Recovery is work that Terrance Streeter knows.
At 56, he is clean. No more drinking, no more drugs. After graduating from an alcohol recovery program two years ago, he went looking for a home. In New York City, his $855 monthly disability check doesn't go far.
Despite the distance he traveled from addiction, Streeter in late 2012 found himself homeless and suicidal.
He checked himself into the psychiatric ward of a city hospital, where a social worker eventually found him somewhere she said was safe and drug-free: a residence run by a substance abuse treatment program called Narco Freedom.
When he walked through the door of that home, a rundown former hotel on Beach 116 Street, in the Rockaway neighborhood of Queens, Streeter was shocked. Cockroaches skittered across the floor. The plumbing was bad, the bathroom moldy.
"Are you kidding me?" he remembers saying to himself. "This is recovery?"
Streeter had entered the largely unregulated system of group homes that has emerged in cities throughout the country, often catering to poor people struggling with substance abuse, homelessness, or returning from prison.
In New York City, where the demand for affordable housing is especially high, these houses have become a little discussed, but deeply ingrained, piece of the recovery and reentry landscape.
Unlike government-sanctioned halfway houses, these homes don't operate treatment programs on-site, but they do often require residents to attend outpatient therapy.
The New York City facilities, variously known as "three-quarter houses," "sober homes" and "transitional housing," bring in millions of dollars each year in taxpayer funds for landlords and operators, largely through welfare, Medicaid and disability payments.
Yet no city or state agency licenses or oversees the homes, creating a system in which some houses institute rules that advocates say violate tenant laws and patient rights.
Housing and tenants' advocates estimate there are more than 300 of these buildings in New York alone. Most are located in the city's poorest neighborhoods, and many have been slapped with violations of city codes.
Road to Recovery
From Los Angeles to Long Island, New York, "sober homes" have emerged as part of the road to recovery.

Well-run homes can be a positive step for those trying to turn their lives around, according to Dr. Leonard A. Jason, director of the Center for Community Research at DePaul University.
Jason says he has visited many homes that live up to their stated goals, helping residents develop a sense of responsibility and giving them the skills and confidence to pursue productive lives.
"If it's a really well-run sober living home, that house could be a place of real health," says Jason, who recently put out a policy statement aimed at helping to develop research and best practices.
"It can be done right, but it can just as easily be done very wrong."
And when it has gone wrong, authorities have raised doubts about the entire industry.
A spike of private sober homes in Los Angeles, where residents may pay $500 each month for a bed, has prompted the city to propose an ordinance to shut them down.
Long Island and suburban Boston have also had a slew of complaints and safety issues.
In Massachusetts, problems extended to relationships between the homes and medical providers. In 2007 and 2010, the Massachusetts Attorney General accused two medical labs of engaging in kickback schemes, receiving referrals from sober homes with which the labs had a financial relationship.
After more than $20 million in settlements and restitution, the state proposed legislation to stop the practice.
In New York City, people arrive at the homes from hospitals, social service agencies, prison, the street and by word of mouth.
Advocates claim that some of the estimated 300 houses are simply boarding
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A Home of Their Own (cont.)

houses, staffed with bunks leased to poor individuals.

Others offer those with few options a hard-to-refuse tradeoff: a bed, in return for a commitment to attend a treatment program associated with the house. While the system serves women, most residents are men.

Some residents kick their habits and move on with their lives. Their beds are quickly filled.

Half a dozen people interviewed by The Crime Report said they attended treatment they did not need in order to have a place to sleep.

“It is very hard to get housing if you do not have a substance abuse problem,” said Debbie Boar, Deputy Director of Reentry Initiatives at Harlem Community Justice Center, which works with people returning from prison. “Besides the shelter system, if you don’t say you have a drug problem, there’s no housing.”

Falling Through the Cracks

Terrance Streeter had graduated from an addiction program in 2011, and stayed clean, but he knew that agreeing to go back to treatment meant a bed to sleep in.

“I ended up at Narco Freedom because I fell through the cracks,” said Streeter. “I didn’t need treatment for drugs. I needed a home. I didn’t want to be on the streets.

In 2010, city homeless advocates successfully petitioned the city to stop referring homeless people to pay-by-the-bunk homes with a history of building complaints.

Advocates have also raised questions about the programs tied to sober homes.

It is not illegal for a certified substance abuse treatment provider to also operate uncertified housing, according to a spokesperson with the state Office of Alcohol and Substance Abuse Services (OASAS), which certifies drug programs.

But the agency has raised concerns about relationships between the two.

In a 2011 letter to the executive director of CIS Counseling Services, a now-closed substance abuse clinic that also ran sober homes, an OASAS administrator questioned whether rules at the homes constituted “coercion and undue influence.”

“Patients reported the practice of mandatory outpatient treatment as a requirement for admission into a sober home residence,” wrote Charles Monson, OASAS associate commissioner for the Division of Quality Assurance and Performance Improvement.

“This practice violates Patient Rights regulations,” the letter said, adding it “should be immediately ceased.”

CIS Counseling shuttered soon after, but others appear to use a similar model.

The Rockaway building, for example, is part of a network of houses associated with Narco Freedom, a non-profit founded in the 1970s, which is now one of the largest treatment programs in the city.

Property records and interviews with tenants and employees confirm that the organization operates at least twenty homes.

Interviews by The Crime Report with more than two dozen residents, treatment advocates and employees of Narco Freedom houses, as well as a review of hundreds of public records and agency documents, showed how real estate developers partnered with Narco Freedom to turn dilapidated buildings into a sober home network using a similar model as CIS Counseling. (Narco Freedom did not respond to The Crime Report’s repeated requests for interviews).

Rent of $215 a Month

It works like this: A landlord leases the building to an outpatient drug treatment program, which offers its clients a bed for the tenure of their treatment. The client typically pays rent of $215 a month through a welfare shelter subsidy from the city’s Human Resources Administration (HRA).

In turn, the treatment programs, generally funded almost entirely by Medicaid, a public health care program for the poor, pay the landlords a monthly rent, generally much higher than what landlords would make by collecting $215 a month per tenant.

In New York, Medicaid generally pays about $70 for each group session that its beneficiaries attend, sometimes up to five times per week.

Residents said missed sessions must be made up on weekends, a mandate echoed in signs posted in one Narco Freedom house The Crime Report visited. Those who miss too many sessions, or who exhaust their treatment funding, are “discharged,” or evicted.
A Home of Their Own (cont.)

Ann Jacobs, director of the Prisoner Reentry Institute at the John Jay College of Criminal Justice, has been studying the role that these houses play in New York City’s post-incarceration system. The housing has become essential for those returning from prison and in need of a bed, Jacobs said.

But she questioned the strings attached, including whether building managers have the right to mandate drug treatment to specific providers.

“Where do they get the authority, or the ability to provide that kind of oversight?” she said, referring to the clinical training required to prescribe substance abuse treatment. “Who authorized or deputized them?”

While various agencies provide the taxpayer dollars that help the homes run, none appears to certify or oversee New York’s growing number of sober homes.

OASAS certifies drug treatment programs, but despite the agency’s concerns about the sober homes associated with CIS Counseling, OASAS Communication Director Jannette Rondo told The Crime Report that sober houses are out of the agency’s purview.

“The scope of our legal authority is related to services provided in OASAS certified treatment programs which does not include housing,” she wrote in an email. “When those types of issues are raised we will make referrals to the appropriate state and local authorities.”

Rondo declined to name those authorities, “as the matters are still likely the subject of ongoing investigations.”

HRA issues welfare shelter payments on behalf of residents, but a spokesperson said HRA “does not place people receiving cash assistance in apartments” nor does it certify or inspect the housing.

The New York State Department of Corrections and Community Supervision, or DOCCS, officially has a five-year, $866,250 contract with Narco Freedom for 20 beds meant to help parolees transition back into the community.

This gives the agency some authority over those beds, yet they are only a fraction of those used by parolees. DOCCS records show that as of May 2013 more than 425 parolees lived at addresses identified by The Crime Report as Narco Freedom sober homes, sometimes dozens per address.

DOCCS said that while it refers parolees to treatment programs, and must approve any residence in which parolees live, it does not refer directly to housing, nor does it certify or oversee the housing.

“We’re not in charge of finding residences,” said DOCCS spokesperson Thomas Mailey. He could not explain why so many parolees appear to end up at Narco Freedom houses.

The system has grown with few eyes on it, leaving neighborhoods with little say when homes come in, and residents within them little recourse if things go wrong.

Cast Adrift

When James Gregory was paroled from prison, he didn’t have much money or a family to take him in.

As a condition of a 2009 drug conviction, his parole officer mandated him to a drug treatment program at Narco Freedom, which, he was told, could also offer him a bed.

On August 2, 2010, he went to Narco Freedom intake in the Bronx. There, he was
assigned to “Freedom House III,” a five-story building nearby at E. 152nd Street.

Attending Narco Freedom drug treatment sessions was a house rule.

Like all parolees, Gregory had to have the residence signed off by his parole officer.

DOCCS is familiar with the building. In April 2012, DOCCS records showed 89 parolees lived at that address.

Though DOCCS asserts it does not mandate parolees to specific housing, “sober homes” have come to serve the parole process.

“They’re another set of eyes for us, just to make sure that someone’s reentry into the community is going the way it should,” said DOCCS spokesman Mailey.

When Gregory arrived at Freedom House III, “things were really bad,” he recalled during an interview in April 2012.

A sturdy man carefully dressed in a hat and a thick gold chain, he spoke matter-of-factly about the bedbugs in the house and how, several times during the winter of 2011, there was no heat or hot water, a memory confirmed by public records.

But he said he was most troubled watching his fellow residents tossed out if they missed group or exhausted their treatment funding.

“They were throwing people out left and right,” said Gregory. He described men whose belongings were stuffed in black plastic bags, then put out on the curb with their owners.

“This is what happens when they illegally put you out; you go backwards,” said Gregory. “You get depressed. You start using. When you start using, you commit crimes.”

A few times, he said, residents tried to protest, telling police they had a right to stay under city housing laws, which require landlords to get court orders before evicting tenants.

“But every time the police came, they’d be on the side of Narco Freedom,” he said. “Their excuse is that this is a program.”

Eventually it was Gregory’s turn. On February 2, 2012, he came home to the news that it was time to leave. He took Narco Freedom to court.

In court filings, Narco Freedom stated it operates the homes “for temporary use by its program participants during their treatment period.”

Because Narco Freedom holds the lease, and is therefore the tenant, those who sleep in the bunks are not tenants but “licensees,” argued Narco Freedom’s attorney.

When that treatment is done, he argued, Narco Freedom had the right to make them leave without formal evictions.

The court did not agree, ruling that Narco Freedom and Gregory had a landlord-tenant relationship.

Gregory returned to Freedom House III.

The case was a victory for others who live in this gray world, said his attorney, Matthew Main of MFY Legal Services, which has brought several suits on behalf of sober home residents, including those who once lived at homes run by CIS Counseling Services.

While Main said he believes three-quarter houses address a desperate need, he thinks the system often harms the very people it purports to help.

“This system is like a conveyor belt that grabs the most vulnerable people from our communities,” said Main. “It takes people who don’t have anywhere else to turn, stuffs...
them into these dilapidated apartments, and has them stay there to attend a treatment program only for as long as it’s necessary to recover. And then spits them out.”

**A Booming Business**

Narco Freedom is the “#1 outpatient alcohol and substance abuse treatment program in the city,” according to its website. In 2012, OASAS records show the organization’s outpatient and methadone clinics served about 7,770 unique patients.

Narco Freedom’s revenue was $46.7 million in 2011, according to its most recent tax filings.

About 90 percent of the organization’s revenue typically comes from Medicaid payments for outpatient substance abuse treatment and its methadone program. Filings show CEO Alan Brand earned a salary of $386,000 that year.

Despite a booming business, routine certification reports obtained from OASAS through a Freedom of Information request point to issues at the program.

One routine OASAS review, conducted in March 2012 at the Narco Freedom program at 250 Grand Concourse in the Bronx, found that patients were not responding to treatment or meeting their defined goals.

For example, in 19 of the 20 cases studied, patients had tested positive for illicit drugs twice within three months. Their treatment plans had not been changed to address the continued drug use.

Reviewers also found that Narco Freedom had submitted reports to OASAS with inaccurate admittance and discharge dates. Nevertheless, the program was recertified.

OASAS spokesperson Rondo said the program is “subject to ongoing monitoring.”

A review from one former resident of Narco Freedom’s house in Rockaway was more blunt.

“They got low standards,” he said, asking not to be named for fear of retribution. “As long as residents go to group, Narco Freedom doesn’t care what they do.”

**“Guaranteed Rent”**

Narco Freedom’s sober housing has proven a successful model for another person as well: Jay Deutchman, who, property records show, owns at least six buildings used as Narco Freedom houses, a relationship stretching back about 15 years.

He also owns at least one used as a home by the now-defunct CIS Counseling Services. (MFY Legal Services is currently engaged in litigation on behalf of former tenants at the home).

He maintains an office in that former sober home in Greenpoint, Brooklyn, where in February 2012 he puffed through cigarettes while working both hands to answer calls.

In between, he explained how the city’s tenant-friendly laws make leasing to an organization preferable to leasing rooms or apartments to individuals, who may not keep up their end of the rental agreement.

“When you have a not-for-profit there’s good money,” Deutchman said. “When you have a tenant who doesn’t care about anyone or anything, it’s not as good.”

He added that leasing to non-profits has “worked out in my buildings for years.”

Deutchman told concerned residents in Rockaway as much in April 2010, after closing his $2.7 million purchase of the Rockaway Park Hotel, where Terrance Streeter found himself two years later.

“We like guaranteed rentals and therefore we take people that have subsidies from the government,” he told the local paper, The Wave.

Though displeased about the perceived “halfway house” coming to the neighborhood, Danny Russiello, president of the local 100th Precinct Community Council, said the neighborhood had little recourse against a private landlord.

Locals soon learned Deutchman had leased the hotel to Narco Freedom. After repeated complaints to Narco Freedom about residents of the house loitering and bothering passersby, things improved.

“They did want to work with us,” said Russiello.

But he said cleaning things up shouldn’t
The responsibility should be up to the people running the program,” he said.

Finding a Solution
At the Prisoner Reentry Institute, Ann Jacobs wrestles with the quandary these homes present.

“They’re bad and they need to be improved, but it would be a disaster if there was just an enforcement reaction and they were closed wholesale,” she said. Residents could end up at the doors of the shelters they sought to avoid, which are already stretched to meet the needs of nearly 50,000 homeless each day.

“The homeless system isn’t equipped to deal with thousands of more people,” Jacobs said.

Legislators in Suffolk County, New York are working on a solution with a plan they say will regulate the system without forcing thousands of residents to the street.

The “Suffolk Healthy Sober Home Act” calls for OASAS and the Suffolk County Group Home Oversight Board to monitor and certify all sober homes. If passed, the homes would undergo regular building inspections.

Those operating without certification would be fined $10,000. Operators would also be required to “demonstrate good moral character,” according to a press release by State Senator Lee Zeldin, the bill’s sponsor.

But no such oversight was in place in October 2012 when Terrance Streeter arrived in Queens where, three days later, Hurricane Sandy hit.


Streeter said residents were told that Narco Freedom would evacuate them, but no one arrived. Instead, on the first Tuesday after the storm, police vans showed up to cart the residents away.

For months, Streeter moved through emergency shelters to temporary hotel rooms for the displaced, unsure of what he would do when the largess of the Federal Emergency Management Agency ran thin.

In February 2013, Streeter received good news. As a hurricane victim, he qualified for shelter.

At the Frederick Douglass Houses, a public housing complex in Manhattan, Streeter found what he had searched for since getting sober.

It is clean. It is quiet. For one-third of his monthly disability check, it is his.

It took a deluge, but he has a place to call home.

“I have my own apartment,” he said. “It’s a studio apartment, but it’s okay for now.”

Despite her son’s long addiction to painkillers, Kelly O’Neill had never before asked him to move out of their home in Suffolk County, New York.

But in the fall of 2010, 19-year-old Billy DeVito became too difficult to live with and she told him to leave. She hoped it would be a wake-up call.

“I picked up his bags and put him out,” she said in an interview. “I never did that before.”

She helped arrange for him to move into a facility with a promising sounding description: a “sober home.”

But four months later, Billy DeVito was dead.

He had overdosed on heroin – in a place where drugs and alcohol were supposed to be forbidden.

The home where DeVito died was one of hundreds of similar programs that have become a crucial – yet often dangerously unregulated – component of substance abuse treatment and prisoner re-entry in New York State.
For years, local officials have been struggling without success to convince the myriad state agencies that interact with these homes – also known as three-quarter houses – to effectively monitor them. In March 2013, the Suffolk Sober Home Oversight Board, a committee tasked by the county legislature with coming up with a solution, issued a request for qualifications (RFQ).

The board offered to pay $500 per resident – $200 more than the state's Department of Social Services currently pays – to any qualified firm that would agree to provide 24-hour supervision, a zero tolerance policy for drugs and alcohol, and submit to regular inspections.

New Legislation

On October 15, 2013 the Board met to discuss the RFQ, as well as a new piece of legislation, “The Suffolk Healthy Sober Home Act,” which would codify many of the board’s qualifications and create an anonymous hotline for resident complaints.

Neither the legislation nor the RFQ has gained much steam, members of the board noted during the meeting. The board received only three responses and none promised to meet all the qualifications.

Rosemary Dehlow, chief program officer for Community Housing Innovations, told the board her firm wouldn’t participate because the new restrictions are too costly.

“Five hundred dollars is not going to cut it,” Dehlow said. “Everything in this RFQ I believe in. You want solid housing; you want restrictions on certain things; you want to make sure they’re clean.”

But, Dehlow said, the legislation and the RFQ ignore the underlying void that sober homes have come to fill. “Why do sober homes have 20 people in a house? It’s about affordable housing,” Dehlow said.

An hour’s drive away in New York City, where 50,000 people struggle with homelessness each day and the demand for affordable housing is especially high, three-quarter homes have become a critical part of the recovery and reentry landscape.

A study of the New York City homes, published in October 2013 by the Prisoner Reentry Institute at the John Jay College of Criminal Justice, reveals that “building code violations are rampant at the houses, which are funded almost entirely by public dollars.”

“Tenants described small rooms with two to four bunk beds accommodating four to eight people. In some cases, bunk beds are placed in living rooms, hallways, and even kitchens,” according to the study.

“Infestations of bed bugs, rats, mice, roaches, and other vermin often plague dwellings, and structural issues commonly remain in dangerous disrepair.”

Despite the squalid conditions, New York City housing advocates and officials are struggling against a system that critics say provides only two options for problem buildings: looking the other way, or perhaps worse, shutting them down wholesale.

According to Jerilyn Perine, executive director of the non-profit Citizens Housing Planning Committee, that could mean a return to prison for parolees who must live at their declared addresses; for those hoping to avoid the city’s notorious homeless shelters, it could mean a return to the street.

“It’s the classic public policy conundrum,” Perine told a public forum at John Jay College on October 17, 2013.

“The axe that government has ... is a vacate order. That punishes the owner a little bit, but it really punishes the people living in these places,” added Perine, a former commissioner of the city’s Department of Housing Preservation and Development.

The report, based on data from focus groups, documents a complicated web of public monies flowing into sober homes and three-quarter houses.

In New York City, the Human Resources Administration pays $215 per month for each qualifying tenant; those who receive Social Security or unemployment benefits pay $350.

Major Profits

It doesn’t sound like much, but with residents stuffed eight to a room, it can mean major profits for those who operate the houses.

An investigation by The Crime Report and the Prisoner Reentry Institute study each found rampant claims that certain sober home operators, who often also collect Medicaid and disability payments from residents, were illegally coercing residents to attend specific drug treatment programs.

Tanya Kessler, a staff attorney at the Three-Quarter House Project at MFY Legal Services, a firm that has brought several suits on behalf of sober home residents, suggested at the John Jay forum that some operators...
get kickbacks for referring residents.

“The question becomes, what is the connection?” Kessler said. “Why would a landlord be so invested in their tenants going to that specific program? What we hear over and over again is that there’s a money thing going on.”

At both the Suffolk and John Jay discussions, advocates and local officials heard from state officials who argued their agencies were incapable of assuming greater oversight responsibilities.

Debbie Egel, a staff attorney for the New York State Office of Alcoholism and Substance Abuse Services, said at the Suffolk hearing that the only way an oversight initiative can work is if it has the cooperation of all the agencies that feed funds into sober homes.

“OASAS can’t fix this problem by itself, that’s the reality,” Egel said. “Everyone can blame DSS (New York State’s Department of Social Services), but this is a partnership of multiple agencies on different levels that have to face what’s going on.” For O’Neill, whose son died in a Suffolk sober home, Egel’s explanation rings true.

O’Neill addressed the board at the Suffolk County hearing, with a grim recital of the state agencies she reached out to after her son’s death.

First, she wrote to the office of state Attorney General Eric Schneiderman and was advised to contact OASAS. Her letter, she said, was passed on to DSS — with an explanation that it was not within their jurisdiction.

DSS repeated the response.

“It was being passed all over, because no one had any jurisdiction. I was flabbergasted,” O’Neill said.

When her son left three years ago, O’Neill thought she was sending him to a safe place to deal with his addiction, but as she navigated New York’s labyrinth of oversight agencies, she realized she had let her son move to a place where no one was watching out for him.

“I have to live with this every second of my life ... when you hear ‘sober house,’ you think ‘sober,’ but it clearly wasn’t a safe environment,” O’Neill said.

Graham Kates is deputy managing editor of The Crime Report. Lisa Riordan Seville, a former deputy editor at The Crime Report, is an independent reporter. This article was first published as two stories in July and November 2013 in The Crime Report (www.thecrimereport.org), the nation’s most comprehensive daily source of criminal justice news and resources. It is reprinted with permission.
This month’s issue of Prison Legal News marks 24 years and 284 issues, which makes PLN the longest continuously-published prisoners’ rights publication in U.S. history. We have grown significantly from a ten-page, hand-typed newsletter to our current 64-page magazine format. While some things have changed over the years others have remained constant, such as continuing to bring our readers high quality news and legal information they can use to help themselves and advocate for the rights of prisoners.

