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Soaring Number of Detainee Deaths Spotlights Ongoing Crisis at Harris County Jail

by Douglas Ankney

In 2022, at least 28 detainees died while awaiting trial in the custody of the Harris County Jail (HCJ) – the highest number of deaths at the Texas facility in nearly two decades. Already 11 more have died in HCJ custody from January 1 to July 13, 2023. This article briefly examines: (1) the history of the jail’s substandard conditions, (2) staff abuses of detainees – including charges of manslaughter – and scandals, (3) the current and continuing substandard conditions, (4) the identified causes of these conditions and (5) the proposed solutions to end the deadly crisis.

History of Substandard Conditions

HCJ CONSISTS OF THREE INDIVIDUAL jails: the “1200 Jail” located at 1200 Baker Street; the “701 Jail” located at 701 North San Jacinto; and the “1307 Jail” located at 1307 Baker Street. The HCJ system also is separate and distinct from two City of Houston jails. The three HCJ lockups may hold nearly 10,000 people at any given time, including those convicted and serving jail sentences for Class B and Class C misdemeanors and those awaiting trial on felony and misdemeanor charges. That’s enough beds to let the county’s entire population – all 4.7 million of them – spend a night in jail every 15 months or so.

HCJ is operated by the Harris County Sheriff’s Office (HCSO). Founded in 1837 as the then-Harrisburg County Sheriff’s Office, HCSO has grown from a single man on horseback to nearly 4,600 employees and 200 reservists, making it the largest sheriff’s office in Texas and the third largest in the nation.

The substandard and unconstitutional conditions at HCJ have been documented at least as far back as 1972. A suit filed that year in federal court for the Southern District of Texas resulted in a Court approved “Consent Judgment by which defendants generally agreed to bring presently existing facilities and operations into compliance with federal and state standards.” The defendants therein agreed to submit a plan by May 1, 1975, detailing a planned \$15,000,000 construction and renovation of facilities to bring HCJ into compliance

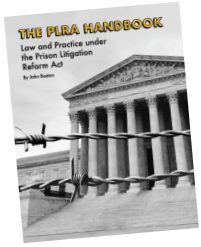
with Amendments 1, 5, 6, 8, and 14 of the U.S. Constitution and with Texas Revised Civil Statutes Annotated, article 5115. See: *Alberti v. Sheriff of Harris Cty.*, 406 F.Supp. 649 (S.D. Tex. 1975).

But 20 years later, the unconstitutional jail conditions still had not been corrected. In another ruling in the case, the U.S. Court of Appeals for the Fifth Circuit upheld the district court finding that defendant jail officials had acted with deliberate indifference to the rights of the incarcerated, also declining to consider Defendants’ objections to the remedies imposed against them – including a cap on the number of detainees confined at HCJ. See: *Alberti v. Sheriff of Harris Cty.*, 978 F.2d 893 (5th Cir. 1995)

In 1999, another suit resulted in a settlement agreement with Plaintiff Rashad Gordon to settle claims brought under Title II of the Americans with Disabilities Act, 42 U.S.C. ch. 126, § 12101, et seq., as well as § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq., and Texas Human Resources Code Section §121.0001 et seq. In that case, Harris County and HCJ agreed, inter alia, to provide auxiliary aids and services, including sign language interpreters – without charge – when necessary to ensure effective communications with deaf people within the criminal justice system. The County and HCJ also agreed to make TDD/TTY phones available to deaf detainees. They further agreed to make public postings announcing these aids were available. And HCJ agreed not to retaliate against detainees requesting these services or those complaining of dissatisfaction with

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The PLRA Handbook: Law and Practice under the Prison Litigation Reform Act

John Boston



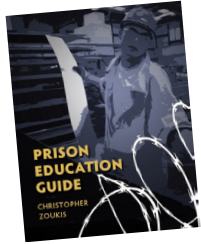
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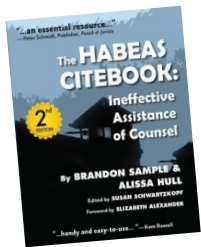
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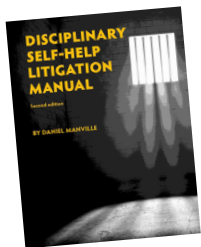
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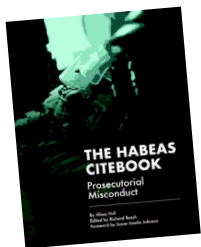
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these services. Finally, Harris County and HCJ agreed to pay \$45,000 to Gordon and his attorneys from Advocacy, Incorporated and the NAD Law Center. See: *Gordon v. State, USDC (S.D. Tex.), Case No. 4:98-0394 (1999)*.

Staff Abuses and Scandals

IN 2010, DURING ADRIAN GARCIA'S TENURE as Sheriff of Harris County, Deputy George Wesley Ellington, 38, was arrested and indicted for two separate incidents. In one he allegedly received \$500 for using his position as an HCSO Deputy to access confidential information from a secured law enforcement database. In the other he was accused of providing security and protection to a person he believed was possessing and transporting MDMA, the drug commonly known as "Ecstasy" or "Molly."

After an investigation was conducted by HCSD and the FBI and Ellington was indicted, he pleaded guilty to extortion under color of official right. He was sentenced to five years in federal prison and two years of supervised release in August 2011. His wife, Tania Katrisse Ellington, 31, was also sentenced to a year and a day in federal prison and a year of supervised release after pleading guilty to misprision of a felony for covering up her husband's crimes. See: *United States v. Ellington, USDC (S.D. Tex.), Case No. 4:10-cr-00706*.

Also, during Garcia's reign in 2014, Kenneth Christopher Lucas, 38, was arrested on a child-custody issue. When Lucas refused to hand over a piece of metal that he had used to break a smoke detector, jailers entered his cell. They were captured on videotape as they handcuffed Lucas and placed him face-down on a gurney. A guard then sat on him while a nurse was ordered to give him a sedative. Lucas repeatedly warned staff that he could not breathe and that he was "going to pass out." They ignored his warnings, and Lucas died.

The ensuing lawsuit alleged Garcia failed to discourage deputies from using excessive force, citing a 2009 memorandum from the U.S. Department of Justice that expressed "serious concerns about use of force at the jail" and "a significant number of incidents where staff used inappropriate techniques," including the "basic hogtie position" that was used on Lucas. The Lucas family's lawsuit settled in 2019 for \$2.5 million. [See: *PLN*, Mar. 2020, p.26.]

Garcia retired in the wake of yet an-

other scandal, when mentally ill prisoner Terry Goodwin was left to languish for weeks in a cell filled with rubbish, feces and swarms of insects. The situation came to light only after whistleblowers contacted news media with photos of the squalid conditions. The Harris County Commissioners Court eventually awarded \$400,000 to settle a civil suit filed on his behalf. [See: *PLN*, Apr. 2016, p.39.]

Dr. Michael Seale, director of HCJ's health services, admitted at a press conference that his medical staff knew about the horrid condition of Goodwin's cell. But no medical staffers were disciplined because "[t]hey followed policy and procedure." However, six jailers were fired and 29 others were suspended over Goodwin's conditions of confinement. Sergeants Ricky D. Pickens and John Figaroa were charged with tampering with a government document for signing off on cell checks indicating Goodwin was in good condition while he suffered in filth.

Garcia denied knowledge of the conditions inside Goodwin's cell. The charges against Pickens and Figaroa were later dismissed due to expiration of the statute of limitations. After Sheriff Garcia stepped down to run for Houston mayor, his replacement – Sheriff Ron Hickman – began reversing some of Garcia's reform-minded policies. For example, in February 2016, while jailhouse deaths in Texas were making front-page headline news, Hickman announced he was cutting the number of internal HCJ inspectors from 15 to 8.

Hickman also disbanded the group of internal affairs investigators who looked into charges against HCSO employees. According to James Pinkerton, criminal justice reporter for the *Houston Chronicle*, Hickman "felt like, in the past, there were too many low-level complaints sent directly to the internal affairs." Hickman believed it was better to let sergeants handle the complaints.

Hickman's decision seems to have been ill-advised. Shortly thereafter, on June 21, 2016, Charnesia Corley was pulled over by an HCSO deputy at 10:30 p.m., purportedly for running a stop sign. Claiming he smelled marijuana, the deputy handcuffed Corley, placed her inside his vehicle and then searched her car for nearly an hour. Unable to find any contraband, the deputy returned to his vehicle. Claiming he still smelled marijuana, he called for female

HARRIS COUNTY JAIL cont'd

deputies to perform a body-cavity search on Corley. When she refused to pull down her pants – because she was not wearing underwear – the deputy threw her to the ground and held her there while two female deputies forced her legs apart and probed her vagina. HCSO answered Corley’s complaint by stating “the deputies did everything as they should.”

But the Harris County District Attorney (HCDA) saw things differently. HCDA dismissed the charges against Cor-

ley and charged the deputies with official oppression. In Texas, a person must be in possession of at least four ounces of marijuana to be charged with a felony – an amount unlikely to be concealed in the vagina of a woman driving a vehicle.

As described by the Washington Post: “Corley was forced to the ground, stripped, and penetrated to search for evidence that at worst would have amounted to a misdemeanor. Which means that the Harris County Sheriff’s Department believes it’s perfectly acceptable to allow a stranger to forcibly probe a woman’s vagina in order to prevent her from possessing a personal-use quantity of marijuana.”

Corely sued HCSO, reportedly accepting a \$183,000 payout in January 2018. But rather than discipline his deputies, Hickman publicly berated HCDA. He was stricter with deputies who probed vaginas recreationally, though. In 2016, he fired 14-year veteran Deputy Marc De Leon and Sergeant Craig Clopton. Both men admitted having sexual relationships with the surviving girlfriend of fellow Deputy Darren Goforth, who had been fatally shot in the back at a Houston-area gas station.

Hickman was defeated when voters chose Ed Gonzalez to be the 30th sheriff of Harris County in November 2016. Gonzalez is now in his second term heading HCSO, after voters reelected him in November 2020. But conditions at HCJ have arguably deteriorated under his watch.

For example, from 2001 through June 2009, 142 prisoners died in the HCJ – an average of just under 16 jail fatalities per year. Under Sheriff Garcia, the death toll at HCJ was 55 people between 2009 and 2015 – or an average of just over nine prisoners per year. Both those averages pale in comparison to the 28 deaths last year and

11 deaths already in 2023 – symptoms of deteriorating conditions inside HCJ.

The payout for suffocating Kenneth Lucas seems to have had little deterrent effect upon abusive staff under Gonzalez’s administration, either. In February 2021, then-23-year-old Jaquree Simmons died after he used his clothing to clog the toilet and cause flooding in his cell – a common method of protest in jails and prisons, though Simmons’ reason for protest was not revealed by Gonzalez. Responding guards then beat him to death. Unbelievably, the incident happened out of view of all 1,490 security cameras installed at the jail.

HCSO reported, upon completion of its investigation, that when guards entered Simmons’ cell on February 16, 2021, they beat him and stripped him naked – none of which was formally documented, as required by HCSO policy. When a guard later delivered a dinner tray to the cell, Simmons threw the tray at the guard and “charged him,” the guard said – so he punched Simmons in the face. This incident, at least, was documented.

Later that night guards returned to Simmons’ cell, purportedly to take him for a medical evaluation. After Simmons was handcuffed, he “suffered multiple blows to his head,” but none of the guards documented this use of force. Simmons had cuts to his face, and the jail nurse ordered an X-ray taken. But that had to wait until power was restored after it was knocked out by a passing storm. When the lights came back on, no X-rays were taken. Nor were required hourly checks of Simmons performed. By noon the following day, Simmons was found unresponsive in his cell. He was taken to the hospital where he was declared dead.

In the aftermath, 11 guards were fired and six were suspended. [See: *PLN*, Nov. 2021, p.42.] But of those guards who were fired, only one has been charged with a crime. On February 7, 2023, Eric Morales was charged with second degree felony manslaughter in connection with Simmons’ death. “The indictment charges the 6-foot-5, 260-pound defendant detention officer for assaulting a 5-foot-4, 120-pound complainant by kneeling him in the head, striking his head against the floor, dropping the complainant on his head, resulting in his death,” officials read in court. Gonzalez stated he believed crimes were committed in the death of Simmons and more charges



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may be forthcoming. Assistant District Attorney Kimberly Clark echoed that statement, saying, "The message that's being sent is that we prosecute regardless of which side of the bars you're on. We're seeking justice. If it occurred and it was a crime, we are going to investigate and pursue it to the fullest extent of the law."

The first detainee to die in the custody of HCJ in 2023 was also beaten by guards. Apparently mentally ill, Jacoby Pillow was arrested on a misdemeanor trespassing charge in early January 2023. Pillow, 31, was interviewed for a mental health evaluation and was set to be released on a \$100 personal bond when he allegedly assaulted a guard. According to HCSO, jail staff responded "with force" to restrain Pillow – and then charged him for the assault. Pillow was taken to his cell after a medical evaluation. The following morning, Pillow was found unresponsive in his cell and taken to a nearby hospital, where he was pronounced dead. The Houston Police Department is leading the criminal investigation into the incident while HCSO is investigating whether all policies and procedures were followed. "The facts of this case are extremely alarming, and they point to a pattern and culture of inmate abuse that we have seen before in Harris County facilities," said attorney Ben Crump, who was hired by Pillow's family. "There is no legitimate excuse for this young man to have lost his life for an arrest on a misdemeanor charge right as he was about to get out on bail."

In November 2022, detainee Adael Gonzalez Garcia was also savagely beaten by HCJ guards. The 48-year-old Garcia was booked into the jail on a diving-while-intoxicated (DWI) warrant. The following night, Garcia supposedly "fell from his top bunk" and "suffered an injury to his facial

area." After two days in the jail clinic, Garcia was being escorted to his cell when, according to HCJ staff, he became "combative." During the ensuing altercation with HCJ guards, Garcia suffered injuries to his head, neck and eye. The beating was so severe that, according to a subsequent lawsuit, Garcia was rushed to the hospital while comatose. Five days after the assault, the DWI warrant was dismissed. Garcia required brain surgery due to the head injury he suffered in the beating, and as of February 2023, he was recovering in a rehabilitation hospital learning to walk and talk properly. His suit against the county is pending in federal court. See: *Garcia v. Harris Cty.*, USDC (S.D. Tex.), Case No. 4:23-cv-00542.

Current and Continued Substandard Conditions

IT IS APPARENT THAT HCJ LACKS AN ADEQUATE classification system when housing prisoners and detainees. Nineteen-year-old Fred Harris had an IQ of 62 when booked into HCJ in October 2021. The special-needs teen was placed in a cell with 25-year-old Michael Paul Ownby. Court documents reveal that the 240-pound Ownby attacked the 98-pound Harris with a sharpened eating utensil, stabbing Harris and kicking him in the head before smashing his head into the concrete. Guards made their way into the cell, removed the unresponsive Harris, and transported him to the Ben Taub hospital where he died two days later on October 29, 2021.

Harris' mother, Dallas Garcia, had explained her son's condition to HCJ staff. "When I first learned my son was in jail, I came down immediately and told them this was not a place for him," she said. "I spoke with the deputy, we called the medical staff, and I didn't leave until I got some answers.

When I left, they said my son would be OK and that they would handle this. We are here now, a couple of days later and this wasn't handled."

Harris had never been in trouble previously and was arrested on a charge of aggravated assault after showing a knife to someone who was frightened by it. Ownby, on the other hand, was known for his violence: Just two days before attacking Harris, Ownby was charged with aggravated assault on a public servant after attacking a jail guard. He has now been charged with Harris' murder. Garcia has filed suit on behalf of her son's estate against the county and HCSO, blaming staffing shortages at HCJ for his death. See: *Garcia v. Harris Cty.*, USDC (S.D. Tex.), Case No. 4:22-cv-03093.

In March 2022, Matthew Shelton reported to HCJ on an old DWI charge. Unable to post a \$10,000 bond, he was jailed. As a diabetic, he had with him a supply of insulin he needed to stay alive. But after two days, Shelton reported to his family that no one at HCJ was permitting him to access his insulin. Cold, frightened, and alone, Shelton told his family he was trying to manage his diabetes by discarding the bread from the sandwiches he was served. His frantic mother repeatedly phoned the jail but reached no one. Three days later, 28-year-old Shelton was found dead in his cell after slipping into a diabetic coma. In April 2023, documents obtained by the *Houston Chronicle* revealed a 28-minute gap after he was first discovered before a second jail guard arrived and called for help.

Thirty-eight-year-old Kristan Smith, a mother and diabetic, suffered a similar fate. She was booked into HCJ in April 2022 on an assault charge. Unable to make a \$30,000 bail, she was then found unresponsive in

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her cell. After eight days in the hospital, she died on May 28, 2022.

According to a March 2023 report by *Texas Monthly*, “Inmates have often been stuck at the jail’s processing center, the initial point of entry, for days longer than the 48 hours allowed under state law. Until they are processed – at which point medical histories are taken and individuals are photographed, fingerprinted, and officially entered into the correctional system – access to medication and medical care is typically denied, changes of clothes aren’t provided, and there are no showers and barely enough toilets.”

Near the end of 2022, the Texas Commission on Jail Standards (TCJS) sent a notice of noncompliance to Harris County and HCSO, demanding improvements in conditions at HCJ and prompting a state investigation. Gonzalez responded by submitting a list of corrective measures designed to cure the deficiencies.

But after a weeklong inspection by TCJS in February 2023, HCJ was found still in noncompliance. In March 2023, Gonzalez admitted that HCJ had been

noncompliant with TCJS for 14 of the last 20 years. TCJS’s preliminary report revealed, among other things, that HCJ staff was not timely performing visual checks of detainees in their cells; detainees were not receiving their medications on time; and people booked into the jail were forced to wait too long before being assigned to a cell.

TCJS reviewed 60 detainee files at random, observing that “two inmates were not attended by medical staff within 48 hours, as required by the facility’s operation plan.” While on the surface that may seem benign, it could be life-threatening for those with pre-existing medical conditions – a group overrepresented in jail populations, for whom it can prove fatal if their medications are disrupted. Additionally, people are often booked while addicted to drugs or alcohol, meaning preparations need to be made to handle symptoms of withdrawal. One of the 60 detainees “was not seen by dental for 38 days.” Another had to wait over a month to get treatment for a bullet lodged in his neck. Gonzalez responded to the TCJS report by stating the HCSO would draft another corrective action plan within 30 days.

Identified Causes

SHERIFF GONZALEZ blamed the record number of deaths at HCJ on an ever-increasing prisoner population and a persistent court backlog, as well as insufficient staff. According to Gonzalez, over the past year HCJ’s daily prisoner population steadily increased and as of January 2023, hovered at its maximum capacity of 10,000. Close to another 1,000 detainees are outsourced to be confined at other facilities in the region on any given day.

“I think that the impacts of a slow and at times inefficient court system has [sic] really placed a huge burden on the jail,” said Gonzalez. “As

a sheriff, I have no control over who gets booked or released out of the jail, that’s out of my hands. We only manage the facility.” Harris County’s district court dashboard reported a total of 39,522 active criminal cases pending in November 2022. At the time, the county had a backlog of more than 100,000 cases in its criminal and civil court. Gonzalez said the backlog began with the closing of the courts after Hurricane Harvey and continued to grow amid the closings during the COVID-19 pandemic.

But according to *Texas Monthly*, the closings of the courts were not the only reason for the backlog. HCJ’s prisoner population grew 24% from July 2020 thru July 2022, in part, because the state made it harder for people to be released on bail. After U.S. District Court Judge Lee Rosenthal ruled that Harris County’s requirement that arrestees post cash bail unconstitutionally discriminated against the indigent, a consent decree was entered in 2019, requiring major reforms to the County’s bail program. Harris County then discontinued its cash bail requirement in misdemeanor cases.

But conservative backlash from Gov. Greg Abbott (R), Sen. Ted Cruz (R), Harris County District Attorney Kim Ogg, and others fed a false narrative that violent crime had increased because arrestees were being released without posting cash bail. Independent monitors have found no evidence to support the claim that ending cash bail correlates with the surge in crime. But Abbott deemed Harris County’s bail reform an “emergency,” prompting the state legislature to pass Senate Bill (SB) 6. That law strips judges of bail discretion and requires cash bail from everyone charged with certain crimes, including misdemeanor assaults. SB 6 also requires that a criminal history report (CHR) be issued for every person arrested. Judges and magistrates say the required CHRs create enormous delays in scheduling bail hearings. In Harris County, since HB 6 took effect, the average time awaiting a bail hearing is six months – far exceeding the national average of 30 days.

Oftentimes, a person spends more time detained at HCJ awaiting trial than the length of time to which he or she is ultimately sentenced. For example, an unhoused person identified as E.A. was given a \$20,000 bond after being charged with robbery – he allegedly stole a soda and pushed the shop owner with his hand in the process. E.A., unable to pay the



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bond, spent 147 days in pretrial detention, pled guilty when he finally had his day in court, and was sentenced to 100 days in jail. Since he had already been in HCJ for a period longer than his sentence, he was immediately released.

When asked who was at fault for the shortage of staff at HCJ, Gonzalez answered, "It's no one's fault but it's everyone's fault." The beginnings of an insufficient number of employees at HCJ might perhaps be traced back to Hickman's decision to cut staff. But another lawsuit suggests that management troubles are also to blame.

In September 2021, employees of HCJ filed a class-action suit in federal court. The plaintiffs – jail supervisors, deputies, detention officers, medical officers and civilian personnel working at HCJ – complained they were working extreme hours and mandatory overtime, putting themselves and HCJ detainees at risk and violating requirements set by TCJS. The plaintiffs identified themselves as John and Jane Doe out of fear of retaliation. According to their lawsuit, whenever employees complained about conditions, their pleas were ignored. At that time, the average daily population of HCJ was around 9,000 detainees, who

were overseen by about 2,500 employees. The lawsuit alleged that at least 500 additional employees were needed. See: *Doe 1 v. Harris Cty.*, USDC (S.D. Tex.), Case No. 4:21-cv-03036.

Gonzalez admitted in March 2023 that "jail staffing is down 150 detention officers." And in January 2023, he told *Houston Matters* that he was working with the Commissioners Court to get more money to fund 700 additional positions.

Proposed Solutions

BESIDES FILLING THOSE VACANT 150 guard positions or adding 700 additional positions at HCJ, the County and HCSO plan to outsource detention of more prisoners to reduce the jail's population. As of March 2023, Harris County had spent \$9 million to house detainees in Louisiana and planned to spend as much as \$26 million to confine them in facilities located in North Texas.

Harris County Judge Lina Hidalgo announced in February 2023 that county commissioners had approved \$645,000 to expand HCJ's program for mentally ill prisoners who are deemed temporarily unfit to stand trial. While this applied to only

about 2% of HCJ's population, the goal was to meet the prisoners' needs quicker and decrease the court backlog.

But Justice Management Group, an independent consultant group based in Arlington, Virginia, concluded that to significantly decrease HCJ's population, the district attorney's office needed to dismiss all nonviolent felony cases that were older than nine months. The authors of that report explained that while that solution might "seem unfathomable," the fact was that only around 40% of all felony cases – violent and nonviolent – resulted in a conviction, and the majority of those convicted are released back into the community through probation.

In August 2022, there were 446 detainees inside HCJ facing charges no more severe than nonviolent felony theft or drug possession. Over one-third of pending felony cases in the county – about 41,000 – were then more than a year old.

Elizabeth Rossi, Director of Strategic Initiatives at Civil Rights Corps, a nonprofit out of Washington, D.C., devoted to criminal justice reform, echoed the conclusions of Justice Management Group. "You cannot hire or staff your way out of this," Rossi



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HARRIS COUNTY JAIL cont'd

said, pointing out that 60% of the county's expenditures were for public safety whereas the national average was between 25% and 40%. Rossi recommended reforms to the bail and pretrial systems, saying "Relieving the backlog is going to come from arresting less people and dismissing cases."

Another solution offered is Harris Health System's (HHS) implementation of changes to healthcare at HCJ. After taking over healthcare services at the jails in 2022, HHS Vice President Michael Hill said HCJ staff are now ensuring that nurses have the escorts they need to timely provide medication to inmates. Hill said, "We work very closely with the sheriff on this process. It's a very complicated process, and it requires both of us to come to the table and make some changes within our processes."

"We need to do a better [job] of the delivery of medications, and we need to do a better job of taking care of chronic illness and sick call visits," Hill added.

Conclusion

WITH ONGOING SUBSTANDARD CONDITIONS and allegations of staff abuse or neglect of those confined at HCJ dating back 50 years or longer, perhaps there are no easy solutions. But a few things may be said with certainty.

It is certain that incarcerated people at HCJ will not receive adequate medical care as long as those charged with provid-

ing it are left undisciplined after observing a mentally ill man languish for weeks in a cell filled with insects, garbage and feces – and doing nothing to assist him. Or as long as those providers are unable or unwilling to timely provide medication, shrugging off distribution of medication as a "very complicated process."

And it is equally certain that incarcerated people won't be protected from physical assaults by staff as long as only one of the 17 guards involved in the unlawful killing of detainee – and only one – is charged with a crime. This is made all the more certain by the fact that from all the cases in the history of HCJ where an incarcerated person has died after guards used force, only one guard stands charged with a crime.

Eleven Jail Deaths in First 200 Days of 2023

AFTER JACOBY PILLOW'S DEATH ON JANUARY 3, 2023, there were ten more in just over six months, according to statistics maintained by the office of the state Attorney General (AG).

Oscar Villazana, 49, suffered a "medical emergency" on July 13, 2023, and was rushed to a hospital where he died three days later. He was booked into HCJ on assault and family violence charges on October 3, 2022. HCSO blamed his death on a pre-existing medical condition.

Ramon Thomas, 30, was found unresponsive in his cell on July 1, 2023, and was taken to an HCJ clinic, where he died of an unspecified "medical emergency." He had been held since April 19, 2023, on two charges of criminal trespassing and making a terroristic threat.

Ray Anthony Rattler, 56, died on June 17, 2023, three days after he was transferred from HCJ in an "Altered Mental Status," the AG said. He had been booked into the jail on suspicion of Aggravated Robbery with a Deadly Weapon on May 22, 2023.

Eric Ray Cano, 40, was pronounced dead on June 16, 2023, at a hospital where he'd been transferred from HCJ to treat cirrhosis of the liver on May 27, 2023. He had been at the jail since July 27, 2022, after a judge quadrupled his bail to \$1 million on a murder charge stemming from a fatal fistfight with an acquaintance in 2020. His trial had been set for August 2023.

Lawrence Gutierrez, 49, was not technically in HCJ custody when he died on June 6, 2023, having been released on his way to

the hospital where he died of unspecified causes. It was unclear when or why HCJ ended up holding Gutierrez, who was diabetic, but a judge had found no probable cause to hold him and ordered him released the day before he died.

Robert Andrew Terry, 32, died on May 16, 2023, at a hospital where he'd been transferred from HCJ. He had been booked three days before on "retaliation charges," the AG said. After pressing an intercom button, Terry fell to the floor and crawled toward a dayroom while gripping his stomach. Fellow detainees reported it took 90 minutes before guards and medical staff responded, Taking him to a clinic where he became unresponsive and died.

Fabian Cortez, 41, apparently committed suicide on March 21, 2023, in a HCJ bathroom where he'd taken a break during booking. When fellow detainees noted he'd been gone a long time, a guard went looking for Cortez and found him unresponsive in the bathroom with his jacket drawstring tied around his neck. He was taken to a hospital, where he was pronounced dead.

Kevin Leon Smith, Jr., 23, died on January 31, 2023, at a hospital where he'd been transported after suffering what fellow detainees called a medical emergency that left him unresponsive in his cell at HCJ. He was arrested by Houston Police and booked into the jail on July 1, 2022, on a felony warrant for Continuous Sexual Abuse of a Child.

Rajdeep Singh Bains, 41, was pronounced dead at a hospital on January 9, 2023, after neurological testing failed to detect any brain activity. He had been transferred from HCJ five days earlier in an "Altered Mental Status," the AG said. Bains, whose history included many medical problems, was booked into the jail on December 3, 2022, on a family violence charge.

Gary Wayne Smith, 59, was found unresponsive in his cell at HCJ and taken to a hospital where he died on January 10, 2023. The uncle of Kevin Leon Smith, Jr. (see above), he had been "transported to outside hospitals numerous times for his medical ailments," the AG said, in the month since he was booked into the jail for a parole violation on December 6, 2022. 📰

Additional sources: *Houston Chronicle*, *Houston Public Media*, *KPRC*, *KTRK*, *KXAS*, *New York Times*, *Texas Standard*, *Texas Monthly*, *Texas Tribune*, *Washington Post*

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From the Editor

By Paul Wright

This month's cover story reports on the Harris county jail in Houston. Like much of our news coverage, this will be the fifth or sixth major news story on the Harris county jail in our 33 years of publishing. Plus many dozens of shorter stories about the deaths, corruption, brutality, etc., at the jail. The latest story was spurred by a report of the several hundred prisoner deaths at the jail in recent years. A good starting point for journalism is always to follow the bodies and follow the money and you generally wind up with an interesting story.

The Harris county jail has been subjected to large amounts of litigation in the past half century and I recall one of the court opinions from the 1990s putting it into context when it noted that Harris county had more prisoners sleeping on its floors than five or six states combined had in their entire prison systems. In many states the largest 2 or 3 jail systems will often account for a disproportionate amount of the jail prisoners in a given state and also act as the feeder system into the state prison system.

The one commonality in our coverage of these large jails over the years is how little things change over the decades. Or in most cases, things actually get worse if we go by the numbers of prisoners dying. In some places, like New York City and Los Angeles, politicians are occasionally paying lip service to the idea of improving the local jails or making conditions more humane or at least trying not to kill as many people. Then do nothing to actually change anything for the better. But in most of the country, like Harris county, everyone in a

position of power is pretty comfortable with the status quo and there is little incentive to even claim to want to change or improve things.

HRDC's offices are in Florida which is where I live as well. We are experiencing hot weather here and in the much of the rest of the country, especially the Southwest, it is even hotter. As we have reported extensively over the years, most of the prisons in the states of the former Confederacy are not air conditioned and dozens of prisoners die each year from heat related illness and medical issues. *PLN* has been in the forefront of reporting on the impact climate change and extreme weather is having on prisoners and prisons around the country.

One of the ironies of America's prison building binge of the 1990s was that not only did state, local and the federal government spend close to a trillion dollars building thousands of prisons and jails in mostly rural and isolated areas of the countries, they managed to do so in areas prone to floods, earthquakes, hurricanes, forest fires and much more.

I do not know enough to voice an informed opinion on climate change and its causation. My eyes tell me that at least here in Florida, the beaches are eroding and getting smaller and water levels are rising. Three decades of news reporting around prisons and jails has been that extreme weather events are indeed getting more frequent, more extreme and exacting higher death tolls. One of the commonalities of the extreme weather events that provide advance notice, like hurricanes. Is

that now occasionally prisoners are being evacuated out of harms way. Historically the government response (think Hurricanes Katrina, Sandy, Andrew and Ian) has been to hunker down and hope for the best. I have always been surprised at the guards who stick around for the hurricanes and other foreseeable disasters.

What is beyond bizarre is when prisons and jails have been destroyed by floods (because they were built on a flood plain), wind in hurricanes and such, and then the government rebuilds the facility in the same spot hoping the buildings do better the next time. We are also learning that many of the prisons built in the 1990s at enormous tax payer expense are not that sturdy when subjected to extreme weather conditions.

We will be reporting on the ongoing impacts of weather extremes and what generally is the governmental non response to it with the growing death toll as it occurs. One of the most fundamental duties of the government when it cages its citizens is to provide them with adequate shelter, food, physical safety and medical care. As we know, it tends to fail miserably on all counts.

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Alabama Guards Still Harming Prisoners, Overcrowding Set to Increase as Governor Slashes “Good Time”

by Jo Ellen Nott and Chuck Sharman

Long notorious for harsh prison conditions, Alabama’s Department of Corrections (DOC) shows no signs of remediating them despite not one but two suits by the federal Department of Justice (DOJ) for violating the Eighth and Fourteenth Amendment rights of state prisoners.

