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God’s Own Warden

If you ever find yourself inside Louisiana’s Angola prison, Burl Cain will make sure you find Jesus – or regret ever crossing his path.

by James Ridgeway

It was a chilly December morning when I got to the gates of Angola prison, and I was nervous as I waited to be admitted. To begin with, nothing looked the way it ought to have looked. The entrance, with its little yellow gatehouse and red brick sign, could have marked the gates of one of the smaller national parks. There was a museum with a gift shop where I perused miniature handcuffs, jars of prisoner-made jelly and mugs that read “Angola: A Gated Community” before moving on to the exhibits, which include Gruesome Gertie, the only electric chair in which a prisoner was executed twice. (It didn’t take the first time, possibly because the executioners were visibly drunk).

Besides being cold and disoriented, I had the well-founded sense of being someplace where I wasn’t wanted. Angola welcomes a thousand or more visitors a month, including religious groups, schoolchildren and tourists taking a side trip from their vacations in plantation country. Under ordinary circumstances, it’s possible to drive up to the gate and tour the prison in a state vehicle, accompanied by a staff guide. But for me, it had taken close to two years and the threat of an ACLU lawsuit to get permission to visit the place.

I was studying an exhibit of sawed-off shotguns when I heard someone call my name. It was Cathy Fontenot, the assistant warden in charge of PR. Smartly dressed in a tailored shirt and jeans, a suede jacket and boots with four-inch heels, she introduced me to a smiling corrections officer (“my bodyguard”) and to Pam Laborde, the genial head spokeswoman for the Louisiana Department of Public Safety and Corrections who had come up from Baton Rouge to help escort me on my hard-won tour of Angola.

Everyone was there except the person I had come to see: Warden Burl Cain, a man with a near-mythical reputation for turning Angola, once known as the bloodiest prison in the South, into a model facility. Among born-again Christians, Cain is revered for delivering hundreds of incarcerated sinners to the Lord – running the nation’s largest maximum-security prison, as one evangelical publication put it, “with an iron fist and an even stronger love for Jesus.” To Cain’s more secular admirers, Angola demonstrates an attractive option for controlling the nation’s booming prison population at a time when the notion of rehabilitation has effectively been abandoned.

What I had heard about Cain, and seen in the plentiful footage of him, led me to expect an affable guy – big gut, pale, jowly face, good-old-boy demeanor. Indeed, former Angola prisoners say that those who respond to Cain’s program of “moral rehabilitation” through Christian redemption are rewarded with privileges, humane treatment and personal attention. Those who displease him, though, can face harsh punishments.

Wilbert Rideau, the award-winning former Angolite editor who is probably Angola’s most famous ex-con, says when he first arrived at the prison, Cain tried to enlist him as a snitch, then sought to convert him. When that didn’t work, Rideau says, his magazine became the target of censorship; he says Cain can be “a bully – harsh, unfair, vindictive.”

“Cain was like a king, a sole ruler,” Rideau writes in his recent memoir, In the Place of Justice. “He enjoyed being a dictator, and regarded himself as a benevolent one.” When a group of middle school students visited Angola a few years ago, Cain told them that the prisoners were there because they “didn’t listen to their parents. They didn’t listen to law enforcement. So when they get here, I become their daddy, and they will either listen to me or make their time here
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Another former prisoner, John Thompson – who spent 14 years on death row at Angola before being exonerated by previously concealed evidence – told me that Cain runs Angola “with a Bible in one hand and a sword in the other.” And when the chips are down, Thompson said, “he drops the Bible.”

Who is the man who wields so much untempered power over so many human beings? I wanted to find out firsthand – but when I requested permission to visit the prison and interview Cain, back in 2009, Fontenot turned me down flat. Cain, she said, was not happy with what I had written about the Angola Three, a trio of prisoners who have been in solitary longer than any other prisoners in America.14 Two years and much legal wrangling later, I was here at Fontenot’s invitation, ready to see the Cain miracle for myself.

Burl Cain has friends in many places – a vast network of contacts and supporters from Baton Rouge to Hollywood. There has been talk in Louisiana of him running for office – maybe even for governor. But no position could ever be so secure, and no authority so complete, as what he already has.

Cain, now 68, was raised in Pitkin (population 1,965), about 90 miles due west of Angola; he began his career at the Louisiana Farm Bureau, then became assistant secretary for agribusiness at the Louisiana Department of Public Safety and Corrections, which runs a number of prison plantations. He became warden of the medium-security Dixon Correctional Institute in 1981 and landed at Angola 14 years later. One official bio notes that “to escape the pressures of running the nation’s largest adult male maximum security prison, Cain enjoys hunting and traveling around the country on his motorcycle.”

Cain’s brother, James David Cain, served in the Louisiana legislature for more than two decades. Burl Cain himself was until 2011 the vice chairman of the powerful State Civil Service Commission, which sets pay scales for state workers. Corrections is big business across the state, with a staff of about 1,600 and an annual budget of more than $120 million; it is also a huge agricultural and industrial enterprise, with a network of customers and suppliers that depend on the warden’s good graces.

Until 2008, the Department of Corrections, which oversees the state’s prisons, was headed by Richard Stalder, who once worked for Cain. Today, its second in command is Sheryl Ranatza, who previously was Cain’s deputy warden. She is married to Michael Ranatza, executive director of the Louisiana Sheriffs’ Association. (The sheriffs have a direct interest in prison policy in Louisiana because the state effectively rents space in local jails – at premium rates – to house “overflow” prisoners who can’t be fit into Angola and other prisons). Together, the Angola warden and the Department of Corrections have long been “a political powerhouse in Louisiana,” says the Southern Center for Human Rights’ Stephen Bright. “[They are] sitting on top of all this power. Governors who come along are afraid to touch them.”

But Cain’s reputation has reached far beyond Louisiana. Shortly after taking the reins at Angola, he gained a national audience through a 1998 documentary about the prison, The Farm: Angola, USA,16 which won the Grand Jury Prize at Sundance and was nominated for an Academy Award. Soon Cain found himself interviewed17 by an admiring Charlie Rose and profiled in TIME,18 which noted his quest to “give the 5,108 hopeless men on this former slave-breeding farm hope.” A follow-up to The Farm was released in 2009,19 with Cain as the central character.

Cain has also had an open-door policy for Hollywood. Parts of Dead Man Walking, Out of Sight and Monster’s Ball were filmed on the prison grounds, and more recently, William Hurt spent a night there to prepare for his role as an ex-con from Angola in The Yellow Handkerchief. As Fontenot proudly told me, Forest Whitaker recently visited to prep for narrating a two-hour documentary20 on the prison’s hospice for Oprah’s new network. Even parts of the recent Jim Carrey film I Love You Phillip Morris, about two men who fall in love in prison, were filmed at Angola. “All the extras we were using were lifers, real killers,” costar Ewan McGregor bragged.21 (Cain drew the line, though, according to one Christian blogger,22 at allowing a gay sex scene to be filmed in the prison).

With Cathy Fontenot at the wheel,
talking a mile a minute, our SUV sped through Angola's expansive grounds. At 18,000 acres, the prison covers a tract of land larger than the island of Manhattan. Surrounded on three sides by the Mississippi River and on the fourth by 20 miles of scrubby, uninhabited woods, it is virtually escape-proof.

With its proximity to the river, this is prime agricultural land, made up of five former plantations and named for the country of origin of the slaves who once worked its fields. Today the prisoners, three-quarters of whom are black,23 still work the land by hand, earning between 2 and 20 cents an hour.

Angola's agribusiness operation grows cash crops like cotton, corn and soybeans, as well as fruits and vegetables. In addition to working the fields, prisoners tend to Angola's hundreds of beef cattle, its prize Percherons and quarter horses, and the dogs it breeds for law enforcement. (In addition to raising bloodhounds, the Angola kennels have experimented with crossing German shepherds and black wolves). Prisoners also make license plates and vinyl mattresses, and fashion toys for charity.

Fontenot crossed one levee after another, rolling off facts and figures and telling little stories about points of interest as we flew past. In 1997, she told me, a flooding Mississippi came close to breaching the ramparts, but they kept the water out with teams of prisoners sandbagging. Warden Cain working by their side. We passed a herd of horses, which at Angola are used not only by officers riding guard over prisoners in the fields, but also to pull wagons and plows, replacing gas-guzzling tractors. Angola is working very hard to go green, Fontenot said. It is also highly entrepreneurial, with ventures such as the Prison View Golf Course bringing in extra funds at a time of budget cuts. They were, she said, considering a pet-grooming service and an Angola-branded clothing line. As we zipped down the road, we passed a big tour bus filled with visitors.

We also passed the 10,000-seat arena where Angola’s famous prison rodeos24 are staged each spring and fall, drawing some 70,000 people. The rodeo is famed for such events as “Convict Poker” (in which four prisoners try to remain seated around a card table while being charged by a 2,000-pound bull) and “Guts and Glory” (where prisoners vie to snatch a poker chip hung around the horns of an angry bull). Daniel Bergner, who spent a year at Angola researching his powerful 1998 book God of the Rodeo,25 observed that the crowd’s reaction was “electric, exhilarated, the thrill of watching men in terror made forgivable because the men were murderers. I’m sure some of it was racist (See that nigger move), some disappointed (that there had been no goring), and some uneasy (with that very disappointment).” Even so, he writes, “many people were not laughing, were too bewildered or stunned by what they had just seen.”

Outside the arena, prisoners sell arts and crafts, along with crawfish etouffée and Frito pies for the benefit of various prisoner organizations: the Lifers Association, the Forgotten Voices Toastmasters group, Camp F Vets and dozens of Christian groups. The rodeo was originally conjured up by the prisoners, but it is now a centerpiece of Cain’s PR operation. Bergner wrote that in Cain’s first year at Angola, he entered the arena in the “closest thing he could find to a chariot” – a cart pulled by the prison’s Percherons, in which he circled the ring before the opening prayer.