Another constant, which continues to distract us from our publishing work, is the ongoing government censorship of PLN and the books we distribute. The first three issues of PLN were banned in all Washington State prisons when we first began publishing in 1990. Today we have been banned in the state of Florida since 2009— which is the subject of pending litigation—and have filed suit against the Nevada DOC for censoring PLN’s books.

In addition to prison systems, many jails around the country ban all books and magazines and even letter correspondence. Jails and even letter correspondence in secrecy. Such records are in secrecy.

I would like to thank everyone who has helped make PLN possible over the years: our subscribers, donors, supporters, volunteers, employees, attorneys and many others who at this point are far too numerous to name. As we approach our 25th year of publishing, we plan to expand our circulation and ask for your help in doing so. Greater circulation ensures that we keep our subscription costs down and also widens the impact we have. If you know someone who might be interested in PLN, whether imprisoned or not, please ask them to subscribe.

Further, expanding the number of our advertisers allows us to bring you even more news and legal content, as more advertisers lets us increase our page count. If you do business with companies that are interested in reaching an incarcerated audience, let them know about PLN and tell them to contact us. If you patronize companies that advertise in PLN, let them know where you saw their ad and ask them to continue advertising.

Lastly, we try not to make mistakes in PLN, but we correct them when we do. Last month’s cover story interview with Noam Chomsky stated that Professor Chomsky is 75 years old. He is actually 85.

Enjoy this issue of PLN and please encourage others to subscribe.

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Seventh Circuit Reverses Dismissal of Prisoner’s 99-Page Complaint

by Mark Wilson

The Seventh Circuit Court of Appeals has reversed a district court’s finding that a prisoner’s “99-page complaint defies understanding, rendering it unintelligible and subject to dismissal on that basis.”

In 2011, federal prisoner Jurijus Kadamovas, who is Lithuanian and claims to be English-illiterate, filed a Bivens action alleging that prison officials violated his religious rights and subjected him to cruel and unusual punishment.

Before the defendants filed an appearance in the case, an Indiana federal district court dismissed Kadamovas’ complaint with leave to amend. The case was later dismissed with prejudice after he failed to file an amended complaint.

In an opinion authored by Judge Posner, the Seventh Circuit explained that “length and unintelligibility, as grounds for dismissal of a complaint, need to be distinguished.”

The Court of Appeals noted that “Length may make a complaint unintelligible, by scattering and concealing in a morass of irrelevancies the few allegations that matter.” However, “a complaint may be long not because the draftsman is incompetent or is seeking to obfuscate (‘serving up a muddle’ to the judge, as such complaints are sometimes described).” Rather, it may be lengthy, like Kadamovas’ complaint, because it contains a large number of distinct claims.

“District judges are busy, and therefore
have a right to dismiss a complaint that is so long that it imposes an undue burden on the judge, to the prejudice of other litigants seeking the judge's attention," the appellate court observed; however, "surplusage can and should be ignored."

While "one doesn't need 99 pages to make" Kadamovas' allegations, "the complaint isn't in fact 99 pages long, as the district judge thought," the Seventh Circuit wrote. "It's 28 pages long, the last 71 pages being an appendix, which the judge could have stricken without bothering to read."

As used in Federal Rule of Civil Procedure 8(a)(2), "short"... is a relative term," the Court of Appeals found. "Brevity must be calibrated to the number of claims and also to their character." Given the Supreme Court's requirement that a complaint establish plausibility of its claims pursuant to Ashcroft v. Iqbal, 129 S.Ct. 1937 (2009) [PLN, July 2009, p.18], the appellate court observed that "complaints are likely to be longer -- and legitimately so -- than" before the ruling in Iqbal.

Noting that "unintelligibility is distinct from length, and often unrelated to it," the Court of Appeals determined that "far from being unintelligible, the complaint in this case ... is not only entirely intelligible; it is clear."

The Court found that "the complaint charges that in retaliation for the plaintiff's going on hunger strikes, the defendants used excessive force to force feed him and extract blood samples from him, placed him in a cell infested with feces, denied him minimal recreational opportunities, refused to allow him to have a Bible, refused to allow him to file grievances, and tried to block his access to the federal courts."

The Seventh Circuit thus concluded that Kadamovas' complaint did "not violate any principle of federal pleading," and remanded the case for further proceedings. See: Kadamovas v. Stevens, 706 F.3d 843 (7th Cir. 2013).

Following remand, on September 30, 2013 the district court granted in part and denied in part the defendants' motion for summary judgment, finding that portions of Kadamovas' personal declaration were inadmissible because they contained hearsay and "legal assertions, arguments, conclusions, or conjecture not otherwise supported by admissible evidence." The court granted summary judgment or judgment as a matter of law to the defendants on most of the claims, but declined to do so on a claim alleging that one defendant was deliberately indifferent to Kadamovas' serious medical needs.

California Improves Compensation Process for Wrongfully Convicted Prisoners

On October 13, 2013, California Governor Jerry Brown signed into law Senate Bill 618, legislation that streamlines the process for providing financial compensation to people who are wrongfully convicted, exonerated and released from prison. The bill had been introduced by state Senator Mark Leno.

SB 618 updates California Penal Code 4900, enacted in 2000, which provides for $100 for each day of incarceration resulting from a wrongful conviction. The law also required exonerated prisoners to undergo a second, smaller trial by a compensation board to establish their innocence.

SB 618 mandates two important changes. First, when a judge grants a writ of habeas corpus, those findings are binding on the compensation board; second, prisoners who are exonerated and freed no longer have to go through another hearing to prove their innocence before obtaining compensation.

The purpose of modifying the existing law is to provide more expedient relief to wrongfully convicted prisoners like Timothy Atkins.

Convicted at age 17 and incarcerated for 23 years for a murder he did not commit, Atkins was released in February 2007 after the state’s witness admitted being coerced by police to name him as the perpetrator.

Regardless, he was denied compensation in 2010 because the compensation hearing board did not believe he had established his innocence “by a preponderance of the evidence,” even though that same evidence had been used to reverse his conviction and set him free.

From 2000 to 2011, only 11 of 132 wrongfully convicted prisoners in California received financial compensation from the state. Their payments ranged from $17,200 to $756,900.

SB 618 was championed by the American Civil Liberties Union, the California Innocence Project and the Northern California Innocence Project.

“The goal of the compensation law is to enable wrongfully convicted people to get back on their feet,” said California Innocence Project director Justin Brooks. “The prior compensation process disrespected judicial decisions by giving no deference to them when deciding if a person had been wrongfully convicted. It also allowed for a long and drawn out process. The new law is just, makes sense, and saves both time and money.”

SB 618 streamlines the compensation process by concentrating the compensation board’s attention on claims that require evaluation while allowing automatic approval of claims where a prisoner’s innocence has already been established. Further, it ensures that board rulings on compensation petitions will be based on the same facts and rules of evidence considered by the court that reversed a prisoner’s conviction and granted his or her release.

The law will benefit wrongfully convicted California prisoners like Daniel Larson, who was exonerated on January 27, 2014 after prosecutors dismissed the charges against him following a federal court ruling that found he was actually innocent. Larson had been convicted of possession of a concealed weapon and sentenced to 28 years under the state’s three-strikes law. He served 14 years in prison.

Meanwhile, Timothy Atkins has appealed the initial rejection of his compensation claim. “I lost 23 years of my life for something I didn’t do. I didn’t give up while I was in prison. And I am most definitely not going to give up now,” he stated.


North Dakota Courtroom Shackling Requires Independent Assessment by Judge

by Mark Wilson

The North Dakota Supreme Court has held that a lower court abused its discretion by failing to independently assess the need for shackling a defendant during a civil commitment discharge hearing.

On January 11, 2006, Robert R. Hoff was civilly committed as a sexually dangerous person. He requested discharge in September 2011 and appeared at a March 2012 discharge hearing while in “handcuffs tethered to his waist and an ankle chain.”

Hoff’s attorney requested that the shackles be removed, but the court refused. “The sheriff makes the determination whether or not [defendants] can be secured while they’re here,” the court explained.

“Not my call, Your Honor,” a deputy stated. “The sheriff said no. They have to stay on.”

At the conclusion of the hearing the court denied Hoff a discharge, finding that he “continues to be a sexually dangerous individual.”

The state Supreme Court reversed, holding that “when Hoff’s counsel requested that Hoff’s restraints be removed, at a minimum, the court was required to engage in the analysis set out in” Interest of R.W.S., 2007 ND 37, 728 N.W.2d 326 (N.D. 2007). The trial court’s failure to do so was not harmless error; this was true even though the hearing was of a civil nature, not criminal, and there was no jury.

On remand, the lower court “must consider on the record the factors established in R.W.S. ... to determine if it is necessary to restrain Hoff” during the discharge hearing, the Supreme Court wrote. “If the court determines restraints are not necessary, it must conduct a new hearing free of restraints.” See: In re Hoff, 2013 ND 68, 830 N.W.2d 608 (N.D. 2013).

Following remand, the trial court found that Hoff remained a sexually dangerous person. Hoff petitioned for another discharge in 2013; his petition was denied and he again appealed. The North Dakota Supreme Court reversed again on April 3, 2014, finding that the lower court had “made insufficient findings of fact on whether Hoff has difficulty controlling his behavior.” The Court remanded the case “for detailed findings of fact and conclusions of law on each legal element supporting the district court’s decision to deny Hoff’s petition for discharge.” See: In re Hoff, 2014 ND 63 (N.D. 2014).
States Renewing Their Prison Phone Contracts

As state DOCs renew or rebid their prison phone contracts, you can help urge them to lower intrastate phone rates and eliminate commission kickbacks!

The Campaign for Prison Phone Justice needs your help in:

**** North Carolina, South Dakota and Virginia ****

The Departments of Corrections in the above states are in the process of re-bidding or renewing their prison phone contracts. Most DOCs receive a commission (kickback) on revenue generated from calls made by prisoners, which results in excessively high phone rates. Although the FCC voted last year to cap the costs of interstate (long distance) prison calls, which went into effect on February 11, 2014, the order does not apply to intrastate (in-state) calls; an estimated 85% of prison phone calls are in-state. This is an opportunity to ask DOCs to forgo commissions and ensure their new prison phone contracts are based on the lowest cost to those who pay for the calls – mostly prisoners’ families.

Take Action NOW! Here’s What YOU Can Do!

Ask your family members and friends to write, email, call and fax the DOC and the governor’s office (addresses and contacts are listed below), requesting that the DOC: 1) forgo commission payments when re-bidding or renewing its prison phone contract, and 2) base the new contract on the lowest calling costs. Lower prison phone rates should apply not just to long distance calls but also to in-state calls. For a sample letter or to easily send an email, visit the Campaign for Prison Phone Justice’s website and click on the “Take Action” tab:

www.phonejustice.org

Prison phone contract information & Contacts:

** North Carolina:** Receives a 58% kickback; existing contract expires on 6-30-2014. Charges $3.40 for a 15-minute collect intrastate call and $1.25 for a local call. Contacts: NC DOC, Commissioner David Guice, 4201 Mail Service Center, Raleigh, NC 27699; ph: 919-733-2126, fax: 919-715-8477, email: david.guice@ncdps.gov. Governor Pat McCrory, Office of the Governor, 20301 Mail Service Center, Raleigh, NC 27699; ph: 919-814-2000, fax: 919-733-2120, email: governorsoffice@nc.gov

** South Dakota:** Receives a 33-38% kickback; existing contract expires on 6-30-2014. Charges $8.40 for a 15-minute collect intrastate call and $2.70 for a local call. Contacts: South Dakota DOC Secretary Denny Kaemingk, 3200 East Highway 34, c/o 500 East Capitol Avenue, Pierre, SD 57501; ph: 605-773-3478, fax: 605-773-3194, email: mary.bisson@state.sd.us. Governor Dennis Daugaard, 500 East Capitol Street, Pierre, SD 57501; ph: 605-773-3212, fax: 605-773-4711, email: nila.novotny@state.sd.us

** Virginia:** Receives a 35% kickback; existing contract expires on 6-30-2014. Charges $6.00 for a 15-minute collect intrastate call and $1.00 for a local call. Contacts: Virginia DOC, Director Harold Clarke, P.O. Box 26963, Richmond, VA 23261; ph: 804-674-3000, fax: 804-674-3509, email: director.clarke@vadoc.virginia.gov. Governor Terry McAuliffe, 1111 East Broad Street, Richmond, VA 23219; ph: 804-786-2211, fax: 804-371-6351, email: traci.deshazor@governor.virginia.gov
A U.S. District Court has ordered the Florida Department of Corrections (FDOC) to begin serving kosher meals to hundreds of Jewish prisoners, following legal challenges after the FDOC discontinued its kosher meal program in 2007. Additionally, an Islamic advocacy group has warned that it is prepared to file suit if the FDOC fails to provide halal food to Muslim prisoners.

The legal fight for kosher meals began in September 2010 when Florida state prisoner Bruce Rich, an Orthodox Jew, filed a complaint in federal court under the Religious Land Use and Institutionalized Persons Act (RLUIPA), claiming the FDOC’s refusal to provide a kosher diet violated his right to practice his religion.

At the time, Florida prisons offered three main diets: 1) the master menu, 2) an alternate entree with a non-meat substitute and 3) vegan meals. None were kosher. The FDOC also provides therapeutic diets prescribed by a doctor and had previously eliminated all pork and pork products from prison meals.

The U.S. Department of Justice (DOJ) joined the fray in August 2012, filing a lawsuit against the FDOC that alleged the state was in violation of RLUIPA by failing to accommodate prisoners’ requests for kosher meals.

A federal district court granted the DOJ’s motion for a preliminary injunction on December 6, 2013, ordering Florida prison officials to begin serving kosher meals by July 1, 2014.

The state had previously announced it would begin providing kosher meals, and that a Religious Diet Program would start in April 2013 at the Union Correctional Institution, where Rich was housed, then be implemented statewide in September 2013. However, the rollout of the program was delayed.

Under the Religious Diet Program, the FDOC was to provide certified pre-packaged kosher foods to prisoners whose religious dietary needs cannot be satisfied by other meal options. Prisoners must first pass a religious sincerity test, which includes “eat[ing] from the alternate entree or vegan meal pattern for up to ninety days.”

The FDOC argued that its Religious Diet Program mooted the legal challenges related to kosher meals, but the Eleventh Circuit disagreed in a May 2013 decision in Rich’s case. The appellate court noted that the FDOC’s policy change came “late in the game,” and only after Rich had filed his brief and after the DOJ filed suit.

The Court of Appeals further noted the FDOC said it would initially implement the Religious Diet Program solely at the prison where Rich was housed, less than two weeks prior to oral argument in his appeal. “These facts,” wrote the Eleventh Circuit, “make it appear that the change in policy is ‘an attempt to manipulate jurisdiction.’”

The appellate court also said there was nothing to suggest the FDOC would not simply end the new program sometime in the future, as it ended the kosher meal program it had operated from 2004 to 2007. See: Rich v. FDOC, 716 F.3d 525 (11th Cir. 2013).

The kosher meal program that was offered by the FDOC starting in 2004 provided meals for prisoners deemed eligible through a screening process that measured the sincerity of their religious convictions. The program served prisoners of the Jewish, Islamic and Seventh Day Adventist faiths.

In April 2007, the FDOC commissioned a study group to review the program. The study group sought several challenges associated with offering kosher meals, including adhering to the laws of kashruth, the set of Jewish dietary laws which prescribes religiously acceptable sources of food and methods of food preparation.

To be kosher, a food item must derive from religiously acceptable sources, be stored in kosher containers, be prepared in a particular manner and be served on tableware that has not contacted non-kosher food. In addition, meat and dairy products may not be mixed.

The study group also found that while there was an additional cost to provide kosher meals, the program was essential to allow prisoners to exercise their religious obligations. Citing in part the cost, the FDOC ended its system-wide kosher meal program in 2007 after receiving the study
The DOJ’s lawsuit contends that the FDOC is capable of providing kosher meals to prisoners consistent with its compelling governmental interests. The DOJ noted that the federal Bureau of Prisons and 34 other states provide kosher food to prisoners.

“Most states do provide kosher diets, even Texas where there are about 25-30 Jewish inmates,” observed Eric Rassbach, an attorney for the Becket Fund for Religious Liberty. “Of the remaining states that don’t, they tend not to be the ones with a big Jewish population.”

One of the FDOC’s arguments against implementing kosher meals was that many more prisoners than expected had requested the meals, and there was no way to adequately determine which prisoners are sincere and which are simply trying to take advantage of kosher food that is considered fresher and more palatable than regular prison fare.

While FDOC officials had expected around 300 prisoners to sign up for kosher meals, they received more than 4,400 requests following the district court’s December 2013 order granting the DOJ’s motion for a preliminary injunction, according to a news report in the Tampa Bay Times. “The last number I saw ... was 4,417,” FDOC Secretary Michael D. Crews told a state Senate committee. “Once they start having the meals, we could see the number balloon.”

Gary Friedman, who chairs Jewish Prisoner Services International, said kosher meals appeal to both Jewish and non-Jewish prisoners alike. “Inmates have a lot of paranoia about what they are being fed,” he stated. “If they are using prepackaged, sealed meals, the inmates believe they are safer.” However, the cost of such meals is much higher. Crews told the Senate committee that three regular meals for state prisoners cost $1.52 per day, while only two kosher meals cost at least $4.00 per day.

The Eleventh Circuit said such concerns were unfounded in its May 2013 ruling in Rich’s appeal, holding that the state’s cost estimates were “unsupported” and that purported security concerns were “speculative.” Following remand, Rich voluntarily dismissed his lawsuit against the FDOC without prejudice on February 10, 2014.

An Islamic rights group, meanwhile, has said that if the FDOC is going to serve kosher meals to Jewish prisoners then the state also needs to provide halal food for Muslim prisoners.

“It is only fair and equitable that if Jewish inmates receive kosher food, as they should, that Muslim inmates have access to halal meals,” said Hassan Shibly, executive director of the Florida chapter of the Council on American-Islamic Relations, in a January 2014 press release.

“We have been trying to amicably resolve these issues for 2½ years to avoid a lawsuit but will be taking legal action within the next year if they do not comply,” he stated.

The DOJ’s lawsuit against the FDOC, which seeks declaratory and injunctive relief, remains pending; Florida officials have since appealed the district court’s preliminary injunction order. The FDOC moved to stay the order pending resolution of the appeal, but the motion was denied. See: United States v. Secretary, Florida Department of Corrections, U.S.D.C. (S.D. Fla.), Case No. 1:12-cv-22958.


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On May 8, 2013, the Ninth Circuit Court of Appeals held that the County of Los Angeles could be held liable for its failure to establish policies regarding the use of jailhouse informants, when that failure led to the wrongful conviction of Thomas Lee Goldstein, a man with no prior criminal history, who served over two decades in prison for a murder he didn’t commit.

In so holding, the Ninth Circuit reversed the district court’s grant of the county’s motion for judgment on the pleadings. The district court’s ruling, in turn, followed a decision by the U.S. Supreme Court four years earlier, which had held that the Los Angeles County District Attorney enjoyed absolute immunity from suit based on Goldstein’s claims.

Goldstein, a Marine Corps veteran and engineering student, was convicted of a 1979 murder based largely on the perjured testimony of an unreliable jailhouse informant, the aptly named Edward Fink. Although Fink had a history of testifying in other cases in exchange for reduced sentences, no one informed Goldstein’s counsel of Fink’s history or that Fink had lied on the stand when he denied having such a history.

In 1998, Goldstein filed a petition for habeas relief in federal court. After conducting an evidentiary hearing, the district court found the prosecution had failed to disclose impeachment material to Goldstein’s defense counsel and that the error had prejudiced him. Given the option of retrying Goldstein, the state chose to release him instead. He had served 24 years.

Goldstein then filed suit against Los Angeles County and the District Attorney pursuant to 42 U.S.C. § 1983, alleging that his civil rights had been violated by their failure to create an information system containing potential impeachment material related to informants.

In Van de Kamp v. Goldstein, 555 U.S. 335 (2009), the U.S. Supreme Court held that the District Attorney was absolutely immune from Goldstein’s claims because those claims focused on administrative procedures “directly connected with the conduct of a trial.” [See: PLN, March 2009, p.26].

On remand, the district court entered judgment in favor of the District Attorney, then “reluctantly” granted the county’s motion for judgment on the pleadings.

The Ninth Circuit reversed on appeal, rejecting the county’s argument that the Supreme Court’s decision in Van de Kamp was determinative of the outcome of the case. In so ruling, the appellate court distinguished the role of the District Attorney as a prosecutor – an agent of the state entitled to absolute immunity – from the role of the District Attorney as an administrative policymaker for the county.

Specifically, the Court of Appeals concluded that California district attorneys “act as local policymakers when adopting and implementing internal policies and procedures related to the use of jailhouse informants.” Accordingly, Goldstein’s claims against Los Angeles County could proceed and the case was remanded to the district court.

The Ninth Circuit noted that its conclusion would vary “from state to state” depending on an analysis of underlying state law with respect to whether prosecutors act on behalf of the state or counties, for purposes of determining immunity.

Circuit Judge Stephen Reinhardt issued a concurring opinion in which he expounded on Edward Fink’s repeated history of providing false informant testimony in exchange for reduced sentences, including in the death penalty case of Thomas Thompson, a California prisoner who was executed in 1998.

The Supreme Court denied Los Angeles County’s petition for writ of certiorari, and this case remains pending before the district court with a trial date scheduled in October 2014. See: Goldstein v. City of Long Beach, 715 F.3d 750 (9th Cir. Cal. 2013), cert. denied.

California: Sexually Violent Predators May be Conditionally Released from Custody Even if Homeless

by Michael Brodheim

The California Court of Appeal, Third District, has held that a person committed as a sexually violent predator (SVP) may be conditionally released into the community even if he or she has no fixed residence.