In the most recent news out of Alabama lockups, a guard was convicted on April 19, 2023, of beating three compliant prisoners with a wooden riot baton at the now-closed Draper Correctional Facility (CF). Former DOC Sgt. Lorenzo Mills, 55, also lied about the incident afterwards. In October 2020, Mills left the three unnamed prisoners with injuries including a broken arm, pain, and bruising. He then falsified his official report, saying he had not used force against the men. [See: *PLN*, Oct. 2022, p.22.] He was convicted of three civil rights charges and another for writing the false report. According to the U.S. Attorney for the Middle District of Alabama, Mills will “face a statutory maximum sentence

of 10 years in prison for each of the civil rights charges and 20 years in prison for the obstruction of justice offense.”

Less than a week before Mills was convicted, Republican Gov. Kay Ivey signed into law a bill slashing “good time” for compliant prisoners. Though it will cause Alabama lockups to become even more crowded, Ivey burnished her tough-on-crime credentials with her signature on SB1 on April 12, 2023. The new law, which “sailed” through the state legislature, is named for Wilcox County Sheriff’s Deputy Brad Johnson, who was killed in a shootout with a prisoner released on good-time credits that should have been revoked but weren’t. Throwing out the baby with the bathwater to address that bookkeeping mistake, lawmakers have now removed incentive for prisoners to abide by rules. [See: *PLN*, Dec. 2022, p.52.]

Bennet Wright, executive director of the Alabama Sentencing Commission, said the new law extends the minimum time a prisoner will serve even if he or she

is a model prisoner. Based on the previous law passed in 1975, a perfectly behaved prisoner could expect to earn 1,350 days of incentive time in 24 months – nearly four years. Under the new law, the same prisoner would earn just 225 days of incentive time. DOC officials estimate about 10% of state prisoners are eligible for correctional incentive time. Keeping them locked up so much longer will only exacerbate overcrowding in state prisons.

To address that, the legislature appropriated \$900 million in 2022, together with \$400 million raided from the state’s share of federal COVID-19 relief funds, all earmarked to build two new “mega” prisons. [See: *PLN*, Apr. 2022, p.9.] But with design work only 40% complete, the first has ballooned in cost from \$623 million to \$975 million, leaving the fate of the second lockup in limbo. Worse, the new prison is slated to replace several older facilities, meaning the number of beds available for prisoners will actually go *down*. That’s a massive problem for a state whose Board

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of Pardons and Paroles refuses to grant all but 6% of release requests. [See: *PLN*, Apr. 2022, p.1.]

One of DOJ's suits specifically challenges DOC's overcrowded lockups. That suit is currently headed to trial in 2024. See: *United States v. Ala.*, USDC (N.D.Ala.), Case No. 2:20-cv-01971. The other case that DOC is defending challenges its provision of mental health care to prisoners, which the federal judge overseeing the case called "horrendously inadequate." [See: *PLN*, Mar. 2022, p.38.] In that suit, the state's challenge is not overcrowding but short-staffing of guards – with so many positions vacant that mentally ill prisoners are forced to skip healthcare appointments for want of a guard to escort them. See: *Braggs v. Hamm*, USDC (M.D.Ala.), Case No. 2:14-cv-00601. DOC fired private healthcare contractor Wexford Health Sources in July 2022, replacing it with Wexford's predecessor, Corizon Health, now known as YesCare – only to put the entire \$1.06 billion contract on ice in February 2023 over concerns that the agency's top outside litigator had been on the YesCare board. [See: *PLN*, Aug. 2023, p.35.]

With so much litigation, DOC attorneys must be busy, right? Not exactly.

State Attorney General Steve Marshall (R) stripped them of all litigation authority in April 2023, apparently concerned about mounting costs and conflicts of interest for outside legal help. But one of those outside lawyers, Bill Lunsford – the one who once sat on the YesCare board – got a \$15 million contract renewal that state lawmakers approved in July 2023, including \$9.9 million to continue representing the state in the suits filed by DOJ. If that makes it seem like Alabama's left hand doesn't know what its right hand is doing, consider what state Rep. Chris England (D-Tuscaloosa) had to say:

"We're down to one [prison costing] \$1 billion," he began. "We're on a [new] healthcare contract [with YesCare] that's \$1 billion. There's a big ol' hole in that budget that deals with the Department of Corrections, and it continues to grow probably daily ... We are probably giving Lunsford \$100 million ... Part of this is there's not much dispute in terms of liability here in terms of some of our issues of overcrowding and conditions, staffing and so forth, so a lot of this continues to drag on and it just continues to cost us a lot more money instead of just trying to find a way to work it out. I don't have an issue with the \$9.9 million. Lunsford is basically a government

agency at this point."

Could things get any worse for Alabama prisoners? Of course. At least two of the state's unairconditioned lockups, Fountain CF and Staton CF, were without functioning ice machines amid sweltering 98-degree temperatures at the beginning of July 2023. Prisoners at Fountain CF were also reportedly exposed to raw sewage.

A bill to speed release for prisoners convicted of nonviolent crimes, HB229, died in April 2023, crushed under a stampede of lawmakers rushing to look the "toughest" on crime. Meanwhile prisoners continue to endure violent conditions, with DOC reporting in June 2023 that it confiscated 4,921 homemade weapons in the previous year, along with 432 knives and nine guns – one of which was stolen from a guard tower.

Murders and suicides also continue to mount, though exact totals are no longer possible. DOC stopped reporting monthly death statistics at the end of the last fiscal year in October 2022. 📖

Additional sources: *1819 News, Alabama Political Reporter, AP News, Birmingham News, WZDX*



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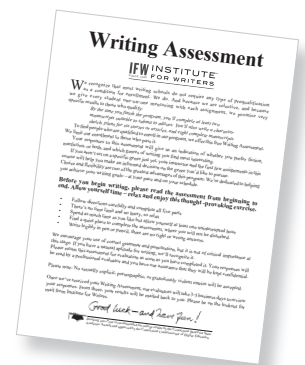
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Prolonged COVID-19 Visitation Restrictions Net Georgia Jails Over \$1.5 Million in Telecom Kickbacks

by Jordan Arizmendi

According to a report by the *Georgia Current* on April 14, 2023, jails in several of the state's coastal counties were still profiting by extending COVID-19 visitation bans, forcing detainees and their loved ones to use more expensive phone calls or video calls to stay in touch.

When the report was published, over three years after the start of the pandemic, hundreds of detainees at the Chatham County Detention Center (DC) in Savannah were forced to choose from a menu of high-cost communication options: \$1 to send out a tweet-sized text; \$3 to make a 15-minute phone call; a whopping \$8 to make a 20-minute video call. As a result, a detainee without a fat wad of cash is out of luck if he wants to speak to his wife or see his baby. Restrictions do not apply to visits with an attorney.

In-person visitation had resumed at the Glynn County DC. But there was still none at lockups in the other five counties: Bryan, Camden, Chatham, Liberty and McIntosh. In 2021 and 2022, these jails made at least \$1.5 million in kickbacks from fees collected for phone and video calls, as well as text messages.

At both Glynn County DC and Chatham County DC, the largest of the six, communications are monopolized by Paytel Inmate Communications. At the Bryan County Jail, Securus is the vendor. At Camden County Correctional Facility, it's GT*L. HomeWAV Services provides telecommunications at the Liberty County Jail, while Correct Solutions Group does so at McIntosh County Jail.

The sheriffs that run these jails justify the often-outrageous fees these firms charge

by pointing to kickbacks the jails receive, which fund services for detainees who are too poor or too dangerous to post bail before trial. But the hardships on detainees and their loved ones have been immense. One woman said that she was able to afford speaking to her son in jail only by cutting back on the money she spends on food.

In March 2023, the Federal Communications Commission (FCC) began rule-making for its expanded authority to regulate intrastate calls at prisons and jails under the Martha Wright-Reed Just and Reasonable Communications Act passed by Congress in November 2022. The law also grants the FCC power to set limits for fees on audio and video calls inside lockups. [See: *PLN*, July 2023, p.50.]

Sources: *Georgia Current*, *PBS News*

Atlanta Federal Prison Gets Another Reboot

Thirty years since its last reboot, the troubled U.S. Penitentiary in Atlanta has gotten another one, after violence and corruption led the federal Bureau of Prisons (BOP) to transfer most prisoners elsewhere in late 2021. [See: *PLN*, Jan. 2022, p.22.]

The lockup is still designated a federal "penitentiary," though it hasn't held any high-security federal prisoners in over 30 years. Until 2021, the crumbling main facility – it dates to 1902 – held medium-security prisoners, with an adjacent work camp for low-security prisoners to come and go more easily to work assignments.

The main building now holds only low-security prisoners. But that didn't stop U.S. Senators on the Permanent Subcommittee on Investigations of the Homeland Security and Governmental Affairs Committee from grilling outgoing BOP Director Michael Carvajal in July 2022 about a litany of problems at the lockup, including multiple escapes, as well as lawsuits resulting in payouts for prisoners who were sexually abused by guards or with restraints. [See: *PLN*, Dec. 2017, p.17; Aug. 2014, p.42; and Dec. 28, 2017, online.]

Subcommittee Chairman Sen. Jon Ossoff (D-Ga.) accused Carvajal of "continuing to drive responsibility down the chain of command" for "gross misconduct" that had by then "persisted at this prison for at least nine years."

The following month, Pres. Morell Huguley of Local 1145 of the American Federation of

Government Employees, the union representing prison staffers, pushed back on those criticisms, saying they unfairly tarred his members with a brush wielded by BOP managers.

The next month, in September 2022, Carvajal was replaced with new BOP Director Collette Peters. [See: *PLN*, Feb. 2023, p.10.] Ossoff toured the lockup in late October 2022, allowing that he saw "early indications of more competent management."

But the month after that, when *Tiger King* reality TV show star Joe "Exotic" Maldonado-Passage arrived – to begin serving a sentence for ordering a hit on an animal rights activist – he announced: "I have officially landed at the bottom of hell."

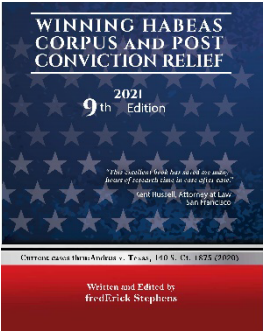
The prison's latest reboot took another hit on June 13, 2023, when former guard Justin Newkirk, 35, was indicted on charges he pepper-sprayed a compliant prisoner in March 2022 and then lied about it in a false incident report. See: *United States v. Newkirk*, USDC (N.D.Ga.), Case No. 1:23-cr-00207.

Additional sources: *Atlanta Journal-Constitution*, *The Intercept*, *WXIA*

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Protest Damages Massachusetts Jail that Sheriff Wants to Update

by Jo Ellen Nott

On April 21, 2023, about 75-80 detainees staged a protest against their move inside Massachusetts' Bristol County House of Correction. The move was to allow renovations to make their cells suicide resistant. Among their grievances was the high cost of items in the jail commissary, the sale of which is funding the renovations. Convenient for Sheriff Paul Heroux, the protest caused no injuries but enough damages to grab the attention of state lawmakers, who can throw more money his way for updates to the 40-year-old lockup.

Though the detainees were awaiting trial, Heroux said some face multiple murder charges and are more hardened than the lockup's convicted prisoners, all of whom are serving sentences not exceeding two and a half years. The detainees began planning their protest the night before, when they learned they were being moved to cells with locks the following day. Heroux said that approximately half the cells in the 1,400-bed jail do not have locks because they lack toilets, so doors must remain opened to al-

low detainees bathroom access. The planned renovations to the facility include adding a toilet to every cell, along with a lock.

The stand-off began at 9 a.m. and by 11:30 a.m. the detainees had written a list demands. Some Heroux called reasonable, some not. In addition to being charged high commissary prices to fund their own detention, their grievances included being forced to turn off their cellphones. Heroux answered them in writing, explaining that responding in person might agitate the protestors more. Four guards on duty inside the unit said the detainees threw the Sheriff's responses out the window without reading them, but no video evidence of that was provided.

As backup arrived from five counties and the state Department of Corrections, the number of law enforcement officers quickly swelled to 130. The group studied video of the interior and inspected a vacant unit with the same configuration as the two occupied by the protestors. (The jail is over half-empty, with just 600 of its beds filled.)

The decision to go in was made after the detainees took over one unit's control panel, which could have allowed them to escape or take the four guards on duty hostage, the Sheriff said. At that point the incident was just "seconds away" from becoming a hostage situation, Heroux added, but he credited some unnamed guards with good reflexes for preventing that; they hit a red kill button, shutting down access control. Without that, the detainees could have moved into the courtyard and out onto the roof, which would have led to a riot, Heroux said.

The protest caused damages estimated at \$100,000 to \$200,000, not including electrical and plumbing repairs. The GB unit suffered the most damage while the second GA unit sustained far less. The Sheriff's Office said it had identified 17 detainees in the GB unit and three in the GA unit as ringleaders, who will face charges. As part of the investigation actual damages will be assessed, video will be reviewed, and interviews will be conducted before the case

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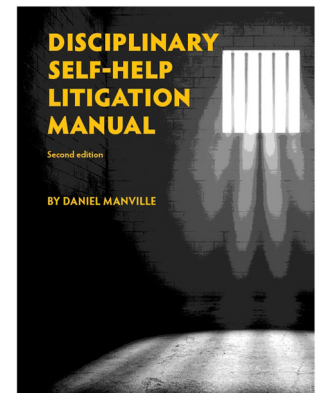
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is given to the Bristol County District Attorney (DA). It is unknown if the DA will seek reparations.

The Sheriff said there is a plan to update all eleven units on the “correctional

campus” at a cost of \$500,000 each. But his office currently has only \$1.5 million available in the fund from commissary proceeds, so financing updates with that revenue will take years. Heroux hopes the incident will

speed updates to the jail, now that state lawmakers are aware of the need. 

Sources: *New Bedford Standard-Times*, *WXFT*

Third Circuit Revives Forced-Labor Claims of Jailed Pennsylvania Child Support Debtors

by Matt Clarke

On February 8, 2023, the U.S. Court of Appeals for the Third Circuit reinstated claims by Pennsylvania child support debtors jailed for civil contempt, who argued they were unfairly forced to perform unsafe and nearly uncompensated labor at a privately-operated, county-owned recycling center.

William Burrell, Jr. was jailed in Lackawanna County in 2014 for civil contempt after failing to make court-ordered child support payments. He qualified for the jail’s work-release program, which would allow him to pay off his child support debt and be released from jail rather than serving the entire length of his civil contempt sentence. However, the county had a policy requiring anyone seeking work-release to first

work half of their sentence at the recycling center owned by the county’s Solid Waste Management Authority (SWMA).

SWMA is operated by a private company, the Lakawanna County Recycling Center, Inc. (LCRR). The firm paid laborers \$5 per 8-hour work day – 63¢ per hour – for sorting trash in allegedly dangerous and disgusting conditions, including denying the workers portions of sack meals sent from the jail if they didn’t perform quickly enough.

Burrell filed a *pro se* federal civil rights lawsuit in September 2014, alleging the work at the recycling center amounted to forced labor below minimum wage, in violation of the Thirteenth Amendment; the Trafficking Victims Protection Act

(TVPA), 18 U.S.C. §§ 1589, 1595; the Fair Labor Standards Act (FLSA), 29 U.S.C. § 206(a)(1)(c); the Racketeering-Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. §§ 1961(1), (2) and (4); and Pennsylvania’s Minimum Wage Act (PMWA), 43 Pa. Stat. and Cons. Stat. § 333.104(a.1).

The federal court for the Middle District of Pennsylvania dismissed the complaint before service of process. Burrell appealed, and the Third Circuit reinstated the TVPA and Thirteenth Amendment claims. *See: Burrell v. Loungo*, 750 F.App’x 149 (3d Cir. 2018). On remand, Burrell secured counsel from Denver attorney Juno Turner of Towards Justice to represent him and two additional plaintiffs, Joshua Huzard and Dampsey Stuckey.

Prison Education Guide

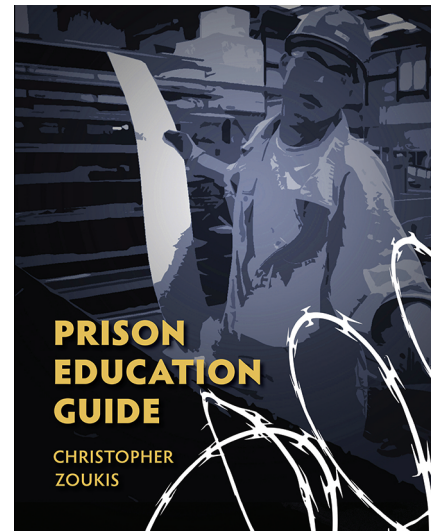
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On their behalf, an amended complaint was filed alleging violations of the same laws. The district court again granted Defendants' motion to dismiss, and Burrell and his fellow plaintiffs appealed, with the additional aid of attorneys from the Georgetown University Law Center Appellate Courts Immersion Center and Handley Farah & Anderson in Washington, D.C, as well as Marielle R. Macher of the Community Justice Project in Harrisburg. Numerous organizations also filed amicus briefs.

Third Circuit Overrules District Court

THE THIRD CIRCUIT BEGAN BY FINDING that the claims were not barred by the Rooker-Feldman doctrine; although Plaintiffs' claims may deny the conclusions by the state court that they were able to pay the child support arrears at the time of the state trial, the Court said, those claims "do not require review and rejection of the orders in which those conclusions were reached."

Issue preclusion also did not apply, the Court continued, because Plaintiffs' factual allegations showed that circumstances had changed since the state court orders were issued, making them no longer capable of paying the child support arrears.

Further, their claims that no one would voluntarily work at the recycling center on 1,000 days separating recyclables on conveyor belts – suffering skin rashes and frequent wounds from sharp pieces of glass, while vomiting from the stench and unable to use the toilet – are claims of physically or legally coerced labor. Thus, the district court "erred by dismissing plaintiffs' Thirteenth Amendment and TVPA claims based on their failure to allege changed circumstances" and "not seek[ing] modification of their support orders."

However, the claims do not amount to a violation of the Thirteenth Amendment, which in modern days has been "limited to labor camps, isolated religious sects, or forced confinement," the Court said, citing *Steirer v. Bethlehem Area Sch. Dist.*, 987 F.2d 989 (3d Cir. 1993), and *Zavala v. Wal Mart Stores, Inc.*, 691 F.3d 527 (3d Cir. 2012).

The Court held that "conditioning plaintiffs' access to the work release program (which plaintiffs allege they needed to free themselves) on a period of nearly free, grueling labor at the Recycling Center is an abuse of law or legal process under the TVPA."

"That is so because it is a use of the work release program in a manner for which it was not designed [as stated in 42 Pa. Stat. and Cons. Stat. § 9803], in order to pressure plaintiffs to work at the Center," the Court explained. This meant plaintiffs were similar to immigration detainees unlawfully forced to labor for TVPA purposes, as held in *Gonzales v. CoreCivic, Inc.* 986 F.3d 53 (5th Cir. 2021). Thus, the TVPA claims against the County, SWMA and LCRR should not have been dismissed. However, similar claims against LCRR's owners were tenuous and properly dismissed.

The Court held that the RICO claims against LCRR were based on the TVPA claims and should not have been dismissed. However, the RICO claims against the firm's owners were properly dismissed because the TVPA claims against them were properly dismissed, leaving no predicate offense.

Evidence of Unjust Enrichment

BECAUSE PLAINTIFFS WERE SUPERVISED BY the County's jail guards while working at the recycling plant, all three entities – the County, SWMA and LCRR – shared the profits of their labor, the Court said. So all three were Plaintiffs' joint employer. Further, Plaintiffs did not have the same legal status as prisoners because they had not been convicted of a crime. "Plaintiffs' work, as alleged, sits on a razor-thin line between involuntary and voluntary, and whether it falls to either side should be decided on the facts. And no one can say that not-convicted plaintiffs' work belongs to the County or that the Thirteenth Amendment excludes their labor from the prohibition on involuntary servitude."

This meant that FLSA, PMWA and unjust enrichment claims against the three entities should not have been dismissed. However, the Court indicated that plaintiffs could not prevail on both the TVPA claims, which allege involuntary labor, and the FLSA claims, which only apply to voluntary labor, because they are incompatible. However, Plaintiffs could present both theories and let a fact-finder determine whether the labor was voluntary or not.

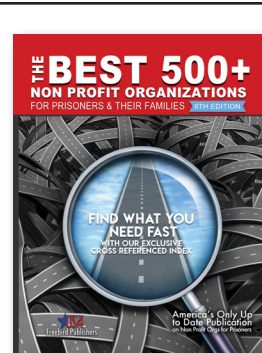
Therefore, the Court affirmed dismissal of all claims except those under TVPA, FLSA, PMWA, and the unjust enrichment claims against the three entities, as well as the RICO claim against LCRR. The lower court's dismissal of those claims

was reversed, and the case remanded to the district court. *See: Burrell v. Staff*, F.4th (3d Cir. 2023).

The case has now returned to the district court, where Burrell and his fellow plaintiffs continue to be represented by their counsel. *PLN* will update developments as they are available. *See: Burrell v. Loungo*, USDC (M.D.Pa.), Case No. 3:14-cv-01891.

The servitude forced on Burrell seems especially egregious given he has never been convicted of a crime. However, tens of thousands of his fellow Pennsylvanians held by the state Department of Corrections (DOC) also toil for slave wages. That's how DOC Secretary George M. Little was able to tell state prisoners at the end of 2022 that he was "happy to report" they would get a 20% pay hike in 2023 – one that still leaves them earning 50 cents per hour or less. The state's minimum wage is the same as the federal minimum, \$7.25 per hour. The Democratic majority in the state House led passage of a bill on June 21, 2023, raising the state's hourly minimum wage to \$15 by 2026. HB 1500 now goes to the GOP-dominated state senate, where a companion bill, SB 743, was sponsored by a member of the leadership team, Sen. Dan Laughlin (R-Erie). But a spokesperson for his caucus, Kate Flessner, swatted away any such "artificial minimum wage increases." 🗞️

Additional sources: *Reason*, *Spotlight PA*



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BOP Closes Deadliest Unit

by Chuck Sharman

On February 14, 2023, the federal Bureau of Prisons (BOP) announced it was closing Special Management Unit (SMU) at the U.S. Penitentiary (USP) in Thomson, Illinois, where seven deaths have been recorded since it opened in 2019, the highest death toll in any BOP facility.

Some 350 prisoners housed there were slated for transfer to other lockups, after they were gathered from prisons around the country to be punished with lengthy periods of isolation for disciplinary infractions.

The unit replaced an earlier one at Pennsylvania's USP-Lewisburg that ironically closed for similar reasons. Staff was accused of violating prisoners' civil rights almost since it opened in 2008. Lawsuits alleged that mentally ill prisoners were denied mental health care and punished with restraints. At least four prisoners were murdered by cellmates between 2010 and 2017. The Office of the Inspector General for BOP's parent agency, the federal Department of Justice, criticized the mental health treatment, and the D.C. Corrections Information Council found in 2017 that the use of restraints resulted in prisoner injuries.

Much of the problem was blamed on double-celling violent prisoners, which continued at USP-Thomson's SMU. Prisoners there have also been kept for long periods in isolation and punished in shackles that scarred them with the "Thomson tattoo." Staff was also accused of using excessive force – the lockup has BOP's highest rate of pepper-spray use – and "outing" sex offenders, putting them at increased risk of assaults that guards couldn't or didn't prevent.

Staffers pointed fingers at each other even before the closing was announced, with guards calling for Warden Thomas Bergami's head for leaving 100 guard vacancies unfilled and allowing 275 incidents in 2022 when frustrated and bored prisoners suffering mental illness – surprise! – exposed themselves to guards or masturbated in front of them. The closing leaves behind seven tombstones.

Matthew Phillips, 31, was allegedly beaten and stomped on March 2, 2020, by fellow prisoners Brandon C. "Whitey" Simonson, 37, and Kristopher S. "No Luck" Martin, 39. Both reportedly are

Valhalla Bound Skinheads gang members who targeted their victim because he was Jewish. Phillips, who was convicted in 2014 for heroin-trafficking in Austin, died in an Indiana hospital three days later. Simonson and Martin were indicted for his second-degree murder and a hate crime in December 2021 and are awaiting trial. The dead prisoner's parents, Susan and Jeffrey Phillips, are suing the government for guards' deliberate indifference to his risk of assault when they allegedly placed him in a recreation cage with known white supremacists. They are aided by attorneys from Spangenberg Shibley & Liber LLP in Cleveland and Romanucci & Blandin, LLC in Chicago. *See: Phillips v. United States*, USDC (N.D.Ill.), Case No. 1:22-cv-01048.

Edsel Aaron Badoni, 37, died on November 27, 2020, from injuries sustained in a fight with an unnamed fellow prisoner. The Arizonan was serving 14 years for an assault on the Navajo Nation Reservation where he was from.

Boyd Weekley, 49, was found hanged on December 3, 2020. He was serving a life sentence for stealing a car from a South Dakota priest and driving to Michigan, where he kidnapped a boy and sexually abused him for two weeks in 1995. His death was initially reported in the general population at the prison; later it was called a suspected SMU homicide.

Patrick Bacon, 36, was found unresponsive in his cell and died at a hospital on December 18, 2020, just over two months

after arriving at USP-Thomson. He was serving 10 years for a California assault. His death was ruled a suicide, according to his mother, Shelly Bacon.

Shay Paniri, 41, was fatally stabbed on February 28, 2021. He was serving a 17-and-a-half-year sentence for a drug-trafficking conspiracy in California. His now-released cellmate, Javier Gonzalez-Valenzuela, 47, was indicted for second-degree murder on May 23, 2023. *See: United States v. Gonzalez-Valenzuela*, USDC (N.D.Ill.), Case No. 3:23-cr-50021.

Bobby "AJ" Everson, 36, was allegedly killed by cellmate Donta Maddox, 44, on December 15, 2021. Everson was near the end of a 10-year sentence for drug and weapons crimes when he was fatally bludgeoned. Maddox was indicted for first-degree murder in October 2022 and is awaiting trial. *See: United States v. Maddox*, USDC (N.D.Ill.), Case No. 3:22-cr-50058.

James Everett, 35, was found unresponsive and pronounced dead on March 15, 2022. He was serving 15 years for assaulting a federal law enforcement officer. Homicide is suspected in the death. His corpse was returned to his family with a "Thomson tattoo" on each wrist. 🗿

Additional sources: *Arizona Republic*, *Bloomington Pantagraph*, *KWQC, Law&Crime*, The Marshall Project, *New York Times*, *NPR*, *Quad-City Times*, *Shaw Local News*, *WQAD*

Biden Commutes 31 Federal Drug Sentences

On April 29, 2023, Pres. Joseph R. Biden, Jr. (D) reduced the federal prison sentences of 31 people, each serving time on home confinement for nonviolent drug-related convictions. The commutation of sentences was one component of a strategy to help people transition from incarceration to employment, the White House said.

The sentences commuted included men and women convicted of drug possession in Alabama, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Maryland, Michigan, Missouri, Mississippi, New York, Ohio, Tennessee and Texas. Most of the convic-

tions involved methamphetamine, but some were for possession of cocaine, heroin or marijuana. The 31 individuals were kept under home confinement until June 30, 2023, when their punishments ended. They were also not required to pay the remainder due of their fines, ranging from \$5,000 to \$20,000.

"These individuals, who have been successfully serving sentences on home confinement, have demonstrated a commitment to rehabilitation, including by securing employment and advancing their education," the White House said. "Many

would have received a lower sentence if they were charged with the same offense today, due to changes in the law, including the bipartisan First Step Act” passed in 2018 under former Pres. Donald J. Trump (R).

Since assuming office, Biden has commuted the sentences of 75 other people. In addition, he pardoned thousands more convicted of “simple possession” of marijuana under federal or D.C. law, along with six other people who had already served out

their sentences. They included an 80-year-old Ohio woman convicted of killing her abusive husband in 1976 and a 66-year-old Arizona man who pled guilty to using a telephone for a cocaine transaction in 1980. [See: *PLN*, July 2023, p.58.]

About 600,000 U.S. citizens are released from prison every year, leaving about one-third of the adult population with a criminal record. Yet it remains a scarlet letter that can make securing employment

or housing impossible.

“By investing in crime prevention and a fairer criminal justice system, we can tackle the root causes of crime, improve individual and community outcomes, and ease the burden on police,” said outgoing domestic policy adviser Susan Rice. 🐦

Sources: *AP News*, *CBS News*

Fourth Circuit Revives Virginia Prisoner’s Challenge to DOC Policy Restricting His Religious Headwear

by Douglas Ankney

On November 7, 2022, the U.S. Court of Appeals for the Fourth Circuit ruled that a district court erred in finding that Virginia prisoner David A. Richardson failed to present evidence that a policy of the state Department of Corrections (DOC) substantially burdened the exercise of his religious beliefs. Also, the Court said, the federal court for the Eastern District of Virginia erred in granting Defendants summary judgment on an issue they hadn’t raised without giving Plaintiff notice and a reasonable time to respond.

Richardson is a prisoner at Deerfield Correctional Center, where DOC policy required him to remove his religious head covering while in the dining hall, visiting room and administrative buildings. He sued DOC Director Harold W. Clarke and Wardens Eddie L. Pearson and Tammy Williams, alleging, inter alia, that the policy substantially burdened the exercise of his religious beliefs. As an adherent of the Nation of Islam faith, he claimed, he is required to wear a kufi headcovering at all times, and preventing him from doing so violated his rights under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000(1)(a) et seq.

After Richardson filed suit, DOC changed its policy to allow prisoners to wear religious head coverings anywhere within a DOC facility as well as when participating in outside work assignments – subject to removal only for a search by security personnel.

Richardson then sought prospective relief to prevent Defendants from returning to the prior policy. Defendants moved for summary judgment, arguing the policy change made the complaint moot; alterna-

tively, they said that the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e, prevented the district court from issuing an injunction.

The district court sua sponte raised the issue of Richardson’s failure to show that the prior policy imposed a substantial burden on the exercise of his religious beliefs and granted summary judgment to the defendants on that ground. Richardson appealed.

The Fourth Circuit observed that “RLUIPA provides, in part, that: ‘No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution ... unless the government demonstrates that imposition of the burden on the person – (1) is in the furtherance of a compelling government interest; and (2) is the least restrictive means of furthering that compelling government interest.’” Plaintiff bears the initial burden of proving a challenged policy “implicates his religious exercise,” the Court

noted, citing *Holt v. Hobbs*, 574 U.S. 352 (2015). But if he meets that burden, RLUIPA claims proceed in two stages.

First, “the plaintiff must show that the prison’s policies imposed a substantial burden on his exercise of sincerely held religious beliefs,” the Court said, pointing to *Wright v. Lassiter*, 921 F.3d 413 (4th Cir. 2019). Furthermore, to make that showing he must establish “that a government entity has substantially pressured him to

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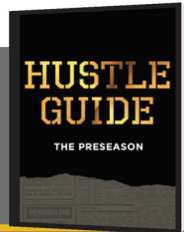


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modify his behavior and violate his beliefs," the Court added, citing *Lovelace v. Lee*, 472 F.3d 174 (4th Cir. 2006). If Plaintiff passes the first stage, "the court proceeds to the second stage to determine whether the prison's policies are justified despite the imposed burden."

"Under RLUIPA," the Court continued, "the government has the burden to show that its policy satisfies strict scrutiny; that is, the policies must represent the least restrictive means of furthering a compelling government interest," as provided in *Holt*.

The Court then began its analysis of the instant case by questioning the propriety of the district court's grant of summary judgment on an issue it raised sua sponte. "Rule 56(f) describes how a court may rule on an issue not raised by the moving party," the Court noted. "Under the rule, a district court, 'after giving notice and a reasonable time to respond,' is permitted to 'grant [summary judgment] on grounds not raised by a party; or consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.'"

But in *Jehova v. Clarke*, 798 F.3d 169 (4th Cir. 2015), the Court had found "the district court erred in failing to give notice and an opportunity to respond before addressing the substantial burden prong when the parties did not address it in their summary judgment briefing." The Court saw nothing in the record to indicate Richardson was afforded notice and an opportunity to respond on the issue of substantial burden of his religious exercise before the district court ruled against him.

