Jailhouse Medicine
A Private Contractor Flourishes Despite Controversy Over Prisoner Deaths

by Brian Joseph, FairWarning

In July 2011, a jailhouse nurse in Imperial County, California found prisoner Marsha Dau lying naked and dazed on the concrete floor. Charged with illegally transporting aliens, Dau, 58, recently had been exhibiting strange and aggressive behavior. For her own safety, the jail put her in an empty, beige cell with no clothes. Now, three days later, she was on her back, semi-conscious and pale.

The nurse who found her was Elisa Pacheco, an employee of the California Forensic Medical Group, a private company that provides correctional medical services to rural counties like Imperial, near the Mexico border. Pacheco later would testify Dau looked dehydrated. But she didn't treat it as an emergency.

Rather than call an ambulance – which the company said would have cost several hundred dollars – Pacheco, in her testimony, acknowledged that she instructed guards to get Dau to a hospital in 30 to 40 minutes. Two guards dressed Dau in orange shorts, a yellow shirt and a yellow jumpsuit, then chained her to a wheelchair. As they wheeled her to a van, Dau's head slumped forward. One of the guards later remembered her colleague saying Dau "looks dead."

That comment, recalled in a deposition, would come to haunt California Forensic. Months after that July day, Dau's hospital trip became the subject of a lawsuit, one of more than 80 filed against the company since 2000. The state's largest private correctional health care provider, California Forensic, or CFMG, is a growing regional power in an obscure, multi-billion-dollar industry. It contracts with 27 California counties, overseeing the health care of some 13,000 prisoners of jails, juvenile halls and other detention facilities. CFMG and a new sister company recently secured contracts in New Mexico, Arkansas and Oregon, and they have their sights set on expanding into Texas, Colorado and Washington, among other Western states. But like other private correctional medical companies, CFMG has been accused of providing negligent care that puts profits before people.

Several county grand juries have investigated the company and faulted its practices. "CFMG staff failed to identify and treat symptoms of methadone overdose," a Santa Cruz County Grand Jury found after a prisoner died in November 2012. A grand jury in Sonoma County concluded CFMG protocol "lacks the formality and specificity" necessary to identify prisoners at risk for alcohol withdrawal syndrome. When a prisoner in alcohol detox died in August 2012, the Ventura County Grand Jury recommended that the jail consider replacing CFMG "to ensure standards of care are met and carried out." (The county stayed with CFMG, but is considering other providers when the company's contract expires in January 2016.)

About 200 California prisoners have died under CFMG care since 2004, according to a FairWarning analysis of state Department of Justice records. For the 11-year period that ended in 2014, FairWarning found that where CFMG provided both medical and mental health services, jails had a slightly higher mortality rate than other county lockups. The CFMG rate, excluding homicides, was 1.7 deaths annually per 1,000 prisoners. The rate for non-CFMG jails was 1.5 deaths per 1,000 prisoners. CFMG says the gap is "not meaningful" because of differences in the types of jails compared and in the demographics of the prisoners.

Push for Privatization

The outsourcing of medical care in jails and prisons reflects a nationwide push for privatizing government duties. The private sector, outsourcing advocates say, offers better services at a lower cost. But while other government services have...
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Jailhouse Medicine (cont.)

outspoken constituencies, jails and prisons do not. Prisoners usually have little clout to demand change if they believe they are receiving poor health care.

“Society doesn’t really care about prisoners,” said Neville Johnson, a Beverly Hills lawyer. Johnson sued CFMG and Yolo County, near Sacramento, over the August 2000 jailhouse suicide of Stephen Achen. A drug addict, Achen warned some jail staffers that he could become self-destructive but promised another that he wouldn’t hurt himself. “As we got into it, we were astonished at what we felt [was] the deliberate indifference of the jail staff and especially CFMG, which is nothing but a money-making machine,” Johnson said. CFMG settled with the Achen family for $825,000 after a judge found evidence of medical understaffing, according to media reports.

The private sector started providing health services to jails and prisons in the 1970s, when negligent medical care became a foremost prisoners’ rights issue. Prisoners across the country filed lawsuits alleging inadequate care. Courts ruled that depriving prisoners of competent medical services was unconstitutional and in some cases ordered states and counties to take corrective action. Wardens and sheriffs, lacking backgrounds in medicine, turned to outside contractors for help.

In California, substandard medical care in state prisons led to a 2006 federal court ruling putting prison health care and spending under the authority of a federal overseer. Recently, responsibility for prisoner health care at Folsom State Prison was transferred back to the state corrections department, and the court-appointed overseer said that in the wake of improvements in prisoner care he planned to restore authority for more of the state’s 33 prisons in the coming months. The California prison system, other than sometimes contracting with medical specialists, does not outsource its health care services.

When private providers like CFMG receive any attention at all, it’s usually because a prisoner has died. But industry experts say outsourced services are often no worse than the care provided by the government. “Whether a jail health care system is being run by the county or whether it’s been outsourced to a private company, my experience is in both cases it’s underfunded,” said Marc Stern, a former health official with the Washington Department of Corrections who now teaches at the University of Washington. Prisoners are more likely than the general population to have chronic or infectious diseases, and many take medications.

Today, experts estimate that roughly 40 percent to 50 percent of the more than 2.2 million incarcerated Americans receive their health care from contracted providers. Some state prisons outsource their medical care to university health systems, but most contracts in the sector are handled by private businesses like CFMG or Corizon Correctional Health Care, the largest provider in the nation. Industry insiders say private correctional health care firms typically have a profit margin of about 8 percent on contracts that pay them either a flat fee per prisoner or reimburse them for costs plus an administrative fee. Critics say flat fee contracts give companies, including CFMG, an incentive to skimp on care. Company executives declined to discuss profitability or other financial information.

Plaintiff lawyers such as Steven Yourke of San Francisco, who has settled two suits filed against CFMG, are sharply critical. “Based on the cases that I have done, I have a pretty negative impression of this company,” Yourke said. He filed one suit for the family of Craig Prescott, a prisoner who, according to the complaint, exhibited “delusional” behavior for half a week in Stanislaus County jail before dying after a scuffle with guards in 2009. Yourke said the company should have done more for the prisoner, a common complaint among lawyers who have sued CFMG.

The company dismissed the Yourkes’ claim, saying its staff knew Prescott as an aggressive prisoner. CFMG executives routinely reject accusations against the company as ill-informed and insignificant. They say CFMG has never lost a civil trial and that most settlements have been small. “I think that the most important thing to us is providing quality service,” said CFMG Chief Operating Officer Elaine Hustedt, who founded the company with her husband, Dan, and psychiatrist Taylor Fithian in 1983. Indeed, the company receives high marks from some cash-strapped California sheriffs who oversee county jails. “CFMG offered more services at a lesser cost than our old system,”
former Santa Cruz County Sheriff-Coroner Phil Wowak wrote in a recommendation letter for the company.

Hustedt said personal relationships are the backbone of CFMG’s business strategy. She described the company as a family, where employees stay for a decade or more. CFMG touts a nurse turnover rate of less than 10 percent a year – below the average attrition for hospitals. “We have a staff that really cares about what they do. We want to do the right thing,” Hustedt said.

In fact, that’s CFMG’s corporate motto: “Always do the right thing.”

A Troubled Life

Marsha Dau concealed a struggle with addiction beneath makeup and a playful, gentle spirit. A petite woman with an oval face, dyed blonde hair and false teeth, Dau was a “hippie in high heels,” as her sister called her. She favored polka dot skirts, studied Native American beliefs and addiction beneath makeup and a little money to care for their mother.

For most of her life, Dau kept it together, but things started to unravel around 2009 when she was working as a bus driver. One day, she saw a man get hit by a car and thrown onto her bus. According to Dau’s sister, the experience traumatized Dau so much she left her job, leaving her with little money to care for their mother.

On June 30, 2011, U.S. Border Patrol Agents near Westmorland, east of San Diego, stopped Dau as she was driving a blue 2009 Toyota Camry. Two Mexican nationals were found in the trunk, along with methamphetamine in the car, according to a criminal complaint. Dau admitted the drugs were hers and said she was being paid $800 to transport the men after they had illegally crossed into the United States.

Dau was booked into the Imperial County jail at about 3:30 a.m. the next morning. A medical intake form filled out at the time noted she suffered from fibromyalgia and panic attacks, had a history of lung cancer and once had surgery to remove part of her lung. (On a subsequent medical history form, Dau would reveal she also had one functioning kidney and a history of Hepatitis C.)

For anxiety, Dau reported taking prescription Valium, as well as medication for chronic pain. CFMG’s contract physician in Imperial County ordered Dau to partially replace her pain meds with Tramadol, the dosage for which he later tripled, according to medical records and legal filings. Tramadol can cause agitation or confusion in patients. Meanwhile, Dr. John H. Baker, Jr., CFMG’s contract psychiatrist, ordered Dau to cut her Valium dosage in half, then stop taking it after a few days, according to evidence presented in court. Patients who stop taking Valium also can experience anxiety or psychosis.

Nearly two weeks later, Dau started exhibiting “bizarre behavior,” according to nurses’ notes. One day a CFMG nurse found Dau naked in a cell where she was permitted to wear clothing. The floor was

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covered in urine, her clothes stuffed in the toilet, covered in feces. Dau also had feces on her back, buttocks and feet, which she didn't seem to know. “Many days just run together and I don't know if I should still be here,” Dau told the nurse, who recorded the incident, but, according to court records and deposition testimony, never contacted a physician.

A few days later, Baker, the psychiatrist, saw Dau via video conference. Baker would later testify that he primarily provided psychiatric services to eight CFMG jails this way, seeing as many as 140 prisoners in a single week. Because he saw prisoners remotely, it was Baker’s practice to rely on nurses to tell him what was in their charts. He would testify that he couldn’t remember if he knew Dau was taking Tramadol.

That day, Baker later testified, he decided Dau could be experiencing a psychosis related to her previous meth use. He prescribed her an anti-psychotic and another drug to reduce the side effects of the anti-psychotic.

Dr. Paul Appelbaum, a professor of psychiatry at Columbia University and a former president of the American Psychiatric Association, told FairWarning that psychiatrists rarely see 140 patients in a week, but it’s standard for one practicing telemedicine to rely on nurses to review patient charts. The nurse who aided Baker that day later testified she couldn't remember if she knew about Dau's recent behavior, but said she doesn’t always have the time to look at notes like that.

**Dynamic Growth**

CFMG's first contract, in 1984, was with Monterey County, where the company is based. Early on, CFMG sought to differentiate itself from its competitors by offering its services only to county facilities, not to state prisons. The strategy paid off as over the years CFMG came to dominate the market in California.

In 2012, the private equity firm H.I.G. Capital purchased about 80 percent of the company with designs on exporting CFMG’s brand of correctional health care. Since then, it’s launched a sister company, the Southwest Correctional Medical Group, to lead the expansion, although CFMG also is seeking contracts outside of California. “We feel really proud of what we do and felt like we almost had an obligation to go someplace else,” said Kip Hallman, CEO of the sister company. Today, CFMG and its sister company employ more than 900 people, mostly nurses. They also contract with 20 dentists, 11 psychiatrists and 52 other doctors.

For much of its history, CFMG has remained out of the spotlight, but that’s starting to change. A grassroots protest group in Santa Cruz called Sin Barras, Spanish for “without bars,” has held public demonstrations calling for the local jail to end its contract with CFMG. The group has been protesting ever since four prisoners died in short succession after CFMG arrived in 2012.

Meanwhile, CFMG recently negotiated a preliminary settlement in a high-profile, class-action lawsuit over conditions in Monterey County. The settlement requires CFMG to make several improvements to the medical services at the jail, although the company admitted no wrongdoing in the case. Among the listed plaintiffs was Wesley Miller, a prisoner with Type 1 diabetes who, according to the suit, was improperly administered insulin by a CFMG employee in February 2013. According to the com-

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plight, Miller nearly died from the injection, a contention that CFMG disputes.

“This company should be taken out. They should not be allowed in any institution in the world,” said Valerie George, whose son died of complications from sickle cell anemia while under CFMG care in Sonoma County. Ryan George, age 22, was serving time for domestic violence in 2007 when he experienced the onset of a sickle cell crisis, a painful, but treatable, condition where blood vessels become clogged by the misshapen cells. For days, Valerie says, Ryan called her from jail in obvious pain, complaining that he was being neglected.

Finally, when he was found “unresponsive” in his bed, Ryan was taken to the hospital, according to court records. But shortly thereafter, Valerie said, a CFMG responsive in his bed, Ryan was taken to the hospital, according to the civil complaint. A subsequent Sonoma County Grand Jury investigation found that the “Sheriff’s [department] and CFMG medical staff failed to fully intervene” when Ryan’s condition worsened. “He was not re-hospitalized, despite exhibiting symptoms of jaundice, severe dehydration, bone pain, altered level of consciousness and loss of urinary and bowel control,” the grand jury found. Said Valerie George, whose family settled with CFMG: “They let him die like a dog in a cage because this company would not pay for him to get proper medical treatment.”

Former CFMG employees interviewed by FairWarning were largely complimentary about the company. Cheryl Sumers, a licensed vocational nurse who worked for CFMG in El Dorado County, near Sacramento, said she “never saw anything bad” during her time with the company, from 1998 to 2005. “They were a good company to work for. They took care of their employees. They paid well,” she said. Colleen Patton, a former administrative assistant for CFMG in Sonoma County from 2003 to 2009, agreed. “Sometimes the workload was pretty heavy,” she said, but it was no different than a busy hospital. Patton said she was “envious” of the prisoners for how quickly they received medical care.

Dana Hudgins, a former licensed vocational nurse for CFMG in Ventura County from 1999 to 2006, said the company provided good medical care for most of the time she was with them, until the last six to eight months. That’s when a new nursing supervisor came in. Hudgins said this new supervisor replaced nurses with unqualified medical assistants. Prisoners who once received their medications within hours of being admitted now had to wait three days. “I didn’t like the situation it was coming to,” said Hudgins. “I felt it could become a potential lawsuit.” A CFMG spokesman said Hudgins was fired for performance issues and was not credible, but Hudgins denied she was fired, saying she left for a better job.

One of the most recent prisoners to die under CFMG care was 33-year-old Jacob Parenti, who, according to his family, was serving a one-year term in Monterey County for a probation violation for possessing marijuana. According to court records, fellow prisoners noticed he had stopped breathing and turned a bluish color on the morning of January 15,
2014. His cause of death has been officially ruled a drug overdose, but his half-sister, Amy Vye, says she’s spoken with prisoners who said her brother died of a horrible flu that swept through the jail. “Jacob was left to die of a treatable, jail-acquired illness, one for which basic medical intervention could have saved his life,” Vye wrote in an email. In court filings, CFMG said Parenti submitted a slip saying he had the flu, but the company denied that he died from it.

Vye says prisoners told her that Parenti was coughing up blood for days and twice requested medical care, but was ignored until it was too late. Her family, which is suing CFMG and the county, commissioned an independent autopsy that found Parenti died of the flu. “At no point did any CFMG employee ever respond in any way to my brother’s prolonged and preventable death,” Vye said in an email.

“**They Just Rolled Right Over Us**”

“Why wasn’t an ambulance called?” a guard later recalled someone asking when he wheeled a pale Dau into El Centro Regional Medical Center at about 9:30 a.m. on July 23, 2011. A doctor rushed to her side and felt her neck. “She has no pulse!” the doctor yelled, according to a deposition given later by the physician. Hospital staff cut off her jumpsuit and attempted CPR, but it was no use: at 9:56 a.m. Dau was declared dead.

A subsequent autopsy by Imperial County Chief Forensic Pathologist Darrell Garber determined Dau died of heart disease with a contributing factor being acute drug intoxication from the multiple medications she was prescribed. Garber also discovered Dau had a bed sore on her lower back, suggesting that she had been unable to move for some time.

Later, according to the minutes from a meeting about Dau’s death, CFMG and jail staff decided that an ambulance should have been called and that Dau was “probably” going through Valium withdrawal. In March 2015, the California Board of Registered Nursing brought incompetence and gross negligence charges against Elisa Pacheco, the nurse who acknowledged saying it wasn’t necessary to call an ambulance. She still works for the company. CFMG executives declined to speak about specifics of the case or to make Pacheco or the psychiatrist, John Baker, available for an interview, citing the Board’s pending action to revoke the nurse’s license.

Ruth Ann Hall, Dau’s mother, sued Imperial County and CFMG in federal court in February 2012, but died herself before the end of the year. Dau’s siblings pursued the suit in her place, taking the case to trial in July 2013. But just before the proceedings, the lawyer for the family said, CFMG told Dau’s brother and sister that if they lost in court the company would seek tens of thousands of dollars in fees from them. Scared, the family reached a confidential settlement with CFMG during the trial. CFMG denies that it made any threats, saying that it’s not unusual for losing plaintiffs to pay fees. When pressed about the case, company executives said “it was settled very much in our favor” but refused to elaborate.

“We were nothing. They just rolled right over us,” said Dau’s sister, Rebecca LaRue, who described suing CFMG as the scariest thing she’s ever done. She says she’s let go of her anger, but talking about Dau still brings her to tears. “My sister was a beautiful human being,” LaRue said. “I mean, she made mistakes. She deserved to pay, somehow. But not with her life.”

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Recent decades have seen the rise of not only private, for-profit prisons but also the privatization of other aspects of corrections systems, most notably the provision of medical care. As with prison privatization, the only people who have benefited are the owners of and investors in the companies. Everyone else – prisoners, taxpayers and the government itself – has received short shrift with little to show for privatization except empty, unrealized promises of cost savings.

The prison medical industry is dominated by a few large corporations such as Corizon, Centurion and Wexford Health Sources, which are the core oligopoly companies. There are smaller players, too, though most will likely eventually be bought out by one of the larger ones. These smaller firms typically operate at the regional and local levels, and rarely make national news or headlines. Their business model is the same: to provide as few services as possible while billing the government as much as possible. This month’s cover story examines the California Forensic Medical Group, one of those small regional companies whose body count and track record of inadequate care, negligence, incompetence and greed puts it in the running with the larger corporations in the prison medical industry.

All too often the injustices at the local level are harder to expose and resolve simply because they are local. One of the questions I am sometimes asked is why does PLN report on lawsuits and terrible conditions at small, rural jails? Why does PLN sue county jails with unconstitutional mail policies rather than focus on larger facilities and entire prison systems? The reality is that injustice is just as real for the people who experience it whether they are in a big prison or a local jail, and there are typically even fewer resources available at small detention facilities – which sometimes have higher death rates and more egregious conditions, usually because they are more poorly managed and face less scrutiny.

For readers who preordered the Prison Education Guide by Christopher Zoukis, the book arrived from the printer in late February and shipped within days after it was delivered to our office. It has received excellent reviews and anyone interested in pursuing an education while incarcerated should order a copy. While that title is good for the mind, we are also distributing another new book that is good for the body: Cell Workout by L.J. Flanders, a former British prisoner, which describes how to exercise in isolation as well as anyone who does not have or want to use a gym. We have been looking for a good prison exercise book to add to our bookstore for several years, and this is the best one we’ve found to date. It is available from PLN for $35 – see page 69.

As this issue goes to press, the Federal Communications Commission’s recent order capping the cost of prison phone calls nationwide was due to go into effect on March 17, 2016. Nine states and several telecom companies have filed suit to prevent that from happening, however, and while we are intervening in the case to defend the FCC’s order, on March 7 the D.C. Court of Appeals issued a partial stay. As described in greater detail in this issue of PLN, the stay prevents the FCC’s most recent rate caps from going into effect, though the earlier caps imposed in 2014 – $.25/min. for collect and $.21/min. for debit and prepaid interstate calls – will still apply. Other aspects of the FCC’s order were not stayed by the appellate court.

The struggle around prison and jail phone rates continues and we need your help to keep that fight going. Please send donations to support the Campaign for Prison Phone Justice, so we can ensure affordable phone rates for prisoners and their families. We are currently fighting multiple state attorneys general, the National Sheriffs’ Association, the nation’s largest prison phone service providers – Global Tel*Link and Securus – and several smaller companies. They are all bankrolled with money taken from prisoners and their family members through exploitive prison and jail phone rates. We need your help to continue fighting for prison phone justice! You can donate online at www.prisonlegalnews.org, by mail or by phone at (561) 360-2523.

We will report future events as they occur, including the outcome of the court challenge to the FCC’s order. The best way for people outside of prison to stay abreast of these issues is to subscribe to PLN’s free email newsletter at www.prisonlegalnews.org/subscribe/email, where we report prison and corrections-related news on a daily basis with an emphasis on litigation and the struggle for prisoners’ rights and criminal justice reform.

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Massachusetts: Lawsuit Filed to Stop Dog Searches of Prison Visitors

by Joe Watson

The American Civil Liberties Union (ACLU), Boston-based Prisoners’ Legal Services of Massachusetts (PLSM) and attorney Leonard Singer filed suit against the Massachusetts Department of Correction in January 2014 to prevent prison officials from using drug-sniffing dogs to search visitors.

“Putting visitors through the humiliation of dog searches will reduce visits far more than it reduces drug flow,” PLSM executive director Leslie Walker said of the searches, which were introduced by the DOC in November 2013 due to a purported increase in drugs and contraband being smuggled in by visitors. “This is counterproductive because all the research shows that family visits are key to successful reentry after prison.”

If a dog alerts to the presence of drugs, visitors must consent to a pat search or strip search or be barred from visiting.

“In order to prove the dog wrong, visitors will have to agree to intrusive and humiliating searches,” said ACLU of Massachusetts staff attorney Sarah Wunsch. “This is senseless. We should be encouraging family visits, not discouraging those who are frightened of dogs. Anybody who really was carrying drugs would turn away if there were dogs at the facility on that day, and would simply come back another day.”

Attorneys visiting prisoners were also subject to searches by drug-sniffing dogs, though after the suit was filed the court issued a preliminary injunction prohibiting such searches. The use of dogs to search other visitors was allowed to continue, however.

“Studies have shown that when you search people at random, without cause, you are going to have a high rate of false alerts,” Walker warned. “And the dog’s handler can unconsciously signal the dog who to suspect, which can create racial bias.”

The lawsuit acknowledges that the DOC can take action to stem the flow of drugs into the prison system, but asserts the dog search policy is illegal “because it was adopted without providing the public with notice and an opportunity to comment, as required by law for any new regulation,” according to a joint statement issued by PLSM and the ACLU.

The plaintiffs have also argued that drug-sniffing dogs scare children and some adult visitors, which “will inevitably reduce the numbers of visits and make it more difficult for those who do come to have a normal meeting with their loved ones.”

In response, the DOC posted an online fact sheet that said the dogs are “non-aggressive” and “generally golden retrievers or Labrador retrievers.” DOC spokesman Terrel Harris added that using dogs to search visitors was “an integral element of our efforts to rehabilitate inmates and return them addiction free into our communities.”

But Lois Ahrens, director of the Real Cost of Prisons Project, said visitors are not the main source of drugs and other contraband, and that prisoners are already strip-searched after they receive visits.

“The DOC needs to look at staff,” she noted. “Under the new policy, most correctional officers will still be free to come and go without screening.”

The case remains pending and a trial date has not yet been scheduled. See: Nathanson v. Spencer, Suffolk County Superior Court (MA), Docket No. 2014-00023-B.

Debate is quietly raging within the medical and law enforcement communities about a diagnosis first identified more than 160 years ago which more recently has become associated with the deaths of people in police custody, many of whom were involved in physical altercation with officers or shocked with Tasers before they died.

The diagnosis of “excited delirium syndrome” was initially linked to psychiatric patients during the late 1840s, but was little heard of until the 1980s when authorities in Miami began using it to explain deaths linked to cocaine use, mental illness and confrontations involving the police. Officials claim the syndrome, a rare neurological condition, turns normally peaceful individuals into raging, violent attackers.

Since 2002, according to records from the Miami-Dade Medical Examiner’s Office, 29 people have died in the South Florida city due to excited delirium; of those, nine were Tased and two others, who were also stunned with Tasers, were found to have had contributing causes – cocaine intoxication or “psychosis.”

Critics contend that excited delirium syndrome is not grounded in science, but instead based on shaky medical research that is used to cover up aggressive police tactics.

“The data supporting it is tenuous,” said Indiana University cardiologist Dr. Douglas Zipes, who testifies in court on behalf of clients suing Taser International. “I think excited delirium is often used as a catch-all to explain in-custody deaths.”

The American Civil Liberties Union suggests that excited delirium is cited as a cause of death mainly to cover up the use of excessive force by law enforcement. Police and medical examiners “are using ‘excited delirium’ as a means of whitewashing what may be excessive use of force and inappropriate use of control techniques by officers during an arrest,” Eric Balaban, senior counsel with the ACLU’s National Prison Project, told NPR during a 2007 interview.

San Francisco cardiac pathologist Dr. Steven Karch, who has extensively studied the syndrome, disagrees. “It’s utterly real. It’s a not a made-up disease at all,” he said. “It is a first-class medical emergency.”

Karch explained that most cases of excited delirium involve the police because those who suffer from the syndrome exhibit violent outbursts.

“They’ve come up with the concept that the individual is so excited they bring on their own death,” countered Dr. Zipes. “That you can be excited is without question. That you can be delirious is without question. But the concept of this being a syndrome causing death is incorrect and false.”

Excited delirium has been described as a genetic abnormality of the brain that might never reveal itself were it not for triggers such as stress, mental illness or chronic abuse of hardcore drugs, according to neurology professor Deborah Mash with the University of Miami’s Brain Endowment Bank. Mash directs a project on excited delirium that maintains it “is a medical emergency that presents itself as a law enforcement problem,” and claims people who suffer from the syndrome “exhibit superhuman strength and are impervious to pain.” Mash said an overheated body is a telltale sign among people who have died due to excited delirium.

“Hyperthermia is often a harbinger of death in these cases,” she stated. “You get hot, you reset your core body temperature, you’re going to die. It means you’re going to collapse. That’s why the body temperature is an important bio marker of the condition.”

Dr. Vincent Di Maio, the former chief medical examiner for San Antonio, Texas and author of a book on excited delirium, said the brain sends pulses to nerves which cause the heart, often weakened by years of drug abuse, to beat irregularly. Next, the victim often begins shouting and becomes aggressive, acting panicked and paranoid and exhibiting extreme strength. Dr. Di Maio added that when police are invariably called to restrain the victim, the flood of chemicals in their body becomes greater due to increased stress, and the person collapses and dies.

“Essentially, to put it simply, they’re dying of an overdose of adrenaline,” he said.

TheCLU’S Balaban doesn’t buy that explanation. “I know of no reputable medical organization – certainly not theAMA(American Medical Association) or the APA(American Psychological Association) – that recognizes excited delirium as a medical or mental health condition,” he noted.

 “[The] APA has no official position on the notion of ‘excited delirium’ as a mental health diagnosis,” APA spokesman Michael Shulman told PLN in a March 9, 2016 email. “We are, however, aware of an ongoing debate within the professional literature about such a diagnosis. Licensed practicing psychologists rely on peer-reviewed research and diagnostic manuals such as the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association, to diagnose mental conditions. To the best of our knowledge, ‘excited delirium’ is not included in the DSM-5, the latest edition of the aforementioned manual. Ultimately, more research on the concept of ‘excited delirium’ needs to be undertaken.”

Mash has defended her position on the syndrome. “It’s definitely real,” she insisted, “and while we don’t know precisely what causes this, we do know it is the result of a neural chemical imbalance in the brain.”

Fueling the controversy further, excited delirium syndrome is accepted by the National Association of Medical Examiners and the American College of Emergency Physicians. The syndrome is listed as the cause of death for about 250 people each year in the United States, though some experts say that number could be as high as 800 annually.

Another issue involves the role that Taser stun devices play in excited delirium deaths that involve law enforcement officers. Amnesty International, a long-standing critic of Tasers, has reported that since 2001 at least 550 people died after being Tased by police. [See: PLN, Oct. 2006, p.1; June 2005, p.1]. The company that manufactures the stun devices, Taser International, has been at the forefront of educating police about excited delirium as a medical condition.