In October 2010, the Placer County Superior Court determined that Tibor Karsai, who had been committed as an SVP in 1998, would pose no danger to others under outpatient supervision and treatment in the community, and that he therefore should be conditionally released. A year and a half later, despite the fact that an acceptable residence for Karsai had not been found, the court ordered his release.

Arguing that no provision of law permits an SVP to be released as a transient without a fixed residence, the District Attorney sought a writ of mandate to prevent Karsai’s release. The Court of Appeal rejected that argument, however, concluding that “nothing in the law forbids conditional release of an SVP as a transient.” To hold otherwise, the appellate court wrote, would raise serious constitutional concerns.

Once a trial court determines that an SVP would not pose a danger to others – if under supervision and treatment in the community, as required by statute – the SVP “unquestionably has a significant liberty interest in being released.” Delaying that release due to lack of post-release housing “would run the risk that a person who is no longer dangerous will nonetheless have to remain in custody in a secure facility indefinitely simply because of some extraneous factor, such as public outrage, that interferes with finding and securing a fixed residence for that person,” the Court of Appeal wrote. See: People v. Superior Court (Karsai), 213 Cal. App. 4th 774 (Cal. App. 3d Dist. 2013), review denied.
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Seventh Circuit Clarifies Standard for Recruiting Counsel in Pro Se Cases

by David Reutter

The Seventh Circuit Court of Appeals has held that an Illinois federal district court, like many federal courts in Northern Illinois, used an improper standard when refusing to exercise its discretion to recruit counsel for a pro se prisoner in a civil rights action. The appellate court further found the prisoner was prejudiced by the refusal to recruit counsel.

While at the Stateville Correctional Center in 2008, prisoner Eduardo Navejar was ordered out of the cafeteria line by Lt. Akinola Iyiola for violating prison rules that prohibit prisoners being transported from stopping to speak to other prisoners. Navejar disobeyed the order, became belligerent and punched Iyiola in the face.

Iyiola and other guards wrestled Navejar to the ground and handcuffed him. From that point on, the facts were disputed. Navejar testified that Iyiola kicked him in the forehead near his eye and an unidentified guard stomped his head against the ground. Navejar was then pepper-sprayed by Sgt. Michael Grant.

After Navejar was dragged along the floor and carried down some stairs, Iyiola again pepper-sprayed him. Guards then left Navejar in a segregation cell for a half-hour, screaming in pain, before allowing him to wash off the pepper spray. The next morning Navejar was in the medical unit awaiting examination when Lt. Glen Elberson removed him and told him that he was being transferred to the Pontiac Correctional Center. A doctor later concluded, after administering X-rays, that Navejar suffered only bruises and scratches.

Navejar was found guilty of four disciplinary charges stemming from the incident; his appeal and grievance claiming excessive force were denied. He then sued Iyiola, Grant, Elberson and other unnamed guards. The district court ignored two motions filed by Navejar seeking pro-bono counsel, and denied two similar motions. The court then granted summary judgment to the defendants.

On appeal, the Seventh Circuit found the district court’s denial of Navejar’s motions was based on a legal standard that preceded its en banc ruling in Pruitt v. Mote, 503 F.3d 647 (7th Cir. 2007), which refined the standards for evaluating whether to recruit counsel. Under Pruitt, if a plaintiff makes a reasonable attempt to secure an attorney, the district court must examine “whether the difficulty of the case – factually and legally – exceeds the particular plaintiff’s capacity as a lay person to coherently present it.” The inquiry does not focus, as the district court had held, solely on the plaintiff’s ability to try the case; it also includes other tasks that “normally attend litigation,” such as “evidence gathering” and “preparing and responding to motions.” Further, the district court improperly considered whether recruiting counsel would affect the case’s outcome. That inquiry, the Court of Appeals held, “is reserved for the appellate court’s review for prejudice.” The Seventh Circuit found more than 100 cases from the Northern District of Illinois that had improperly relied on pre-Pruitt case law.

Finally, the appellate court held that Navejar was prejudiced as a result of the district court’s refusal to recruit counsel, because counsel would have responded to the defendants’ arguments that the district court should disregard Navejar’s “self-serving evidence” and that his excessive force claims were barred by Heck v. Humphrey, 512 U.S. 477 (1984). Both arguments, which were accepted by the district court, constituted “substantive errors.” Accordingly, the case was reversed and remanded for further proceedings. See: Navejar v. Iyiola, 718 F.3d 692 (7th Cir. 2013). Following remand the district court appointed counsel to represent Navejar, and the parties entered into settlement discussions in April 2014.

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The Court of Appeals for the Second Circuit held that a federal prisoner sufficiently stated a claim alleging the conditions of his confinement violated the Eighth Amendment.

The case involved an appeal from a New York federal district court’s order granting a motion to dismiss filed by defendant prison officials. The district court held that FCI Ray Brook prisoner Ellis Walker had failed to present facts to support his claim that conditions at the facility constituted cruel and unusual punishment.

Walker alleged that for 28 months he was held in a cell with five other men. The cell had “inadequate space and ventilation, stifling heat in the summer and freezing cold in the winter,” unsanitary conditions that included urine and feces splattered on the floor, insufficient cleaning supplies and a mattress too narrow for him to lie down on flat. Walker also claimed the cell was noisy and crowded, which made sleep difficult, and that he was at constant risk of violence and serious harm from his cellmates.

The Second Circuit held that those allegations plausibly stated a claim for cruel and unusual punishment. First, the appellate court said it was well settled that exposing prisoners to extreme temperatures without adequate ventilation may constitute a constitutional violation.

Next, the Court of Appeals noted that sleep is critical to human existence, and conditions which prevent sleep have been held to violate the Eighth Amendment. “Further, at least one court recently found that the condition of a prisoner’s mattress may be so inadequate as to constitute an unconstitutional violation,” the appellate court wrote.

Third, it has long been recognized that unsanitary conditions in a prison cell, under egregious circumstances, can rise to the level of cruel and unusual punishment. Such conditions lasting for “mere days” could reach that level.

The failure to provide prisoners with toiletries and other hygiene supplies also can be unconstitutional, as can conditions that place prisoners at a “substantial risk of harm.” The Court of Appeals found that Walker had pled sufficient facts to defeat a motion to dismiss, which treats all factual allegations as true, by plausibly alleging “conditions that, perhaps alone and certainly in combination, deprived him of a minimal civilized measure of life’s necessities.”

The Second Circuit held the district court had improperly “assay[ed] the weight of the evidence” and had erred in finding that Walker, who was proceeding pro se, was required to indicate “the exact extent or duration of [his] exposure to unsanitary conditions” and the temperatures in his cell. It had also erred in dismissing Walker’s overcrowding claim by finding the 29 square feet allotted to each prisoner in his six-man cell had been judicially sanctioned in other cases.

The Court of Appeals concluded that Walker was entitled to develop a factual record to support his claims, and that he had adequately alleged the defendants knew about and disregarded the excessive risks to his health and safety at FCI Ray Brook. The Second Circuit declined to address the defendants’ argument that they were entitled to qualified immunity. The district court’s order of dismissal was vacated and the case remanded for further proceedings, where it remains pending. See: Walker v. Schult, 717 F.3d 119 (2d Cir. 2013).

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Witness Protection Program Termination Unreviewable; 188 Days in SHU Triggers Due Process Protections

by Mark Wilson

The Second Circuit Court of Appeals has held that claims related to termination from a federal witness protection program are not judicially reviewable. The Court reinstated an administrative segregation claim, however, holding that 188 days in segregation triggered due process protections.

A federal prisoner incarcerated at FCI Otisville in New York, identified only as “J.S.,” voluntarily participated in the U.S. Department of Justice’s (DOJ) Witness Security Program, also known as the witness protection program, from December 2007 to March 2010 pursuant to a “prisoner-witness agreement” and a memorandum of understanding with the DOJ.

Upon entering the program, J.S. agreed that contacting or attempting to contact unauthorized individuals could result in his termination from the program.

In October 2009, DOJ officials informed J.S. that he had violated the agreement by contacting unauthorized individuals, and a program termination notice was issued.

J.S. administratively appealed the termination, arguing that the DOJ’s failure to provide him with notice of whom he allegedly contacted deprived him of due process. He also claimed the alleged violation was impossible because prison staff approved all of his contacts.

On April 19, 2010, prison unit manager Donna Hill served J.S. with a copy of the DOJ order denying his appeal. The DOJ “doesn’t have to go by the same rules as everybody else,” Hill said when J.S. again objected to the lack of notice regarding whom he had allegedly contacted. “They don’t have to tell you what you did, you know what you did.”

Hill instructed J.S. to initial the order. After he did so, he was immediately confined in the prison’s Security Housing Unit (SHU) for 188 days.

J.S. filed a Bivens action alleging that his witness protection program termination and SHU confinement were unconstitutional. The district court dismissed the action sua sponte, holding that it lacked subject-matter jurisdiction because 18 U.S.C. § 3521(f) states that witness protection program termination decisions “shall not be subject to judicial review.”

The Second Circuit upheld the dismissal of the termination claim, agreeing that § 3521(f) bars judicial review of such termination decisions and Congress did not create a property interest in participation in the witness protection program. In the latter regard, J.S. was “unable to show that he has been deprived of a property right for which process is due because ‘a benefit is not a protected entitlement if government officials may grant or deny it in their discretion.’”

The appellate court reversed the dismissal of J.S.’s SHU claim, however, concluding with “little difficulty” that “188 days of administrative confinement is sufficient to implicate Sandin-type liberty interests,” referring to the due process standard set forth in Sandin v. Conner, 115 S.Ct. 2293 (1995) [PLN, Aug. 1995, p.1]. The Court of Appeals also found that J.S. should be allowed on remand to replead his claim, not included in his original complaint, “that his confinement [in the SHU] was not merely administrative but was punitive because it was intended to punish his breach of the Program agreement....”

In a concurring opinion, two Second Circuit judges made “the troubling observation that Congress has created procedural guarantees for Witness Security Program... participants which when violated, as they appear to have been here, give rise to no judicial remedy.” They expressed hope “that Congress may choose to review and audit compliance with, or even revise, 18 U.S.C. § 3521 to provide greater enforcement of the procedural protections it intended Program participants to have.” The dissenting judges also directed the court clerk to send a copy of the opinion to the DOJ’s Office of the Inspector General for review.

The case was remanded so J.S. could replead his SHU claim, while the dismissal of the program termination claim was affirmed. See: J.S. v. T’Kach, 714 F.3d 99 (2d Cir. 2013).
Ex-Colorado prison official Mark Edward McKinna, 63, pleaded guilty in May 2013 to six counts of felony menacing with a deadly weapon.

McKinna, once a regional director for the Colorado Department of Corrections who served as warden at the Fremont, Limon and Territorial correctional facilities, admitted discharging a firearm at six people – five of them children – near a neighbor’s home in Cañon City.

The incident occurred when Charlene Cornwell’s then-14-year-old daughter and another girl were outside riding the family’s go-kart. According to a probable cause affidavit, McKinna exited his house and began cursing at them due to the noise.

He reportedly continued using profanity at Cornwell, the two girls and three other children even after they turned off the go-kart. McKinna then pulled a gun from his pocket and fired a shot in their direction.

Cañon City police responded to the August 2012 incident and one officer testified that he smelled alcohol on McKinna, who had slurred speech, watery eyes and was off-balance.

McKinna accepted a plea bargain and was sentenced to 10 days in jail and three years’ probation on July 17, 2013. While on probation he will not be allowed to possess firearms, other deadly weapons, alcohol or non-prescription drugs. Further, he must write an apology to each of the victims, obtain a mental health evaluation and stay away from the Cornwell family.

The state court rejected the prosecution’s request for an 18-month sentence, citing McKinna’s “exemplary” character and career as a prison official. McKinna’s defense attorney said the sentence was a reasonable outcome.

Sources: www.canoncitydailyrecord.com, www.chieftain.com

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Inmates across the country have questions and “For The Scoop” has answers!

A prison official who suspended a prisoner’s visitation privileges was entitled to qualified immunity because, under the facts of the case, the prisoner did not have a clearly established right to visitation, the Fourth Circuit Court of Appeals held.

South Carolina state prisoner Jerome A. Williams received a visitor at the Evans Correctional Institution on March 31, 2007. During the visit, a guard observed the visitor “pass suspected marijuana to Williams,” who reportedly placed it in his pants before walking to the restroom.

Several guards intercepted Williams. He was taken to an area to be strip searched while his visitor was escorted out of the prison. No contraband was found, but a guard said he saw Williams put something in his mouth and swallow. As a result, Williams was placed in a “dry cell” for 72 hours. His excrement was searched for the suspected marijuana, without success. He was not charged with a disciplinary offense.

Despite the lack of contraband, Williams was held in a disciplinary “special housing unit” for a little over two months. Additionally, the warden suspended Williams’ visitation privileges for two years based on the guard’s observations. The visitation privileges of Williams’ visitor were suspended for two years, too, but that was not at issue in the case.

Williams filed a civil rights action in December 2008 that alleged several constitutional violations. The district court granted summary judgment to the defendants on his visitation suspension claim, which was one of the claims at issue before the Fourth Circuit (other claims went to a jury trial, which found in favor of the defendants).

The appellate court noted that in overton v. Bazzetta, 539 U.S. 126 (2003) [PLN, Oct. 2003, p.18], the U.S. Supreme Court had rejected a prisoner’s claim that a two-year visitation suspension constituted cruel and unusual punishment. The Supreme Court did, however, acknowledge that an Eighth Amendment analysis might differ if visitation privileges were denied permanently “or for a ‘much longer period,’ or ‘in an arbitrary manner to a particular inmate.’”

The appellate court also found that Williams’ complaint failed to state a declaratory judgment claim challenging the visitation suspension policy, and since his visitation privileges had since been restored he was not entitled to injunctive relief. The Court of Appeals further held the case did not fall within the narrow exception to the mootness doctrine.

The district court’s summary judgment order was therefore affirmed; Williams petitioned the Supreme Court for a writ of certiorari, which was denied on February 24, 2014. See: Williams v. Ozmint, 716 F. 3d 801 (4th Cir. 2013), cert. denied.

Massachusetts: Order Relieving Sex Offender of Registration Not Vacated Upon Probation Violation

by David Reutter

The Massachusetts Supreme Judicial Court has held that once a judge relieves a sex offender of the requirement to register, a different judge lacks the authority to order the offender to register following a probation violation.

Douglas Ventura pleaded guilty to one count of possession of child pornography. After being sentenced to probation, pursuant to state law he moved to be relieved of the statutory requirement to register as a sex offender. The sentencing judge found that Ventura had demonstrated he did not pose a risk of re-offense or a danger to the public, and relieved him of the registration requirement.

About two-and-a-half years later, in September 2010, Ventura was charged with accosting and annoying a person of the opposite sex. At his probation revocation hearing, it was established that Ventura had watched two of his daughters’ friends through a hole in the shower wall of his home’s guest bathroom, which they used when they stayed at his house during overnight visits.

Ventura’s probation was revoked and he was sentenced to one year in prison and three years of probation on the new charge. As part of the sentence, the judge ordered him to register as a sex offender.

On appeal, the Supreme Judicial Court said the original charge of possession of child pornography qualified as a sex offense, but the charge of accosting and annoying a person of the opposite sex did not. Registration is a collateral consequence for convicted sex offenders; however, “Nothing in the act confers authority on a judge to impose an obligation to register as a condition of probation.”

The Court held the Sex Offender Registry Act allows a judge in certain circumstances to relieve a sex offender from the registration requirement, but does not permit a judge to order such registration. “It follows that the second judge may not, as part of the sentence imposed following probation revocation, impose a registration requirement as a condition of the probationary portion of that sentence.”

The Supreme Court rejected the state’s position that upon a violation of probation the prior order relieving Ventura of the registration requirement was vacated. Simply put, the Court found there was no statutory support for that position, saying the state’s “strained parsing of the statutory text” was “untenable.” Thus, the trial court’s order requiring Ventura to register as a sex offender was reversed. See: Commonwealth v. Ventura, 465 Mass. 202, 987 N.E. 2d 1266 (Mass. 2013).

May 2014

Prison Legal News
NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT CONCERNING CENSORSHIP OF MATERIALS MAILED TO INDIVIDUALS IN THE CUSTODY OF THE MISSOURI DEPARTMENT OF CORRECTIONS

This notice gives information about the settlement of a lawsuit challenging how the Missouri Department of Corrections censors material that is mailed to individuals who are in its custody.

BACKGROUND

In August 2012, a lawsuit, Lane d/b/a Caged Potential v. Lombardi, No. 12-4219, was brought claiming that the Missouri Department of Corrections was not giving notice of censorship decisions and an opportunity to appeal to senders of material mailed to individuals in its custody. The lawsuit claims that failing to provide senders of censored materials notice of censorship and non-delivery and failing to provide an opportunity to appeal censorship decisions violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

In November 2012, the court certified the case as a class action.

The parties have now agreed to a settlement in the case, which must be approved by the court.

PROPOSED SETTLEMENT

You can see the entire proposed settlement at the website for the plaintiffs’ counsel: American Civil Liberties Union of Missouri Foundation, http://www.aclu-mo.org/legal-docket/bobbie-lane-v-modoc/.

The plaintiff class consists of “All current and future publishers, distributors, and authors of written materials, who mail books, publications, or other written materials to inmates incarcerated in prisons operated by the Missouri Department of Corrections.”

The basic terms of the settlement are:

• Publications received in the mail and thought to violate censorship guidelines will now be reviewed by the censorship committee before any censorship occurs. Furthermore, the sender of publications that are censored will receive written notice of the decision and will have the opportunity to appeal the censorship. Within 30 days of receipt of the appeal, the division director or designee of equal or higher ranking will respond to the appeal. The Chief Administrative Officer will be advised of the decision.

• Recorded materials and personal correspondence will not be reviewed by a committee before censorship; however, the senders of such materials that are censored will be given notice of the decision and the opportunity to appeal.

• The defendants will pay the plaintiffs’ counsel $33,479.45 to reimburse litigation expenses and in attorneys’ fees.

RIGHT TO OBJECT

Any class member has the right to let the court, the attorneys, and the parties know if he or she objects to the proposed settlement. The court has set a hearing for this purpose on July 1, 2014, at 10:00 a.m. at the following address:

Honorable Nanette K. Laughrey
United States District Judge
United States District Court for the Western District of Missouri
United States Courthouse
80 Lafayette Street
Jefferson City, Missouri 65101.

Class members may also object to the settlement by sending a letter marked “Lane v. Lombardi Settlement” before June 26, 2014, to the court at the address listed above. Class members may also call the American Civil Liberties Union of Missouri Foundation, which represents the class in this lawsuit, with any questions, at: (314) 652-3114.
Pay Tel Receives Waiver of Prison Phone Rate Caps

On January 8, 2014, Pay Tel Communications, a North Carolina company that provides phone services at correctional facilities in 13 states, filed a petition requesting a waiver of the rate caps on interstate (long distance) prison phone calls imposed by the Federal Communications Commission. The rate caps went into effect on February 11, 2014. [See: PLN, Feb. 2014, p.10].

As a result of longstanding efforts by prisoners, their family members and advocacy organizations (including the Campaign for Prison Phone Justice) against exorbitant prison and jail phone rates, the FCC ordered the rate caps and other reforms after examining the issue for almost a decade in a proceeding known as the Wright petition. The rate caps include a maximum of $.25 per minute for collect interstate calls and $.21 per minute for debit or prepaid interstate calls. [See: Wright, PLN, Dec. 2013, p.1].

The FCC’s Wireline Competition Bureau found that Pay Tel had “met its burden of proof” to establish a good cause to grant a limited, temporary waiver of the Commission’s interim [prison phone] rate cap rule.” Accordingly, on February 11, 2014, Pay Tel received a nine-month “narrow waiver” that allows the company to charge phone rates above the caps, not to exceed $.46 per minute for interstate prison phone calls – or up to $6.90 for a 15-minute call. Absent any further action by the FCC, the waiver will expire on November 11, 2014. See: In the Matter of Rates for Interstate Inmate Calling Services, FCC WC Docket No. 12-375.

Pay Tel had argued it could not recover its costs if it was required to comply with the FCC’s rate caps, due to intrastate (in-state) rate restrictions in five of the states where it provides phone services. The Human Rights Defense Center – the parent organization of Prison Legal News – had filed comments with the FCC contesting the claims made by Pay Tel in its waiver petition.

Separately, other prison phone service providers such as Global Tel*Link (GTL) and Securus have challenged the FCC’s rate caps and other reforms in the D.C. Circuit Court of Appeals, and Securus has applied for a blanket rate cap waiver in all of the states where Pay Tel has contracts. But unlike Pay Tel, Securus did not submit detailed documentation indicating how the rate caps would inhibit the company’s ability to recover its costs. Pay Tel had submitted records to the FCC and Wireline Competition Bureau showing that its costs exceeded the rate caps, which was instrumental in obtaining the waiver.

The petitioners in the Wright petition have opposed Securus’ request for a “me too” rate cap waiver, noting that “Securus has steadfastly refused to provide any actual cost data to the FCC.” By continuing to pay commission kickbacks to correctional agencies for intrastate calls while failing to provide the FCC or Wireline Competition Bureau with financial statements that demonstrate the company’s actual costs, it will be more difficult for Securus to justify its waiver request.

The Wright petitioners argued in a March 11, 2014 comment in opposition to Securus’ request that “until such time that Securus and the other [prison phone service] providers are willing to submit the same financial information as provided by Pay Tel Communications in connection with its Petition for Waiver, i.e., audited Financial Statements, substantive cost studies, the FCC must deny any attempt to extend similar relief.”

Meanwhile, both GTL and Securus have stated that due to the rate caps imposed by the FCC, they are no longer paying commission kickbacks to correctional agencies on revenue generated from interstate prison phone calls.
Oregon Judge Scolded for Courtroom Rant

by Mark Wilson

The Oregon Supreme Court has publicly censured a trial court judge for a profanity-laced tirade during a sentencing hearing.