But regardless of notice, the Court concluded that the record established that the Defendants' prior policy imposed a substantial burden. Defendants admitted Richardson sincerely held a belief that his

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religion required him to wear a head covering at all times. “Thus, the prior policy required Richardson to either violate his religious beliefs – by refraining from wearing a head covering at all times – or risk discipline at Deerfield for violating the policy. In other words, Deerfield’s head covering policy placed Richardson between the proverbial rock and a hard place. Doing so substantially burdens his religious beliefs under the RLUIPA.”

Because the district court erred in find-

ing to the contrary, it did not proceed to the second step of determining if the policy was nonetheless the least restrictive means of furthering a compelling government interest and, if not, whether PLRA barred it from issuing an injunction to prevent reversion to the prior policy.

Accordingly, the Court vacated the grant of summary judgment on the RLUIPA claim and remanded the case to the district court for further proceedings. Richardson was represented before the court by

attorneys Oren Missim Nimni and Samuel Weiss of Rights Behind Bars in Washington, D.C. See: *Richardson v. Clarke*, 52 F.4th 614 (4th Cir. 2022).

The case has now returned to the district court, where Richardson is once again proceeding *pro se*, and *PLN* will update developments as they are available. See: *Richardson v. Clarke*, USDC (E.D.Va.), Case No. 3:18-cv-00023. 📖

Ohio Governor Repeives Three Condemned Prisoners

Ohio prisoners James O’Neal, Jerome Henderson and Melvin Bonnell were all scheduled to die by lethal injection between August and October 2023. However, on April 14, 2023, Gov. Mike Dewine (R) delayed each execution over two years.

DeWine was the state Attorney General when big pharmaceutical firm Pfizer announced in May 2016 that it was imposing “strict distribution controls to block states from obtaining and using its medicines in executions.” Then in January 2017, the federal court for the Southern District of Ohio declared the state’s three-drug execution protocol carried an unconstitutional “risk of serious harm.” However, that decision was vacated by the U.S. Court of

Appeals for the Sixth Circuit in an *en banc* ruling issued in April 2017. See: *Fears v. Morgan (In re Ohio Execution Protocol)*, 860 F.3d 881 (6th Cir. 2017).

After that, former Gov. John Kasich (R) forged ahead with three executions that went off fairly smoothly: Ronald Phillips, 43, in July 2017; Gary Otte in September 2017; and Robert Van Hook in July 2018. But a fourth execution was called off for Alva Campbell, 69, in November 2017, when executioners failed to locate a suitable vein for the lethal injection. Campbell then died in prison in March 2018. [See *PLN*: June 2018, p.56.]

Shortly after DeWine took over the governor’s mansion in 2019, the district

court revisited the matter in light of new evidence that it found less favorable to one of the drugs. The sedative midazolam, the district court said, “at any dosage level has no analgesic properties” so it cannot “prevent the pain incident to the second and third drugs” but was in fact “certain or very likely to cause pulmonary edema.” See: *Hennes (In re Ohio Execution Protocol Litig.)*, 2019 U.S. Dist. LEXIS 8200 (S.D. Ohio).

That was enough for DeWine to pause executions in the state, also publicly fretting that crossing firms like Pfizer might make them shut off the state’s supply of other drugs distributed through Medicaid. He asked state lawmakers to add a different execution method. They haven’t done so

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yet, and there have been no more executions, either.

In addition to the three prisoners the governor has now reprieved, a fourth is awaiting execution in November 2023: Keith LaMar, who was condemned in 1995 for his role in the murders of four fellow prisoners during riots two years before at

Southern Ohio Correctional Facility in Lucasville. [See: *PLN*, Aug. 1994, p.14.]

It remains to be seen who blinks first – Big Pharma, DeWine or state lawmakers dawdling over a pair of bills to abolish the death penalty altogether. Both HB183 and SB103 remain stuck in House and Senate committees, respectively. There is no pend-

ing legislation for alternative execution methods, like a firing squad. One of 27 states still using capital punishment, Ohio has 130 prisoners on its death row, according to the Death Penalty Information Center. 🐦

Additional sources: *Cleveland Plain Dealer*, *The Intercept*, *WKBN*

Connecticut GOP Lawmakers Force Governor to Replace Pardon Board Chair, Stopping All Commutation Hearings

A spate of Connecticut commutations in 2022 didn't come close to resolving the backlog in applications, only one of which had been granted in two years. But it piqued the ire of reactionary GOP lawmakers, like state Sen. John Kissel, who loudly called on Gov. Ned Lamont (D) to "stop this right now." On April 10, 2023, Lamont caved to that demand, replacing Board of Pardons and Paroles (BOPP) Chairman Carleton Giles.

By then, Kissel and fellow Republican lawmakers had staged a bizarre press conference in March 2023, littering a stage with cut-up mugshots of prisoners who had received clemency. Where the face should be, however, text spelled out the crimes for which each had been convicted, the length of his sentence and how many years had been subtracted from it.

Connecticut is one of just six states that vests clemency authority in an independent body. As the new chair of BOPP, Jennifer Medina Zaccagnini also chooses which board members hear commutations, a power Kissel and his fellow Republicans accused Giles of abusing – even though

Giles is a former cop. Within days of her appointment, Zaccagnini announced an indefinite hold on all future clemency actions in the state.

The state is an especially lousy place to serve life. Prison sentences were drastically elongated in the late 1980s. Many young adults busted during the crack crime wave of that era got massively long sentences. Though BOPP has historically granted clemency at a snail's pace, the pace ground to a halt in 2020, when it granted zero commutations. Just one followed in 2021. In fact, BOPP made it more difficult to get a commutation by forcing prisoners to wait two years before applying.

After BOPP, under Giles, resumed taking applications for clemency in 2021, the review process was altered to include prisoners who were sentenced to long terms when they were just kids or young adults. Of the 700 people serving life sentences in the state, the Sentencing Project determined that most will die in prison without clemency. Over half of them are Black, compared to just 13% of the state's population as a whole. The math means that clemency

overwhelmingly benefits Black prisoners, who received nearly two-thirds of the 71 commutations handed out in 2022.

"Stopping the commutations is a racist policy," declared attorney Alex Taubes, whose clients include prisoners appearing before BOPP.

But included in the 2022 commutations were 44 prisoners convicted of murder. GOP lawmakers seized on the fact, shrewdly pointing their fire at Giles to force Lamont to defenestrate him. Giles remains on BOPP, but without the authority of the Chair.

"Even though this governor is very lackadaisical when it comes to criminal justice abolition and reform, we need to push him to do the right thing, and we need him to push [BOPP] to do the right thing," insisted Tiheba Bain, co-founder of Women Against Mass Incarceration, a Bridgeport nonprofit whose "vision is a world where the current criminal (in)justice system is obsolete." 🐦

Additional sources: *Bolts Magazine*, *US News*, *WBUR*

Flooding Causes Evacuation of 1,075 Detainees from California Jail

On New Year's Day January 2023, as storms swelled California's Cosumnes River near Sacramento, officials at the county's Rio Cosumnes Correctional Center (RCCC) evacuated all 1,075 detainees, as well as all staff, to other nearby lockups.

The Sacramento County Sheriff's Office said that an emergency operation center was activated to assess flood risks and monitor conditions near the jail. After initially waiving aside the risks "[a]s weather conditions worsened and road conditions eroded," jail officials finally decided to evacuate as "the impending threat of flooding at the facility grew by the hour."

Down the road in Corcoran, two state prisons – California State Prison-Corcoran and the California Department of Corrections and Rehabilitation (CDCR) Substance Abuse Treatment Facility – sat two miles from the rising waters of Tulare Lake. Between the prisons and the lake, an extensive irrigation system maintained by one of the largest cotton producers in the world, J.G. Boswell Company, resulted in more flooding.

As extreme weather events worsen, it is imperative that buildings with occupants locked inside must be evacuated to let them survive brutal floods. These are also some of

the structures most at risk in storms; land for the two state prisons in Corcoran, for example, was sold to the state in 1985 by J.G. Boswell because the area was prone to flooding. Yet buildings in the carceral system are some of the last to be repaired and strengthened.

In 2022, the Cross City Correctional Institution began to flood in Florida's Dixie County. Sewage water began to seep through the drains. According to prisoner DaRon Jones, guards told him and fellow prisoners to pack what they could in pillowcases and get ready to evacuate. However, Jones said he was never released from his

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cell even as it filled with filthy water.

“The water was close to ankle-dep,” he recalled, “with human waste floating by as we were fed in our cells.”

By January 17, 2023, two weeks after the storms, all detainees had been returned to RCCC. 🐼

Sources: CBS News, The Intercept, KORA, Truthout

California College Offers Housing, Services to Formally Incarcerated Students

by Keith Sanders

For decades, prisoners were not eligible for federal financial aid for college education. So when Congress passed the Second Chance Act in 2020, rescinding ineligibility for felons and prisoners to access federal Pell Grant funding for college, advocates, educators and those in prison who might benefit all rejoiced. From a small list of pilot sites, eligibility was set to be restored at lockups throughout the country on July 1, 2023.

“The expansion of the Second Chance Pell Experiment will allow for opportunities to study the best practices for implementing the reinstatement of Pell Grant eligibility for incarcerated students, and will expand the geographic range of the programs,” the federal Department of Education said.

According to a 2018 report, less than

4% of prisoners obtain a postsecondary education, well below the national average of 29%. Nicholas Turner, president of the Vera Institute of Justice, estimates that over 765,000 prisoners will apply for Pell Grants once they become eligible this summer.

The former Pell Grant restrictions also affected prisoners after release. Some convictions, like drug crimes, kept released prisoners ineligible. So did prior default on student loans. Nevertheless, the fact that over 95% of individuals are eventually released from prison – over 600,000 a year – combined with the lifting of Pell Grant eligibility requirements, means that colleges will see an influx of formally incarcerated students.

The barriers individuals face upon release are well documented. Housing,

health care, substance abuse treatment, mental health services and employment obstacles make returning to the community a difficult task. Attempting to pursue a college degree on top of that is a big challenge. That is why the vast majority of formerly incarcerated students never return for their second semester.

Opening Pell Grant eligibility to the incarcerated pushes that timeline forward before release, though prisoners should be wary of the myriad ways their efforts to get an education behind bars may be stymied. [See: *PLN*, May 2022, p.44.]

For those released, a California State University (CSU) program called Project Rebound has been assisting them in overcoming obstacles. The project began in 1967 and is now established on 15 CSU



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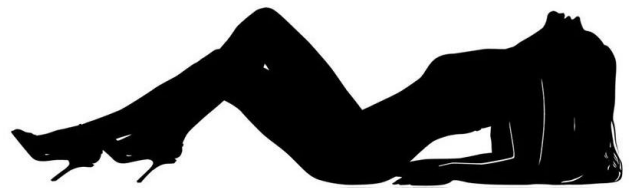
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campuses. At the CSU campus in Fullerton, the John Irwin House opened in 2018 and has supported 21 students who were formally incarcerated. They are provided with stable housing, networking opportunities, academic counseling and tutoring, financial aid assistance and much more by people who were formally incarcerated themselves. Of the 21 students, 20 have either graduated or remain enrolled at the college.

Recidivism rates show how education can help a former prisoner become part of

the community again. Those with postsecondary degrees are 45% less likely to return to prison. That number drops to just 1% for those helped by Project Rebound. It is zero for those at the John Irwin House.

Acquiring a college degree also confers other advantages for ex-prisoners. Those with a postsecondary education are more likely to engage in voting and volunteering, and they are less likely to have significant health issues, live in poverty or be unemployed.

Because of Project Rebound's success, especially its on-campus residences like the John Irwin House – named after the project's founder – it has been called a “revolutionary” model for providing a solution to housing and other services for the formerly incarcerated at other colleges and universities across America. 🏠

Sources: *The Hill, The Nation*

SCOTUS Orders Last-Minute Stay of Execution for Oklahoma Death Row Prisoner Richard Glossip

In a surprising turn of events, the Supreme Court of the U.S. (SCOTUS) granted a stay of execution to condemned Oklahoma prisoner Richard Glossip on May 5, 2023. The decision marks the ninth time Glossip, 60, has come close to facing the death penalty for the 1997 murder of Barry Van Treese, the owner of a motel where Glossip worked as a manager. He has steadfastly protested his innocence, and mounting evidence of his possible wrongful conviction has raised doubts about his guilt.

In its decision, SCOTUS also granted

an extraordinary plea made by state Attorney General Gentner Drummond (R) after the state Pardon and Parole Board (PPB) voted to deny Glossip clemency on April 26, 2023 – even though Drummond had argued for it. Citing a “litany of errors” at Glossip’s trial, Drummond said executing him would be “an excessive sentence for the man who did not commit this violent act when the man who did will remain housed at the taxpayer’s expense for the rest of his life.”

Before he was turned down by PPB,

Drummond also pleaded for Glossip to the state Court of Criminal Appeals. However, the court denied that appeal on April 20, 2023. When PPB’s denial followed soon thereafter, Glossip’s scheduled execution was greenlighted on May 18, 2023.

The case against Glossip relied heavily on testimony from Justin Sneed, a 19-year-old former handyman at the motel who admitted to the murder but said Glossip orchestrated the crime. Based on Sneed’s testimony, Glossip was convicted and sentenced to death. Sneed received a life

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sentence in exchange for his cooperation.

Gov. Kevin Stitt (R) said he would “follow the law” and murder Glossip, despite previously suppressed evidence that changed Drummond’s mind, indicating Sneed wanted to recant his testimony and that prosecutors knew parts of it were false. Witnesses who were previously ignored also came forward to say Sneed was capable of committing the crime on his own in a botched robbery attempt.

Accompanied by another request from the attorney general, Glossip’s legal team filed a second petition to stay his execution with SCOTUS – the high court had earlier refused a challenge to the drug protocol that would be used to kill him. [See: *PLN*, Feb. 2016, p.20.] The decision to grant the stay is only temporary, while justices consider whether to take up the case. See: *Glossip v. Oklahoma, U.S.*, Application No. 22-A-941 (2023). 📖

Additional sources: *AP News, KTUL, The Intercept, New York Times*

Prison Looks Different for Two Celebrity Women

by Jordan Arizmendi

On May 30, 2023, over a year after her felony conviction for fraud and conspiracy, Elizabeth Holmes, 39, founder of bogus and bankrupt blood-test maker Theranos, arrived at her home for the next 11 years: the Federal Prison Camp (FPC) in Bryan, Texas.

Photographs showed Holmes entered the lockup smiling. The minimum-security FPC-Bryan has been nicknamed ‘Club Fed’ for its relative comfort: Prisoners share four-person rooms, sleep in bunk beds, play Uno late into the night and can purchase hobby items, like crochet needles, from the commissary.

The federal Bureau of Prisons (BOP) established an FPC adjacent to each higher-security penitentiary so that lower-security prisoners assigned to work details could come and go more easily. Each FPC has dormitory housing, a low staff-to-inmate ratio and little to no perimeter fencing. White collar criminals populate most cells.

But Holmes will still make lifestyle adjustments. Instead of her trademark black turtlenecks, she’ll wear khaki pants and shirts. She can have no jewelry, except a wedding band or a religious medallion, and nothing worth over \$100. Her work assignment is mandatory and pays \$0.12 to \$1.15 per hour – not bad for someone with no reported net worth, but a far cry from the billions she once had.

Meanwhile, 900 miles away at BOP’s Federal Correctional Institution for women in Tallahassee, Florida, socialite Ghislaine Maxwell, 61, is serving a 20-year sentence for grooming underage sex-trafficking

victims for boyfriend Jeffrey Epstein. Found dead in August 2019 of a suspected suicide in his cell at a BOP lockup in Manhattan, the 65-year-old followed a murky path to a half-billion-dollar fortune before he died awaiting trial on sex-trafficking charges.

Maxwell is not as wealthy, but wealthy nonetheless; when arrested in 2020, she was worth about \$20 million. Her father, Robert Maxwell, was a flamboyant Czech immigrant who cobbled together a media empire that financed an extravagant lifestyle until his body was found floating near his yacht in the Atlantic in 1991. His businesses then went bankrupt.

His daughter’s life in her new digs got dicey after Maxwell, a strict vegan, struck up an arrangement with an unnamed prison kitchen worker for extra fruit, vegetables and tofu. Two fellow prisoners found out and attempted to extort commissary credit in exchange for not reporting her. Maxwell showed a guard the threatening note she got from the pair, known as “Las Cubanas,” sending them to solitary confinement for 47 days. Reportedly left fearful that “snitches get stitches,” Maxwell then refused to use the showers without a guard escort.

As in male prisons, there is violence and rampant mental illness in women’s lockups. The U.K. Ministry of Justice even found female prisoners more violent than male prisoners. Assaults in U.K. prisons holding women occurred at a rate of 419 per 1,000 prisoners in 2022, compared to just 255 per 1,000 prisoners in men’s lockups. 📖

Sources: *Tallahassee Democrat, The Guardian, The Telegraph*

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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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Unabomber Ted Kaczynski Found Dead in Prison Cell

by Jordan Arizmendi

On June 10, 2023, convicted “Unabomber” Ted Kaczynski, 81, was found dead in his cell at the Federal Medical Center in Butner, North Carolina. The federal Bureau of Prisons (BOP) offered no cause of death, though unofficial reports indicated suicide.

Kaczynski pleaded guilty in 1998 to orchestrating 16 bombings across the country between 1978 and 1995, killing three people and injuring 23 more. While the FBI was trying to identify the person agents nicknamed the “Unabomber,” the *New York Times* and *Washington Post* received a 35,000-word manifesto purportedly from the bomber, who threatened more bombings were it not published.

At the urging of then-Attorney General Janet Reno and then-FBI Director Louis Freeh, both papers ran *Industrial Society and Its Future*. Calling for an end to industrial society, the anonymous writer likened the relationship between “the human race” and “technology” to “an alcoholic with a barrel of wine,” warping innate individualism to produce “socialists, collectivists, ‘politically correct’ types, feminists, gay and disability activists and the like.”

Upon reading it, Linda Patrik showed it to her husband, David Kaczynski, then an assistant director at an Albany runaway shelter. He recognized his older brother’s writing and notified the FBI, securing a

promise from Reno that the elder Kaczynski – a recluse living alone in a shack in the remote Montana woods – would get psychiatric care. She broke that promise to seek the death penalty before accepting the plea deal that put Ted Kaczynski in prison for life.

With his \$1 million FBI reward, David Kaczynski set up a fund for survivors of the bombings and the three people killed: Hugh Scrutton, a Sacramento computer rental store owner; Thomas Mosser, a New Jersey advertising executive; and Gilbert Murray, a Sacramento timber industry lobbyist. 📰

Sources: *New York Times*, *Washington Post*

Alabama Prisoner’s Family Sues Over Allegedly Botched Execution

by Chuck Sharman

On May 3, 2023, the family of Joe Nathan James Jr., an Alabama prisoner executed in July 2022, sued Gov. Kay Ivey (R) and other state officials, claiming he suffered excessive pain and was unconscious too long before his death, thwarting his intent to apologize to his family, the victim’s family, and recite the Muslim profession of faith, the shahada, as his final words.

“Alabama must own up to its wrongs,” said Hakim James, who is representing his brother’s estate.

During the 18-minute execution, James, 50, did not open his eyes or respond to standard consciousness checks by guards.

The suit alleges that was likely because he had already been given midazolam a heavy sedative that is part of the state’s three-drug execution protocol, during an extended attempt to set up intravenous (IV) lines in his arms that was not completed more than three hours past the scheduled execution time.

An autopsy report released by the state Department of Forensic Sciences found no evidence of a “cutdown procedure” to insert the IV lines, though it did not count the puncture wounds on James’ arms. The lawsuit notes that a privately arranged autopsy performed after the execution found signs

of such physical abuse. It also called James’ execution the longest recorded lethal injection in American history and highlighted Alabama’s history of botched execution protocol and inadequately trained staff.

Filed in federal court for the Middle District of Alabama, the suit claims James’ suffering amounted to “cruel and unusual punishment” prohibited by the Eighth Amendment, laying the blame on Ivey, Attorney General Steve Marshall (R), state Department of Corrections (DOC) Commissioner John Hamm, William C. Holman Correctional Facility Warden Terry Raybon, and six unnamed executioners.

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The lawsuit further alleges that Ivey was contacted during the IV insertion process, but she insisted on proceeding despite indications James had sustained injuries. It also claims that Warden Raybon failed to closely observe the execution process and disregarded signs of James' distress. Attorney General Marshall is accused of being aware of problems placing the IV line but failing to intervene.

James was executed for murdering ex-girlfriend Faith Hall in 1994. The new lawsuit, his brother insisted, "is not about

attacking the death penalty or seeking pity for my brother." Rather he called it "simply a demand that Alabama officials recognize the humanity of the people the State executes." He is represented by attorneys with Arnold & Porter Kaye Scholer LLP in New York City and Washington, DC. See: *James v. Ivey*, USDC (M.D.Ala.), Case No. 2:23-cv-00293.

The state paused executions in November 2022, after James' murder stretched so long and executioners then failed to kill the next two condemned men, Kenneth Eugene

Smith and Alan Eugene Miller. [See: *PLN*, Mar. 2023, p.50.] But in February 2023, a review ordered by Ivey ended with no public report except an announcement that DOC had "ordered and obtained new equipment" to resume executions. The next was then scheduled for July 20, 2023, when Alabama will kill James Barber, 64, for fatally beating his ex-girlfriend's mother, Dorothy Epps, 75, in 2001. 📖

Additional source: Law360

Vermont Sheriff Locked Out of National Crime Database, Facing Impeachment

by Chuck Sharman

Troubles mounted for Sheriff John Grismore of Vermont's Franklin County on May 11, 2023, when state lawmakers took a significant step toward his impeachment. The same day, Grismore lost access to the National Crime Information Center (NCIC), a crucial criminal records database used in policing.

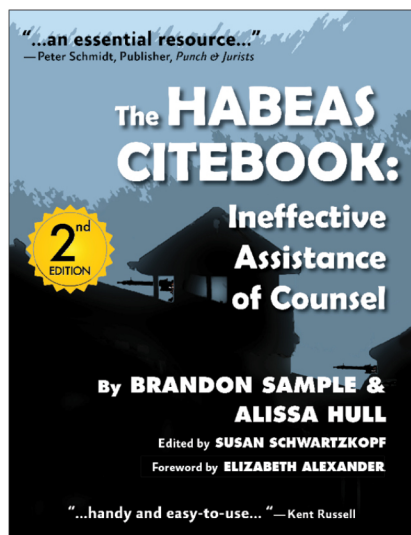
Because his NCIC access was revoked, Grismore was also locked out of the Ver-

mont Crime Information Center and its records system, Valcour. Although other authorized users at the Franklin County Sheriff's Department can continue using the national database and Valcour, they are prohibited from sharing information with Grismore.

His problems predate his November 2022 election, when then-Cpt. Grismore was accused by two fellow deputies of kick-

ing a detainee and charged with assault on August 7, 2022. He pleaded not guilty and then won election. But his prosecution is ongoing.

The impact of Grismore's restricted access to these critical systems on his day-to-day work as a law enforcement official and the extent to which members of the Franklin County Sheriff's Department are aware of these restrictions remains unclear.



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by Brandon Sample and Alissa Hull

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The databases contain valuable information such as wanted and missing persons, stolen property records, and domestic violence protection orders.

In December 2022, while Grismore was sheriff-elect, Franklin County State's Attorney John Lavoie issued him a Brady letter, which flags law enforcement officers with credibility issues. Lavoie stated he acted based on conflicting statements Grismore made regarding his assault charge, which contradicted sworn statements from the two law enforcement officers who witnessed the alleged detainee assault.

On May 11, 2023, Vermont House Speaker Jill Krowinski (D-Burlington), said leadership would pursue impeachment by introducing a resolution to form a seven-member, bipartisan committee responsible for investigating both Grismore and Lavoie. The announcement followed allegations of harassment and discrimination against Lavoie, as well as the assault charges against Grismore.

The impeachment process in Vermont is lengthy and complex, with little historical precedent. If articles of impeachment were introduced against either official by a House committee and received a majority vote, removal from office would still require a trial and conviction overseen by the state Senate.

Lavoie expressed surprise upon hearing the news. But just minutes before the lawmakers' announcement, a redacted summary of the investigation into his conduct was released, detailing allegations of discriminatory language and inappropriate physical contact towards colleagues, as well as offensive mimicry targeting individuals with disabilities. Lavoie categorically denied some of the allegations but apologized for any harm caused by his crude sense of humor and "locker room talk."

For his part, Sheriff Grismore expressed disappointment and suggested that his impeachment was purely political, for his affiliation with the Republican party, which holds the governor's office but a minority of seats in the state legislature.

Gov. Phil Scott (R) can call a special session for the House to vote on impeachment, but Krowinski said she plans to introduce a resolution before the legislative session ends, calling for a special session on impeachment to be held before January 2024. 🗞

Source: *Vermont Digger*

Arizona Prisoner Released from Death Row

After 29 years in prison, condemned Arizona prisoner Barry Lee Jones was freed on June 15, 2023. Callous state prison officials dropped him on a street in Phoenix. Undeterred, Jones walked in the heat to the only address he recalled: the office of Arizona Public Defenders (AFD).

Jones, 64, was convicted in 1995 of abusing and killing his ex-girlfriend's daughter, Rachel Gray, 4. Her mother, Angela Gray, served 11 years in prison for reckless child abuse because she failed to get her child life-saving medical treatment.

Years later, now-retired AFD investigator Andrew Sowards discovered discrepancies in the testimony the medical examiner gave at the two trials. He also found unexamined tissue samples from the child's corpse that showed scarring, indicating her injuries were sustained before the day Jones allegedly abused her.

AFD attorneys filed a habeas corpus petition for Jones, claiming ineffective assistance of counsel (IAC) at his trial. The federal court for the District of Arizona agreed and tossed his conviction in 2018, a decision affirmed the following year by the U.S. Court of Appeals for the Ninth Circuit. But in May 2022, the U.S. Supreme Court reversed that decision, saying federal courts cannot hear an IAC claim that wasn't first raised in state court – a baffling ruling; was trial counsel supposed to report his own ineffectiveness? [See: *PLN*, Oct. 2022, p.44.]

Fortunately for Jones, state Attorney General Kris Mayes (D) asked Pima County District Attorney Laura Conover (D) to re-open the case. Under the same rationale applied to

his former girlfriend, Jones was charged with second-degree murder, which carries a 25-year maximum prison term – four years less than he had served. He pleaded guilty and was freed.

Jones is the 12th condemned prisoner exonerated and released from Arizona's death row since the Supreme Court reinstated the death penalty in 1976. 🗞

Sources: Death Penalty Information Center, *The Intercept*, *KPHO/KTVK*, *Washington Post*

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Executive Inaction: States and Federal Government Fail to Use Commutations as a Release Mechanism

By Naila Awan and Katie Rose Quandt

On April 26, 2022, President Joe Biden used his executive powers to commute the federal sentences of 75 people — a first step toward addressing his campaign promise to release some individuals “facing unduly long sentences.” While this action is promising and will be life-altering for each of the 75 individuals, it took nearly 100 days into his second year in office for Biden to act on his promise and grant clemency to a single person. What’s more, many of the people receiving commutations are already released on home confinement due to the COVID-19 pandemic, and all were convicted of “nonviolent” drug offenses.

If Biden intends to truly deliver on his promises to enact large-scale criminal justice reform, this set of commutations should merely mark the beginning of a broader initiative. In fact, nothing is holding him back: the President has the power to grant commutations to large categories of people in federal prisons independently — without any action by Congress, the Department of Justice, or another third party. Despite this broad power, most U.S. presidents in the era of mass incarceration have been hesitant to use their powers of commutation.

In 2021, at the request of advocates working on clemency reform in the north-

east, we submitted records requests to eight northeastern states seeking information about their commutation processes. As our survey of these eight states finds, state executive branches also chronically underuse their commutation powers. The states in our sample reported granting just 210 commutations from 2005 through mid-2021, for a total average of 13 grants a year across the eight states. For comparison, the average total prison population across these eight states from 2005 to 2020 was about 130,000 — meaning that each year, this group of states commuted about one out of every 10,000 sentenced and imprisoned individuals. In fact, five of the states each reported granting just five commutations or fewer over the 16.5 years for which we requested data. And concerning, almost no states in the sample increased their rate of commutations during the pandemic, at a time when reducing prison populations is critical to save lives.

In addition to granting few commutations, most of the states in our sample do not appear to maintain robust data on their commutation systems. Several states did not have access to commutation records for all the years we requested, and others implied in their responses that they do not keep this information in a centralized database, and had to review individual applications in order to fulfill our request.

This lack of transparency and inadequate data keeping makes it difficult or impossible for people who are incarcerated to know if they are even eligible for commutation, how the process is being administered, or the current status of their own applications. It also prevents advocates from determining where commutation applications are being held up or thrown out, and identifying any characteristics — such as the race, age, sex, or type of offense a person was convicted for — shared by those who are granted (or denied) commutations.

Biden Should Make Regular and More Continuous Use of His Commutation Power

PRESIDENT BIDEN’S RECENT ANNOUNCEMENT that he is commuting the sentences


of 75 individuals is promising, and marks a higher level of action than his recent predecessors had taken at this point in their presidencies. The President should continue to use the federal commutation power to reduce prison sentences for broader categories of people, and states should follow suit.

It is notable, however, that while the President has set a positive precedent by issuing commutations relatively early in his presidency, the impact of these specific commutations may be less than you would expect. None of the sentences commuted will expire immediately, and many of the individuals who received commutations were already placed on home confinement during the COVID-19 pandemic. This means that the commutations will have little impact on the number of people held too long in federal prison, whose numbers have only risen during Biden’s tenure in office.

Further, these commutations were limited to “people who are serving long sentences for non-violent drug offenses.” This is certainly not unusual; executives and legislators often seek to avoid political risk by limiting relief to people who have been convicted of “non-violent” crimes. However, this creates carve-outs in the commutation process, reduces the potential impact commutations can have, and prevents them from being a real tool in the fight to end the injustices of mass incarceration.

Looking past the commutations granted by President Biden and at the operation of the federal clemency process more generally — it is clear that changes to the status quo are necessary. First, there is far too great a backlog in federal clemency applications. Data released on April 1, 2022 showed that approximately 18,270 applications for federal clemency are pending, nearly 15,000 of which are for a commutation of sentence. And, until April 2022, all of the 2,415 applications for clemency that had been acted on since the President took office in January 2021 had been administratively closed. This means that Biden had taken no action to either grant or deny clemency applications.

Second, in recent decades, and especially since the onset of the era of mass incarceration, relatively few federal applica-




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tions for clemency have been granted. This is partially due to a complex bureaucratic system: Federal clemency applications are routed through the Office of the Pardon Attorney in the Department of Justice (DOJ), then to the deputy attorney general, then to the White House counsel, and finally to the President. There have been calls to change this system for quite some time, including to remove the inherent conflict of interest that exists with the DOJ, which is tasked with reviewing applications for clemency, being the agency that led the original prosecutions. Advocates also note that the current review structure “includes redundant levels of scrutiny by Department of Justice staff who can unilaterally prevent a clemency application from reaching the President.”

To address these problems, Rep. Ayanna Pressley (D-Mass.) has introduced the Fair and Independent Experts in Clemency (FIX Clemency) Act, H.R. 6234, which would shift the body tasked with reviewing federal clemency applications from the DOJ to a new, independent clemency board that would send recommendations directly to the President and provide greater transparency into the federal clemency process.

However, it is important to note that, regardless of how the clemency process is structured, there are no obstacles to prevent the President from acting unilaterally: The President has the authority to independently grant commutations and other forms of clemency without receiving a recommendation. At the end of the day, the use

of federal commutation powers — or lack thereof — is entirely in the hands of the Chief Executive.

Only 138 commutations have been granted since the onset of the COVID-19 pandemic in March 2020 — demonstrating that this tool has not been effectively used to spare lives, reduce the spread of disease, or respond to a pandemic unlike any other in our lifetime. While only about 11% of people incarcerated in the United States are held in federal facilities, more extensive use of commutations by a president could provide an example to the states of how they can more effectively use their own commutation powers.

States Also Fail to Use Commutations to Respond to the Injustices of Mass Incarceration

STATES ALSO DRASTICALLY UNDERUTILIZE this powerful tool. As noted above, the eight states in our survey granted a total of 210 commutations in the 16.5 years from 2005 to mid-2021, an overall average of just 13 grants a year.