“We’re not telling departments [that] excited delirium is always the cause of death following a Taser application,” said company spokesman Steve Tuttle. “We’re simply pointing out the facts: that excited delirium is an issue out there, and they need to treat this as a medical emergency if they see these signs.” Each year, he said Taser International “sends hundreds of pamphlets to
medical examiners explaining how to detect excited delirium. Taser also holds seminars across the country, which hundreds of law enforcement officials attend.”

“Such tactics infuriate the ACLU’s Balaban. “If police officers are being trained about this condition known as excited delirium, and are being told the people suffering from it have superhuman strength, and [these people] are being treated as if they are somehow not human, it can lead officers to escalate situations.”

In February 2015, Fairfax County, Virginia jail prisoner Natasha McKenna, 37, died several days after she was Tased four times while handcuffed by deputies. Even though she weighed just 130 pounds, it took six guards to restrain her. Three months later the medical examiner ruled the official cause of death was “excited delirium associated with physical restraint including use of conducted energy device.” Bipolar disorder and schizophrenia were listed as contributing factors.

Police in Miami initially claimed Rudy Eugene had used a designer drug known as “bath salts” before he removed his clothes, ripped up a Bible, and pounced on a sleeping homeless man and began to eat his face in a widely-publicized 2012 incident. An official with the Fraternal Order of Police said Eugene exhibited symptoms of excited delirium, though the cause of his death was not in doubt—he was shot dead by a responding police officer. A toxicology report later determined that he only had marijuana in his system.

Another alleged Miami drug abuser, Camilo Guzman, 28, took off his clothes and climbed on the roof of a nursing home in 2013 before attacking officers. One shot him with a Taser and Guzman died a short time later. His mother, Delia Nuñez, disagreed that her son’s death was caused by excited delirium.

“I don’t think he died of that,” she said. “If they hadn’t Tased him, he wouldn’t have died. But how can I dispute it?”

Some critics simply don’t subscribe to the notion that excited delirium is a neurological condition exacerbated by drug use and psychosis.

“It’s junk science to a lot of board-certified cardiologists,” observed attorney David Gold. “Some people might buy it, especially with cocaine use. But when the toxicity comes back clean?”

“They want the victim to be looked at as the cause of his or her own death,” added Dawn Edwards with the Ella Baker Center for Human Rights, a non-profit criminal justice watchdog organization based in California. “The bottom line is that these people are dying at the hands of, or in the custody of, police officers.”

The ultimate paradox of the controversy might be that some police departments have started training officers in how to diffuse volatile situations. For example, police in Dallas, Texas are trained to summon an ambulance when they come across someone displaying symptoms of excited delirium, and to defuse situations involving people suspected of being mentally ill.

Whether or not excited delirium syndrome is a legitimate medical condition, such tactics are more likely to result in fewer deaths when people with mental health problems, or who are under the influence of drugs, have confrontations with law enforcement officers.

Westword recently shared video showing the jailhouse death of Michael Lee Marshall. The homeless man, who suffered from symptoms associated with paranoid schizophrenia, choked on his own vomit after being restrained by Denver, Colorado deputies in a November 2015 incident the city coroner’s office has labeled a homicide.

It’s a shocking tale, but hardly an isolated one. We’ve been reporting for years about dubious medical care and alleged mistreatment of physically or mentally ill prisoners at prisons and similar facilities, including Ken McGill, who was awarded $11 million over a stroke he suffered at the Jefferson County jail.

Now, the Denver-area law firm that represented McGill—Holland, Holland, Edwards & Grossman, P.C.—is collaborating with Farmington, New Mexico’s Tucker, Burns, Yoder & Hatfield on a series of lawsuits involving the San Juan County Detention Center in San Juan County, New Mexico, just over the Colorado state line near Durango.

The allegations contained in the complaints come across as real life horror stories with tragic endings that could have been easily prevented but weren’t as a result of what attorney Anna Holland Edwards calls “a system that incentivizes ignoring serious medical conditions because it costs too much to treat them.”

Not that the expense would have been that great for three prisoners who lost their lives after being incarcerated at SJCDC. Both Sharon Jones, whose son, plaintiff Corey Jones, lives in Parker, and Jesus Marquez and Carter, too—and unfortunately, it took their deaths to definitively disprove them.

On December 1, 2014, Jones informed prison staffers that “she had been suffering from bronchitis for a couple of weeks and that she had a bad cough,” her lawsuit states. She was never examined by a doctor, however, and her condition didn’t improve. On December 16, she noted that she had just finished “a course of cold and cough medicine” but she still had “quite a bit of congestion/coughing” and asked for medication. The same sort was provided again sans any follow-up examination.

Another request for help came on December 31, 2014, with Jones noting that “my cough + congestion still get bad sometimes.” This time, the medical staff did nothing—so on January 3, 2015, Jones wrote, “I put in a request for more cold/cough medicine (as needed). That was 3 or 4 days ago. I’ve had this ‘crud’ for over a month. Maybe I need antibiotics for infection? Probably have a sinus infection.”

Again, Jones was not subjected to an examination, even though she’d been sick for over a month. Maybe I need antibiotics for infection? Probably have a sinus infection.

On March 2, Marquez phoned his mother to tell her of his worsening condition, telling her “that the nurses refused to take him seriously or do anything other than give him cold medicine and Ibuprofen,” the suit states. “He begged his mother to call the nurses and get them to take him seriously.”

Marquez’s mother, who was alarmed by her son’s labored breathing during the phone call, contacted the SJCDC medical area and pleaded with personnel to transfer him to the emergency room. But Marquez wasn’t moved there, prompting another phone call to his mother in which he told her, “My chest hurts so bad,” “When I lay down it hurts worse” and, repeatedly, “I can’t breathe.”

The suit notes: “Shortly before he got off the phone, he said: ‘I feel like I am going to die’ and told his mother that he loved her.”

The next time Marquez’s mother heard from the medical staff, it was to inform her that Jesus was dead. On March 3, he succumbed to “necrotizing tracheitis and bronchopneumonia, caused by untreated strep throat,” the lawsuit reveals.

And Carter? He had Chronic Obstructive Pulmonary Disease, or COPD, but was not at the end stage of the malady; he controlled the symptoms with two inhalers, including one known as a QVAR. But on January 27, 2015, the jail “stopped Mr. Carter’s QVAR prescription without obtaining or starting a new prescription,” his lawsuit states.

In the days that followed, Carter’s condition rapidly deteriorated. On February 12, the suit maintains that video footage “shows Mr. Carter walking toward the washer/dryer when he dramatically took ill and appears to lie down on the floor.” But after he told the nurse who responded that he was nauseated, had vomited and hadn’t slept for five days, she allegedly failed to secure a doctor’s evaluation or diagnosis.

He was sent back to his cell—and when an officer checked on him the next morning, he was dead.

The detention center’s alleged policy of skimping on medical treatments is reinforced in the lawsuits by well over a dozen accounts from the Berkey cases—one that
January 2016, attorney Tucker says, he found out that the firm providing medical care for SJCDC “lost their contract and the doctors in charge of it have been terminated. So we’re happy they’re making some steps to change things over there.”

This is among the only developments that cheer Tucker, a former district attorney for San Juan County whose decision to sue a county operation has definitely been noted by many of his former colleagues.

“To me, it shocks the consciousness,” he says. “Most of these people were never convicted of anything. But when they’re put in jail, they don’t have a choice about medical care. They’re confined, and if the jail isn’t giving them the right medication, it can be a death sentence. Nurses shouldn’t act as jury and executioner, but that appears what’s been happening in some of these cases”—some serious enough that he thinks criminal investigations might be warranted.

Denver attorney John Holland is equally frustrated by the situation in San Juan County and beyond. In his view, the cases “demonstrate an admitted widespread culture and habit in the jail of treating inmates as faking their serious illnesses to avoid the jail’s constitutional obligations to provide them with urgently required medical care,” he writes via e-mail. “These lawsuits are part of a widening national effort by legal advocates for families in these calamities to serve clear notice on governments operating jails everywhere that it is much less expensive to provide required medical care than to defend grim lawsuits like these when such care is not afforded.”

Ed. Note: On January 15, 2016, U.S. District Court Judge James O. Browning denied a motion filed by current and former SJCDC prisoners to appoint an independent monitor to oversee medical care at the facility. “In the end, the plaintiffs have not produced sufficient evidence that the defendants acted deliberately indifferent to their medical needs,” Browning held. The case remains pending. See: Salazar v. San Juan County Detention Center, U.S.D.C. (D. NM), Case No. 1:15-cv-00417-JB-LF. [x]

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South Carolina Sheriff Resigns, Pleads Guilty to DUI


PLN SUBSEQUENTLY FILED A PUBLIC RECORDS REQUEST WITH THE SOUTH CAROLINA BUDGET AND CONTROL BOARD, WHICH REVEALED THAT BERKELEY COUNTY HAD PAID AN ADDITIONAL $390,036.70 IN ATTORNEY FEES AND COSTS TO DEFEND AGAINST THE LAWSUIT.

DEWITT, WHO SERVED AS SHERIFF FOR 20 YEARS, RESIGNED ON FEBRUARY 4, 2015, SAYING HE HAD “CAST A CLOUD” OVER HIS POST FOLLOWING HIS ARREST ON DECEMBER 28, 2014 FOR DUl AND LEAVING THE SCENE OF AN ACCIDENT.

DeWitt was driving a county pickup truck when he rear-ended another vehicle at an intersection. He then fled the scene – and pursuing police – at speeds of over 100 mph for more than two miles. Most of the incident was captured on police dashcam, including footage of the swaying and stumbling sheriff being handcuffed after failing a field sobriety test.

An investigation by the Post and Courier newspaper, which obtained nearly 400 pages of personnel records, revealed that DeWitt’s DUI arrest was not the only “cloud” he had cast during his lengthy tenure with the sheriff’s department. The documents indicated the former sheriff had faced multiple sexual harassment allegations, crashed a cruiser, been demoted for not following warrant procedures and received below-average marks in eight of 10 performance measures, including leadership.

On January 11, 2016, DeWitt pleaded guilty to charges related to the DUI accident and was sentenced to 30 days in jail, suspended to three years of probation, plus 60 hours of community service. He joins the ranks of at least eight other South Carolina sheriffs who have faced criminal charges in the past six years, including former Lexington County Sheriff James Metts, who was sentenced to 366 days in federal prison plus a $10,000 fine in April 2015 for accepting bribes. [SEE: PLN, APRIL 2013, P.48].

D.C. CIRCUIT COURT PARTIALLY STAYS FCC ORDER CAPPING PRISON AND JAIL PHONE RATES

OVER 1.5 MILLION FAMILIES WITH LOVED ONES IN STATE AND FEDERAL PRISONS WILL EXPERIENCE SIGNIFICANT FINANCIAL RELIEF WITH RESPECT TO THE COSTS OF INMATE CALLING SERVICES (ICS) BEGINNING MARCH 17, 2016, DESPITE THE BEST EFFORTS OF SEVERAL MAJOR ICS PROVIDERS, INCLUDING GLOBAL TEL*LINK, SECURUS AND TELMATE, AND A COURT-ORDERED PARTIAL STAY ON RATE CAPS.

The Federal Communications Commission (FCC) voted on October 22, 2015 to enact reforms to protect families that rely on phone calls to stay in touch with incarcerated loved ones. [SEE: PLN, DEC. 2015, p.40]. ICS providers wasted no time in appealing to the U.S. Court of Appeals for the D.C. Circuit in an attempt to invalidate the FCC’s order, so they can continue to prey on prisoners’ families through inflated phone rates and exorbitant fees.

Historically, the cost of prison phone calls has been extremely high – more than $1.00 per minute in many cases. Under the leadership of Commissioner Mignon Clyburn as Acting Chair, the FCC took the first step in reforming the prison phone industry with a historic vote in August 2013 to cap interstate (long distance) ICS calls with interim rates of $0.25/min. for collect calls and $0.21/min. for debit and prepaid calls. [SEE: PLN, DEC. 2013, P.1].

In its October 2015 order the FCC issued lower rate caps scheduled to go into effect on March 17, 2016, including caps of $0.11/min. for debit and prepaid calls and $0.14/min. for collect calls, both interstate and intrastate, made from state and federal prisons. Caps on calls from local jails were set to go into effect several months later.

However, on March 7, 2016 the D.C. Court of Appeals stayed implementation of the lower rate caps – though the FCC’s limits on ancillary fees charged in addition to per-minute phone rates will go into effect as scheduled. This will provide substantial relief to prisoners’ families, as ancillary fees represent up to 40% of the cost of a call. Pursuant to the FCC’s order, ICS providers can charge only three ancillary fees: up to $3.00 for automated payments by phone or online, $5.95 for payments made through a live agent and $2.00 to receive paper bills. The FCC also banned flat-rate calls.

Further, the stay by the appellate court means that the FCC’s initial interim rates of $0.21/min. for debit and prepaid, and $0.25/min. for collect interstate calls, will remain in effect. Prisoners’ families will also benefit from the elimination of connection fees and minimum account balance requirements, in addition to a regulatory requirement that all ICS providers must publicly disclose their phone rates. Additional reforms ordered by the FCC target...
phone services for the deaf and hard of hearing, including the rates for calls made through TTY devices.

The State of Oklahoma, Oklahoma County Sheriff John Whetsel and the Oklahoma Sheriffs’ Association have intervened in the appeal challenging the FCC’s order, in an effort to continue receiving lucrative commission kickbacks from revenue generated from prisoners’ phone calls. [See: PLN, March 2016, p.22]. Eight other states have also sought to intervene, including Arizona, Arkansas, Indiana, Kansas, Louisiana, Missouri, Wisconsin and Nevada, led by Wisconsin Attorney General Brad Schimel. The states contend the rate caps imposed by the FCC would not cover necessary security-related costs for prison phone services. That is a red herring, though, as 11 state DOCs currently charge phone rates below the $0.11/min. cap in the FCC’s order, which indicates that low rates are possible without sacrificing security needs.

The issue is really about money, not security. “We’ve looked at the impact of the [FCC rate cap] rule, and the department stands to lose $3,000,000 a year,” said Oklahoma Department of Corrections spokesperson Terri Watkins. “We will work through the appeal process because, with budget constraints, we can’t make it up any other way.”

Close attention should be paid to the profound conflict of interest demonstrated by the state Attorneys General seeking to challenge the FCC’s order. Elected to represent the interests of all taxpayers, they are apparently only interested in price gouging some of their poorest citizens in exchange for continued kickbacks from ICS providers. These efforts to oppose prison phone reforms serve to underscore the need for regulatory action by the FCC, since very few public officials are willing or able to stop the financial exploitation of prisoners’ families — and at least nine states have clearly indicated they will spend taxpayer dollars to ensure that such exploitation continues, by challenging the FCC’s order.

“While it is disappointing that the Court’s initial ruling did not allow the FCC’s lower rate caps to go into effect as scheduled, we are confident that victory will be achieved despite the legal challenge filed by hedge fund-owned ICS providers to delay drastic cuts to their obscene profit margins,” said Paul Wright, executive director of the Human Rights Defense Center, PLN’s parent non-profit organization. “There should be no mistake that the provisions of the FCC order that will go into effect in state and federal prisons [on March 17], and later in jails nationwide, represent a significant step forward for millions of families, which will see immediate financial benefits,” he added.

“Ultimately, we believe the court will uphold the new rates set by the Commission,” FCC Chairman Tom Wheeler and Commissioner Clyburn said in a joint statement.

The FCC’s order as applied to local jails is scheduled to go into effect on June 15, 2016 except for the rate caps, ranging from $0.14/min. to $0.22/min. for debit and prepaid calls, which were included in the partial stay issued by the D.C. Court of Appeals. See: Global Tel*Link v. FCC, U.S. Court of Appeals for the D.C. Circuit, Case No. 15-1461.

Sources: HRDC press release (March 10, 2016); www.journaltimes.com; www.law360.com; www.kfor.com

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Prisoners serving life sentences in California have been paroled at a record rate since Governor Jerry Brown took office in January 2011 – a positive trend in the view of many advocacy groups, but one that causes worry among victims' rights advocates despite statistics which reveal a recidivism rate of less than one percent for paroled lifers.

California is one of only three states where the governor has final say on decisions by state parole boards (Maryland and Oklahoma are the other two), and Brown has approved parole for 82% of the 1,590 lifers whose cases were presented to him by the California Board of Parole Hearings (Board). During the first 2½ years he was in office, more lifers were released from prison than during the previous three gubernatorial administrations combined.

Governor Brown has reversed the Board's recommendations less than 20% of the time compared to his predecessor, Arnold Schwarzenegger, whose reversal rate hovered at 70%. Former Governor Gray Davis reversed most of the Board’s decisions, granting parole to less than one in 10 lifers whose cases were presented to him by the California Board of Parole Hearings (Board). During the first 2½ years he was in office, more lifers were released from prison than during the previous three gubernatorial administrations combined.

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In upholding Lawrence’s parole, the state Supreme Court held it was no longer sufficient to base parole decisions on the viciousness of the crime. Rather, lifers have the right to present evidence of rehabilitative efforts at their parole hearings to demonstrate they are no longer a threat to society. The Court found that Lawrence had cited “overwhelming” evidence she had been rehabilitated and, therefore, was no longer dangerous.

That decision changed everything, according to Jennifer Shaffer, executive director of the Board of Parole Hearings. “As you can imagine, if their crime alone could keep them from being paroled forever then that was really not life with the possibility of parole. So there had to be something else,” she said.

Governor Brown pointed to the change in the law as the key element in his approach to making lifer parole decisions. He said he was not in a position to explain why so many parole recommendations were reversed by previous governors, stating, “I don’t know what they did and whether they read the record or whether they looked at the law.”

“If an individual is eligible for parole and the board determines they are no longer a threat, the law says they must be paroled unless there is firm evidence indicating they are still a threat,” explained Brown spokesman Evan Westrup.

The governor also pointed to his core belief that people can change as a factor in granting parole. “I have been brought up in the Holy Roman Catholic Apostolic Church,” he said, “and redemption is at the very core of that religion.”

Prior to 2008, California had stringent parole restrictions that made parole almost impossible for lifers. A Stanford University study of parole rates from 1990 to 2010 found that those convicted of murder had only a 6% chance of leaving prison alive. Since the 2008 California Supreme Court decision, however, around 3,000 lifers have been paroled — including a record 670 in 2012 – compared to the three decades prior to the ruling, when only 180 lifers were released on parole. More than 80% of lifers are serving time for murder; the others were mostly convicted of sex offences and kidnapping.

Some victims’ rights advocates think the mounting number of paroled lifers is a dangerous trend. Christine Ward, who heads the Crime Victims Action Alliance, called the new parole policy an experiment with public safety.

“It really is like playing Russian roulette,” she said. “We just hope that that one time bomb doesn’t go off and create that really serious, heinous crime that will leave not only that family devastated but the entire state devastated. We’ve seen it before.”

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Prison Legal News
California between 1995 and 2010, only five were returned to prison for committing new felonies and none for crimes requiring life terms, such as murder. Another study quoted by the Los Angeles Times revealed that 33 parolees were returned to custody for mostly “technical violations,” such as “using drugs,” “buying beer,” “public use of alcohol,” “unpermitted travel to visit family” and “possessing a banned iPhone.”

By contrast, California’s overall recidivism rate has been estimated at nearly 50% in recent years.

Experts point to the age of lifer parolees as a contributing factor in their lower recidivism rates: The average age of lifers at their parole hearings is 51. State prison officials have also taken steps to help life-sentenced prisoners prepare for release, now that the likelihood is not as remote, such as offering a program on leadership at San Quentin State Prison.

Over the course of several weeks, prisoners who enroll in ELITE, or “Exploring Leadership and Improving Transitional Effectiveness,” learn skills such as managing emotions, active listening and using consensus to build coalitions. The program also teaches prisoners how traits like impulsiveness, pessimism, anger and lack of personal empathy can contribute to criminal behavior. Prison officials say taking the course prepares prisoners for life on the outside and helps them demonstrate their suitability for parole.

“Most of these guys understand there is a light at the end of the tunnel now, so it just helps improve the overall environment for them,” said Associate Warden Jeff Lawson. “And it gets the ones who were maybe straddling the fence to actually get off the fence and get on the right side.”

After completing the ELITE program, lifer Duane Reynolds said he was optimistic that he would soon be paroled after being turned down three times during the 24 years he had served in prison. “I murdered my supervisor,” he said, “high on drugs. So my life was out of control.” Reynolds, who was 30 years old at the time of the crime, is now in his 50s.

“The fact that people are going home is just really encouraging to a lot of individuals serving life sentences, he noted.

That encouragement may be coming to an end, however. The most recent Executive Report on Parole Review Decisions issued by Governor Brown’s office, covering the period from January 1 through December 31, 2015, detailed his actions on 96 parole decisions. Of those, he reversed 95 recommendations for parole and modified one.


_,_
AFTER FOUR PRISONERS COMMITTED SUICIDE in the Salinas branch of the Monterey County, California jail system within a five-year period, a class-action lawsuit was filed in 2013 against both the jail and California Forensic Medical Group, alleging substandard intake procedures, medical care and mental health treatment.

Shortly after an injunction was issued by the federal court in favor of the plaintiffs, the parties reached a preliminary settlement in May 2015. Pursuant to that settlement, the parties agreed “to develop a series of implementation plans to enhance services at the Monterey County Jail,” according to a joint press release.

On April 14, 2015, U.S. Magistrate Judge Paul S. Grewal had issued a 44-page preliminary injunction requiring jail officials to improve the facility’s tuberculosis screening program, alcohol treatment program and medicine dispensing procedures. According to the injunction, potential hanging points will also have to be removed from cells in the segregation unit, to mitigate suicides.

Further, jail officials and medical staff had 60 days to submit a detailed plan to remedy alleged constitutional and statutory violations. Negotiations between the parties had stalled after the lawsuit was certified by the court as a class-action. Four impartial experts had examined conditions at the jail, but efforts by the parties to agree on implementation of their findings were unsuccessful.

In addition to conditions at the jail that the plaintiffs argued had contributed to suicides, prisoners had complained that staff failed to comply with the Americans with Disabilities Act (ADA), treatment of incoming prisoners with alcohol and drug problems, and timely administering of prescription medications. Those issues also were addressed in the preliminary injunction.

The district court held the jail was required to implement national standards for the diagnosis, treatment and tracking of tuberculosis; provide access to and withdrawal treatment; conduct health and safety checks of all prisoners held in segregation at least every 30 minutes; identify and accommodate prisoners with disabilities in compliance with ADA regulations; and provide qualified sign language interpreters for prisoners who need them.

Magistrate Judge Grewal found that the class-action suit was “likely to succeed on the merits,” one of the criteria for issuance of a preliminary injunction, and also noted the injunction was “in the public interest.” At the time the injunction was issued, one of the attorneys representing the prisoners, Gay Grunfeld of Rosen Bien Galvan & Grunfeld LLP, said, “We are pleased that after almost two years of litigation, our clients and the public will benefit from increased safety and health at the Monterey County Jail.”

In the end, the issuance of the preliminary injunction, which granted almost all of the relief sought by the plaintiffs, left Monterey County with few options other than a negotiated settlement – including a face-saving denial of responsibility for the substandard conditions at the jail.

On November 9, 2015, the district court awarded $4.8 million in attorney fees and costs, as the parties had agreed in the settlement. See: Hernandez v. County of Monterey, U.S.D.C. (N.D. Cal.), Case No. 5:13-cv-02354-PSG. Additional source: Salinas Connection

2015 ANNUAL ANTI-PRIVATE PRISON AWARDS ANNOUNCED

ON MARCH 1, 2016, THE PRIVATE CORRECTIONS INSTITUTE (PCI), a non-profit citizen watchdog organization, announced its 2015 award winners for individual activism, organizational advocacy and excellence in news reporting related to the private prison industry. PCI opposes the privatization of correctional services, including the operation of prisons, jails and other detention facilities by for-profit companies such as Corrections Corporation of America (CCA) and The GEO Group, both of which trade on the New York Stock Exchange.

PCI’s 2015 award for excellence in news reporting on the private prison industry went to Jerry Mitchell, a reporter with The Clarion-Ledger in Jackson, Mississippi, for multiple articles regarding conditions, violence and abuses at for-profit prisons in Mississippi. He also covered the indictments filed against former MS DOC Commissioner Christopher Epps, who took bribes from private prison firms and their consultants. The recipient of a MacArthur Foundation “genius grant,” Jerry previously broke stories that resulted in the prosecution of Civil Rights era murders; he has received numerous other honors and was a Pulitzer finalist.

“This award belongs to the staff of The Clarion-Ledger and especially my boss, Assistant Managing Editor Debbie Skipper, who worked not only with our staff, but with freelancers as well, in producing our series, ‘Hard Look at Hard Time,’ and to oversee our coverage of the corruption indictments of Corrections

Settlement in California Jail Suit Includes $4.8 Million in Attorney Fees, Costs

by Derek Gilna
Commissioner Chris Epps and others,” he said.

Ryann Greenberg was the recipient of PCI's 2015 award for exceptional activism against the privatization of correctional services. Ryann was the driving force behind opposition to a privately-operated immigration detention facility that CCA planned to build just outside Pembroke Pines, Florida. Despite the project being a “done deal,” she rallied support and worked with other activists, and was ultimately successful in defeating it in 2012. [See: PLN, Aug. 2012, p.18].

“The for-profit prison model doesn’t fit into a future for our nation that I would want to be a part of. I had no choice but to step up and get involved,” Ryann said. “I am so happy to see over the last several years the national discussion is being changed and people are recognizing that over-incarceration is not a healthy scenario in this country. Not only is it fiscally irresponsible but it’s not a humane solution.

“From the start of our prison fight we heard the same mantra. It’s a done deal, It’s a done deal. I will never look at the words ‘It’s a done deal’ the same way again,” she continued. “It will forever be a call to action to rise to the occasion. My hope is that people do not accept defeat as an option, but rather spur into action to get involved in their community. The work that other activists and groups are doing is really making a difference on this issue and I’m just happy to be another voice calling out for the end of for-profit prisons.”

Finally, PCI’s 2015 award for outstanding advocacy against the privatization of correctional services went to In the Public Interest (ITPI), a research and policy organization that “promotes the common good and democratic control of public goods and services.” ITPI has consistently opposed for-profit prisons, and in 2013 issued a report titled “Criminal: How Lockup Quotas and ‘Low-Crime Taxes’ Guarantee Profits for Private Prison Corporations.”

“I’m proud that our work has received recognition from the Private Corrections Institute,” said ITPI Executive Director Donald Cohen. “We have big plans for 2016, and this award will inspire our work to oppose privatization in the criminal justice system. Every year, the private corrections industry collects hundreds of millions of dollars in profits from taxpayers. And too often the industry cuts corners to make that profit, which hurts incarcerated people, correctional officers and taxpayers. Opposing privatization in our criminal justice system is a necessary step towards righting the wrongs of the mass incarceration era.”

The Private Corrections Institute’s third annual awards were presented by PCI president (and PLN managing editor) Alex Friedmann, who served ten years behind bars in the 1990s, including six years at a CCA-operated prison, prior to his release in 1999.

“Incarcerating people for the purpose of generating corporate profit is both unacceptable and immoral,” he stated. “We salute those advocates and activists who continue to address this important social issue, and reporters who expose shortcomings and corruption in the private prison industry. We will only see change when the public and policymakers demand change – and PCI’s annual awards seek to raise public awareness about for-profit prisons.”

Source: PCI press release (March 1, 2016)
Prisoners in Texas and their families are still feeling the impact of a botched Texas Department of Criminal Justice (TDCJ) policy change in 2012 that led to the destruction of documents for some 86,000 parole-eligible prisoners, whose files were incomplete when reviewed by the Texas Board of Pardons and Paroles. The snafu led to the shredding of letters of support and other records that could have persuaded the board to grant parole to affected prisoners.

When the mistake finally came to light in 2013, the TDCJ spent around $160,000 to correct it by replacing the shredded documents, even though the parole board never initiated a review to determine whether any prisoners had been adversely impacted by the mix-up.