In October 2011, Richard Lee Taylor, 60, was convicted of 21 sex offenses involving two 12-year-old boys. Evidence of his crimes included video recordings that showed Taylor sexually abusing the victims. The recordings were so disturbing that jurors thanked Jackson County Circuit Court Judge Tim P. Barnack when he stopped some of the videos from being shown during the trial. Several jurors wept and three asked if they could receive counseling.

Since Taylor had a prior California sex abuse conviction, prosecutors requested that he receive a life sentence.

Judge Barnack gave Taylor the opportunity to speak during his January 21, 2012 sentencing hearing, but Taylor said he had “nothing to say.”

That apparently was the last straw for the judge. “I don’t think you have a soul,” Barnack stated. He called Taylor a “piece of shit” and said community members wondered why he wasn’t “hanging from a tree.” The judge repeatedly asked Taylor if he wanted to salvage his soul, and said he personally hoped that Taylor rots in prison.

“We are going to make sure you never get out,” Judge Barnack remarked as he sentenced Taylor to 21 life sentences without the possibility of parole. “I’ve seen the cells for people like you. They’re skinny, they’re small, and I think you get an hour of daylight. You will rot, and for what you did to these people, that’s where you should be.”

Judge Barnack sent an email to other Jackson County Circuit Court judges after the sentencing hearing, apologizing for his remarks. He said that he, too, was traumatized by the evidence in the case, and that he lost control of his emotions when Taylor declined to speak because he felt Taylor’s silence “evidenced an indifferent and unsympathetic attitude towards his victims, one of whom was in the courtroom.”

Barnack acknowledged that his comments were inappropriate and he sought counseling from more experienced judges regarding the best way to manage emotionally-charged courtroom situations. As a result he adopted new procedures, including the use of a prepared script during sentencing to ensure that his outburst would not be repeated.

“I’ve learned from this experience and I look forward to continuing to serve the people of Jackson County,” he said.

The Oregon Supreme Court noted that Judge Barnack and the Commission on Judicial Fitness and Disability stipulated that he had violated two rules of the Oregon Code of Judicial Conduct, and Barnack agreed to a public censure. The Supreme Court approved the censure, which does not impact his duties as a judge or include any fines or fees. See: In re Barnack, 353 Ore. 205, 299 P.3d 525 (Or. 2013).

Judge Barnack is currently running for re-election in 2014.

Additional source: www.kdrv.com
Research Finds that Conjugal Visits Correlate with Fewer Sexual Assaults

A study conducted by researchers at Florida International University (FIU) found that state prison systems that permit conjugal visits report fewer rapes and sexual assaults than those where such visits are prohibited – a finding that the researchers said tends to dispute the theory that sex offenses are crimes of power rather than a means of sexual gratification.

“Our findings propel the idea that sexual violence can be attenuated given appropriate policy initiatives,” stated the authors of the 2012 study, Stewart D’Alessio, Jamie Flexon and Lisa Stolzenberg. In spite of the report’s findings, two states recently announced that they are discontinuing their conjugal visitation programs.

The FIU study was conducted over a three-year period, from 2004-2006, in the five states that provided conjugal visits at that time: California, Mississippi, New Mexico, New York and Washington. [See: PLN, May 2013, p.1].

“Inmate-on-inmate sexual offending is much less pronounced in states that allow conjugal visitation,” the study concluded.

While sexual violence occurred in state prison systems that prohibit conjugal visits at an average rate of 226 incidents per 100,000 prisoners, it occurred almost four times less frequently in the five states that permitted such visits – 57 per 100,000 prisoners.

The FIU researchers said the effect of conjugal visitation in reducing sexual assaults among prisoners should encourage more states to consider allowing such visits, which the study noted have other positive effects. For example, conjugal visits, also known as family visits, help “improve the functioning of a marriage by maintaining an inmate’s ability to maintain ties with his or her family.”

“There are costs associated with the staff’s time, having to escort inmates to and from the visitation facility, supervising personal hygiene and keeping up with the infrastructure of the facility,” Mississippi DOC Commissioner Christopher B. Epps said in a press release. “Then, even though we provide contraception, we have no idea how many women are getting pregnant only for the child to be raised by one parent.”

Of the more than 22,000 prisoners in Mississippi state prisons, just 155 were allowed conjugal visits in fiscal year 2013. Under the program, the visits were available only to prisoners classified as minimum- or medium-security who did not have a written rules violation within the previous six months.

“While both the extended family visitation and conjugal visit program involve a small percentage of inmates, the cost coupled with big-ticket items adds up,” Epps stated. “The benefits of the programs don’t outweigh the cost in the overall budget.”

Family members who participated in the visits strongly disagreed.

Tina Perry, 49, who had been visiting her incarcerated husband every few months for the past eight years, said prisoners’ spouses should not be forced to suffer any more than they already do, and the state should not deprive them of something that is an infrequent but important part of their relationship.

Some spouses argued it’s not about the sex but rather about privacy. “The little 60 minutes isn’t a lot of time, but I appreciate it because we can just talk and hold each other and be with each other,” said Ebony Fisher, 25, who would drive nearly three hours to see her husband, who is serving a 60-year sentence. But Fisher also admitted that the end of conjugal visits means no more children for the couple.

“Let me have that option,” she said. “I feel like they are taking away my choice.”

“You never just get husband and wife time” during regular prison visits, noted Amy Parsons, who drove eight hours for a one-hour conjugal visit with her husband, who is not due to be released until 2022.

“It’s not romantic, but it doesn’t matter,” she said. “I just want people to realize it’s about the alone time with your husband. I understand they are in there for a reason. Obviously they did something wrong. But they are human, too. So are we.”

Even prison officials conceded that the visits were a deterrent to unruly behavior among prisoners. “Conjugal visits have been a privilege,” noted Mississippi DOC spokeswoman Tara Booth. “So in that sense, it has, as other internal opportunities, helped to maintain order.”

On April 16, 2014, New Mexico prison officials announced the end of conjugal visits effective the following month, citing concerns about contraband and sexually transmitted diseases. They estimated annual savings of around $120,000 by discontinuing the visitation program, which had been in effect for 30 years.

“Some of these policies are old and tired,” said Corrections Secretary Gregg Marcantel. “They aren’t producing the outcomes we need to help our inmates and make our communities safer.”

Conjugal visitation was implemented in New Mexico following an infamous 1980 riot at the state penitentiary near Santa Fe that resulted in 33 deaths; the visits were intended to help reduce tension in the prison population.

“After two years of research we found the overnight stays had no impact on decreasing the rate of inmates returning to jail,” said New Mexico DOC spokeswoman Alex Tomlin, who noted that only around
150 prisoners qualified for conjugal visits. The visits will be replaced with family programs that include classes on parenting and financial planning.

When discontinuing their conjugal visitation programs, neither Mississippi nor New Mexico officials addressed the findings of the FIU study relative to the effect conjugal visits have on reducing sexual assaults among prisoners. [1]

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**Cancellation of BOP Elderly Offender Pilot Program Moots Appeal**

**by Michael Brodheim**

On July 11, 2013, in an amended ruling, the Ninth Circuit dismissed as moot the appeal of a federal prisoner who had been denied entry into a pilot program that allowed the Bureau of Prisons (BOP) to release certain elderly offenders from BOP facilities and place them on home detention, because the program had been discontinued.

The Second Chance Act of 2007 created a pilot program which allowed the BOP, in its discretion, to place certain nonviolent elderly offenders on home detention after they had served the greater of 10 years or 75% of their term of incarceration. [See: PLN, Feb. 2009, p.8].

BOP prisoner Perry A. McCullough applied to the elderly offender pilot program in 2009. McCullough, who had been sentenced in 1990 to 380 months in federal prison for drug trafficking, calculated that he would be eligible for the program in March 2010 if the BOP took into account his good time credits.

The BOP declined to consider McCullough's good time credits, however, and found he would not be eligible for the pilot program until March 2013, once he had served 75% of his sentence. After exhausting his administrative remedies, McCullough filed a pro se petition for habeas relief in federal court in Arizona. The district court denied his petition because, under a plain language analysis of the applicable statute, the BOP was not required to consider good time credits when evaluating whether a prisoner was eligible for the program.

Meanwhile, in September 2010, the elderly offender pilot program authorized under the Second Chance Act was discontinued.

The Ninth Circuit held that the cancellation of the program divested it of jurisdiction, and dismissed McCullough's appeal as moot since the relief requested in his petition was “no longer available because of the termination of the pilot program.” The Court of Appeals found no applicable exceptions to the mootness doctrine in this case; hence, the district court’s dismissal of the habeas petition was affirmed. See: McCullough v. Graber, 726 F.3d 1057 (9th Cir. 2013). [1]

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PRISON-TRANSFER-DISCIPLINE-VISITING-CLASSIFICATION-HOUSING PROP. 36 RE-SENTENCING-3 STRIKES-MEDICAL-PAROLE HEARINGS

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A report compiled by the Wisconsin Department of Corrections (DOC) found there were 351 assaults, attempted assaults and assault-related injuries involving prison staff from mid-2012 to mid-2013. In response, Corrections Secretary Ed Wall announced in December 2013 that he was equipping guards with 3-ounce canisters of pepper spray to help prevent and stop violent incidents.

Wall noted that the threat of pepper spray alone can defuse dangerous situations and deter assaults. He said he is also considering furnishing civilian prison employees, such as nurses and teachers, with pepper spray.

Guards at the Milwaukee Secure Detention Facility and the Green Bay Correctional Institution were given pepper spray in a 2013 pilot program. The program, considered to be a success, is expanding statewide.

“The pepper spray is now being rolled out to officers at all minimum- and medium-security institutions,” said Wall and DOC Deputy Secretary Deidre Morgan.

State prisons previously had been equipped with Tasers, but they were kept locked up until needed. Now, supervisors in contact with prisoners are allowed to carry Tasers.

“It should have been done a long time ago. You stop stuff before anything happens,” stated Sgt. Daniel Meehan at the Waupun Correctional Institution.

Meehan, the local president of the Wisconsin Association for Correctional Law Enforcement, said he welcomed the DOC’s plan to equip guards with pepper spray. Not everyone was supportive of the idea, though.

“That’s a two-edged sword,” observed Marty Beil, executive director of the Wisconsin State Employees Union. “That pepper spray can be taken off an officer as quickly as it can be used by an officer.”

Beil credited the DOC with improving its tracking of prisoner-on-staff assaults; for years, such data had been poorly maintained. But the best way to protect employees from being assaulted, he said, would be for DOC administrators to work closely with prison staff.

That was the case before Governor Scott Walker eliminated collective bargaining for most public employees in 2011, Beil noted. He called the deployment of pepper spray and Tasers “window dressing.”

The DOC report found there were 252 assaults on staff, 40 attempted assaults and 59 assault-related injuries from July 2012 to June 2013. Those incidents included attempted assaults that consisted of prisoners unsuccessfully trying to spit on guards, as well as injuries that guards sustained from other staff members when trying to break up fights.

Further, to place the data in context, the 351 assaults, attempted assaults and injuries during the one-year period covered in the DOC report occurred in a prison system with around 21,800 offenders.

According to the report, prisoners with serious mental health problems accounted for 47% of the assaults; 59% of assaults and 70% of attempted assaults occurred at maximum-security prisons; and approximately 70% of assaults and attempted assaults happened in segregation units.

In addition to equipping guards with pepper spray and Tasers, the DOC has installed boxes on the doors of segregation cells, similar to devices used at bank drive-through windows. Food trays are placed in the box, then the door to the box is closed before it can be opened on the other side. Thus, prisoners are less likely to throw items at staff during meal times.

Source: Journal Sentinel

Wisconsin DOC Equips Guards with Pepper Spray, Tasers

California Prison Regulation Governing Gang Validation Upheld by Ninth Circuit

by Michael Brodheim

Last year the Ninth Circuit upheld the constitutionality of a California prison regulation that guides state prison officials in determining whether or not a prisoner should be classified as gang-affiliated.

In California, a prisoner affiliated with a gang — whether as a “member” or “associate” — is deemed to pose a threat to institutional safety and security sufficient to warrant placement in administrative segregation. Pursuant to Cal. Code Regs., title 15 § 3378(c)(4), an “associate” is defined to be a person “who is involved periodically or regularly with members or associates of a gang.” Prison officials must show such involvement through three independent sources of documentation indicating association with validated gang members or associates.

In April 1997, California state prisoner Carlos Castro was validated as an associate of the Mexican Mafia, a recognized prison gang. He was then transferred to the Security Housing Unit at Pelican Bay State Prison.

Castro filed suit in federal court in 1998, challenging his validation on due process grounds. The district court granted summary judgment to the defendants, which was reversed by the Ninth Circuit in a 2002 ruling that held due process requires prisoners to be afforded a meaningful opportunity to present their views to the critical decision maker in administrative segregation cases. [See: PLN, July 2003, p.17].

Following remand and a bench trial, which “found that Castro did not receive due process in his initial validation procedure,” the district court issued an order requiring prison officials to determine whether or not Castro was currently a gang associate. As a result of that order they conducted a second validation inquiry, and again concluded that Castro was a gang associate in April 2011.

On appeal, Castro argued that the definition of “associate” in § 3378(c)(4) is facially unconstitutionally vague, and therefore the procedure used to validate him as a gang associate did not comport with due process.

Finding no case raising a similar challenge, the Court of Appeals began its examination of Castro’s claims by assuming that the void-for-vagueness doctrine could be applied to prison regulations. Applying the analysis employed in void-for-vagueness challenges to criminal statutes, the appellate court considered 1) whether § 3378(c)(4) defines “associate” with sufficient definiteness that “ordinary people can understand what conduct is prohibited” (e.g., what conduct can be used as evidence of be-
The Oregon Court of Appeals has held that the Parole Board lacks authority to impose incarceration sanctions in excess of 180 days for post-prison supervision (PPS) violations for life-sentenced offenders convicted of murder.

Richard Hostetter was convicted of murder in 1992 and released on PPS in 2006. He then committed a technical violation by using alcohol and failing to report to his parole officer.

On February 11, 2008, the Oregon Board of Parole and Post-Prison Supervision (Board) revoked Hostetter’s PPS and imposed a sanction of 84 months incarceration (Board) revoked Hostetter’s PPS and imposed a sanction of 84 months incarceration (Board) revoked Hostetter’s PPS and imposed a sanction of 84 months incarceration, establishing a projected release date of January 17, 2015.

Under former OAR 253-11-004(3) (9/1/89), the Board was authorized to impose incarceration sanctions of “up to ninety (90) days for a technical violation and up to one hundred and eighty (180) days for conduct constituting a crime.” The rule also imposed a 180-day cap on total incarceration sanctions during an entire PPS term, “except as provided in OAR 253-05-004(2)” for offenders like Hostetter serving a life sentence for murder.

“Thus, OAR 253-11-004(3) both limits re-incarceration of an offender for any single PPS violation to 90 or 180 days and places a 180-day cap on aggregate incarceration sanctions for multiple PPS violations,” subject to the exception in OAR 253-05-004(2). In Jones v. Board of Parole, 231 Ore. App. 256, 218 P.3d 904 (Or. Ct. App. 2009), the Oregon Court of Appeals held “that the 90- and 180-day limitations in OAR 253-11-004(3) do not apply to offenders on lifetime PPS for a murder conviction.” The Jones court read the exception as applying to both the aggregate cap and individual sanction caps for PPS violations.

Hostetter appealed his 84-month incarceration sanction, arguing that Jones incorrectly interpreted the applicable rules. Noting that “the proper construction of OAR 253-11-004(3) and OAR 253-05-004 was not ‘squarely’ presented ... in Jones,” Hostetter argued that Jones should be overturned.

The Court of Appeals agreed. Applying rules of statutory construction, the Court concurred with Hostetter “that the Criminal Justice Council and legislature intended that the exception for those on lifetime PPS for murder set forth in OAR 253-05-004 apply only to OAR 253-11-004(3)’s 180-day aggregate limitation.” Such offenders may not receive more than 90- or 180-days sanctions for each individual PPS violation. As such, the Board erred in imposing an 84-month incarceration sanction for Hostetter’s technical violation. See: Hostetter v. Board of Parole, 255 Ore. App. 328, 296 P.3d 664 (Or. Ct. App. 2013).

The Board appealed the decision to the Oregon Supreme Court, which denied review on June 20, 2013.
California: Trial Court Cannot Abdicate its Responsibility to Examine Peace Officer Personnel Records

by Michael Brodheim

On May 6, 2013, the California Court of Appeal held that a trial court conducting an in camera review of peace officer personnel records must examine the records itself, and cannot abdicate that responsibility in favor of an assessment by the custodian of the records with respect to whether they contain discoverable information.

In November 2007, Costa Mesa police officers, along with state parole agents, traveled to Carlsbad in unmarked vehicles to arrest Ronald Jay Sisson, also known as Brian Lee Olson – a parolee and suspected gang member. In the incident that ensued, the officers fired 27 rounds into Sisson’s vehicle after he rammed police cars and struck an officer when attempting to drive away. The gunfire killed Esther Elizabeth Evans, a passenger in Sisson’s front seat, who was shot in the head.

Sisson was subsequently charged with one count of provocative act murder in connection with Evans’ death plus three counts of assaulting a peace officer with a deadly weapon. He disputed the officers’ version of events and filed two discovery motions under Pitchess v. Superior Court, 11 Cal.3d 531 (Cal. 1974), seeking complaints of dishonesty, false reporting and excessive force in the officers’ and parole agents’ personnel files. He alleged the officers and agents had lied and falsified their statements concerning the incident.

Instead of examining the files itself, the trial court placed the custodian of the records under oath and then asked general questions about the contents of the records that had been produced. Only when the custodian indicated that, in its assessment, a record included discoverable information did the trial court actually examine the record. Incredibly, the trial court deferred to the custodian’s opinion that the records of an internal affairs review of the shooting incident at issue contained no discoverable information.

The Court of Appeal reversed, noting that under California Supreme Court precedent, “the locus of decision making is to be the trial court, not the prosecution or the custodian of records.” Additionally, “while the trial court made an effort to inquire into what types of documents the custodians opted not to produce, the effort fell short of requiring the custodians to establish on the record what documents or category of documents were included in the officers’ complete personnel files and, where applicable, to explain their decisions to withhold certain documents.”

The appellate court concluded that Sisson had “showed good cause for discovery of complaints of dishonesty or false reporting as to some officers, but did not show good cause for discovery of complaints of excessive force as to any officers.” Accordingly, his petition for review was granted in part and denied in part. See: Sisson v. Supreme Court, 216 Cal. App. 4th 24 (Cal. App. 4th Dist. 2013).

In September 2013, Sisson pleaded guilty to a reduced charge of manslaughter and two counts of assault on peace officers using a deadly weapon (his vehicle). He was sentenced to 13 years and 8 months in prison pursuant to a plea agreement.

Additional source: www.sandiegoreader.com

Connecticut Town Raises Stink Over Sewage Discharged by State Prison

The town of Cheshire, Connecticut has decided that if it has to take more crap from the Connecticut Department of Correction (CDOC), then it wants help to pay for it.

Discussions are underway between town and state officials to resolve a lawsuit filed by Cheshire in July 2012 that seeks to renegotiate the terms of an agreement with the CDOC, to require the state to help upgrade the town’s wastewater treatment plant due to the amount of sewage discharged from a nearby prison complex.

Officials have admitted, though, that the negotiations are not producing any positive results.

“We met with members of the Department of Corrections and Attorney General’s office to see if we could negotiate a settlement, but right now it’s in court just sitting there,” Cheshire town manager Michael Milone said in April 2013.

“In the meantime, we are hoping to appeal to some of the state agencies to resolve this – we are hoping to sit down and negotiate a resolution,” he added.

The current agreement allows for 350,000 gallons of effluent each day from the complex, which houses around 2,000 prisoners at the Cheshire Correctional Institution and the Manson Youth Institution. But town officials say that for years, the prison complex has discharged more sewage into the treatment plant than is permitted by either the town or the state.

“They have an agreement with the town that goes back to 1990 that says that they cannot exceed 350,000 gallons per day and they have consistently exceeded that for nine or 10 years,” Milone said. The town is seeking to increase the permit requirements to 450,000 gallons of sewage per day.

Cheshire officials also want the CDOC to contribute 25% of a planned $31 million upgrade to the town’s wastewater treatment plant; the upgrade, scheduled to begin in late 2012, was estimated to take more than two years to complete.

“[T]he prison represents 25% of the effluent treated there, so the state should pay 25% of the cost,” Milone argued. He said the town’s lawsuit was prompted by the state Senate’s failure to pass legislation that would have required the CDOC to renegotiate its wastewater agreement.

“We’ve been trying to negotiate the host agreement since 2006, and we don’t feel they [state officials] have been negotiating in good faith,” said Milone. “We feel we’ve exhausted all of our options.”

Cheshire’s lawsuit against the CDOC remains pending. See: Town of Cheshire v. State of Connecticut DOC, Hartford Superior Court (CT), Case No. HHD-CV-12-6033159S.


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Prison Legal News
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Prison Education Programs Threatened
by Matt Clarke

Corrections officials across the country fear that two recent developments will drastically limit educational opportunities for prisoners—a scenario that research indicates could lead to higher recidivism rates.

First, Congress failed to renew federal funding in 2011, 2012 and 2013 for a grant program that helps finance higher education courses for prisoners. The grants, known as Specter funds—named after correctional education advocate and late-U.S. Senator Arlen Specter—provided money to state prison systems that helped underwrite a portion of the cost of post-secondary programs for prisoners.

The second development concerns significant changes in the GED program that allows people to earn the equivalent of a high school diploma. Starting on January 1, 2014, the test was realigned to match Common Core State Standards, and the old pencil-and-paper exams were eliminated in favor of a computer-based test. Most prisons and jails that offer GED classes will be affected by the change.