The paltry rate at which these states grant commutations has not budged during the pandemic. In fact, between 2020 and mid-2021, only two of the eight states surveyed (New York and Pennsylvania) told us that they granted any commutations. And, Connecticut indicated that its commutation process was paused throughout this entire period.

This lack of urgency is part of a dis-

turbing larger trend: Nationwide, state and federal prisons actually released 10% fewer people in 2020 than in 2019, and on average, we found that state parole boards released fewer people in 2020 than in 2019. (Because of decreased prison admissions, overall prison populations have seen a modest decrease of 15% from pre-pandemic levels, which is not enough to allow for safe social distancing behind bars.)

Because comprehensive data on the commutation process was typically not available on government websites, we had to obtain data through public records requests. Through these requests we found that:

- Massachusetts, Rhode Island, and Vermont do not seem to have granted any commutations from 2005 to mid-2021.
- In fact, Rhode Island has granted only one commutation or pardon since 1950. In 2011, the governor granted a posthumous pardon to a person who was executed in 1845.
- Our public record responses indicate that New Hampshire granted just one commutation from 2005 to mid-2021, and Connecticut granted just five.
- Vermont noted that it found no requests for commutations and, as a result, none had been granted.
- None of the eight states provided all of the information we requested, including demographic information of commutation applicants and grantees.

Which Pieces of Requested Information Did Each State Provide About Commutations?

		All yrs. 2005 to Aug. 2021?	Race?	Age?	Sex?	Crime of Conviction?
Connecticut	Applications	N	N	N	N	N
	Grants	N	N	N	N	N
Maine	Applications	Y	N	N	N	N
	Grants	Y	N	N	N	Y
Massachusetts	Applications	Y	N	N	N	N
	Grants†					
New Hampshire	Applications	N	N	Y*	Y	N
	Grants	N	N	Y*	Y	N
New York	Applications	Y	N	N	N	N
	Grants	Y	N	N	N	N
Pennsylvania	Applications	Y	N	Y	Y*	Y
	Grants	Y	N	Y	Y*	Y
Rhode Island	Applications†					
	Grants†					
Vermont	Applications†					
	Grants†					

* Indicates that the data is available for some, but not all, applicants or grantees.

† Indicates that the state noted that there was not responsive data available, so we cannot determine what information would be provided if there was data available.

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As the table above shows, state commutation processes are opaque. This lack of transparency prevents advocates from effectively determining how the commutation process is being administered, at what point and why applications are being denied, and what interventions would be most effective. The sparse data kept and supplied about state commutation processes also serve as one more indicator that states have de-prioritized their commutation processes.

Why Are Commutations Used So Infrequently?

HISTORICALLY, COMMUTATIONS WERE used much more frequently. In Massachusetts, for example, 218 commutations were granted in the 50s, 60s, and 70s, and 84% of them went to people serving life sentences for murder. Connecticut was still granting regular commutations even more recently: The state granted 36 commutations between 1991 and 1994.

But grants have since slowed down drastically and become exceedingly rare across the country. Massachusetts granted just 29 commutations in the 80s, 90s, 2000s, and 2010s; Connecticut reported granting five from 2016 to mid-2021. Today, commutations are often explicitly reserved for — or in practice, awarded only to — narrowly defined groups, such as people who have served at least half of their sentence or those convicted of “nonviolent” offenses.

Several factors contribute to the current lack of commutations.

First, politicians fear being seen as “soft on crime.” There is an outsized fear of releasing someone who might go on to commit another crime, and an undersized appreciation for the benefits of prison releases. (A longstanding challenge for criminal justice reform is that it is difficult to quantify the fiscal, familial, and community benefits of people returning to their homes and communities.) This fear is particularly unfounded because in many cases, commutation does not trigger immediate release but simply reduces a sentence or makes someone parole-eligible. Throughout American history, there have in fact been many instances of large-scale releases, and recent mass releases have resulted in lower-than average levels of recidivism.

Second, politicians and the public frequently misunderstand clemency’s place in American history. Individuals on both sides of the political aisle have expressed

hesitancy in revisiting the sentencing decisions of judges. But the concept of revisiting judgements and forgiving sentences is a longstanding American tradition, enshrined in the Constitution and core to the country’s (and states’) founding. Clemency is a foundational, basic legal principle, praised by Alexander Hamilton and the first Supreme Court Chief Justice, John Marshall.

Finally, as discussed above, clemency is hindered by understaffing, conflicts of interest and complicated, bureaucratic systems. Allocating insufficient staff to review commutation applications can result in long delays processing applications. At the federal level, and in many states, the offices involved in the original prosecution of a person’s case are involved in clemency determinations. Additionally, applications for clemency can be complicated or require obtaining materials that an incarcerated person does not have in their immediate possession. And because of the lack of visibility into clemency processes, individuals who are incarcerated often do not know they are eligible to apply for clemency and may not be able to access information on the status of their application.

Potential Reforms

COMMUTATIONS can grant relief to individuals impacted by the criminal legal system and serve as a tool in decarceration efforts. However, c o m m u t a t i o n powers are widely underutilized, even by chief executives (such as the President of the United States and governors of some states) who have the power to act unilaterally.

In order to more effectively and consistently use commutation powers at the federal and state level, a number of reforms should be adopted,

including:

1. Congress should pass the FIX Clemency Act. This bill would, among other things, eliminate the Office of the Pardon Attorney at the U.S. Department of Justice and create an independent board of experts who would provide the President with recommendations on who should receive clemency.
2. Act unilaterally to provide relief when possible. The President of the United States and when applicable, state governors, should use their power to grant commutations to swiftly provide relief and aid decarceration efforts.
3. Conduct regular, affirmative outreach to those individuals who qualify for commutations. States and the federal government should ensure incarcerated individuals are provided accessible materials explaining the commutation process, conduct regular outreach to individuals who qualify to apply for a commutation of that fact, supply such individuals with applications for a commutation, and

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provide free assistance in completing these applications and navigating the process.

4. Use the clemency power to grant mass commutations. Rather than relying on a case-by-case review, categorical commutations should be granted. Categorical commutations can be used to adjust sentences or release people who: (a) were sentenced under laws that have since been repealed or for crimes that have been reclassified, or (b) share certain personal characteristics (i.e., current age or age at time of conviction) or experiences (i.e., survivors of sex or labor trafficking).
5. Simplify commutation applications. Applications should be made as simple and straightforward as possible. The government should be responsible for gathering information that it maintains, such as official court documents.
6. Expediently process, review, and act on commutation applications. Commutation grants should not be treated as a rare, seasonal, or end-of-term

act, but rather should occur with regularity throughout a President or governor's term of office. Applications should not remain pending for long periods of time, but rather a strict and short time-limit should be established within which review must take place. An adequate number of people must be assigned the responsibility of reviewing these applications in order to meet these limits.

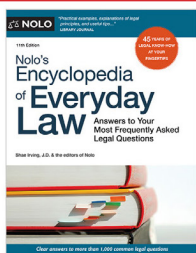
7. When a group must approve a commutation application, do not require unanimous consent or set different vote requirements based on the crime of conviction. In some states, action can only be taken to a grant commutation if a board or council first vote to approve it. Applications should move forward on a majority vote and applicants should not need to obtain a different number of votes — i.e., majority versus unanimous — based on the crime of conviction.
8. Equally consider all people who qualify for relief, regardless of their crime of conviction. Whether a person was convicted of a “violent” or “non-

violent” crime, their application should be equally considered. Qualified individuals should not be denied relief purely based on their crime of conviction.

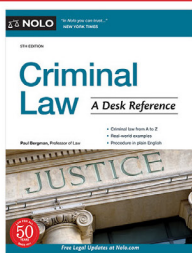
9. Increase transparency. The many ways in which the commutation process lacks transparency need to be addressed. For example:
 - Applicants should be able to easily obtain information regarding where their application is in the process,
 - Individuals whose applications are denied should receive written confirmation with the reasons for denial specified, and
 - Data should be made publicly available that provides an effective picture of how the commutation process is operating

This article was originally published by Prison Policy Initiative on its website in April 2022. It is reprinted here with permission. Find the original report as well as additional charts and footnotes at prisonpolicy.org

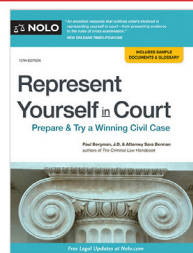
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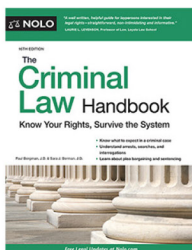
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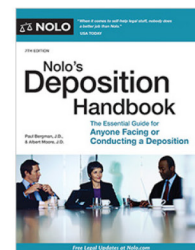
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Senators Spank DOJ for Failure to Implement Death-in-Custody Reporting Act

On September 20, 2022, the U.S. Senate's Permanent Subcommittee on Investigations, chaired by Sen. Jon Ossoff, issued a scathing report that slammed the U.S. Department of Justice (DOJ) for failing to effectively implement the Death in Custody Reporting Act, Pub.L. No. 113-242.

First passed in 2000 and reauthorized in 2014, the law requires states that accept certain federal funds to report deaths in prisons, jails and police custody to DOJ. The information is vital to show the number of people dying in custody in different jurisdictions and how - e.g., homicide, suicide or various types of illness.

From 2001 to 2019 - the years that data was reported so far since the law took effect - approximately 84,500 people died while in custody. In 2019, the most recent data cited in the Subcommittee's report, 3,853 people died in state and privately-operated prisons nationwide while 1,200 died in local jails, where suicide was the leading cause of death. The report excluded

deaths in federal detention, which are reported separately.

But spotty reporting makes those numbers suspect, Senators said, noting at least 990 in-custody deaths that were missed in Fiscal Year 2021 alone. Moreover, that same year, the "vast majority" of custodial death information collected from states "was incomplete." In fact, 70% of custodial death records were missing at least one required piece of data, and only two states had submitted complete data.

These failures "undermined transparency and Congressional oversight of deaths in custody," the Subcommittee found. They were also preventable, since both DOJ's Office of the Inspector General and its Bureau of Justice Statistics (BJS) had warned about deficiencies in data collection methodology - warnings that were ignored.

BJS did a competent job of surveying in-custody deaths when the law first took effect. But when the Act was reauthorized, it permitted the U.S. Attorney General to withhold up to 10% of Justice Assistance

Grant funds from states that failed to report in-custody deaths.

Tellingly, no such penalties have been imposed for non-compliance. But the provision created a jurisdictional problem for BJS. Because it is a "statistical agency," DOJ determined BJS could not properly make "penalty determinations" that might result in withheld funds. So custodial death reporting was transferred to DOJ's Bureau of Justice Assistance (BJA) in 2020.

Since then - as of the date of the Subcommittee's report - BJA had not publicly released any in-custody death data. DOJ had also failed to tell Congress how the data could be used to reduce in-custody deaths once it is finally collected; the agency said it didn't expect to release that report until 2024 - eight years after its last 2016 deadline. Lastly, the Subcommittee found that DOJ did not "properly manage the transition" of data collection from BJS to BJA.

The Subcommittee heard testimony from a DOJ official, family members of 10 people who had died in custody, as well as

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two criminal justice experts. Senators then concluded that DOJ “failed to provide full and complete information to the Subcommittee,” which “delay[ed] potential reforms that could restore the integrity of this critical program.”

In summary, the Subcommittee said

that DOJ “deprived Congress and the American public of information about who is dying in custody and why,” something Senators called a “missed opportunity to prevent avoidable deaths.” See: *Uncounted Deaths in America’s Prisons & Jails: How the Department of Justice Failed to Implement the*

Death in Custody Reporting Act, U.S. Senate Permanent Subcommittee on Investigations (2022).¹⁴

Additional source: *Washington Post*

Former Prisoner Uses “Look Back” Window to Sue for Sexual Abuse at Shuttered New York Prison

by David M. Reutter

“For decades, women incarcerated in New York state prisons have been raped, assaulted, sexually abused, harassed, and verbally degraded” by male guards, as officials “turned a blind eye to the sexual misconduct.” That explosive allegation was made in a lawsuit filed on November 29, 2022, seeking damages for sexual abuse alleged by a former prisoner at the now-shuttered Bayview Correctional Facility.

The suit was made possible by passage of the state’s “look back” law, the Adult Survivors Act. When it took effect in July 2022, it opened a 12-month window for victims

of sexual abuse to bring legal claims that would otherwise be barred by the statute of limitations.

The claimant in this case was identified in court pleadings as “LK Doe 2.” Her complaint alleged that prisoners held at Bayview, a medium-security all-female prison in New York City operated from 1979 to 2012, “were at high risk of being sexually abused by the predominately male prison staff.” New State Department of Corrections and Community Supervision (DOCCS) records from 2007 to 2012 show “women were involved in 30% of sexual

a large Caucasian man, with a height of about 6’1” and a big stomach,” the complaint recalled.

For several months, Bonello allegedly “attempted to groom” LK Doe 2 for sex, asking her to stay late and plying her with cigarettes or extra food from the dining hall. She feigned having a boyfriend and said she was not interested in Bonello’s advances.

After months of grooming, Bonello allegedly came up behind LK Doe 2 while they were alone and grabbed her breast. It happened repeatedly, she said, and each time Bonello “would touch Claimant’s breasts, kiss her breasts, and make other advances.” After enduring six months of this abuse, LK Doe 2 successfully requested an assignment change.

But she alleged that on one instance after that change, Bonello came to her cell and fondled her. She also lodged a complaint with Sgt. Hill about the abuse, but he took no action. Bonello was allegedly removed from the dining hall for abusing another prisoner and subsequently fired by DOCCS for sexually abusing a third prisoner.

The complaint seeks compensatory damages. It was filed on behalf of the claimant by attorney Anna Kull with Levy Konigsburg LLP in New York City. See: *LK Doe 2 v. N.Y., N.Y. Court of Claims* (2022).

Hundreds of other former Bayview prisoners plan to use the Adult Survivors Act to sue DOCCS for sexual abuse they suffered at the prison. In the most famous case opened under the law, writer E. Jean Carroll successfully sued former Pres. Donald J. Trump (R) for sexually assaulting and raping her; a jury awarded her \$5 million in damages on May 10, 2023.¹⁵

Additional sources: *Local Today News*, *New York Times*

misconduct cases and 61% of sexual harassment cases, despite accounting for only 5% of all state prisoners.”

The complaint cited at least five lawsuits that gave or should have given DOCCS knowledge of sexual abuse at Bayview. It also pointed to two instances when Bayview guards were convicted of sexual misconduct against prisoners.

LK Doe 2 was imprisoned at Bayview from 2001 until her release in 2006. In 2005 she worked in the dining hall under the supervision of a guard named Bonello, who “was

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Corizon Executes “Texas Two-Step,” Spinning Off Debt Into Bankrupt New Firm to Avoid Paying Creditors and Lawsuit Winners

by Matt Clarke

Corizon Heath, Inc. has engaged in legal maneuvers over the course of the past year that are intended to limit how much it must pay on over \$38 million in debt to companies that supplied it with staffing, medical supplies and real estate, as well as plaintiffs and attorneys who won lawsuits against the firm and government entities it had agreed to indemnify for lawsuit losses.

Corizon began the first step of the legal maneuvers known as the “Texas 2-step” in April 2022 when it converted to a Texas corporation. At the time, Corizon’s headquarters was in Tennessee, and it was not conducting any business in Texas. The sole reason it became a Texas corporation was to perform a “divisional merger,” a process permitted under Texas law in which a corporation divides into multiple successor corporations with assets and liabilities assigned to the successors as it sees fit under Tex. Bus. Orgs. Code, §§ 10.001(a), 10.003.

In this case, Corizon survived and re-

tained all of its expired contracts and their corresponding liabilities plus \$1 million in cash, the right to collect on its insurance policies, and the right to collect up to \$4 million under a “funding agreement” with a Corizon affiliate if certain conditions are met. The divisional merger also created a new corporation, CHSTX, which is owned by the same sole shareholder as Corizon, and which inherited all of Corizon’s employees (including its CEO and chair, Sara Tirshwell), along with its active contracts, equipment, real estate and remaining assets, including most of its cash.

After the divisional merger, CHS TX was acquired by YesCare, Inc., a corporation controlled by Tirshwell, and began doing business under that name. Tirshwell was replaced as YesCare’s CEO in February 2022. What was left of Corizon then changed its name to Tehum Care Services, Inc. and declared bankruptcy.

Tehum’s Chapter 11 bankruptcy filings

show it has 200-999 creditors owed \$10 million to \$50 million in debt, for which the firm possesses just \$1 million to \$10 million in assets. Its listing of its 20 largest creditors shows over \$37 million in debts, but two of the largest creditors on the list – hospitals in Boise, Idaho – have an “unknown” amount of debt. The list also does not include any of the multitude of lawsuits pending against Corizon or awards for lawsuits it already lost. Thus, Corizon’s true debt is undoubtedly much higher.

Its largest creditor with an amount listed is \$12 million owed to Jefferson City, Missouri’s Capital City Hospital. Of the 11 creditors owed over \$1 million each, five provided medical services and three provided medical staffing. The Arizona prison system is also listed as a creditor owed \$2.6 million in indemnification. A later listing showed legal and indemnification claims against Corizon in 39 lawsuits from 11 states, eight of which were from vendors

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seeking payment and 20 of which involved indemnification of government entities or their employees. 31 of the lawsuits appear to be by prisoners or their survivors who allege Corizon provided unconstitutionally inadequate health care.

At this point, one must ask whether a corporation can get away with dumping its debts like this. The answer is maybe. It is possible to chase the successor corporation and have it added to a lawsuit, but you must know how to do so. Further, the bankruptcy automatically puts a stay on all litigation involving Corizon until the bankruptcy court lifts the stay.

In *Kelly v. Corizon Health, Inc.*, USDC (E.D.Mich.), Case No. 2:22-cv-10589, Michigan prisoner William Kelly alleged that when Corizon was the contracted medical services provider at Michigan prisons, missteps by Corizon employees allowed his kidney cancer to grow and spread. While the lawsuit was pending, Corizon performed the “Texas 2-step.”

Kelly then sought to have Corizon’s successor organizations, CHS TX and YesCare, added to the lawsuit as defendants. The court initially had to decide whether federal, Michigan or Texas law would apply to the issue. It determined that it must apply Michigan’s choice-of-law rules because Michigan is the state in which the lawsuit was filed, citing *O’Melveny & Meyers v. FDIC*, 512 U.S. 79 (1994). It then determined that there was “little doubt a Michigan court would fall in line with the growing consensus that the law of the state of incorporation presumptively governs corporate law issues,” quoting *Daystar Seller Fin., LLC v. Hundley*, 931 N.W.2d 15 (2018).

But, because Michigan has a relatively strong interest in applying its own law and Texas, by comparison, has a relatively weak interest, the court would use Michigan law to determine whether Corizon transferred its interest in the matter to CHS TX and YesCare, pointing to *Chrysler Corp. v. Ford Motor Co.*, 972 F.Supp. 1097 (E.D. Mich. 1997), Restatement (Second) of Conflict of Laws § 302.

The court held that the divisional merger was to be treated like an asset purchase – basically a transfer of assets between corporations. “[W]hether the Court conceptualizes the divisional merger as an asset purchase or some distinct, restructuring process that is neither an asset purchase

nor a true statutory merger, there is one well established doctrine in Michigan law that controls in either situation. That is the mere continuation doctrine. Under the mere continuation doctrine, a successor corporation will be treated as the same entity as a past corporation if the successor corporation is nothing more than ‘a reincarnation of the old’ corporation,” the court said, quoting *Pearce v. Schneider*, 21.7 N.W. 761 (1928).”

The court found that CHS TX was a mere continuation of Corizon because both had the same single shareholder: Valitas Intermediate Holdings. CHS TX also acquired all of Corizon’s active contracts and equipment and it “picked up right where Corizon left off,” the court noted. So it was added to the lawsuit as a defendant.

The court did not add YesCare as a defendant because Kelly’s attorney misunderstood the “alter ego liability” doctrine he was arguing and neglected to discuss YesCare’s relationship to CHS TX. This meant he waived the proper argument – that YesCare was a mere continuation of CHS TX.

As previously reported, the care Arizona prisoners received when Corizon had the contract to provide their medical and mental health care between 2012 and 2019 was abysmal. [See: *PLN*, Dec. 2022, p. 1]. This led to numerous lawsuits which will now be affected by the “Texas 2-Step” and bankruptcy. Likewise, over \$2.6 million in legal fees awarded to brilliant Berkeley, California attorney Lori Rifkin is now on hold due to the bankruptcy. [See: *PLN*, Mar. 2023, p. 56].

It is possible that, in cases where a state prison system or local jail is a losing defendant in a lawsuit alongside Corizon, the governmental entity may have to pay the entire award. That will almost certainly be the case where indemnification was promised. Corizon employees who were promised indemnification may also be on the hook to personally pay large awards.

Despite the financial turmoil, YesCare intended to implement a \$1.06 billion contract to provide Alabama state prisoners’ health care. However, in February 2022, the Alabama Legislative Contract Review Counsel put the contract on hold, citing both the financial issues and the fact that mere weeks before the awarding of the contract was announced, YesCare appointed to its board Bill Lunsford, an attorney that had represented the Alabama prison system

in numerous lawsuits. This had led to a report of “undue influence.” Further, YesCare had not submitted the lowest bid, but was awarded the contract anyway.

Alabama state Rep. Chris England (D-Tuscaloosa) questioned whether YesCare could deliver on the contract. “The point has to be made that we know that this deal is going to fail,” said England. “We simply do not have enough money to pay to care for our aging prison population that our pardons and paroles board won’t release.”

What remains astonishing is that vendors are willing to do business with YesCare at all, considering that its successor corporation just stiffed vendors in Missouri, Idaho and Michigan for tens of millions of dollars. Further, YesCare is bleeding contracts, having lost 20 while only gaining five over the past few years. That is the same formula Corizon followed into bankruptcy – lose contracts, lose lawsuits, go broke.

All of these issues could be avoided if prisons and jails weren’t so anxious to contract out their constitutional obligation to provide prisoners medical and mental health care. They think they will be indemnified when something goes wrong, but the fate of Corizon may well show that they remain on the hook for huge court awards when their private vendors go belly up.

Such is the case in Arizona, where prison officials are scrambling to keep Corizon from weaseling out of its obligation to repay fines totaling more than \$2 million imposed by a federal judge for substandard prison health care. Good luck on collecting that! See: *In re: Tehum Care Services, Inc.*, USBC (S.D. Tex.), Case No. 73-90086. 🐾

Additional sources: *Alabama Political Reporter*, *Arizona Republic*, *KOB*

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Missouri Legalizes Marijuana and Expunges Criminal Records

by David M. Reutter

By June 8, 2023, misdemeanor criminal records of those previously convicted in Missouri of a nonviolent marijuana-related offense were scheduled to be expunged. Felony expungement is set to follow by December 8, 2023. Though some counties have dragged their feet, the process is underway to implement post-conviction relief provided by passage of Amendment 3 to the state constitution in November 2022.

Approval of the ballot initiative made it legal for those 21 and over to buy and use recreational amounts of marijuana. Expungement of most marijuana-related convictions recognized that the constitution now effectively decriminalizes marijuana use in the state.

Expungement clears all charges and seals or destroys the case record. By June 5, 2023, the state had expunged over 32,500 misdemeanor cases and another 10,000 felony cases. After spending a dozen years

in prison on a marijuana conviction, Sean Farmer, 36, said he was “super grateful” for the chance to clear his record.

“I got reintegrated with my children (and) my girlfriend,” he said. “It’s surreal. When I wake up in the morning sometimes I don’t know where I’m at, and then I look around, I’m like, oh God, I’m here.”

Missouri now allows consumers to possess up to three ounces of marijuana without penalty. Those with medical marijuana cards may purchase up to six ounces per month. However, all marijuana must be sold and bought from a regulated dispensary. A sale outside the regulated system is still a criminal offense, as is sale of marijuana to those under 21.

The Amendment also took aim at youth marijuana use with a special penalty for those under 21 who share marijuana with someone else, such as by passing a joint or a pipe. The law provides that anyone not

yet 21 who “delivers without compensation or who distributes without consideration three ounces or less of marijuana” is subject to a \$100 fine.

Those currently incarcerated on an eligible marijuana-related conviction are entitled to a review of their records, followed by immediate release from the associated sentence and expungement of the offense by a state court. Ineligible convictions include driving under the influence of marijuana or selling marijuana to minors.

Missouri is in the process of awarding licenses to comprehensive medical facilities that cultivate, sell and distribute recreational marijuana. The state Department of Health and Senior Services (DHSS) awarded the first such licenses by February 6, 2023. DHSS was set to roll out licenses for smaller dispensaries in September 2023.

Additional sources: *KCUR, Kansas City Star*

Third Circuit Reinstates Claim by Federal Prisoner in Pennsylvania that Guards Prevented Daily Muslim Prayers

by Matt Clarke

On March 21, 2023, the U.S. Court of Appeals for the Third Circuit reinstated a former federal prisoner’s lawsuit under the Religious Freedom Restoration Act (RFRA), 42 U.S.C. §§ 2000bb et seq., alleging religiously motivated harassment by guards with the federal Bureau of Prisons (BOP) caused him to cease daily Muslim prayer at his workplace in the prison commissary and then cost him his job.

In 2009, Charles Mack was incarcerated

at the Federal Correctional Institution in Loretto, Pennsylvania. A devout Muslim as well as a paid worker in the prison’s commissary, he tried to observe the basic tenet of his faith that he pray daily at five specified times, as his work duties allowed. Mack typically went to the back corner of the commissary to pray for about five minutes.

Mack was easily identifiable as a devout Muslim because he wore religious headgear and was exempted from handling

pork products in the commissary. Most of the guards assigned to the commissary had no problem with his prayers, he said. But two guards, Doug Roberts and Samuel Venslosky, allegedly targeted Mack for religious animus. Because of his religious beliefs, the two guards – who were assigned to run the commissary – “singled him out for disrespect and harassment,” according to the complaint he later filed. Other prisoners also told him that Roberts and Venslosky

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were “out to get [him] because [he] was a Muslim.”

Initially, the hostility was limited to “stares” and “looks,” the complaint continued. It escalated to “snide remarks” mocking Mack’s adherence to Islam.” Roberts repeatedly told Mack, “I don’t like Muslims,” adding that he didn’t like Mack. Venslosky told other prisoners “he disliked Mack because he was a Muslim” and “sarcastically asked Mack whether Muslim was a religion.”

Within months, things got worse, with Roberts telling Mack: “There is no good Muslim but a dead Muslim.” Venslosky would sit back and grin, “egging him on,” the prisoner claimed, thus expressing tacit approval of what Roberts was saying.

In addition to verbal harassment, the guards “would interfere with Mack’s efforts to pray” by coming to the corner of the commissary where he retreated for prayers and interrupting them by “making noise, telling jokes, talking loudly, and even kicking the boxes that Mack was praying behind.” Other prisoners confirmed to him that the guards “were trying to interrupt [his] prayers.”

One Friday, as Mack left work for Islamic services, Roberts “surreptitiously put a sticker on Mack’s back. It said ‘I love pork bacon.’” When Mack found out and confronted him, Roberts did not deny the deed, but told him, “You are not going to be here long,” indicating he would try to get Mack fired.

On the advice of an imam, Mack decided to stop praying in the commissary and to “make up” the missed prayers with additional prayers in the evening. But about two weeks later, Mack was fired on allegedly bogus disciplinary charges.

He then filed a *pro se* civil rights complaint in federal court for the Western District of Pennsylvania against the guards and other prison officials. Over the course of three trips to the court of appeals and litigation in the district court, his lawsuit was pared down to a single claim that the guards violated RFRA by interfering with his worship.

The guards filed a motion to dismiss, asserting qualified immunity (QI). The district court granted the motion. Mack, now out of prison and represented by attorneys Jessica Moran, Christopher E. Kemmitt and Michael Skocpol of K&L Gataes in Washington, D.C., appealed for a fourth time.

At the Third Circuit a Fourth Time

AS AN INITIAL MATTER, THE THIRD CIRCUIT needed to determine whether QI could be a defense to an RFRA claim. Finding that “[j]ust as textual similarity between § 1983 and the RFRA means that those statutes provide analogous remedies,” the Court said “they also contemplate analogous defenses.” By the time RFRA was enacted, “the Supreme Court had interpreted § 1983 ‘to permit ... monetary recovery against

officials’ only if they violated ‘clearly established’ federal law,” the Court continued, citing *Tanzin v. Tanvir*, 14 S.Ct. 486 (2020). Based on that, the Third Circuit held that QI applies to RFRA claims, as the Fourth, Ninth, Eleventh and D.C. Circuits had previously decided.

Moving on, the Court noted that “[i]t is undisputed that the first prong [of a qualified immunity analysis] – a violation of Mack’s RFRA rights – has been established here.” Therefore, it addressed the second prong, whether the rights that were violated were clearly established at the time of the incident.

The Court noted that its previous rulings and those of the district court had already determined that the guards had placed “indirect pressure” on Mack “to stop praying at work” by creating a “hostile work environment.” To overcome that finding, the guards would have to show that what they did represented “the least restrictive means of furthering a compelling governmental interest.” Yet they did not even argue there was a governmental interest involved.

However, neither Mack nor the guards framed the issue correctly, the Court said. Instead the proper frame was whether it was clearly established that “Mack had a right to engage in prayer free of substantial, deliberate, repeated, and unjustified disruption by prison officials.” The Court noted that sometimes a violation is so obvious that a case that addresses the same facts is not required in order to prove clearly established law, citing *Peroza-Benitez v. Smith*, 994 F.3d 157 (3d Cir. 2021). This, the Court said, was such a case.

There was not a “factually analogous’ binding precedent” nor anything to “amount to a ‘robust consensus’ of persuasive authority” that the guards’ conduct was unlawful, the Court noted – largely due to the fact that freedom of religion is so well established that government actors rarely violate it and thus there are few cases addressing the issue. However, the Court was “convinced that it should be clear to any reasonable correctional officer that, in absence of some legitimate penological interest, he may not seek to prevent an inmate from praying in accordance with his faith.”

“The long-standing history and force of these general principles lead us to conclude that, during the time at issue, it was clearly established that a correctional officer was forbidden to pressure an inmate to

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forego engaging in prayer, absent some compelling government interest,” the Court said. “Simply put, there is no logical conundrum about whether the law permits prison officials to wage a concerted campaign, for

no legitimate reason, to stop an inmate from praying.” Citing *O’Lone v. Est. of Shabazz*, 482 U.S. 342 (1987), the Court said “[t]hat has been in place beyond reasonable debate for decades.” Therefore, the order granting

summary judgment was vacated and the case remanded. See: *Mack v. Yost*, 63 F.4th 211 (3d Cir. 2023).¹¹

Life Sentence for Alabama Jail Escapee After Suicide of Guard Lover Who Helped Him

by Chuck Sharman

On June 8, 2023, a judge in Alabama’s Lauderdale County handed a life sentence without parole to a state prisoner for escaping the county lockup with his jail-guard lover, who then committed suicide as pursuing police closed in. Casey White, 39, pleaded guilty to felony escape in a deal with prosecutors, who dropped a capital murder charge that might have sent him to death row.

White was serving a 75-year prison sentence for attempted murder with the state Department of Corrections (DOC) when he was transferred to the Lauderdale County Detention Center in 2020 to face trial for a 2015 murder in the county. Not quite two years later, jail Assistant Director Vicky White, 56 – who was no relation – hurriedly arranged her own retirement and sold her home at a steep discount for cash to finance the prisoner’s escape on April 29, 2022. Their getaway triggered a nearly two-week manhunt before cops caught up with the couple near Evansville, Indiana, running their car off the road on May 9, 2022. Vicky White then fatally shot herself. [See: *PLN*, Nov. 2022, p.58.]

“You think you know someone,” county Sheriff Rick Singleton said of his dead jailer, whose 17-year career was spotless. “And it turns out you really don’t know them at all.”

Casey White must still stand trial in August 2023 on his original murder charge for killing Connie Ridgeway, 59, at her apartment in August 2015. He sent a letter from his cell at DOC’s William Donaldson Correctional Facility in June 2020, confessing to the murder and claiming he was paid to do it, though not naming by whom. No one else has been charged in that crime, but prosecutors announced they would not seek the death penalty for White in that case.