In August 2012, the TDCJ attempted to streamline the way it handled parole paperwork for the 150,000 prisoners in the state's prison system. Described as a “department largely stuck in the past,” orders came down for administrators to stop filing paper copies of the thousands of documents placed in prisoners’ parole files each month, and to instead file them electronically.

“It made absolutely no sense for us to do this,” recalled state employee Brenda Pisana. It was “a waste of resources… This change was … huge.”

Workers began electronically scanning everything into prisoners’ files, while shredding the original hardcopy documents. What nobody noticed for almost five months was that no one had informed the state parole board of the new policy for keeping track of supporting documents. As a result, the board was reviewing files that were devoid of any supporting documents. As a result, the board did not know how many reviews were actually translated into millions of dollars in additional costs to taxpayers for housing prisoners who might otherwise have been released on parole, had their files contained the supporting documents that were destroyed.

Fixing the mistake reportedly became more an issue of covering it up. “They were scurrying to fix something before somebody found out about it,” said Pisana. “Hurry up and fix it so we can be ahead of the issue when it gets out to the public.”

In response to media inquiries, TDCJ spokesman Jason Clark would not say whether the shredded documents might have led to the release of prisoners who were denied parole.

“You know, how this general correspondence would have influenced the parole decision, I can’t speculate,” Clark told KHOU-TV. “Those decisions come down to the Texas Board of Pardons and Paroles.” He added, “We try to be good stewards of the state’s money but ultimately we identified that there was a problem.”

Harry Battson, a spokesman for the Board of Pardons and Paroles, said the board did not know how many reviews were based on incomplete files, but wrote that parole officials “closely monitored approval rates since December 2012 and identified no discernible differences with previous months.” He admitted, however, that a full year after the board learned of the mistake, officials had not implemented any process to re-examine cases to determine if prisoners had been denied parole due to incomplete files.

“This is stunning,” said Terri Burke, executive director of the American Civil Liberties Union of Texas. “Just stunning to me. They [the parole board] need to correct this. If all the materials weren’t there in someone’s file, then they didn’t get a fair parole review.”

Faith Smith spent months arranging letters of support from friends, family members and even a potential employer for her husband Kris, who was serving a 20-year sentence for robbery. She said she can’t help but wonder if the state’s mistake cost Kris, and perhaps thousands of other prisoners, their chance at freedom.

“Even if it wasn’t me or my husband, there are families out there that are going through the same thing that I go through,” she said. “For those files and those packets to not end up so they could see them and know the information that’s within them, there’s no way they can stand by any of their [parole] decisions.”

In the aftermath of the document shredding, the Board of Pardons and Paroles’ website currently contains specific instructions related to letters and other materials that support prisoners going up for parole, urging family members to “Include information that demonstrates to the parole panel that an offender has a support system in place upon release. Letters may include information regarding employment/potential employment, residence, transportation, available treatment programs (as applicable), or other information the writer feels would be helpful to the parole panel in making their decision.”

The website specifically notes that “Support letters are placed in an offender’s case file and are available to the parole panel during the parole review process.”

Except, apparently, when they are not.

Melene James sued the City of Boise and other defendants in Idaho state court in a 42 U.S.C. § 1983 action, alleging assault, battery, false arrest, wrongful imprisonment and other claims against city police officers, but failed to prevail. In § 1983 suits, federal law provides that the court may “allow the prevailing party, other than the United States, a reasonable attorney’s fee,” but only if it is determined after a hearing that “the plaintiff’s action was frivolous, unreasonable, or without foundation.”

On review, the Idaho Supreme Court choose to disregard that provision of law when deciding to award fees to the defendants. That decision was reversed by the U.S. Supreme Court on January 25, 2016.

In its ruling, the Idaho Supreme Court reasoned that “[a]lthough the Supreme Court may have the authority to limit the discretion of lower federal courts, it does not have the authority to limit the discretion of state courts where such limitation is not contained in the statute.” The state Supreme Court awarded attorneys fees under 42 U.S.C. § 1988 even though it held no hearing to determine whether or not the suit filed by James was frivolous. See: James v. City of Boise, 158 Idaho 713 (Idaho 2015).

The problem with the Idaho court’s decision, of course, is that the rule of federal supremacy provides that states must defer to federal court decisions when a federal law, such as § 1988, is being applied. “It is this Court’s responsibility to say what a [federal] statute means, and once the Court has spoken, it is the duty of other courts to respect that understanding of the governing rule of law,” the U.S. Supreme Court wrote, citing Nitro-Lift Technologies, L.L.C. v. Howard, 133 S.Ct. 500 (2012) (per curiam).

“The state court erred in concluding otherwise,” the Supreme Court held; the case was reversed and remanded for further proceedings. See: James v. City of Boise, 136 S.Ct. 685 (2016).
Prisoners Hang Themselves in Sheriff Joe Arpaio’s Jails at a Rate that Dwarfs Other County Lockups

by Michael Lacey, Phoenix New Times

How many people have died in our sheriff’s jails? On May 4, 2015, I asked a spokesman for Maricopa County, Arizona Sheriff Joe Arpaio for a cadaver count. It was not an idle question.

Since he was elected sheriff in 1993, county taxpayers have shelled out more than $140 million to litigate — and ultimately settle — claims of brutality by the sheriff’s deputies. Lawsuits charge that the sheriff has cultivated a “culture of cruelty” motivated by Arpaio’s incessant trumpeting that he is America’s toughest lawman.

But even if you could kill and maim the indigent and the lawless for free, do we really want a medieval penal system?

So it is a simple, if morbid, question: How many body bags?

Sheriff Joe Arpaio has refused to answer. His spokesman, Lieutenant Brandon James, said doing the math would take a few weeks.

It’s been six months.

Searching other databases (the Office of the County Medical Examiner’s and the Office of Risk Management’s, as well as the U.S. Department of Justice’s) revealed that close to 160 people have died in Arpaio’s jails.

But that is an estimate, because the truth is that no outside authority keeps track of how many people die from brutality, neglect, disease, bad health or old age in Arpaio’s jails. Federal Judge Neil Wake twice has ruled that medical care is so deficient in the jails as to be “unconstitutional.”

The Department of Justice supposedly monitors conditions in the jails but has shown little or no appetite for confronting Arpaio.

What my research discovered is that people hang themselves in the sheriff’s jail at a rate that dwarfs other county lockups.

And many of the deaths are classified as having occurred in the county hospital or in a cell without further explanation. People die and no one asks why; no one asks why. Pursuant to Arizona Revised Statute, Section 39-121 (Arizona’s Public Records law), this information on the deceased is supposed to be public.

But as the sheriff has demonstrated in the eight-plus years and counting of the Melendres lawsuit brought by the ACLU, he believes he is above any law.

At public functions and fundraisers, Arizona’s most venal Italian often breaks into his own cover of Frank Sinatra’s “My Way,” the cornball serenade of masculine neurosis. Voters lap it up. And if there is oversight of his abuse, there certainly is no consequence.

Government authorities responsible for the sheriff’s behavior show no alarm, or knowledge, of the dead carted out of the jails. Not at the federal level; not at the local level.

How can you prevent abuse, how can you reduce damage claims, how can you prevent the hemorrhaging of tax dollars to lawyers and victims if you don’t track the violence?

No one cares.

The sheriff’s charnel house is accepted because the victims are not members of a 4-H club. They are late on child support, use drugs, smoke cigarettes, drive without licenses, have problems with authority, sport ink with gang affiliations.

Some are worse.

When the Sheriff’s Office refused to produce what is supposed to be public information, I turned to the Medical Examiner’s Office.

Surprisingly, it does not monitor the deaths in Sheriff Joe’s lockup.

“I apologize for the delay in responding to your request,” wrote Lavinia Shaw from the M.E.’s Office. “We have been working diligently with our IT department in an effort to search our database for the information you requested.... We searched all cases that fell [within the] MCSO’s jurisdiction ... for the following key words: jail, inmate, cell, incarcerated, in custody and prison.... Some of the inmates were transferred to the hospital where they later died.”

More on that final point later.

Initially, the M.E.’s Office could do only a partial search, from 1999 to 2015. Before that, the records involved a paper search of more than 20,000 cases that would have cost this newspaper up to $60,000 for the years 1993 to 1998.

At the same time, I surveyed the County’s Office of Risk Management and found that more than 13,000 claims were filed against the Sheriff’s Office over mistreatment, abuse and ultimately death.

During the reign of Sheriff Joe Arpaio, research requested and provided from the coroner’s office showed 157 deaths.

In and of itself, the number is not necessarily out of line with jail deaths in other jurisdictions.

But digging into this data raises troubling questions, particularly when compared with jails across America.

Suicide is an all-too-frequent consequence of incarceration.

In jailhouse deaths across the nation, the U.S. Department of Justice notes the following rates of suicide over a three-year period from 2000 to 2002:

• Los Angeles: 11 percent.
• New York: 9 percent.
• Cook County (Chicago): 6 percent.
• Philadelphia: 14 percent.
• Harris County (Houston): 13 percent.
• Dade County (Miami): 6 percent.

From 1996 to 2015, the suicide rate among jail deaths in Sheriff Joe Arpaio’s lockups was an astounding 24 percent, with 39 of the 157 hanging themselves.

Furthermore, of the 157 deaths listed on the sheriff’s watch on the M.E.’s chart, 34 simply are tagged as having been found dead with no explanation as to cause of death. More mysteriously, another 39 died in the county hospital without explanation.

That’s 73 deaths — nearly half of all deaths — that county authorities list as “who knows?”

Of course, all these numbers are generated by the very people who should be responsible for preventing abusive deaths: jailers and their enablers.

So questions present themselves.

For example, prisoner Felix Torres is listed as simply dying in the hospital on the M.E.’s chart.

True enough. That’s where he was pronounced dead.

But it’s not where he died.

Felix Torres was a construction worker bicycling to his job when police stopped...
him for pedaling in the wrong direction. The stop ended with a trip to jail because Torres had an outstanding warrant for failure to appear.

During jail intake, he informed Arpaio’s staff that he had a very bad ulcer.

Once in the jail, Torres complained about pain in his stomach.

He was ignored by the medical staff.

He became seriously ill, vomiting, defecating and enduring hour after hour of agony, all while screaming for help.

To shut him up, the nursing staff gave him the one drug, Toradol, that you never give to someone with ulcers.

It flat-out killed him.

EMTs took the corpse to the hospital.

I know about all this because I wrote about Torres in June 2015.

So when county officials say Torres died in a hospital, this hardly covers the bill of particulars.

If you look up what the M.E.’s Office is responsible for, you find: “The medical examiner determines the cause and manner of death ... provides medicolegal investigations into all deaths requiring a public inquiry to determine and record the cause and manner of death for the families of the decedent, and the legal and medical community so that they can effect a resolution and have closure, affix responsibility and protect public health and safety.”

None of this occurred in nearly half of the sheriff’s deaths, according to the report supplied to us.

Chief County Medical Examiner Jeffrey Johnson’s office has not “determined the cause and manner of death,” no “medicolegal investigations into all deaths” occurred, the “families of the decedent” ... found no “resolution and closure.”

And certainly the M.E.’s Office “affixed no responsibility.”

Furthermore, though the data provided by the M.E.’s Office covered 1996 to the present in some detail, no mention is made in the data supplied of the outrageous death of Deborah Braillard.

She’s not even an anonymous digit. She is unaccounted for in the tally.

I wrote about Braillard’s unnecessary death in 2010.

A loving mother with a petty drug appetite, her real issue was that she was diabetic.

Though informed that she was a diabetic, the staff in the jail paid no heed.

In fact, jail records documented that she was a diabetic that needed insulin to survive.

The jailers ignored their own records.

A cellmate described Braillard:

“She was unconscious,” said Tamela Harper. “She wasn’t hardly there. She walked back to her bunk, and that was the last time I saw that lady walking. People [other prisoners] were helping her. She was throwing up constantly. The next day she started moaning and groaning and throwing up. She was basically unconscious at the time. She couldn’t speak. She couldn’t eat. The officers kept saying she was kicking heroin.”

For the next 60 hours, Deborah Braillard suffered the agonies of hell as she went into a diabetic coma.

She died because jailers did not administer insulin.

There was ample testimony that the jailers believed they could ignore her because Braillard was kicking heroin.

She was not kicking heroin.

But even had she been kicking heroin, the jailers are duty-bound to get medical attention for the effects of withdrawal.

Sheriff Joe Arpaio’s jailers and medical staff did nothing for this woman. Later, the county would pay millions to her survivors.

So when I consider Felix Torres, who died, according to the M.E., in the hospital, I believe the M.E.’s Office has shirked its responsibility to fully monitor the deaths in Joe Arpaio’s jail.

And when I see that Deborah Braillard is not even on the M.E.’s list, I understand why Sheriff Arpaio gets away with a procession of body bags gurneys out of his jail. The sheriff doesn’t care. The M.E.’s Office doesn’t care. The county’s Board of Supervisors doesn’t care.

And since 1993, Sheriff Joe Arpaio has been bulletproof at the polls.

In the face of so much official neglect – underscored by voters’ ambivalence – Sheriff Joe Arpaio’s “My Way” might more accurately be styled “Our Way.”

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Prison Legal News
Use of Nutraloaf on the Decline in U.S. Prisons
by Christopher Zoukis

After decades of using food as a means of discipline, prison officials across the country are increasingly turning away from punitive diets as a response to misbehavior by prisoners.

One food that has been commonly used as punishment is known as “nutraloaf” – a concoction of mashed-together ingredients that are baked into a brick-like loaf designed to meet basic nutritional guidelines, but which is deliberately made with a bland and unappealing flavor. Recipes vary from state to state, but usually include some kind of meat, potatoes, rice, beans and other vegetables or grains. At some facilities, nutraloaf is simply leftovers from the day’s meals dumped into a blender and then cooked.

Historically, the use of such punitive diets has been limited to disciplinary units, Special Housing Units and other segregation cells. For the most part, prisoners receive nutraloaf or similar meals in response to food-related misconduct, such as throwing food at guards, though in some facilities nutraloaf can be imposed for a wide variety of disciplinary and security management reasons.

Using food as punishment has been a practice in American prisons since the 19th century, when bread and water diets were a common tool for making prisoners behave. In the 1970s, Arkansas prison officials popularized the use of “grue,” made by combining “meat, potatoes, oleo [margarine], syrup, vegetables, eggs, and seasoning into a paste and baking the mixture in a pan,” according to a court ruling. The use of “grue” was discontinued after a federal court found its use in a segregation unit to be a component of unconstitutional conditions. See: Hutto v. Finney, 410 F.Supp. 251 (E.D. Ark. 1976), aff’d, 548 F.2d 740 (8th Cir. 1976), aff’d, 437 U.S. 678 (1978).

Before falling from favor, the use of punitive meals was popularized over several decades. At least a dozen state prison systems still use some form of nutraloaf or food loaf, and Benson Li, food service director for the Los Angeles County Jail and former president of the Association of Correctional Food Service Affiliates, said over 100 facilities across the nation utilize food as a form of punishment.

The Florida Department of Corrections (FDOC) continues to use nutraloaf in special management units, according to a February 9, 2016 report by radio station WUFT-FM, though state prison officials claimed it was “not used for disciplinary reasons.” PLN managing editor Alex Friedmann disagreed.

“The bottom line is it is a form of punishment,” he said. “They don’t serve the loaf to the general population or the officers.” He also noted that other prison systems are able to maintain discipline without resorting to nutraloaf, adding, “When you create a food item that is so unpalatable that prisoners just can’t eat it ... then, in effect, you are denying people food.”

The FDOC’s nutraloaf recipe consists of carrots, spinach, dried beans, vegetable oil, tomato paste, water, grits and oatmeal, mixed and baked for 30 to 40 minutes. In Pennsylvania prisons, “food loaf” is made with milk, rice, potatoes, carrots, cabbage, oatmeal and beans.

Litigation has fueled growing resistance to the use of nutraloaf in recent years. At least 22 lawsuits related to punishment diets have been filed since 2012, when the Seventh Circuit Court of Appeals held that nutraloaf could serve as the basis for an Eighth Amendment claim when actual injury was alleged. See: Prude v. Clarke, 675 F.3d 732 (7th Cir. 2012) [PLN, May 2013, p.28].

The American Civil Liberties Union has stated that punitive diets such as nutraloaf are “sort of legally right on the line,” although the American Correctional Association (ACA), which establishes accreditation standards for correctional facilities, discourages them. An informal survey by Li found that 40 percent of the prisons that responded indicated the use of nutraloaf was decreasing.

As noted by David Fathi, director of the ACLU’s National Prison Project, “The fading use of nutraloaf is part of a larger long-term trend toward professionalization, and, in most respects, more humane conditions.”

The prison systems in California, Massachusetts, Minnesota and New York have banned nutraloaf as a disciplinary tool.

“It goes to the heart of the question of what is the purpose of prison: is it meant to be retributive or is it meant to be rehabilitative?” asked Heather Ann Thompson, a mass incarceration historian at the University of Michigan. “We want people to come back healthier, not less healthy. So nutraloaf is a very shortsighted way of dealing with punishment, at the very least.”

Those who are working to provide healthier prison meals find themselves fighting a constant battle between improving the menu and staying within limited budgets. Laurie Maurino, a registered dietician and the food administrator for the California Department of Corrections and Rehabilitation, said her focus is on creating healthy, lower-sodium meals that prisoners will still want to eat.

“We’re not serving them steak and lobster or anything,” she stated. “But food is the one thing that inmates look forward to in a day. Inmates with full stomachs are happy inmates, they’re not going to be getting in fights. A lot of times riots have started after a bad meal.”

The New York State Department of Corrections and Community Supervision has reported a dramatic decline in the use of nutraloaf as a form of punishment. The department served nutraloaf almost 1,000 times in 2010 according to spokesperson Taylor Vogt, but by 2014 that number had fallen to just 385. Nutraloaf was discontinued in New York prisons in December 2015.

In Vermont, the state Supreme Court ruled in March 2009 that prison officials must hold a hearing with due process protections before imposing a nutraloaf diet. [See: PLN, Aug. 2009, p.32]. As a result, the use of nutraloaf has declined significantly.

“I was just really offended by the idea that in a civilized society we would do that to people, no matter what they did,” said Seth Lipschutz, the attorney who argued the case. “Since we won, this stuff is hardly ever used in Vermont. It’s still technically on the books but they have to give inmates procedural due process now. But they don’t use it because they figured out how to get along without needing it.”

One jail official who plans to continue
using food as punishment – and who makes no apology for it – is Joe Arpaio, the infamous sheriff in Maricopa County, Arizona, who won a lawsuit filed by prisoners challenging nutraloaf diets.

“When they assault our officers or do something wrong, we place them in lockdown and take away their regular meals,” Arpaio said. “They won’t do it again if they like the regular food.”

In a video posted online, the sheriff was shown taste-testing nutraloaf. His assessment: “You know, quite frankly, I wouldn’t eat this.”


New Federal Law that Brands Sex Offenders’ Passports Faces Court Challenge

by Derek Gilna

First it was the so-called “War on Drugs,” complete with military-themed anti-drug task forces and disproportionately long prison sentences primarily reserved for poor people of color, which had little impact on U.S. drug consumption. Now it appears that war is being supplanted by an offensive on U.S. drug consumption. Now it appears poor people of color, which had little impact long prison sentences primarily reserved for anti-drug task forces and disproportionately

A new federal statute, the “International Megan’s Law to Prevent Child Exploitation and Other Sexual Crimes Through Advanced Notification of Traveling Sex Offenders,” or IML, was recently signed into law by President Obama. The legislation requires that U.S. passports must designate when the passport holder has been convicted of a sex offense. However, prisoners’ rights advocates are already filing legal challenges to what they argue is prosecution of sex offenders who have completed their prison sentences.

One of those groups, Reform Sex Offender Laws, Inc. (RSOL), said it was unfortunate that for the first time in the history of the United States, the passports of a class of American citizens will be “branded.” The citizens of this nation should be afraid, very afraid, that a unique identifier will soon be added to their passports,” according to RSOL spokesperson Brenda Jones. “Who will be the next targeted group?”

The first challenge to the IML was filed in federal district court in California on February 9, 2016. That lawsuit, which names Secretary of State John Kerry as a defendant, alleges that “the IML imposes a proverbial Scarlet Letter and compels speech in violation of the First Amendment by forcing Covered Individuals to identify themselves publicly as ‘sex offenders’ on their United States passport, which serves both as a primary form of identification within the United States as well as an essential international travel document.” See: John Doe v. Kerry, U.S.D.C. (N.D. Cal.), Case No. 4:16-cv-00654-PJH.

The suit, filed by attorney Janice M. Bellucci with California RSOL, will likely rely on the decision in Wooley v. Maynard, 430 U.S. 705 (1997), which held the government cannot force someone to carry the government’s message, which is in effect what the new law would require sex offenders to do.

Another factor apparently not taken into account by either Congress or President Obama is the fact that sex offenders are already required to register with local law enforcement agencies, which must be notified when they plan to travel, including internationally.

Apparently the authors, sponsors and supporters of the new law were not aware of the fact that according to Bureau of Justice Statistics data, the recidivism rate for sex offenders is only 5.3% for committing new sex crimes – much lower than the rate for almost every other criminal offense. But then the government apparently believes it’s not enough to sentence sex offenders to long prison terms; they must also be punished long after their release, including by having their passports “branded” with the nature of their offense.

Galen Baughman, a Soros Fellow with the Human Rights Defense Center, PLN’s parent organization, is currently working on a separate legal challenge to the IML.

Lifetime Registration of Low-level Sex Offenders found Excessive, Unconstitutional in New Hampshire

The New Hampshire Supreme Court held in February 2015 that requiring lifetime registration without review of the risk that low-level sex offenders present to the public is unconstitutional. The Court ordered that such offenders must be provided an initial risk hearing and periodic opportunities for further hearings if they are initially found to pose a risk.

The petitioner, John Doe, was convicted in 1987 of two counts of aggravated felonious sexual assault. He served a prison sentence, completed sex counseling and was released from probation in 1990. He became subject to registration as a sex offender on January 1, 1994, but did not become aware of that requirement until 2004.

After he registered, he endured the stigma and repercussions that accompany being on the sex offender registry. Neighbors of his son petitioned the landlord to prevent Doe from moving in with his son, and he was denied public housing. Doe sought a declaratory judgment that registration law was unconstitutional as applied to him because it violated the ex post facto law.

The trial court denied his petition.

In an appeal in which PLN joined in an amicus brief, Doe pressed his claims. The state Supreme Court noted that since the registration law went into effect, it had been amended several times, incrementally increasing the burdens and intrusiveness of the registration requirements with each amendment.

The Court first examined whether the law was regulatory or punitive in nature. It held “the legislature intended the act to be regulatory,” but also found “some indications of a punitive intent, especially when considering the more recent amendments.” In the end, the Court could not “conclude the legislature intended the act to be punitive.”

It then turned to examine whether the statute’s effects were punitive. To make that determination, the Court utilized the seven-prong test in Kennedy v Mendoza-Martinez, 372 U.S. 144 (1963).

That analysis led the Supreme Court to conclude that while there is a regulatory purpose underlying the statute, as currently constituted it is excessive when compared to the purpose and past versions of the law.

Specifically, the Court held that requiring “all tier II and tier III offenders be registered for life without regard to whether they pose a current risk to the public” was excessive. As such, the statute had a punitive effect on Doe. It was this provision alone that led the Court to its conclusion that a risk assessment hearing was required.

Therefore, the Supreme Court ordered the trial court to hold a hearing to determine whether Doe “poses a risk to justify continued registration,” until the legislature establishes alternative procedures for initial and periodic hearings to make that determination. This, the Court held, would remedy the ex post facto violation inherent in the law. The Court further held that Doe had received all the process he was due with respect to being subject to the registration statute during his criminal case proceedings. See: Doe v. State of New Hampshire, 167 N.H. 382, 111 A.3d 1077 (N.H. 2015).

$11.3 Million Jury Award for Former Colorado Jail Prisoner

by Matt Clarke

A federal jury awarded a former Jefferson County Detention Center prisoner more than $11 million against the sheriff and the jail’s privately-contracted medical provider, Correctional Healthcare Companies (CHC) – now Correct Care Solutions – after he was denied medical treatment for at least 16 hours despite obvious signs of a stroke. Following the verdict, the suit settled under confidential terms.

In 2012, Kenneth McGill, 44, was serving a sentence for DUI at the Jefferson County jail in Golden, Colorado. He was working in the kitchen when he had a sudden, severe headache accompanied by dizziness. A nurse told him he was probably dehydrated and needed to drink some water.

Later, McGill had trouble “navigating” the stairs. A deputy took him to the infirmary using a wheelchair. There, a physician’s assistant conducted some tests and sent him back to his housing unit.

According to court documents, his symptoms increased drastically while he was watching a football game in the common area. Another prisoner told him the right side of his face was drooping and he was likely having a stroke.

McGill called his wife. In the recorded conversation, an obviously terrified McGill told her, “My whole right side is numb. I can’t talk. You don’t know how hard it is to even talk.”

A fellow prisoner convinced a deputy that McGill needed medical attention. He was again wheeled to the medical unit where he was seen by RN Gina Marie Battenhouse. When McGill told Battenhouse that he thought he was having a stroke and required hospital care, she sarcastically replied, “Are you a doctor? Have you had a stroke before? What do you know about strokes?”

Battenhouse did not chart McGill’s drooping face, and falsely charted that he could walk around the room normally, despite his being unable to do so and having been brought to the medical unit in a wheelchair. She told him he was having a panic attack and sent him back to his housing area for bed rest.

Yet another prisoner – a former paramedic – convinced another deputy to call a different nurse. She arrived saying, “I’m just here to give him ibuprofen.”

McGill was later placed in a special housing cell for observation as punishment for repeatedly requesting medical assistance. The cell had no mattress. “He was intentionally and punitively left to lie on the concrete floor ... thinking he was dying – for almost seven hours.”

McGill was finally seen by a physician who examined him, then, instead of immediately transporting him to a hospital, called the nursing staff in to berate them for ignoring a stroke. About an hour later, deputies took McGill to the outpatient area of a local hospital instead of the emergency room, further delaying his treatment. An MRI confirmed he arrived at the hospital “well over 16 hours after the likely beginning of his first stroke.”
There was evidence the delay caused McGill to suffer permanent injuries, including limping, dizziness, partial paralysis, cognitive impairment and difficulty multi-tasking. With the assistance of Denver attorneys Anna C. Holland and Erica T. Grossman, he filed a federal lawsuit against CHC, Battenhouse and Jefferson County Sheriff Ted Mink under 42 U.S.C. § 1983, alleging violations of his constitutional rights and negligence. Following a ten-day trial in December 2014, the jury awarded him $2,848,981 in compensatory damages plus punitive damages of $854,994 against Battenhouse and $7,694,951 against CHC for a total award of $11,398,926. The parties then entered into a confidential settlement, and the case was dismissed in early 2015. See: McGill v. Correctional Healthcare Companies, U.S.D.C. (D. Co.), Case No. 1:13-cv-01080-RBJ-BNB.

Battenhouse remains a registered nurse, and no discipline was taken against her by the Colorado Department of Regulatory Agencies.

Additional sources: Denver Post, Federal Verdict Reporter

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**Texas Disciplinary Appeals Board Upholds Disbarment of State Prosecutor**

On February 8, 2016, the Texas Board of Disciplinary Appeals, appointed by the state Supreme Court, upheld the disbarment of former prosecutor Charles J. Sebesta, Jr. for using tainted testimony and false statements to obtain a death sentence against now-exonerated former prisoner Anthony Graves. Graves served 18 years in prison, including a dozen years on death row, before a special prosecutor determined in 2010 that there was no credible evidence he had been involved in setting a fire that killed six people. [See: PLN, June 2012, p.16; April 2012, p.22].

Graves had actively sought to have Sebesta disbarred and filed a grievance with the Texas State Bar in January 2014. Over a year later, the organization’s Office of Disciplinary Counsel found “just cause” to hold a disciplinary hearing on ethics violations.

Sebesta, who was initially disbarred by a three-member evidentiary panel on June 11, 2015 following a four-day hearing, vigorously maintained on appeal that he was being unfairly treated and that Graves’ conviction was just.