Prison Education Research

The elimination of Specter funds compounds the woes of prison education programs that are already suffering from cuts imposed by states facing budget shortfalls. A study conducted by the non-profit RAND Corporation on behalf of the federal Bureau of Justice Assistance found that states reduced funding for prison education programs by an average of 6% between fiscal years 2009 and 2012. The study reported that states with large prison populations cut prison education funding by 10%, on average, while states with medium-sized populations slashed education budgets by an average of 20%.

The February 2014 RAND report, “How Effective is Correctional Education, and Where Do We Go from Here?,” found that academic courses were hardest hit by the state funding cuts.

“There has been a dramatic contraction of the prison education system, particularly those programs focused on academic instruction versus vocational training,” said Lois Davis, a RAND senior policy researcher and the study’s lead author. “There are now fewer teachers, fewer course offerings and fewer students enrolled in academic education programs,” she remarked in a statement released along with the report.

Further, the study found that on average, every dollar spent on prison education programs results in a savings of four to five dollars in the cost of re-incarcerating prisoners within the three years following their release, due to lower recidivism rates.

“We need to weigh the short-term need to reduce budgets with the long-term consequence of trimming programs that help keep people from returning to prison after they have paid their debt to society,” Davis said.

The RAND report integrated a 2013 meta-analysis of more than 30 years of previous research which concluded that “inmates who participated in correctional education programs had 43% lower odds of returning to prison than inmates who did not.” The positive impact of prison-based education programs on recidivism rates has long been known. [See: PLN, March 2012, p.10].

“These findings reinforce the need to become smarter on crime by expanding proven strategies for keeping our communities safe, and ensuring that those who have paid their debts to society have the chance to become productive citizens,” U.S. Attorney General Eric Holder said when the meta-analysis findings were released in August 2013.

“Correctional education programs provide incarcerated individuals with the skills and knowledge essential to their futures,” added U.S. Secretary of Education Arne Duncan. “Investing in these education programs helps released prisoners get back on their feet—and stay on their feet—when they return to communities across the country.”

Further, the RAND report determined the odds of an offender finding employment after release from prison was 13% higher for those who participated in academic or vocational programs compared to those who did not. Prisoners who received vocational training were 28% more likely to obtain post-release employment.

Despite the numerous studies that have linked increased educational opportunities to lower recidivism rates, state officials are skeptical about future federal funding for post-secondary prison education programs—which was largely gutted after such programs were barred from receiving federal Pell grants under President Clinton in 1994. [See: PLN, Jan. 1998, p.4; Dec. 1994, p.7]. As a result of the loss of Pell grants, college programs for prisoners dropped from approximately 350 nationwide to around a dozen, according to The New York Times.

Loss of Specter Funds

The discontinuation of federal Specter funds starting in 2011 has prison education officials nationwide scrambling to find alternative funding sources.

“I’m not a pessimistic person, but I don’t see this one coming back any time soon,” said Stephen Steurer, executive director of the National Correctional Education Association (NCEA), in reference to the end of Specter funds. “We’re cutting our own throats,” he added.

Specter funds had been provided through the Grants to States for Workplace and Community Transition Training for Incarcerated Individuals, 20 U.S.C. § 1151.

For example, Minnesota’s prison system received around $150,000 per year in Specter funds; the money was used to partner with state colleges and universities, which provided teachers and class materials. When the funding was cut in 2011, the partnership did not dissolve because the state prison system had a surplus from previous years, but that was only temporary. Minnesota prison officials have admitted...
they don’t know where they will secure new funding, but vowed to continue looking.

“It’s an important program, and we’re going to do what we can to try and keep it continuing,” insisted George Kimball, the prison system’s director for adult education.

Other state corrections officials have found themselves in a similar position; about a third of the nation’s prisons offer post-secondary education programs of some type.

West Virginia will be cutting classes by half or worse, according to Fran Warsing, superintendent of the state’s Office of Institutional Education Programs.

“There’s no money,” complained Warsing. “They did away with Pell grants, and now they’ve done away with this.”

In Florida, Specter funds were used to support a number of prison vocational programs, including web design courses at the Lawtey Correctional Institution and Hernando Correctional Institution; a culinary arts program at the Madison Correctional Institution; and a landscape irrigation course at the Suwannee Correctional Institution.

NCEA President Don Kiffin, who is in charge of education at a prison in Oklahoma, said his institution was down to its last semester of funding after losing $7,000 to $10,000 in annual Specter funds.

“A lot of people coming to me that want to go to school [are] wondering why I can’t give them money to go,” Kiffin stated. “I have to pick, choose and refuse.”

“You can basically kiss the post-secondary programs goodbye,” remarked NCEA director Steurer, referring to the Maryland prison system where he worked before retiring.

Steurer said short-sighted politicians don’t look at the long-term benefits of prisoner education, such as lower prison populations due to reduced recidivism or having more former prisoners become productive, tax-paying citizens.

Legislation introduced in the U.S. House of Representatives, H.R. 803, known as the SKILLS Act, repeals the statute that authorizes Specter funds and replaces it with a different federal funding initiative for prison education programs. H.R. 803 passed in the House in March 2013; a companion bill in the Senate, S.B. 1911, was introduced in January 2014 and has been referred to a committee.

Changes in GED Testing

Meanwhile, the RAND study predicted that recent changes to GED testing will pose another threat to prison education programs. The report warned that the realignment of the test to Common Core State Standards and the switch to a computer-based exam could have a negative impact on prisoners trying to earn their GEDs.

“These two changes have important implications for correctional administrators and educators in terms of preparing for and implementing the new test,” RAND stated. “Educators will need to be prepared to teach the [new standards] and prepare students for a more rigorous GED test that will require students to demonstrate high-level thinking skills and exhibit deeper levels of knowledge in four subject areas.”

The report said the switch to a computer-based test will make the exam even more difficult for prisoners in programs that generally have limited technology resources. It “will require educators to prepare students

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to have a level of computer literacy and skills necessary to successfully navigate the test,” which in turn has “implications when it comes to agency budgets and professional development needs of educators and present[s] a number of logistical concerns when it comes to preparing to implement computer-based testing.”

According to RAND, 31 states plan to use the new, more difficult GED exams. A survey of correctional education directors in those states found that 52% believe the new tests will have a negative impact on the number of prisoners who earn GEDs. Further, 68% indicated that as a result, they anticipate a decline in the number of prisoners participating in GED programs.

The RAND report also found that 42% of state prison education officials believe it will take more time for prisoners to prepare for the redesigned tests, and 45% said they expect fewer prisoners will be adequately prepared.

Facilities that do not currently have computers to provide the new tests can request a waiver to continue using paper exams on a temporary basis. According to the GED Testing Service, “Prisons not able to offer computer-based testing will continue to offer the 2002 Series GED Test on paper for a limited approved amount of time.”

Over 75% of the states responding to the RAND survey reported that the increased cost of implementing computer-based GED testing was a concern. The new GED exams will cost around $120 each, which, according to USA Today, is a significant increase from the $70 average cost for paper tests. In some jurisdictions the increase may be passed along to students in whole or part, though GED testing costs are sometimes subsidized by public agencies.

As noted in the RAND report, the new GED exam comes on the heels of a growing trend by states to slash funding for prisoner education. In Oregon, for example, Department of Corrections spokesman Betty Bernt said the state cut roughly $100,000 from the department’s Adult Basic Skills Development program in the four years between 2009 and 2013. The budget cuts led to a nearly 13% drop in the number of prisoners participating in the program.

Due to the cost increase of the new GED exam, some correctional facilities are switching to an alternative, less expensive high school equivalency test known as HiSET.

A Case Study: Prison Education in New York

In New York, a senior official with the administration of Governor Andrew Cuomo told reporters at a March 31, 2014 briefing that non-profit organizations and foundations had expressed interest in financing the governor’s plan to expand college classes at 10 state prisons.

The announcement signaled the revival of a program that Cuomo unveiled in February 2014, which was quickly scuttled after New York state lawmakers voiced fierce opposition to using taxpayer dollars to fund college courses for prisoners.

Cuomo first detailed the proposal in a speech to the New York State Black, Puerto Rican, Hispanic and Asian Legislative Caucus. The governor said New York spends about $60,000 per prisoner – what he called “more money than it takes to send a person to Harvard for a year” – and that paying for one year of college education for the same prisoner would cost about $5,000.

“We’re imprisoning, we’re isolating, but we’re not rehabilitating the way we should,” Governor Cuomo said at the time.

The plan drew immediate praise from the Caucus. “A higher level of education will support these men and women in moving forward with their lives, as opposed to returning to criminal activity and prison,” stated Caucus chairman and state Assemblyman Karim Camara.

The deal-breaker for lawmakers, however, was the plan to use taxpayer money to fund the initiative. Republican state Assemblyman Joe Borelli said the issue was not the proposal itself but rather that the plan favored one group of people – prisoners – over another.

“The problem with the program is not the idea of rehabilitation for convicted felons,” said Borelli. “The problem is the fundamental inequity of the proposal... How can we provide a free education for people who have made the wrong choices in life, while we let the people who made good choices struggle?”

Borelli noted that college students in New York typically incur an average of $25,537 in student loans.

Governor Cuomo had touted the plan as a way to reduce future prison spending. State data shows that New York’s recidivism rate is approximately 40%. By comparison, since 1999 the rate of re-incarceration dropped to only 4% for prisoners who participated in an existing post-secondary education program sponsored by Bard College at six medium- and maximum-security New York state prisons. As of 2013, more than 250 prisoners have obtained degrees through the Bard Prison Initiative.

“I understand the sentiment” against using public funds to pay for college classes for prisoners, the governor conceded at a news conference to mark the passage of the new state budget. “I don’t agree with it, but I understand it, and I understand the appearance of it.”

Currently, higher education programs are offered at 22 New York state prisons; most are funded with private money. For example, the Prison-to-College Pipeline, a project of the John Jay College of Criminal Justice, began offering classes at the Otisville Correctional Facility in 2011. Other college programs are provided through Bard and Cornell University.

Governor Cuomo’s proposed initiative would have expanded existing programs so more prisoners could participate in college courses and earn associate’s and bachelor’s degrees.}

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A wave of legal maneuvering is sweeping across the nation due to a deeply divided U.S. Supreme Court decision regarding juveniles serving mandatory sentences of life without parole, and a number of states have taken action as a result of the ruling.

The high court held in June 2012 that mandatory life-without-parole sentences for juveniles convicted of murder violate the Eighth Amendment’s ban on cruel and unusual punishment. The 5-4 decision in *Miller v. Alabama*, 132 S.Ct. 2455 (2012) overturned life sentences imposed on two defendants who were 14 years old at the time they were convicted of murder.

The Supreme Court found that juvenile defendants cannot be treated the same as adults for sentencing purposes because they are cognitively different, citing their “immaturity, impetuosity, and failure to appreciate risks and consequences.” The ruling was expected to affect around 2,000 prisoners nationwide.

Just weeks after the *Miller* decision, Iowa Governor Terry Branstad announced that he would commute life-without-parole sentences for 38 Iowa juvenile lifers, only to make them ineligible for parole until they have served at least 60 years in prison.

“Justice,” Branstad said, “is a balance, and these commutations ensure that justice is balanced with punishment for those vicious crimes and taking into account public safety.”

However, an Iowa district court overturned the governor’s commutation in the first legal challenge filed by one of the affected prisoners. After hearing testimony in the case of Jeffrey K. Ragland, 44, who was 17 years old when sentenced to life without parole, the court held that Governor Branstad had exceeded his authority because his commutation did not allow for the individualized sentencing required by *Miller*, thus depriving Ragland of a meaningful opportunity to demonstrate his maturity and potential for rehabilitation.

The district court then re-sentenced Ragland to life with the possibility of parole after 25 years, making him immediately eligible for parole. The court also affirmed that a sentence of life without parole was cruel and unusual punishment as applied to Ragland, and criticized Branstad’s commutation as being outside the intent of state law, which makes juveniles convicted of Class A felonies eligible for parole after 25 years.

The state challenged the re-sentencing order, but the Iowa Supreme Court affirmed the district court in August 2013 and pulled no punches in condemning Governor Branstad’s actions.

“The sentence served by Ragland, as commuted, still amounts to cruel and unusual punishment under the Eighth Amendment to the United States Constitution and Article I, Section 17 of the Iowa Constitution,” the state Supreme Court held. “Consequently, the district court properly resentenced Ragland.”

Supreme Court Justice David Wiggins took further aim at Branstad: “In this situation, is the Governor commuting a void sentence or sentencing the defendant for the first time in violation of the separation of powers doctrine?” he asked in a concurring opinion.

“Another observation is that the Governor’s imposition of a sentence might constitute a denial of due process – such as the right to present evidence at the sentence stage ... or the right to be informed of accusations, the right to a jury trial, the right to compulsory process, and the right to counsel under ... the Iowa Constitution,” Wiggins continued. See: *State v. Ragland*, 836 N.W.2d 107 (Iowa 2013).

In a separate ruling, the Iowa Supreme Court held that a 75-year sentence imposed on a juvenile defendant convicted of murder was subject to the limitations of *Miller*, even though it was not a sentence of life without parole.

“We conclude that *Miller’s* principles are fully applicable to a lengthy term-of-years sentence as was imposed in this case because an offender sentenced to a lengthy term-of-years sentence should not be worse off than an offender sentenced to life in prison without parole who has the benefit of an individualized hearing under *Miller*,” the Court wrote. See: *State v. Null*, 836 N.W.2d 41 (Iowa 2013).

Further, in a third case, the state Supreme Court found that *Miller* should be applied to a juvenile defendant sentenced to a mandatory fixed-term sentence in a non-homicide case. See: *State v. Pearson*, 836 N.W.2d 88 (Iowa 2013).

In *Miller*, the Supreme Court held that all pertinent factors, including age, education, life experiences and home environment, must be considered when judges impose sentences on defendants convicted of committing murder as juveniles.

Stephen Bright, director of the Southern Center for Human Rights and an instructor at Yale Law School, said at the very least, Branstad’s decision to issue commutations mandating 60-year sentences was poor public policy.

“The main point of the *Miller* decision – and the main concern of any sentencing – should be individualized sentencing based on factors about each human being,” Bright said. “Obviously, nothing about any of the 38 individuals [Iowa prisoners convicted of murder as juveniles] was taken into account, just as it was not when they were sentenced to life imprisonment without parole.”

One of the Iowa lifers to have their sentences commuted, David Epps, was convicted of a burglary-murder when he was 16. Due to Branstad’s commutation imposing a 60-year sentence, Epps, now 48, would not be eligible for parole until his mid-70s.

“I was thinking he was going to get some kind of release because he served 32 years on a life sentence,” said David’s brother, Dennis Epps. “[Branstad] might as well have left them serving a life sentence, because that’s pretty much what that is.”

Meanwhile, the ACLU announced its opposition to three bills introduced in the Iowa legislature in support of the governor’s commutations. All three would allow...
judges to sentence juveniles convicted of first-degree murder to life without parole, or – at the judge's discretion – to a mandatory minimum sentence that critics argue would not provide such offenders with a meaningful second chance.

The mandatory minimum sentence varies with the proposed legislation; a Senate bill (SSB 1089) would require a 45-year minimum, while in the House, one measure (HB 105) proposes 50 years and a second (HSB 33) proposes 60 years. Juveniles convicted of murder in Iowa can still be sentenced to life without parole based on an individual determination by the trial court.

Juvenile lifers are facing similar situations in several other states, according to Drexel University law professor Dan Filler, who said the Miller ruling did not make clear whether it is to be applied retroactively to prisoners convicted as juveniles who are already serving life-without-parole sentences.

“When you look at the decision closely, it implicitly leaves room for exactly what the governor of Iowa did,” said Filler. “It doesn’t give us any guidance. You have to see this decision as entirely cloudy. Different states are going to do different things.”

Around half the states currently allow life-without-parole sentences for juveniles.

In Florida, the courts have done effectively the same thing as Governor Branstad in response to Miller. In some cases, Florida judges have re-sentenced juvenile lifers to 70- to 90-year prison terms. Michigan has adopted a similar response, with courts imposing sentences of 25 to 60 years rather than mandatory sentences of life without parole – although prosecutors can still request life sentences.

In Alabama, where the Miller case originated, state officials remain defiant.

“It is the [Alabama] Attorney General’s position that this rule does not apply retroactively,” said John C. Neiman Jr., the state’s solicitor general. “Ultimately, whether it will apply retroactively is going to be a question that will be litigated in, and decided by, the courts.”

Some states, however, have taken action in the spirit of the Supreme Court’s decision in Miller, and five have abolished life-without-parole sentences for all juvenile offenders.

In North Carolina, juvenile lifers are now eligible for parole review after serving 25 years following a statutory amendment that also requires judges to consider factors such as their age, immaturity, intellectual capacity, mental health history and the influence of familial or peer pressure when imposing sentences.

Texas' highest court for criminal cases, the Texas Court of Criminal Appeals, held on March 12, 2014 that Miller applied retroactively to juveniles convicted of murder and sentenced to mandatory life without parole. The court noted that judges must consider “how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.” See: Ex parte Maxwell, 2014 Tex. Crim. App. LEXIS 264 (Tex. Crim. App. 2014).

Similarly, the Illinois Supreme Court held in March 2014 that Miller is to be applied retroactively – a decision that will affect around 100 Illinois prisoners currently serving life without parole. See: People v. Davis, 2014 IL 115595 (Ill. 2014).

On March 28, 2014, West Virginia Governor Earl Ray Tomblin signed a bill that ensures juveniles sentenced as adults will be eligible for parole after 15 years, including those serving life sentences. The legislation also requires courts to consider more than a dozen factors when sentencing juveniles convicted of serious crimes, including their age, family background and likelihood of rehabilitation.

Washington state recently abolished life-without-parole sentences for juvenile offenders under age 16, and made such sentences discretionary for 16- and 17-year-olds. The change will be applied retroactively to prisoners serving life without parole and life-equivalent sentences who were convicted as juveniles.

In Pennsylvania, however, the state Supreme Court has held that Miller does not apply retroactively – a ruling that affects about 450 prisoners serving mandatory life sentences for crimes committed as juveniles. Pennsylvania has more juvenile lifers than any other state. See: Commonwealth v. Cunningham, 81 A.3d 1 (Pa. 2013).


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A N INCREASING NUMBER OF ADVOCACY

groups are calling for reforms in the
wake of three reports that found the nation’s
aging prison population is reaching record
levels at growing expense to taxpayers, mostly
due to the high cost of medical care

for geriatric prisoners.

The studies noted that the vast major-
ity of elderly prisoners pose a low risk of
reoffending but were caught in the peak
years of “get tough on crime” sentencing
during the 1980s and ’90s. As a result, more
prisoners are growing older in prison. [See: PLN, Dec. 2010, p.1].

An October 2013 report by The Pew Charitable Trusts identified the aging
prison population as the primary factor behind a median 52% jump in prisoner

“Health care is consuming a growing
share of state budgets, and corrections de-

partments are not immune to this trend,”
said Maria Schiff, who heads the State
Health Care Spending Project, an initiative
of The Pew Charitable Trusts and

John D. and Catherine T. MacArthur

Foundation.

The Pew report analyzed data on prison
healthcare spending collected from 44

states by the U.S. Department of Justice.

Those states spent $6.5 billion on prisoner
healthcare in 2008 – a $2.3 billion increase
compared to 2001. During the same time
period, healthcare spending per prisoner
also increased in 35 of the states.

The study reported a 94% increase in

the number of state and federal prisoners
age 55 and older during the seven-year
period. Healthcare costs for older prisoners
with chronic illnesses were an average of
two to three times higher than the cost for
younger prisoners, the report stated.

The Pew findings echo those of a June
2012 report by the American Civil Liberties
Union, which found that of the nation’s 1.5

million state and federal prisoners, around
246,600 were age 50 and over – about
16% of the overall prison population. The

National Institute of Corrections (NIC)
classifies prisoners over 50 as “aging” due
to the stress of incarceration and typical
lack of appropriate healthcare prior to and
during incarceration. [See: PLN, April
2013, p.24].

The cost of keeping aging prisoners

behind bars? An estimated $16 billion per
year, including $3 billion in medical care,
according to the ACLU.

“The number of elderly prisoners has

absolutely exploded,” stated Inimai Chettiar,
who co-authored the ACLU report. Chett-

tiar is a director at the Brennan Center for
Justice at the NYU School of Law. She said
by the year 2030, nearly a third of the entire
prison population in the U.S. – upwards of
400,000 prisoners – will be elderly.

“Our extreme sentencing policies and

a growing number of life sentences have
effectively turned many of our correctional
facilities into veritable nursing homes –
and taxpayers are paying for it,” the study
noted.

“Incarceration is expensive,” said David

Fathi, who heads the ACLU’s National
Prison Project, “and incarcerating the el-
derly is extraordinarily expensive.”

While it costs taxpayers approximately
$34,100 per year on average to incarcerate
a prisoner, it costs twice as much – $68,270
per year – to care for elderly prisoners.
That is a major reason for state corrections
spending growing by 674% over the last 25
years, the ACLU study determined. [See: PLN, Nov. 2012, p.22].

A 2012 report by Human Rights Watch
reached similar conclusions. For example, in
Georgia, the report said, the annual average
cost of medical care for elderly prisoners
was $8,565 compared to an annual average
cost of just $961 for prisoners under age
65. In Michigan, the report documented
healthcare for prisoners age 80 and older
as high as $40,000 each.

The ACLU study identified five
states with the highest percentages of ag-
ing prisoners: West Virginia (20%), New

Hampshire (19%), Florida (18%) and Texas (18%). In fact, the

report said, California, Texas and Florida
combined accounted for 43% of the nation’s
entire elderly prison population.

Some older prisoners are serving short
sentences for nonviolent crimes such as bur-
glary or drug possession, the ACLU found;
many are repeat offenders caught in the “re-
volving door” of the criminal justice system.
Increasingly, the aging prison population is

comprised of offenders who received long
sentences for nonviolent crimes and are thus
remaining in prison until their old age.