Though confessing to Ridgeway’s murder brought Casey White to the jail where Vicky White worked, Sheriff Singleton insisted the two had no prior relationship. However, Casey White reportedly began recanting that confession as soon as the cops pulled him from the getaway car where his dead “wife” slumped in the passenger seat.

He also has the remainder of his original sentence to serve for a wild night in December 2015 that included a home invasion, a pair of carjackings and several shootings across northern Alabama

and southern Tennessee, killing a dog and injuring a woman.

Hours before sentencing on his felony escape plea, White gave a TV interview in which he claimed that he murdered another woman and her baby girl in Evansville before his recapture. Law enforcement authorities dismissed his confession as a ploy to secure a prison transfer. They said there were no missing person reports in Evansville matching the timeline of his escape.¹²

Sources: *AP News*, *Birmingham News*, *CBS News*, *CNN*, *Vice*

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Washington State Initiative to Expand Jail Ballot Access Faces Local Pushback

by David M. Reutter

As of January 23, 2023, only \$250,000 had been tapped of a \$2.5 million allocation made by the Washington legislature in 2022 for grants to counties to ease ballot access for those in jail.

Many people in jail are eligible to vote because they are being detained pretrial or they have a low-level conviction. But these eligible voters are often denied ballots or even information about how to request one.

When Spokane County Auditor Vicky Dalton presented a plan in September 2022 to increase voter registration and participation in the County's two jails with grant funds, she met stiff resistance and was denied approval.

Politics were clearly at the forefront. "So, if you're a candidate that's campaigning on a position of being tough on crime, obviously you're not going to get a lot of votes out of the jail, and the inverse of that also could apply," Commissioner Al French noted at the meeting.

Responded Dalton, "We don't speculate how people vote. We just need to make

sure that they have the opportunity to register to receive a ballot and return the ballot."

But French, in an interview with *Bolts Magazine*, doubled down on his position that it "stacks the deck" to make it easier for eligible voters to cast ballots from jail. "We want to have a fair and open election, and to try and get voters who have a predisposition, it's not in my mind consistent with free and open elections," French said.

King and Pierce counties each received about \$100,000. Thurston, Benton, and Kitsap counties also received funds to increase jail balloting.

Thurston County Auditor Mary Hall said the \$42,000 her office received was used to train guards and distribute voter guides. Ballots cast from the jail increased from just three during the previous election to 40 in November 2022.

"The ability to vote and engage in a society [where] you did not necessarily feel that you belonged, that just carries 10,000 miles of value," said Kurtis Robinson, vice president of the NAACP's Spokane Branch. "It is a real core underlying issue surround-

ing the issue of justice involvement. You cannot understand the importance of it and what it means when it's not supported."

A 2022 state law change increased the Spokane County Commission from three to five commissioners, and in November 2022, voters elected two new Democratic commissioners. Dalton estimated that 700 eligible voters are held in Spokane's jails. She intends to present her plan to commissioners again.

Efforts to expand election participation by incarcerated voters are typically met with pushback from conservative politicians, like Commissioner French. But research has shown that few people vote from behind bars even when they have the opportunity. [See: *PLN*, Sep. 2022, p.50.] Moreover, it is not a sure bet that they won't support candidates from certain conservative blocs – like evangelical Christians – with whom they might strongly identify. ■

Source: *Bolts Magazine*

Cuyahoga County Sheriff Stripped of Jail Commissary Control After \$500,000 in Inventory Goes Missing

by David M. Reutter

Ohio's Cuyahoga County Council took control of the county jail commissary on March 28, 2023, after a watchdog found over \$500,000 worth of items were missing. The investigation also found that monies from the canteen fund were misappropriated by the Sheriff's Office, which has been operating under interim Sheriff Joseph Greiner.

But even jail guards questioned the county's next decision, awarding a contract to run the commissary to Keefe Commissary Network. That's because Keefe owner TKC Holdings also owns Trinity Services Group, the contractor long criticized for poor quality meals served to detainees and prisoners.

After receiving a complaint about donations of expired food from the Cuyahoga County Jail commissary, the County's Inspector General (IG) began an investiga-

tion. That uncovered problems from 2020 and 2021, ranging from shoddy bookkeeping to a lack of oversight that "increases the risk of theft or unauthorized transactions going undetected," the IG said.

The IG found \$376,206 in recorded commissary inventory that wasn't in the warehouse. It guessed there were accounting errors, or waste from expired food, or even potential theft. Around the time the report was issued in June 2022, three guards were fired for stealing commissary snacks for themselves and detainees. [See: *PLN*, Aug. 2022, p.63.]

Investigators were also "unable to trace" the inventory from 33 invoices totaling nearly \$55,000. And they found \$1,788 in expired chips, flour tortillas, and iced honey buns that had to be discarded. Another \$72,277 in unauthorized write-offs of damaged or spoiled items was found from 2020.

All told, that's \$505,271 in missing items.

All revenue from commissary sales is supposed to be used to restock supply, pay commissary staff and provide skills training and education for detainees. Surplus in the account may also be used to purchase technology to prevent contraband introduction into the jail. But investigators found inappropriate spending by the Sheriff's Office for other things.

Reports showed that \$102,144 was spent on vehicles, riot ammunition, laptops, printers, headsets, employee travel and employee reimbursement for groceries and parking. A \$25,000 payment to Watch Systems, LLC – a sex-offender community notification – was not only an improper expenditure from the commissary fund, the IG said, but also violated the budget the Sheriff's Office was allowed to spend on the service. The County's law department

was working on recovering the payment to return it to the commissary fund.

After control was transferred from the Sheriff's Office, County Executive Chris Ronayne said the \$2 million commissary fund "will have its own budget, accounts, and sub-accounts and will be managed by the fiscal office and approved by county council." For day-to-day operations, the county had already awarded a three-year management contract to Keefe in August 2022 – effectively granting owner TKC Holdings a monopoly over everything eaten by those incarcerated at the jail.

That has even jail guards worried. "A properly fed inmate population is key for the safety and security of the jail," said Adam Chaloupka of the Ohio Patrolmen's Benevolent Association, the guards' union. "That's why officers have been sounding alarms about the low-quality food."

Keefe jacked up commissary prices at the end of March 2023 as much as 550%. A Hershey bar went from \$1.05 to \$1.80. Diced chicken breast rose \$3.75, ranch dressing 27 cents, Ramen noodles 30 cents and tuna fish \$1.41. A bag of Doritos that used to sell for 60 cents was marked up to \$3.91. Predictably, commissary revenues plummeted, from an average of \$167,000 per month to just \$115,000 in April.

Chaloupka called it "troubling that inmates may be forced to purchase overpriced commissary items to supplement their diet, due to the poor and inadequate quality of food that Trinity is serving."

The county had no comment. But in addition to losing inventory headaches, it also picks up revenue from the Keefe deal: a 40% commission on commissary sales, worth \$46,000 in April. In 2022, the Sheriff's office averaged a monthly net about \$20,000 less from the canteen.

County council members were steamed

to find out they weren't advised of Keefe's relationship to Trinity. But they promised to wait before acting until a new sheriff is sworn in. In May 2023, Ronayne appointed Cleveland cop Harold Pretel, who is awaiting council approval.

Former Sheriff Clifford Pinkney resigned in May 2019, a year after nine jail prisoners died in just six months and U.S. Marshals Service inspectors called the lockup "one of the worst in the country."

For lying and record-tampering in the ensuing investigation, former jail administrator Ken Mills got a nine-month prison term in 2021, when Summit County Court of Common Pleas Judge Patricia A. Cosgrove told him, "I don't know how you can live with yourself." [See: *PLN*, Feb. 2022, p.54.]

Additional source: *Cleveland Plain Dealer*

Prison Profiteer Who Chairs Christian Seminary Board Called Not Very 'Christlike'

by Kevin W. Bliss

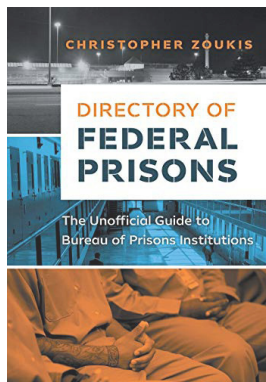
Members of Princeton Theological Seminars for Peace and Justice (SPJ) sent a letter on March 14, 2023, calling for resignation of seminary Board of Trustees Chairman Michael Fisch. After learning Fisch's hedge fund, American Securities, owns prison telecom giant ViaPath, the group complained that the way the firm profits off exploiting prisoners – many people of color – runs counter to the teachings of Jesus Christ, which their group should be exemplifying.

Dozens of seminary alumni signed the letter, including Rev. J. Amos Caley, leader of New Jersey's Reformed Church of Highland Park; Pastor Erich Kussman of St. Bartholomew Lutheran Church in Trenton; as well as SPJ moderator and seminarian

Angel Nalbega. They demanded seminary President Jonathan Walton ensure more transparency and greater accountability for Board members, finding it especially concerning that what Fisch and other members do appears contrary to SPJ's mission.

"We are appalled," read the letter, "that the board of trustees is chaired by someone who makes profit from conditions we have been taught to work against and have been trained at the Seminary to mitigate in our roles as pastors, chaplains, and social workers."

ViaPath is a privately held company known until January 2022 as Global Tel*Link. [See: *PLN*, June 2022, p.38.] It contracts with jails and prisons to provide communication services, charging upwards



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of \$1 per minute for prisoners to stay connected with their families and friends. Other Board members have been found aligned with military weapons technology and fossil fuel industries, as well as other prison profiteering ventures.

New Jersey Assemblyman Herb Conway (D-Delran) introduced a bill in February 2023 that would make all prison phone calls and video calls in the state free of charge. State law currently caps charges at 11 cents per minute for domestic calls.

Phone calls for nearly 100,000 California prisoners are free, and other states are considering similar free fare laws. [See: *PLN*, Apr. 2023, p.43.] Under Pres. Joseph R. Biden, Jr. (D), the Federal Communications Commission has also expanded regulation of prison phone rates to include both in-state and interstate calls.. [See: *PLN*, July 2023, p.50.]

Walton replied to the letter by stating he was in agreement with the group that there was a need for greater transparency

and ethical responsibility. But he did not detail how the Seminary would currently achieve that goal. ❏

Source: *New Jersey Advance Publications*

Corizon Bankruptcy Stalls Suit By Alleged Rape Victims of Rikers Island Guard

by Chuck Sharman

A group of women who claimed they were raped by a physician's assistant at New York City's Rikers Island jail complex has now been screwed two more times. First, prosecutors apparently bungled the criminal case against their alleged assailant. Then a lawsuit the group filed was stayed by the federal court for the Southern District of New York on March 8, 2023, pending the outcome of bankruptcy proceedings filed by one of the defendants, former jail healthcare

provider Corizon Health.

The group of 29 former detainees alleged that the City and Corizon Health should have stopped Sidney Wilson from abusing his role in the jail's medical unit to ply them with gifts – including Popeye's Chicken, a sex toy and prescription drugs – as he “repeatedly raped, sexually assaulted and abused” them between 2015 and 2017. [See: *PLN*, Nov. 2016, p.63.]

Wilson, now 66, was criminally

charged. But the charges were dropped in June 2021. Bronx Senior Assistant District Attorney Nancy Strohmeier admitted then that the case “could not be brought into compliance” with reform laws passed the year before, which set strict timelines for prosecutors to share discovery materials with defendants.

Though their alleged assailant walked free then, Plaintiffs – all identified by their initials or “Jane Doe” – were at last able

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to resume their civil suit, which had been waiting for disposition of Wilson's criminal case before the Court would proceed with their claims.

Meanwhile Corizon Health executed a "Texas Two-Step" in federal bankruptcy court for the Southern District of Texas, transferring its more profitable business to a new entity called YesCare, while sloughing off most of its liabilities into another new entity called Tehum Care Services – which promptly declared bankruptcy. The firm made a bankruptcy filing in February 2023

listing 30 creditors owed over \$38 million already. [See: *PLN*, Aug. 2023, p.35.]

That same month, back in Plaintiffs' case before the Court, Tehum Care Services filed its Suggestion of Bankruptcy, casting doubt whether there will be anything left to pay victims should they prevail in their suit. That left Judge Laura Taylor Swain little choice but to terminate all outstanding motions and stay proceedings. Plaintiffs are represented by attorney Phillip M. Hines with Held & Hines, LLP in Brooklyn. See: *K.A. v. City of New York*, USDC (S.D.N.Y.),

Case No. 1:16-cv-04936.

Even when a criminal case is not mishandled, the wheels of justice churn slowly on the backs of rape victims at Rikers Island. Another former guard, Leonard McNeill, was fired in June 2023, seven years after assaulting his victim; he was the only guard fired from the jail for rape over a five-year period. [See: *PLN*, July 2023, p.24.]

Additional sources: *New York Daily News*, *New York Times*

Menstruation Weaponized Against Women in Prison

by Kevin W. Bliss

Writers Victoria Law and Rachel Kauder Nalebuff penned a *Time* magazine article on March 29, 2023, collecting accounts from female prisoners about difficulties dealing with menstruation while in prison. They found the current criminal justice system has weaponized menstruation, using it as a means to punish and oppress female prisoners.

Approximately 10% of the U.S. prison population – 170,000 people – is incarcerated in women's prisons across the country, 90% of them under age 55. Almost all of these women have to cope with a monthly period behind bars, where insensitivity and even harassment from guards add humiliation to this natural body function.

In 2017, U.S. Senators Cory Booker (D-N.J.) and Elizabeth Warren (D-Mass.) submitted a bill requiring the federal Bureau of Prisons (BOP) to supply menstrual care products free of charge in prison. BOP made the change voluntarily shortly thereafter, and it became law with passage of the First Step Act in 2018. [See: *PLN*, Jan. 2019, p.34.]

But this bill affected only the federal prison system; more than 35 states lack similar menstrual care protections in their laws. A Texas prisoner named Kwaneta said she was allotted just one pack of pads and five regular-sized tampons monthly. Additional pads must be purchased from the prison canteen at \$15 per box – as much as triple the price outside prison and a small fortune in Texas, where prison work is unpaid.

Why does she need more? For one thing, she said, guards force women to re-

move pads and tampons during recurrent strip searches, and each search requires a replacement pad or tampon. One guard opened every one of her sealed tampon packages during a shakedown, she added, contaminating them and forcing her to replace them, as well.

Surprisingly, Kwaneta said that birth control was more readily available than menstrual products in prison. So many women take "the pill" just to keep from bleeding each month.

As Law and Nalebuff note, humiliation surrounding a woman's period can take many forms in prison. Menstruating women are sometimes given supplies but no way to dispose of them when soiled. Or

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they are given pads but no panties to wear that will hold them in place. Guards shame prisoners for bloody spots on their prison uniforms.

“No matter what you believe about serving time,” they said, “we need to question why we permit this kind of control and abuse over anyone’s most basic

bodily functions and needs.”

Source: *Time*

DOJ Finds Louisiana ‘Deliberately Indifferent’ to Prisoners Incarcerated Long Past Their Release Dates

by Matt Clarke

On January 25, 2023, the U.S. Department of Justice (DOJ) released a report finding the Louisiana Department of Public Safety and Corrections (DPSC) was deliberately indifferent to the due-process rights of state prisoners who were held long past their release dates. DOJ also found that DPSC has been aware of this problem for more than a decade yet refused to take effective steps to ensure the timely release of its prisoners.

The report noted that between January and April 2022, 1,108 (26.8%) of the 4,135 prisoners DPSC released were held past their release dates. The median over-detention was 29 days, but 31% were over-detained at least 60 days and 24% at least 90 days.

Although Louisiana does not com-

jails to incarcerate about half of its 26,000 prisoners, as well as privately operated lockups where it contracts for bed space. All prisoners held at jails, however, remain in custody of DPSC, which is responsible for their timely release.

It is this extensive use of local jails, along with an antiquated system of calculating sentences and delivering the results to the parish jails, which is largely responsible for the delayed releases. According to the report, DPSC’s Pre-classification Department is responsible for collecting, maintaining and managing prisoners’ sentencing information and related records. The Department also calculates release dates and is responsible for the timely processing of DPSC prisoners from incarceration.

ing information and other documents into a “preclass packet” that is forwarded to the Pre-classification Department, which then uses the information to calculate a release date. If a person is eligible for immediate release, the Department contacts various local officials to check for detainers and unresolved charges, as well as confirming that the prisoner’s DNA is on file and any necessary victim notification has been completed. Then it issues a release certificate and forwards it to the appropriate local official. Only upon receipt of the certificate is the prisoner finally released.

However, there is no standardized method of forwarding information at any step of this process. More than five years ago, DPSC declined an offer from a clerk’s association to email sentencing information

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August 2023 - detained prisoners, it does have to pay to keep them incarcerated – at least \$2.5 million a year, DOJ estimated. The state DPSC, 1041, which

That process starts when the Clerk of the Court sends sentencing information to the sheriff of the parish where the prisoner is incarcerated. The sheriff then

directly. DPSC recently sent legal news sheriffs to email sentencing information, but few do so. Mostly, the information is

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These cumbersome and nonuniform procedures resulted in an average over-detention of 44 days in 2019 for about 200 of the 1,000 or more prisoners the state releases each month. Further, according to the report, DPSC has known about the problem since a 2012 Sigma Six report it commissioned revealed these severe, systemic delays. How severe? On average every year covered in that report, 2,252 prisoners were each over-detained for 72 days.

Though that means the situation has improved slightly in the past 11 years, it remains a big problem, as legislative audits in 2017 and 2019 also found. Armed with evidence that DPSC knew about the problem for so long and left it uncorrected, DOJ said the agency had been deliberately indifferent to violations of prisoners' due-process rights. See: *Investigation of the La. Dep't of Pub. Safety & Corr.*, U.S.D.O.J.O.I.G. (2023).

Recently, the U.S. Court of Appeals for the Fifth Circuit held that Jessie Crittendon and four other state prisoners who had been incarcerated long beyond the end of their sentences could sue DPSC for violating their constitutional rights. That case has now returned to federal court for the Middle District of Louisiana, and *PLN* is tracking developments. [*PLN*, Mar. 2023, p. 30].

Additional source: *New York Times*

Seventh Circuit: Cook County Jail Grievance Procedure An "Incomprehensible Trap"

by Douglas Ankney

On March 16, 2023, the U.S. Court of Appeals for the Seventh Circuit ruled that the grievance procedure in Chicago's Cook County Jail is an "incomprehensible trap," making it effectively unavailable to a detainee and so excusing his failure to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e.

While incarcerated at the jail, Gerald Hacker was found standing in a doorway by guard D. Sandoval, who ordered Hacker to return to his bed. Hacker is almost entirely deaf, with just 10% hearing in his right ear and none in his left. Unable to hear the guard, he did not comply. Sandoval responded by shoving Hacker, knocking him unconscious. Hacker later awoke at

Cermak Health Services, handcuffed to a bed.

Hacker filed an administrative grievance with the jail. That same day, he received a written notice informing him that his grievance had been referred to the Office of Professional Responsibility (OPR), as per jail policy, as well as to the Divisional Superintendent. The notice said Hacker could follow up on the investigation by contacting either OPR or the Divisional Superintendent. Attached to the referral notice was a form allowing Hacker to appeal within 15 days and including a standard warning that Hacker had to appeal the prison's response in order to exhaust his remedies under PLRA.

But Hacker received no instruction

what to do, if anything. The response informed him only that his complaint had been forwarded to OPR. Nor was there any timeline given for OPR or the Divisional Superintendent to resolve Hacker's grievance. After more than three months – long after the 15 days for appeal had lapsed – an OPR investigator issued a memorandum concluding the claims against Sandoval could not be substantiated, and the investigation was closed. The memorandum was not addressed to Hacker but to the investigator's superior officer. Nothing in the memorandum indicated it brought the grievance process to a close; it made no mention of an appeals process; and it did not include an appeal form.

Hacker did not return the appeals form in response to the initial referral or the OPR memorandum. By the time OPR closed its investigation, Hacker had filed suit under 42 U.S.C. § 1983 in federal court for the Northern District of Illinois, accusing Cook County and Sheriff Thomas J. Dart, as well as various jail officials, of violating his civil rights.

In addition to his grievance against Sandoval, Hacker also filed a grievance in May 2017, complaining that the jail failed to provide him access to assistive listening devices (ALD), without which he cannot hear or understand what others are saying to him. The jail responded by telling Hacker it did not have to provide him with ALD. It then denied Hacker's appeal of this grievance, completely exhausting the grievance process.

Meanwhile, Hacker was periodically missing medication for his dental abscess because he could not hear the nurse call-

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ing his name when medications were dispensed. Hacker filed a grievance about this in July 2017 – after he had filed his suit – complaining that the missed medications left him in pain and delayed his tooth extraction. The jail forwarded the grievance to Cermak, where it was denied. Hacker appealed and the appeal was also denied.

At the district court, Defendants argued that Hacker failed to exhaust his administrative remedies concerning the excessive force grievance against Sandoval by failing to appeal the OPR referral notice within 15 days. The district court rejected the 15-day deadline to appeal, however. In its view, the referral notice allowed Hacker to delay his appeal until he heard back from OPR. But Hacker was still required to appeal at some point; because he failed to do so, the district court dismissed the claim for failure to exhaust.

The district court also dismissed Hacker's claims relating to ALD, made under the Americans with Disabilities Act (ADA), 412 U.S.C. ch. 126, § 12101 et. seq., and the Rehabilitation Act of 1973 (RA), 29 U.S.C. § 701 et seq., saying he failed to show any physical injury stemming from denial of the devices. Regarding his ADA and RA claims related to missed medications, Hacker admitted that he did not exhaust his administrative remedies prior to commencing suit. Therefore, those claims were dismissed, too. The district court then granted summary judgment to Defendants. Hacker appealed.

Seventh Circuit Hears Appeal

AT THE SEVENTH CIRCUIT, HACKER DID not argue in his opening brief that the grievance procedure was so opaque and confusing as to be unavailable to him. Instead, he waited until his reply brief to articulate, develop and include this argument. The Court observed, “We require litigants to raise and develop all of their arguments in their opening appellate brief to ensure ‘that the opposing party has an opportunity to reflect upon and respond in writing to the arguments that his adversary is raising,’” quoting *Beckman v. Vanibel*, 33 F.4th 937 (7th Cir. 2022). By failing to advance his argument in his opening brief, Hacker forfeited it, the Court said.

Ordinarily, that would be the end of the case, since the Court usually will not consider forfeited arguments. However, as laid out in *Henry v. Hulett*, 969 F.3d 769

(7th Cir. 2020), the Court may review a forfeited argument for plain error in the infrequent instance where “(1) exceptional circumstances exist; (2) substantial rights are affected; and (3) a miscarriage of justice will occur if plain error review is not applied.” The Court concluded this case presented rare issues that it would consider for the first time on appeal.

Generally, PLRA bars prisoners from bringing federal claims challenging prison conditions, including medical care, “until such administrative remedies as are available are exhausted,” the Court noted. However, prisoners do not have to exhaust remedies that are unavailable. If an administrative remedy is so opaque that it becomes essentially “unknowable,” then prisoners are no longer required to exhaust, the Court continued, citing *Ross v. Blake*, 578 U.S. 632 (2016). Hacker had identified a plain error: The notice of referral to the OPR contained no clear instruction that he was supposed to appeal it. To the contrary, the clear and sensible takeaway from the notice was that Hacker should stand by while OPR investigated the complaint against Sandoval.

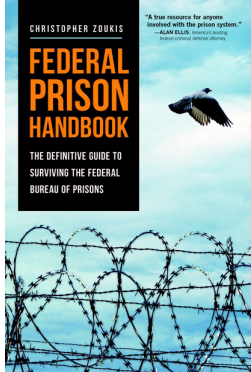
Nor did the jail tell Hacker to appeal after OPR made its decision. The memorandum made no reference or suggestion to appeal, and it contained no appeals form. In light of these facts, the Court had “little trouble concluding that the Cook County Jail’s grievance procedures became unavailable to Hacker after the jail involved the OPR.” Therefore, the district court plainly erred in holding Hacker had failed to exhaust his administrative remedies.

Second, the circumstances of Hacker’s case were exceptional because of the consequences for Hacker and other CCJ prisoners. Faced with “a labyrinthine and confusing process,” civil litigants

like Hacker risked being locked out of court entirely for some of the most serious claims they could bring, the Seventh Circuit noted.

Exercising its discretion to review Hacker’s claims also provided the benefit of resolving conflicting district court opinions, with some courts ruling the OPR referral notice must be appealed within 15 days and others ruling appeal could be delayed until after the OPR’s decision. The Court confessed that even it had a difficult time understanding the jail’s grievance process. But substantial rights were at stake: Since the only basis for dismissing the claim against Sandoval was Hacker’s alleged failure to exhaust his remedies, the district court had substantially prejudiced Hacker in the way anticipated by *Perry v. City of Chicago*, 733 F.3d 248 (7th Cir. 2013).

Fourth, the Court opined that “a miscarriage of justice looms if we do not apply plain error review. The Cook County Jail’s grievance process was not just a confusing annoyance. It was an incomprehensible trap that risked locking Hacker – and potentially other inmates as well – out of court altogether on serious claims,” the Court said, citing *Henry* again. Thus PLRA did not require Hacker to exhaust CCJ’s grievance



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process, the Court concluded, because it was effectively unavailable to him.

The Court next turned to Hacker's ADA and RA claims. It agreed with the district court that Hacker did not exhaust his grievance regarding his delay in receiving medication. However, with regard to the district court's determination that Hacker did not show physical injury stemming from denial of ALD, the Court disagreed.

PLRA requires prisoners to make a prior showing of physical injury – or the commission of a sexual act, in a claim of that nature – before recovering compensatory damages for mental or emotional injuries, as laid out in *Thomas v. Illinois*, 697 F.3d 612 (7th Cir. 2012). In his exhausted grievance related to the denial of ALD, Hacker com-

plained that he could not hear what others were saying to him. And in his exhausted grievance related to the missed medication that resulted in pain and delayed his tooth extraction, he said he had not received his medication because he could not hear the nurse calling his name. Taken together, the denial of ALD caused him to not hear the nurse, which in turn caused him to miss his medication – resulting in pain, the Court noted. This allegation was sufficient to satisfy the physical injury necessary for PLRA purposes, since a dental abscess is a “serious medical condition requiring prompt treatment,” as held in *Dobby v. Mitchell-Lawshea*, 806 F.3d 938 (7th Cir. 2015).

Accordingly, the Court vacated sum-

mary judgment as to the claim against Sandoval for excessive force and as to the ADA and RA claims relating to the denial of the ALD. Hacker was represented before the Court by attorney Patrick W. Morrissey of Thomas G. Morrissey, Ltd. in Chicago. See: *Hacker v. Dart*, 62 F.4th 1073 (7th Cir. 2023).

A request for rehearing before the full Seventh Circuit *en banc* was denied on May 15, 2023. See: *Hacker v. Dart*, 2023 U.S. App. LEXIS 11873 (7th Cir.). The case has now returned to the district court, and *PLN* will update developments as they are available. See: *Hacker v. Dart*, USDC (N.D.Ill.), Case No. 1:17-cv-04282. 📄

Prisoner Health Update: HIV

by Eike Blohm, MD

Human immunodeficiency virus (HIV) is highly overrepresented among U.S. prisoners, along with other infectious illnesses such as MRSA, Hepatitis-C and tuberculosis. [See: *PLN*, Jan. 2023, p.38; Feb. 2023, p.52; and June 2023, p.41.]

The high prevalence of HIV among prisoners is due to the selective incarceration of Americans who struggle with intravenous substance use, as well as a lack of mandatory and universal testing protocols in prisons.

After an initial outbreak infected five gay men in Los Angeles in June 1981, the then-unknown disease was called GRID5: gay-related immunodeficiency syndrome. Coinciding with what was then still a young movement for gay rights, HIV/AIDS became stigmatized as a punishment for what many religious people view as sinful and immoral behavior. Sadly, the negative impact

of this stigmatization persists even today.

How is HIV transmitted?

HIV IS A VIRUS TRANSMITTED FROM ONE person to another by blood, usually due to unprotected sexual intercourse or sharing needles (e.g., during tattooing or drug use). It cannot be transmitted through casual contact such as shaking hands or exchanging hugs, nor by inanimate objects such as toilets seats or drinking cups. Thus, an HIV-positive cellmate does not pose an infection risk unless the two of you are having sex or sharing needles.

Why is HIV so hard to treat?

OUR GENETIC INFORMATION IS STORED in our DNA. In each new cell the DNA is transcribed into an RNA strand – like a working copy that allows preservation of the

original. In turn, the RNA is then translated into a protein by a cellular machine called a ribosome. Viruses hijack cells and substitute their own DNA for this process, tricking ribosomes into producing more virus instead.

HIV does not have DNA. It is a retrovirus (retro means “backwards”) that stores its genetic information as RNA. It brings along its own enzyme called “reverse transcriptase,” which transcribes the RNA into DNA and the viral DNA is then inserted into the human DNA of the cell. In other words, HIV welds itself into our genome. Doctors are not yet able to selectively excise the viral DNA from our chromosomes.

What are symptoms of an HIV infection?

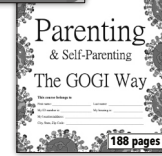
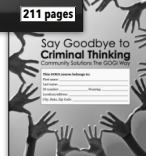
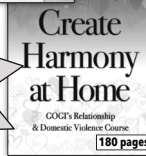
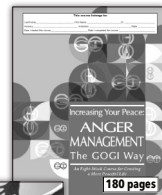
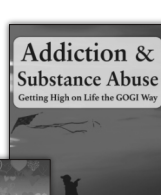
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days of exposure. Fever, headache, joint and muscle pain last for 1-2 weeks, then disappear. Unlike other sexually transmitted illnesses, there are no genital lesions, rashes, or discharge. What follows is an invisible war between the virus and the immune system, with no outward symptoms at all during a period that can last for years. But because HIV infects cells of the immune system, it is slowly weakening the body's defense mechanism until it can no longer fight off other infections.

What is the difference between HIV and AIDS?

HIV IS THE VIRUS; AIDS – ACQUIRED IMMUNODEFICIENCY SYNDROME – IS the illness that it eventually causes. AIDS is diagnosed when a person starts having opportunistic infections, like thrush, a fungal mouth infection that a person with a healthy immune system would not get. Not every person with HIV will develop AIDS; modern medications are now so effective that HIV can be suppressed indefinitely.

Can a person with HIV still have children?

IF A PRISONER OR HIS PARTNER IS HIV-positive and they plan to start a family after release from prison, they can safely do so. To prevent infection during intercourse, the HIV-negative partner should take prophylactic medication. That's doesn't mean swallowing a condom, but taking a prescription drug like Truvada, Descovy or Apretude, designed to provide "Pre-exposure prophylaxis" (or PreP) to HIV infection.

While the baby grows inside the mother, their blood does not mix, so an HIV-positive mother will not infect her unborn child. However, the trauma of vaginal delivery can lead to blood-to-blood contact and thus infection, so the baby must be delivered by Cesarean Section. HIV can also be transmitted by breast milk, so an HIV-positive mom must bottle-feed her baby.

How can I get tested?

HIV TESTING IS USUALLY DONE WITH A blood test, although mouth swabbing is an alternative. The prison medical staff should be able to perform this test in accordance with its protocols. The test looks for antibodies to HIV that your body has produced, and it requires a certain amount

of virus to be present, so a person who just got infected might still test negative. About two weeks after exposure, the test becomes more reliable.

Living with HIV

WITH PROPER MEDICATION AND REGULAR checkups, you can live a long, full life with HIV. What was a death sentence 40 years ago today has become a long-term manageable disease, not unlike diabetes. But just as diabetics risk death without regular medication, those positive for HIV should not skip

proper healthcare. Prison and jail medical providers are required to treat HIV, just as they must treat any other disease. After release, Medicaid is available to help former prisoners avoid disruption in treatment due to financial need. If a case worker is not available at your prison prior to your release, find the nearest public health officer after your release to get signed up. 📄

Disclaimer: This column aims to educate prisoners about a common health condition, but it does not constitute medical advice and is no substitute for evaluation by a trained medical professional.

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.