One thing I learned when attending the rodeo a year earlier (it was the only way to get into Angola without Fontenot’s permission) is the vast difference in the way various groups of prisoners live. Most of the men who work the booths are “trusties.” They live in open dorms or group houses, hold the most coveted jobs, move around with some degree of ease, and in some cases even have limited contact with the public. A few trusties are trucked out to keep up the grounds at the local school, while others tend to the homes and yards of B-Line, the small town inside the prison gates that is populated by Angola’s staff, many of them third- or fourth-generation corrections officers. (Angola officials have military ranks; collectively, they are sometimes still referred to by their historical name, “freemen”).

About 700 of Angola’s 5,200 prisoners are trusties. Another 2,800 are “big stripes,” who work in the fields and factories under armed supervision. The remaining 1,500 are confined in cellblocks – some in the general population, some in 23-hour-a-day lockdown, some in punishment units. A word from the warden can make the difference between life in a “trustie camp” with a decent job and contact visits, and life in a six-by-nine isolation cell.

A little farther on was the main prison, surrounded by layers of razor wire shining bright in the sun. “Hiya,” Fontenot called out to the prisoners as our entourage swept down the central walkway. “How ya

God’s Own Warden (cont.)
“Good morning,” they responded. She put her arm affectionately around the shoulder of one man, asked another about a personal problem. She came off as part country-western princess, part girl next door and entirely in charge.

By most estimates, including Fontenot’s, at least 90 percent26 of Angola’s prisoners will die here. In Louisiana, what are effectively life sentences are now doled out not only for murder but for anything from gang activity to bank robbery. The Angolite has reported that in 1977, just 88 men had spent more than 10 years in the prison. By 2000, 274 men had spent 25 years behind bars and in 2009, 880 Angola prisoners had spent 25 or more years inside. Sixty-four men had been locked up for more than 40 years.

Today, 3,660 men – 70 percent of Angola’s population – are serving life without parole, and most of the rest have sentences too long to serve in a lifetime. “It is not too far of a stretch to claim life without parole as another form of capital punishment,” writes Lane Nelson, the magazine’s star writer (who recently received clemency). “[It is] slow execution by incarceration. Decades of segregation can be released. I think he is very frustrated because of the sentencing laws in the state [and] the whole process of pardon and parole because of its political nature.”

As it stands, Cain and his staff confront an aging and increasingly infirm prison population, which is why some of Angola’s best-known programs deal with easing old age and death in prison. The prison even operates a hospice, founded and staffed by prisoners, that houses men judged to have fewer than 18 months to live. When these men die, if no relatives come to claim the body, they can count on a prisoner-crafted coffin, a decent funeral and delivery, via horse-drawn hearse, to their final resting place at Angola’s Point Lookout Cemetery.

Five miles into the plantation, we arrived at death row. A central control room led to a series of tiers, each marked by a locked door and color photos of the inhabitants, 83 in all. Guards patrol the tiers day and night, looking for potential suicides.

We walked past a plastic nativity scene to get to the death house, which contains the cells where prisoners spend their final hours, saying goodbye to loved ones and having their last meals. In the death chamber sat a flat, padded leather gurney with “wings” where the condemned man’s arms would be outstretched to receive the needle. Fontenot pointed out where Warden Cain would stand, near the man’s left hand, and described how he would motion for the execution to begin.

Cain’s first execution, he told the Baptist Press, was done strictly by the book. “There was a psshhppsst from the machine, and then he was gone,” Cain recalled. “I felt him go to hell as I held his hand. Then the thought came over me: I just killed that man. I said nothing to him about his soul. I didn’t give him a chance to get right with God. What does God think of me? I decided that night that I would never again put someone to death without telling him about his soul and about Jesus.”

By 1996, in a Diane Sawyer special...
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God’s Own Warden (cont.)

about an Angola execution, Cain said that putting a prisoner to death was “so complex I can’t even answer… I came here with an opinion about a lot of things. Today I don’t have an opinion about hardly anything.”

Attorney Nick Trenticosta says that in his view, Cain treats death-row prisoners better than wardens at most other prisons: “It is not that these guys had super privileges. But Warden Cain was somewhat responsive to not only prisoners, but to their families.” Trenticosta recalls Cain demurring before one execution, “All I wanted was the keys to the big house. Not this.” The lawyer offers a picture of a man torn between the duty to kill and the faith that makes him question that duty—a dilemma he seeks to resolve, perhaps, by giving prisoners the promise of a heavenly life before the state snuffs out their earthly one.

Chapels are all over Angola, and the main one, which seats 800, was a key stop on our tour—just as it is for visiting preachers from around the country. Gathered there waiting for us was a group of prisoner preachers, who spread the good news at the five houses of worship in Angola (a sixth is under construction) and at other prisons throughout the state. On occasion, they even have the opportunity to preach in the outside world. I asked the prisoners whether Warden Cain had to approve what they did; one said they answered only to “Him” and pointed skyward. For a while, we listened to a former country-western bandleader play gospel on the famed Angola organ, donated by a close associate of Billy Graham. As we began to leave, one preacher raised his hand to Cathy, smiled broadly, and said, “We did good for you.”

It had taken me a while to figure out what bothered me about Cain’s religious crusade at Angola, beyond a healthy respect for the separation of church and state. My grandfather, a Methodist minister, was an evangelist of sorts, so this wasn’t an altogether foreign world to me. And I’ve seen a lot of good come out of faith-based programs—which, particularly in prison, fill the void created when lawmakers nationwide slashed funding for rehabilitation. In 1994, for example, Congress dealt a crushing blow to prison education by making prisoners ineligible for higher-education Pell grants. Prison college programs, which had proved the single most effective tool for reducing recidivism, disappeared almost overnight. In Louisiana today, 1 percent of the corrections budget goes to rehabilitation.

The imbalance “makes no rational sense from a prison management point of view,” says David Fathi, who heads the ACLU’s National Prison Project. “But unfortunately it makes political sense for the next election.” As a result, he says, “the religiously inspired programs are pretty much all there is.”

According to estimates in the Christian press, some 2,000 of Angola’s prisoners have been born again since the arrival of Cain—who has described his own religious persuasion as “Bapticostal”—and 203 have earned B.A. degrees in Christian ministry at the “Bible college,” an extension program operated by the New Orleans Baptist Theological Seminary that is the only route to earning a college degree at Angola.

Besides the prison seminary, Angola’s major religious institution is the Louisiana Prison Chapel Foundation, which has raised at least $1.2 million to dot the prison’s grounds with houses of worship. Franklin Graham, Billy’s son, reportedly donated $200,000 to build one of the chapels, continuing a longstanding relationship with Angola. (Prisoners crafted the coffin in which Billy Graham’s wife was buried in 2007, and they are building one for Billy himself).

Franklin Graham wrote about one of his visits to preach at the prison under the title “Freedom for the Captives.” It’s a phrase drawn from Luke 4:18-19, where Jesus announces that God “has sent Me to proclaim freedom to the captives and recovery of sight to the blind, to set free the oppressed, to proclaim the year of the Lord’s favor.” It’s not hard to see why this

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would be an appealing message for men who will never again be physically free.

But for my grandfather, personal redemption was inseparable from social justice. Cain’s brand of Christianity, in contrast, serves in large part as an instrument of control – and the warden has little patience for those who don’t get with his program, including other Christians. In 2009, the ACLU of Louisiana filed suit on behalf of Donald Lee Leger, Jr., a practicing Catholic who had sought to take Mass while on death row. He alleged that Cain had TV screens outside his cell turned up full blast and tuned to Baptist Sunday services. Prison officials destroyed a plastic rosary sent to Leger from a nearby diocese. When Leger continued to file grievances requesting Mass, he was moved to a tier of ill-behaved prisoners and finally put in the hole for 10 days.

The ACLU also represented Norman Sanders, a member of a Mormon Bible study course, who was denied books from Brigham Young University and Deseret Book Direct, sources of Mormon publications. (Cain told the Christian magazine *World* that other religions are welcome to set up programs at Angola “as long as they’re willing to pay for it. Let them all compete to catch the most fish. I’ll stand on the bank and watch”). An attorney representing another prisoner told me that the prisoner had been disciplined because he had not bowed his head during prayer. The prisoner also alleged that prisoners who don’t participate in church services will have their privileges revoked, while those who attend will get “a day or two off from the field, a good meal and other goodies” such as ice cream. (Some help themselves to further goodies: In a recent scandal, several prisoner ministers were investigated for allegedly bribing guards to let them have sex with visitors who came for special banquets).

Stan Moody, a one-time prison chaplain in Maine who has met with ex-Angola prisoners, believes that “Cain is without question a committed Christian” who “cares about the downtrodden and disadvantaged in a way that’s sadly missing in prisons across the U.S.” But he questions pushing religion onto a “literally captive” audience, especially in exchange for better treatment. What Cain seems to be creating at Angola, Moody warns, is an atmosphere of “imposed Christian values” designed to put “notches on the old salvation belt.”

With those who resist salvation, Cain takes a somewhat different approach – as the men known as the Angola Three found out. When they came to Angola in 1971 for armed robbery, Herman Wallace and Albert Woodfox were Black Panthers, and they began organizing to improve prison conditions. That quickly landed them on the wrong side of the prison administration, and in 1972 they were prosecuted and convicted for the murder of a prison guard. They have been fighting the conviction ever since, pointing out that one of the eyewitnesses was legally blind and the other was a known prison snitch who was rewarded for his testimony.

After the murder, the two – along with a third prisoner named Robert King – were put in solitary, and Woodfox and Wallace have now spent nearly four decades in the hole – something Cain has suggested has more to do with their politics than with their crimes (King was released in 2001 when his conviction in a separate prison murder was overturned). In a 2008 deposition, Cain said Woodfox “wants to demonstrate. He wants to organize. He wants to be defiant.... He is
God’s Own Warden (cont.)

still trying to practice Black Pantherism, and I still would not want him walking around my prison because he would organize the young new prisoners. I would have me all kind of problems, more than I could stand, and I would have the blacks chasing after them.”