“In rejecting Sebesta’s argument, the Board of Disciplinary Appeals found that Charles Sebesta’s misconduct was so egregious that they characterized him as having ‘unclean hands.’ That certainly is a fitting description,” said Graves’ pro bono attorney, Neal Manne. See: Commission for Lawyer Discipline v. Sebesta, TBDA No. 56406.

In 2013 another former Texas prosecutor, Ken Anderson, served four days in jail and forfeited his law license for intentionally concealing evidence to secure a murder conviction against Michael Morton. Morton served almost 25 years of a life sentence before he was exonerated and freed in 2011. [See: PLN, Nov. 2014, p.1].


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A winter outbreak of the H1N1 flu virus is being blamed for the death of one prisoner and sickening 40 others, including five staff members, at the Putnamville Correctional Facility in Greencastle, Indiana in January 2016. Some of the prisoners were in serious enough condition to require hospitalization at the nearby Terre Haute Regional Hospital. And while prison officials defended their response to the outbreak, prisoners’ family members were critical.

“I don’t think the response has been very good because I’ve tried to personally contact them and I was constantly given the run around,” Rhonda Williams told reporters for WISH-TV. Williams said her son, who was serving time at the Putnamville facility, was only offered a flu shot after he was already sick.

The TV station reported that other family members had come forward to complain the prison was dirty and that protective masks were provided only to prisoners who were also already ill.

Prison Superintendent Brian Smith told reporters at a January 26, 2016 news conference that the outbreak of H1N1 – a strain of swine flu – began on January 16, but that prison staff were not made aware of the incident until one day before a public announcement. Smith said masks were not provided to prisoners until the afternoon of the news conference.

“I didn’t realize the severity of it until Saturday,” Smith said. “We had a situation with the guy that passed away but then the other guy didn’t get sick until Saturday.”

In response to the outbreak, prison officials sanitized parts of the facility, such as common areas, with bleach, germicides and other cleaners. In addition, staff members and prisoners were offered masks and hand sanitizer, and flu shots were given to anyone who requested them.

Despite criticism from prisoners’ families, Indiana Department of Correction Medical Director Dr. Michael Mitcheff praised the facility’s efforts.

“I think the prison’s response was excellent,” Mitcheff stated. “I think the staff proactively admitted patients to the observation unit to keep them – I think the superintendent was as proactive as I’ve even seen.”

Mitcheff said those who became especially ill had complications due to MRSA, a serious staph infection that is often resistant to antibiotics. He said the prisoner who died was 35 years old and had developed both MRSA and pneumonia, as well as being afflicted with the H1N1 virus. The prisoner’s family requested that his name not be released.

This past winter’s flu outbreak is just the latest to plague prison systems in a number of states. A similar H1N1 outbreak in 2014 in California and a mysterious flu-like bug in Indiana and Arkansas killed at least two prisoners, prompted the quarantine of hundreds more and compelled at least one federal judge to suspend criminal proceedings in his court “in order to assure the health and safety” of judicial staff, attorneys and the general public.

One day after the Fresno County, California Sheriff’s Office announced the death of 60-year-old prisoner Francisco Rosales Gamboa due to H1N1, and diagnosed three other prisoners with the virus on January 13, 2014, U.S. District Court Judge Lawrence J. O’Neill ordered a week-long suspension of proceedings involving Fresno County jail prisoners.

“Of particular significance is the medical information that a person who has the virus is contagious for twenty-four (24) hours before they are symptomatic,” O’Neill’s order said, “and precluding exposure of the inmate population to others outside of the jail is the very safest thing to do from a proactive and preventative standpoint.” See: In re Health Emergency, U.S.D.C. (E.D. Cal.), Case No. 1:14-MC-00003.

“It is the right thing to do to protect everyone’s health,” agreed Fresno defense attorney Anthony Capozzi, who added that the order to suspend proceedings was a first in the 41 years he had been practicing law. Capozzi said the major impact of Judge O’Neill’s order was to delay sentencing hearings in federal criminal cases.

More than 300 prisoners at the Fresno County jail were quarantined after Rosales Gamboa’s death, and at least nine showed H1N1-like symptoms. Rosales Gamboa had been jailed since September 2013 on a drunk driving charge, and was also being held on a federal immigration detainer.

Farther north, officials at the Elmwood Correctional Facility in Milpitas, California, near San Francisco, reported on January 14, 2014 that three prisoners had been diagnosed with H1N1 and four more had symptoms. Prisoners were still being transported to court hearings, but non-official visitors to the jail were turned away for nearly a week.

“We’re also giving our staff the proper equipment – masks and gloves – to make sure they can take care of the inmates,” said Santa Clara County Sheriff Sgt. Kurtis Stenderup.

Across the country, meanwhile, around 240 female prisoners at the McPherson Unit in Newport, Arkansas were quarantined after an unidentified 42-year-old woman died of flu-like symptoms on January 11, 2014. Although prison officials said she did not test positive for H1N1, they brought in extra doctors and nurses to examine the nearly 900 prisoners at the facility and to
treat others who might be affected. The quarantine had ended by January 16, 2014, Shea Wilson, a spokesperson for the Arkansas Department of Correction, told Prison Legal News.

“Two housing areas of the McPherson Unit were placed under quarantine due to flu-like symptoms,” she said. “Those restrictions have been lifted.”

When asked whether the flu vaccine was made available to prisoners, Wilson told PLN, “We do offer flu shots to all inmates, but they have the option of not taking them.”

Finally, in Indiana, where three people statewide died from the flu during the same winter, prisoners at the Allen County jail were given masks to prevent the spread of influenza after several began exhibiting flu-like symptoms, even though jail officials refused to confirm that an outbreak had occurred.

According to Allen County Sheriff’s Department spokesman Jeremy Tinkel, the jail was simply taking precautions, and was working with county health officials to have prisoners vaccinated.

Prisoners are at greater risk from communicable diseases such as H1N1 and other forms of the flu due to their confined living conditions and reliance on prison or jail medical staff for treatment. [See, e.g., PLN, Aug. 2007, p.1].

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**$360,000 Verdict Against Indiana Sheriff for Denying Prompt Court Hearings**

An Indiana federal court awarded nearly $360,000 in a class-action lawsuit alleging the Allen County Sheriff’s Office violated arrestees’ due process rights by failing to bring them before a court within 48 hours.

The class consisted of 962 people who had been arrested on a weekend. According to the practice of then-Allen County Sheriff Ken Fries, those arrestees were not brought before a judge for a hearing within 48 hours as required by a 1991 U.S. Supreme Court decision.

After lead plaintiff LaTasha Myatt filed suit, Fries admitted that that practice was illegal. A consent decree was entered on behalf of the class members, and the case then went to a jury to determine the value of the plaintiffs’ loss of liberty while jailed over a weekend.

The district court instructed the jury to value the deprivation according to five time frames: 1) 0-12 hours, 2) 12-24 hours, 3) 24-36 hours, 4) 36-48 hours and 5) more than 48 hours. The jury heard testimony from fifteen class members over a five-day trial.

The January 2015 verdict did not adjudicate damages for individual class members, but instead awarded monetary amounts ranging from $200 for the first time frame to $1,100 for the fifth. The total jury award was approximately $360,000. On October 23, 2015, the court awarded $271,355 in attorney’s fees and $2,186.77 in costs against the county. The class members were represented by Fort Wayne attorneys Christopher C. Meyers and Ilene M. Smith. See: Myatt v. Fries, U.S.D.C. (N.D. Ind.), Case No. 1:10-cv-00064-TLS-SLC.
Proposition 83, passed in 2006 by California voters and popularly known as Jessica’s Law, had the stated aim of protecting children from sex offenders. It was later codified at Pen. Code § 3003.5(b), but on March 2, 2015 the California Supreme Court struck down those parts of the law that restrict people convicted of sex crimes prior to Prop 83’s enactment from finding suitable housing after their release from custody. The law prohibited certain sex offenders, as defined by statute, from residing within 2,000 feet of any public or private school or park where children might congregate.

Prisoners’ rights advocates had argued that the restrictions prevented many people who had been convicted prior to the law’s enactment from residing in other than marginal areas, and violated the constitutional prohibition against ex post facto laws. The Supreme Court agreed, finding the law unconstitutional as applied to registered sex offenders on parole in San Diego County, where the suit was initially brought. The Court’s opinion noted that along with difficulty finding housing, parolees had experienced problems securing employment, medical care and other social services such as substance abuse treatment.

The California Department of Corrections and Rehabilitation (CDCR) had begun to violate sex offender parolees through blanket enforcement of Jessica’s Law, including the plaintiffs who challenged the statute, some of whom were returned to prison on parole violations. CDCR statistics showed that over a third of the registered sex offenders in San Diego County were classified as homeless or transient, and as a result were difficult to monitor for parole compliance. Further, a report prepared with the CDCR’s assistance showed that 3003.5(b) had not improved public safety and in fact had reduced it.

The state Supreme Court found that the CDCR had engaged in “arbitrary and oppressive enforcement action” of Jessica’s Law, which had actually made the community less safe. The Court did, however, concede that the CDCR retained the authority to tailor its parole conditions for each individual parolee under its jurisdiction, “including residency restrictions that may be more or less restrictive than those found in section 3003.5(b),” provided they could show the restrictions are supported by the parolee’s “particularized circumstances.”

The California Supreme Court’s ruling affirmed an order of the Court of Appeal, 4th Appellate District. See: In re Taylor, 60 Cal. 4th 1019, 343 P.3d 867 (Cal. 2015).

Exonerated New York Prisoner Recovers $21.9 Million in Damages

An exonerated former New York prisoner received $21.9 million as a result of settlements and a jury verdict in a federal lawsuit claiming that law enforcement officials were responsible for his wrongful convictions for rape and homicide.

Jeffrey Deskovic, 16, was arrested in January 1990 for the murder of 15-year-old Angela Correa in Peekskill. His arrest was based on a confession obtained during a six-hour police interrogation, which was not attended by his parents or an attorney.

After a jury found him guilty in December 1990, Deskovic was sentenced to 15 years to life; he served almost 16 years in prison. His conviction was vacated in September 2006 after DNA evidence connected the semen recovered from the victim to another suspect, Stephen Cunningham, who ultimately admitted he had raped and murdered Correa.

Following his release, Deskovic filed a civil rights action alleging he was denied due process, maliciously prosecuted and falsely incarcerated. One of the defendants was Deskovic’s court-appointed attorney from the Legal Aid Society, who reached an undisclosed settlement in 2010.

In 2011, police officers Walter Brovarski, David Levine, Thomas McIntyre and Eugene Tumulo, plus the City of Peekskill, agreed to a settlement that required the city to pay $5.4 million. Westchester County Coroners Millard Hyland and Dr. Louis Roh then reached a $6.5 million settlement which resolved Deskovic’s claims against Westchester County.

The matter proceeded to trial against former investigator Daniel Stephens, who was employed by the Putnam County Sheriff’s Department. Deskovic alleged that “Stephens and the other investigators disclosed confidential details of the investigation,” hoping that he “would retain that information, incorporate it into his own account of the incident, and thereby implicate himself,” according to Verdictsearch.com.

Deskovic further claimed his conviction was aided by fabrications. His attorneys argued that prosecutors knew the semen found in the victim could not be linked to him, and Stephens manufactured false evidence indicating the semen was the residual product of a sexual encounter not linked to the rape and murder.

Prior to the jury trial, which began in October 2014, the parties stipulated to $1.65 million in lost wages during Deskovic’s incarceration. The jury returned a verdict of $40 million upon finding that Stephens had coerced Deskovic’s confession and fabricated evidence, but the parties had agreed in advance that damages would be capped at $10 million under a high-low settlement agreement.

“I feel elated. The jury obviously saw that Daniel Stephens’ testimony was not truthful,” Deskovic stated after the verdict.
“I feel like I finally got the fair trial I never got before.”

Combined with the $11.9 million in pretrial settlements, Deskovic received a total of $21.9 million, inclusive of attorney fees and costs. The settlement was finalized and the case closed in March 2015; Deskovic was represented by attorneys with the law firm of Neufeld, Scheck & Brustin, LLP. See: Deskovic v. City of Peekskill, U.S.D.C. (S.D. NY), Case No. 7:07-cv-08150-KMK.

PLN previously published an interview with Jeff Deskovic, and ran his article on www.lohud.com, www.nbcnewyork.com

Jay College of Criminal Justice.

In 2013, just over a year of the pretrial settlements, Deskovic used some of his settlement funds to create the Jeffrey Deskovic Foundation for Justice, a New York City-based non-profit organization that works on wrongful conviction cases. Further, following his release from prison he graduated with criminal justice degrees from the John Jay College of Criminal Justice.


“After just over a year of increased scrutiny for prison visitors, presumably to stem the flow of drugs and other contraband into California’s 35 state correctional facilities, prison officials announced in January 2016 that they would end the controversial practice of strip searching visitors who fail preliminary drug screens.

In November 2014, California’s prison system rolled out a program that placed drug-sniffing dogs and ion scanners at eleven facilities, to conduct random drug screens of visitors and employees. Funded by a $5.2 million grant for the airport-style scanners in addition to a pre-existing $3 million K9 program, the initiative imposed increasingly severe sanctions on visitors who failed drug dog screens or ion scans – including strip searches and loss of visits.

On January 11, 2016, California Department of Corrections and Rehabilitation (CDCR) spokeswoman Dana Simas said that pursuant to revised regulations, visitors will be screened by non-threatening drug alert dogs that sit when they detect contraband or by the use of ion scanner technology. Visitors who raise alerts will be subjected to clothed searches and forfeit a contact visit, whether or not drugs are found. If the search is refused, the visit will be canceled. For a second refusal, the CDCR will impose a 30-day loss of visiting privileges; a third could mean no visits for a year. Visitors who refuse a fourth search face permanent revocation of their visiting privileges.

Governor Jerry Brown’s proposed state budget includes nearly $8 million to cover the annual cost of intensive visitor drug screening at California prisons. Presumably the CDCR conducts similar searches of employees, who are a more likely source for smuggling in drugs and other contraband.

Sources: Los Angeles Times, http://sacramento.cbslocal.com

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Raymond Leo Jarlik Bell, convicted of filing false income tax returns to obtain fraudulent refunds, appealed his 97-month federal prison sentence on three grounds, including whether the judge committed Sixth Amendment error by failing to prompt him to present a closing argument; whether the government presented sufficient evidence to prove its case; and whether he could be ordered to abstain from alcohol and drug use, and enroll in substance abuse treatment, as a condition of his three-year term of supervised release.

Bell, who acted as his own attorney at trial and apparently subscribed to some variation of the “sovereign citizen” movement, failed to present a closing argument and did not preserve that issue for appeal. He argued that the district court judge's failure to prompt him to make a closing argument violated his rights under the Sixth Amendment, but the appellate court found no “plain error” and held the judge was under no obligation to do so.

Bell’s assertion that the government had failed to present evidence sufficient to convict him of filing fraudulent tax returns was also unsuccessful, as the Ninth Circuit found that “a rational jury could find beyond a reasonable doubt that Bell assisted [his son] Steven Bell in preparing the latter's fraudulent returns.”

However, Bell met with more success in his challenge to a court-ordered condition of supervised release that required him to “participate ... for treatment of narcotic addiction, drug dependency, or substance abuse,” and to “abstain from the use of alcohol and/or other intoxicants.” Those conditions were also reviewed under the plain error standard, as Bell did not object to them before the trial court.

The Court of Appeals noted that “the present record contains no information about Bell’s substance abuse history because he refused to cooperate with the Probation Department during the presentence investigation. We vacate the challenged conditions and remand with instructions that the district court explain its reasons for imposing the special conditions for Bell’s supervised release, if the court chooses to re-impose them.”

Accordingly, the district court’s judgment was affirmed in part, vacated in part and remanded. Bell filed a petition for writ of certiorari with the U.S. Supreme Court, which was denied on April 20, 2015. See: United States v. Bell, 770 F.3d 1253 (9th Cir. 2014), cert. denied. [4]

$2.5 Million Award for Wrongfully Convicted Former Michigan Prisoner

An exonerated Michigan man will receive $2.5 million for his almost 26 years of wrongful incarceration. He was released from prison after it was discovered that Detroit police had tainted the victim's identification and withheld exculpatory evidence.

Walter Swift was 21 when he was arrested on September 16, 1982 for the home invasion, rape and armed robbery of a pregnant woman in the presence of her infant son.

The victim identified the perpetrator as being 15-18 years old, without facial hair and with an unusual hairstyle that included braids. Eight days after the rape, Detroit police officer Janice Paavola-Nobliski showed the victim over 500 pictures in photo lineups. The victim identified seven men as having “similar” features as her assailant.

After the victim made that comment for the seventh time, Paavola-Nobliski “arbitrarily decided that the next person the victim selected having features similar to the perpetrator would be arrested and brought in for an in-person line-up identification,” according to Swift’s civil rights complaint.

The victim then commented that Swift's eyes were “similar” to the perpetrator’s. Swift, who had a mature moustache, long sideburns and closely cropped hair, was brought in for a line-up. The victim was advised he would be present and when she saw him, she said she “believed” he was the assailant.

Paavola-Nobliski, however, was skeptical of the identification; she released Swift and scheduled him for a polygraph. Two days later, she was removed from the investigation while on vacation. Sgt. Elizabeth Lewandowski took over the case and arrested Swift. When Paavola-Nobliski explained to her why she was not convinced Swift was the perpetrator, Lewandowski reportedly said that while he may not have committed the crime, she was sure he had committed some other crime that he had gotten away with.

The victim’s identification was the central theme at trial. Detroit police officials also had an amended lab report on body fluids that would have excluded Swift as the assailant, which was withheld from the defense, and Swift was convicted in November 1982.

He was exonerated through the efforts of the Innocence Project and released on May 21, 2008 – 25 years, 6 months and twelve days after his arrest.

The City of Detroit still was not willing to take responsibility for his wrongful
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Federal prisoner Charles D. Keller filed a lawsuit under the Federal Tort Claims Act (FTCA) against prison officials at the U.S. Penitentiary in Terre Haute, Indiana, seeking damages after he was assaulted by another prisoner. Despite his history of mental illness that affected his ability to function and defend himself, Keller was placed in the prison’s general population where he was attacked. The brutal beating lasted several minutes and left him unconscious.

Keller filed suit, alleging negligence on the part of prison guards for “violat[ing] mandatory regulations and orders governing their conduct, thus allowing the attack to occur and continue.” He also claimed that prison psychologist Joseph Bleier “did not examine all of his available medical documents before deciding to release him into the general prison population, as required by applicable regulations.”


The district court granted the defendants’ motion for summary judgment, finding that the “discretionary function exception” shields the federal government from liability for violence by other prisoners, based upon Calderon v. United States, 123 F.3d 947 (7th Cir. 1997). However, the Court of Appeals wrote that the guards’ negligent behavior in this case would not qualify for the discretionary function exception. The Court rejected the government’s argument that the exception applied, based on the lack of “evidence in the record to contradict Keller’s claims that the guards were simply lazy or inattentive.”

The Seventh Circuit held that such “carelessness would not be covered by the discretionary function exception, as it involves no element of choice or judgment grounded in public policy considerations,” and concluded “that the government did not sustain its burden to prove as a matter of law that the discretionary function exception shielded it from liability for the brutal attack that seriously injured Keller.” Accordingly, the district court’s grant of summary judgment was reversed. See: Keller v. United States, 771 F.3d 1021 (7th Cir. 2014).

The case remains pending on remand, with a trial date scheduled in October 2016.

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April 2016
$550,000 Jury Award for Failure to Treat Prisoner’s Broken Jaw

The First Circuit Court of Appeals found that a Massachusetts federal district court improperly weighed the evidence when granting summary judgment to the defendants in a prisoner’s civil rights suit alleging nurses at the Bristol House of Correction failed to treat his serious medical condition.

Shortly after being booked into the jail, prisoner Rico Perry was involved in an altercation with several guards. The June 9, 2007 incident resulted in serious injuries to Perry, who was examined by nurse Susie Roy. Perry alleged his mouth was “pouring blood” from a long gash, his jaw was “clenched” and he had a lump on his head. He told Roy that he was in pain and had a broken jaw.

According to his complaint, Roy did not “thoroughly examine” him or “come to focus on his jaw.” Roy, however, said she diagnosed a cracked tooth, cleaned the wound, had Perry rinse his mouth and provided him with gauze. She said he could open his mouth wide and verbalize without difficulty.

Later that night, while Perry was in his cell, Roy applied smelling salts to wake him after he passed out. He asked to be taken to a hospital but his request was ignored. Around 4 a.m., Nurse Claire Rocha examined Perry through the cell’s glass window, noting he had an “egg” on his forehead. She said she would help him, but after speaking to one of the guards involved in the altercation, who told her to let Perry “sleep it off,” she denied further care.

Around 5:30-6:00 p.m., or 17 hours after he was injured, Perry was examined by a third nurse, who observed he had swelling of the jaw and some wheezing. That resulted in a hospital transfer, which found Perry of the jaw and some wheezing. That resulted in a hospital transfer, which found Perry had an acute bilateral mandibular fracture.

Perry then sued Roy and Rocha, claiming they were deliberately indifferent to his serious medical needs by failing to provide treatment for his broken jaw. The district court, however, granted them summary judgment, finding that even if Perry had told both nurses that he had a broken jaw and asked to be taken to a hospital, that was insufficient by itself to establish deliberate indifference. Perry appealed.

The First Circuit found there were several material facts in dispute that, if believed by a jury, could result in a finding for Perry. Those facts basically covered the entire spectrum of Perry’s allegations, which had to be accepted as true for summary judgment purposes.

The Court of Appeals was critical of the district court’s weighing of the evidence. The district court had found that because Perry was “provided some additional treatment as the condition evolved over time,” his serious medical needs were not ignored. “If we were to accept this premise, no deliberate indifference case would go to trial so long as someone managed to take an inmate to a hospital right before he or she died, as we can easily presume serious medical conditions do not necessarily improve on their own over time,” the appellate court noted. “This is precisely why the Constitution protects an inmate from a significant risk of future health harms.”

The district court’s summary judgment order was reversed and the case remanded for further proceedings. See: Perry v. Roy, 782 F.3d 73 (1st Cir. 2015).

Following remand, a trial was held in September 2015 and the jury entered a verdict for Perry, awarding him $50,000 in compensatory damages plus $250,000 in punitive damages each against Roy and Rocha, for a total award of $550,000. The case remains pending on Perry’s post-trial motion for attorney fees and the defendants’ motion for judgment as a matter of law. See: Perry v. Roy, U.S.D.C. (D. Mass.), Case No. 1:10-cv-10769-FDS.

Sixth Circuit Allows Revival of Untimely Habeas Appeal Using Rule 60(b)

by Matt Clarke

The Sixth Circuit allowed a prisoner to revive the appeal of her federal habeas corpus action in the interests of justice after she won a civil rights lawsuit against prison guards who prevented her from filing a timely notice of appeal a decade earlier.

Hattie Tanner, a Michigan state prisoner who described herself as “functionally illiterate,” was convicted of felony murder and sentenced to life without parole in 1995. She appealed and a state appellate court overturned her conviction based on a violation of her constitutional rights due to the state’s failure to provide her with DNA and serology experts. That reversal was itself later reversed by the Supreme Court of Michigan.

Unaided by an attorney, Tanner then drafted and filed a federal petition for writ of habeas corpus, which the district court dismissed on its merits on November 8, 2005. Following the dismissal, Tanner sought the assistance of a prison legal aide.

The other prisoner helped Tanner request a certified copy of her prison trust account activity, which was needed to appeal in forma pauperis. The prison did not release the document until three days prior to the 30-day deadline for filing the notice of appeal. The legal aide prepared the notice, but before she could give it to Tanner for signing and mailing, Tanner’s housing unit went on lockdown. The other prisoner scheduled a “call-out” for Tanner to sign the notice the next day, but guards refused to allow her to go, telling her “too bad” when she explained the need to meet the filing deadline. The lockdown ended two days later and the notice of appeal was given to prison officials for mailing the next day – one day after the deadline.

The court clerk did not notice the late filing. Neither did the district court judge, who issued a certificate of appealability. The appeal was initially docketed with the Sixth Circuit, and a few weeks later the Court of Appeals recognized the error and

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See page 69 for more information.
notified Tanner that her appeal was tardy. By then, the time allowed for filing a motion to extend the time to file a notice of appeal had expired and Tanner had lost her chance to appeal.

Tanner filed a civil rights action pursuant to 42 U.S.C. § 1983, alleging the guards who prevented her from filing her notice of appeal on time had violated her constitutional rights. In March 2012, a jury awarded her $20,000 in compensatory damages and $7,000 in punitive damages. The guards did not appeal.

She subsequently filed a motion under Rule 60(b)(6), Federal Rules of Civil Procedure (FRCP), alleging “it would be a miscarriage of justice” to allow the guards’ unconstitutional actions — as verified by the jury in the civil rights case — to deprive her of her right to appeal. She asked the district court to vacate its judgment dismissing her habeas petition and reinstate the judgment, resetting the 30-day period during which she could appeal. Interpreting the motion as one to extend the time period to file a notice of appeal set forth in Rule 4, FRCP, the court denied the motion. Tanner appealed.

The Sixth Circuit held that a district court cannot extend the 30-day period to file a notice of appeal. However, Tanner was not asking for an extension. Pointing out a tradition that predated the founding of this country, in which English courts would set aside a judgment whose enforcement would work inequity, the Court of Appeals held that the district court could and should set aside the habeas judgment and then reinstate it, resetting the 30-day period to appeal.

“By the time Tanner filed her Rule 60(b)(6) motion for relief from judgment in this case, she had established a violation of her constitutional right of access by means of a jury’s verdict — certainly a rare example of success for an inmate litigant,” the Sixth Circuit noted.

Accordingly, the district court’s order on the Rule 60(b)(6) motion was reversed, and the case remanded for the court to dismiss the judgment and reinstate it, so Tanner could appeal the dismissal of her habeas action. A petition for rehearing en banc was denied in April 2015. See: Tanner v. Yukins, 776 F.3d 434 (6th Cir. 2015), petition for rehearing en banc denied. [1]

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This effort is part of the Human Rights Defense Center’s Stop Prison Profiteering campaign, aimed at exposing business practices that result in money being diverted away from the friends and family members of prisoners.
April  2016 Prison Legal News

**Defense Verdict in Kentucky Prisoner’s Death; Appellate Court Reverses**

by David Reutter

A Kentucky state jury found for the defendants in a lawsuit alleging a jail guard and nurse failed to monitor and treat a pretrial detainee’s serious medical condition, resulting in her death. Recently, however, the Court of Appeals reversed and remanded for a new trial.

Melissa Czaja, 34, was arrested for an outstanding warrant on a traffic violation on July 26, 2012, and booked into the Bullitt County Jail with a $34 bond. She was placed in a common cell with other detainees. One of her family members arrived at the jail shortly thereafter with $35 to post bond, but officials required exact change.

Upset that she had not been released, Czaja pressed the cell’s buzzer several times. Guard Laura Worman, who was nicknamed “Shrek” and reportedly known to be oppressive, responded. A confrontation ensued, resulting in Czaja calling Worman a “bitch.” In turn, Worman claimed that Czaja attacked her, lodged a charge of assault on a detention officer and placed Czaja in solitary confinement. Witnesses testified that Worman was the aggressor.

The assault charge prevented the family member from posting bond when they arrived with $34, as the new charge had increased the bond amount. On her fifth or sixth day in solitary, Czaja became sick and the next day she was vomiting. Upon arrival to work on August 3, 2012, Worman failed to check on Czaja’s condition or open her cell for an assessment. LPN Donna Bullock, who worked for the jail’s for-profit medical contractor, Southern Health Partners (SHP), was called to evaluate Czaja.

Bullock noted that Czaja “appeared ill” but took no further action. Later that same day, Czaja was found “nearly unresponsive,” and urine and bloody vomit were observed in her cell. Rather than call an ambulance once the decision was made to take Czaja to a hospital, she was shackled and transported in a jail van.