ADVERTISING MATERIAL

Ninth Circuit Affirms Expanded Relief for Disabled California Prisoners in Long-Running Class Action

by David M. Reutter

On February 2, 2023, the U.S. Court of Appeals for the Ninth Circuit affirmed, in large part, an order that found ongoing violations of the rights of disabled prisoners at California's R.J. Donovan Correctional Facility (RJD) and five additional state prisons, all resulting from the failure to adequately investigate and discipline staff misconduct by the state Department of Corrections and Rehabilitation (CDCR).

The opinion was issued in a class-action lawsuit that was filed in 1994, alleging widespread violations of the American with Disabilities Act, 42 U.S.C. ch. 126, § 12101, et seq., and the Rehabilitation Act of 1973, 29 U.S.C. § 701 et seq.

In 2018, auditors from CDCR and Class Counsel attorneys conducted a compliance review of disability policies at RJD. The resulting memo documented prisoner reports that "staff members forcefully remov[ed] some [Class] members from wheelchairs" and "assault[ed] inmates

[who] were already secured with restraint equipment."

A state "strike team" was sent to RJD to investigate the reports. It found 48 of the 102 prisoners interviewed "provided specific, actionable information, relevant to the foundational concerns" of staff misconduct that prompted the review.

The strike team recommended, among other things, installing surveillance cameras at certain locations within RJD, increasing the presence of supervisory staff and providing additional mandatory staff training. Class Counsel spent 2019 communicating with CDCR to remedy the problems at RJD. In February 2020, Counsel filed a motion asking the U.S. District Court for the Northern District of California to impose further remedial measures at RJD. The motion included 87 declarations from 66 prisoners and two expert reports that criticized RJD staff treatment of disabled prisoners, as well as the failure of CDCR to

investigate and discipline staff in response. The district court granted the motion.

While the motion was pending, the Class moved for similar relief at the other five prisons. That motion incorporated the material in the RJD motion and two new expert reports and declarations from 75 additional prisoners. The district court found staff had denied ADA accommodations to prisoners at the five prisons amid a "culture that condones abuse and retaliation against disabled inmates."

The district court ordered Defendants, among other things, to submit plans to install fixed cameras and body-worn cameras; reform the staff complaint, investigative and discipline processes; increase supervisory staffing; provide more staff training; implement anti-retaliation mechanisms; and reform pepper spray policies.

Defendants appealed. The Ninth Circuit began its analysis by finding that the staff misconduct order was related to the

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claims in the original complaint. It pointed to an example in the RJD order in which the district court recounted an incident where a guard punched a deaf prisoner in the face because he requested the guard communicate with him in writing.

“Refusing to communicate in writing with a deaf inmate and beating a deaf inmate who requests such a method of communication are both denials of reasonable accommodation,” wrote the Ninth Circuit. “That the allegations raised in Plaintiffs’ recent motions described violent denials of accommodations makes injunctive relief all the more supportive.”

The Court found relief was necessary, since “[w]itnessing retaliation against any disabled inmate . . . may accordingly deter class members from speaking up, contributing to [a] vicious cycle” that makes prisoners think twice before requesting accommodations. Additionally, the district court’s more intrusive order was permissible since it was “confronting noncompliance with its prior, less intrusive, orders.”

The district court’s order required the five prisons to “more effectively monitor and control the use of pepper spray” by staff and to “significantly increase supervisory staff by posting additional sergeants” on prison

watches. But the Ninth Circuit found relief was not supported by the record as to those prisons. The district court’s order was affirmed in all other respects, however.

Plaintiffs were represented by Class Counsel from Rosen Bien Galvan & Grunfeld LLP in San Francisco, as well as attorneys from the Prison Law Office and the Disability Rights Education & Defense Fund Inc., both in Berkeley, plus Morgan Lewis & Bockius LLP in San Francisco. See: *Armstrong v. Newsom*, 58 F.4th 1283 (9th Cir. 2023). 📖

Idaho Revives Firing Squads

by Kevin W. Bliss

On March 24, 2023, Idaho Gov. Brad Little (R) signed HB 186, making him the fifth state to adopt a firing squad as a means of execution. Taking effect July 1, 2023, the law allows the state Department of Corrections (DOC) to use a firing squad whenever the state is unable to obtain drugs necessary for lethal injection.

Idaho follows Mississippi, Utah, Oklahoma and South Carolina in allowing firing squads to supplement execution procedures, prompted by pharmaceutical companies denying sales of their products for the purpose of taking lives. [See: *PLN*, Nov. 2022, p.20; and Feb. 2023, p.52.] The federal Bureau of Prisons (BOP) allows the same option at prisons in the five states.

The Idaho bill was sponsored by Rep. Bruce Skaug (R) and Sen. Doug Ricks (R), who said the difficulty in obtaining lethal injection drugs could continue indefinitely, and execution by firing squad is still humane. “This is a rule of law issue,” Ricks said. “Our criminal system should work, and penalties should be exacted.”

Some states have refurbished defunct electric chairs in the wake of the lethal injection drug scarcity. Others have begun experimenting with new drug cocktails. Nebraska’s DOC executed Carey Dean Moore in August 2018 using a mixture combined with fentanyl. Alabama has approved using nitrogen gas to induce hypoxia, though its DOC has yet to design a system [See: *PLN*, Mar. 2023, p.50.] Former U.S. Attorney General William P. Barr directed BOP to use pentobarbital in executions, but the Justice Department didn’t finish collecting public comments on that plan until Novem-

ber 28, 2022, so implementation remains a way off. All current methods have proven fraught with legal challenges.

Pres. Joseph R. Biden, Jr. (D) ran on a campaign that included a promise to end the death penalty nationwide. But while current Attorney General Merrick Garland has placed a moratorium on executing BOP prisoners pending legal challenges, Biden has remained largely silent on the issue since his inauguration.

A 2019 court filing claiming firing squads violate the Eighth Amendment guarantee of freedom from cruel and unusual punishment had experts testifying

that firing squad victims could remain conscious after being shot for up to 10 seconds – during which they experience excruciating pain related to the shattering of their bones and spinal cord damage.

Idaho state Sen. Dan Foreman (R), an opponent of the legislation, called firing squad executions traumatizing to all involved, including witnesses and those responsible for cleanup. “The use of the firing squad is, in my opinion, beneath the dignity of the state of Idaho,” he said. 📖

Source: *AP News*

\$82 Million For Detainee Death in Oklahoma Jail is “Largest Civil Rights Death Claim in U.S. History”

by Matt Clarke

On February 24, 2023, an Oklahoma federal jury awarded \$14 million in compensatory damages and \$68 million in punitive damages to the estate of a woman who died of a heart attack in the Tulsa County Jail, despite repeatedly requesting medical care to no avail.

Gwendolyn Young, 52, had serious medical and mental health conditions requiring prescribed medication plus regular monitoring and evaluation when she was booked into the jail on October 16, 2012. She suffered from diabetes, hypertension and hyperlipidemia, and she had a prior history of cardiovascular disease and strokes. Correctional Healthcare Compa-

nies (CHC) - now Wellpath - was under contract to provide healthcare to the jail’s detainees.

According to the complaint later filed on her behalf, Young repeatedly told jailers and CHC staff that she was experiencing nausea and vomiting, along with pain in her abdomen and lower back. But her complaints were ignored. Two hours before she died in a segregation cell, Young told jail staff she was vomiting blood. A jailer looked at the vomit and told her there was “not enough blood” – in fact he said it looked like Kool-Aid. Mere minutes before she expired, Young told a nurse she was having difficulty breathing and asked to be taken to

THE PLRA HANDBOOK

Law and Practice under the Prison Litigation Reform

By John Boston

Edited by Richard Resch

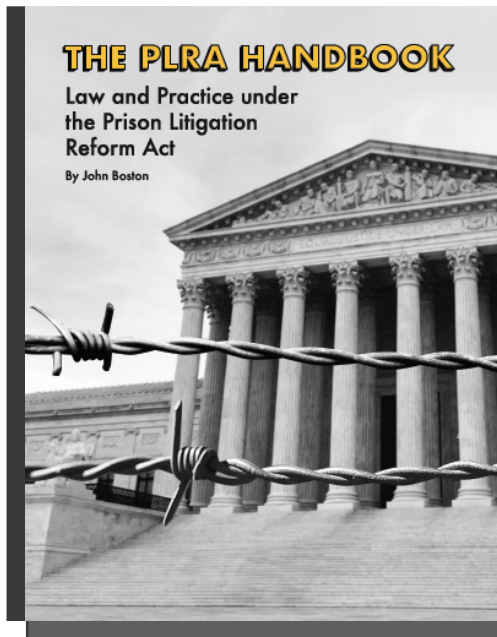
The PLRA Handbook is the best and most thorough guide to the PLRA in existence and provides an invaluable roadmap to all the complexities and absurdities it raises to keep prisoners from getting rulings and relief on the merits of their cases. The goal of this book is to provide the knowledge prisoners' 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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a hospital. The nurse denied the request and told Young to take her medication. Young then suffered a heart attack and died in the jail on February 8, 2013.

The jail had a history of substandard health care. It failed audits by the National Commission on Correctional Health Care (NCCCHC) in 2007 and 2010. A 2009 investigation by the state Department of Health uncovered at least five serious violations of state jail standards related to healthcare. But the jail failed to address those deficiencies or deficiencies reported by its own director of nursing. Instead, CHC's Vice President of Accreditation allegedly orchestrated falsification of documents in an unsuccessful attempt to defraud NCCCHC auditors.

With the assistance of Tulsa attorney Dan Smolen, Deborah Young filed suit as administrator of Young's estate in federal court for the Northern District of Oklahoma in 2013. The Court then denied a motion to dismiss on October 6, 2020, by

defendants CHC and Tulsa County Sheriff Vic Regalado, who by then had replaced Stanley Glanz, the sheriff in office when Young died. See: *Young v. Glanz*, 2020 U.S. Dist. LEXIS 184675 (N.D. Okla.).

The county settled its part of the suit in 2021 for \$3.6 million. But CHC opted for a jury trial. When the verdict was returned, the jury awarded the estate \$82 million, which its attorney called "the largest standing civil rights death claim verdict in U.S. history."

"I think the jury really realized that the private medical provider was incentivized to not send people to the hospital, and that's really why they were not doing it," said Smolen, who noted that Young had predicted her own death two months before she died, when talking to jail staff about CHC's culture of indifference.

"I think the jury really understood that deterrence is a large part of the damage component in a civil rights case," Smolen added. "They saw the evidence. They were

receptive to essentially send the message of deterrence and that if you can have an industry that provides for-profit medical care in a jail setting, then that industry has to be put in check. And if the Legislature isn't going to do it and they are not going to do it themselves, then a jury has to be the one to do it, and I really think they understood that and took it serious."

The jail recorded 28 deaths from 2005 until 2015.

"I'm really happy for the family. They really stuck with it over the decade lifespan of the lawsuit," the attorney concluded. "The family was just highly offended by the evidence, and they had a real desire to memorialize what happened to their mom and to other people in the county jail under this private medical provider." See: *Young v. Corr. Healthcare Cos.*, U.S.D.C. (N.D. Okla.), Case No. 4:13-cv-00315. 📄

Additional source: *Tulsa World*

SCOTUS Overrules Arizona Supreme Court, Allows Death Row Prisoner to Proceed With State Habeas Action

by Matt Clarke

On February 22, 2023, the Supreme Court of the United States (SCOTUS) held that its decision in *Lynch v. Arizona*, 578 U.S. 613 (2016), was a "significant change" in the law as that term is used in Arizona Rule of Criminal Procedure 32.1(g). The decision cleared the way for a death row prisoner to pursue state habeas corpus relief. In issuing it, the high court also put down an apparent rebellion by the Arizona Supreme Court (ASC).

Almost three decades ago, the Court held that capital juries must be advised when a defendant is ineligible for parole, in *Simmons v. South Carolina*, 512 U.S. 154 (1994). But the Arizona high court ignored that ruling. So in its 2016 decision in *Lynch*, the Court specifically said its earlier decision applied to Arizona's capital sentencing scheme – overturning binding ASC precedent which consistently ignored what SCOTUS had ruled for almost 30 years. Incredibly, though, the Arizona high court remained stubbornly opposed.

John Montenegro Cruz was convicted of capital murder. The only aggravating factor found by the jury was that the victim was a police officer. The 1994 version of

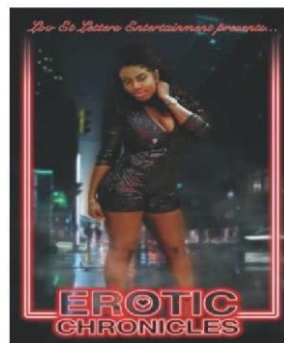
Ariz. Rev. Stat. Ann. Sec. 41-1604.09(I) (1) eliminated parole for felonies, like his, committed after 1993. At trial, Cruz repeatedly sought to inform the jury that this made him ineligible for parole, should jurors sentence him to life, only to be overruled by the judge. In fact, the judge told the jury that Cruz could be eligible for the death penalty, life without parole or "life imprisonment with the possibility of parole or release" after 25 years. The judge also told jurors they could decide only whether Cruz would be executed and, if they spared him, the judge would determine which of the life sentences he received – an incorrect statement of the law. Cruz was sentenced to death.

Three jurors told the press the next day that they and others on the jury would have sentenced Cruz to life without parole, but the judge had not given them that option. Cruz raised the

issue on direct appeal without success. ACS even incorrectly held that no state law would have prevented Cruz from being released on parole after 25 years.

After SCOTUS decided *Lynch*, Cruz filed a successive motion for state post-conviction relief pursuant to Rule 32.1(g). But ACS held *Lynch* was not a "significant change" in the law that would permit a successive writ under that rule and denied relief. Cruz petitioned SCOTUS for a writ of certiorari, which was granted, and the high court heard the case.

It began by noting that ACS, in an



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unprecedented analysis, had considered the effect of *Lynch* on federal law only. *Lynch* did not change federal law, the Court noted, but it overruled multiple ACS decisions that were binding on state law. This, by ACS's own definition, was a "significant change" in the law, SCOTUS said, pointing to *State v. Shrum*, 203 P.3d 1175 (Ariz. 2009). Thus, ACS's decision was so novel and unfounded as not to preclude federal review, per *Bouie*

v. City of Columbia, 378 U.S. 449 (1958).

SCOTUS held that although *Lynch* did not change federal interpretation of *Simmons*, "it did change the operative (and mistaken) interpretation of *Simmons* by Arizona courts" and this was a change in the law in Arizona "in the way that it matters for purposes of Rule 32.1(g). It overruled previous binding [ACS] precedent preventing capital defendants from informing

their juries of their parole ineligibility." In a 5-4 split – with Justices Roberts, Kavanaugh, Kagan, and Jackson joining Justice Sotomayor's majority opinion – the ACS judgment was vacated and the case remanded for further proceedings.

Cruz's case was argued before the high court by attorney Neal K. Katyal of Washington, D.C. See: *Cruz v. Arizona*, 143 S.Ct. 650 (2023).¹¹

\$30,000 Paid by Michigan to Prisoner Wrongfully Classified as Sex Offender

by David M. Reutter

On March 6, 2023, a Michigan prisoner dismissed his complaint against officials with the state Department of Corrections (DOC) after agreeing to accept \$30,000 to settle claims that he suffered the "stigmatizing consequences" of being falsely classified as a sex offender.

In January 2018, Willie E. Harper, Jr. entered DOC custody, after pleading guilty to First Degree Home Invasion. As part of his plea agreement, prosecutors dropped a charge of Criminal Sexual Conduct. Yet when Harper arrived at Charles Egeler Reception & Guidance Center, a DOC "Classification Director" named Egbuchulam assigned him a "high assaultive risk," apparently based in part on the dropped charge.

Worse, Harper was assigned to Muskegon Correctional Facility (MCF), site of the state Sex Offender Program (SOP), in which his classification meant he would be enrolled. Worse still, he would have to "admit" to sex offenses in order to complete SOP, and if he didn't, his parole might be denied or delayed.

Harper objected and asked for an ad-

ministrative hearing, but none was provided before he was transferred to MCF. There two mental health practitioners named Arkesteyn and Foster oversaw SOP. Harper named them in a grievance he filed and carried all the way through DOC's three-step grievance process, to no avail.

He then filed suit *pro se* in federal court for the Western District of Michigan in April 2019. Proceeding under 42 U.S.C. § 1983, he accused the mental health providers of violating his civil rights under the First and Fourteenth amendments. The district court screened the complaint and dismissed it for failure to state a cause of action. Harper appealed to the U.S. Court of Appeals for the Sixth Circuit, aided by Bloomfield Hills attorney Frank J. Lawrence, Jr.

The Court began its analysis with the First Amendment claim, which noted that Harper had then been transferred to Belamy Creek Correctional Facility (BCCF) – a move he alleged was made in retaliation for the grievance he filed against Arkesteyn and Foster. Aside from the transfer, though, the district court found no facts alleged to support a retaliatory motive, and the Sixth Circuit agreed.

But Harper also filed claims under the Fourteenth Amendment, saying that the classification and assignment to SOP, with its requirement that he confess to crimes he was never convicted of, violated his protection from self-incrimination. The district court

construed this as a challenge to Harper's prison assignment and denied the claim, concluding he did not have a right to imprisonment at a certain lockup or to any specific security designation.

The Sixth Circuit found error in dismissal of these claims. Harper's objection to the sex-offender classification was not limited to the prison transfer, the Court said, noting that "Harper also alleged that the stigmatizing consequences of being labeled a sex offender, when coupled with mandated behavioral-modification therapy, constituted the kind of deprivation of liberty that requires procedural protections." It was also error to dismiss the claim that his protection from self-incrimination was violated, the Court said. Vacating those parts of the order, the Sixth Circuit remanded the case on April 28, 2020. See: *Harper v. [Unknown] Arkesteyn*, 2020 U.S. App. LEXIS 13665 (6th Cir.).

On remand on February 4, 2022, a magistrate recommended denying Egbuchulam's motion for summary judgment, also denying the other defendants' motion to dismiss. Quoting *Pearson v. City of Grand Blanc*, 961 F.2d 1211, 1217 (6th Cir. 1992), the judge said that "classifying Harper as a sex offender and requiring him to take sex offender programming to be eligible for parole without providing him an administrative hearing, can be considered an 'arbitrary or capricious' action that 'shocks the conscience,' in violation of his substantive due process rights." See: *Harper v. Arkesteyn*, 2022 U.S. Dist. LEXIS 20178 (E.D. Mich.). The district court adopted that and the rest of the magistrate's recommendations on February 24, 2022. See: *Harper v. Arkesteyn*, 2022 U.S. Dist. LEXIS 33101 (E.D. Mich.).

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The parties then proceeded to reach their settlement agreement, which included \$10,000 in fees and costs for Lawrence,

Harper's counsel. Harper's \$20,000 share was subject to \$1,875.30 deduction to settle his account with DOC. *See: Harper*

v. Arkestyn, USDC (E.D. Mich.), Case No. 19-cv-11106. 

Fifth Circuit Kills Suit by Louisiana Prisoners Whose Release Dates Were Incorrectly Calculated

by David M. Reutter

On February 14, 2023, the U.S. Court of Appeals for the Fifth Circuit reversed a lower court's denial of qualified immunity (QI) to James LeBlanc, Secretary of the Louisiana Department of Public Safety and Corrections (DPSC), in a lawsuit alleging he was liable for detaining prisoners beyond their sentence expiration – by incorrectly calculating their release dates, not by failing to notify the people charged with making release happen, which is the subject of another suit. [See: *PLN*, Aug. 2023, p.??.]

Percy Taylor was sentenced in 1995 to 10 years and subsequently released on parole. He committed a new offense in July 2001, but he wasn't arrested until February 20, 2002. Taylor was then convicted on October 15, 2003, and sentenced to life imprisonment as a habitual offender. His parole was also revoked. The life sentence was eventually reduced to 20 years with "credit for all time served."

Taylor learned in 2017 that his full-term release date was March 16, 2021, and his good-time adjusted date was May 5, 2020. Taylor believed his release date should have been the end of October 2017, but no later than January 1, 2018, with proper good-time credit application. Prison officials denied his grievances, however, stating he could not receive double credit for 18 months of pretrial detention on both the 20-year sentence and the parole violation.

A state district court disagreed, finding that the law in effect at the time Taylor was a pretrial detainee on the new offense and the parole violation did not expressly prohibit double counting of credit. That court ordered Taylor's master prison record recalculated to give credit for time served on both sentences. Taylor was released from prison on February 18, 2020, just over two years after the latest release date he alleged should have been his.


In late 2020, Taylor sued various state officials for false imprisonment in state court. The action was removed to federal court, and Defendants moved to dismiss, which the U.S. District Court for the Mid-

dle District of Louisiana granted in part and denied in part. Relevant on appeal was the denial of QI on the supervisory liability claim against LeBlanc. That claim alleged Taylor's unlawful detention was the result of a pattern of unlawful detentions by DPSC resulting from inadequate training and guidance that was traceable all the way to the top of the prison system's management.

Taylor cited various cases, reports and statements to suggest LeBlanc "was aware of similar constitutional violations but failed to correct them." In denying LeBlanc QI, the district court addressed the issue of deliberate indifference, but it failed to address the separate issue of whether LeBlanc's acts were objectively unreasonable. LeBlanc appealed.

The Fifth Circuit found Taylor failed to present any meritorious argument that LeBlanc acted in an unreasonable manner in this case. The Court first rejected an argument that it lacked jurisdiction to review the issue. It then found that Taylor failed to adequately brief the issue of LeBlanc's objective unreasonableness, noting his argument amounted to a single conclusory statement: "It is inherently unreasonable for the secretary . . . to fail to enact policies and procedures to ensure the prompt release of inmates who have served their sentences in accordance with law." As such, Taylor forfeited the issue, and the district court's order denying LeBlanc QI was reversed.

Just over two months later, the Court withdrew that opinion and substituted another that came to the same conclusion from a different angle. Gone was any fussiness about whether Taylor sufficiently briefed his arguments against granting LeBlanc QI. In its place, the Court said that Taylor's argument was this: that LeBlanc acted unreasonably by failing to delegate sentence calculation to lawyers. However, since sentences are routinely calculated by non-lawyers, the Court found it "hard to say that it was objectively unreasonable for LeBlanc to delegate sentencing calculations to non-lawyers as well."

Taylor was represented before the Court by attorney Donna U. Grodner with Grodner & Associates, A.P.L.C. in Baton Rouge. *See: Taylor v. LeBlanc*, 68 F.4th 223 (5th Cir. 2023). 

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New Report Pats BOP on the Back for Addressing Problems With Restrictive Housing, PREA

by Keith Sanders

In February 2023, the federal Department of Justice (DOJ) published a surprisingly positive assessment of restrictive housing and sex abuse in the federal Bureau of Prisons (BOP) – the same month that BOP announced it was closing its deadliest lockup, the Special Management Unit (SMU) at the U.S. Penitentiary in Thomson, Illinois. [See: *PLN*, Aug. 2023, p.16.]

The report satisfies one requirement of Executive Order 14074, which was issued by Pres. Joseph R. Biden, Jr. (D) on May 25, 2022 – on the second anniversary of the death of George Floyd at the hands of Minneapolis police – attempting to alter criminal justice and policing practices in the U.S.

Specifically, Biden's order mandated that Attorney General (AG) Merrick Garland determine whether DOJ and BOP had taken steps to ensure that restrictive housing in federal lockups is “used rarely, applied fairly, and subject to reasonable constraints.”

The new AG report first outlined BOP's two main restrictive housing statuses: disciplinary segregation and administrative segregation. The former is defined as a “punitive housing status imposed as a sanction for violating a disciplinary rule,” while the latter refers to the use of restrictive housing for any non-punitive reason: investigative, protective, preventative, or transitional segregation.

DOJ's 2016 Report and Recommendations Concerning the Use of Restrictive Housing required BOP to update its policies to “establish processes for investigating and adjudicating the need for administrative segregation.” BOP was also instructed then to establish regulations that require an “individual to receive notice of his or her placement in restrictive housing” and that provide “all incarcerated individuals in restrictive housing may submit a formal grievance challenging their placement.” [See: *PLN*, Feb. 2017, p.52.] The new report ascertained that those policies and procedures had been implemented.

For the small number of prisoners who are exceedingly violent or have what the BOP describes as a “disproportionately negative effect on the safe and orderly operation of an institution,” there is USP Administra-

tive Segregation (ADX) in Colorado. BOP policy, according to the AG report, carefully and regularly reviews individuals in ADX to ensure restrictive housing is utilized only for “those individuals who need the security and controls.” *PLN* has extensively covered the harsh and dehumanizing isolation in which ADX prisoners spend every day for years at a time. [See, eg: *PLN*, Aug. 2021, p.44.] Since the 2016 report, at least the prisoner population in ADX has fallen 20%.

The SMU program was created in 2009 for the rest of BOP's most troublesome prisoners, with three classifications of confinement for “individuals who present unique security and management concerns.” However, since most SMU prisoners were double-celled, the program proved especially deadly, and BOP has whittled it down to the single site that it recently announced would close.

To implement new policies mandated by the 2016 Report, BOP now requires a multidisciplinary staff committee that includes medical and mental health professionals to “regularly evaluate BOP's restrictive housing policies and develop safe and effective alternatives to restrictive housing.”

The new report also assessed whether DOJ had fully implemented the Prison Rape Elimination Act of 2003 (PREA) and related concerns laid out in the 2016 report. The AG concluded that BOP had adopted most of the recommendations from

that report and was “working diligently” to institute the remainder in a “timely fashion.” The AG also noted that BOP facilities are in full compliance with PREA standards. However, the prison system nevertheless struggles with high incidences of sexual abuse – including indictments for sex abuse against the former warden and five other staffers at the Federal Correctional Institution in Dublin, California, all but one of whom have been convicted. [See: *PLN*, July 2023, p.17.]

Finally, the AG report addressed BOP's policy of housing prisoners as close to their families as possible. It found that the “majority of BOP individuals are housed within 500 miles of their home residence.” That is not exactly a trip next door for families that are among the poorest in the country. But the report added that BOP continues to explore other measures to “maximize the proximity of incarcerated individuals to their families and communities.” See: *Dep't of Justice Efforts to Ensure that Restrictive Housing in Federal Detention Facilities is Used Rarely, Applied Fairly, and Subject to Reasonable Constraints, and to Implement Other Legal Requirements and Policy Recommendations*, U.S.D.O.J. (2023).

It's mind-boggling that anyone, let alone the Attorney General, can congratulate BOP for reigning in sex abuse or the use of solitary confinement when both remain rampant. 🐻

Former Illinois Guards Sentenced for Prisoner's Fatal Beating

by Benjamin Tschirhart

On March 16, 2023, Judge Sue Myerscough of the federal court for the Central District of Illinois sentenced former state prison guards Alex Banta, 31, and Todd Sheffler, 54, to 20 years in prison for the fatal beating of a handcuffed and helpless prisoner, Larry Earvin, at Western Illinois Correctional Center (WICC) in 2018.

A third co-defendant, former guard Willie Hedden, 44, cooperated in prosecution of the other two and received a shorter

prison sentence of six years on March 22, 2023. All three were also ordered to serve five years of supervised release. Banta and Sheffler each must also pay a \$500 special assessment. Hedden's special assessment is \$300. See: *USA v. Sheffler*, USDC (C.D.Ill.), Case No. 3:19-cr-30067.

“Forget what you learned at the academy. We do things differently here.” That's what Banta recalled hearing on his first day of work at WICC in 2014, from Internal Affairs officers giving new recruits a lesson

in reality. “Things will happen that you might need to ignore,” they reportedly continued. “If things happen with an inmate, aim for the body and not the face.”

Banta learned that lesson and put it into practice with Earvin, a 65-year-old schizophrenic serving a six-year prison sentence. His crime? Theft of merchandise under \$300. Earvin was scheduled for release in September 2018. But before that could happen, he crossed paths with Banta, Sheffler and Hedden, following a reported confrontation between Earvin and some other guards – for which Earvin had

already been pepper sprayed when the three guards escorted him in handcuffs to an area not covered by surveillance cameras. There they beat him, slamming his head into a wall, punching, stomping and kicking him. Finally, while he was lying on the ground, Banta jumped into the air and landed with both knees on Earvin’s rib cage.

Earvin suffered rib fractures, hemorrhages and fatal blunt trauma to the chest and abdomen. He died from his injuries on June 26, 2018. The prison administration did not even notify Earvin’s family, burying his body in an unmarked grave. The guards

filed separate reports, claiming that they delivered their victim to the security housing unit “without further incident.” When Illinois State Police investigated the incident, the three guards claimed no knowledge of the beating. Ultimately, all three guards were fired, but not before each received paid administrative leave worth a total of \$132,000. A civil suit filed by Earvin’s family is proceeding in the same federal court where the three guards were convicted. [See: *PLN*, Oct. 2022, p.48.]

Additional sources: *AP News*, *WLDS*

Fourth Circuit: Federal Prisoner in North Carolina Making Rehabilitation Act Claim Must Exhaust Both BOP Grievance Process and Justice Department’s EEO Complaint Process

by David M. Reutter

On March 29, 2023, the U.S. Court of Appeals for the Fourth Circuit raised the high bar a prisoner must clear in civil rights litigation just a little bit higher. It held that a federal prisoner must exhaust both internal *and* external remedies before pursuing a claim in federal court under the Rehabilitation Act of 1973 (RA), 29 U.S.C. § 701 et seq.

The Court’s opinion affirmed a district court’s finding that the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e, requires exhaustion of available remedies from both the Bureau of Prisons (BOP) Administrative Remedy Program (ARP) and the Director for Equal Employment Opportunity (EEO) of BOP’s parent agency, the U.S. Department of Justice.

On February 28, 2019, while imprisoned at the Federal Correctional Complex in Butner, North Carolina, Webster Williams developed a strong urge to urinate

while walking to his work assignment. Williams suffered from several medical conditions, including kidney disease, and took a prescribed diuretic that caused excessive urination. But just as he headed to the restroom, an alarm triggered elsewhere in the prison.

BOP Unit Manager Willis responded by heading to the restroom and telling prisoners there to return to their cells. Williams proceeded past Willis without addressing him and entered a stall. He then ignored Willis’ rapping on the stall door. When Williams exited, Willis confronted him, and Williams explained he took “water pills, and [he] had to use the restroom.” He then returned to his cell.

Williams was issued a disciplinary action report for refusing Willis’s command. Per his request, Williams received a hearing before a Uniform Disciplinary Committee (UDC). At the hearing, Williams explained

his overwhelming need to urinate was caused by his medical condition, a fact he argued that Willis “intentionally omitted” from his report. He also provided UDC with a copy of ADA. Nevertheless, he was found guilty and sanctioned with loss of telephone privileges for one month.

Concerned the infraction would affect his chances for early home confinement when he becomes ineligible, Williams completed the ARP. He then filed a *pro se* complaint alleging the disciplinary action report and sanction violated his rights under RA.

BOP moved to dismiss the complaint, which the U.S. District Court for the Eastern District of North Carolina construed as a motion for summary judgment, on the grounds that Williams failed to exhaust administrative remedies as required by PLRA. BOP acknowledged that Williams had exhausted remedies through ARP. How-

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ever, it argued that he had failed to exhaust the additional process under EEO, which “applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency,” as laid out in 28 C.F.R. § 39.170(a). In fact, as the Fourth Circuit later noted, subsequent subsections of that regulation twice refer to complaints filed by BOP prisoners in the EEO process.

The district court found that PLRA’s mandatory language required RA claimants to exhaust both the ARP and EEO processes. Williams argued that even if that were true, the EEO process was “unavailable” to him under the standards delineated in *Ross v. Blake*, 578 U.S. 632 (2016). But the district court disagreed, finding that Williams “had not established that the EEO process is unavailable.” After his complaint was dismissed, Williams appealed.

The Fourth Circuit began its analysis by citing the mandatory language of PLRA: “No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.”

Williams argued that “[e]xhaustion of internal prison grievance procedures is all the PLRA requires.” But the Fourth Circuit said that “argument runs afoul of the PLRA’s text.” It found that the “plain language of the PLRA requires exhaustion of all administrative remedies, so long as they are available.”

“For most claims, federal prisoners need only follow the rules of the ARP,” the Court allowed. “For Rehabilitation Act claims, however, inmates must also follow the procedures laid out in 28 C.F.R. Section 39.170.” Those procedures apply to prisoners and “explain when and how to file a complaint.”