Wallace’s and Woodfox’s lawyers have pointed out that the two men, now in their sixties, have had a near-perfect record for more than 20 years. In response, Cain argued that “it’s not a matter of write-ups. It’s a matter of attitude and what you are.... Albert Woodfox and Herman Wallace is [sic] locked in time with that Black Panther revolutionary actions they were doing way back when.... And from that, there’s been no rehabilitation.” Wallace has said that Cain suggested that he and Woodfox could be released into the general population if they renounced their political views and embraced Jesus.

I asked Fontenot about the Angola Three, and she told me matter-of-factly that they just hadn’t played by the rules. Anyway, Wallace and Woodfox had recently been shipped off to other prisons in the state system. I asked about solitary confinement. The prisoners in what Angola calls “closed cells” had everything they needed, she said. It was like having a little apartment.

The Angola Three are not the only prisoners who claim they have suffered under Cain. Back in 1999, a group of five prisoners took two guards hostage and killed one of them during an attempted prison break. Both then-Corrections Secretary Richard Stalder and Warden Cain came to the scene, and after learning of the guard’s death, Cain, according to news reports, sent in a tactical team that had been prepared for them. The events prompted an FBI investigation, and the state of Louisiana eventually agreed to settle with 13 prisoners who filed civil rights lawsuits. But there was no admission of guilt and no reprimand for Warden Cain.

Even in normal times, Angola maintains a punishment unit known as Camp J, which combines extreme isolation and deprivation – prisoners cannot have any personal items and are fed a block of ground-up scraps known as “the loaf” – and is plagued by suicide attempts. There are “things that the mind can’t handle,” one former prisoner told me. “I guarantee you that today, somebody tried [suicide] in Camp J.”

Certain accusations against Cain go beyond his treatment of prisoners. Shortly after he took over as warden, in 1995, he was implicated in a scandal involving a company that used Angola prison labor to relabel damaged or outdated cans of milk and tomato paste. There were allegations of kickbacks, and of retaliation against a prisoner who wrote letters to federal health officials. Both Cain and Corrections Secretary Stalder were held in contempt of court for withholding documents, and Cain was warned to stop harassing the whistleblower.

In another episode, the Baton Rouge Advocate reported that in 2007 a grand jury in Baton Rouge subpoenaed documents involving the prison’s various businesses, as well as the Angola State Prison Museum Foundation (headed by Sheryl Ranatza, the Cain protégé who is now deputy secretary at the Department of Corrections) and the Angola Prison Rodeo, whose proceeds were once put into a fund for prisoner expenses such as funeral trips, TV and the law library, but are now used to maintain the arena and build prison chapels. Cain is chairman of the committee that runs the rodeo, and he founded and sits on the board of the prison chapel foundation.

The FBI also has been investigating Prison Enterprises, the state outfit that runs all farming and industrial operations in Louisiana’s prisons, a probe that has led to several indictments; in October 2010, a contractor named Wallace “Gene” Fletcher pleaded guilty to defrauding Louisiana taxpayers of some $170,000. [Ed. Note: Fletcher, 70, was sentenced in
Sept. 2011 to serve six months and pay $247,000 in restitution.

In 2004, Angola Rodeo producer Dan Klein went to the FBI with a complaint that Burl Cain had forced him to contribute $1,000 to the Chapel Fund. Cain said at the time that Klein made the contribution without any pressuring, and the warden himself has not been named in any of the indictments.

Daniel Bergner also says he was pressured to pitch in for one of Cain’s pet projects while writing his book on Angola: Though he initially had broad access to the prison, partway through his reporting Cain asked him to help pay for a new barn for his wife’s dressage horses, which he said would cost about $50,000. When Bergner demurred, Cain made a straight pitch: In return for arranging a “consultancy” payment for Cain, Bergner would get continued access. Bergner refused, whereupon Cain began demanding editorial control over the book and finally barred Bergner from the prison. Bergner only got access again after going to court.

After more than a year of trying to get into Angola, I too turned to a lawsuit. In March 2010, the ACLU agreed to represent me on a First Amendment claim arguing that to keep government information from a reporter merely on the basis of what he’s written is an infringement on press freedom. My attorneys asked for a listing of visitors the prison had welcomed in the previous year (not counting the everyday tourists). Without hesitation, Angola provided a 14-page list that included Miss Louisiana, the comedian Russell Brand, the Dixie Dazzle Dolls (a children’s beauty pageant group), various groups of high school and college students, judges, representatives from gospel groups and film teams, scouts looking for film locations, criminal justice students, a former member of the Colombo crime family, a French attorney.

Members of the media included a journalist from Switzerland; “Neal Moore, citizen journalist, who was canoeing the Mississippi River”; and a producer getting ready to film a “future movie/documentary on finding happiness.” My attorneys dispatched one more letter to Cain urging him to grant me a visit. There was no response. But a month later, as the ACLU prepared to file suit in federal court, Fontenot wrote to them, inviting me down for a tour.

In his memoir, Wilbert Rideau writes about how tightly Cain controls his messaging – a practice that had grim consequences for the Angolite, once known for its investigative reporting. At a time when even outside journalists encountered increasing barriers to access at prisons nationwide – it’s almost impossible now to interview a prisoner, or even a staffer, at many state and federal prisons – the Angolite staffers found their calls monitored and their stories censored. “The only information coming out of Angola,” Rideau says, “was what Burl Cain wanted the public to know.”

When I asked Fontenot about this, she shook her head and told me that after he started winning journalism prizes and drawing attention from outside Angola, Rideau withdrew from prison life, spending all his time holed up in the Angolite offices. His celebrity, she thought, had gone to his head.

Or perhaps Rideau got on the wrong side of Cain by refusing to embrace the dominant story of the warden as Angola’s savior, a narrative neatly summed up by prison chaplain Robert Toney in congressional testimony in 2005: Angola “was once the most violent prison in America.
God’s Own Warden (cont.)

Today, we are known as the safest prison in America. This change began with a warden that believed that change could occur.”

In fact, there is considerable evidence that the turnaround at Angola began two decades before Cain became warden, in the 1970s, when a prisoner lawsuit forced the facility into federal oversight and a series of reforms began. According to Burk Foster, a professor of criminal justice at Saginaw Valley State University in Michigan and the leading historian of Angola, by the mid-1980s Angola was already the most secure prison in the South. Prison violence is down dramatically across the country; the prison murder rate has fallen more than 90 percent nationwide in the last three decades.

Yet the legend of Cain persists – and not just because Cain and his team (the formidable Cathy Fontenot included) are so skilled at PR. Cain does a job that no one else much wants to do, dealing with a group of people that no one else much wants to think about. Rather than face that reality, most of us prefer to believe in a miracle.

Aside from the high-level escort, my tour of Angola had covered pretty much what the tourists see, except for the closing lunch – Fontenot took me to the Ranch House, a sort of clubhouse where the wardens and other officials get together in a convivial atmosphere for chow prepared by prisoner cooks. (It’s traditional for Ranch House cooks to go on and work at the governor’s mansion, but Gov. Bobby Jindal had spurned that tradition). The house is built low, with a long porch and white board fence; we sat down to barbecued chicken, red beans and rice, and sweet potato pie, all of it quite good.

After lunch, I accompanied Fontenot to her office in the administration building. When we’d scheduled the tour, she’d promised me an interview with Cain provided he was at Angola when I visited, which she expected him to be. But when I asked, “Where’s the warden?” she said matter-of-factly, “Oh, he’s in Atlanta today.”

On the way back over the line to the free world, I asked Fontenot whether the warden might consider talking to me on the phone. She suggested I follow up once I got home, and I did, thanking her for the tour and the fine luncheon. After several weeks and multiple inquiries – including a few questions submitted via email, at her request – I got this reply:

The warden respectfully declines to

Angola: A Prison Passion Play

by John E. Dannenberg

The New Testament recounts Jesus’ plight as a prisoner:

“Naked, and ye clothed me: I was sick, and ye visited me: I was in prison, and ye came unto me.” (Matthew 25:36).

Spurred on by Bible-banging Warden Burl Cain of the Louisiana State Penitentiary at Angola, a cast of 70 male and female prisoners from both Angola and the Louisiana Correctional Institute for Women – accompanied by a bevy of animals that included two horses, a lamb and a camel – put on a 3½-hour passion play, The Life of Jesus Christ, at Angola’s rodeo grounds. With an attentive audience of prisoners, relatives, church groups and ticket holders, the fully-costumed theatrical production ran for three days in May 2012.

In this unusual alliance of male and female prisoners, who were allowed to touch one another during the course of the performance, Jesus was played by Bobby Wallace, a lifer who committed a string of armed robberies, while the young Virgin Mary was portrayed by a woman who robbed a Mexican restaurant. A teenager who had killed his girlfriend and infant daughter played Joseph.

Gary Tyler, the prisoner who directed the play, has served 38 years for murder. Perhaps unknowingly, he drew parallels between himself and Christ. “Jesus was executed because of an allegation,” he said. “People vented their hatred on him.” Originally sentenced to death, Tyler was convicted of killing a white youth during a 1974 attack by a mob of whites on a bus full of black students when his high school was racially integrated. Convicted by an all-white jury, he has steadfastly maintained his innocence.

Judas, who, as a snitch, was not a popular character, was played by a murderer who talked about his character’s unbearable burden of guilt. The prisoner who portrayed Pontius Pilate compared his character to a judge who had sentenced an innocent man to death, while the actress playing Mary Magdalene recounted that she, too, had been “used” by men.

Warden Cain proclaimed, “Jesus Christ was innocent. There are innocent people in this prison. Believe me, there are.” Cain’s iron-fisted control over Angola has often been criticized by prisoners and prison reformers alike, while the ACLU has claimed Cain’s belief in Christian redemption results in religious bias reflected in the management of his prison.