At the hospital, Czaja was diagnosed with a progressive hypoglycemic brain injury, which would have been treatable if caught early. The delay in treatment, however, resulted in Czaja falling into a coma. She died a week later after her family decided to discontinue medical treatment.

Czaja’s estate filed a wrongful death suit. After trial, the jury found that Worman was not liable for false imprisonment or negligence, and that neither Bullock nor SHP was negligent. The estate had argued that SHP staffed the jail with an LPN who was poorly trained and cheap to hire, implying the company put profits before adequate medical care.

The estate did not assert a claim of medical malpractice, however, the Court of Appeals reversed and remanded for a new trial. The appellate court also held the trial court’s prior partial summary judgment order, and on February 12, 2016 the Kentucky Court of Appeals affirmed a bond of just $34 when she was initially booked into jail. The Court of Appeals reversed the trial court’s grant of summary judgment to the jail employee defendants, finding they were not entitled to qualified official immunity because their actions were ministerial, not discretionary. The Court held the defendants had “failed to comply with [ ] policies and procedures of the detention center” that were written in mandatory language.

The appellate court also held the trial court had used an erroneous jury instruction. While Kentucky uses a “bare bones” approach to jury instructions, the Court of Appeals noted they “must include all the bones.” Here, the jury was not told that it could consider Czaja’s pain and suffering, only her death. Consequently, the case was remanded for a new trial. See: [Czaja v. Bullitt County Jail, Bullitt County Court (KY), Case No. 10-1344.](https://keyword.com)

In reciting the facts of the case, the appellate court emphasized that Czaja had been fully served. Only Maine and Vermont do not disenfranchise people with criminal records, who can vote even while incarcerated.

On November 24, 2015, two weeks before the end of his term, Kentucky Governor Steve Beshear signed an executive order that restored the right to vote to certain convicted felons. Less than a month later, on December 22, incoming governor Matt Bevin overturned that order on the grounds that it violated the state’s constitution. The government giveth and the government taketh away.

Kentucky is one of only a few states that do not automatically restore voting rights to those with criminal convictions after they have completed their sentences, and an estimated 140,000 Kentuckians do not have the right to vote. Governor Bevin’s move puts Kentucky back on line with the vast majority of states on this issue.

**Kentucky Restores Voting Rights for Former Prisoners, then Reverses Course**

Sources: [www.lex18.com](http://www.lex18.com), [www.courier-journal.com](http://www.courier-journal.com), [www.csmonitor.com](http://www.csmonitor.com), [www.vox.com](http://www.vox.com)
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Prison’s Censorship of Newsweek Upheld

The Eighth Circuit Court of Appeals affirmed a grant of summary judgment to prison officials in a First Amendment challenge to the censorship of a magazine because it contained an article that reported violence and disorder in Mexico involving drug cartels.

Missouri prisoner Joseph Murchison had subscribed to Newsweek for many years. He received most issues without incident, but staff at the South Central Correctional Center censored the October 11, 2010 issue on the grounds that it “promotes violence, disorder, or the violation of state or federal law including inflammatory material” due to three pages that contained the article on Mexican drug-related violence. Murchison filed suit and the district court granted summary judgment to the defendants.

On appeal, the Eighth Circuit found the article “Hiding Behind the Web” focused on and depicted “disorder, violence, and the violation of law.” The article described attacks by drug cartels against the Mexican government and military. Additionally, it contained a photograph of two people hanging from a bridge and another of a journalist lying on a street in a pool of blood.

“Although the material, on its face, may not necessarily explicitly advocate for violence or the violation of law, this does not mean it does not promote it either,” the appellate court wrote. The Court of Appeals then deferred to a prison official’s statement that “prolonged exposure to violent acts, through print or other materials or other media, reinforces socially irresponsible behavior inside prisons.” Therefore, the Court found there was a legitimate penological objective to censoring the article.

The Eighth Circuit noted there was not a blanket ban on the publication. It also found that although “some other violent material with similar content is available in the prison [that] does not undermine the prison officials’ decision to censor this particular Newsweek issue.”

Murchison cited “to other written and non-written materials with similar content available in the prison library,” which the appellate court held “demonstrates that he is able to exercise his First Amendment rights.” Absent a blanket ban on Newsweek and a suggestion that the specific content has been entirely banned, the Court of Appeals held that “Murchison has alternative means to exercise his rights.” Just not his right to read that particular article.

Finally, the alternatives that Murchison suggested, including removing the objectionable article, were not found to have a de minimus effect.

“Tearing out specific pages of a specific publication containing prohibited material does not sound particularly difficult. Yet, when considered in the context of the review process for all incoming mail, the question becomes more complex,” the appellate court stated. “Prison policy provides that ‘[i]f part of an item or mailing is prohibited, the entire item must be censored.’ Thus, prison officials cannot merely tear out the pages specific to Murchison’s censored publication, they would have to do so for all incoming publications which include prohibited content. Murchison has not challenged, and we have an insufficient record to fully evaluate, whether the prison regulation of censoring an entire item based on a limited amount of content subject to censorship, on its face, is constitutional.”

The district court’s order was affirmed. See: Murchison v. Rogers, 779 F.3d 882 (8th Cir. 2015), rehearing denied.

Lawsuits Challenge Release Debit Cards; Courts Rule Against Arbitration

by Derek Gilna

Robert Regan, 67, was carrying $764 when he was arrested on a warrant in Rockdale County, Georgia. Upon his release from jail, instead of receiving cash or a check for the money seized during his arrest, he had no choice but to accept a debit card. Regan objected to the card’s numerous fees, which he had to pay to recover his own money, but when he sued the defendants attempted to dismiss his complaint by enforcing an arbitration clause to which he had never consented.

The federal district court agreed with Regan that the debit card’s arbitration clause was unenforceable, and that his lawsuit could proceed. That decision has ramifications for other prisoners forced to accept fee-laden debit cards at the time of their release.

The defendants, including Stored Value Cards, Inc., argued that the Federal Arbitration Act should apply, which required Regan to submit to arbitration in lieu of a lawsuit. They also noted that he had received written notification of the fees in a Cardholder Agreement included in his release papers. Regan established, however, that he had never signed any agreement assenting to the debit card fees or arbitration.

The district court noted in its January 13, 2015 order that “it is undisputed that the party seeking to avoid arbitration has not signed any contract requiring arbitration and is challenging the very existence of any agreement, including the existence of an agreement, including the existence of an agreement to arbitrate ... there is no presumptively valid contract which would trigger the district court’s duty to compel arbitration pursuant to the Act.”

As stated by the court, “the circumstances surrounding the receipt of the Card and Cardholder Agreement, the absence of Plaintiff’s signature (at least on the Cardholder Agreement), the language on the back of the Card and in the Cardholder Agreement, and Plaintiff’s actions throughout do not permit the Court to decide, as a matter of law, that a reasonable person in Defendants’ position would ascribe to Plaintiff’s actions acceptance or, perhaps later ratification of the Cardholder Agreement.”

The defendants appealed to the Eleventh Circuit, which issued a decision on June 18, 2015 affirming the district court. The Court of Appeals found the lower court had “correctly held that issues of fact exist to be resolved by the court or a jury as to whether Reagan agreed to” the arbitration clause. See: Reagan v. Stored Value Cards, Inc., 608 Fed.Appx. 895 (11th Cir. 2015).

Following remand the case settled under confidential terms in August 2015; according to Atlanta attorney William C. Klase, who represented Regan, the case was resolved to the satisfaction of all parties. See: Reagan v. Stored Value Cards, Inc.,
A number of jails have faced legal challenges for issuing debit cards to prisoners upon their release, which require them to pay various fees to access their own money. [See: PLN, June 2014, p.20].

Another pending lawsuit against Stored Value Cards (d/b/a Numi Financial) was filed by the Human Rights Defense Center, PLN’s parent organization, on behalf of plaintiff Danica Love Brown, a former prisoner at the Multnomah County Jail in Oregon. On February 25, 2016, the federal district court denied the defendants’ motion to compel arbitration in that case, too. The ruling will be reported in greater detail in a future issue of PLN; the case remains pending. See: Brown v. Stored Value Cards, Inc., U.S.D.C. (D. Ore.), Case No. 3:15-cv-01370-MO.

Texas: $400,000 Settlement Award to Mentally Ill Jail Prisoner

On June 2, 2015, the Harris County Commissioners Court awarded $400,000 to Terry Goodwin, a mentally ill prisoner, to settle a civil lawsuit stemming from his extreme neglect while housed at the Harris County Jail in Houston.

“I have never seen anything like this in my 41 years as a lawyer,” attorney Jim Harrington stated shortly before the settlement was announced. “This is just unbelievable.”

Harrington, executive director of the Texas Civil Rights Project, was reacting to revelations that medical staff at the Harris County Jail were aware of the filthy conditions of the cell that Goodwin was left in for weeks. Goodwin’s case was brought to light by whistleblowers who contacted the news media with photos of Goodwin’s cell, which was filled with trash, feces and swarms of insects.

When Dr. Michael Seale, director of health services at the jail, was questioned following a press conference, he admitted that his medical staff knew about the squalor in Goodwin’s cell. “They documented it in the medical records,” he said. “They followed policy and procedure.” No medical staff were disciplined, and Seale refused to describe the incident as a communications breakdown.

Six jailers were fired and 29 others suspended in connection with Goodwin’s conditions of confinement. On April 14, 2015, two guards, Sergeants Ricky D. Pickens-Wilson and John Figueroa, appeared in court to face felony charges of tampering with a government document. Prosecutors accused them of signing off on cell checks that indicated Goodwin was in good condition when, in fact, he was languishing in filth. Harris County Sheriff Adrian Garcia retired in the wake of the scandal but denied having knowledge of the squalid conditions in Goodwin’s cell.

Goodwin remains incarcerated, serving a three-year sentence for assaulting a guard during his incarceration in Harris County. He was initially jailed on a marijuana charge while on probation.

The Will of the People: Ex-prisoners Voted into Public Office

by Joe Watson

What happens when voters elect a public official once deemed a public threat by the criminal justice system? From Connecticut to Virginia, Michigan to New Hampshire and Oregon to Oklahoma – just a few of the places where former prisoners have been voted into office – it’s politics as usual.

After serving seven years in prison on charges that included bribery, racketeering and extortion for awarding city contracts in return for hundreds of thousands of dollars in gifts, including cash, home improvements, custom-made clothes and expensive wine, former mayor Joe Ganim was given a second chance by the voters of Bridgeport, Connecticut, who reelected him mayor on November 4, 2013 with 59% of the vote. He had been released from prison five years earlier.

“Tonight, we not only made history, but we defined a new course for this great city,” Ganim said in his victory speech as he was surrounded by supporters. “Of course, there’s an element of redemption in all of this,” he added.

Ganim’s election even brought a congratulatory message from Connecticut’s governor, who had refused to endorse his fellow Democrat during the campaign.

In Virginia, former state House Delegate Joe Morrissey gained notoriety when he was elected while serving 90 days in jail to run for the state Senate, months later due to a medical condition.

At first, Morrissey, 57, entered an Alford plea, the Virginia equivalent of no contest, refusing to admit guilt but conceding that prosecutors had enough evidence to convict him. He later publicly admitted fathering the child with Pride; the couple later moved in together and announced plans to have more children.

He was twice elected to the state House of Delegates, prompting a scathing Washington Post opinion piece in which the newspaper called Morrissey “an embarrassment to Virginia’s General Assembly.”

“Rather than stumbling into laughstock territory, the General Assembly would do well to censure and marginalize Mr. Morrissey,” the Post wrote on January 15, 2015. “He should be assigned to no committees, which would leave him twiddling his thumbs most days in Richmond, and prohibited from serving on state boards and commissions. Conceivably, he could even be banned from setting foot on the floor of the House of Delegates.”

Morrissey resigned his House seat on March 25, 2015 to run for the state Senate, though he dropped out of that race six months later due to a medical condition.

On November 5, 2013, the citizens of Flint, Michigan elected to their city council 5th Ward Councilman Wantwaz Davis and 1st Ward Councilman Eric Mays. Davis, who defeated the incumbent by just 71 votes, had previously served a 19-year prison sentence – beginning when he was just 17 – after pleading guilty to second-degree murder in 1991. Davis never hid his conviction from voters. In fact, he spoke openly with Flint residents about the day he shot and killed 27-year-old Kenneth Morris.

“He went and reached in his pocket, so I reached in my pocket and I shot him,” Davis said. “When I found out he later died, I turned myself in. I never intended to shoot Mr. Morris. To this day, I am very remorseful.”

More than 25 years prior to his election, Mays pleaded guilty in 1987 to felonious assault and served a year of probation. The assault, he said, occurred when a man threatened his life and he responded by brandishing a gun. Mays had just been accepted into law school.

“That destroyed my law career,” he stated.

There is nothing illegal in Michigan about ex-felons being candidates for public office, so long as their crimes weren't committed while they were serving in office. Revelations of Mays’ and Davis’ criminal histories failed to dissuade Flint voters, who also elected two women to the city council who had previously filed for bankruptcy.

In August 2015, Davis and Mays were among four candidates for mayor of Flint; businesswoman Karen Weaver won the election, while Davis and Mays retained their seats on the city council. As part of his mayoral campaign, Davis had advocated for an economic development program that would focus on identifying and helping businesses which hire convicted felons.

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“Flint is an industrialized city, the first in the auto industry and once third economically in the nation,” Davis said. “There are 30,000 or more men and women with felonies on their record and cannot receive a job. [Having] 80 to 88 percent of people living in poverty [is] not good for public safety or the economy.”

“Manufacturing companies would hire these men and women, crime will go down, and income taxes will flourish,” he added. “Once crime is brought down, other developers would come to Flint.”

Despite such examples of positive public service, many argue that ex-prisoners are incapable of possessing the integrity necessary to be effective elected officials. Trust, critics contend, is as much perceived as it is earned. Then again, although not on the same scale, the American public apparently is earned. Then again, although not on the same scale, the American public apparently

In 2010, an amendment to Michigan's state constitution allowed ex-felons to run for statewide office as long as their conviction was not "related to the person's official capacity while holding any elective office." The amendment paved the way for Detroit native Brian Banks, a Democrat, to win 68% of the vote in 2012 to represent the city and serve as chairman of the Detroit caucus in Michigan's state assembly.

Banks, who was convicted eight times between 1998 and 2004 for writing bad checks and credit card fraud, ultimately earned Bachelor's, Master's and law degrees. He said that his poor decisions "as a young adult" taught him valuable lessons and "inspired me to pursue my education and use my experience to deter other young adults from making the same choices."

The political opponent Banks defeated – Republican Dan Schulte – offered the Detroit Free Press a different perspective.

"You can't be an attorney or doctor with a felony, and I don't think you can teach elementary school with a felony," Schulte said during the 2012 campaign. "If you can't do any of those things, I don't know why you can be a legislator."

One of the most famous ex-felons elected to office was Marion Barry, who served as mayor of Washington, D.C. from 1979 until January 1990, when he was caught on videotape smoking crack during an FBI sting operation.

After serving six months in federal prison on drug charges, Barry was elected to the D.C. City Council in 1992 then re-elected as the city's mayor, serving from 1995 to 1999. Barry died on November 23, 2014 at the age of 78, while still serving as a councilman representing the District's 8th Ward.

While Barry was affectionately dubbed “Mayor for Life” by his supporters, not all politician’s or state officials look favorably on former prisoners holding public office. Take for example, Arizona – even when it involves an ex-felon running for office in another state.

In 2011, the voters of Pawnee, Oklahoma, population about 2,300, elected Christopher Linder mayor at a time when the only hospital in town had closed and residents were struggling financially. Along with his wife, Linder owned the popular Pawnee Cafe, and he volunteered for the Chamber of Commerce, as a baseball coach and at the First Baptist Church.

But almost 12 years earlier, in August 1999, Linder – then 21 years old and a member of the Gangster Disciples known by his handle “Big Slim” – was arrested in Phoenix, Arizona and charged with a drive-by shooting following a botched drug deal.

Under Oklahoma state law, Linder, who laid bare his criminal record for Pawnee voters prior to his election, had to have his felony record expunged in order to serve as mayor, requiring him to petition Arizona’s five-member Board of Executive Clemency for a pardon.

“Every single day that I get up, I live with the decision I made 12 years ago,” Linder told the clemency board in May 2011. “I know it wasn’t a wise decision. I know it was atrocious.”

In spite of evidence of his rehabilitation since his release from prison in 2005, and vocal support from some of Pawnee’s most respected residents, Linder’s pardon request was denied by the Board in a 4-1 vote, prohibiting him from becoming mayor.

A more forgiving state statute in New Hampshire nevertheless barred Stacie Laughton, the state’s first openly-transgender elected official, from taking office. In 2012, Laughton, a Democrat, beat out two Republicans to represent Hillsborough County. But a local newspaper revealed just weeks later that Laughton had served a suspended sentence of four months in jail only four years earlier on felony charges.
of conspiracy to commit credit card fraud.

“I have made mistakes just like everyone else,” Laughton wrote on her Facebook page after the story broke. “No one is perfect. I don’t want to talk about my past nor do I care about my past. I live for today and my future.”

State law cared about her past, however, even if Laughton didn’t. Under New Hampshire law, a resident convicted of a felony is barred from voting or becoming a candidate for public office from the time his or her sentence begins until its final discharge. Laughton was sentenced to 15 years in prison on the conspiracy charges, but the sentence was suspended pending 10 years of good behavior. At the time she was elected she still had six years to go. As a result, she was forced to resign less than a month after her election.

“I regret to inform you,” Laughton announced on a Nashua public access TV station, “that I am unable to fill the state representative seat for Hillsborough County District 31 to which I was recently elected.”

And in 2008, in the small town of Sodaville, Oregon, Thomas Brady Harrington, a 33-year-old former welder, was inspired to run for public office after becoming disillusioned with the City Council’s ineffectiveness in dealing with water issues and fiscal mismanagement.

“I think I can bring a fresh outlook on all those things,” he said during his campaign. “I think, with all these past problems, citizens kind of lost faith in the city council. They’ve been throwing money at this thing with no real goals.”

It was not until after Harrington was elected that the town’s 300 residents learned of his felony record, or that he had completed probation for a 2006 criminal mischief conviction just five months before his election. His criminal record, in fact, dated back to 1995, with convictions for assault, robbery, felony possession of a firearm and attempting to elude police.

But Oregon law, unless a city charter mandates otherwise, does not prohibit felons from holding office if they are not incarcerated at the time they’re sworn in. Nor does it prohibit a state resident with a felony conviction from voting.

“I’ve done my time and proven to the state I’ve changed,” Harrington said in his defense after some Sodaville residents called for his resignation. “Regardless of my past, I can do a good job for the city.”

Local voters agreed. Just two years after he was elected, Harrington won re-election on a record of restoring Sodaville’s water system and stabilizing its financial footing. But in August 2011, for reasons unrelated to his criminal past, Harrington was removed from office. The city manager took over the position after Harrington missed council meetings and skipped three budget meetings due to his work as a city firefighter.


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**Ex-prisoners in Office (cont.)**

**Ninth Circuit: Improper ICE Detainer Constitutes Article III Injury**

*by Mark Wilson*

**T**he Ninth Circuit Court of Appeals reversed a district court’s dismissal of a false imprisonment suit based upon an improper immigration detainer, as the district court incorrectly held that it lacked Article III standing.

In June 2007, Bernardo Mendia was arrested on several California state charges. The court granted bail but Mendia needed the assistance of a bondsman to get out.

Before Mendia could make bail, he was interviewed by two agents with Immigration and Customs Enforcement (ICE) – Ching Chang and John M. Garcia. Mendia insisted that he was an American citizen and had a valid U.S. passport, and gave them his Social Security number. He then invoked his Fifth Amendment right to remain silent, directing the agents to speak with his public defender. Agent Garcia became irate and said, “Oh! You don’t want to talk to me? We’ll see if you want to talk when we’re deporting your ass!”

An immigration detainer was immediately lodged against Mendia, falsely declaring that he was an illegal immigrant of Mexican nationality. The detainer blocked Mendia from posting bail. All the bondsmen he contacted “refused to even consider posting a bail ... because of the immigration detainer.”

About six months later the detainer was canceled, but Mendia was not told it had been lifted until much later. Sometimes after the detainer was lifted, the state court released Mendia on his own recognizance. He refused to accept release, however, believing that the detainer was still valid and that he would risk being rearrested and deported – jeopardizing his defense to the pending state criminal charges.

After finally learning that the detainer had been canceled, Mendia accepted release on his own recognizance in July 2009.

He then filed *Bivens* and Federal Tort Claims Act (FTCA) claims against Chang and Garcia, alleging constitutional and common-law tort violations. The district...
court dismissed for lack of Article III standing, finding that Mendia could not have suffered injury because ICE never took him into custody.

Menda appealed and the Ninth Circuit reversed. “Remaining confined in jail when one should otherwise be free is an Article III injury, plain and simple,” the appellate court concluded. “Who or what caused that injury is of course a separate question.”

The Court of Appeals explained that “Of the three elements required to establish Article III standing – injury, causation, and redressability – injury and redressability are easily met here. If we take Mendia’s well-pleaded allegations as true, as we must on this facial attack ... he spent two years in pre-trial detention that he should not have endured. He thus claims as his injury loss of liberty, which satisfies Article III because it’s an injury that affects him in a “personal and individual way.”

The Court of Appeals also found that Mendia had adequately alleged causation by arguing “the government’s unlawful conduct, while not directly causing his injury, nonetheless led third parties to act in a way that injured him.” See: Mendia v. Garcia, 768 F.3d 1009 (9th Cir. 2014).

Following remand the defendants filed a motion to dismiss, which was granted in part and denied in part on February 26, 2016, and the district court allowed Mendia to proceed on various claims – including First and Fourth Amendment Bivens claims, a Fifth Amendment equal protection claim and FTCA claims for intentional infliction of emotional distress, false imprisonment and negligence. The case remains pending. See: Mendia v. Garcia, 2016 U.S. Dist. LEXIS 24031 (N.D. Cal. 2016).

The Seventh Circuit held that once King was transferred from LJC, the jail’s administrative remedy process was no longer available to challenge treatment during the transfer. As such, the failure to exhaust administrative remedies could not be a barrier to King’s claim.

The Court of Appeals further held that King stated an Eighth Amendment claim, for he complained he was degraded and humiliated by being transported in a see-through jumpsuit that left him exposed in front of other prisoners and guards of both genders. “Such compelled and prolonged nudity seems to be, for present purposes, analogous to a lengthy strip-search,” the Court wrote.

The Seventh Circuit also found King’s allegations indicated there was no legitimate reason for the transparent jumpsuit policy. “Detainees arriving at the [prison] intake facility from other jails were not wearing similar garments, which at least tends to suggest that such clothing is not necessary for safe and secure penal transfers,” the appellate court noted. “Moreover, King was strip-searched before and after his transfer, and he remained shackled and under surveillance throughout.” Those facts, the Court of Appeals held, “raise at least the possibility that the policy was driven by a desire to humiliate or harass.”

“The jumpsuit’s actual appearance remains a mystery at this point because the defendants have so far resisted King’s discovery requests,” the Court added.

Having found a viable Eighth Amendment claim, the appellate court then considered King’s Fourth Amendment claim. That claim should have been dismissed “on the merits rather than for failure to exhaust administrative remedies.” Prisoners retain no right to privacy, and King did not allege any intrusion into his body; hence, a Fourth Amendment claim was not stated.

The district court’s order was reversed and the case remanded for further proceedings. See: King v. McCarthy, 781 F.3d 889 (7th Cir. 2015).

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Privately-operated Texas Prison Rebounds

by Matt Clarke

Despite years of controversy that included sitting vacant for months after it was built and staff members being arrested for smuggling contraband and having sexual relationships with prisoners, the Jack Harwell Detention Center in Waco, Texas has rebounded. It now houses more prisoners, obtained a lower interest rate on the bonds floated to build the jail, and has a recently-extended contract with private prison operator LaSalle Corrections, Inc.

McLennan County commissioners voted on June 2, 2015 to extend LaSalle's contract for three years. The company's prior agreement had been scheduled to expire at the end of June 2015.

"We’re glad to extend it with LaSalle because we trust them and they’re good business people," said County Judge Scott Felton, a member of the McLennan County Public Facility Corporation’s board of directors. “They pay the note payment on the bonds to pay for the jail and they’ve never missed a payment, even without making money.”

Felton said the jail has been losing money steadily since it was built because the prisoner population has not met expectations. The facility has capacity for 816 prisoners, but has housed fewer than 700 at any one time. During November and December of 2014, the average daily population fell to 445.

The contract extension approved by the county commissioners includes a provision that takes effect on June 13, 2016, stating the contract can be declared void after a 90-day notice period if the jail population falls below 575 prisoners for two consecutive months.

"[LaSalle is] a for-profit business, and they have to have some assurance that they can be able to hang on here without being financially punished until things change," Felton said in reference to the 90-day termination provision. “It’s been a great relationship on both sides, and that was said right upfront.”

Compounding the problem has been the federal government’s change in policy of not incarcerating illegal immigrants at such a high rate, according to County Commissioner Ben Perry. Shortly after LaSalle began operating the jail in 2013, Immigration and Customs Enforcement (ICE) reached an agreement with the company to house an average of 200 ICE detainees at the facility. But shortly afterwards, ICE withdrew its prisoners.

“When the federal government took the stance they did toward immigration, the jails emptied out,” said Perry.

Fortunately for McLennan County taxpayers, the original 2009 bond issue of $49 million to build the jail was refinanced at a much lower interest rate, resulting in savings to the county of nearly $13 million in long-term financing costs.

“This allows us a lot of flexibility to go out and get outside contracts because we’re not limited by that tax-exempt status anymore,” said County Commissioner Will Jones. He added the savings will come over the next 20 years – the life of the bonds.

These developments cap the tumultuous history of the jail, which sat empty for months after it first opened in 2010. According to the Waco Tribune, the private prison company that operated the facility at the time – Community Education Centers of New Jersey – could not fill the beds because it was unsuccessful attracting government contracts. It was for that reason the county contracted with LaSalle Corrections beginning in May 2013.

The jail has been enmeshed in controversy on several occasions, most involving staff misconduct. For example, on January 27, 2015, a former guard at the Jack Harwell Detention Center pleaded guilty to having sex with a prisoner. Melissa Suzanne Corona, 25, of Waco, was sentenced to three years’ deferred probation under a plea agreement. She was also fined $750.

According to court documents, Corona initiated the relationship in 2013 by kissing the prisoner more than 10 times, after...
which they engaged in improper contact through the bars of the prisoner’s cell. Eventually, the indictment states, Corona entered the cell and performed sex acts on the prisoner. [See: PLN, Aug. 2015, p.63; Aug. 2014, p.56].

The charges against Corona were not the first involving sexual improprieties. On September 18, 2013, McLennan County Sheriff’s deputies arrested three LaSalle Corrections guards. Regina Antoinette Edwards, 48, and Dorothy Pennington, 23, were arrested for improper sexual acts with a person in custody. Pennington pleaded guilty and received five years’ deferred probation. The complaint against Edwards stated that investigators traced phone calls between her and a prisoner in which they discussed sexual acts which allegedly occurred between 2011 and 2013. She was sentenced in June 2015 to two years of deferred probation and a $500 fine. [See: PLN, May 2014, p.56].

The third guard, Sherry Lynn Haynes, 41, was charged with possession of a prohibited substance in a correctional facility, a third-degree felony, after she allegedly confessed that she “snuck in her bra one pack of cigarettes containing tobacco” and gave it to a prisoner.

Then on November 13, 2015, three LaSalle Corrections guards were arrested on charges that they falsified records related to the death of prisoner Michael Antonio Martinez, 25, who was found hanging in his cell on November 1. The three were accused of reporting that they checked on Martinez when in fact they had not.

Guards Michael Crittenden, 24, Christopher Simpson, 24, and Milton Walker, 33, were arrested by sheriff’s deputies after officials discovered the falsified records. According to McLennan County Sheriff Parnell McNamara, the records indicated that the three guards had checked on Martinez within a half-hour time span required for certain at-risk prisoners, but an investigation indicated that when Martinez was found he had been hanging for almost three hours. His death was ruled a suicide. [See: PLN, March 2016, p.63].