First, they require exhaustion of ARP and filing of an EEO complaint within 180 days of that. If the matter is not resolved within 180 days, a letter of findings must be issued. Either party may then appeal those findings to the EEO Complaint Adjudication Officer (CAO) within 30 days. A party may also request a hearing before an administrative law judge. The CAO must resolve the appeal within 60 days with a final agency decision. At that point, the Court said, the administrative process is exhausted.

The Fourth Circuit found this dual exhaustion process serves the PLRA’s purpose by providing the EEO to correct BOP’s mistakes. It listed numerous district courts within its jurisdiction that have required exhaustion of both ARP and EEO when confronted with an RA claim. Both processes were available to Williams. The Court, however, “observe[d] that it would pain the BOP very little to make clearer to inmates filing Rehabilitation Act claims that they are required to exhaust both the BOP’s grievance policies and the EEO process . . . with its various program statements and agency procedures.”

In affirming the district court’s dismissal of the complaint without prejudice to Williams’ ability to exhaust EEO remedies, the Fourth Circuit trusted the administrative process would provide the prisoner “the chance to fairly present his claims as he seeks to fulfill his statutory responsibilities.” Williams was represented before the Court by attorney Jennifer A. Wedekind of the American Civil Liberties Union in Washington, D.C. See: *Williams v. Carvajal*, 63 F.4th 279 (4th Cir. 2023).

Missouri Prisoner Illegally Condemned by Illiterate Juror Executed Anyway

by Chuck Sharman

Depending on who’s telling the story, Missouri prisoner Michael Tisius, 42, got either what he deserved or the last in a long line of bad breaks when he was executed on June 6, 2023, hours after the Supreme Court of the U.S. (SCOTUS) refused to hear his last appeal.

Tisius was 18 in 1999 when he tried to pawn a rented stereo and was locked up on a misdemeanor charge in the Randolph County Jail. There he met Roy Vance, then 27, who later recalled the teen was “a kid in a grown man’s body, and I knew I could manipulate him into what I wanted him to do.”

Following a plan they hatched, Tisius returned to the jail after his release with Vance’s then-27-year-old girlfriend, Traci Burlington, on June 22, 2000, under the guise of delivering cigarettes to the prisoner. The plan was to overpower guards to steal their cell keys. But instead Tisius shot and killed jail supervisor Leon Egly, 33, and guard Jason Acton, 36. However,

their keys didn’t open Vance’s cell.

Leaving him there, Tisius and Burlington fled and were captured the next day, after their car broke down 130 miles away in Kansas. All three were tried and convicted of capital murder in the killings. Vance and Burlington, both now 50, are serving life sentences. Tisius received a death sentence, which the state Supreme Court affirmed on December 10, 2002. See: *State v. Tisius*, 92 S.W.3d 751 (Mo. 2002).

An appeal to his conviction was denied, but Tisius received a new sentencing hearing that again resulted in the death penalty; the state Supreme Court affirmed that decision, too, on March 6, 2012. See: *State v. Tisius*, 362 S.W.3d 398 (Mo. 2012).

Tisius appealed for post-conviction relief, claiming ineffective assistance of counsel – who, among other alleged failings, neglected to argue that a “mental age” under 18 disqualified him for execution under *Roper v. Simmons*, 543 U.S. 551 (2005). That appeal was denied on April 25, 2017. See:

Tisius v. State, 519 S.W.3d 413 (Mo. 2017).

Tisius then took his ineffective-assistance-of-counsel claims – 31 in all – to the federal court for the Western District of Missouri in a habeas corpus petition. He specifically objected to a book and study that were introduced at his sentencing to undermine evidence he presented of childhood abuse, by suggesting Tisius either (a) fabricated symptoms to fool psychologists or (b) could have overcome them with simple determination – like David Pelzer, the author of the 1995 book that was introduced, *A Child Called It*, based on his childhood abuse claims that have been disputed by other family members.

The district court, however, found no error in such sensationalistic prosecution. It denied the petition on October 30, 2020, and that decision was affirmed by the U.S. Court of Appeals for the Eighth Circuit on November 9, 2021. See: *Tisius v. Jennings*, 2020 U.S. Dist. LEXIS 203361 (W.D. Mo.); and *Tisius v. Blair*, 2021 U.S. App.

LEXIS 40376 (8th Cir.).

Tisius then filed a clemency application, believing testing would reveal abnormal levels of lead in his bones that might prove his diminished mental capacity. He was willing to pay for the test, but the state wouldn't help arrange it. The Eighth Circuit said federal courts could not force the state court to accommodate testing for a state clemency proceeding. *See: Tisius v. Vandergriff*, 55 F.4th 1153 (8th Cir. 2022).

At that point, with his execution scheduled, his attorneys began drafting an appeal to the clemency denial to SCOTUS. On April 28, 2023, they learned one of the jurors who sentenced Tisius to death was illiterate – a violation of state law. They filed a post-habeas petition with the district court, where the state presented evidence

that the juror in question simply “cannot read or write very well.” Finding a factual dispute to resolve, the district court stayed the execution on May 31, 2023.

But the Eighth Circuit reversed that decision on June 2, 2023, finding the district court lacked jurisdiction because Tisius' claim was a “second or successive application” for habeas relief under 28 U.S.C. § 2244(b)(3)(A), so a certificate of appealability was first needed from the appellate court. It refused to issue one, though, saying whatever the lawyers discovered “could have been timely investigated by counsel and raised in earlier habeas proceedings.” *See: Tisius v. Vandergriff*, 2023 U.S. App. LEXIS 14155 (8th Cir.).

That sent Tisius' lawyers to SCOTUS in a last-ditch effort to stay his execution

while the juror's literacy was fully investigated. Their application included highly unusual affidavits in support of clemency from a half-dozen jurors and alternates in Tisius' case. But the high court refused to hear that appeal. *See: Tisius v. Vandergriff*, 2023 U.S. LEXIS 2418; and 2023 U.S. LEXIS 2419.

After a final meal of hamburgers and French fries, Tisius said “sorry” to the families of the dead jail guards and lay down on a gurney where he received his lethal injection. 📄

Additional sources: *Flat Rive Daily Journal*, *The Guardian*, *Kansas City Star*, *New York Post*, *New York Times*

Four Month Prison Term for BOP Compliance Monitor in Miami Who Sexually Abused Prisoner on His Case Load

by Jo Ellen Nott

On April 14, 2023, U.S. District Judge Robert N. Scola sentenced a federal Bureau of Prisons (BOP) site supervisor in Miami to four months in prison followed by a year of supervised release, after accepting his guilty plea to one count of abusive sexual contact against a federal prisoner on house arrest, whose case he was assigned.

Benito Montes de Oca Cruz, 60, worked as a compliance monitor for Riverside House, a private facility operated under contract from BOP to provide custodial, supervisory and disciplinary control of federal prisoners on home confinement.

During a supervision visit on December 28, 2020, Montes de Oca Cruz engaged in sexual contact “with and by the victim.” More specifically he touched the prisoner's breasts, genitals, and buttocks, made her get naked, then got on top of her. Montes de Oca Cruz finished the home visit by ordering the prisoner to masturbate him.

The prisoner had little choice but to submit to her monitor when he demanded sexual favors. But revenge is a dish best served cold, as French author Eugène Sue wrote in the 1800s. Montes de Oca Cruz most likely did not suspect his victim retained evidence of the sordid encounter. When she reported the incident to BOP, she was able to give investigators a semen sample as well as two short videos.

The results of DNA testing revealed the semen “was 16 octillion times more likely if [Montes de Oca Cruz] is a contributor than if an unknown, unrelated person is a contributor.”

His sentence of four months was more lenient than the maximum two years in prison Judge Scola could have ordered. It was also one month shorter than his victim's time on house arrest. The unnamed woman was serving the last five months

of a 51-month prison sentence on home confinement, according to prosecutors.

Montes de Oca Cruz' case was investigated by the Department of Justice's Office of the Inspector General and prosecuted by Assistant U.S. Attorney Edward N. Stamm. *See: United States v. Montes de Oca Cruz*, USDC (S.D.Fla.), Case No. 1:22-cr-20459. 📄

Additional sources: *Miami Herald*, *WPLG*

Ohio Supreme Court Grants State Prisoner Another \$1,000 for Denied Records

by Keith Sanders

On March 15, 2023, the Ohio Supreme Court partially granted a writ of mandamus brought by a state prisoner, ordering Hamilton County Clerk of Courts Pavan Parikh to produce copies of court documents related to a 2001 case. The Court also awarded \$1,000 in statutory damages to the prisoner, Kimani E. Ware, because the Clerk failed to provide the record within 10 business days of Ware's request.

That brought Ware's total haul to at least \$5,000 from suing officials in the state for denying his records requests. The Court earlier granted him \$3,000 in December 2022 for a similar denial by the state De-

partment of Rehabilitation and Correction. [See: *PLN*, June 2023, p.58.] He was also awarded \$1,000 in March 2021 for records denied by the City of Akron. *See: State ex rel. Ware v. City of Akron*, 164 Ohio St. 3d 557 (2021).

In this case, Ware sent a public records request to the Hamilton County Clerk in February 2021, pursuant to R.C. 149.43 of Ohio's Public Records Act, seeking oaths of office for three judges, along with a docket sheet, a writ of mandamus, Motion to Dismiss and judgment filed on July 27, 2001. When the Clerk failed to respond, Ware filed a writ of mandamus in the Court *pro se*,

requesting the records, along with statutory damages and court costs.

The Court began by acknowledging that mandamus was the “appropriate remedy to compel compliance with R.C. 149.43,” citing *State ex rel. Physicians Comm. for Resp. Med. v. Bd. of Trs. of Ohio State Univ.*, 108 Ohio St. 3d 288 (2006). The Court then noted Ware must “show he has a clear right to the requested relief and that Parikh has a clear duty provide it,” pointing to *State ex rel. Ellis v. Maple Hts. Police Dept.*, 158 Ohio St.3d 25 (2019).

The Clerk argued that Ware’s request for three oaths of office was governed by the Rules of Superintendence for the Court of Ohio rather than the state’s Public Records Act and thus mandamus wasn’t the appropriate vehicle for such a request.

The Court had previously determined in yet another mandamus Ware brought – but ultimately lost – that it was proper

to refuse him a “record memorializing a judge’s oath of office,” since that “was an ‘administrative document’ governed by the Rules of Superintendence ‘because [it] recorded the operations of the court.’” *See: State ex rel. Ware v. Kurt*, 169 Ohio St. 3d 223 (2022). Therefore Ware’s mandamus for those records in this case was properly denied.

The Clerk also argued that the remaining documents related to a 2001 judgment – *State ex rel. Cincinnati Enquirer v. Dinke Lacker*, 142 Ohio App.3d 725 (2001) – which was a criminal case prior to July 1, 2009. The Court noted the significance of that date by quoting from another denied records mandamus action that Ware lost, *State ex rel. Ware v. Giavasis*, 163 Ohio St. 3d 359 (2020), in which it said that requests for “documents in cases commenced on or after July 1, 2009, are governed by the Rules of Superintendence, not the Public

Records Act.”

The Court observed that the *Cincinnati Enquirer* case “was not a criminal” one but rather an “original action in mandamus, which is a civil action.” However, the Court also pointed out that “neither party...cites a decision considering whether the statute [R.C. 149.43 (B)(8)] applies to an inmate’s request for records for a mandamus action in which the underlying subject matter concerned a criminal prosecution.”

Nevertheless, because the Clerk did not meet his burden showing that the statute applied in this instance, the Court granted Ware’s writ and ordered the Clerk to produce the records. Ware was also awarded \$1,000 in statutory damages because the Clerk’s delay exceeded 10 business days from the initial request, as well as court costs pursuant to R.C. 149.43(C)(3)(a)(1). *See: State ex rel. Ware v. Parikh*, 2023-Ohio-759.



Wellpath Sanctioned for Discovery Violations After Stonewalling in Prisoner Lawsuits

by Douglas Ankney

A review of court records by *PLN* has found repeated sanctions for discovery violations against private prison healthcare provider Wellpath in suits across the country blaming the firm’s dismal care for prisoner deaths – including four since 2020.

Washington – Benton County Jail

FIRST, THE FIRM WAS TWICE SANCTIONED in a suit alleging that the death of Marc Moreno at Washington’s Benton County Jail was caused by employees of a Wellpath corporate predecessor, Correctional Healthcare Companies (CHC).

Plaintiffs sought discovery in 2018 of documents related to prior complaints about healthcare at the jail, as well as audits of the jail’s medical services and electronically stored information (ESI). The U.S. District Court for the Eastern District of Washington granted a motion to compel discovery on April 9, 2019, giving Wellpath 14 days to comply. But months later, on January 8, 2020, the Court found CHC in contempt of its earlier order, and it levied a sanction for \$7,290 in fees to pay Plaintiff’s attorneys from Budge & Heipt PLLC in Seattle and the Law Office of George Trejo in Yakima. CHC was also ordered to execute a search plan to locate the missing

ESI, including emails of all CHC employees who worked at the jail. *See: Est. of Moreno v. Corr. Healthcare Cos.*, 2020 U.S. Dist. LEXIS 40680 (E.D. Wash.).

But that wasn’t the end of the matter. On June 1, 2020, the Court took the rare and extraordinary step of ordering dispositive sanctions – a default judgment – against CHC because the firm had earlier failed to disclose that in February 2019 it implemented a new records retention policy that resulted in destruction of all ESI relevant to Plaintiffs’ claims in the suit. The Court found that CHC Chief Information Officer Robert Martin admitted in his deposition that one consideration for the new retention policy was the company had problems that needed whitewashing – by purging “bad emails” that contained information potentially problematic for Wellpath in litigation.

The Court was particularly troubled that CHC employees charged with implementing the new retention policy and causing the purge were the same employees who had received notice of the discovery requests in this litigation. The Court found the destroyed emails included those of “nurses and managers who worked shifts at the jail while Mr. Moreno was confined”; the emails “of the employees who conducted

Mr. Moreno’s mortality review”; the emails “of the nurse who discovered Mr. Moreno dead in his cell”; and the emails of one nurse whose employment was terminated after Moreno’s death for failing to follow proper procedure.

The destruction of ESI was so widespread, the Court concluded, that the truth – should the case proceed to trial – could not be determined by a factfinder. In its chastising statement, the Court declared “that dispositive sanctions are appropriate given Defendants’ continued deceptive misconduct throughout this litigation.”

“Defendants repeatedly failed to provide responsive discovery to Plaintiffs, even after being compelled to do so,” the Court noted. “Similarly, Defendants failed to notify Plaintiffs and the Court of the spoliation for approximately eight months while this litigation was ongoing. Rather than telling Plaintiffs or the Court what had occurred, Defendants misled Plaintiffs by promising to provide responsive emails at a later date. Due to the way that Defendants have conducted themselves over the course of this litigation, the Court finds that lesser sanctions are not warranted.” *See: Est. of Moreno v. Corr. Healthcare Cos.*, 2020 U.S. Dist. LEXIS 108370 (E.D. Wash.).

Southeast Arkansas Community Correction Center

IN ANOTHER CASE AGAINST ANOTHER Wellpath corporate predecessor, Correct Care Solutions (CCS), for the death of Christine Marziale's newborn daughter at the Southeast Arkansas Community Correction Center, a magistrate judge for the U.S. District Court for the Eastern District of Arkansas found on July 28, 2020, that "CCS repeatedly failed to produce responsive discovery documents; failed to preserve evidence; and failed to faithfully comply with the Court's discovery orders." The magistrate further observed that "CCS regularly appears in litigated matters in the Eastern District of Arkansas. In fact, CCS is a named defendant in twenty-eight cases currently pending in this district."

"Unlike this case, where Plaintiffs are represented by zealous advocates," the magistrate continued, "in most cases in this district, CCS opposes plaintiffs who are litigating their claims *pro se*. CCS must be given to understand that this Court will require it to comply with the letter and spirit of discovery rules and court orders."

Because of "CCS's multiple abuses of the discovery process," the magistrate recommended that CCS provide a consolidated financial statement, since the Court could not rule out the possibility of punitive damages in the underlying suit; that CCS provide the audit trail for the medical records of Marziale and two other detainees, Latoya Wren and Christina Strickland, at CCS's expense; and that Plaintiffs be given an adverse inference instruction regarding CCS's destruction of emails. *See: Marziale v. Correct Care Sols. LLC*, 2020 U.S. Dist. LEXIS 143872 (E.D. Ark.).

Largely adopting that Report and Recommendation from the magistrate on August 10, 2020, the Court noted that "Defendants' many discovery dodges, stumbles, and foot-draggs have created the need to do ... clean-up discovery."

"Therefore," the Court continued, "in addition to paying a reasonable fee and costs for the motions to compel and for sanctions, Defendants must also pay a reasonable attorney's fee to Plaintiffs' counsel for having to do this work now," as provided in Fed. R. Civ. P. 37(b)(2)(C).

"Defendants might fairly respond that this work is not extra, it has just been delayed," the Court allowed; however, it said "[t]hat's true but not the whole truth.

Plaintiffs' counsel will necessarily have to revisit many issues, re-do much of the case work-up, and re-think things — all in a sprint."

The "additional sanction" therefore was designed "to account for the consequences of Defendants' discomobulation of the case in discovery. Rough justice is the best the Court can do in the circumstances. If the parties are unable to agree on the number, the Court will set the fee (in an amount not to exceed \$25,000) on a motion supported by itemized billing" by Plaintiff's counsel from Sutter & Gillham, PLLC in Benton. *See: Marziale v. Correct Care Sols. LLC*, 2020 U.S. Dist. LEXIS 144952 (E.D. Ark.).

Michigan – Macomb County Jail

JUST WEEKS LATER, IN A SUIT ALLEGING CCS was liable in the July 2017 suicide of Dieter Herriges-Love while confined at the Macomb County Jail, the U.S. District Court for the Eastern District of Michigan rejected CCS' claim that a "death report suicide" and "psychological autopsy" for Vanessa Sexton were privileged under the Federal Patient Safety and Quality Improvement Act (PSQIA), 42 U.S.C. § 299b-21, et. seq.. Sexton was one of 21 other prisoners who had committed suicide in the jail. The Court on August 14, 2020, found the testimony of CCS witness Dr. Bazzel contained an "abundance of errors and discrepancies" that were "troubling and undermine Dr. Bazzel's and CCS's credibility."

It then granted Plaintiff's motion to compel CCS to produce all documents for each prisoner who committed suicide at the jail since October 1, 2011, when CCS began providing medical care at the jail. The Court also directed that CCS was liable for reimbursement of Plaintiff's expenses. *See: Herriges v. Cty. of Macomb*, 2020 U.S. Dist. LEXIS 146663 (E.D. Mich.). The suit ultimately resulted in October 2021 settlements with Herriges-Love's estate totaling \$1.2 million – \$100,000 paid by Wellpath and the rest by Macomb County. [See: *PLN*, Sep. 2022, p.40.]

California – Ventura County Jail

THEN, IN A SUIT OVER THE SUICIDE OF Scott Hultman at California's Ventura County Jail, where Wellpath provided medical and mental health care, the U.S. District Court for the Central District of

California ordered the firm on May 16, 2022, to provide to Plaintiffs Parts I and III of a Mortality and Morbidity Report and Review and the Psychological Autopsy of Hultman.

In its ruling, the Court rejected Wellpath's argument that the Report and Autopsy were privileged patient safety work product (PSWP) under PSQIA. Under § 299b-22(a)(2), the Court said, PSWP includes "any data reports, records, memoranda, analyses (such as root cause analyses), or written or oral statement - (i) which are assembled or developed by a provider for reporting to a patient safety organization and are reported to a patient safety organization; or (ii) which identify or constitute the deliberations or analysis of, or identify the fact or reporting pursuant to, a patient evaluation system."

Based on testimony by Wellpath Public Safety Officer and Medical Director for Care Management Judd Bazzel, M.D., however, the Court concluded that neither the Report nor Autopsy was "used in" deliberations or analysis. And the evidence showed that both were prepared for use by the Ventura County Sheriff's Office and not solely for the purpose of reporting to a patient safety organization (PSO). "[I]nformation prepared for purposes other than reporting to a PSO is not PSWP under the reporting pathway," the Court declared, citing Department of Health and Human Services Guidance, 81 FR 32655 (2016). *See: Est. of Hultman v. Cty. of Ventura*, 2022 U.S. Dist. LEXIS 107258 (C.D. Cal.).

The parties then proceeded to reach a \$3 million settlement agreement on December 9, 2022. Under its terms, \$1 million went to Hultman's mother, Paula Hultman, and her attorneys, Sonia Mercado & Assoc. Of the remaining \$2 million, \$800,000 went to the estate's attorneys from Pachowicz Goldenring APLC in Ventura, plus \$84,417.47 in costs. That left \$1,115,528.53 for Hultman's seven-year-old child, R.H.; \$248,708.53 of that went into a minor's trust, while the remaining \$871,874 purchased a structured settlement that will pay out a total of \$3 million by 2050. *See: Est. of Hultman v. Cty. of Ventura*, USDC (C.D. Cal.), Case No. 2:21-cv-06280.

Earlier Sanctions in Pennsylvania and Arizona

IN A SUIT ALLEGING EIGHTH AND FOURTEENTH Amendment claims against CHC

employees for providing substandard care that resulted in the death of Neil Raymond Early – after a beating by other prisoners at the Arizona State Prison Complex in Kingman – the U.S. District Court for the District of Arizona sanctioned CHC for its failure to timely provide requested nursing protocols and training manuals, plus hundreds of pages of clinical policies and procedures.

For months, CHC denied these materials existed. But eventually the company admitted its denials were untrue and provided the requested materials. The Court then ordered CHC on May 22, 2018, to

pay reasonable costs and fees associated with seeking production of the documents to Plaintiff's attorneys with Angelini & Ori LLC in Chicago. *See: Early v. Arizona*, USDC (D.Ariz.), Case No. 2:16-cv-00031 (2018).

Even earlier, the U.S. District Court for the Western District of Pennsylvania sanctioned CCS \$45,180 on May 9, 2017, after finding that the firm failed to fulfill discovery obligations in providing prisoner medical records. The Court also ruled that the failure entitled the jury “to infer that had the medical records been obtained, they would reflect negatively on the supervi-

sion provided by supervising physicians to physician assistants” during the time period relevant to the lawsuit. Plaintiffs in that case were represented by attorneys from Jokelson Law Group PC in Philadelphia. *See: Brogdon v. Correct Care Solutions, LLC*, 2017 U.S. Dist. LEXIS 91950 (W.D. Pa.).

Wellpath founder Gerard Boyle, 68, is currently completing a three-year federal prison term for bribing former Sheriff Robert McCabe to secure the jail healthcare contract in Norfolk, Virginia. McCabe, 65, is serving an 11-year federal prison term for his role in the scheme. [See: *PLN*, Dec. 2022, p.48.]

Second Circuit Affirms Denial of Qualified Immunity to N.Y. Prison Official Who Imposed Post-Release Supervision on Prisoner – But Reverses Damages Award

by David M. Reutter

On March 23, 2023, the U.S. Court of Appeals for the Second Circuit held it was not error to deny qualified immunity (QI) to a New York prison official who “affirmatively decided” not to heed a federal court decision that it was unconstitutional to administratively impose post-release supervision (PRS) on a state prisoner. But it reversed an award for resulting damages, sending the case back to a district court to determine when exactly they should begin to be calculated.

The case follows another recently heard concerning administratively imposed PRS, which the Court first found unconstitutional in 2006, holding that PRS may be imposed only by a court, not by the state Department of Corrections and Community Services (DOCCS). [See: *PLN*, Apr. 2010, p.46.] In March 2022, the federal court for the Southern District of New York refused a bid by DOCCS to decertify the class in suit then action brought by prisoners subjected to illegally imposed PRS. [See: *PLN*, Oct. 2022, p.50.]

This case involved the illegal imposition of PRS on state prisoner Shawn Michael Vincent. As *PLN* has previously reported, Vincent was sentenced in 2001 to five years imprisonment and released conditionally on January 15, 2005. At his release, DOCCS unilaterally imposed a five-year PRS term. Vincent was then arrested on October 14, 2005, for violating his PRS by possessing a credit card. He was released on March 21, 2007, and arrested again two weeks later

for violating his PRS by failing to report an address change.

While Vincent was in custody on the first violation, the Court decided that administrative imposition of PRS was unconstitutional in *Earley v. Murray*, 451 F.3d 71 (2d Cir. 2006). Vincent then filed a habeas corpus petition, which was granted in March 2008. He was released from the sentence he was serving for his second PRS violation in July 2008, having been confined a total of 686 days after the *Earley* ruling made it clear that no PRS should ever have been imposed.

Vincent sued for damages in federal court for the Western District of New York, which dismissed the case on QI grounds. But the Second Circuit reversed that ruling on appeal, noting that *Earley* clearly established that administratively imposed PRS was unconstitutional. *See: Vincent v. Yelich*, 718 F.3d 157 (2d Cir. 2013).

On remand, the district court found that Anthony Annucci, then Deputy Commissioner and legal counsel for DOCCS, was not entitled to QI. It then awarded Vincent \$175,000 in damages. [See: *PLN*, Jan. 2022, p.56.] Annucci appealed.

Taking up the case again, the Second Circuit affirmed the denial of QI to Annucci, rejecting his invitation to revisit the prior rulings in this case and *Earley*. Annucci argued that he deserved QI because the law was not “clearly established,” since certain state courts had rejected *Earley*'s logic. But the Second Circuit swatted that

aside, noting that “[u]nder the Supremacy Clause of the Constitution, [the *Earley* decision] was binding on state courts and state officials, regardless of their willingness to accept it.”

However, the Court reversed the award of damages. It noted that in its 2013 decision in Vincent's case, it had said it was incumbent on state officials to cure the ongoing constitutional violations. Annucci also acknowledged that the New York Court of Appeals held in 2010 that resentencing after a defendant completed the lawful portion of his sentence and had been released from custody violates the “double jeopardy” clause of the federal constitution.

Annucci admitted that “nothing prevented” him from complying with *Earley* and that he “affirmatively decided not to do so” for over a year and a half. But the Second Circuit concluded that the record “is not clear whether there was any impediment, legal or otherwise, to Annucci's simply and unilaterally releasing Vincent.” It therefore remanded the case for the district court to resolve that question “to establish the onset date for calculating any compensatory damages” that Vincent may be entitled to.

Thus the district court's order was affirmed in part and reversed in part. Vincent was represented before the Court by attorneys Jon P. Getz of Rochester and K. Wade Eaton of the Eaton Law Firm in Pittsford. *See: Vincent v. Annucci*, 63 F.4th 145, (2d Cir. 2023).

News in Brief

Alabama: A state Department of Corrections (DOC) guard was arrested on June 10, 2023, for allegedly smuggling drugs, including meth, to a prisoner at Kilby Correctional Facility, *1819 News* reported. Charlie Townsend, 28, resigned from his position upon his arrest by the Law Enforcement Services Division. He was booked and released on \$775,000 bail. Townsend allegedly brought in 88 grams of meth, 104 grams of fentanyl, 30 grams of marijuana and multiple Xanax pills, in addition to 208 grams of synthetic drugs. He planned to sell the stash for \$1,500 but now faces charges of trafficking methamphetamine, use of position for personal gain, and second-degree promoting prison contraband. DOC's Contraband Interdiction Program (CIP) was responsible for the arrest and the agency said more charges are possible.

Alaska: Kodiak Police Department Chief Tim Putney announced on May 11, 2023, that a guard at the city lockup was arrested and charged with third-degree sexual assault of a detainee, according to a report by *Alaska Public Media*. Fredrick Fangonilo flirted with his victim, at that time the only female detainee at the jail, before requesting they "hook up." He released her to do cleaning duties but she ended up performing oral sex on the guard, who is now on administrative leave. The alleged sexual assault happened on March 29, 2022. The charges indicate that Fangonilo apologized to the woman after the incident and asked her to keep it between them. He is currently out on a \$5,000 cash performance bond and pleaded not guilty at a preliminary hearing. The guard has worked at the Kodiak Jail for five years.

Arizona: A guard with the state DOC was arrested on May 25, 2023, for alleged "unlawful sexual misconduct" with a prisoner at the Arizona State Prison Complex in Perryville, according to a report by *KPHO-KTVK* in Phoenix. Carlos Alberto Carranza, 21, snuck the woman into a prison control room where the sexual contact unfolded over the next eight minutes, security footage confirmed. The guard had had at least three other previous sexual contacts with the female prisoner. In the state of Arizona, it is illegal for peace officers and prison guards to engage in any act of a sexual nature with an individual

who is in their custody.

Arkansas: *KTLO* in Mountain Home reported on May 14, 2023, that a state prisoner at DOC's North Central Unit in Calico Rock was charged with felony aggravated assault for throwing urine at a guard. Richard Varnell, 46, is serving a 10-sentence for aggravated robbery, and his latest charge carries an enhancement of being a habitual offender. The urine-tossing incident occurred when the guard opened the door to pick up Varnell's breakfast tray. A supervisor who was assisting the guard secured the tray and other cups to prevent Varnell from throwing more liquids. The guard was taken to the infirmary, decontaminated and sent to a hospital for tests.

California: An indictment unsealed in federal court for the Eastern District of California on April 13, 2023, charged a state prisoner and three accomplices with scheming to smuggle drugs by drone into Pleasant Valley State Prison. Michael Ray Acosta, 48, is charged with conspiracy to distribute methamphetamine, heroin, cocaine and marijuana, as well as conspiracy to own and operate an unregistered drone and serving or attempting to serve as an airman without an airman's certificate, plus using a cellphone in aid of racketeering. For the greater part of 2021 Acosta coordinated numerous drone deliveries of contraband into state lockups in Coalinga, Corcoran, Sacramento, Soledad and Susanville. An accomplice, Rosendo Ramirez, allegedly flew the drones and dropped the drugs into the prisons. Acosta and his associates on the inside are charged with picking up the packages and distributing the contents in the lockup. According to court documents, Acosta's co-conspirators tried to avoid detection of the deliveries by launching the drones from hidden positions in fields around the prisons and making drops at night when the drones were less likely to be seen by prison staff. In addition to the drug deliveries the drones dropped cellphones, cellphone accessories, butane oil and other items.

California: *KGET* in Bakersfield reported that a Wasco State Prison guard was hit with felony charges on May 28, 2023, for showing up drunk to work and barricading himself in a guard control booth with a weapon in January 2023. [See: *PLN*, Mar. 2023, p.63.] Shawn William Wilder,

52, spent about ten hours holed up in the building before crisis teams from five other prisons talked him into surrendering himself and his firearm. A spokeswoman for the state Department of Corrections and Rehabilitation (CDCR) reported no one was injured in the incident, though prisoner movement was restricted during the situation. Wilder has worked for the CDCR since 1996 but left in 2015 due to a "medical retirement." He returned to work in July 2018. He is currently free on \$50,000 bail and was due back in court in July 2023. In addition to the felony charges stemming from the stand-off, Wilder faces a misdemeanor charge for brandishing a gun.

California: Two guards in Fresno County went to court in June 2023 – one charged with drugging and sexually assaulting a woman, the other accused of ordering a hit on his girlfriend's husband. On June 15, 2023, former guard Miguel Angel Corona, 34, was due for sentencing in the murder-for-hire plot, but a judge tossed his plea agreement, the *Fresno Bee* reported. Two weeks later, Jeremy Gerard Cuthbert, 36, appeared in Madera County Superior Court to face sex offense charges there, *KFSN* reported. He is on leave from the Fresno County Jail. It was unclear if that's also where Corona worked, or if he worked for CDCR. Bradely Beau Costill, the hitman he hired to take out Jeremy Schmall in 2021, was set for sentencing on July 5, 2023. A preliminary hearing for the former guard was set for July 17, 2023.

California: The 24th time was the charm. *AP News* reported that on July 11, 2023, Leslie Van Houten, 73, was released from the California Institution for Women, after serving 53 years for participating with late cult leader Charles Manson in the brutal 1969 stabbing deaths of Los Angeles grocer Leno LaBianca and his wife, Rosemary. As recently as November 2020, Gov. Gavin Newsom (D) overruled a state parole panel decision and denied Van Houten release. [See: *PLN*, Mar. 2021, p.62.] But a state appeals court said she should be paroled, and Newsom said he would not fight the decision. Her release is the first for any accomplice of Manson, who died in prison in 2017. Van Houten had been rejected for parole 23 times before.