Mitigating concerns about separation of church and state, Louisiana prison officials said that participation in the play was voluntary and that funds for the production were donated by individuals and charitable groups (notably, local Christian churches). Associate Warden Cathy Fontenot opined that the production – which portrayed the life and death of Christ – did not push a particular religious message but rather one of moral redemption.

However, with over 4,000 of Angola’s 5,329 prisoners serving sentences of life without parole, they may well be inspired by Warden Cain’s crusade to have them accept Jesus as their only hope of salvation. Indeed, for those doing time at Angola, The Life of Jesus Christ may not be just an act. As for Cain, if he truly believes there are prisoners who are innocent just as Christ was, then perhaps he should run his prison, and treat “the least of these,” accordingly.

Sources: New York Times, Democracy Now!
participate in this article. As he says often, its all of us at Angola that have caused the positive changes. Thanks again James. It really was a pleasure to meet you in person. Stay warm during these cold days of winter.

Much peace to you,
Cathy

When I interviewed John Thompson, the exonerated death-row prisoner, about his time in Angola, he mentioned what he believes is one of the public's biggest misconceptions about prisons. Most people look at the fence around the perimeter and think its purpose is to keep prisoners from escaping. But the barrier “isn’t there to keep prisoners in,” Thompson said. “It’s to keep the rest of you out.”

James Ridgeway is a senior correspondent at Mother Jones. This article first appeared in the July/August 2011 issue of Mother Jones magazine (www.motherjones.com), and is reprinted with permission.

Endnotes/Links:
[34] https://www.readability.com/articles/cj2ziek9?legacy_bookmarklet=1
[37] http://motherjones.com/special-reports/2009/03/angola-3-36-years-solitude
[48] 102 FREE ISSUES! (Void in New York)
For the past 22 years, PLN has been at the forefront of reporting on the gouging of prisoners’ families by prisons, jails and the telecommunications industry as prisonocrats and corporations profit by charging families exorbitant phone rates for the ability to communicate with their incarcerated loved ones. PLN’s groundbreaking report on the prison phone industry last year – see our April 2011 cover story – has led to a growing movement that seeks real change regarding this issue. To date, we are the only news media organization to tackle this topic on a national level.

To end the injustice of unfair prison phone rates, the Human Rights Defense Center, the Center for Media Justice and Working Narratives have launched a national campaign to end the kickback “commissions” routinely provided to prisons and jails by prison phone companies. We have launched two websites, www.phonejustice.org and www.kitescampaigns.org/campaign/prison-phone-justice, where we have massive amounts of information on prison phone rates, contracts and corruption; these sites also include resources for people affected by prison phone rate gouging to tell their story and take action.

In March 2012 I was among a number of advocates on the topic of prison phone justice who met in Washington, DC with Federal Communications Commission (FCC) Commissioner Mignon Clyburn to seek FCC action on this issue. Since 2005, a petition called the Wright petition has been pending before the FCC, requesting that that agency cap phone rates charged for interstate calls made by prisoners (the FCC can only regulate interstate, not interstate calls). HRDC and more than 4,800 organizations and individuals have submitted formal comments on the Wright petition. Thus far the only ones seeking to maintain the unjust system of exploitation and corruption by gouging consumers who communicate with prisoners is the telecom industry, its lobbyists and lawyers, and some prison and jail officials.

Along with Kay Perry from CURE, who directs the eTc Campaign, I outlined the concerns of prisoners and their families on this issue. Commissioner Clyburn was both receptive and sympathetic. She said one thing that would help spur the FCC to action would be to hear from people affected by prison phone rates in regard to why this is a burden and an outrage, and why the FCC should take action to end the kickbacks and impose caps on the rates charged to prisoners and their families for the cost of making interstate phone calls.

This issue of PLN has a full-page ad with relevant information on whom you can write and points to make in your letter. Just because you are in prison does not mean your voice is not important and cannot be heard. If you are tired of being exploited and having your family exploited because you make phone calls from prison, take a few minutes and contact the FCC to express your concerns about how excessively high phone rates, driven by kickbacks to prison and jail officials, have negatively impacted you and your family.

People outside prison can send letters and make comments on the public docket for the Wright petition, too. Your family members and friends can mail the FCC copies of their phone bills that reflect the high cost of prison phone calls, for example. We need to educate the FCC about the scope and devastating impact of these corrupt and anti-consumer practices. Having many affected people send letters to the FCC urging them to take action will have a larger impact than just a few organizational advocates telling them the same thing. The phone justice campaign includes a helpful toolkit, which is available online at this link: http://bit.ly/K8BUy0.

We will be running the prison phone justice campaign ad in PLN until the FCC takes action on the Wright petition, and will report updates as they occur in the campaign in future issues of PLN. If you can make a donation to support this project, please do so now.

Additionally, we have made some changes to our book list and added new titles as we strive to offer books to our readers that they can use to help and educate themselves. Please check out our book list in the back of this issue for the new additions.

If you are not a PLN subscriber and are receiving PLN for the first time, this is a complimentary sample copy. If you wish to continue receiving the magazine, you must order a subscription using the attached subscription card, or you can subscribe by letter or by having a family member contact us by phone or online. If you are a subscriber and you received two copies, one is a sample – please give it to someone else who might have an interest in PLN, and encourage them to subscribe.

Thank you and enjoy this issue of PLN.
LEGAL NOTICE

If you received an intrastate telephone call from an inmate in a Washington State Department of Corrections facility between June 20, 1996 and December 31, 2000, you may be a member of a class in an action against AT&T.

A court in King County, Washington, has certified a class action against AT&T. The case alleges that AT&T violated the Washington State Consumer Protection Act by failing to provide information, including rate information, during collect calls originating from inmates at Washington Department of Corrections ("DOC") facilities between June 20, 1996 through December 31, 2000. If you are a member of the class, you have the right to opt out of the class action lawsuit. This notice explains how to do so. It also explains how to receive more case information.

Who's Included?
You may be a member of the class if you accepted a long-distance, intrastate, collect call from an inmate at a Washington DOC facility between June 20, 1996 through December 31, 2000 that was carried by AT&T. Most, but not all, Washington DOC facilities are covered. A list of covered facilities and types of covered telephone calls are detailed at www.ratedisclosure.com.

What's This About?
In this lawsuit, recipients of collect telephone calls from inmates at Washington DOC facilities allege that AT&T failed to provide certain information, including a rate disclosure, required by law. They allege that for each call that did not contain the required information, Washington law requires AT&T to pay the recipient $200 plus the cost of the call. They also allege that the court should triple any award under the Washington Consumer Protection Act, and award interest, costs and attorney fees.

AT&T denies that it did anything wrong.
The Court has not decided who is right. By establishing the Class and authorizing this Notice, the Court is not suggesting who will win or lose the case. The Class must prove their claims at trial. The trial date is October 29, 2012.

What Are My Rights?
If you are a member of the class, you have the right to opt-out, or exclude, yourself from the class. If you do so, then you will receive no benefit from the action, but you will have the right to file a separate lawsuit. If you remain in the class, then you will be entitled to your share of any recovery, if any, but you will also be bound by the decision in the case, win or lose. To ask to be excluded, you must fill and return an opt-out form by August 31, 2012. The form is available at www.ratedisclosure.com, or by calling (877) 457-4246.

If you believe you may be a member of the class and you did not receive a notice in the mail, then you should register your name and address at www.ratedisclosure.com, or by calling (877) 457-4246, so you may be notified of future developments in the case.

How Can I Get More Information?
You may receive more information at www.ratedisclosure.com, or by calling (877) 457-4246.
The class action case is titled Judd, et. al. v. AT&T, et. al., King County Cause No. 00-2-17565-5 SEA.
No Budget Cuts for Federal Prisons

by James Ridgeway and Jean Casella

In the midst of an epic budget battle that could transform the American landscape for decades to come, the White House and Republicans in Congress appear to agree on one point: Federal prisons need more money.

With more people and a higher percentage of the population locked up than any other country, the United States would seem more than ripe for cuts in both its incarceration rate and its prison spending. A number of states have initiated such measures, and a growing chorus of critics on the right and left are decrying the devastating fiscal costs of mass incarceration. Yet the Obama administration’s combined budget requests for FY 2011 and FY 2012 call for a full 10 percent increase over 2010 levels in funding for the federal Bureau of Prisons (BOP), to more than $6.8 billion, which includes funding for a new federal supermax. 

The increase, says the BOP, is necessary to accommodate a still-growing federal prison population. And the latest budget deal reached with the Republican leadership indicates that this particular category of discretionary spending will emerge from the budget battles comparably unscathed.

There is ample precedent for an expansion of federal prisons under a Democratic administration. According to analyses by the Sentencing Project and the Pew Center on the States, the growth rate in the BOP’s population has far outstripped that of the states (which itself has increased by more than 700 percent in the past 40 years). BOP growth was most dramatic during the Clinton years, when a host of new offenses were federalized: a host of new offenses were federalized: The “activation” of the new ADX supermax on the model of the notorious Florence ADX in Colorado – a place where solitary confinement has been raised to a torturous art, and prisoners seldom, if ever, see another human being. Conditions at this “Alcatraz of the Rockies” are so harsh that the European Court of Human Rights initially refused to extradite terrorism suspects to the United States lest they end up in ADX. [Ed. Note: On April 10, 2012 the European Court of Human Rights ruled that terrorism suspects could be extradited to the U.S. even if they might be held at the Florence ADX]. Yet this new prison has also become the centerpiece of Obama’s plans for prison expansion. The letter from Holder to Durbin and Kirk continues:

As you know, the Department wishes to acquire the Thomson facility in order to provide critically needed high security bed space for the federal Bureau of Prisons. The current population of high security federal penitentiaries is 51% above rated capacity, and continues to grow. I appreciate your leadership in addressing the dangers of prison overcrowding, and in fostering community support for the federal government’s acquisition of this unused state facility.