From 1986 to 1995, what the ACLU
calls “the apex of the tough-on-crime
period” of the U.S. criminal justice sys-
tem, the number of prisoners sentenced
to 20 or more years more than tripled,
while from 1984 to 2002, life sentences
– with or without parole – more than
quadrupled.

“When you have people serving life
sentences, they’re going to die in prison,
just like people serving 20-, 30- and 40-
year sentences are inevitably going to grow
old behind bars,” noted Jamie Fellner,
senior advisor of the U.S. Program at Hu-
man Rights Watch, in an interview with IPS News.

The majority of aging prisoners, ac-
cording to the ACLU, are not serving time
for murder. About 65% of Texas’ elderly
prisoners, for example, were incarcerated
for drug and property offenses and other
nonviolent crimes. In North Carolina, 26%
of prisoners age 50 and over were incarcer-
ated under habitual offender laws or for
drug crimes, while another 14% were in
prison for fraud, larceny, and traffic and
public order offenses.
“Many individuals who would have been sentenced to shorter periods of incarceration for repeat crimes before 1979 are now caught in the net of later-enacted habitual offender laws and given punishments of 20 years or more,” the ACLU report observed.

While the ballooning expense of caring for a geriatric prison population has state and federal prison officials searching for ways to cope with the problems of providing – and paying for – healthcare for elderly prisoners, the ACLU and other advocacy groups have proposed alternatives to solve the growing dilemma.

Research has shown that by age 50, people are far less likely to commit crimes. Arrest rates are just over 2% at age 50 and almost nil at age 65. Prisoners age 50 or older are far less likely to recidivate than younger offenders. In New York, for example, only 7% of ex-offenders age 50 to 64 return to prison for new convictions. In Virginia, only 1.3% of ex-offenders over 55 committed new crimes and were reincarcerated.

“The risk of re-offense is much lower” after age 50, said Fathi. “Elderly prisoners are generally past their crime-prone years.”

Fellner agreed, stating in an August 18, 2013 editorial in The New York Times, “Those who are bedridden or in wheelchairs are not likely to go on crime sprees.”

She added, “It is worth asking: What do we as a society get from keeping these people in prison? People like the 87-year-old I met who had an ‘L’ painted on his left shoe and an ‘R’ on his right so he would know which was which and who didn’t even seem to know he was in prison. Or the old man I watched play bingo in a prison day room who needed staff members to put the markers on the bingo cards for them."

The ACLU report recommended that parole boards grant conditional releases to elderly prisoners, using a “peer-reviewed, evidence-based risk assessment” to determine whether they pose a substantial risk to public safety. States should also “utilize and expand” medical parole, which usually requires prisoners to be terminally ill or physically incapacitated to be considered for release. While many states provide for medical parole, also known as compassionate release, they are rarely granted. [See: PLN, Feb. 2014, p.30; Jan. 2013, p.22; March 2012, p.12; Feb. 2012, p.16].

In one small step towards reform, U.S. Attorney General Eric Holder announced on August 12, 2013 that the Bureau of Prisons would institute new compassionate release policies for federal prisoners. Under the revised policies, elderly and infirm prisoners who have served a significant portion of their sentences, and who pose no danger to society, would be eligible for early release.

However, such measures have sparked resistance from victims’ rights advocates. “There are many criminals, especially violent criminals, for whom recidivism rates are very high and the propensity for reoffending is very high,” stated Kristy Dyroff, a spokeswoman for the National Organization for Victim Assistance.

“Our first priority is that victims are protected. It may be reasonable for a non-violent offender to be paroled,” Dyroff said, “but when there’s a possibility of violent re-offense, then we don’t support that.”

Beyond expanding the use of medical parole and compassionate release, more systemic reforms that would reduce the number of elderly prisoners include the repeal of mandatory minimum sentencing laws, habitual offender statutes and so-called truth-in-sentencing laws that require offenders to serve lengthy prison terms, the ACLU report concluded.

Several advocacy organizations have formed specifically to address issues related to elderly prisoners, such as Release Aging People in Prison, which focuses on older prisoners in New York, and the Project for Older Prisoners (POPS) at the George Washington University in Washington, D.C.


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On August 27, 2013, Idaho’s Supreme Court held that a lower state court improperly granted summary judgment to a pepper spray manufacturer on a prison guard’s product liability and inadequate warning label claims.

While on light duty for bronchitis, Idaho prison guard Billie Jo Major participated in a March 3, 2008 training exercise that required her to enter a cell that had been sprayed with bursts of oleoresin capsicum (OC) from an MK-9 Fogger manufactured by Security Equipment Corporation (SEC).

“The MK-9 Fogger produces a widely dispersed aerosol designed to irritate and inflame the respiratory tract.”

Major alleged her respiratory problems worsened due to her exposure to the OC spray; she developed a chronic cough and claimed that “her health issues prevented her from working, caring for herself, or engaging in other activities.”

Major sued SEC in Ada County district court, claiming that the MK-9 Fogger was unreasonably dangerous and had inadequate warning labels and instructions.

The district court granted summary judgment to SEC, finding that “Major failed to show a genuine issue of fact regarding chronic injury that resulted from exposure to the pepper spray,” and that the MK-9 Fogger’s “warning label provided an adequate notice to Major regarding the acute effects of the spray.” The court also struck an affidavit from Major’s expert witness as a sham affidavit because it contradicted his deposition testimony without explanation.

The Idaho Supreme Court reversed the grant of summary judgment on both the causation and inadequate warning label issues, finding material facts in dispute and holding “the district court improperly granted summary judgment to SEC on whether the company had a duty to warn Major of possible chronic injury.”

The Supreme Court also reversed the district court’s sham affidavit order, noting that credibility issues may not be resolved on a motion for summary judgment and that the Court had “never adopted the sham affidavit doctrine.” Since “a sham affidavit finding necessarily turns on a credibility finding as well as a finding of bad faith,” the Court held that was “beyond the power of the trial courts at the summary judgment phase.” See: Major v. Security Equipment Corporation, 307 P.3d 1225 (Idaho 2013).

No “Reasonable Efforts” to Reunite Oregon Sex Offender with His Son

by Mark Wilson

The Oregon Court of Appeals held on July 3, 2013 that a juvenile court improperly assessed whether the Department of Human Services (DHS) had made reasonable efforts to reunite an incarcerated sex offender with his minor son.

At the time, DHS maintained custody of a child identified as R.W., who was born in 2007. His father, M.K., sentenced to prison for sex offenses involving a 15-year-old girl, was not scheduled for release until November 2013. M.K. participated in a parenting course and other programs while incarcerated.

Pursuant to ORS § 419B.476, at a juvenile court permanency hearing the court must “determine whether [DHS] has made reasonable efforts ... and whether the parent has made sufficient progress to make it possible for the ward to safely return home.”

At an October 2012 permanency hearing, a DHS caseworker testified that the department wanted M.K. to visit with R.W., but required the father to complete a psychosexual evaluation to determine whether he could safely visit his son, in prison or following release, before approving visitation.

The caseworker noted that M.K. had not been evaluated but said she had located a doctor willing to perform the evaluation at the prison. However, the doctor’s fee was “$5,000 to perform the psychosexual evaluation while [the] father was incarcerated, in comparison to the ‘less than $1,000’ that DHS usually would pay for such an evaluation.”

The juvenile court held that DHS was
not required to pay $5,000 to have M.K. evaluated and found that DHS had made reasonable efforts to reunite R.W. with M.K. “Reasonable efforts do not require [DHS] to offer [the father] a psychosexual evaluation while he is in prison if the cost is $5,000,” the court found. Ultimately, the juvenile court concluded that M.K. had not made sufficient progress toward reunification with his son because he “is a sex offender and needs a psychosexual examination to determine whether he presents a danger” to R.W.

The Court of Appeals reversed, holding that the juvenile court failed to consider the totality of the circumstances in making its reasonable efforts determination.

“Put bluntly,” the appellate court held, “when a parent contends that DHS’s efforts have not been reasonable because the agency has declined to provide a particular service, the court’s ‘reasonable efforts’ determination should include something resembling a cost-benefit analysis, at least when … the agency itself has deemed that service to be ‘key’ to the reunification plan.”

Such an analysis was not conducted by the juvenile court. Rather, it “appears to have considered only the cost of performing the psychosexual evaluation while the father is incarcerated,” the Court of Appeals found. “Given the importance of the psychosexual evaluation to the reunification plan, the juvenile court should have considered the extent to which the family might benefit if [the] father received a psychosexual evaluation promptly, instead of waiting a year to be evaluated after his release.” The juvenile court’s ruling was reversed. See: *DHS v. M.K. (In re R.W.), 257 Ore. App. 409 (Or. Ct. App. 2013).*

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**Pennsylvania Warrantless, Suspicionless Search Probation Condition Held Invalid**

*by Mark Wilson*

The Pennsylvania Supreme Court held that a condition of probation authorizing warrantless, suspicionless searches of a probationer’s home was invalid, and remanded the case for resentencing.

On September 1, 2007, Philadelphia police witnessed David A. Wilson point a handgun at a driver in a parked car. He was arrested on gun and drug charges and tried in the Philadelphia Gun Court – a specialized court within the Court of Common Pleas.

Wilson was convicted and sentenced to 30-60 months in prison and a 36-month term of probation. “The trial court emphasized that there was no stricter probation than Gun Court probation.” As a condition of probation, the court authorized warrantless, suspicionless searches of Wilson’s residence for prohibited weapons.

The trial court rejected Wilson’s objection to the search condition but a panel of the Superior Court later vacated the condition. On *en banc* review, however, the Superior Court reversed itself and affirmed “the search condition as it applied to the probationary sentence, but vacated the condition as it applied to the state parole aspect of the sentence.” See: *Commonwealth v. Wilson, 11 A.3d 519 (Pa. Super. 2010)*.

The Supreme Court reversed, holding that “sentencing courts are not empowered to direct that a probation officer may conduct warrantless, suspicionless searches of a probationer as a condition of probation.” As such, the Supreme Court found that the search condition of Wilson’s probation violated 42 Pa.C.S. § 9912(d)(2), and remanded the case for resentencing.

The Court rejected Wilson’s request to merely strike the search condition, because the trial court “made clear that it viewed the warrantless, suspicionless search condition of probation to be an integral part of the sentencing scheme.” Therefore, “striking the condition, without remanding for resentencing, would be improper.” See: *Commonwealth of Pennsylvania v. Wilson, 67 A.3d 736 (Pa. 2013).*


**Lawsuit Against Missouri Jail Proceeds as Two Guards Plead Guilty**

Attorneys representing current and former prisoners at the city workhouse in St. Louis, Missouri are moving forward with a federal lawsuit that alleges cruel and unusual punishment at the jail, including guards forcing prisoners to take part in “gladiator-style” fights.

On November 14, 2013, a motion to certify the case as a class-action was filed in the U.S. District Court for the Eastern District of Missouri.

The motion followed guilty pleas entered in August 2013 by two workhouse guards who had been accused of forcing prisoners to fight each other. The guards, Elvis M. Howard, 34, and Dexter Brinson, 46, pleaded guilty to charges of assault and obstruction of government operations. In addition, Howard pled guilty to burglary.

The American Civil Liberties Union (ACLU) and other groups have complained for years about abuses in St. Louis’ jail system, according to Daniel Brown, one of the attorneys representing the prisoners in the federal lawsuit.

As far back as 2009, the ACLU of Missouri had released a report critical of conditions at the workhouse, citing assaults and cover-ups, and in August 2012 the organization called for an independent committee to provide oversight at the jail.

“What was happening was the guards were actually taking inmates out of the cells, placing them in cells with other inmates and forcing them to fight each other,” Brown said.

Guards allegedly bet on the fights, one of which reportedly involved a prisoner on suicide watch. Prisoners were sometimes offered incentives to battle each other, such as extra food, or were threatened with violence if they did not participate.

Brown noted the guilty pleas entered by the two jail guards proved the validity of the lawsuit, which was filed in August 2012 against the guards, the City of St. Louis and the St. Louis Department of Corrections. He also predicted that the scope of the suit would widen.

“Now that the guards have pled guilty, it’s no longer an allegation — it’s a fact,” Brown said. “We believe these aren’t the only two guards who did this.”

Howard and Brinson were arrested after they were observed on jail security cameras letting prisoner Thadeus Dumas into prisoner Derrick Rodgers’ cell to watch them fight. In court pleadings, Dumas claimed that he was repeatedly threatened by guards and ordered to assault other prisoners.

The lawsuit, which seeks $150 million, originally named seven plaintiffs but grew to include 45-50 current and former prisoners after the attorneys for Dumas and Rodgers spoke with Paul Sims, a lawyer representing other prisoners at the workhouse. Those prisoners reported similar incidents that resulted in serious injuries, including a broken jaw, and claimed they were denied medical care.

“We believe once we are successful, we will be able to make a change in the way business is being done at the workhouse,” said Sims, who became the fourth attorney on the legal team representing the prisoners.

“We are looking for reform in the justice system and workhouse,” attorney Ryan Smith said. “We mean the court to dictate to the city how these institutions should be run because obviously they don’t have it within themselves to run the facilities in a proper manner.”

The lawsuit also seeks changes in the way prisoners file complaints at the workhouse; currently, grievances are filed with the guards themselves.

“The complainers are complaining to the violators,” Smith said.

Howard and Brinson both received suspended sentences and were placed on probation; Howard was sentenced to three-and-a-half years while Brinson received four years. The charges of assault in the third degree and obstruction of government operations were both misdemeanors, while Howard’s charge of burglary in the first degree was a felony.

The federal lawsuit alleging constitutional violations at the St. Louis workhouse remains pending. See: Rodgers v. Brinson, U.S.D.C. (E.D. Mo.), Case No. 4:12-cv-01482-JCH.

In a related matter, St. Louis officials agreed to pay $1,384.50 to the ACLU of Missouri to settle a lawsuit accusing the city of failing to comply with a public records request concerning conditions at the jail.

On September 27, 2011, the ACLU had requested “any and all records relating to [the] inmate grievance process” from the city’s corrections department. A month later the ACLU was informed that a reply to its Sunshine Law request would be forthcoming in a few days; however, another month passed without any documents or other reply, and the ACLU filed suit.

“Our request for public records was — it wasn’t refused, it was ignored,” said Tony Rothert, the ACLU’s legal director.

The request for documents was part of the ACLU’s investigation into complaints of neglect, abuse and poor conditions in the workhouse. At the time, the organization was working with then-Corrections Commissioner Gene Stubblefield to look into mismanagement and understaffing at the jail.

A series of escapes led to Stubblefield’s suspension in September 2011 and he was subsequently fired, ending the collaboration. In February 2014, Stubblefield filed a federal lawsuit against the city claiming that he was wrongly accused of misconduct and had been wrongfully terminated due to racial discrimination.

The ACLU received the documents it had requested shortly after filing suit. “After we filed the lawsuit, ... the city promptly owned up to its errors and gave up the records they had,” said Rothert. “They are to be commended for owning up to their failure to comply with the Sunshine Law.”

On June 27, 2012, a Missouri state court approved a consent judgment that required the city to pay $1,148.50 to the ACLU in attorney fees and $236 in costs in the public records case. “You only get attorney fees and costs if [the violation is] knowing and purposeful,” Rothert noted. See: ACLU of Eastern Missouri v. City of St. Louis, 22nd Judicial Circuit Court (MO), Case No. 1222-CC00423.


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Five members of the Oklahoma Pardon and Parole Board (Board) will not face trial for criminal violations of the state’s Open Meeting Act, after signing a statement acknowledging that they had conducted business without listing and publishing it on the agenda of the Board’s meetings over a 14-month period.

As previously reported in PLN, the five members of the Board had been charged in March 2013 with violating state law by voting on prisoners’ early release requests without proper public notice at meetings between May 2011 and July 2012. The Board members included Marc Dreyer, Currie Ballard, Richard L. Dugger, Lynnell Harkins and David Moore. [See: PLN, May 2013, p.30].

The Open Meeting Act requires notification of the time and place of meetings of public agencies and of the business that will be considered at the meetings; violations of the law can result in a $500 fine and up to a year in jail.

When the charges were first announced, Oklahoma City District Attorney David Prater issued a news release alleging that the Board had conducted business in a manner “designed to hide potentially unpopular actions from the citizens it serves.” He had previously warned the Board that its actions were “egregious, aggravated, and a clear attempt to operate in secrecy, outside of public scrutiny.”

The charges claimed the Board members had expedited the release of prisoners who had not yet served the minimum requirement of their sentences; Prater said the Board illegally placed the names of 50 prisoners on meeting agendas to consider them for early release. He stated some of the prisoners were convicted of murder, child molestation and other crimes that, by state law, required them to serve a minimum 85% of their sentences. Some were serving life sentences and at least one was serving life without parole.

Before filing charges, Prater had offered the Board members a chance to resign—an offer that was quickly rejected. “I’m not going anywhere,” member Currie Ballard said at the time. “Until Jesus Christ calls me home, I’ll be on the parole board.”

In January 2014, after the Board members signed a one-page statement publicly accepting responsibility for violating state law, Prater said the issue should be settled quickly: “With the board’s acknowledgement that their actions violated the Open Meeting Act, I anticipate a resolution of this matter in short order.”

The statement echoed sentiments expressed by Oklahoma Governor Mary Fallin when the charges were first announced.

“The governor doesn’t think there’s any wrongdoing and have the charges against them dropped. Most prosecutors would instead consider any such statement to be a confession, and proceed with the criminal case accordingly.”

Top aides for Fallin had initially responded to Prater’s accusations by saying he was confusing parole hearings with the Board’s consideration of commutation requests. The Board didn’t list the names of prisoners being considered for commutation but did announce their names during monthly meetings. The Attorney General’s office had issued an opinion in October 2012 that said the Board could consider commutation requests submitted by prisoners before they were eligible for parole.

Despite the Board members’ written acknowledgement that they had violated state law, no plans to replace any of the members have been announced. Of course, most people who break the law are not allowed to sign a statement admitting their wrongdoing and have the charges against them dropped. Most prosecutors would instead consider any such statement to be a confession, and proceed with the criminal case accordingly.


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May 2014 46  Prison Legal News
The Kansas Court of Appeals held that employees of Correct Care Solutions at the Lansing Correctional Facility (LCF) committed continuing Eighth Amendment violations by withholding a prisoner's medical restrictions.

LCF prisoner Ernest Lee Thomas, Jr., 61, had broken his ankle prior to his incarceration in 1989, resulting in arthritis and a permanent deformity. Consequently, he was granted a number of medical restrictions by prison healthcare staff: He was not to climb stairs, had a lower bunk restriction and was allowed to wear tennis shoes rather than regular prison-issued footwear.

Those restrictions continued until January 27, 2011, when Lamont Lane, an LCF nurse, removed them after Thomas failed to attend a medical appointment. Thomas was subsequently moved to a different housing unit that required him to climb a steep hill to reach his cell.

Thomas filed a petition in Leavenworth District Court that alleged deliberate indifference to his “chronic and continuing medical conditions.” The court held his Eighth Amendment rights had been violated when Nurse Lane removed his restrictions without permission from a physician, and noted the punishment for missing a medical appointment evidenced a “total disregard for the excessive risk to inmate health and safety.”

However, the district court found that such deliberate indifference had been rectified and cured because a subsequent decision not to restore Thomas’ medical restrictions was based on evaluations by two doctors and a review by Correct Care Solutions’ regional medical director.

On appeal, Thomas argued that the removal of his medical restrictions should not have been upheld because the doctors’ evaluations were not based on a change in his medical condition or healthcare procedures. The appellate court agreed, finding that Thomas’ Eighth Amendment rights had continued to be violated when prison healthcare staff decided not to reinstate his longstanding medical restrictions.

“In the final analysis, we hold that because of the district court’s initial finding and holding of an Eighth Amendment violation in the removal of all medical restrictions as conditions of Thomas’ incarceration, it was legally erroneous to find and hold that the Eighth Amendment violation was rectified and extinguished by testimony that was not based on any objective change in Thomas’ condition or some known institutional change in the medical standards of the [Department of Corrections].”

The Court of Appeals directed the district court to order the reinstatement of Thomas’ medical restrictions. Thomas had not sought monetary damages, only injunctive relief. See: Thomas v. McKune, 298 P.3d 1138 (Kan. Ct. App. 2013).

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A government study revealed that overcrowding in the federal prison system worsened over the five-year period from 2006 through 2011, affecting facilities of all security levels.

The study, conducted by the U.S. Government Accountability Office (GAO), warned that the growing population of the federal Bureau of Prisons (BOP) threatens to result in increasingly negative effects for prisoners, staff and the prison system’s infrastructure. The 85-page report further indicated that the increase in the number of federal prisoners coincided with actions by various states to not only reduce their prison populations but also lower their crime rates and cut costly corrections budgets.

The GAO report found the increase in the federal prison population occurred despite the addition of thousands of beds due to the opening of five new federal facilities. At the same time, four federal minimum-security camps closed.

According to the study, federal prisons were 39% over capacity as of September 2011. Further, the report predicted that overcrowding would climb to more than 45% above the BOP’s maximum capacity by 2018.

The GAO warned that prisons may experience rising rates of violence among prisoners and growing levels of stress among prison staff because overcrowding contributes “to increased inmate misconduct, which negatively affects the safety and security of inmates and staff.”

“If you start cramping more and more people into a confined space, you’re going to create more tensions and problems,” noted David Maurer, director of Homeland Security and Justice Issues for the GAO. “It creates the possibility that someone’s going to snap and have a violent incident.”

The BOP said its “rated capacity”—the term used to describe maximum population levels—requires 25% double bunking and 75% single bunking in high-security cells; 50% double bunking and 50% single bunking in medium-security prisons; and 100% double bunking in low- and minimum-security facilities.

Overcrowding also puts a strain on prison infrastructure such as dining halls, bathrooms, laundry rooms and even television rooms, which become more difficult to access. Some institutions have even had to reduce prisoners’ visitation time.

“Some of this sounds small and trivial,” Maurer said, “but it adds up.”