Four days after Martinez’s death, the Texas Commission on Jail Standards issued a letter to LaSalle stating the Jack Harwell facility was out of compliance with the rule that at-risk prisoners must be checked every half-hour while in custody.

Jail Standards Commission Executive Director Brandon Wood said the notice triggered a second inspection by the commission to recertify the jail.

Sacramento County settles former jail prisoner's lawsuits for $3,800
by Matt Clarke

In February 2013, Sacramento County, California agreed to settle three pro se federal civil rights actions filed by a former Sacramento County jail prisoner alleging theft of his mail, opening of his legal mail outside his presence and failure to provide at least three hours of out-of-cell recreation time per week.

David Allen Thompson, Sr. was incarcerated at the Sacramento County Main Jail for 38 months. During that time, jail staff and officials with the District Attorney’s Office allegedly seized his mail under false pretenses, opened his legal mail outside his presence and denied him out-of-cell recreation for up to sixty days multiple times. Sometimes Thompson received rejection notices for the confiscated mail, sometimes not. The notices he received listed the reasons for seizing his mail as “3-way mail, girls in panties, sexual content, porn photos.” However, none of the letters contained any of those types of content; rather, they were often letters to and from friends or religious volunteers who visited the jail. The notices said the letters had been seized and “forwarded to the D.A.’s office.”

Thompson’s public defender received copies of some of the confiscated letters with the notices confirming they were being sent to a Deputy District Attorney.

Further, legal mail from courts, attorneys and government officials was allegedly delivered already opened to Thompson, though it should have been opened in his presence. When he grieved this issue, he was told the correspondence wasn’t legal mail.

Thompson also received 26 disciplinary violations while at the Main Jail. During his punishment for those violations, which lasted up to 60 days, he was denied out-of-cell recreation. He complained that this violated a state statute which guaranteed a minimum of three hours out-of-cell recreation per week. The seizure of his mail and opening of his legal mail also allegedly violated state law.

Over the course of three years, from 2013 to 2015, Thompson filed three federal civil rights actions pursuant to 42 U.S.C. § 1983 against sheriff’s department and District Attorney’s Office officials alleging violations of his constitutional rights.

Sacramento County settled all three suits for a total of $3,800, although $1,943.87 of that amount was used to satisfy a lien the county had against Thompson. See: Thompson v. Jones, U.S.D.C. (E.D. Cal.), Case No. 2:13-cv-01951-MCE-CKD; Thompson v. Orozco, U.S.D.C. (E.D. Cal.), Case No. 2:14-cv-02111-JAM-DAD; and Thompson v. Jones, U.S.D.C. (E.D. Cal.), Case No. 2:15-cv-00011-TLN-DAD.

Delayed Washington competency evaluations and treatment violate due process
by Mark Wilson

"The state has consistently and over a long period of time violated the constitutional rights of the mentally ill – this must stop," declared a Washington federal district court. “The in-jail wait time" before transferring incompetent criminal defendants to state hospitals “is far beyond any constitutional boundary.”

Washington law requires that criminal defendants found incompetent be provided competency evaluations and restoration services. Once evaluation or treatment is ordered, the individual remains in jail until transferred to a state mental hospital.

The Washington legislature has suggested that the in-jail waiting period should not exceed seven days. However, compliance with that time frame has been impossible due to the number of people requiring services and a lack of resources, treatment staff and facilities.

“... The hospitals ... are chronically short of beds and staff, and thus the waiting time for transfer ... can now exceed sixty days,” the federal court found. The average waiting times ranged from a low of two weeks to a high of nearly two months, and the court noted the legislature’s target time frame was met less than fifteen percent of the time.

Washington pretrial detainees filed a class-action lawsuit challenging the untimely transfers to mental health facilities. They moved for summary judgment, arguing that the wait periods deprived them of substantive due process.

“Plaintiffs detail the alarming conditions faced by many mentally ill pretrial detainees while in jail awaiting trial,” the court found. “Jails are often not equipped to deal with people with mental health issues, and overwhelmed guards resort to placing mentally ill detainees in solitary confinement.”

As repeatedly reported in PLN, such placements cause dramatic mental health deterioration and increase the risk of suicide.

“Alone for 22 to 23 hours a day and without access to medication, some of these detainees lose touch with reality – damage to their mental health that can take years of intensive mental health services to reverse,” the court wrote.

The defendants conceded “that 'current wait times for many criminal defendants are excessive and indefensible.” They argued, however, that inadequate funding, staffing and available facilities inhibited timely transfers.

The federal district court followed Oregon Advocacy Center v. Mink, 322 F.3d 1101 (9th Cir. 2003) [PLN, April 2004, p.36], in which the Ninth Circuit held that “incapacitated criminal defendants have liberty interests in freedom from incarceration and in restorative treatment," and that a “lack of funds, staff or facilities, cannot justify the State’s failure” to provide necessary treatment.

As in Mink, the district court could “discern no legitimate state interest in ‘keeping mentally incapacitated criminal defendants locked up in county jails for weeks or months.'” The court granted summary judgment to the plaintiffs, concluding “that the liberty interests of those incarcerated while awaiting court-ordered competency services outweigh countervailing state interests, and that the current waiting periods violate the substantive due
After 18 months of good behavior, those policies after that date. Discovery by prison officials have inconsistently applied (by statute) criteria for placing prisoners into CMUs, according to CCR staff attorney Alexis Agathocleous.

The suit, filed in April 2010, resulted in the collection of hundreds of documents that showed the BOP never drafted (or published prior to implementation, as required by statute) criteria for placing prisoners in CMUs until 2009. In addition, federal prison officials have inconsistently applied those policies after that date. Discovery by the plaintiffs found that reasons given to prisoners designated to CMUs were incomplete, inaccurate and sometimes false. Some prisoners were incorrectly advised that they could earn their way out of CMU custody after 18 months of good behavior.

Many prisoners’ rights advocates have long felt that CMUs grew out of the federal government’s reaction to the 9-11 terrorist attacks, when scores of Muslims were arrested and then confined in CMUs, where their communication was limited and monitored. Over 60 percent of CMU prisoners are Muslim despite the fact that only 6 percent of the federal prison population is Muslim.

“The CMUs impose harsh restrictions on prisoners, including a ban on even momentarily hugging their families. Meantime, the BOP has denied hundreds of prisoners, who are mostly Muslim, the opportunity to understand or rebut the rationale for their placement, or a meaningful review process to earn their way out,” Agathocleous noted.

Former CMU prisoner Avon Twitty, a plaintiff in the lawsuit, spoke out after he was released from prison. “I was told the reason I was moved to CMU was because of ‘recruitment and radicalization’ but wasn’t told anything else,” he said. “I tried to find out more about these allegations so I could challenge my designation, but to no avail. Without knowing what I had allegedly done to land in a CMU ... I was helpless to challenge those allegations and had no hope of being transferred out. This lawsuit is my first opportunity to get to the bottom of my placement in a harsh, restrictive, and secretive prison unit.”

The BOP documents related to CMUs were finally made public after a motion by CCR attorneys dissolved a protective order that had prevented their release.

The district court dismissed some of the claims in the lawsuit in 2011. The court then granted summary judgment to the BOP in March 2015; the plaintiffs appealed, and oral arguments were held before the D.C. Circuit Court on March 15, 2016. The appeal remains pending. See: Aref v. Holder, U.S.D.C. (D. DC), Case No. 1:10-cv-00539-BJR.

Sources: www.orjustice.org, NPR
Criminal justice reform is an issue that has gained significant political and social traction over the last several years. Modest legislative headway is being made on issues such as the over-criminalization of non-violent drug offenders, prison overcrowding and mass incarceration. Some efforts are being made to lower mandatory minimums and shorten sentences. Retroactive changes made by the U.S. Sentencing Commission have resulted in the recent early release of upwards of 6,000 federal prisoners.

Curiously missing from these laudable efforts to reign in our nation’s out-of-control carceral machine is any meaningful discussion of the resulting increase in former prisoners returning to society. After all, shorter sentences, early releases and other efforts to reduce the prison population necessarily mean a greater number of prisoners becoming ex-prisoners. Given the sad state of the often ineffective and permanently overtaxed reentry preparation system currently in place in most jurisdictions, one may wonder: What will keep these newly-released prisoners from returning to a life of crime?

Enter R.L. Pelshaw and his new book, Illegal to Legal: Business Success for (ex)Criminals. Pelshaw, a successful businessman and former federal prisoner, argues that a primary barrier to the ex-prisoner’s successful reentry to society is financial in nature. As Pelshaw puts it, “To stay away from prison and crime, felons and potential felons need a legal way to support themselves and their families.” One is hard-pressed to disagree.

Pelshaw posits that a large portion of the prison population in the United States consists of those convicted of crimes related to an illegal business: The drug trade. He then illustrates quite clearly that many, if not all, of the skills necessary to operate an illegal business are exactly the same as those required in the legal business world. This deceptively simple concept forms the basis for Pelshaw’s practical and informative guide to starting and running a successful business enterprise.

Illegal to Legal is split into two parts. The first half is partly devoted to helping the ex-prisoner isolate and understand their skills, strengths and weaknesses, and how they apply to the legal business world. There is also a chapter that lists hundreds of businesses former prisoners might consider starting, with start-up costs ranging from nothing to hundreds of thousands of dollars. The remainder of the first half details the business planning process and knowledge that new businessmen and women need to know.

The second half of the book provides “success snapshots” of many actual businesses, from landscaping to laundromats, that may appeal to former prisoners. Pelshaw includes useful information about each enterprise, such as training or licensing requirements, as well as the actual story of the business owner. Several forms are included in the appendix of the book, such as a “Business Plan Checklist” as well as a sample business plan.

Illegal to Legal is both a motivational and practical read. The process of going from prisoner to law-abiding citizen is a difficult one, and the resources to assist with this transition are limited and overburdened. Former prisoners will find this to be a valuable and useful guide to operating a legal business and not becoming another recidivism statistic. For those who want to learn how to spread their entrepreneurial wings, this book will help them fly.

Illegal to Legal: Business Success for (ex)Criminals is available on Amazon.com or from www.illegaltolegal.org.

Colson Task Force Report Highlights BOP Issues, Makes Recommendations

by Derek Gilna

According to the Charles Colson Task Force on Federal Corrections, named after the former top advisor to President Richard Nixon who served a stint in federal prison before dedicating his life to prisoner rehabilitation and spiritual growth, “the United States faces a defining moment” and an opportunity to correct the country’s “over-reliance on incarceration.” In a report released in January 2016, the nine-member Task Force, established by Congress in 2014, made six recommendations to correct some of the shortcomings of the federal Bureau of Prisons (BOP).

The BOP currently houses approximately 196,000 prisoners, a number that has declined slightly over the last few years but has experienced a six-fold increase since 1980. The Task Force stated that if the BOP adopts the proposed recommendations, it could cut the prison population by 60,000 and save approximately $5 billion.

First, the Task Force recommended, “At sentencing, the federal system should reserve prison beds for those convicted of the most serious federal crimes.” The Task Force said this goal “cannot be achieved without addressing mandatory minimum drug penalties – the primary driver of BOP overcrowding and unsustainable growth.”

The report noted that “[t]he vast majority of federal sentences (90 percent) incorporate a term of incarceration, and most judicial districts do not operate specialty courts or offer front-end diversion from prison. It is a one-size-fits-all model and it contrasts starkly with the states, where policymakers are reducing both costs and crime through heavier emphasis on evidence-guided correctional approaches tailored to the risk and need profiles of each individual.”

Second, the Task Force suggested that “the federal Bureau of Prisons should promote a culture of safety and rehabilitation and ensure that programming is allocated in accordance with individual risk and needs.” There should be sufficient staff to ensure a safe environment, with an emphasis on programs and contact with friends and family members to assist with the rehabilitative process.

Third, the Task Force recommended that “Throughout the prison term, correctional policies should incentivize participation in risk-reduction programming.” Prisoners should be encouraged
Cell Workout
by L. J. Flanders

Cell Workout, written by a former prisoner, is a bodyweight training guide designed for use in a prison cell without the need for actual weights. This program is suitable for any age, ability and fitness level and promises results for everyone who tries it. There are step-by-step instructions of how to do the exercises, photographs and sample workouts to follow. The aim of this book is to benefit the physical and mental health of people in prison and outside. Get the body you want — Inside & Out!

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.to participate in rehabilitative programs
to achieve sentence credits, and a “second look” provision should be used to “ensure judicious use of incarceration and encourage rehabilitation.”

“Prior to and following release, the federal correctional system should ensure successful reintegration by using evidence-based practices in supervision and support,” was the fourth recommendation. People leaving prison need to be given “the tools, services, supervision, and support necessary for successful reintegration.”

Fifth, “The federal criminal justice system should enhance performance and accountability through better coordination across agencies and increased transparency.” The Task Force noted that reform is necessary to “hold agencies accountable for results” – an uncommon occurrence in the BOP, which is rarely held accountable for its deficiencies.

Finally, the Task Force recommended that “Congress should reinvest savings to support the expansion of necessary programs, supervision, and treatment.” It is currently difficult for the U.S. Department of Justice (DOJ) and Bureau of Prisons to devote sufficient resources to programming when federal prisons are overcrowded and require funds to be diverted from other DOJ agencies to the BOP.

“Now almost $7.5 billion, federal prison spending has grown at more than twice the rate of the rest of the DOJ budget and accounts for about one-quarter of the total,” the Task Force noted. “Unfortunately, these expenditures have not yielded the public safety we seek. About 40 percent of those who leave federal prison are re-arrested or have their supervision revoked within three years. And inside federal prisons, serious problems persist, with overcrowding a particular challenge.”

Of course this is not the first time a task force or commission has suggested a plan to reform the BOP and the rest of the federal criminal justice system; the Inspector General of the DOJ, Congressional committees and the Commission on Safety and Abuse in America’s Prisons have also developed plans for similar improvements. The question is whether this time the recommendations will finally translate into action by Congress and the executive branch, which have been slow to adopt reforms in the past, or if the Charles Colson Task Force’s report will simply sit on a shelf alongside the many other studies that have come before it.

Members of the Task Force included former Congressman J.C. Watts, Jr.; former Congressman Alan B. Mollohan; Craig DeRoche with Prison Fellowship (the faith-based organization founded by Charles Colson); David C. Iglesias, director of the Wheaton Center for Faith, Politics and Economics at Wheaton College and a former U.S. Attorney; Prison Fellowship president and CEO Jim Liske; Jay Neal with the Georgia Criminal Justice Coordinating Council; Prof. Laurie O. Robinson, a former Assistant Attorney General who teaches at George Mason University; former federal public defender Cynthia W. Roseberry, who directs the Clemency Project 2014; former U.S. District Court Judge Ricardo M. Urbina; and John E. Wetzel, Secretary of the Pennsylvania Department of Corrections.


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DOJ Settlement to Improve Conditions at Mississippi Juvenile Facility

The U.S. Department of Justice (DOJ) has reached a settlement to address conditions at Mississippi’s Leflore County Juvenile Detention Center (LCJDC). The settlement agreement is the culmination of a DOJ investigation and a March 31, 2011 findings letter from the department concerning security-related issues and living conditions at LCJDC.

The DOJ found numerous areas of deficiency at the juvenile facility, including the use of force and restraints, abuse investigations, suicide prevention and use of solitary confinement. The settlement, approved by the federal district court on June 18, 2015, addresses all of those areas.

To ensure that juvenile offenders’ mental health issues are identified and addressed, LCJDC agreed to administer a screening tool “within no more than three (3) hours of admission.” It will also supply an orientation within eight hours of admission to provide a “clear explanation” of facility rules, how to obtain medical and mental health care, use the grievance system and report abuse.

Further, LCJDC agreed to revamp its classification system to assure juveniles are classified within 24 hours of admission and placed in housing units consistent with their risk level. It will also change its use of force policies and train staff in “conflict management, de-escalation of confrontations, crisis intervention, management of assaultive behavior, minimizing trauma involved in the use of force, and the facility’s continuum of methods of control.”

New policies will emphasize the least amount of force is to be used, and that force shall only be applied in “exceptional situations where the youth currently is physically violent, poses an immediate danger to self or others, and where LCJDC has attempted a graduated set of interventions that avoid or minimize the use of force or restraints.” The agreement provides that staff “shall not shackles or restrain youth to their beds as a disciplinary measure.”

Additionally, the settlement ends the use of solitary confinement as a form of discipline and limits solitary to a cool-down period not to exceed one hour. It also requires changes in policies related to suicide prevention and mental health care, medical care, due process, incident reporting, sanitation, fire safety and security staffing.

“This agreement will help protect children who are in custody and ensure that they are detained under conditions that are secure, safe, and appropriate,” said Vanita Gupta, Principal Deputy Assistant Attorney General over the DOJ’s Civil Rights Division. See: United States v. Leflore County, Mississippi, U.S.D.C. (N.D. Miss.), Case No. 4:15-cv-00059-NBB-JMV.

While the settlement resolved issues initially raised by the DOJ at LCJDC, it did not end problems at the juvenile facility. In a January 12, 2016 press release, DOJ officials stated they had conducted another review that determined the facility was in violation of the Individuals with Disabilities Education Act (IDEA).

“The Justice Department investigation found that the detention center school has failed to implement appropriate policies and procedures to identify, locate and evaluate children with disabilities for special education services,” according to the DOJ’s press release. “For instance, the detention center has no intake practices to ask children if they received special education services at their home school. And once children are in the detention center school, there are no procedures to observe and respond to student performance that may indicate a special education need.”

Deputy Assistant Attorney General Gupta noted that “Students with disabilities do not forfeit their rights to special education services simply because they are accused of or have committed juvenile offenses. Agencies that are involved in the provision of special education of children in correctional facilities, such as the Mississippi Department of Education, must continue to ensure that students receive special education services even while incarcerated.”

Mississippi state officials took control over the Leflore County school system in 2013, including at LCJDC. Should the state fail to improve educational opportunities for disabled juveniles at the facility, another settlement with the DOJ may be on the near horizon.

Additional source: www.justice.gov

Second Circuit Allows Muslim Prisoners’ Bivens Claims to Proceed

by Derek Gilna

Although Muslim prisoners held at the harsh U.S. military prison in Guantanamo Bay, Cuba have received more publicity, conditions of confinement for prisoners of Middle-Eastern descent in domestic prisons have also been abusive. So abusive, in fact, that the Second Circuit Court of Appeals allowed a lawsuit filed by Muslim prisoners housed at the Metropolitan Detention Center (MDC) in New York to proceed, affirming in part and reversing in part a dismissal of the case by a federal district court.

According to the appellate court, “This case raises a difficult and delicate set of legal issues concerning individuals who were arrested on immigration charges and detained following the 9/11 attacks.” [See: PLN, July 2010, p.46].

The plaintiffs alleged that then-Attorney General John Ashcroft, FBI Director Robert Mueller, Immigration and Naturalization Service Director James Ziglar, MDC Warden Dennis Hasty and former MDC Warden James Sherman committed or caused “discriminatory and punitive” acts against them. Most of the plaintiffs were held in detention from three to eight months.

After reviewing the pattern of behavior of the defendants, the appellate court concluded in its June 17, 2015 decision “that a Bivens remedy is available for Plaintiffs’ conditions of confinement claims, under both the Due Process and Equal Protection Clauses of the Fifth Amendment, and Fourth Amendment unreasonable and
punitive strip searches claim,” while denying the plaintiffs’ religious free-exercise claim as not allowable under Bivens. The “Fifth Amendment’s Due Process Clause forbids subjecting pretrial detainees to punitive restrictions or conditions,” noted the Second Circuit, citing Bell v. Wolfish, 441 U.S. 520 (1979).

While held at the MDC, the plaintiffs were subjected to conditions that included placement “in tiny cells for over 23 hours a day”; being strip-searched whenever they were removed from their cells; “provided with ‘meager and barely edible’ food”; denied sleep due to bright lights that “were left on in their cells for 24 hours a day” and guards kicking their cell doors during the night; denied recreation; “denied access to basic hygiene items like toilet paper, soap, towels, toothpaste, [and] eating utensils”; and not allowed to move around their unit or freely use the telephone and commissary, or access MDC handbooks “which explained how to file complaints about mistreatment.”

Additionally, the Court of Appeals found that staff at MDC had “subjected the 9/11 detainees to frequent physical and verbal abuse. The abuse included slamming the 9/11 detainees into walls; bending or twisting their arms, hands, wrists, and fingers; lifting them off the ground by their arms; pulling on their arms and handcuffs; stepping on their leg restraints; restraining them with handcuffs and/or shackles even while in their cells; and handling them in other rough and inappropriate ways.”

The Court concluded that “Plaintiffs’ well-pleaded allegations, in conjunction with the OIG [Office of Inspector General] Report’s documentation of events [showing prisoner abuse] render plausible the claim that by the beginning of November 2001 Ashcroft knew of, and approved, the MDC Plaintiffs’ confinement under severe conditions, and that Mueller and Ziglar complied with Ashcroft’s order notwithstanding their knowledge that the government had no evidence linking the MDC Plaintiffs to terrorist activity.” The appellate court also held the defendants were not entitled to qualified immunity on most of the claims.

“If there is one guiding principle to our nation it is the rule of law,” the Second Circuit wrote. “It protects the unpopular view, it restrains fear-based responses in times of trouble, and it sanctifies individual liberty regardless of wealth, faith, or color. The Constitution defines the limits of the Defendants’ authority; detaining individuals as if they were terrorists, in the most restrictive conditions of confinement available, simply because these individuals were, or appeared to be, Arab or Muslim exceeds those limits.”

The dissent argued that the plaintiffs should not be able to “pursue money damages on policy-challenging Fifth Amendment claims for punitive and discriminatory confinement claims against Ashcroft, Mueller, Ziglar, Hasty, and Sherman, and an attendant policy-challenging Fourth Amendment claim for unreasonable strip searches against defendants Hasty and Sherman.”

The case remains pending following remand; six of the original plaintiffs who settled or withdrew their claims against the federal government have been replaced by other plaintiffs from the Middle East, North Africa or South Asia who were housed at MDC following the 9/11 attacks and subjected to similar abusive conditions of confinement. See: Turkmen v. Hasty, 789 F.3d 218 (2d Cir. 2015), reargument en banc denied.

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Prison officials must provide a pre-deprivation hearing before freezing substantial prisoner assets, the Ninth Circuit Court of Appeals held on April 6, 2015.

Under Oregon’s “pay-to-stay” law, prisoners are fully liable for their incarceration costs. The Oregon Department of Corrections (ODOC) calculates the incarceration cost by multiplying the daily cost of care by the number of days a prisoner is incarcerated. Cost of care is determined by dividing the ODOC’s budget — excluding some items — by its prisoner population.

Before collecting incarceration costs, prison officials must consider the prisoner’s ability to pay and “need for funds for personal support after release.” OAR 291-203-0040(5). Collection may be waived in the “best interest of the inmate or the department.” OAR 291-203-0080.

Lester Shinault was incarcerated from May 19, 2005 until February 5, 2007, and from October 23, 2008 to August 14, 2009. During his second sentence, Shinault settled a medical product liability lawsuit on May 29, 2009 that required Shinault to pay $65,353.94 for his current and previous incarcerations (ODOC) calculates the incarceration cost by multiplying the daily cost of care by the number of days a prisoner is incarcerated. Cost of care is determined by dividing the ODOC’s budget — excluding some items — by its prisoner population.

The ODOC did not serve Shinault with its filing or exhibits until the morning of the October 23, 2009 hearing. He was denied a continuance or opportunity to retain another attorney after his lawyer withdrew before the hearing, and an Administrative Law Judge ordered him to pay the reduced amount of $61,352.39.

Shinault then filed suit in federal court, alleging several constitutional violations. The district court granted summary judgment to the defendants on all claims, and he appealed.

Relying on Quick v. Jones, 754 F.2d 1521 (9th Cir. 1985), the Ninth Circuit noted there is no question that prisoners have a protected liberty interest in their prison trust accounts. A “state must provide a hearing prior to freezing a significant sum in the inmate’s account,” the Court of Appeals held. Accordingly, “Shinault received insufficient due process as a result of Oregon’s actions.”

The ODOC was not required to “provide each inmate with a formal, judicial-like hearing prior to freezing inmate accounts,” the appellate court clarified. “Neither do we observe that the administrative hearing that preceded the withdrawal of Shinault’s funds was deficient, apart from the process afforded prior to freezing his assets. Rather, prior to such a freeze, Oregon must give notice and provide a meaningful opportunity to object.”

Despite finding the ODOC had violated Shinault’s due process rights, the Ninth Circuit held the defendants were entitled to qualified immunity because the law was not clearly established at the time, since “numerous material differences distinguish [the ruling in] Quick.” The district court’s judgment was therefore affirmed, and the ODOC was allowed to keep the $61,352.39 it had removed from Shinault’s prison trust account. See: Shinault v. Hawks, 782 F.3d 1053 (9th Cir. 2015), cert. denied.

**“Fatal Neglect” Report Faults ICE Health Care for Deaths of Detained Immigrants**

The American Civil Liberties Union (ACLU), Detention Watch Network (DWN) and National Immigrant Justice Center (NIJC) issued a joint report, “Fatal Neglect: How ICE Ignores Deaths in Detention,” that describes case studies of deficient medical care resulting in the deaths of detained immigrants. The report, released in February 2016, accuses Immigration and Customs Enforcement (ICE) of failing to follow accepted medical practices and even its own revised standards for providing health care to detainees — many of whom are in civil detention awaiting asylum hearings.

According to the report, 56 detainee deaths have occurred in ICE custody during the Obama administration, including six suicides. Federal officials formulated new ICE standards for immigration detention facilities in 2009, then again in 2011. Following the implementation of the 2009 standards, ICE’s Office of Detention Oversight (ODO) began producing detainee death reviews, which were obtained by the ACLU through Freedom of Information Act (FOIA) requests.

The more recent 2011 standards were not in effect at ICE facilities during the time period covered by the joint report. However, even though they are considered “the most thorough standards,” they still “fall short in significant respects compared to the National Commission on Correctional Health Care (NCCHC) standards for medical care in prison and jail settings.”

The report states that the “ACLU’s updated FOIA request sought the ODO reviews of 24 deaths that occurred in ICE custody from January 2010 through May 2012,” after the 2009 revised standards went into effect. The report focuses on eight detainees who died in ICE custody, and describes in chilling detail the apparent inability – or unwillingness – of ICE to address serious deficiencies in the agency’s medical treatment protocols.

Even by January 2014, “139 facilities holding 44 percent of detained immigrants still operated under other, outdated standards that were promulgated as early as 2008, or even in 2000, prior to the creation of ICE.” Some of those facilities were not even contractually obligated to follow the new medical treatment standards.

Congress has shown an interest in compelling ICE to improve its medical
Pepper-spraying Sleeping Prisoner Unconstitutional, but Case Loses at Trial

by David M. Reutter

The Sixth Circuit Court of Appeals held that “using a chemical agent in an attempt to wake a sleeping prisoner, without apparent necessity and in the absence of mitigating circumstances, violates clearly established law.” The ruling came in an interlocutory appeal filed by a Michigan prison guard.

Prisoner Nicholas Roberson filed a civil rights action alleging that former Sgt. James Torres violated the Eighth Amendment when he sprayed him with a chemical agent on March 13, 2009 while he was sleeping. Torres later issued Roberson a major-misconduct ticket for failure to comply with an order, stating he ordered Roberson to back up to the cell door to be placed in restraints.

Roberson claimed he didn’t hear the order because he was asleep and covered by a blanket. Torres then sprayed a chemical agent into the cell. The district court denied Torres’ argument that any factual findings by a prison hearing officer in a major-misconduct hearing are to be accorded preclusive effect. The Court of Appeals said such a reading of its decision in Peterson v. Johnson, 714 F.3d 905 (6th Cir. 2013) was overbroad. Rather, it requires a “case-by-case analysis of surrounding circumstances,” and the district court was directed to conduct such an analysis on remand.