The President’s FY11 budget requested $237 million for the acquisition, renovation, and operation of the Thomson facility. However, under the FY11 Continuing Resolutions, the Department lacks sufficient money to purchase or activate Thomson using currently available funds. We look forward to working with you to obtain additional appropriated funds for this important and needed project.

So far, this new prison remains a sticking point in the latest budget deal. With $6.3 billion for the BOP, it includes much of the other prison funding requested by the White House, and represents a significant increase over 2010 levels. But it is still $239 million below the White House’s 2011 request, and doesn’t contain funding for the Thomson purchase. Durbin and Kirk have not given up on the plan, however, and will continue pressing the Justice Department to come up with funds to finance the new prison.
The BOP’s standing in the House Republicans’ 2012 budget proposal is less clear. Budget Chair Paul Ryan’s “Path to Prosperity” calls for more than $10 billion in cuts to programs that fall under the broad spending category “Administration of Justice.” But the plan, which is more of a manifesto than an actual budget, doesn’t specify where these cuts should be made. History would suggest that civil rights prosecutions and the like would be more obvious targets for Republican cuts than prison spending. In another rare show of bipartisan unity, House Judiciary Committee Chair Lamar Smith (R-TX) and ranking member John Conyers (D-MI) have already joined in writing to the House Budget Committee, warning them against making cuts to federal law enforcement in 2012.

What belies all this agreement on increasing federal prison spending is a bipartisan trend that calls for precisely the opposite. Fall 2010 saw the birth of the group Right on Crime, spearheaded by the likes of Newt Gingrich, Grover Norquist and Ed Meese, making the “conservative case for criminal justice reform” — including a reduction in prison populations. Norquist also joined the NAACP to endorse its Smart and Safe Campaign for criminal justice reform, and publicize its new report Misplaced Priorities: Under Educate, Over Incarcerate. Another recently formed coalition, calling itself Smart on Crime, brings together the Heritage Foundation, Manhattan Institute and Prison Fellowship with the Innocence Project and the ACLU. Smart on Crime advocates for criminal justice reforms that are “fair, accurate, effective, proven, and cost efficient,” and makes a particularly sharp critique of the “overcriminalization of conduct” and “overfederalization of criminal law.”

What think tanks and pundits do, of course, is quite a different matter from what elected officials are willing to undertake. Few politicians will risk being declared “soft on crime” in the next election. And in the end, the generous funding for prisons makes a grim kind of sense, in the context of a budget that slashes education, health care and social services: A country that can’t spare the funds to properly educate its children or care for its sick, poor or unemployed is destined to remain an incarceration nation.

Update from PLN: Unsurprisingly, things have not greatly improved since this article was first published in April 2011. Although the nation’s state prison population dropped in 2010 for the second year running, the BOP population has continued to increase, to 218,261 as of May 2012. The Department of Justice’s budget for prisons and detention was funded at $7.6 billion in 2011 and $8.38 billion in 2012, and the department has requested $8.6 billion for 2013 (including $6.9 billion allocated for the BOP — a 4.2% increase). FCI Aliceville and FCI Berlin received partial activation funding in 2012; the BOP’s 2013 budget request, if approved, would bring both facilities on-line. The BOP also plans to expand its residential drug abuse treatment program (RDAP), which allows up to a one-year sentence reduction upon completion, “to all eligible inmates” as part of its 2013 budget. The BOP’s 2013 budget request does not, however, include funding for the purchase and conversion of the Thomson prison into another federal supermax.

This article originally appeared in Mother Jones (www.motherjones.com), and is reprinted with permission. Additional source: www.justice.gov
Death Sentences, Executions Remain at Low Levels

by Justin Miller

According to a report released by the Death Penalty Information Center last December, there were 78 new death sentences imposed in 2011, down significantly from 104 in 2010 and the fewest new death sentences since capital punishment was reinstated in 1976. The number of new death sentences reached its peak in 1996 when 315 prisoners were sentenced to death, and averaged 295 annually in the 1990s. Since 1996 the average number of death sentences imposed each year has decreased by about 75 percent.

Leading the way in the decline in 2011 was the state that carries out the most executions, Texas, which has averaged 34 new death sentences per year, had only 8 in 2011. Other death penalty states, including Maryland, Missouri and Indiana, had no new death sentences imposed in 2011.

The number of people sitting on death rows across the nation has also reached a new low. As of the end of 2011, the death row population nationwide was 3,251, down from 3,625 in 1999. In the years preceding 1999, the size of the death row population nationally had increased every year. But while the number of people sentenced to death on the state level has decreased, the number of prisoners on death row in the federal system has more than tripled over the past decade, from 19 to 61.

The number of executions nationwide also declined, from 46 in 2010 to 43 in 2011. However, the drop is largely attributed to problems with obtaining drugs used in lethal injections. [See: PLN, June 2011, p.1]. The economic downturn, which has focused attention on budget deficits vis-à-vis the high cost of capital punishment, is likely another contributing factor.

Additionally, James Alan Fox, a criminology professor at Northeastern University, pointed to historically low crime rates and U.S. Supreme Court decisions that prevent juveniles and mentally disabled prisoners from being executed. “The pool of offenders who are eligible for execution is smaller,” Fox said in regard to the latter factor — although the bar is set fairly low in terms of death row prisoners with mental disabilities.

Of the 34 states with the death penalty at the end of 2011, only 13 carried out executions that year. Texas had the most executions (13), followed by Alabama (6) and Ohio (5). Since the death penalty was reinstated by the U.S. Supreme Court in 1976, a disproportionate majority of executions have occurred in the Southern states of the former Confederacy.

The State of Illinois abolished the death penalty effective July 1, 2011 following a lengthy moratorium, and the sentences of all death row prisoners were commuted to life without parole. “I have concluded that our system of imposing the death penalty is inherently flawed,” said Illinois Governor Pat Quinn. “The evidence presented to me by former prosecutors and judges with decades of experience in the criminal justice system has convinced me that it is impossible to devise a system that is consistent, that is free of discrimination on the basis of race, geography or economic circumstance, and that always gets it right.” [See: PLN, April 2012, p.36].

Also, Oregon Governor John Kitzhaber declared a moratorium on executions in that state on November 22, 2011. “I am convinced we can find a better solution that keeps society safe, supports the victims of crime and their families and reflects Oregon values,” Kitzhaber said. “I refuse to be a part of this compromised and inequitable system any longer; and I will not allow further executions while I am Governor.”

Another prominent death penalty event occurred on September 21, 2011 when Georgia executed Troy Davis, despite national and international condemnation due to strong claims of innocence in Davis’ case.

Public support for the death penalty appears to be waning. When presented with alternatives, 61 percent of the respondents in a 2011 Gallup poll said they opposed the death penalty. A May 2010 poll by Lake Research Partners had similar results, and found that voters “would continue to support elected officials if they voted to replace the death penalty with a sentence of life without parole.”

Reasons cited for opposing capital punishment included fears of executing people who are innocent and the high costs associated with the death penalty. In regard to the death penalty ensnaring the innocent, the total number of death row prisoners exonerated since 1973 now stands at 140.

For example, former Texas death row prisoner Anthony Graves was freed from prison in October 2010 after serving 16 years. According to special prosecutor Kelly Sigler, “[W]e found not one piece of credible evidence that links Anthony Graves to the commission of this capital murder.... He is an innocent man.” That did not stop Texas officials from initially denying him compensation for his wrongful conviction, nor did it stop the state from hounding him for back child support that had accrued during his incarceration. [See: PLN, April 2012, p.22].

The most recent exoneration was that of Joe D’Ambrosio, an Ohio prisoner who served 23 years for murder before his habeas petition was granted and the charges against him were dismissed after the U.S. Supreme Court refused to hear the state’s appeal in his case on January 23, 2012.

“It’s a thrill to hear this good news, but to wait 23 years for this day is inexcusable,” said Rev. Neil Kookothe, who advocated for D’Ambrosio’s release.

“Justice denied this long isn’t justice, but it also shows the system works ... even if it is too slow of a process.”

In 2011, New York Governor Mario Cuomo, former San Quentin prison warden Jeanne Woodford, and former California prosecutors Don Heller and Gil Garcetti were among notable public officials who spoke out against the death penalty.

Several prominent former corrections officials had criticized the death penalty in 2010, too. Ron McAndrew, a former Florida warden who oversaw executions, said “Many colleagues turned to drugs and alcohol from the pain of knowing a man had died at their hands. And I’ve been haunted by the men I was asked to execute in the name of the state of Florida.”

Former Ohio corrections director Reginald Wilkinson stated, “I’m of the opinion that we should eliminate capital punishment. Having been involved with justice agencies around the world, it’s been somewhat embarrassing, quite frankly, that nations just as so-called civilized as ours think we’re barbaric because we still have capital punishment.”

There have been 18 executions nationwide in 2012 as of mid-May. Connecticut abolished capital punishment in April.
I

Dallas County Passes Jail Inspections ... Finally

It took eight tries over seven years, but the nation’s seventh-largest jail system, located in Dallas County, Texas, has finally started passing inspections by the Texas Commission on Jail Standards (TCJS), most recently in March 2012.

Adam Munoz, executive director of the TCJS, announced the first successful inspection of the Dallas County Jail on August 11, 2010. The jail system had last passed a TCJS inspection in 2003 – one year before current Dallas County Sheriff Lupe Valdez was elected.

Despite having spent over $100 million on improving fire safety systems, maintenance and staffing ratios in recent years, the jail remained under a federal court order to improve medical and mental health services. The court order was issued after a 2006 investigation by the U.S. Department of Justice revealed that serious health care issues had contributed to the deaths or serious injuries of several prisoners. [See: PLN, May 2011, p.16; Nov. 2007, p.14].

Dallas County’s jail system had failed a surprise TCJS inspection as recently as March 2010, largely due to inadequate smoke detection and removal equipment in the north tower. Smoke detection and removal is especially important in high-rise jails like those in Dallas because the multi-story configuration makes it difficult to evacuate prisoners. The west tower and George Allen jails had previously been retrofitted with similar equipment.