Additionally, “nearly all BOP facilities had fewer correctional staff on board than needed, with a BOP-wide staffing shortage in excess of 3,200 ... [and] there was also anecdotal evidence that understaffing was stressing the workforce.”

The GAO noted that “population pressures on both staffing levels and inmate living space have an upward impact on serious prison violence,” although system-wide violence rates had remained stable.

According to statistics compiled by the Council of Prison Locals, the union representing about 32,000 federal prison employees, nearly 60 guards were assaulted by prisoners from January to September 2012, and 14 of those attacks involved weapons.

The GAO also reviewed the BOP’s efforts to use its statutory authority to help mitigate the effects of the growing federal prison population, including the Residential Drug Abuse Program (RDAP), utilization of sentence credits for GED participation and increased halfway house placement pursuant to the Second Chance Act. While such efforts were covered more extensively in a separate report, the GAO study focused on the “effects of population growth and prison crowding on BOP operations,” including “available bed space, inmate program participation and waiting lists, inmate-to-staff ratios, and available infrastructure costs.”

The reduction in rehabilitative and reentry services is another source of frustration for prisoners. Programs such as RDAP—which in theory can shave up to a year off a prisoner’s sentence—and vocational training courses often have lengthy waiting lists.

“People will get out of prison, but they’re not being helped to reenter society,” stated Inimai Chettiar with the Brennan Center for Justice at the New York University School of Law. “People are going to recidivate more when they get out of horrendous [prison] conditions without job training and development programs to get their lives back together.”

The GAO warned that federal prison overcrowding shows no sign of abating. The “BOP’s 2010 long-range capacity plan assumes continued growth in the federal prison population from fiscal years 2011 through 2020, with about 15 percent growth in the number of inmates BOP will house,” the report stated.

The GAO study did not discount the fact that in the future, “courts might require BOP to address conditions related to crowding, or that the [American Correctional Association] might revoke the accreditation of BOP institutions.”

In contrast, the GAO noted that some states had reduced their prison populations to ease overcrowding, stating “the overall growth of the state inmate population began to decline in 2009.” Kansas, Mississippi, New York, Ohio and Wisconsin were cited as examples of states making good progress in reducing incarceration levels and crowding in their prison systems; as a result of state prison population reductions, there have been a number of prison closures nationwide. [See: PLN, June 2013, p.1].

The GAO found that in comparison to the five selected states, federal sentencing laws, mandatory minimums and the absence of parole in the federal prison system have limited the BOP’s flexibility to “significantly modify” a prisoner’s sentence. In contrast, the selected states have increased sentence reduction credits for positive behavior and completion of faith-based, vocational, drug treatment and “other constructive program[s] with specific
performance standards.”

“[The report] pointed out exactly what we assumed,” said U.S. Rep. Bobby Scott, who has been critical of mandatory minimum sentences. “With more inmates, [prison officials] focus more on security and less on the programs that can rehabilitate the prisoners.”

Overall, the GAO report did not so much blame the BOP for an increasing number of prisoners, overcrowding and associated problems as highlight what many corrections experts acknowledge is a continuing and unsustainable trend. It is also an expensive trend.

According to a report released by the Congressional Research Service on March 4, 2014, “The burgeoning federal prison population has led Congress to increase appropriations for the BOP’s operations and infrastructure. In FY1980, Congress appropriated $330.0 million for the BOP. By FY2014, the total appropriation for the BOP reached $6.859 billion.”

The Congressional Research Service noted that “Congress could choose to mitigate some of the issues related to federal prison population growth by appropriating more funding so the BOP could expand prison capacity to alleviate overcrowding, but this would only continue the upward climb in the BOP’s appropriations.” Alternatively, “Congress could also consider ways to reduce the number of inmates held in federal prison through methods such as increasing good time credit for inmates who participate in certain rehabilitative programs, placing more low-level offenders on community supervision in lieu of incarceration, or reducing mandatory minimum penalties for some offenses.”


**Liberty Interest Necessary to Trigger Arkansas Judicial Review**

*by Mark Wilson*

The Arkansas Supreme Court has upheld the dismissal of a prisoner’s state judicial review action because he failed to assert a constitutional violation.

Arkansas Department of Corrections (ADC) prisoner James Chadwick Renfro said he had entered into an agreement with prison officials that allowed him to make and send greeting cards as a hobby craft. However, the ADC subsequently implemented an administrative directive that changed the rules governing that privilege. Prison officials then relied on the new directive to impose and uphold a disciplinary action against Renfro for what he claimed would have been allowable conduct under the original agreement. He also argued the disciplinary action violated applicable ADC rules.

Renfro brought a state judicial review and declaratory judgment suit challenging the dismissal of his disciplinary grievance, the application of the new administrative directive and prison policies which allegedly violated ADC officials’ contractual obligations.

The circuit court denied relief, concluding that Renfro’s suit “was barred under the Arkansas Administrative Review Act, codified as Arkansas Code Annotated sections 25-15-201 to -217 ... because the Act specifically exempts inmate actions and [Renfro] failed to state facts regarding the alleged violation sufficient to create a liberty interest protected by the Due Process Clause.”

Conducting a de novo review, the Arkansas Supreme Court noted that in *Clinton v. Bonds*, 306 Ark. 554, 816 S.W.2d 169 (Ark. 1991), it had held the Act “unconstitutional to the extent that it deprived inmates of review of constitutional questions.” Thus, when a prisoner “challenges a disciplinary proceeding and the ADC officials’ implementation of ADC rules, the petitioner must raise a constitutional question sufficient to raise a liberty interest merely to fall within the classification of claims subject to judicial review.”

Although Renfro argued “that he lost his craft tools and supplies, income, and certain privileges,” the Court held that none of his claims was “sufficient to assert a deprivation of a liberty interest.”

The Supreme Court concluded that Renfro had “failed to sustain a claim under section 25-15-212 to support a judicial review of the ADC’s decision,” and the dismissal of his suit was therefore affirmed. See: *Renfro v. Smith*, 2013 Ark. 40 (Ark. 2013).

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The Seventh Circuit Court of Appeals held that a prisoner who suffers from scoliosis stated a claim for deliberate indifference when he alleged that he fell and injured himself trying to climb into an upper bunk bed after specifically complaining that, due to back pain, he wasn’t able to access the upper bunk.

In January 2009, Illinois state prisoner Dorcus Withers filed suit pursuant to 42 U.S.C. § 1983, alleging that various healthcare professionals had been deliberately indifferent to his serious medical needs in violation of the Eighth Amendment’s ban on cruel and unusual punishment. The district court granted summary judgment to the defendants.

On appeal, the Seventh Circuit noted that although Withers suffered from scoliosis (i.e., curvature of the spine) and “frequent flare-ups” of back pain, the evidence was “overwhelming” that he was also a malingering and had no medical need for a back brace, a medical mattress or orthopedic shoes – some of the items he repeatedly requested.

The Court of Appeals was troubled, however, by an encounter between Withers and prison nurse Debra Miller. According to Withers, Miller had denied his request to let him stay overnight in the prison’s Health Care Unit despite his report of back pain; she then returned him to his cell in a wheelchair. When he told her that he wouldn’t be able to climb into his upper bunk, she replied that he’d “figure it out” and left. Withers claimed he then fell and injured himself trying to climb into the upper bunk, which was not equipped with a ladder.

The appellate court wrote that “Even if all the plaintiff’s allegations are true ... they don’t make a conclusive case of deliberate indifference. The nurse may, in light of the plaintiff’s record of malingering, have believed that he would have no difficulty climbing to the upper bunk, or at least that he would not fall and hurt himself. She may have believed he was just trying to lie his way into a more comfortable bed in the Health Care Unit.”

Regardless, the Seventh Circuit held that Withers’ claim related to his fall from the upper bunk may have merit, and there was at least a genuine issue of material fact as to whether Nurse Miller was deliberately indifferent to his medical needs in that regard. All other aspects of the lower court’s summary judgment order were affirmed. See: Withers v. Wexford Health Services, Inc., 710 F.3d 688 (7th Cir. 2013).

Following remand, the district court entered summary judgment in favor of the defendants on February 12, 2014, dismissing the case. The court found that Nurse Miller was not deliberately indifferent to Withers’ medical condition, noting that he had a mild form of scoliosis, may have exaggerated his condition and did not suffer any significant injuries. Further, the district court held that even if Withers’ allegations were true he could at most demonstrate negligence, which does not support an Eighth Amendment claim. See: Withers v. Wexford Health Services, Inc., U.S.D.C. (C.D. Ill.), Case No. 1:09-cv-01035-HAB-JAG.

High-Ranking Illinois Prison Official Fired due to Criminal History

According to court records obtained by the Chicago Sun Times, Xadrian R. McCraven, 44, has a lengthy criminal history that includes a 1987 conviction for disorderly conduct, a 1989 conviction for illegal possession of a handgun and a conviction in 1998 for reckless conduct related to a domestic battery case. Plus around two dozen arrests in his youth for offenses that ranged from arson and aggravated assault to attempted robbery and drug possession.

McCraven applied for a job with the Chicago Police Department, but was rejected due to his criminal history. He unsuccessfully argued in federal court that his record should not have been considered because the arrests had been expunged.

His lawsuit was dismissed, with the court finding there was no proof the police background check was improper or that the department had discriminated against him due to his race. A magistrate wrote in an August 2000 ruling that the police background investigation found McCraven was known “to be a drug dealer, gang member and a supplier of guns to other gangs.”

But that didn’t stop him from subsequently obtaining jobs with the Chicago Housing Authority Police Department, the Illinois Department of Professional Regulations and the Illinois Department of Children and Family Services (DCFS).

He applied for a position with the Illinois Department of Corrections (IDOC) in 2007, and was rejected. Regardless, in 2011, while employed with the DCFS, he was assigned to work in the prison system’s intelligence unit for two months – before the assignment was terminated due to “suitability issues” uncovered in a background investigation.
check. McCraven had admitted in a job application that he was a gang member in the 1980s, reportedly with the Young Latino Organization Disciples.

According to a wrongful termination suit filed by McCraven, he was fired from the DCFS in 2012 after an investigation found he was “writing and responding to hundreds of lewd and inappropriate emails” at work and had falsified information on a job application.

His lawsuit was dismissed, but McCraven settled a union grievance with state officials in June 2013 and received a 10-day suspension. He also received six months back pay and was transferred to the Department of Corrections, where he landed a $111,432-a-year job as a senior advisor to the IDOC’s chief of parole.

After McCraven’s criminal record was exposed by the Sun Times, IDOC spokesman Tom Shaer said McCraven was placed on paid leave in December 2013 and scheduled for a pre-disciplinary hearing.

“In the hearing, the Department of Corrections will provide its reasoning for seeking discipline against the employee, and the employee can provide his rebuttal,” said Shaer. “If termination is pursued, an employee is suspended without pay pending the termination process,” he added.

McCraven was fired on January 6, 2014 due to “inconsistencies in employment applications.” Several days later, Illinois state Senator Kirk Dillard called on Governor Pat Quinn to remove IDOC director Salvador Godinez in connection with the McCraven scandal.

Godinez’s chief of staff had signed off on McCraven’s 2013 hiring despite his criminal record, prior gang membership and a finding that he was not eligible for a position in the IDOC because his nephew was on parole at the time.

“It’s outrageous that former gang members are now running the prisons,” said Dillard. “No matter if you’re a Democrat or Republican, from Chicago or Cairo, this is just plain wrong and dangerous.”

Senator Dillard and other lawmakers have questioned whether McCraven obtained his state job positions through political influence. McCraven was hired under former Governor Rod Blagojevich’s administration; Blagojevich was impeached, removed from office and prosecuted on corruption charges, including soliciting bribes for political appointments. He was sentenced in December 2011 to 14 years in federal prison.

Governor Quinn has expressed his support for Godinez. Meanwhile, two Illinois state legislators – one a former prosecutor and the other a former police officer – have proposed a bill that would prohibit anyone who is “documented to have been a member of a criminal gang” from being hired by the IDOC, State Police, DCFS and Department of Juvenile Justice. [1]

Source: www.suntimes.com

California: Surety Entitled to Exoneration of Bail Bond Forfeited as a Result of Defendant’s Deportation

by Michael Brodheim

The California Court of Appeal has held that a bail surety did not forfeit the bond it posted for a defendant who was deported before he could appear in court to answer the underlying criminal charge against him.

In June 2011, Financial Casualty & Surety, Inc. (Financial) posted a $100,000 bond for the release of Luciano Villa, who had been charged with driving under the influence. Villa was deported two days after the bond was posted, which made it impossible for him to appear in court. As a result, his bail was forfeited.

Financial sought to have the forfeiture vacated and its bond exonerated. The trial court found the company did not meet the statutory requirements set forth in Penal Code Section 1305(d) for exoneration of a forfeited bail bond, even when the defendant had been deported.

Specifically, the court held that because Financial “had full knowledge” of Villa’s immigration status when it posted a bond on his behalf, it had “unclean hands” and “should [therefore] be held responsible” for the bond forfeiture.

The Court of Appeal reversed, finding the trial court had “applied the wrong legal standard when it used the clean hands doctrine to deny Financial’s motion to vacate the order of forfeiture.” Even assuming Financial “should have known” that Villa would likely be deported after he was released on bond, that did not mean the company “connived” in his deportation.

Under the plain meaning of the statute, exoneration is mandatory absent “connivance of the bail” and the doctrine of clean hands had no relevance in this context, the appellate court wrote. See: County of Los Angeles v. Financial Casualty & Surety, Inc., 216 Cal. App. 4th 1192 (Cal. App. 2d Dist. 2013). [2]
Philadelphia Sued Over Rejection of Ad Criticizing U.S. Incarceration Policies

by Michael Brodheim

On May 20, 2013, a federal district court in Pennsylvania denied the City of Philadelphia’s motion to dismiss in a case brought by the National Association for the Advancement of Colored People (NAACP) and ACLU, challenging the city’s policy related to advertising at the Philadelphia International Airport.

In April 2011, the NAACP had released a report titled “Misplaced Priorities,” which espoused the view that the United States overspends on incarceration at the expense of education and proposed specific reforms to reverse that trend. Seeking to increase public awareness, the NAACP prepared ads to display at airports around the country. The ad that the organization proposed to post at the Philadelphia International Airport read, in relevant part, “Welcome to America, home to 5% of the world’s people & 25% of the world’s prisoners. Let’s build a better America together.”

City officials rejected the ad, claiming that they did not accept “issue” or “advocacy” advertisements, which prompted the NAACP and ACLU to file suit on First Amendment and state constitutional grounds. [See: PLN, April 2012, p.50].

The NAACP noted that “other issue-oriented, educational, and advocacy advertisements” had been displayed at Philadelphia’s airport, including ads related to wildlife preservation, global warming, racial equality and supporting U.S. military troops. “The government cannot pick and choose which speech it deems acceptable and which it does not,” stated Chris Hansen, senior staff attorney for the ACLU’s Speech, Privacy and Technology Project. “The fact that the airport accepted some political issue ads but not the NAACP’s shows the arbitrary nature of the city’s unwritten and undefined policy. It is a clear violation of the First Amendment’s prohibition against the government favoring some speakers over others.”

The city subsequently agreed to post the NAACP’s ad at the airport, but only for three months. In March 2012, Philadelphia officials adopted a written policy prohibiting political and noncommercial advertising at the airport. In response the NAACP filed an amended complaint challenging the new policy. The city then filed a motion to dismiss, arguing that its airport ad policy was viewpoint-neutral and a reasonable regulation, and thus not unconstitutional.

The district court rejected the city’s argument as premature. In order to determine whether the city’s restriction on speech in airport advertisements is constitutional, the court stated it must first determine whether the airport is a private forum or designated public forum, as different standards of judicial scrutiny apply. The city argued for the former classification while the NAACP argued for the latter.

“The walls of Philadelphia International Airport are public space, and the city officials do not have the right to suppress any group’s viewpoint based on their own beliefs or political considerations,” said NAACP general counsel Kim Keenan.

In the absence of a developed factual record from which it could determine the appropriate forum classification, the district court denied the city’s motion to dismiss.


DC Circuit: Federal Prisoner not Limited to Seeking Relief via Habeas Corpus

by Michael Brodheim

The District of Columbia Circuit Court of Appeals has held that a federal prisoner may seek relief via means other than habeas corpus, so long as success on the merits of the claim does not “necessarily imply the invalidity of confinement or shorten its duration.”

In 1993, Brian A. Davis was convicted of drug-related offenses involving both powder and crack cocaine. At that time the federal sentencing guidelines treated 1 gram of crack cocaine the same, for sentencing purposes, as 100 grams of powder cocaine, resulting in a 100:1 sentencing disparity. Davis received a life sentence, later reduced to 30 years in federal prison.

In 2007 and again in 2010, both Congress and the U.S. Sentencing Commission took steps to reduce the sentencing disparity related to crack and powder cocaine (the current ratio is 18:1 under the Fair Sentencing Act). Unfortunately for Davis, those efforts only included crimes involving amounts of cocaine less than the amounts involved in his offenses.

In 2011, Davis filed suit under Bivens and the Declaratory Judgment Act, 28 U.S.C. § 2201(a), seeking a declaration that he was denied equal protection under the law because Congress and the Sentencing Commission had failed to reduce the sentencing disparity for defendants – like himself – who were convicted of crimes involving larger amounts of crack cocaine.

Davis sought to “compel the Commission to reinstate its proposed 1995 amendments” to the federal sentencing guidelines, which would have created a 1:1 sentencing ratio for crack and powder cocaine offenses. Congress had expressly rejected the proposed amendments when it passed Public Law 104-38.

The district court dismissed Davis’ lawsuit on the grounds that the relief he requested was only available, if at all, via a petition for habeas corpus.

The D.C. Circuit reversed, holding that Supreme Court precedent “channeled” prisoners’ claims for relief into habeas petitions only if the remedy sought was within “the ‘core of habeas.’” Citing Wilkinson v. Austin, 544 U.S. 74 (2005) [PLN, Aug. 2005, p.24], the appellate court concluded that a habeas petition was required only if success on the merits of the claim would “necessarily imply the invalidity of confinement or shorten its
The Court of Appeals reasoned that success for Davis would not “necessarily” lead to a decrease in his prison term, because even if he prevailed on his equal protection challenge the district court would still retain the discretion to deny him a sentence reduction. The Court also found that Davis could proceed on his Bivens action, while remarking that his Bivens claim was “admittedly flawed ... and possibly fatally so.” See: Davis v. United States Sentencing Commission, 716 F.3d 660 (D.C. Cir. 2013).

Following remand, the district court granted the Sentencing Commission’s motion to dismiss on April 11, 2014, noting that federal circuit courts had found no constitutional equal protection violation in Congress’ refusal to enact the Commission’s 1995 proposed amendments, and that Davis had failed to cite authority to support his argument other than a concurring opinion in a Second Circuit case. See: Davis v. United States Sentencing Commission, U.S.D.C. (D.D.C.), Case No. 1:11-cv-01433-JEB.

Additional source: www.famm.org

Massachusetts DOC, Hospital Officials Disciplined in Prisoner’s Death

by Derek Gilna

A n investigative report ordered by Massachusetts Governor Deval Patrick into what he termed the “disgusting” death of a mentally-ill prisoner at Bridgewater State Hospital found not only numerous policy violations, but also evidence of a cover-up of the facts surrounding the death. As a result, three guards and three high-ranking Department of Correction (DOC) officials were disciplined.

Patrick was prompted to investigate the 2009 death of state prisoner Joshua K. Messier following a Boston Globe article that described delays and misleading information provided by DOC officials in response to media inquiries. The investigation was conducted by Public Safety Secretary Andrea Cabral.

Messier, who was reportedly disruptive, had been placed on his bed in four-point restraints. Two guards then pushed his chest almost to his knees in a move called “suitcasing,” and he died of a heart attack shortly thereafter.

Bridgewater superintendent Karin Bergeron, who was required to investigate and report on prisoners’ deaths, tried to avoid issuing written findings that might embarrass the DOC and Bridgewater. She attempted to arrange a phone conference regarding Messier’s death to avoid filing a written report. She also requested repeated extensions of time to file her report, even though an autopsy determined the death was a homicide and other reports found Messier had suffered blunt force trauma.

Bergeron is no longer employed with the state.

Secretary Cabral’s investigation determined that Bridgewater officials misled a watchdog agency, the Disability Law Center, by saying the guards involved in Messier’s death had been cleared by a Plymouth County grand jury, when in fact the case was never submitted to the grand jury. Cabral said former DOC Commissioner Harold W. Clarke, who now heads Virginia’s prison system, was unhelpful during the investigation.

Current Bridgewater superintendent Robert F. Murphy was reprimanded for delaying completion of a required report on the guards’ use of force until several years after Messier’s death. Correction Commissioner Luis S. Spencer also was reprimanded, and Assistant Deputy Commissioner Karen Hetherson was asked to resign. She had overruled an internal affairs report that cited two DOC guards for misconduct.

Further, three guards were placed on paid administrative leave as a result of Secretary Cabral’s investigation – Derek Howard and John C. Raposo for improper use of force when restraining Messier, and a third guard for failing to properly supervise them.

Sources: Boston Globe, Associated Press
Washington County Jail Remains Closed after Voters Reject Tax Hike

Officials in Yakima County, Washington say a deal struck with the city of Fife, near Tacoma, to house the city’s prisoners will help make up for lost income from an empty county jail that failed to win the support of voters in a 2012 tax referendum.

Yakima County Department of Corrections director Ed Campbell said he hopes the contract to house prisoners from Fife will be the first of many. He noted the contract, announced in April 2013, should generate $700,000 in annual revenue.

“The market is certainly different,” he said. “It’s very competitive, very tough, and there’s very little need for beds compared to what it used to be so we continue to try to work towards getting contracts.”

The city of Fife will send low-risk prisoners to Yakima County’s main jail, according to County Commissioner Mike Leita. “We have certainty from them that these will be the lowest level of best type of inmates if you will, therefore they afforded a very good rate.”