Canada: Calling his testimony "completely unbelievable," a judge convicted a

guard at Vanier Centre for Women on May 23, 2023, of sexually assaulting a prisoner, the *Toronto Star* reported. Dwayne Jason Thomas, 43, testified that the prisoner “lured him into the shower area, and began touching him sexually,” and Thomas “eventually allowed (the inmate) to masturbate him manually to ejaculation.” Ontario Court Justice Jennifer Campitelli found the guard’s account to be “inherently implausible.” Video surveillance footage from outside the shower supported the prisoner’s version of events, in which Thomas asked her for oral sex and when she said no, he “pulled down her pants, and inserted his penis into her vagina” for a 30-second penetration. The prisoner also said she collected Thomas’ semen from the floor with her pants afterwards, fearing no one would believe her story. After telling a cellmate and worrying that the story would spread, she decided to tell a guard she trusted with her semen-stained pants. The victim also said Thomas “did not force it” but that “she for some reason could not say no.” She explained that because Thomas had authority over her as a guard, she felt awkward. A spokesperson from the Ministry of the Solicitor General said Thomas was fired prior to the guilty findings.

Georgia: A guard and nurse at the Clayton County Jail were arrested on May 26, 2023, for allegedly smuggling contraband to detainees, *WRDW* in Augusta reported. Guard Tabitha Clifton and nurse Jessica Castellanos were booked into the lockup on charges of providing guns, drugs, or alcohol to prisoners. Clifton was charged with violating her oath of office and Castellanos with obstructing an officer. Just 24 hours earlier, another Clayton County guard was fired and arrested for placing a detainee into a high-risk housing unit where he was beaten and stabbed. Sean Hollinshead then allegedly failed to provide aid to the assaulted man, Sheriff Lavon Allen said. Hollinshead is charged with criminal negligence and violation of oath.

Georgia: *WRDW* in Augusta reported that a deputy of the Richmond County Sheriff’s Office (RCSO) was arrested on June 5, 2023, on suspicion of smuggling contraband to detainees at the county lockup, the Charles B. Webster Detention Center. The county’s Criminal Investigative Division learned that Dep. Demondre Mahoney was involved in smuggling and determined there was probable cause to

charge him with giving detainees articles without consent of the warden. Mahoney was also charged with violation of oath by a public officer. He began working for the RCSO in January 2021 and had been assigned to road patrol.

Georgia: On June 9, 2023, three weeks after allegedly making a drug drop at Lee Arrandale State Prison, the second of two suspects was arrested after a dramatic car chase that ended when she crashed into a pursuing prison guard’s vehicle and attempted to flee on foot, *Now Habersham* reported. Leticia Erika Perry, 28, of Summerville, was arrested by the Floyd County Sheriff’s Office as she fled from the scene of the crash, injured and bleeding, having been the subject of a three-week search. She was booked into the Habersham County jail and charged with aggravated assault, driving on a suspended license, failure to report an accident, criminal interference with government property, two counts each of illegal possession of a controlled substance and a seat belt violation. She is being held without bond after her preliminary court appearance on June 12, 2023.

Indiana: On June 12, 2023, police in Lake County arrested Terrance Craig, 40, after he admitted setting fire to the county lockup a week before. *CBS News* reported that cops also released a wrongly identified suspect in the arson, 26-year-old Ryan Andrews. Sheriff Oscar Martinez blamed the mix-up on “some similar physical characteristics” the two men shared, insisting that “the process worked as it should” – probably small comfort to Andrews, who spent three days in custody falsely accused of starting the blaze. Bizarrely, Craig blamed his arson on Gov. Eric Holcomb (R) and his two predecessors, Mitch Daniels and Mike Pence, saying he “wouldn’t have come out here if they wouldn’t have been [expletive] with me.”

Indiana: A Marion County Jail guard was arrested by co-workers for attempting to smuggle drugs into the lockup on June 9, 2023, the *Indianapolis Star* reported. Nijell Holmes, 25, who had worked at the jail for two years without incident, is now charged with two drug trafficking-related charges, two drug-dealing charges and two drug-possession charges. The charges are level 4 and 5 felonies that carry sentences up to six and 12 years each. Sheriff Kerry Forestal reacted to Holmes’ arrest by boasting, “Our new facility has thousands of high-defini-

tion cameras, advanced body scanners, and real-time inmate and staff tracking devices. When you pair that with our experienced staff, drug sniffing K9s, and incredible Investigations Unit, you simply won’t get away with bringing illicit substances into our jail. But that’s okay, we’ll find a cell for those who would try.”

Michigan: On May 15, 2023, the state DOC asked the public’s help in locating a prisoner mistakenly released two months earlier from an Ohio jail where he was awaiting trial on new charges, the *Detroit News* reported. Christopher Bibbs Jr., 21, was serving four to 10 years at the Thumb Correctional Facility for a carjacking when he was transported to the Warren County jail in Ohio to face charges for improper handling of a firearm in a vehicle, operating a vehicle while intoxicated and provided false information to law enforcement. After he was released in error, he walked away. He was still at large two months later in mid-July 2023. Bibbs has ink on his arm that reads, “Only the Strong Survive” and is believed to be in the Detroit area.

Mississippi: A former Jones County juvenile detention center guard convicted of killing an iconic rooster escaped jail time at her sentencing in Ocean Springs court on May 1, 2023, the *Biloxi Sun Herald* reported. Kendra Shaffer, 35, of Jones County, had been celebrating her birthday with friends when she allegedly scooped up the beloved rooster named Carl and disappeared into the darkness of a Mississippi spring night to commit murder most fowl. She was caught on video surveillance walking with friends and holding Carl, but no other evidence was presented proving that Shaffer had killed the popular Government Street tourist attraction. After investigators interviewed her at work and she was charged with misdemeanor animal cruelty, Jones County Sheriff Joe Berlin terminated Shaffer’s employment. Shaffer had worked for the sheriff’s office since December 2020 to support her four children. She pleaded not guilty to the charge but was sentenced to a

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10-day suspended jail sentence and ordered to pay a \$1,000 fine, plus perform 150 hours of community service at an animal shelter. In addition, Judge Calvin Taylor sentenced Shaffer to six months probation. Shaffer vowed to appeal her conviction but to date has not filed an appeal nor paid the fine.

Mississippi: *Supertalk Mississippi Media* reported that two people were arrested on May 31 and June 1, 2023, for allegedly abetting the escape of two detainees from the same Hinds County lockup where four others who escaped in April 2023 were later recaptured or found dead. [See: *PLN*, June 2023, p.42.] Kayce Knight, 36, was apprehended in Jackson on June 1, 2023, and charged with accessory, as well as aiding and abetting in a detainee's escape. Knight is currently being held at the jail. His arrest came one day after Michael Lynn Allen, 45, was taken into custody on similar charges. The two escapees they helped bust out on May 29, 2023, Joseph Spring and Michael Lewis, 31, both got out through an air duct. Spring had been at the Raymond Detention Center since November for violation of parole and burglary charges. Lewis had been booked on DUI and marijuana possession charges. Lewis was captured several hours after the escape and Spring was captured by deputies and U.S. Marshals after a quick "vehicle encounter" in west Jackson on June 17, 2023, according to Hinds County Sheriff Tyree Jones.

Missouri: Of seven detainees who escaped the Barry County Jail on June 1, 2023, only one remained at large a day later, *KYTV* in Springfield reported. Barry County Sheriff Danny Boyd said the men escaped after assaulting two guards and locking them in a cell. One of the detainees had told a guard he needed a blood pressure check before grabbing and choking the guard until he passed out. At the time of the escape only two guards were responsible for 60 detainees. The escapees were Mario Che-Tiul, Derson Pelep, Rolondo Saldivar, Axel Agans, Andrew Madewell, Jonathan Saucedo, and Harley Joe Wilkins. Three of them were caught 15 minutes after the escape and three more were apprehended the following morning. Che-Tiul remains at large after stealing street clothing from the property room on his way out. Sheriff Boyd said Che-Tiul might be going north and had been planning his escape for months. Che-Tiul was being held on charges of first-degree child molestation and incest.

In June 2022 three detainees also escaped from jail by cutting through the ceiling. The county broke ground in February 2023 on a new jail and Sheriff Boyd said it should be finished in summer 2024.

Missouri: A case manager at the Jackson County Detention Center was one of four people indicted on June 7, 2023, in an alleged smuggling scheme at the lockup, according to *KMBC* in Kansas City. Aaron D. Copes, 42, of Grandview, is accused of accepting money and sexual favors in exchange for helping to smuggle K2-laced papers into the jail. His co-conspirators – Deanna Clark, 32, Stephanie McDaniel, 31 and James Booker, 37 – are closely associated with an unnamed detainee also mentioned in the indictment. The conspiracy allegedly ran from March 2020 to October 2021. K2, or "spice," is a synthetic cannabinoid whose composition is similar to, but not the same, as cannabis. This makes it legal in states where cannabis is not. According to American Addiction Centers, K2 affects the brain in similar ways but is far more potent than marijuana. K2 can have serious side effects such as seizures and convulsions, vomiting, an increased risk of having a stroke, elevated blood pressure, heart rhythm abnormalities and chest pain, as well as kidney failure, heart attack and sometimes death. [See: *PLN*, May 2023, p.13.]

Montana: The *Helena Independent Record* reported that a prisoner serving a life sentence at Montana State Prison (MSP) pleaded guilty on June 6, 2023, to an assault on guards that left one with brain injuries and fractured ribs. Augustus Standing Rock, 31, allegedly tried to corrupt a state prison guard who responded by issuing him an infraction. Standing Rock took his revenge by brutally assaulting the guard in January 2022. The lifer also bit, head-butted and punched the guards who came to the victim's aid. In February 2022 the Attorney General's Office charged Standing Rock with four counts of assault, and in June 2023 he accepted a deal from the Assistant Attorney General for another life sentence with a 40-year parole restriction. Montana DOC's director told a legislative committee the day after the attack that the guard's injuries were a result of staff shortages. Montana House Bill 817 passed this year to fund both needed capital projects at MSP and a contract with a private prison firm to relieve capacity issues.

Nebraska: An attack by three prisoners at the state Reception and Treatment Center (RTC) in Lincoln sent seven guards to the hospital on June 1, 2023, including two who responded when the rest were stabbed with homemade knives, *KAKE* in Wichita reported. The Nebraska Department of Correctional Services (NDCS) said the prisoners were intoxicated at the time of the assault. The stabbing occurred in one of the high security, maximum custody units at RTC. The guards' injuries were serious but not life-threatening. The incident highlighted concerns about understaffing. Michael Chapman, president of the union which represents guards, said RTC requires 240 staffers to operate safely but there are only 200. He also said guards need stab vests to protect them from knife attacks. Criminal justice system reform bill LB 50, signed into law on June 6, 2023, will deliver those vests and much more according to an *Omaha World-Herald* community columnist. LB 50 "addresses prison overcrowding, reduces recidivism, strengthens communities, and economizes state resources for other critical needs — without endangering public safety," wrote columnist and former GOP Sen. John McCollister.

New Mexico: The *Roswell Daily Record* reported that a Chaves County Detention Center guard with an apparent chip on her shoulder was fired and arrested on May 8, 2023, hours after jail surveillance video captured her removing the shackles from one detainee and opening the cell door of another who was then assaulted. Vereniz Cano Villalobos, 36, of Roswell, has maintained her innocence, claiming that she unlocked Steven Perez's restraints so he could take a shower after having feces thrown at him. She also claimed that she had not unlocked the cell door, and if she had, it was done by accident. Perez, 31, repeatedly stabbed the other prisoner, Javier Gurrola, and when he fell through the open cell door with multiple stab wounds, beat him with a mop. Two days after the incident, a Chaves County judge released Villalobos on her own recognizance to await trial on one count of conspiracy to commit aggravated battery, great bodily harm. For his part, Perez claimed the stabbing was self-defense. He told investigators that when Gurrola's cell door opened he entered to confront him about the feces tossing. Perez alleged that Gurrola produced the weapon and tried to use it against him.

Perez, serving a sentence as a sex offender, now faces four felony counts related to the vicious stabbing.

New Jersey: A state DOC guard at a sex offender treatment facility was indicted on July 7, 2023, for beating a resident who later suffered a stroke and died. *New Jersey Monitor* reported that Giuseppe Mandara was charged with second-degree official misconduct for allegedly assaulting Darrell Smith at the Adult Diagnostic and Treatment Center on August 23, 2019. A wrongful death suit filed by Smith's sister in federal court for the District of New Jersey accuses Mandara and eight other guards of "a gang-style assault" that left her brother with a brain injury that killed him. See: *McNair v. N.J. Dep't of Corr.*, USDC (D.N.J.), Case No. 2:21-cv-01291. Mandara was the only guard indicted. The charge carries a mandatory minimum five-year prison sentence, but if convicted he faces up to 10 years in prison and a fine up to \$150,000.

New Jersey: A former guard who snuck drugs in potato chip bags into the Monmouth County Jail got five years in prison on May 27, 2023, the *Asbury Park*

Press reported. Bryant Mack, 55, had 18 years under his belt as a guard, but he will never again hold public employment in the state. The beginning of the end for Mack came on September 4, 2021, when jail officials found synthetic marijuana and other contraband in the cell of two prisoners. In the ensuing investigation, the Special Investigations Division discovered that Mack would conceal the contraband in potato chip bags and smuggle it to a prison accomplice, who would then distribute the illegal goods among the prisoner population. Mack pleaded guilty in November 2022 to second-degree conspiracy to distribute a controlled dangerous substance. [See *PLN*, Jan. 1, 2023, p. 63.] Before being caught, Mack earned an annual salary of \$119,136.

New York: A former Rikers Island guard was indicted on June 22, 2023, for allegedly taking a \$2,500 bribe to smuggle an iPhone to a detainee, the *Yonkers Times* reported. Also indicted were the detainee and a civilian. The guard, Bennie Green,

36, was indicted on charges of third-degree Bribe Receiving, first-degree Promoting Prison Contraband, second-degree Promoting Criminal Contraband and Official Misconduct. Green and the civilian woman will appear again in court on September 14, 2023. The investigation revealed that the detainee had instructed the civilian to buy him an iPhone and arranged the delivery via several calls made in summer 2021. Green then called that cellphone multiple times on August 4, 2021, and the next day surveillance video showed the guard entering the detainee's cell in the Anna M. Koss Center. A partner of the detainee finalized the scheme by sending Green three Zelle payments totaling \$2,500.

New York: On May 3, 2023, Rikers Island guards nabbed the second attorney in two months who was allegedly trying

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to smuggle drugs into the jail, the *New York Post* reported. The Legal Aid Society says Tatyana King is a law school graduate working in its criminal appeals bureau. The aspiring attorney was arrested while trying to smuggle weed to detainee Shyanne Patterson, who is accused of attempted murder. A drug-sniffing dog tipped off guards, who then searched King's belongings and found bags of marijuana and tobacco. King was not working on Patterson's case at the time. She previously had tried to fool guards in April 2023 by signing in as a staff lawyer for Legal Aid to visit detainees. The Legal Aid Society responded to King's arrest by saying she had their "unwavering support" but did not say why she was at Rikers or whether she is a staff lawyer now. In March 2023 another smuggling scheme was uncovered when DOC guards caught attorney Christopher Hoyt trying to introduce fentanyl-laced pot into a Queens jail. Hoyt at the time was representing dominatrix Viktoria Nasyrova.

New York: An Oneida County Jail guard was suspended and arrested on May 30, 2023, after a review of jail surveillance

video revealed he never made rounds that he logged. Jacob Mayo, 31, allegedly falsified tour logs saying that he had performed prisoner supervision tours but never made those tours in his assigned unit. Mayo is currently suspended without pay for his alleged dishonesty, which was discovered after an incident in the unit gave reason to review footage from the jail security cameras. Sheriff Rob Maciol reported that Mayo has been issued appearance tickets and an internal review is being conducted.

New York: A scheming former federal Bureau of Prisons (BOP) guard in New York pleaded guilty to disability fraud on June 7, 2023, according to a Department of Justice (DOJ) press release. Elizabeth Torres, 56, had been working as a guard for the BOP until 2006, when she lied about a debilitating knee injury that allegedly prevented her from working either while sitting or standing. In the claim forms Torres said she was significantly disabled, a

dependent was living with her, and she was not receiving pay from any job nor was she volunteering in any capacity. Contrary to her false claims, Torres worked full-time as director of a drug and alcohol addiction program and was even caught once dancing in high-heeled boots outside the clinic. To hide her employment at the addiction clinic Torres had her pay directed through a third party, disguising her salary as rent. According to DOJ, Torres defrauded the Office of Workers' Compensation Programs of more than \$4,000 a month over several years. She faces up to five years in prison when she appears before U.S. District Judge Sidney H. Stein on September 7, 2023.

Ohio: A former state Department of Rehabilitation and Corrections (DRC) guard who ran a smuggling operation supplying prisoners with contraband was sentenced to a year in prison on May 23,

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2023, *WKBN* in Youngstown reported. Terry Terrigno, 30, smuggled suboxone, marijuana and tobacco to inmates at the Northeast Ohio Correctional Center. An investigation revealed that Terrigno accepted bribes from inmates for contraband between February 2017 and July 2019. Investigators said he used a post office box to receive the drugs from associates of prisoners and then smuggled them inside, taking more than \$8,650 in bribes through a mobile cash app. In addition to his prison sentence, he was ordered to serve two years of probation.

Ohio: A handcuffed detainee who somehow slipped from his medical boot and ran away from a hospital where he'd been taken from the Summit County Jail was recaptured just a day later on May 31, 2023, *CBS News* reported. Jason L. Conrad, 39, had jail officials fooled about the extent of his injury. As a guard was escorting Conrad to a medical appointment and removing him from the transport vehicle, the wily cocaine dealer escaped by removing his boot and sprinting across six lanes of traffic. The deputy tried to chase him, but he fell and couldn't catch up, sustaining minor injuries to his hip and shoulder. Officers with the Northern Ohio Violent Fugitive Task Force apprehended Conrad the morning after his escape by watching him travel by bicycle then hide in a ravine when he realized foot patrol officers and an aviation unit were closing in. Conrad had been held in the county jail for felony drug possession and trafficking and weapons counts. He will now have an escape charge added to his rap sheet.

Oklahoma: On June 1, 2023, a former guard at James Crabtree Correctional Center in Helena was sentenced to 13 months in prison for dabbling in the black market, after he admitted taking \$5,000 in bribes to smuggle contraband into the lockup, *The Oklahoman* reported. Ty Craig, 25, smuggled cellphones, marijuana and methamphetamine into the medium-security prison from 2020 to 2021. Craig originally pled guilty to his charges on March 1, 2023, in Oklahoma City federal court. At his sentencing, U.S. District Judge Joe Heaton ordered Craig to turn over the cash bribes and serve two years of probation after release. Trafficking in contraband cellphones – crucial to allow prisoners to conduct criminal operations from inside the prison – resulted in more than 48,500

illegal cellphones confiscated by the state DOC from 2011 to 2019.

Oklahoma: A former guard with a bad temper who assaulted a detainee at the Grady County Jail was sentenced on June 6, 2023, to four years on probation, 30 days of weekend incarceration and 104 hours of community service, *The Oklahoman* reported. Johnnie K. Drewery, 29, a former sergeant at the jail, was the recipient of a spit ball launched from a detainee he had recently placed in a holding cell. Drewery then ordered the door reopened and struck and kned the prisoner, fracturing one of his ribs. Drewery pleaded guilty to a felony civil rights violation in Oklahoma City federal court on January 19, 2022, which led to his eventual June sentencing.

Tennessee: There's no "James Earl Ray Whiskey" for sale, but the *Nashville Tennessean* reported on May 11, 2023, that tours are now being offered at a distillery operating in the former state prison where Martin Luther King, Jr.'s assassin was held. Bushy Mountain State Penitentiary was once a major employer in the small town of Petros – population under 500. The prison closed in 2009 when the state said it was inhumane to house people there, leaving townspeople struggling to make a living. Many knew it as the prison where James Earl Ray had been held, but for Canaan Brock it had more meaning. Years before the prison was built his mother's family owned the land. Now Brock works at the prison as a master distiller, his family's first legal moonshiner, he notes wryly.

Utah: A prisoner released from Purgatory Correctional Center who is accused of stealing a guard's uniform and car on his way out of the Washington County lockup was back there in a cell on May 23, 2023, *KSL* in Salt Lake City reported. Ryan Bradley Thompson, 35, told police he was hearing voices directing him to re-enter the prison and pretend to be a cop. Thompson had been booked and charged with intoxication and littering just the day before. When a deputy arrived at his house, Thompson claimed he was someone else. The arresting deputy wrote in the affidavit that "it is clear Ryan is not in his correct state of mind, and in his own words, this is leading him to commit these crimes." Another thing that might be unclear to the casual observer is just exactly how Thompson walked through the secure portion of the building and a restricted office area to a

gym locker room, before walking out holding a county sheriff's deputy uniform shirt. He then put the shirt on and took his jeans off, walking in his boxers to the front of the building, where he talked to a civilian staff member and walked around the parking lot checking door handles before choosing a pickup truck to drive home – all without anyone at the jail even asking what he was doing. Thompson was later charged with theft, burglary, providing false information to police and impersonating an officer.

Washington: A robbery suspect is accused of smuggling fentanyl that sickened seven other detainees at the Snohomish County Jail on May 19, 2023, *KIRO* in Seattle reported. In a "how-did-this-happen" quandary, jail officials couldn't understand how seven detainees overdosed within 30 minutes of Justin Michael Sims' arrival at the lockup. The 37-year-old was booked on third degree robbery charges yet managed to smuggle fentanyl powder on scraps of torn and folded paper hidden in a box of crackers. The pieces of paper had Sims' name on them because they had been ripped from his court documents. Jail officials raced the detainees to the hospital after treating them with NARCAN. Other detainees later fingered Sims and his jail cell as the source of the fentanyl. Sims now faces multiple new charges for the contraband.

Wisconsin: *CBS News* reported that an off-duty guard at Minnesota's Stillwater State Prison was fatally shot by a St. Croix County deputy responding to a domestic disturbance at the guard's home on June 3, 2022. Tyler Abel, 42, had worked in manufacturing for 20 years before changing careers to law enforcement. He was first hired as a guard in April 2022. On the night he died, Abel's wife called 911 and reported her husband was out of control and threatening to use his gun. St. Croix County and New Richmond cops arrived and found Abel's wife outside the house where her husband and kids were still inside. Cops then saw a man with a hunting rifle at a window and tried to reason with him. But Abel threatened them and walked outside to confront them. At that point the responding officers fired and killed Abel. The individuals involved in the shooting have been placed on administrative leave pending results of an investigation and review. The Minnesota DOC called the guard's death "tragic and troubling." 📰

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Prison Profiteers: Who Makes Money from Mass Incarceration, edited by Paul Wright and Tara Herivel, 323 pages. **\$24.95**. This is the third book in a series of Prison Legal News anthologies that examines the reality of mass imprisonment in America. Prison Profiteers is unique from other books because it exposes and discusses who profits and benefits from mass imprisonment, rather than who is harmed by it and how. **1063**

Prison Education Guide, by Christopher Zoukis, PLN Publishing (2016), 269 pages. **\$24.95**. This book includes up-to-date information on pursuing educational coursework by correspondence, including high school, college, paralegal and religious studies. **2019**

The Habeas Citebook: Ineffective Assistance of Counsel, 2nd Ed. (2016) by Brandon Sample, PLN Publishing, 275 pages. **\$49.95**. This is an updated version of PLN's second book, by former federal prisoner Brandon Sample, which extensively covers ineffective assistance of counsel issues in federal habeas petitions. **2021**

Prison Nation: The Warehousing of America's Poor, edited by Tara Herivel and Paul Wright, 332 pages. **\$54.95**. PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. **1041**

The Ceiling of America, An Inside Look at the U.S. Prison Industry, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. **\$24.95**. PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. **1001**

The Criminal Law Handbook: Know Your Rights, Survive the System, by Attorneys Paul Bergman & Sara J. Berman-Barrett, 16th Ed, Nolo Press, 648 pages. **\$39.99**. Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy-to-understand question-and-answer format. **1038**

Represent Yourself in Court: How to Prepare & Try a Winning Case, by Attorneys Paul Bergman & Sara J. Berman-Barrett, 10th Ed, Nolo Press, 600 pages. **\$39.99**. Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. **1037**

The Merriam-Webster Dictionary, 2016 edition, 939 pages. **\$9.95**. This paperback dictionary is a handy reference for the most common English words, with more than 75,000 entries. **2015**

The Blue Book of Grammar and Punctuation, by Jane Straus, 201 pages. **\$19.99**. A guide to grammar and punctuation by an educator with experience teaching English to prisoners. **1046**

Legal Research: How to Find and Understand the Law, 19th Ed., by Stephen Elias and Susan Levinkind, 368 pages. **\$49.99**. Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. **1059**

Deposition Handbook, by Paul Bergman and Albert Moore, 7th Ed. Nolo Press, 440 pages. **\$34.99**. How-to handbook for anyone who conducts a deposition or is going to be deposed. **1054**

All Alone in the World: Children of the Incarcerated, by Nell Bernstein, 303 pages. **\$19.99**. A moving condemnation of the U.S. penal system and its effect on families" (Parents' Press), award-winning journalist Nell Bernstein takes an intimate look at parents and children—over two million of them - torn apart by our current incarceration policy. **2016**

Everyday Letters for Busy People: Hundreds of Samples You Can Adapt at a Moment's Notice, by Debra May, 287 pages. **\$21.99**. Here are hundreds of tips, techniques, and samples that will help you create the perfect letter. **1048**

Protecting Your Health and Safety, by Robert E. Toone, Southern Poverty Law Center, 325 pages. **\$10.00**. This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how to enforce your rights, including through litigation. **1060**

Spanish-English/English-Spanish Dictionary, 2nd ed., Random House. 694 pages. **\$15.95**. Has 145,000+ entries from A to Z; includes Western Hemisphere usage. **1034a**

Writing to Win: The Legal Writer, by Steven D. Stark, Broadway Books/Random House, 303 pages. **\$19.95**. Explains the writing of effective complaints, responses, briefs, motions and other legal papers. **1035**

Roget's Thesaurus, 709 pages. **\$9.95**. Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. **1045**

Beyond Bars, Rejoining Society After Prison, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alpha, 224 pages. **\$14.95**. Beyond Bars is a practical and comprehensive guide for ex-convicts and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more. **1080**

Directory of Federal Prisons: The Unofficial Guide to Bureau of Prisons Institutions, by Christopher Zoukis, 764 pages. **\$99.95**. A comprehensive guidebook to Federal Bureau of Prisons facilities. This book delves into the shadowy world of American federal prisoners and their experiences at each prison, whether governmental or private. **2024**

Merriam-Webster's Dictionary of Law, 634 pages. **\$19.95**. Includes definitions for more than 10,000 legal words and phrases, plus pronunciations, supplementary notes and special sections on the judicial system, historic laws and selected important cases. Great reference for jailhouse lawyers who need to learn legal terminology. **2018**

The Best 500+ Non-Profit Organizations for Prisoners and Their Families, 5th edition, 170 pages. **\$19.99**. The only comprehensive, up-to-date book of non-profit organizations specifically for prisoners and their families. Cross referenced by state, organization name and subject area. Find what you want fast! **2020**

Criminal Law: A Desk Reference, by Paul Bergman, 5th Ed. Nolo Press, 456 pages. **\$44.99**. The book offers clear, plain English explanations of the law accompanied by real-world illustrations. **1101**

Blue Collar Resume, by Steven Provenzano, 210 pages. **\$16.95**. The must have guide to expert resume writing for blue and gray-collar jobs. **1103**

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Prisoners' Self-Help Litigation Manual, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 928 pages. **\$69.95.** The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Includes detailed instructions and thousands of case citations. Highly recommended! **1077**

How to Win Your Personal Injury Claim, by Atty. Joseph Matthews, 9th edition, NOLO Press, 411 pages. **\$34.99.** While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents. **1075**

Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A., by Mumia Abu-Jamal, 286 pages. **\$16.95.** In Jailhouse Lawyers, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned advocates who have learned to use the court system to represent other prisoners—many uneducated or illiterate—and in some cases, to win their freedom. **1073**

Sue the Doctor and Win! Victim's Guide to Secrets of Malpractice Lawsuits, by Lewis Laska, 336 pages. **\$39.95.** Written for victims of medical malpractice/neglect, to prepare for litigation. Note that this book addresses medical malpractice claims and issues in general, not specifically related to prisoners. **1079**

Disciplinary Self-Help Litigation Manual, by Daniel Manville, 355 pages. **\$49.95.** By the co-author of the Prisoners' Self-Help Litigation Manual, this book provides detailed information about prisoners' rights in disciplinary hearings and how to enforce those rights in court. Includes state-by-state case law on prison disciplinary issues. This is the third book published by PLN Publishing. **2017**

The PLRA Handbook: Law and Practice under the Prison Litigation Reform Act, by John Boston, 576 pages. **Prisoners - \$84.95, Lawyers/Entities - \$224.95.** This book is the best and most thorough guide to the PLRA provides a 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. **2029**

Federal Prison Handbook, by Christopher Zoukis, 493 pages. **\$74.95.** This leading survival guide to the federal Bureau of Prisons teaches current and soon-to-be federal prisoners everything they need to know about BOP life, policies and operations. **2022**

Locking Up Our Own, by James Forman Jr., 306 pages. **\$19.95.** In Locking Up Our Own, he seeks to understand the war on crime that began in the 1970s and why it was supported by many African American leaders in the nation's urban centers. **2025**

Win Your Case, by Gerry Spence, 287 pages. **\$21.95.** Relying on the successful methods he has developed over more than 50 years, Spence, an attorney who has never lost a criminal case, describes how to win through a step-by-step process **1092**

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The Habeas Citebook: Prosecutorial Misconduct, by Alissa Hull, 300 pages. **\$59.95.** This book is designed to help pro se litigants identify and raise viable claims for habeas corpus relief based on prosecutorial misconduct. Contains hundreds of useful case citations from all 50 states and on the federal level. **2023**

Arrest-Proof Yourself, Second Edition, by Dale C. Carson and Wes Denham, 376 pages. **\$16.95.** What do you say if a cop pulls you s to search your car? What if he gets up in your face and uses a racial slur? What if there's a roach in the ashtray? And what if your hot-headed teenage son is at the wheel? If you read this book, you'll know exactly what to do and say. **1083**

Caught: The Prison State and the Lockdown of American Politics, by Marie Gottschalk, 496 pages. **\$27.99.** This book examines why the carceral state, with its growing number of outcasts, remains so tenacious in the United States. **2005**

Encyclopedia of Everyday Law, by Shae Irving, J.D., 11th Ed. Nolo Press, 544 pages. **\$34.99.** This is a helpful glossary of legal terms and an appendix on how to do your own legal research. **1102**

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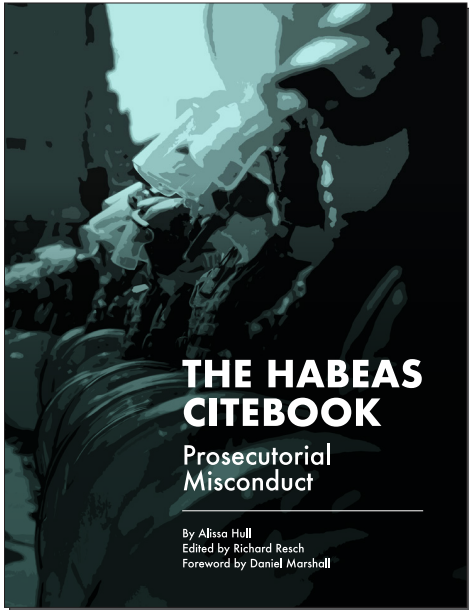
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By Alissa Hull

Edited by Richard Resch

The Habeas Citebook: Prosecutorial Misconduct is part of the series of books by Prison Legal News Publishing designed to help pro se prisoner litigants and their attorneys identify, raise and litigate viable claims for potential habeas corpus relief. This easy-to-use book is an essential resource for anyone with a potential claim based upon prosecutorial

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