“Dallas County took the time to invest,” Munoz stated. “It’s a testament to Dallas County for the effort they made to get this jail back into compliance.” However, he also warned that a rapidly-rising prisoner population may make future inspections of the jail system more difficult to pass.

“Now the challenge for Dallas County is to stay in compliance,” said Munoz, who noted that the TCJS has the power to force the county to transfer prisoners to other facilities, at a cost of millions of dollars, should its jail system become overcrowded or fall below a ratio of one staff member per 48 prisoners.

Continued compliance is indeed the question, but the county has thus far managed to maintain required jail standards and stay in compliance.

Dallas County passed its second TCJS inspection in April 2011, with inspectors giving high marks to the jail system. “It is one of the best inspections we’ve had in 7 years!” remarked TCJS Assistant Director Shannon Herklotz, who said the jails had passed all standards in key areas such as medical care, staffing and sanitation.

The county’s jails also received a favorable inspection from the U.S. Dept. of Justice in September 2011, which was the last in a series of court-ordered inspections related to medical and mental health care.

Most recently, Dallas County’s jail system passed a TCJS inspection in March 2012, for the third time in a row. “I can’t say enough how clean this place was,” said Herklotz. “It’s definitely a model for a lot of people to look at.”

Of course it took a federal lawsuit, over $100 million in improvements and seven years to reach that point, while thousands of prisoners were held in the county’s jails in conditions that repeatedly failed state inspections during that time period.


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2012, becoming the fifth state to do so in five years, with Governor Dannel Malloy citing the “unworkability” of the death penalty system. Voters in California will consider a ballot initiative to abolish the death penalty in November 2012. [ ]


Dallas County Passes Jail Inspections ... Finally

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California Lifers: Deaths Exceed Parole Releases

by John E. Dannenberg

Between 2000 and 2010, 775 California lifers died in prison while 674 were granted parole. Those statistics, released by the California Department of Corrections and Rehabilitation (CDCR) pursuant to a public records request, reflect the grim reality that parole-eligible lifers are more likely to die in prison than to be granted release.

A good deal of the downward pressure on the number of lifer paroles, and the concomitant upward pressure on the number of deaths, can be attributed to two initiatives enacted by California voters. The first, in 1988, politicized the parole process by giving the governor unprecedented unilateral power to reverse grants of parole to life-sentenced prisoners. Between 1988 and 2010, all California governors have abused this power to reverse 75 to 99 percent of the few such grants of parole.

The second initiative, effective in 2009, tripled the intervals between parole hearings from a range of 1-5 years to a range of 3-15 years following an unfavorable parole decision, with a presumption of a 15-year delay until the next parole hearing unless a prisoner shows by “clear and convincing evidence” that he or she is deserving of a shorter interval. [See: PLN, May 2009, p.12].

Compounding these voter enactments is a 1996 legislative amendment to California’s good-time credit laws which eliminated all such credits towards lifers’ initial parole eligibility dates.

There are currently over 30,000 lifers in California’s prison system, including approximately 17,000 with murder convictions who are eligible for parole. An estimated 7,000 are “three-strikes” lifers, many with third-strike offenses that were neither serious nor violent crimes. Lifers serving time for murder, whose sentences are either 15 to life (2nd degree murder) or 25 to life (1st degree) are serving an average of 24 to 27 years (and growing) before being paroled, assuming they are paroled at all.

This is in spite of the fact that of the 988 lifers who have been released in the past two decades, only 6 have reoffended by committing violent or serious crimes (none of which were murder or sex offenses).

However, the trend for California lifers could be changing. Under pressure from state courts that increasingly have been granting habeas petitions challenging denials of parole by the Board of Parole Hearings (BPH) and reversals of parole grants by the governor, more lifers have been gaining their freedom.

The most recent BPH statistics show that lifers are being granted parole in about 10% of hearings. Further, recent (2011) statistics from the governor’s office indicate that 82% of such grants of parole have been left untouched; that is, they have not been reversed by Governor Jerry Brown, unlike his predecessors.

The opposing forces of (a) political pressure to keep lifers in prison until they die, and (b) economic pressures that might force pragmatic increases in parole grant rates for lifers, will likely continue to compete. One can only hope that the concept of “human dignity” for state prisoners, invoked by Justice Anthony Kennedy in the Supreme Court’s decision in Brown v. Plata, will eventually infuse reason into the parole decision-making process for California lifers.

Sources: California Department of Corrections and Rehabilitation, www.kalwnews.org

Michigan Sex Offender’s Suicide Results in Changes to Sex Offender Registry Law

by Matt Clarke

When 17-year-old Justin Fawcett admitted to having consensual sex with a 14-year-old student at the same high school he attended in West Bloomfield, Michigan, he probably never thought that youthful dalliance would lead to his death, but it did.

Justin and three other teens who separately had sex with the girl were prosecuted for felony criminal sexual conduct. They were allowed to plead guilty to a lesser charge of seduction, and told they would not be listed on the state’s sex offender registry. However, a year after the plea deal, Justin was informed by his probation officer that he was going to be included on the registry after all.

Hounded by the public shame that he would be listed on the state’s sex offender registry website for more than two decades, Justin despaired of ever having a normal life. Who would hire, or date, a registered sex offender? Despite his father’s assurances that the registration law would eventually be changed, Justin saw no future ... no life for himself. Which led him to commit suicide when he was 20.

Seven years after Justin’s parents found his body in his bedroom, dead from an overdose, they received a letter addressed to Justin from Michigan’s Sex Offender and Registry Enforcement Unit. The letter indicated that his name would be excluded from the public part of the registry and he might be eligible to have it removed altogether.

One might view this as a typical bureaucratic error except for the fact that Justin’s parents, David and Gayle Fawcett, had become activists for reform of the state’s sex offender registry statute following Justin’s death, which became a focal point of their successful efforts to change the law. David Fawcett testified before the state legislature and his family’s tragedy was the force that pushed through much-needed reforms.

When asked why Justin’s name remained on the sex offender registry seven years after his death, state police spokeswoman Shanon Banner said that names are not removed unless a family member sends the registry enforcement unit a death certificate. She speculated that the Fawcett’s had not done so. However, this puts the responsibility for keeping the registry current in the hands of citizens who have no obligation to take such action. Which is a questionable practice, as it is the responsibility of the state police to maintain the accuracy of the registry, not families of deceased sex offenders.

Including the names of people who are no longer living is not the only problem with Michigan’s sex offender registry. The amendments to the state’s sex offender registration law, enacted on July 1, 2011, removed Justin’s name and the names of certain other offenders from the registry website, but also required each registered sex offender (RSO) to provide additional information. Such newly-required information included the phone numbers for any phones regularly used by the RSO, the
RSO’s passport or immigration document numbers and a copy of any business or professional licenses held by the RSO.

The amendments also required RSOs to notify police within three days of any changes related to their name, address or employment; vehicle ownership or long-term use; school enrollment status; and email addresses and online identity, or if they intended to reside outside their homes for more than seven days. Failure to comply could result in arrest and imprisonment.

Each RSO in the registry, both living and dead, was sent a letter explaining the new requirements and informing them they had until July 15, 2011 to provide the newly-required information. The overwhelming majority of RSOs complied. However, police departments were not prepared for the flood of registered sex offenders seeking to update their registry details.

Meanwhile, the enforcement unit decided to flag every RSO in the state as “non-compliant” on the registry until their information was updated. This led to a flood of complaints from RSOs who had submitted their updated information in a timely manner, yet were nonetheless flagged as being “non-compliant” due to delays in having the information processed by law enforcement officials.

“What’s an employer supposed to think when he finds that the state police have publicly identified one of his workers as a non-compliant sex offender?” asked Oakland County attorney Cheryl Carpenter, after receiving phone calls from over a dozen RSOs who were concerned about the erroneous registry entries.

“We did underestimate the volume of information we had to process,” Banner acknowledged. “We underestimated how well [RSOs] were going to carry out their new duties.”

In other words, after state officials sent RSOs a letter threatening to put them in prison if they didn’t provide updated information, they were surprised when most RSOs complied with that demand.

Still, Banner said it was good that errors—including deceased people listed in the sex offender registry—came to light as a result of the amendments to the registration law. Also, after receiving numerous complaints, the “non-compliant” status of RSOs whose updated information had not yet been processed was changed to “compliant.”

“Obviously, the registry is only useful if the information listed there is accurate,” Banner stated. “If anything positive comes of this, it is that this process is cleaning up a number of problems.”[See related article in the May 2012 issue of PLN, “Report Deconstructs Urban Legend of 100,000 Missing Sex Offenders”].

That may be so, but the clean-up is temporary and long overdue, and comes at a steep price—Justin Fawcett’s needless suicide, which was the impetus for the changes to the state’s sex offender registration law.

Sources: Detroit Free Press, www.abcnews.go.com

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A report by the National Employment Law Project (NELP) released in March 2011 concluded that the growth in background checks by employers, combined with a lack of enforcement of civil rights and consumer protections for an estimated 65 million people with criminal records, subjects ex-offenders to a lifetime of social and economic disadvantage. In response to such concerns, the U.S. Equal Employment Opportunity Commission (EEOC) issued new background check guidelines in April 2012.

The NELP report begins by pointing out that as background checks have become more popular and inexpensive, “the share of the U.S. population with criminal records has soared to over one in four adults.” A 2010 survey by the Society of Human Resources Management, the largest association of human resources personnel in the nation, found that 92 percent of their members – mostly large employers – perform background checks on some or all job candidates.

“Across the nation there is a consistent theme: people with criminal records ‘need not apply’ for available jobs,” the NELP report states. The report lists companies that impose overbroad background checks, including Bank of America, Aramark, Lowes, Accenture, Domino’s Pizza, Adecco USA, Burlington Northern Santa Fe Railroad Co., RadioShack and Omni Hotels.