The scramble for contracts for prisoners from other jurisdictions followed the August 2012 rejection by Yakima County residents of a proposed one-tenth-of-a-cent sales tax hike. The measure was rejected by more than 53% of voters.

County commissioners had requested the tax increase to cover $3 million in annual debt payments on three bond issues, including one from 2002 to build Yakima’s newest jail on Pacific Avenue. The 288-bed jail was built specifically to generate revenue, with local officials counting on other cities and counties to house their prisoners at the facility. But those other jurisdictions withdrew their prisoners in 2010, having found alternatives to incarceration to cut costs.

As a result, Campbell closed the Pacific Avenue jail, laid off employees and reduced expenses for prisoner healthcare and food at the main jail, slashing his budget by more than $12 million. The Pacific Avenue jail has remained closed since 2011; around $17 million is still owed on its construction costs.

The other two outstanding jail bonds were for security upgrades at Yakima’s main 950-bed downtown jail and the remodeling more than a decade ago of a former bowling alley to be used as a minimum-security facility.

One Yakima County official blamed the economy for the rejection of the sales tax increase.

“In these difficult times, it is asking a lot of the taxpayers to willingly increase their taxes,” said County Commissioner Rand Elliott. “They have expressed themselves and we will move on to our next option.”

The contract with Fife means about three dozen beds at Yakima County’s main jail should be filled, which will make up a small amount of the revenue lost when the Pacific Avenue jail closed. County officials said they also planned to transfer $2.8 million from the county’s road fund to the general fund to cover the budget shortfall.

In the meantime, talks began in early 2014 between Yakima County and the State of Washington, which needs to find beds for around 300 minimum- and medium-security prisoners. Housing those prisoners will cost about $7 million per year, and the legislature passed a bill in 2013 that allows state prisoners to be held in county jails in the wake of budget cuts that led to the closure of three prisons.

In April 2014, the Yakima Herald-Republic reported that the legislature had approved a one-year, $1.5 million contract to house 75 female state prisoners in Yakima County, which may lead to the reopening of the Pacific Avenue jail.

“We’re looking at investigating every opportunity to house inmates at the lowest possible rate,” said state Rep. Charles Ross. “With Yakima sitting there with an empty facility, [it is] an attractive place for the state.”

Due to the state contract and renewed interest by other cities and counties to house their prisoners in Yakima County, Campbell said he was “cautiously optimistic” the Pacific Avenue jail would reopen by the end of 2014.

Sources: Yakima Herald-Republic, www.kimate.com, Seattle Times
State of Washington
Prison Phone Justice Campaign!

Prison Phone Justice Project needs your help for statewide campaign!

While much progress has been made in reducing the costs of long distance prison calls, we are still fighting to reduce the high costs of in-state prison and jail calls at the local level. In January 2014, the Human Rights Defense Center (HRDC), the parent organization of Prison Legal News, reopened its Seattle office to launch the Washington Prison Phone Justice Campaign.

This is our first statewide phone justice campaign, and we’re excited to have people involved on both the local and national levels who are dedicated to ending the exorbitant phone rates and kickbacks associated with the prison phone industry. David Ganim, HRDC’s national Prison Phone Justice Director, has already been obtaining the phone contracts and rates for all 39 county jails in Washington, as well as data from the Washington Department of Corrections.

We recently hired a local campaign director, Carrie Wilkinson, who will manage our office in Seattle and coordinate the statewide campaign. Washington prisoners and their families pay some of the highest phone rates in the nation, and we need your help to win this battle!

Here’s how you can help – first, please visit the Washington campaign website: www.wappj.org

There you can see all the ways you can make a difference. The site allows you to sign up for the campaign and upload videos and share blog entries about how high prison phone rates make it difficult for you to stay in touch with your incarcerated loved ones. You can also upload an audio message, and even call in your story to 1-877-410-4863, toll-free 24 hours a day, seven days a week! We need to hear how you and your family have been affected by high prison phone rates. If you don’t have Internet access, you can mail us a letter describing your experiences and we’ll post it. Send letters to HRDC’s main office at: HRDC, Attn: WA Phone Justice Campaign, P.O. Box 1151, Lake Worth, FL 33460. Washington state prisoners can mail us letters and send a copy of this notice to their family members so they can get involved.

By choosing to participate in the Washington Prison Phone Justice Campaign, you will be playing a key role in ending the unfair phone rates that prisoners’ families have to pay. We cannot win this battle without your help, so please visit the campaign website and share your experiences! Donations are also welcome and greatly appreciated, and can be mailed to the above address or made online via the campaign site. Thank you for your support!
**District of Columbia:** Before sending former jail guard Jonathan Womble to prison for just over three years on October 9, 2013, U.S. District Court Judge Reggie Walton called Womble's crime “reprehensible and one of the most serious anyone could commit.” Heroin, marijuana, and a cell phone and charger were some of the contraband that Womble had smuggled into the D.C. jail in exchange for cash bribes. [See: PLN, Sept. 2013, p.56]. Since 2010, 138 cell phones have been found in the D.C. jail – and staff corruption is apparently one way they are getting into the facility.

**Dubai:** According to a September 30, 2013 news report, prisoner Ayoub A.Y. was stabbed and beaten to death by a gang of multi-national prisoners who cut off his ear and his finger before killing him. On April 24, 2014 a special tribunal acquitted 18 of the prisoners accused of Ayoub's murder. An unnamed 21-year-old police officer was fired in connection with the incident; he left a gate open as he ran toward the disturbance that allowed other prisoners to rush into the unit.

**Florida:** Guard Vincent Taylor resigned from his position at the West Tampa Detention Center on September 17, 2013 after he violated Department of Juvenile Justice policy when he brought his cell phone into the facility. Taylor allegedly allowed three juvenile offenders to use his phone to post pictures of themselves on Facebook. Another employee at the state-operated detention center, supervisor Charlie Whitehead, resigned in May 2013 for policy violations that included use of excessive force.

**Florida:** Two former state prison guards were arrested on September 25 and 26, 2013, and face charges of official misconduct. Erik Boe and Leon Brown were investigated after Ryan Anderson, a prisoner at a work release center in West Palm Beach, called 911 to file a complaint against them. They allegedly demanded that Anderson pay them to avoid being accused of selling drugs; he initially paid $870, but Boe and Brown told him they wanted more money.

**Georgia:** Channel 2 Action News confirmed on September 9, 2013 that an unnamed Fulton County Sheriff’s Office employee was disciplined following a prisoner’s escape from the North County Jail Annex in Alpharetta. A deputy was seen on surveillance video as the last person to handle an exterior door through which Michael Shawn Wilson escaped, and an investigation determined that deputies had put tape over the latches of certain locks, rendering them inoperable. Assistant City Administrator James Drinkard noted that concerns had been raised about door locks that could not be controlled remotely; he said he believed the problem had since been resolved.

**Georgia:** Dustin Blake Otwell, 31, a former jailer for the city of Smyrna, was sentenced to 10 years in prison after he altered the personal property documents of an arrestee and stole the man's money. Otwell was unaware that the arresting police officer had counted the $600 in cash while his patrol car's video camera recorded. The former jail guard tried to blame the officer for the theft. The Associated Press reported on September 11, 2013 that a Cobb County judge had ordered Otwell to serve at least two years of his sentence.

**Hawaii:** According to an October 1, 2013 news report, 17 Hawaii prisoners were removed from the Halawa Correctional Facility and mainland prisons and transferred to federal custody after an investigation into bribery and corruption among prison guards and members of the USO Family gang resulted in federal indictments. Guards John Joseph Kalei Hall and Feso Malufau are accused of receiving thousands of dollars in bribes to smuggle cigarettes and drugs into the Halawa prison for distribution by gang members. The guards, who face multiple charges, both lost their jobs; Hall had already been sentenced to 13 months in federal prison. [See: PLN, Jan. 2014, p.56]. Around eight of the prisoners sent to the Honolulu Federal Detention Center to await trial later went on a hunger strike to protest poor conditions at the facility.

**Illinois:** Cook County Jail prisoner Roosevelt Gray, 26, collapsed on September 26, 2013 as he was being released after serving a two-day sentence for driving on a suspended license. Gray was alert when transported to a nearby hospital but died later that morning. The medical examiner’s office ruled his death was natural, resulting from pulmonary thromboembolism, deep vein thrombosis and obesity.

**Kansas:** On September 5, 2013, Sedgwick County Sheriff Jeff Easter announced that an unnamed detention deputy had been arrested in connection with the theft and unauthorized use of a $50 debit card belonging to a prisoner who was transferred to a work release facility. The prisoner complained about the missing card and the ensuing investigation revealed surveillance video that showed a uniformed deputy using the card to purchase $50 worth of items at a store about eight hours after the prisoner had been moved. The deputy bonded out of jail and was placed on administrative leave.

**Kentucky:** Narcotics detectives from the Kentucky State Police arrested Donna S. Hunter, 60, on September 20, 2013. She was charged in connection with smuggling cigarettes and drugs into the Madison County Detention Center, where she worked in the facility’s kitchen. The investigation resulted in charges of promoting contraband, prescription substance not in proper container and trafficking in a controlled substance. Hunter pleaded guilty and was sentenced on April 3, 2014 to a year in prison.

**Louisiana:** As Tropical Storm Karen approached on October 4, 2013, Orleans Parish Sheriff Marlin N. Gusman transferred 432 prisoners from temporary tent housing to State Department of Public Safety and Corrections facilities. In a prepared statement, the sheriff said his office had also released 70 prisoners who were being held on minor charges in advance of the storm, and that the jail would stop accepting new prisoners for municipal or traffic violations. The Orleans Parish Prison had been severely damaged by Hurricane Katrina in 2005. [See: PLN, April 2007, p.1].

**Maryland:** On September 9, 2013, Judge Jerome R. Spencer sentenced former Charles County jail guard Michael Anderson Hurd to a 25-year prison term, then suspended all but seven years of the sentence. Hurd had entered an Alford plea to one of six counts of child sex abuse and prosecutors dropped the remaining charges as part of the plea agreement. Following the sentencing, several people who identified themselves as fellow jail guards called the Maryland Independent claiming that Hurd was given preferential treatment. The anonymous callers alleged that Hurd’s family had close ties with Charles County Sheriff Rex Coffey and expressed outrage that, as a result of that relationship, Hurd...
had been allowed to draw a paycheck while being held without bond and was allowed to resign instead of being fired.

**Michigan:** Kent County jail guard Jaclynn Rodriguez was fired on September 23, 2013 for “failure to pass probation” following an internal investigation into a September 2012 incident in which she was attacked by prisoner Willie Lee Wilson. Jail surveillance video showed Rodriguez being knocked to the ground and strangled. Several prisoners came to her aid, and Kent County Prosecutor Robin Eslinger said their actions had kept Wilson from killing Rodriguez. Wilson was found guilty of attempted murder as a result of the assault and sentenced to 80 to 160 years.

**Michigan:** Kent County jail guard Jaclynn Rodriguez was fired on September 23, 2013 for “failure to pass probation” following an internal investigation into a September 2012 incident in which she was attacked by prisoner Willie Lee Wilson. Jail surveillance video showed Rodriguez being knocked to the ground and strangled. Several prisoners came to her aid, and Kent County Prosecutor Robin Eslinger said their actions had kept Wilson from killing Rodriguez. Wilson was found guilty of attempted murder as a result of the assault and sentenced to 80 to 160 years.

**Mississippi:** Two men have been sentenced for building a pipe bomb discovered in a car at the South Mississippi Correctional Institution. Scott Jenkins Waits and John Eric Harberson were indicted on June 25, 2013 for making and possessing a destructive device; they pleaded guilty the following month. Officials said the bomb was not intended for use at the prison. Harberson reportedly drove a woman to the facility to visit a prisoner, and forgot the pipe bomb was in the car. Jenkins and Harberson were each sentenced on December 18, 2013 to around 2½ years in prison.

**Nebraska:** Douglas County law enforcement officers opened an investigation in early October 2013 into allegations that two unnamed former guards, one male and one female, sexually assaulted prisoners at the county jail. Both guards resigned, as did a third who had been accused earlier in 2013. Female prisoners reported that the guards would act as lookouts for one another while they sexually abused them. Douglas County Corrections Director Mark Foxall called the allegations a “personnel matter,” but on October 25, 2013 the case was turned over to federal prosecutors.

**New Jersey:** Robert Pyott, 48, a guard employed at the Federal Correctional Institution at Fairton since 1995, was found dead of an apparent self-inflicted gunshot wound outside the perimeter fence of the facility on September 21, 2013. Bureau of Prisons spokesman Eric Williams said Pyott’s body was discovered beside a vehicle shortly after 7 pm. The FBI and New Jersey State Police are investigating the incident, but no foul play is suspected.

**New Jersey:** On October 6, 2013, Suffolk County District Attorney Thomas Spota announced new charges against Patrick O’Sullivan, 21, an accused rapist being held at the Riverhead Correctional Facility. While awaiting trial, O’Sullivan was accused of plotting the death of his victim by passing paper airplanes to a fellow prisoner that contained the victim’s name, address, a map to her home and instructions on how to dispose of her body. The prisoner who received the notes contacted authorities and was granted an early release in exchange for helping build a case against O’Sullivan.

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**North Carolina:** Three former guards and two former prisoners at the GEO Group-operated Rivers Correctional Institution have been sentenced for their roles in a contraband smuggling scheme. [See: PLN, Jan. 2013, p.24]. Two of the guards, Raye Lynn Holley and Rhonda Boyd, were each sentenced to 20 months in federal prison on October 3, 2013, while a third guard, Rashonda Cross, received 45 days of intermittent confinement and 3 years’ probation on December 20, 2013. The two former prisoners, Roland Bazemore and Kenneth Dodd, received harsher sentences of 30 months and 37 months, respectively, for participating in the scheme, which involved smuggling cell phones and cigarettes into the facility.

**Oklahoma:** On September 24, 2013, eight prisoners escaped in a transport van when guards left the keys in the vehicle while they took a sick prisoner to a hospital. Six of the prisoners remained with the van when they stopped after driving about a mile, and one called 911 to report the escape. The other two, Lester Burns and Michael Coleman, ran but were quickly recaptured. The van was operated by Prisoner Transportation Services, a private firm based in Nashville, Tennessee. The company declined to comment on the incident.

**Pennsylvania:** Anthony Todora, a former guard at the Northampton County Prison, was one of six guards who filed suit in 2005 raising claims of toxic mold exposure at the facility. Todora and another guard filed a second lawsuit three years later, alleging they had suffered on-the-job retaliation for their initial suit, including “ridiculous nitpicking disciplinary actions.” On September 20, 2013, Judge F.P. Kimberly McFadden granted summary judgment to the county in the second lawsuit. McFadden noted that Todora had a history of disciplinary problems prior to
filing the original suit, and that he had shown no “matter of public concern” that would entitle him to First Amendment protections from retaliation.

Pennsylvania: Two maintenance workers at SCI-Laural Highlands, Harold Maust and Stephen Toth, were charged with using prisoner labor to perform personal repairs and spending state funds to buy personal equipment and supplies. However, on September 23, 2013, Somerset County District Attorney Lisa Lazzari-Strasiser dropped all charges against both men. Maust’s attorney said he was happy the charges were dropped, while Toth’s lawyer plans to file suit against state prison officials for the “totally unwarranted” charges. A prison spokesperson said an internal investigation would continue into the allegations.

Pennsylvania: Kevin William Small was incarcerated at SCI-Huntingdon when he perpetrated a tax fraud scheme that netted him an additional 135-month federal prison term to be served after completing his state sentence. In January 2012, once his state sentence had expired, Small forged a document that vacated his federal sentence. He was released and remained free for two months before being arrested. U.S. District Court Judge Gene E. K. Pratter was not amused, and on September 30, 2013, Small received a five-year prison sentence for charges related to his escape.

Rhode Island: Adult Correctional Institution guard James Petrella was arraigned on October 2, 2013 following his arrest on three counts of delivering a controlled substance. Petrella allegedly sold Oxycodone and Clonazepam to an undercover detective on three occasions in September 2013. A search of his home by Rhode Island State Police revealed four firearms and an assortment of prescription medications. Petrella’s bail was set at $20,000 with surety; he failed to post bond and remained in custody.

Texas: In September 2013, McLennan County sheriff’s deputies arrested Regina Antoinette Edwards and Dorothy Pennyngton, both guards at the privately-operated Jack Harwell Detention Center, for engaging in sexual misconduct with prisoners.
The incidents, which were discovered on recorded cell phone calls, allegedly occurred between 2011 and 2013. Pennington pleaded guilty to a charge of improper sexual activity and was sentenced to five years' probation in January 2014. A third guard, Sherry Lynn Haynes, has been charged with smuggling cigarettes into the facility, while a fourth, John Timothy Spears, was arrested in February 2014 for having a sexual relationship with a prisoner. The facility is operated by LaSalle Corrections.

**Texas:** Jose Rodriguez, 37, ran from the Nueces County Courthouse while being moved to the jail on September 27, 2013. He first tried to carjack a utility truck but the driver fought back. Next, while TV news crews videotaped, Rodriguez jumped behind the wheel of a police cruiser, found the keys were not in the ignition, then jumped out and headed for another police car. He locked the doors, but officers broke the windows. Rodriguez now faces a long list of charges.

**Turkey:** Security forces searched for eighteen members of the Kurdistan Workers' Party (PKK) who escaped from a Turkish prison on September 25, 2013. The prisoners had been convicted or charged with belonging to the PKK or helping militants; they escaped by digging a 230-foot tunnel, police said. The PKK has been fighting for autonomy for the southeastern region of Turkey for three decades, and the conflict has killed more than 40,000 people.

**United Kingdom:** Officials at Ford Open Prison objected to some prisoners' alternative to eating meals in the dining hall or purchasing food from the canteen. Apparently the grounds of the facility were overrun by thousands of wild rabbits, and prisoners had started killing them and cooking the meat in microwaves. Prison officials announced a “bunny boiling ban” in September 2013, saying killing and eating the rabbits was causing “distress to staff members.”

**Venezuela:** In the notoriously crowded Sabaneta prison in the western city of Maracaibo, a clash in an ongoing gang war has killed more than 40,000 people. Turkey for three decades, and the conflict autonomy for the southeastern region of Turkey for three decades.
News In Brief (cont.)

left at least 16 prisoners dead, government officials reported on September 17, 2013. When armed police stormed the facility following the riot, they were surprised to find that prisoners were keeping a menagerie of exotic animals. According to La Verdad, a regional newspaper, the animals included an ocelot, raccoons, macaws and several caimans. More than a dozen farm animals were also recovered, as well as a large number of purebred dogs such as mastiffs, Siberian huskies and Yorkshire terriers.

Vermont: Windsor County State’s Attorney Michael Kainen called his September 2013 plea deal with former prison guard Leanne Salls “an exercise in prosecutorial discretion.” Initially charged with sexual exploitation of an inmate, Salls became pregnant and gave birth as a result of her relationship with an unidentified prisoner. “This is a single mother who has a child,” said Kainen. “I wasn’t comfortable making her a rapist.” Salls ultimately pleaded guilty to a misdemeanor charge of prohibited acts and received a one-year deferred sentence.

Wisconsin: Former Black River Correctional Center sergeant Gregg R. Twesme, 47, pleaded guilty on September 13, 2013 to two misdemeanor counts of fourth-degree sexual assault. Twesme used his position to take sexual advantage of two male prisoners, telling one victim he would have him sent to a maximum-security facility if he reported the incident, according to the criminal complaint. Black River Superintendent Dave Andraska said Twesme was no longer employed at the prison; it was unclear whether he quit or had been fired.
Hepatitis and Liver Disease: What You Need to Know, by Melissa Palmer, MD, 457 pages. $17.95. Describes symptoms & treatments of hepatitis B & C and other liver diseases. *Includes* medications to avoid, what diet to follow and exercises to perform, plus a bibliography. 1031

Arrested: What to Do When Your Loved One's in Jail, by Wes Denham, 240 pages. $16.95. Whether a defendant is charged with misdemeanor disorderly conduct or first-degree murder, this is an indispensable guide for those who want to support family members, partners or friends facing criminal charges. 1084

Prisoners’ Self-Help Litigation Manual, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 960 pages. $39.95. The premiere, must-have ‘Bible’ of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil claim, this book is a must-have. Highly recommended! 1077


Sue the Doctor and Win! Victim’s Guide to Secrets of Malpractice Lawsuits, by Lewis Laska, 336 pages. $39.95. Written for victims of medical malpractice/neglect, to prepare for litigation. Note that this book addresses medical malpractice claims and issues in general, not specifically related to prisoners. 1079

Advanced Criminal Procedure in a Nutshell, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. $43.95. This text is designed for supplemental reading in an advanced criminal procedure course on the post-investigation processing of a criminal case, including prosecution and adjudication. 1090

Our Bodies, Ourselves, by The Boston Women's Health Book Collective, 944 pages. $26.00. This book about women's health and sexuality has been called “America’s best-selling book on all aspects of women’s health,” and is a great resource for women of all ages. 1082

Arrest-Proof Yourself, by Dale Carson and Wes Denham, 288 pages. $14.95. This essential “how not to” guide written by an ex-cop explains how to act and what to say when confronted by the police to minimize the chances of being arrested and avoid additional charges. Includes information on basic tricks that police use to get people to incriminate themselves. 1083

Nolo’s Plain-English Law Dictionary, by Gerald N. Hill and Kathleen T. Hill, 496 pages. $29.99. Find terms you can use to understand and access the law. Contains 3,800 easy-to-read definitions for common (and not so common) legal terms. 3001

Criminal Procedure: Constitutional Limitations, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. $43.95. Intended for use by law students, this is a succinct analysis of constitutional standards of major significance in the area of criminal procedure. 1085

A Dictionary of Criminal Law Terms (Black’s Law Dictionary® Series), by Bryan A. Garner, 768 pages. $33.95. This handbook contains police terms such as preventive detention and protective sweep, and phrases from judicial-created law such as independent-source rule and open-fields doctrine. A good resource to help navigate your way through the maze of legal language in criminal cases. 1088

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