Turning to the use of chemical agents, the appellate court rejected Torres’ position that spraying Roberson was necessary to restore order. It noted that “Torres undoubtedly had other means of waking Roberson at his disposal — or at least reasonably assisting that he was awake before having to resort to a chemical agent or physical force.” It found the law was clearly established on that point, and the district court’s denial of qualified immunity was therefore affirmed. See: Roberson v. Torres, 770 F.3d 398 (6th Cir. 2014).

Following remand the case proceeded to a jury trial in January 2016, and a verdict was entered in favor of Torres after the jury decided he did not violate Roberson’s rights under the Eighth Amendment. Roberson was represented by the Detroit law firm of Bodman PLC.


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Architects’ Ethics Panel to Consider Boycott of Execution Chambers and Prison Design

by David M. Reutter

A n advocacy group composed of architects, building designers and planners is hailing a decision by the National Ethics Council of the American Institute of Architects (AIA) to reconsider a proposal to prohibit its members from designing “execution chambers and spaces intended for torture or cruel, inhuman, or degrading treatment.”

The decision marked a significant reversal of the AIA’s position on the issue of building and designing execution chambers and facilities that hold prisoners in solitary confinement. The organization’s Board of Directors had outright rejected the proposal as recently as 2014, and the decision to reconsider means the AIA National Ethics Council will review the proposal for the first time.

“We salute AIA’s 2015 and 2016 Presidents for taking another look at this vitally important issue,” said the Architects/Designers/Planners for Social Responsibility (ADPSR) in a February 24, 2016 statement.

In a letter to the ADPSR in late October 2015, the president of the AIA announced the organization’s intent to reconsider the proposal.

“The decision marked a significant reversal of the AIA’s position on the issue of building and designing execution chambers and facilities that hold prisoners in solitary confinement.”

In the letter, President Elizabeth Chu Richter informed us that the AIA’s National Ethics Council will be considering our ethics proposal as well as other public statements that AIA could make in support of human rights,” the ADPSR statement said. “We commend AIA on continuing to wrestle with this issue and we look forward to participating in discussions with the National Ethics Council on human rights.”

“Since AIA’s rejection in 2014, two more medical professional associations – this time, of pharmacists – have told their members not to participate in executions, and the United Nations has adopted new human rights rules for the treatment of prisoners specifically barring the kind of solitary confinement routinely practiced across the United States,” the statement continued. “This makes 2016 the right time for AIA to update its position, too.”

In 2015, the American Pharmacists Association released a public statement discouraging its members from “providing medical drugs to be used for execution, as it is contrary to the values of their profession.” The International Academy of Compounding Pharmacists adopted a similar position.

While architecture might be the last thought on the mind of anyone considering jail or prison reform efforts, it has become a top priority for the people who plan, design and build such facilities – especially considering the dramatic increase in the nation’s jail and prison populations over the past 40 years. In states such as California, the prison population experienced a ten-fold increase since the 1980s.

The non-descript, monolithic, largely windowless buildings that comprise a jail or prison, euphemistically referred to in more recent years as correctional or detention facilities, are usually tucked away in remote rural areas or lonely corners of cities. They are also typically marketed as such. For example, HOK Architects, a large corporate firm that designed the 1997 Twin Towers Correctional Facility in downtown Los Angeles, tucks its portfolio of jail and prison designs into the “justice buildings” category of its website.

American society has begun to re-examine its decades-long experiment with tough-on-crime sentencing and mass incarceration. This reflection was spurred in part by former U.S. Attorney General Eric Holder, who, in an August 2013 speech, acknowledged the failure of the “War on Drugs” and later made modest efforts to rein in abusive sentencing practices by federal prosecutors.

“Widespread incarceration at the federal, state, and local levels is both ineffective and unsustainable,” Holder said, calling the U.S. prison population “unnecessarily large.”

As the public’s attention has focused on the 2.2 million people housed in our nation’s prisons and jails, the design of the facilities themselves is also coming into view. A new book, Corrections & Collections: Architecture for Art and Crime, by architect Joe Day, not only explores the history of correctional facilities but also examines the overlap between the designs of prisons and museums.

The “evolution of prisons and museums” over the last three decades is a “conflation of collection and punishment,” writes Mike Davis in the book’s introduction. “Day’s thesis, refined to a single sentence, is that the warehousing of surplus people and over-valued objects on an unprecedented scale is the expression of a single social logic.”

The modern prison cell and the art world’s prototypical “white cube” gallery space both call for strict minimalism, and fanatical control of sightlines and lighting. In one striking example, photographs in Corrections & Collections place a prison on one side and a museum on the other; it is nearly impossible to tell them apart.

The completion of California’s Pelican Bay State Prison in 1989, designed by KMD Architects, drew attention to the harsh conditions of solitary confinement. Raphael Sperry, a leader in the prison-design boycott movement who refers to long-term solitary confinement as torture, was one of the influential individuals who urged the AIA to amend its code of ethics and professional conduct to ban members from designing solitary confinement cells and execution chambers.

An ADPSR online petition endorsing the proposal has attracted 2,215 supporters as of March 16, 2016. Signers agree to “not contribute my design to the perpetuation of wrongful institutions that abuse others,” and “pledge not to do any work that furthers the construction of prisons or jails.”

Those adding their names are asked “to reinforce this message by thanking AIA for their reconsideration and encouraging them to take a strong stand for human rights!” the petition concludes.

According to the ADPSR, architectural designers “would rather be using our professional skills to design positive social institutions such as universities or playgrounds, but these institutions lack funding because of spending on prisons.” As a result, the organization is also encouraging architects and designers to support alternatives to correctional facilities.

With respect to filling newly-constructed prisons, policymakers often say,
Deaf Prisoners Win Important Settlements in Kentucky and Maryland

by Derek Gilna

Deaf and hard of hearing prisoners have been doubly punished in many prisons and jails, their disability often not only limiting their access to programs, services and communication with the outside world, but also putting them at risk of physical harm and unnecessary discipline due to their inability to hear. In Kentucky and Maryland, the National Association of the Deaf and the Washington Lawyer’s Committee for Civil Rights and Urban Affairs have won substantial settlements with corrections departments in both states that hopefully signal a growing trend to respect the rights of prisoners with hearing impairments.

The lawsuit in Maryland was Jarboe v. Maryland Department of Public Safety and Correctional Services, and the Kentucky case was Adams v. Commonwealth of Kentucky. Both addressed important and often overlooked issues involving violations of the Americans with Disabilities Act (ADA) and Rehabilitation Act (RA).

According to Deborah M. Golden, director of the Washington Lawyers’ Committee for Civil Rights and Urban Affairs, “There has been a pattern of mistreatment of deaf prisoners around the country, including even disciplining some for not obeying orders they could not hear. These settlements should ensure proper treatment under federal law for prisoners in Kentucky and Maryland and also serve as a model for other states and the federal government. We commend Maryland and Kentucky for their leadership, and thank all of our co-counsel for their tremendous work on these cases.”

The ADA, RA and other federal laws are intended to protect all Americans, including prisoners. Under the ADA, prisoners with hearing disabilities are supposed to have access to TTY phones, relay services, videophones and other auxiliary aids and services. If needed, they are to receive sign language interpreters for disciplinary and classification hearings, medical appointments, educational programs, work assignments and religious services. However, the reality in most penal institutions is much different.

This was reflected in the comments of Howard A. Rosenbaum, legal director of the National Association of the Deaf: “Even in prisons, prisoners have basic human rights which are routinely and appallingly denied to deaf and hard of hearing prisoners across the country. Maryland and Kentucky join only a few states in ensuring equal access is provided to deaf and hard of hearing prisoners. We hope all state and federal prisons will recognize their obligations and comply with federal laws without further delay. We appreciate the hard work of the legal teams whose work gave back to these prisoners their rights and dignity.”

According to the attorneys who handled both cases, the settlements ensure that “deaf inmates will be able to communicate with people outside of prison, just as hearing inmates can ... [receive] adequate visual notification of oral announcements concerning emergencies and other events, [and gain] access to sign language interpreters and other auxiliary aids and services.” Further, the settlements require the implementation of “necessary policies, training, outreach to prisoners, and monitoring to ensure equal treatment by prison officials.”

The Maryland settlement, finalized in February 2015, also provided for the payment of $142,500 in attorney fees and costs, while the May 2015 settlement in the Kentucky lawsuit included $1,500 in damages for each of the two lead plaintiffs plus $250,000 in fees and costs. See: Jarboe v. Maryland Department of Public Safety and Correctional Services, U.S.D.C. (D. Md.), Case No. 1:12-cv-00572-ELH; and Adams v. Commonwealth of Kentucky, U.S.D.C. (E.D. Ky.), Case No. 3:14-cv-00001-GFVT-EBA.
The estate of a prisoner who died as a result of complications from medical ailments that went untreated at South Carolina’s Hill–Finklea Detention Center (HFDC) received $3.5 million from a settlement and jury verdict.

David Allan Woods, 50, was serving a 60-day sentence at HFDC. He had long-term medical problems prior to his incarceration, and submitted numerous requests for medical care between October 12 and November 5, 2010. Those requests were ignored.

Sgt. Priscilla Garrett and PFC Ashley A. Harber found Woods sick in his cell on November 5, and escorted him to a video-monitored observation cell. Once there, his condition deteriorated rapidly. Guards ignored Woods and never called a nurse as he lay on the floor, barely conscious and repeatedly defecating on himself over the weekend.

On November 7, Sgt. Garrett reportedly told her replacement, Sgt. Richard T. Burkholder, to call the nurse. He failed to do so. Thirty minutes later another guard wrote an incident report, stating Woods was very sick. When Garrett came back on duty Sunday night, she learned that Burkholder had failed to call for medical care for Woods, but took no action herself, the estate alleged.

A nurse finally became aware of Woods’ condition on Monday morning and ordered him sent to a hospital. By then it was too late. He died three days later, on November 11, 2010; his death was caused by complications from gastrointestinal bleeding, a duodenal ulcer, esophageal varices, cirrhosis of the liver, hepatitis and cardiac arrest.

Following his death, Woods’ estate, represented by his mother, filed suit in federal court. Hope Clinic agreed to a $625,000 pretrial settlement. The only claim that remained, deliberate indifference, proceeded to trial with Burkholder, Garrett, PFC Leemon E. Carner, Andrew J. Bland and PFC Jerry Speissegger, Jr. as defendants.

In October 2014, following a four-day trial and four hours of deliberation, the jury concluded the defendants had acted with deliberate indifference. It awarded $500,000 in actual damages, $1 million in punitive damages against both Garrett and Burkholder, and $150,000 in punitive damages each against Carner, Bland and Speissegger, totaling $2.95 million.

After the verdict, the district court entered an award of $31,820.62 in costs plus $354,293 in attorney fees in January 2015. The defendants appealed, and on March 23, 2015 the court issued a stay of execution of the judgment while the appeal remains pending. See: Morris v. Bland, U.S.D.C. (D. SC), Case No. 5:12-cv-03177-RMG.

Woods had been jailed because he couldn’t afford to pay around $2,500 in fines resulting from shoplifting and animal nuisance convictions. While incarcerated, he twice called his outside doctor to express concerns about his medical condition, saying he feared that he would die.

Additional source: www.postandcourier.com

Tennessee Prisoner Awarded $60,000 for Guards’ Use of Excessive Force

A Tennessee federal jury awarded $60,000 to a prisoner after finding three guards at the Riverbend Maximum Security Institution (RMSI) in Nashville had used excessive force.

The verdict found that prison guards Joshua McCall, Gaelen Doss and Sean Stewart used excessive force on former prisoner Todd Lee White while he was held in a segregation unit at RMSI. The incident occurred on May 31, 2010—Memorial Day.

Because White and other prisoners in the unit were in segregation, they were confined to their cells 23 hours a day and received showers only on Monday, Wednesday and Friday. McCall said there would be no showers that day because the unit was on “holiday schedule.”

Prisoners began banging on their cell doors, but McCall reiterated there would be no showers. When a nurse came to the cell of prisoner Ryan Honeycutt, he threw liquid on a guard. A short time later, guards arrived at Honeycutt’s cell, handcuffed him, beat him, broke his nose and left him without medical care.

About an hour later, guards returned to the unit to pass out dinner. When they approached White’s cell, he told the guards what had happened to Honeycutt and said the incident should be reported to the shift commander. He then threw a milk carton full of cold coffee and water on the guards.

Four guards, including McCall, came to White’s cell about 30 minutes later and ordered him to submit to handcuffing. McCall said he must not have seen what they did to Honeycutt. White responded that he had, and demanded that the shift commander show up with a video camera before he would submit to handcuffing, as he was in fear for his safety.

The guards left and returned with other RMSI guards in riot gear. Lt. Bryan Baldwin assured White he would not be beaten, and directed him to face the wall with his hands behind his back and get on his knees. Once White did so, guards entered the cell with an electric shield and shocked him; they then commenced to kick, hit and beat him. White was placed in handcuffs and shackles, and a guard hit him in the eye, knocking him “unconscious for some period of time.” He awoke to more blows, and knees on his back. Once pulled to a standing position, a blow to his head caused a split in his forehead from the top of his hairline to between the eyebrows.

Finally, Lt. Baldwin said, “that was enough, bring him out of the cell.” White was carried down a staircase and slammed on the floor at the bottom. He was dragged to a recreation area, but his injuries resulted in such severe bleeding that a nurse was called. White was taken to a hospital, where “approximately ten to fifteen staples” and other sutures were needed to close his wounds.

At trial, the guards pointed fingers at each other. They acknowledged the force used was unnecessary, but no one took responsibility. While McCall denied using excessive force himself, he blamed Doss and Stewart. Doss admitted to an internal investigator that he had used excessive force, but denied it at trial.
A report prepared by a San Francisco law firm following interviews with 944 prisoners and 33 staff members at the Santa Clara County Jail found numerous complaints of both physical and verbal abuse, uneven enforcement of rules, harassment and a grievance system that fails to recognize prisoners’ legitimate complaints.

According to the report, jail guards often use excessive force “in routine jail movements and lockdowns.” The prisoners who were interviewed “emphasized that officers’ use of force does not always stop when an emergency ends; physical violence and pepper spray often continue even after an inmate is fully restrained and no longer a threat to anyone’s safety.”

Twenty-seven percent of the prisoners and three to four percent of staff at the jail responded to a survey distributed by the law firm of Moscone, Emblidge & Otis in January and February 2016. The survey and interviews were conducted for a Blue Ribbon Commission appointed by the county to examine conditions at the jail, the year after three guards were charged with killing a mentally ill prisoner.

The law firm did its best to speak with prisoners in a confidential setting, one-on-one, but many said they were discouraged by guards from participating. Some complained that their bunks and cells were “tossed” by jail staff while they were at the interviews, with personal hygiene items confiscated for no purpose other than harassment.

The interviews disclosed ten significant issues. The first was a lack of confidence by “inmates, staff and families” in the grievance process. Prisoners alleged that guards often refuse to accept grievance requests, and harass those who submit them. The second issue was “gaps between policy and practice.” While prisoners and their family members acknowledged that the jail had policies regulating the use of force and providing for the dissemination of rules and regulations, in practice many guards and other jail staff treated prisoners in a demeaning manner, and often showed partiality in their behavior.

The third area of concern was “avoidable delays and deficiencies in medical care,” including poor mental health treatment. Fourth, “Inmates consistently complain of poor hygiene and sanitation conditions,” including insufficient laundry materials and cleaning supplies.

Issue five was “insufficient and inconsistent out-of-cell time”; sixth, a “lack of transparency in the classification and inmate discipline systems”; seventh, perceived poorer treatment for state prisoners serving time in the county facility; and eighth, poor morale and understaffing among guards, often resulting in unsafe conditions. The ninth issue revealed by the interviews was a lack of accountability and discipline for guards and other staff who engage in misconduct, and finally, tenth, the under-use of the Inmate Welfare Fund, which is used to provide needed supplies to indigent prisoners.

Attorney Aaron Zisser, a special consultant to the Blue Ribbon Commission who previously worked in the U.S. Department of Justice’s Civil Rights Division, found “there really isn’t any meaningful independent oversight” at the jail, and recommended the appointment of an oversight panel to ensure changes are made to address the concerns reflected in the law firm’s comprehensive report. The panel should be separate from the Sheriff’s Office, he said, and report to the county’s Board of Supervisors.

Some changes are already in progress. According to a January 7, 2016 news report, 22 Santa Clara jail guards have been fired and 27 suspended since 2010, for misconduct ranging from use of excessive force and having sexual relationships with prisoners to DUI and improperly accessing law enforcement databases.

Report Finds Shortcomings at Santa Clara County, California Jail

by Derek Gilna

The jurors made a culpability statement with their verdict: They awarded White $30,000 in compensatory damages against McCall and $15,000 each against Doss and Stewart. The district court entered the judgment on January 21, 2015; costs of $4,482.65 were taxed against the defendants, and on August 31, 2015 the court awarded $82,257.90 in attorney fees. White was represented by attorneys David L. Cooper, Blair P. Durham and Benjamin E. Winters.

“We think justice was served after an excessive amount of force was used against Mr. White,” Cooper stated. “He was very happy and very satisfied and thankful the jury listened to him and gave him justice when he was an incarcerated man and no one else would.”

The defendants appealed to the Sixth Circuit in late September 2015, and their appeal remains pending. White has since been released from prison. See: White v. Ray, U.S.D.C. (M.D. Tenn.), Case No. 3:10-cv-00863.

Additional source: The Tennessean
The Sixth Circuit Court of Appeals held on April 8, 2015 that an Ohio federal district court did not abuse its discretion by finding prison officials had waived their qualified immunity defense in a prisoner’s civil rights action.

The lawsuit was filed by John Henricks, incarcerated at Ohio’s Pickaway Correctional Institution, and included claims against Dr. Ida Gonzalez and guard Michael Maynard.

Henricks began to experience symptoms of acute appendicitis on August 19, 2006. Gonzalez ordered him to be taken to a hospital. At the emergency room, Maynard refused to heed the doctor’s request for the removal of Henricks’ handcuffs and other restraints. A 45-minute argument ensued before Maynard finally removed the restraints and Henricks was taken in for emergency surgery. The surgery, which Henricks alleged was made more extensive by Maynard’s delay in removing the restraints, caused nerve damage to Henricks’ right leg.

The claims against Gonzalez arose from her “consistent refusal to prescribe a medication called Neurontin for the pain caused by the nerve damage, in spite of the view of several other doctors, including specialists, that Neurontin was necessary to treat Henricks’ pain.” Instead she prescribed Motrin, which was not effective and caused him to suffer “unreduced pain resulting from his nerve damage during much of 2007.”

In response to Henricks’ pro se complaint, Gonzalez and Maynard filed a motion to dismiss invoking qualified immunity. The motion was denied, as they had not been raised in a responsive pleading. The defendants appealed.

The Sixth Circuit held the only issue it had jurisdiction over in the interlocutory appeal was waiver of the affirmative defense of qualified immunity by failing to assert it in a responsive pleading.

The appellate court noted it was well settled that “a failure to plead an affirmative defense ... results in a waiver of that defense.” Gonzalez and Maynard provided “no reasonable explanation for their failure to plead qualified immunity and were very tardy in raising the defense.” Their lack of diligence rendered it “permissible for the district court to refuse to inconvenience itself and Henricks and further delay trial to make up for the defendants’ errors.”

Failure to assert the defense earlier could have led Henricks to fairly conclude the defendants did not intend to assert a qualified immunity defense. Under the facts of this case, the Court of Appeals held Henricks would be sufficiently prejudiced if the defendants’ tardiness was excused. The district court’s order was affirmed, and the case remains pending on remand. See: Henricks v. Pickaway Correctional Institution, 782 F.3d 744 (6th Cir. 2015).

Court’s Gag Order in Michigan Jail Corruption Case Reversed

In March 2015, the Michigan Supreme Court concluded that a gag order entered in criminal proceedings against Wayne County officials charged with corruption in a jail building project must be reviewed.

Following an audit into the jail project that cost Wayne County taxpayers tens of millions of dollars, an auditor found evidence of corruption. Then-Auditor General Willie Mayo, upon forwarding his findings to prosecutor Kym Worthy, was informed that disclosure of his findings to anyone, including the county commissioners who ordered the audit, could result in obstruction of justice charges.

Once charges of willful neglect of duty and misconduct in office were filed against Carla Sledge, the county’s Chief Financial Officer, and Steven M. Collins, a top county attorney, Wayne County District Judge Vonda Evans issued a gag order. That September 30, 2014 order barred “all potential trial participants” from speaking publicly about the case.

The Detroit Free Press challenged the order. The Michigan Court of Appeals denied the newspaper’s appeal, saying the gag order was not an “impermissible prior restraint” and “placed no direct restraint of any kind on the Free Press.”

While the appellate court found the phrase “all potential trial participants” conceivably implicated First Amendment rights, it said the Free Press had failed to identify any willing person who wanted to speak out but was restrained by the gag order.

The Michigan Supreme Court denied review but vacated the Court of Appeals’ decision and ordered it to reconsider the newspaper’s appeal. See: People v. Sledge, 497 Mich. 979, 865 N.W.2d 9 (Mich. 2015).

The Free Press was “heartened by that ruling,” said the paper’s then-editor and publisher, Paul Anger.

Following the remand order the Court of Appeals completely reversed course, holding on October 1, 2015 that the gag order “constituted an unconstitutional prior restraint on the freedom of speech and the freedom of the press under the First Amendment.” Further, the Court found the Free Press had standing to challenge the gag order, which “fail[ed] to meet the strict scrutiny standard to overcome the heavy presumption of unconstitutionality attached to all prior restraints.” See: People v. Sledge, 2015 Mich. App. LEXIS 1831 (Mich. Ct. App. 2015).

In addition to Sledge and Collins, misdemeanor charges were filed against Anthony Parlovacchio, a consultant for the jail construction project who was accused of misleading county officials about cost overruns. The cost of the project, initially estimated at $300 million, ballooned to $391 million before the project was halted in June 2013. Taxpayers remained on the
hook for about $14 million per year for the two years that construction was placed on hold.

The charges against Collins were dismissed in September 2015 and those against Parlovecchio were dropped the following month, as neither was a “public official” as required by the charging statute. The felony charges against Sledge remain pending.

In December 2015, the Wayne County Commission voted to proceed with the jail project, using the same main contractors – Ghafari Associates and AECOM Services – though with a redesigned facility that will cost up to $175 million. That cost is in addition to the estimated $150 million the county has already spent to build a new jail.

“I feel like I have a gun to my head and I have to decide whether to get shot by a .45 or a .357,” said Commissioner Ray Basham, frustrated with having to use the same companies to proceed with the controversial and expensive project.

Also in December 2015, the draft audit of the jail building project was finally unsealed. In addition to finding that county officials knew the project would run over-budget by millions of dollars, the audit found the county was not supervising the contractors; that county officials did not heed other contractors who questioned whether it was possible to build the jail within the allotted budget; and that the project included $29 million in no-bid contracts to AECOM and Parlovecchio Building – the latter run by Anthony Parlovecchio, a former county employee.


The North Carolina Department of Public Safety (NCDPS) agreed to pay $2.5 million to the family of a mentally ill prisoner who died after spending 35 days in an isolation cell.

Michael Anthony Kerr’s death in 2014 occurred during a transport from the Alexander Correctional Institution (ACI) to Central Prison. An Army veteran serving a 31-year sentence, Kerr suffered from schizo-affective disorder that went untreated for at least six months. As previously reported in PLN, Kerr died of dehydration after being left handcuffed in solitary confinement. [See: PLN, May 2015, p.60].

While in solitary, Kerr, 54, was placed on a nutraloaf diet. He initially received milk with the nutraloaf, but four days before his death the milk was ordered discontinued because he used the cartons to stop up the toilet in his cell. The only way Kerr could obtain anything to drink was by using his hands to get water at a sink, which was difficult due to his obesity – he was 5’9” and weighed about 300 pounds – and because his hands were cuffed during the last five days before he died.

Other prisoners reported that Kerr was lethargic and laid in his own waste for days while in the segregation cell. Indeed, when guards arrived to transfer him to Central Prison, they had to cut the handcuffs off because the lock was encrusted with dried feces.

After Kerr’s death, over two dozen prison employees resigned or were disciplined. Nine were fired, but several were successful in reversing their dismissals, including the acting warden at ACI. No criminal charges were filed.

In July 2015, the NCDPS agreed to a $2.5 million settlement with Kerr’s family. Of that amount, $1.5 million will be paid by insurance. While the state did not admit liability, it agreed to issue the family a letter of apology “from a high ranking official.”

In a press release, the NCDPS also stated its Division of Adult Correctional and Juvenile Justice was taking action to improve the treatment of mentally ill prisoners. The department said it had provided 1,800 employees with crisis intervention training.

One of the staff members fired in connection with Kerr’s death, Shawn Blackburn, challenged his April 2014 termination, which was upheld by an Administrative Law Judge (ALJ). He then appealed to the state Court of Appeals, which affirmed the decision by the ALJ on March 15, 2016. Blackburn had ordered that Kerr not receive milk with his meals, had allowed him to remain in handcuffs for five days and “failed to initiate an Incident report for a documented Code Blue Emergency” when Kerr was in segregation.

“Based on the evidence, the ALJ’s findings of fact, and the undisputed crucial facts, we conclude that petitioner’s actions of (1) allowing Mr. Kerr to remain lying on his bed in handcuffs for five days, (2) without receiving anything to drink during this time, and (3) without any attention to Mr. Kerr’s condition, was a violation of applicable rules, a breach of petitioner’s responsibility as a senior correctional officer, and contributed directly related to Mr. Kerr’s death on 12 March 2014,” the appellate court held. “The ALJ did not err by finding and concluding that [the NCDPS] had properly determined that it had just cause to terminate petitioner for grossly inefficient job performance.” See: Blackburn v. NCDPS, Court of Appeals of North Carolina, Case No. COA15-556.


$2.5 Million Settlement in North Carolina Prisoner’s Dehydration Death

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- Federal Prisoners -

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The High Court of Ireland has declined to extradite a terrorism suspect to the United States to face justice, quashing an extradition request filed by American officials. Ali Charaf Damache, born in Algeria but a 15-year resident of Ireland and an Irish citizen, was accused of engaging in terrorist activities by the U.S. government – activities that allegedly involved recruiting U.S. citizens, including Colleen LaRose.

LaRose, who had already been arrested by U.S. authorities, implicated Damache. He had been in custody in Ireland for five years, which included serving three years of a four-year sentence for making a menacing phone call to a U.S. Muslim activist in 2010.

The refusal to extradite by the Irish High Court followed a contrary 2012 decision by the European Court of Human Rights (ECHR) in Babar Ahmad and Others v. The United Kingdom, which rejected the defendants’ argument that they faced incarceration in solitary confinement at the ADX supermax facility in Florence, Colorado. [See: PLN, April 2011, p.44].

The ECHR’s ruling was criticized by many prisoners’ rights advocates, who argued that the U.S. government had misrepresented conditions of confinement for terrorism suspects at the ADX.

However, in yet another case, British officials blocked the extradition of U.K. citizen and accused computer hacker Gary McKinnon to the United States because he suffered from Asperger’s disease, which would be exacerbated by solitary confinement. Irish law requires that “a prisoner should not be totally or substantially deprived of the society of fellow humans for anything other than relatively brief and clearly defined periods.”

In its decision in the Damache case, the Irish High Court proceeded to eviscerate the American criminal justice system. First, it noted that the adverse psychological effects of solitary confinement are well-documented, citing a 2014 report by the UN’s Committee Against Torture which described the full isolation of prisoners held in U.S. supermax facilities such as the ADX. Second, it found “The lack of meaningful judicial review creates a risk of arbitrariness in the detention of the person in solitary confinement and therefore confirms that the prolonged detention amounts to a breach of constitutional rights.” The High Court also criticized the U.S. concept of “relevant conduct,” used to tack on additional prison time based on circumstantial and hearsay evidence, as being contrary to Irish law.

The Court pointed out that Irish state prosecutors had elected not to prosecute Damache in Ireland for the same charges, quashed the extradition request and ordered Damache freed in its May 2015 decision. According to the ruling, there were “substantial grounds for believing that Mr. Damache will be at real risk of being subjected to inhuman and degrading treatment if extradited to the USA.” See: Attorney General v. Damache, The High Court of Ireland, 2015 IEHC 339 (May 21, 2015).