Although many companies require background checks for the purpose of determining the safety or security risk of a prospective employee, the existence of a criminal record as a predictor of negative work performance is debatable.

Ensuring that all workers have job opportunities is a matter of public concern, and is critical for the struggling economy. Studies show that ex-offenders who have stable employment have lower recidivism rates. Moreover, “[n]o healthy economy can sustain such a large and growing population of unemployable workers, especially in those communities already hit by joblessness,” the NELP report notes.

“Stable employment helps ex-offenders stay out of the legal system. Focusing on that end is the right thing to do for these individuals, and it makes sense for local communities and our economy as a whole,” said Hilda L. Solis, Secretary of the U.S. Department of Labor.

Yet even getting a job interview can be tough for those with the stigma of a criminal record. One prominent researcher found that reporting a past conviction on a job application “reduces the likelihood of a job callback or offer by nearly 50 percent, an effect even more pronounced for African American men than for white men.”

Using arrest and conviction records to screen potential employees invites scrutiny under Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment based on race, gender, national origin and other protected categories. In 1987 the EEOC issued policy guidelines which recognized that barring job applicants who have criminal records “disproportionately excludes African Americans and Latinos because they are overrepresented in the criminal justice system.”

To pass muster under Title VII, the EEOC required employers to make an individual assessment of 1) the nature and gravity of the applicant’s offense or offenses, 2) the time that has passed since the conviction and/or completion of sentence, and 3) the nature of the job position held or sought.

Yet as a 2010 lawsuit against Accenture alleged, many companies “reject[] job applicants and terminate[] employees with criminal records, even where the criminal history ... has no bearing on the ... fitness or ability to perform the job.” See: *Arroyo v. Accenture, LLP*, U.S.D.C. (S.D. NY), Case No. 1:10-cv-03013.

Additionally, background check companies are using software that systemically excludes people with criminal records.

“ChoicePoint, which accounts for an estimated 20 percent of the U.S. background check industry conducting more than 10 million annually, played an integral role in designing and implementing” RadioShack’s policy of excluding job applicants “convicted of a felony in the past 7 years,” by creating “an online application system that automatically dismissed anyone who self-disclosed a criminal record history.”

The NELP report argues that not only do such overbroad criminal background checks constitute civil rights violations, they also disadvantage employers by artificially limiting the pool of job candidates, because they eliminate qualified persons whose “criminal record empirically may be shown to be irrelevant as a factor in a hiring decision.”

The report cites a major study of people with felony convictions which found that 18-year-olds arrested for burglary had the same risk of being arrested again as same-aged persons with no criminal record after 3.8 years had passed since their first arrest (for aggravated assault it was 4.3 years, while for robbery it was 7.7 years).

A “criminal record can be a blunt, misleading tool” in determining the risk a worker poses on the job. A criminal record is difficult to interpret, as it can include arrests for which there was an acquittal or dismissal of the charges. Commercial background checks may contain inaccuracies; even the FBI’s checks are out of date 50 percent of the time.

According to the EEOC, “an absolute bar to employment based on the mere fact that an individual has a conviction record is unlawful under Title VII.” Lawsuits challenging such exclusionary employment practices have seen a resurgence in the past several years; for example, at least five major civil rights actions were filed in 2010 against large employers.

Still, criminal background checks continue to be widely used to exclude people from work. NELP conducted a survey of Craigslist, a website that offers free classified ads in approximately 400 geographic areas in the United States. Craigslist receives over one million new job ads per month. The survey found four categories for employers’ no-hire policies: 1) no arrests/clean or clear records, 2) no felony or misdemeanor convictions, 3) no felony convictions, and 4) no convictions within a specified time frame. These hiring policies were listed by anonymous employers, large companies and staffing firms.

The Craigslist survey indicates that the threat of litigation has not changed the widespread practice of excluding job applicants based solely on criminal records.

The NELP report makes several recommendations. The first is for the federal government to enforce civil rights and consumer protection laws that apply to criminal background checks for employment in both the public and private sectors. The federal government should also be a model for employers by adopting fair hiring policies in federal employment and contracting.
Next, state and local governments should certify that their hiring policies comply with federal civil rights standards, and should launch employer outreach and education campaigns. Finally, the employer community needs to assume a leadership role to meet the mutual interests of job applicants and the employers seeking to hire them, in terms of implementing fairer policies related to criminal background checks.

On April 25, 2012, the EEOC released new guidelines on criminal background checks to help employers comply with Title VII when refusing to hire people with criminal records, since minorities are over-represented among ex-offenders. “The ability of African-Americans and Hispanics to gain employment after prison is one of the paramount civil justice issues of our time,” stated Stuart Ishimaru, one of the EEOC Commissioners.

PLN had submitted formal comments to the EEOC following a July 2011 meeting in which the Commission addressed the issue of employment barriers for ex-offenders; that meeting resulted in the release of the new guidelines. [See: PLN, Sept. 2011, p.32].

The updated guidelines recommend that employers give applicants an opportunity to explain their criminal records rather than reject them automatically. This will let ex-offenders point out any inaccuracies in the background check, such as dismissed charges, and try to convince a prospective employer that they are rehabilitated. In some cases, they can explain that businesses that hire certain former prisoners may qualify for the Work Opportunity Tax Credit.

The EEOC also recommends that employers not ask about arrest histories on job applications, since arrests are not tantamount to convictions. While the guidelines are not mandatory, and although a felony conviction does not constitute a “protected class” for purposes of job discrimination, the guidelines provide a framework that businesses use in order to comply with federal anti-discrimination laws based on race, national origin and other applicable factors.

“For example, there is Title VII disparate treatment liability where the evidence shows that a covered employer rejected an African American applicant based on his criminal record but hired a similarly situated White applicant with a comparable criminal record,” according to the EEOC.

“The new guidance clarifies and updates the EEOC’s longstanding policy concerning the use of arrest and conviction records in employment, which will assist job seekers, employees, employers, and many other agency stakeholders,” said EEOC Chair Jacqueline A. Berrien.

Hawaii ACLU Files Suit on Behalf of Women Who Want to Marry Prisoners

by Alex Friedmann

On May 15, 2012, the ACLU of Hawaii filed a lawsuit in federal court accusing the state Department of Public Safety (DPS) of unlawful discrimination by prohibiting four women from marrying Hawaii prisoners housed at a mainland facility.

According to the complaint, the women submitted multiple applications to wed their fiancés, who were incarcerated at the CCA-operated Saguaro Correctional Facility in Eloy, Arizona. Their applications were denied. State officials sent form letters to the prisoners, informing them that “[a]s a Ward of the State incarcerated in a correctional facility, you are incapable of providing the necessary emotional, financial and physical support that every marriage needs in order to succeed.”

The letters also stated, “We believe that a healthy relationship effort (marriage) established at this time while you are in prison and unable to work and communicate effectively face-to-face with your fiancée will be detrimental to any future re-integrative efforts.” Which is fairly ironic: First the DPS ships Hawaii prisoners to a distant mainland prison, then denies them the right to marry because they cannot “communicate effectively face-to-face” with their would-be spouse who remains in Hawaii.

The U.S. Supreme Court held 25 years ago that prison officials may not prohibit prisoners from marrying absent a legitimate penological reason. In that case, prisoners wanting to marry had to obtain permission from the warden, which was rarely granted. The Supreme Court found there is “a constitutionally protected marital relationship in the prison context,” and that “where the inmate wishes to marry a civilian, the decision to marry (apart from the logistics of the wedding ceremony) is a completely private one.” See: Turner v. Safley, 482 U.S. 78, 96-98 (1987).

“We just want to get married because we love each other. We’ve been trying for years. We gave up on the system, but we never gave up on each other,” said Lenora Santos, one of the plaintiffs in the ACLU suit. The other plaintiffs include Junell Santos, Faith Aliviado, Jamiquia Glass and Margaret Amina.

The ACLU had previously communicated with DPS officials regarding denials of marriage applications, and DPS agreed to make changes. The department issued a revised policy on marriage applications in June 2011 that stated prisoners’ right to marry could be restricted when “the proposed marriage presents a threat to the security or the good government of the institution or to the protection of the public.”

However, prison officials reportedly continued to deny marriage applications using the same form letter, plus other contrived justifications for the denials.

“The Constitution prohibits government officials from imposing their morals and judgment on others,” said ACLU senior staff attorney Daniel Gluck. “DPS’s practices are not only illegal – they hinder prisoners from developing committed relationships that can help their rehabilitation and improve their chances of being productive when they complete their sentences and re-enter society.”

The ACLU is seeking a preliminary injunction to “compel Defendants to cease interfering with Plaintiffs’ fundamental right to marry ...” because the “Defendants’ ongoing and persistent violations of Plaintiffs’ constitutional rights have caused, and continue to cause, irreparable injury to Plaintiffs.”

The lawsuit seeks declaratory and injunctive relief, attorney fees and costs, and monetary damages for emotional distress, psychological harm, humiliation, and pain and suffering. See: Santos v. Kimoto, U.S.D.C. (D. Hawaii), Case No. 1:12-cv-00259-SOM-BMK.

Additional sources: ACLU of Hawaii press release, Star Advertiser

Class-Action Settlement Cures Constitutional Violations at Pennsylvania Prison

A settlement has been reached in a class-action lawsuit challenging conditions at Pennsylvania’s Northumberland County Prison (NCP). Since the suit was filed in February 2008 on behalf of 12 prisoners by the Lewisburg Prison Project, NCP officials had disputed claims that the 134-year-old facility was unsafe and failed to provide adequate medical care.

The parties concluded that a settlement would be the best result and the County Commissioners approved a settlement agreement, arrived at following adversarial negotiations, in October 2010. The class received notice of the proposed settlement in February 2011, which was approved by the district court on April 29, 2011.