“I am very happy with today’s ruling,” Damache stated. “I always had faith in the Irish legal system.”

There wasn’t a happy ending to his ordeal, though. Damache, 50, was arrested in Spain in December 2015, where he was taken into custody and will again be subject to an extradition request from the United States.

Sources: www.solitarywatch.com, www.irishtimes.com

Federal Lawsuit Claims Negligence Caused Pennsylvania Prisoner’s Heroin Overdose Death

by Christopher Zoukis

A federal lawsuit alleges that officials at the Schuylkill County Prison in Pennsylvania were negligent in the 2013 death of a prisoner from an accidental drug overdose. The suit, filed on March 24, 2015, came almost a year after the findings of a coroner’s inquest which determined that negligence did, in fact, play a role in the death of Matthew Konscler, five days after his 21st birthday and four days after he reported to the facility to begin serving a three-to-18 month sentence for possession with intent to deliver and possession of drug paraphernalia.

Konscler’s mother, Sherry Konscler, filed the suit in U.S. District Court for the Middle District against Schuylkill County, the county prison board and warden Eugene Berdanier, as well as the prison’s private healthcare provider, PrimeCare Medical, nine medical assistants and nurses, three unidentified prison guards and guard Robert Murton, who discovered Konscler unresponsive in his cell. The suit seeks at least $150,000 in compensatory damages plus punitive damages, attorney fees and costs.

Konscler had reported to the county prison on March 27, 2013 to begin serving his sentence. During the intake screening, he admitted to prison medical personnel that he was a heavy user of alcohol and Xanax, and was addicted to heroin and a narcotic pain medicine. The lawsuit alleges that prison guards and medical staff failed to monitor Konscler during detoxification, and failed to prevent him from receiving contraband drugs passed by other prisoners under his cell door.

It is “imperative that inmates receiving detoxification medications be monitored closely” to ensure they are taking all of their prescribed medications and not taking any other drugs, the complaint states. “The medical staff and corrections officers failed to properly monitor the inmates, including [Konscler] during the medication administration process.”

The suit also alleges that prison officials were aware of the failure to monitor Konscler but did nothing to correct that deficiency. Further, prison officials were
unaware that contraband drugs were passed to Konscler under his cell door even though security cameras kept watch.

“Despite video surveillance, the corrections officers failed to detect even one episode of contraband being passed,” the lawsuit states.

Konscler complained to cellmates of a headache and pain around his eyes at about 11:00 p.m. on March 30. During the night, one prisoner noticed that Konscler had stopped snoring and, upon checking, found him unresponsive with a purplish color to his skin. The cellmates began banging on the door to summon a guard, but no one responded until a kitchen worker heard the noise the following morning at around 7:30 and alerted Murton. Konscler was pronounced dead at 8:25 a.m.

An autopsy determined that Konscler died of “mixed substance toxicity,” meaning he had ingested too much of too many drugs. Addiction treatment specialist Dr. Carol Ann Littzi said the autopsy tests also revealed that Konscler had ingested heroin within eight hours of his death, meaning he had taken the drug while incarcerated.

Sherry Konscler’s suit contends that prison officials were deliberately indifferent to her son’s medical needs from the moment he entered the facility.

“Despite a history of multiple drug addictions, Matthew Konscler was not examined by a physician at any time during his stay at the Schuylkill County Prison,” according to the lawsuit. “Defendants are responsible for ensuring the health, safety and well-being of inmates placed under their custody and control, and are responsible for enacting, enforcing and administering appropriate policy, procedure and practices to carry out this function.”

“As a direct ... result of Defendants’ deliberate indifference to [Konscler’s] constitutional rights ... [he] was provided with heroin and other opiate drugs ... resulting in serious physical injury, pain and suffering, mental anguish and death from an accidental overdose,” the complaint continues.

The 2014 coroner’s inquest, the first such proceeding in the county in about two decades, was convened after Coroner Dr. David J. Moylan III and District Attorney Christine A. Holman decided they wanted a jury to help resolve unanswered questions surrounding Konscler’s death. After hearing the evidence, the six-person jury determined that while a drug overdose was responsible for Konscler’s death, negligence also played a role.

“There was neglect,” the jury ruled. “I think justice was served,” Holman said after the findings were released. “The six jurors hit the nail on the head. There are some necessary changes that will have to be implemented.”


Medical Marijuana Use by Arizona Probationer Cannot Support Violation

The Arizona Supreme Court held on April 7, 2015 that “any probation term that threatens to revoke probation for medical marijuana use that complies with the terms of AMMA [the Arizona Medical Marijuana Act] is unenforceable and illegal under AMMA.”

Before the Court was an appellate ruling that reversed a condition of probation imposing a “no marijuana” restriction. Keenan Reed-Kaliher pleaded guilty to possession of marijuana for sale and attempted possession of a narcotic drug for sale. He received a split sentence of prison and probation, which required him to “obey all laws.”

Following his release from prison, Reed-Kaliher received a registry identification card from the Arizona Department of Health Services that identified him as a “registered qualifying patient” under the AMMA to receive marijuana for chronic pain from a fractured hip.

The Arizona Supreme Court found the AMMA includes an immunity provision that protects marijuana users from being “subject to arrest, prosecution or penalty in any manner, or denial of any right or privilege...,” as long as their use or possession complies with the terms of the law. The Court held that provision does not exclude probationers, and that compliance with the AMMA prohibits probation conditions or revocation by state courts for marijuana possession or use under state law.

“The State nonetheless argues that prohibiting one convicted of a drug crime from using marijuana should be permitted because it is a reasonable and necessary condition of probation,” the Court noted. “Our job here, however, is not to determine the appropriateness of the term, but rather to determine its legality. While the State can and should include reasonable and necessary terms of probation, it cannot insert illegal ones.”

The Supreme Court further found it had no obligation to comply with federal law, and held state courts cannot incorporate federal law into a probationer’s terms when state law provides otherwise. Accordingly, the decision of the Court of Appeals was affirmed, striking down the “no marijuana” condition of Reed-Kaliher’s probation. See: Reed-Kaliher v. Hoggatt, 37 Ariz. 119, 347 P.3d 136 (Ariz. 2015).
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Arizona: On October 28, 2015, Maricopa County youth detention guard Patrice Dawson was arrested on felony charges of sexual misconduct. Dawson, who supervised juvenile offenders, was accused of having sexual relations with an underage prisoner; she was fired from the department after confessing to the relationship. In a statement, Arizona Department of Juvenile Corrections officials said they “take the safety of our youth very seriously and enforce a zero tolerance policy for misconduct.”

Brazil: Around 40 prisoners fled from the Frei Damião de Bozanno jail in Recife after a bomb exploded and ripped a gaping hole in the external wall of the compound on January 25, 2016. Two escapees were killed and all but one of the others were quickly captured. The bold escape was caught on surveillance video footage, which showed a desperate surge of prisoners scaling a razor wire fence and running into the streets. A second mass breakout occurred earlier in the week in the same area, when 53 prisoners fled from the Professor Barreto Campelo prison near Recife.

California: Richard Alex Williams was acquitted of first-degree murder and attempted murder charges on November 2, 2015, but state prison and Sacramento County jail officials refused to release him after the jury’s decision. Williams had been transferred to county custody to await retrial but was still considered a state prisoner. When he was found not guilty, California Department of Corrections and Rehabilitation authorities demanded that he be returned to the state prison in Lancaster to be processed out, which can take up to seven days. “An acquittal is an acquittal,” said Williams’ attorney, Victor Haltom. “Richard is no longer supposed to be in anybody’s custody. It’s an unlawful detention and the height of bureaucratic absurdity, not to mention a terrible waste of the taxpayers’ money.”

California: Former prisoner Arthur Salgado filed a lawsuit against Santa Clara County, Dr. Sanjay Agarwal, and nurses Nancy Smith, Benedick Coronel and Liberty Forenza on January 18, 2016. The suit alleges Eighth Amendment violations and abuse of a dependent person, and claims medical negligence resulted in the amputation of Salgado’s right leg. He was serving less than a month at the Elmwood Correctional Facility in Milpitas when a blister on his foot became infected. A diabetic, Salgado had experienced previous issues with foot wounds and repeatedly sought medical care. Eight days after reporting the blister, he was hospitalized and underwent four separate surgeries, eventually losing his leg below the knee.

California: Lawrence Phillips, a former NFL running back who was serving a 31-year sentence on multiple charges, was found unresponsive in his cell at Kern Valley State Prison on January 13, 2016. His death was ruled a suicide. Phillips, 40, a member of the 1994 national champion Nebraska Cornhuskers football team, finished eighth in Heisman Trophy voting. He later played for the Rams, the Miami Dolphins, the San Francisco 49ers and two Canadian Football League teams. Phillips’ former coach at Nebraska, Tom Osborne, said he was saddened to hear the news about his former player. “I saw the potential,” he stated. “Lawrence obviously had some demons that were never completely put to rest.”

Canada: On January 7, 2016, the Royal Canadian Mounted Police charged a former guard at the Southeast Regional Correctional Centre in Shediac, New Brunswick with two counts of committing an indecent act. Christien Robichaude, 29, was fired in October 2015 after two female guards at the facility complained that he had masturbated in front of them. Robichaude appeared in court on January 14, 2016 and was ordered not to have any contact with the victims; he was expected to enter a plea at a later date.

Delaware: A crowd of around 40 protestors accompanied Jermaine Wright on a march from his home in Wilmington to his attorney’s office in the city’s central business district on January 15, 2016. Wright, who had been freed from Delaware’s death row in February 2015 after serving 24 years, was ordered back to prison by the state Supreme Court to face a retrial on murder charges from 1991. Earlier in the week, the high court had overturned a lower court’s decision to toss a videotaped confession from Wright that served as a linchpin for the state’s case against him. Wright’s attorney, Herbert Mondros, addressed the crowd, saying, “Jermaine Wright is an innocent man who has already spent more than 20 years on death row for a crime he didn’t commit. Today is the day he has to turn himself in and face the charges. We look forward to proving his innocence.”

Florida: On December 21, 2015, U.S. District Court Judge Cecilia Altonaga granted a petition from Immigration and Customs Enforcement (ICE) that would allow involuntary medical intervention and force feeding for seven detainees from Bangladesh who claimed they were at risk of being killed if deported. The detainees staged a hunger strike in protest, and had not eaten for three weeks. “We would rather die here,” said 21-year-old Abdul Awal. Dr. Dalian Caaraballo, a staff physician at the Krome Detention Facility where the men were being held, said they had each lost up to 15% of their body weight since beginning the hunger strike.

Florida: Jo Ellen Marie Gardner, a 32-year-old employee of the G4S Youth Services-operated Fort Myers Youth Academy, was arrested on December 17, 2015 and charged with felony distributing obscene material to a minor. Gardner resigned at the onset of the investigation, which was spurred by the discovery of explicit text messages and nude photos of her on a cell phone owned by a former juvenile prisoner. Gardner initially denied any inappropriate behavior, but later admitted to kissing the teen and sending him the pictures and text messages. G4S is cooperating with the investigation, though a spokeswoman noted that the incident occurred after the juvenile had been released from the program.

Florida: On December 29, 2015, a former nurse at the Union Correctional Institution was arrested for falsifying or altering records and fraud in obtaining prescription drugs. Prison healthcare contractor Corizon fired Lloyd Collins in November 2015, according to records released by the Florida Department of Corrections. According to the arrest warrant, Collins “did knowingly cause a prescription for a medicinal drug ... to be falsely made or altered.” The criminal investigation was conducted by the FDOC’s Office of Inspector General with assistance from the State Attorney’s Office in the 8th Judicial Circuit.

Georgia: Andre Pope was working as a Bibb County jail guard when his childhood
friend, Ashley Brown, was incarcerated at the facility while awaiting trial on a murder charge. That friendship led to Pope being sentenced on January 29, 2016 to a ten-year prison term, suspended to three years, for smuggling two cell phones to Brown. Brown gave one of the phones to gang member Deonte Kitchens, who used it from the jail to threaten witnesses and engage in a murder conspiracy. Had Pope not pleaded guilty, District Attorney David Cooke said he planned to re-indict the case and add charges against him for violating the state’s anti-gang laws. Pope was sentenced as a first-time offender and will not have a felony record if he successfully completes his sentence.

Georgia: On January 12, 2016, U.S. Attorney John Horn announced the indictment of 17 people for their participation in a large-scale methamphetamine distribution ring. Three prisoners were included in the extensive bust, accused of using contraband smart phones to traffic drugs, smuggle in contraband, steal identities and, in at least one case, arrange a violent attack on another prisoner suspected of snitching. According to the indictment, prisoners Francisco Palacios Baras, Johnathan Corey McLoon and Christopher Wayne Hildebrand managed a network of brokers, distributors and runners using phones inside their cells in separate facilities. The indictment marked the third time in four months that federal prosecutors accused Georgia prisoners of running criminal enterprises with contraband phones.

Israel: A mob of Israeli officials, including soldiers and prison guards as well as police in and out of uniform, lynched a 29-year-old Eritrean refugee on October 18, 2015, beating and shooting him to death as security video caught the entire incident. Haftom Zarhum was killed by the mob, who mistook him for a gunman who had opened fire on a bus station in Bir al-Saba. As the lynching was taking place the real gunman began shooting again, but the crowd continued to savagely beat Zarhum and blocked medical responders from treating his injuries. Despite the video evidence, only four Israelis were criminally charged in connection with the incident.

Louisiana: PLN previously reported on misconduct by two former police chiefs, Gregory Dupuis and Robert McGee, in the small town of Mamou. [See: PLN, Feb. 2016, p.63.] Both faced criminal charges for separate incidents in which they used stun guns on jail prisoners who posed no threat. Dupuis pleaded guilty and was sentenced to a year in federal prison in 2015, while on January 14, 2016, U.S. District Court Judge Richard T. Haik, Sr. sentenced McGee to prison for one year and a day.

Maryland: Retired Charles County judge Robert Nalley faces prison time after pleading guilty on February 1, 2016 to one count of deprivation of rights under color of law. The charge came as a result of Nalley’s July 2014 decision to order a sheriff’s deputy to activate electric shock “stun cuffs” worn by a criminal defendant during a hearing when the man spoke out of order. Maryland U.S. Attorney Rod Rosenstein noted that, in the case of disruptive courtroom defendants, “force may not be used in the absence of danger.” The former judge is expected to be sentenced to the prosecution’s recommended one year of probation. The charge carries a penalty of up to one year of incarceration, one year of supervised release and a $100,000 fine.

Maryland: In a case that the sentencing judge compared to the wildly popular television show “Breaking Bad,” a former federal police officer pleaded guilty and received a three-year prison term for blowing up an illegal meth lab he was operating inside a federal science laboratory. Christopher Bartley’s defense attorney claimed during the January 8, 2016 hearing that Bartley was conducting an “unauthorized experiment,” and wasn’t manufacturing meth for his personal use. U.S. District Court Judge Peter J. Messitte told Bartley there was a “certain craziness” to the matter before handing down the sentence.

Michigan: U.S. District Court Judge Paul Maloney dismissed a lawsuit filed by prisoner Iotonda Taylor against prison food contractor Aramark in December 2015. The suit claimed that food substitutions violated Taylor’s constitutional right to personal safety by causing a near-riot at the Bel-lamy Creek Correctional Facility on May 2, 2015. Prisoners were upset when Aramark ran out of waffles and served peanut butter and jelly sandwiches instead; Taylor claimed he was fearful that similar incidents would place him in harm’s way. In his 11-page order dismissing the case, Judge Maloney wrote, “While the situation may have been tense, Plaintiff fails to allege facts supporting his claim that reasonably remains at substantial risk of serious injury from last-minute food substitutions.”

Michigan: On January 8, 2016, Michigan State Police confirmed that detectives had opened an investigation into a drug smuggling scheme at the Michigan Reformatory in Ionia. Although no criminal charges were filed at the time, an unnamed employee of food service contractor Trinity Services Group was fired. Police declined to release further information. Trinity Services Group took over food service at the prison after Michigan canceled its contract with Aramark following a slew of problems, including employee misconduct, maggot-infested serving lines and inadequate staffing. [See: PLN, Dec. 2015, p.1].

Mississippi: Vasan Josea Oatis was employed by the Columbia Police Department when he had consensual sex with a female prisoner at the Marion-Walthall Correctional Facility in 2013. Oatis pleaded guilty to criminal sexual activity, and on January 31, 2016 he received a suspended five-year sentence. He will also serve a term of probation and is required to register as a sex offender. In addition to his law enforcement job, Oatis had served as the pastor of Walker’s Chapel Freewill Baptist Church since 2013.

Mississippi: Mississippi Department of Corrections officials announced on January 26, 2016 that a lockdown had been lifted at the South Mississippi Correctional Facility after an investigation into an attack on a prison guard. State
officials offered no explanation as to the reason lockdowns were ongoing at two other facilities in the state. Bolivar County Regional Facility and Marshall County Correctional Facility are both operated by private contractors. Movement remained limited and privileges were suspended at the Bolivar County facility; the lockdown at Marshall County only applied to housing units Delta and Bravo.

**New Hampshire:** A former prison lieutenant pleaded guilty to a reduced charge in January 2016 and received a fine and two-year suspended sentence for slashing a prisoner’s shirt at a halfway house in Concord. Robert Gauthier was charged with three felonies for assaulting halfway house resident Roshun Austin by cutting a swatch of fabric out of his shirt and handing it to him to use as a cleaning rag. Gauthier was placed on paid leave at the time of the incident and later retired. Prosecutors were unable to sustain the felony charges because Austin absconded from parole and authorities could not locate him to testify.

**New Mexico:** On October 20, 2015, a vehicle driven by an unnamed off-duty Corrections Corporation of America employee struck two off-duty CCA guards who routinely jogged together after their shifts ended at the Torrance County Detention Facility. Melvin Sharpe died from his injuries and the other guard was injured but expected to recover. Torrance County Sheriff Heath White said the driver had not been charged. “Right now we’re looking into a whole bunch of aspects of the investigation, so it’s still too early to say what direction we’re going,” he stated. CCA declined to comment.

**New York:** Jail nurse Chantiel Cox, 25, was charged on February 5, 2016 with promoting prison contraband and conspiracy following a six-week-long investigation into her smuggling activities at the Nassau County Correctional Facility. Cox faces seven years in prison if convicted of providing prisoners with synthetic marijuana and razors in exchange for cash. Nassau County District Attorney Madeline Singas told reporters, “It raises some serious concerns that need to be addressed about oversight at the jail and security at the jail. We have to make sure that visitors, correction officers, inmates are safe and that things like razor blades don’t make their way into the jail facility.”

**North Carolina:** On January 18, 2016, Wake County sheriff’s deputies charged 19-year-old John Gregory Crawford with obtaining property by false pretense, a felony. Crawford was incarcerated at the Wake County Jail in July 2015 when, the county alleges, he falsely translated information to a Spanish-speaking fellow prisoner and conned the man into giving him his PayTel account number and password. Crawford used that information to withdraw more than $3,100 from Rigoberto Estrella-Cruz’s jail account, then had a friend post his bond with the stolen funds. Crawford turned himself in and this time was held without bail.

**Ohio:** Newsnet5.com reported on January 6, 2016 that six prisoners at the nonprofit Oriana House residential treatment center were transported to an Akron-area hospital after a suspected overnight drug overdose. Officials from Oriana House said two of the men were treated and released and the other four held for evaluation. According to authorities, synthetic marijuana was the suspected source of the overdose. Treatment center staff responded to the incident by searching the facility, conducting pat-downs and restricting resident movement. “Like many jails and prisons that have recently reported overdoses, Oriana House is a community-based program and is not immune to drugs getting into our facilities,” said Bernie Rochford, Oriana’s executive vice-president.

**Oklahoma:** A former guard who worked for The GEO Group for more than 16 years filed suit against the company claiming he was improperly fired for complaining about an assault against a prisoner at the Lawton Correctional Facility. Leo “Allen” Ziembovic said in the lawsuit that he reported an incident in which a fellow guard repeatedly punched a prisoner in the face while the prisoner was restrained by several other guards. Two months after Ziembovic’s report was sent to a local prosecutor and the Oklahoma Department of Corrections, The GEO Group placed him on unpaid suspension. He was formally terminated in January 2015. Ziembovic’s lawsuit, filed in November 2015, seeks compensatory damages and attorneys’ fees. “The termination of the plaintiff was retaliatory..."
and in violation of Oklahoma’s constitution and clearly established public policy,” the complaint states.

**Oklahoma**: Former prison guard Megan Ann Hood, 25, was arraigned on January 11, 2016 on a felony charge of smuggling cell phones into the Corrections Corporation of America-operated Cimarron Correctional Facility. According to a police affidavit, Hood had triggered a metal detector at a security checkpoint as she reported to work. When confronted, she admitted that she had two cell phones concealed inside her body. She told police that she was to receive $2,000 for the contraband and that she had previously delivered another phone to a prisoner at the facility. If convicted, Hood could face a sentence of 20 years to life.

**Pennsylvania**: PLN previously reported that former Chester County Prison guard Douglas A. Keck pleaded guilty to six felony drug charges after he was caught smuggling numerous types of drugs into the facility. [See: PLN, Oct. 2015, p.63]. On January 27, 2016, Keck’s family tearfully testified to his “hardworking and loving” character before Judge Anthony Sarcione sentenced him to two-to-four years on four counts and one-to-three years on two other counts. “As a result of his greed, this correctional officer is going from guarding inmates to being an inmate,” remarked Chester County District Attorney Tom Hogan.

**Romania**: While some prisons in the U.S. discourage prisoners’ expressions of creativity, Romania has had a law on the books since 2006 that grants prisoners 30 days off their sentences if they write and publish a work of literature or science while incarcerated. On January 12, 2016, Justice Minister Raluca Pruna announced that the law was being amended by emergency decree because so many prisoners had taken advantage of the program. Pruna told a news conference that “According to prison administration figures, the number of books published by detainees went from one a year between 2007 and 2010, to 90 in 2014, and 340 last year.” Anti-corruption prosecutors are investigating whether some of the prisoners used ghost writers.

**Russia**: In January 2016, Freebeacon.com reported that a journalist’s project called “Russian Ebola” had uncovered evidence of several prisoners dying each month at police stations and detention centers. Maria Berezina’s investigation found that 197 prisoners had died in police custody in 2015 alone. More than 100 of those death reports list “sudden deterioration in health conditions” or “unknown circumstances” as the cause of death. Another Russian blogger, Oleg Kashin, wrote that the prisoners’ deaths were a “strange epidemic” deserving of greater attention.

**Tennessee**: Knox County jailers beat and kicked a mentally ill prisoner for nearly 24 minutes according to a graphic video

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*April 2016 Prison Legal News*
released on January 18, 2016 by WBIR 10 News. The video contradicts statements made by the guards in the aftermath of the November 2014 incident. Two months after the beating, guard Nick Breeden was fired and guards David Sparkes and Chris Fustos were suspended. Jesse Rudd, another jail employee, also resigned amid the investigation; an internal review found the guards had used “techniques that violated policy.” Attorneys for prisoner Louis Flack filed a $5 million federal lawsuit against the county, the sheriff’s office and six jailers in November 2015. The suit remains pending.

Tennessee: On January 25, 2016, the grand jury in Morgan County handed down indictments against five people in two separate cases involving mistreatment of prisoners at the Morgan County Jail. Guards Joe D. Shoffner, Jr., Garren Austin Luke Cooper and Michael Alan Lloyd were booked into the Roane County Jail on assault charges stemming from the improper restraint of a jail detainee on December 12, 2015. In the second case, guard Denny Hughett was arrested on charges stemming from his encouragement of and failure to intervene in a November 2015 jailhouse fight. Prisoner Samuel Jennings was charged with aggravated assault for his role in the latter incident.

United Kingdom: Private prison operator G4S defended its policy of installing telephones in prisoners’ cells at HM Prison Altcourse in Fazakerley after prisoner Daniel Truelove made a call claiming to be with the terrorist group ISIS and threatening to blow up Liverpool’s Lime Street rail station. Truelove admitted to making the calls as a prank and pleaded guilty to the bomb hoax. On January 2, 2016, G4S warden Dave Thompson said, “In line with many prisons across the country HMP Altcourse is moving to install telephones into prisoners’ cells as evidence suggests it supports the rehabilitation and resettlement on their release.” The company stated it had no plans to discontinue the program.

United Kingdom: The U.K.’s Independent reported on January 29, 2016 that guards at HM Prison Holme House are being affected by secondhand smoke from prisoners’ use of the legal synthetic cannabis drug known as “spice.” Andy Baxter, chairman of Holme House’s Prison Officers’ Association, told reporters that guards had become disoriented after inadvertently breathing spice smoke. “They report feeling dizzy, getting quite a blinding headache,” he said. “A couple of them have been quite hysterical, their emotions run away with them.” The government has proposed a ban on legal synthetic highs, which manufacturers currently market as incense, salts or plant food.

United Kingdom: Prosecutors claim prisoner Ryan Camfield, 24, told a female guard “I’m kidnapping you” before he lunged at her and trapped her inside his cell. The court heard how the guard feared for her life as she pressed her non-functional emergency call button. On December 29, 2015, Judge Mark Bury sentenced Camfield to three more years, saying, “You clearly have a sexualised attitude towards women in uniform and an extremely violent behaviour. I’m satisfied you intended to cause serious sexual harm or serious physical harm.” Camfield had 41 previous convictions and was moved to Hull Prison’s high-security H-Block after verbally and physically assaulting both male and female guards 13 times in a three-month period.

United States: In March 2015, Aramark, one of the largest providers of privatized correctional food services in the U.S., announced a plan to improve the lives of roughly 750,000 individuals per year. No, Aramark did not pledge to improve the lives of 750,000 prisoners who eat the company’s meals; rather, its new corporate goal is to improve the lives of chickens from which its egg products are procured. In a press release, Aramark touted its partnership with the Humane Society of the United States to ensure that by 2020, only eggs from cage-free hens will be served to the caged people the company feeds. “I hope that this transition goes better than the services they are providing in prison systems,” said Lonnie Scott, executive director of Progress Michigan. “They received a lot of bad press...this is probably an attempt to better their reputation.”

Utah: The Deseret News reported on January 15, 2016 that Davis County expected to save nearly $400,000 by using prisoner labor to perform renovations at the county jail. Project foreman Bracken Rick- etts said about 40 prisoners will participate in the project, which involves removing older vinyl flooring and repainting the jail in fewer colors. One of the prisoners who was chosen to participate in the project saw benefit in the activity. Jessy Spruell said that the work assignment was “almost a form of...
had been closely observed during her visit and cannot have contact with any incarcerated person for a five-year period. Wales had been closely observed during her visit with prisoner Matthew Carter due to a tip received by prison staff that she might be trying to pass contraband. Guards saw her spit “several small objects” into a clear juice bottle and pass it to Carter, who drank it. Carter was confronted and placed in a “dry cell,” where several colored balloons containing pills and marijuana were eventually collected from his feces.

Wisconsin: On January 7, 2016, Sheboygan County Sheriff Todd Priebe defended his decision to hire ex-prisoner Rafael George Macias as a sheriff’s department radio technician after questions were raised in the community about the appropriateness of a convicted felon working for a law enforcement agency. Macias, now 59, had earned an associate degree as a radio technician while serving 13 years in prison for a murder he committed at age 20. Following his release, Macias worked on the sheriff’s radio system as a contractor for 10 years prior to being hired by the department in 2011. “The thing about it is, I’ve always had respect for law enforcement,” he said. “This is my way of paying back society. I’m still paying it back by using my skills to maintain the radio system that protects the public.” Sheriff Priebe added, “As far as I’m concerned, he’s a success story.”

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Critical Resistance
Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in Florida, California, New York, Texas and

News In Brief (cont.)

Washington: According to a February 4, 2016 news report, a former Yakima School District special education teacher pleaded guilty to trying to smuggle contraband to a prisoner at the Coyote Ridge Corrections Center. Celah Laree Wales, 38, was sentenced to three months in jail.

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