The first issue addressed in the 37-page settlement is the provision of medical and dental care. Under the agreement, a physician, physician assistant or certified nurse practitioner must be on site at NCP at least six hours per week when the average daily population is below 200 prisoners, and seven hours a week when the population exceeds 201 prisoners for six consecutive months. Medical personnel must also be on call seven days a week, 24 hours a day for emergencies.

A full-time registered nurse is to be on duty 40 hours per week, as well as a licensed practical nurse seven days a week for the first two work shifts. Newly admitted prisoners are to receive an intake medical screening within 24 hours of admission. A mental health screening and suicide risk assessment must be conducted at the time of the medical screening, and a physical health assessment and mental health evaluation will be conducted within 14 days of arrival at NCP.

The agreement also requires a psychiatrist to be available four hours per week when the population is under 200 and five hours a week when it exceeds 201 for six consecutive months. This requirement may be satisfied via a telemedicine service. A full-time healthcare professional with at least a bachelor’s degree will be available at NCP for 40 hours per week. Sick call will be held for general population prisoners three times a week and for segregation prisoners weekly.

The intake screening must include a dental component. An “extraction only” policy for dental care is prohibited, nor may multiple cycles of antibiotics and/or pain medications for dental abscesses and other dental problems associated with infections or pain be routinely prescribed by a non-dental professional.

The settlement includes provisions for confidential sick call settings, prescriptions and distribution of medications, maintenance of written policies and protocols related to the provision of...
medical care, handling of medical records, and a requirement for a sanitary, well-lit examination room and infirmary at the facility. Dental care can be provided on- or off-site.

To fulfill the provisions for medical and psychiatric services, NCP contracted with Prime Care Medical, Inc. The contract costs $650,000 annually and NCP added on-site dental services for $3,756 per month.

The settlement agreement also addresses conditions for prisoners in “Basement cells” and “Cell 3.” Prisoners may not be mechanically restrained in those segregation cells for the purpose of punishment. No more than two prisoners may be housed in each cell unless a documented emergency situation exists. Such prisoners must be provided an opportunity to shower three times weekly and shall receive clothing, bedding and a blanket unless they pose a risk of suicide, in which case they will get a smock to wear and suicide-proof blankets. Segregated prisoners are to receive one hour of out-of-cell recreation five times a week.

In addition to provisions concerning care by nurses and mental health staff for prisoners in segregation cells, the agreement requires guards to factually describe the prisoners’ behavior every 30 minutes. In the event guards have to physically extract a prisoner from a cell, the incident must be videotaped with the video maintained for two years. Finally, the county spent about $500,000 on its own legal fees.

The county attorney acknowledged the settlement was a positive step. “In the beginning there was no real enthusiasm to fix the conditions,” said Robert Hamma of Lavery, Faherty, Young & Patterson. But the settlement “brings the county prison up to constitutional and state Department of Corrections standards.” Indeed, when approving the agreement the district court noted, “[T]his settlement will chart a course that resolves myriad substantial problems that have existed for far too long within the Northumberland County Prison.” See: Inmates of the Northumberland County Prison v. Reish, U.S.D.C. (M.D. Penn.), Case No. 4:08-cv-00345-JEJ.

Additional source: The Daily Item
Guard Who Identified Over 100 Prison Rioters
Pleads Guilty to Contraband Charge

A Kentucky prison guard who identified more than 100 prisoners who allegedly participated in a 2009 riot was later arrested for bringing contraband into the same facility where the riot occurred. PLN previously reported on the riot at the Northpoint Training Center, which resulted in the destruction of numerous buildings and injuries to eight prisoners and eight guards. [See: PLN, April 2010, p.10; Oct. 2009, p.40].

Following the August 21, 2009 riot at Northpoint, guards identified over 170 prisoners who took part in the disturbance. Prison guard Jesus Cabrera, 38, identified 124 of those prisoners, including six of ten who were criminally charged.

However, Cabrera’s own July 28, 2010 arrest for introducing 12 Diazepam (AKA Valium) pills – used for anxiety relief and as a muscle relaxer – into the facility put his credibility into question. “I’m very concerned that an officer who claims to have identified over 100 inmates in this event has, within a matter of months, himself been charged,” said attorney Theodore Shouse, who represents prisoner Aaron Fisk. “It clearly causes anyone to doubt his credibility.”

Fisk contends he did not participate in the riot, but faces charges of first-degree arson, first-degree riot and being a persistent felony offender. Cabrera identified Fisk as having taken part in the disturbance.

“It’s concerning that someone who is, in some cases, the only witness against someone, has also been arrested himself and charged with a crime,” said public defender Stacy Countz, who represents two prisoners charged in the Northpoint riot.

A September 8, 2009 report by Kentucky State Police detective Monte Owens said Cabrera was working in the visitation room when the riot began. He responded to a call of a fire in a dormitory and helped evacuate prisoners. He then moved about the yard. Eventually, other prisoners and Cabrera were chased by prisoners involved in the riot. One of them, Kurt Smith, pleaded guilty to first-degree riot and third-degree assault for hitting Cabrera on the chin with a piece of concrete. Smith received concurrent five-year sentences.

Once the riot was quelled, “Cabrera was able to provide an extensive list of inmates involved in the riot and their actions,” the report stated. “Cabrera advised that he knew many of the inmates. When the yard was secured, Cabrera sat down and made notes of what he saw and their actions. He also used the institution mug book to identify those whose names he did not know.”

Even before Cabrera’s arrest for smuggling the Diazepam pills, prisoners’ families and friends challenged the veracity of his identifications. One family member, Suzette Raybeck, said DOC officials should “stand up, admit that our loved ones were unjustly punished – physically, mentally and emotionally – and we want reparation for the harms done to them.” That, of course, is unlikely to happen.

The DA who is prosecuting prisoners charged with participating in the Northpoint riot said he no longer intended to call Cabrera as a witness. “I have no plans to use him. We have no cases under indictment that depend only on his testimony,” remarked Commonwealth Attorney Richie Bottoms, who noted that Cabrera’s own criminal charges “complicated things.”

Cabrera pleaded guilty on November 3, 2011 to first-degree promoting contraband, in exchange for a recommendation that he receive a one-year jail sentence. He had been fired by the Kentucky DOC following his arrest. Upon being sentenced in January 2012, he received five years’ probation.

Some of the prisoners charged in connection with the Northpoint riot did not fare as well. On January 3, 2012, for example, prisoner Newell Stacy, 40, was sentenced to an additional 20 years for rioting.


Wrongful Convictions Prove Costly, Especially for the Wrongly Convicted

by Matt Clarke

On June 6, 2011, the Better Government Association (BGA) and the Center on Wrongful Convictions (CWC) at Northwestern University School of Law released a joint report on the cost of wrongful convictions. The report, which examined 85 wrongful convictions in Illinois since the advent of modern DNA testing in 1989, is the first study to examine the economic and societal costs of convicting the innocent.

The people who paid the highest price for wrongful convictions were the 83 men and 2 women who spent a total of 926 years in prison for crimes they did not commit. Some have received varying amounts of monetary compensation for the loss of years of their lives, but others struggle to find work and many suffer from chronic physical and mental illness. None said they felt whole after being released.

“The anger never goes away,” remarked Alton Logan, who served 26 years in prison after being wrongly convicted of homicide. His case was overturned in 2009 only because the man who actually committed the murder, a convicted cop killer, gave his lawyer a sworn confession which the attorney was prevented from making public until he was released from attorney-client privilege by the man’s death.

Logan received $40,000 in compensation from the Illinois Court of Claims – about $30 per week of incarceration. He also filed a federal lawsuit against Chicago police officials, including former police Lt. Jon Burge, who is serving a 4½-year sentence for lying about torturing suspects into giving confessions. Logan’s suit remains pending, with the district court granting in part and denying in part the defendants’ motion for summary judgment in April 2012. See: *Logan v. Burge*, U.S.D.C. (N.D. Ill.), Case No. 1:09-cv-05471.

In another federal lawsuit, Jerry Miller, an honorably discharged Army veteran wrongfully convicted of rape, robbery and assault who spent 25 years in prison, received a $6.3 million settlement in 2010. See: *Miller v. Lenz*, U.S.D.C. (N.D. Ill.), Case No. 1:08-cv-00773.

Miller alleged that the Chicago police crime lab had withheld evidence that
would have cleared him; he was convicted based largely on mistaken eyewitness identification. Miller served his entire sentence and was cleared by DNA testing while on parole. His case was the 200th exoneration in the nation based on DNA evidence and the 27th in Illinois, according to the Innocence Project.

The cost of compensation – including settlements and awards in lawsuits filed by the wrongly convicted – is an expense that taxpayers must pay. The BGA/CWC study reported over $164 million in payments in the 85 wrongful conviction cases examined, plus $31.6 million in attorney fees. Additionally, taxpayers had to foot $18.5 million in incarceration costs for locking up people who were later exonerated. Thus, the total price tag for the wrongful conviction cases was estimated at $214 million, though the actual cost may reach $300 million after 16 pending lawsuits are resolved, including Logan’s.

High as the monetary costs may be, there are people who pay an even higher price for wrongful convictions – the victims of subsequent crimes committed by the actual perpetrators. After all, when someone is wrongly convicted, the real criminal remains free to commit more crimes. The BGA/CWC study reported that the actual perpetrators in some of the wrongful conviction cases (who were identified based on the same DNA evidence used to exonerate the innocent) went on to commit at least 94 felonies, including 11 sexual assaults and 14 murders.

“These numbers are dramatically high,” said Thomas P. Sullivan, a former U.S. Attorney who chaired the Illinois Capital Punishment Reform Study Committee. “If they are correct, or anywhere near correct, it certainly is another indication of why special care is needed in these prosecutions to avoid convicting someone who is innocent and failing to convict someone who is guilty.”

Yet police officials, prosecutors and the state’s own experts were largely responsible for the wrongful convictions. According to the BGA/CWC report, misconduct or errors by public officials contributed to 81 of the 85 wrongful convictions. The study found misconduct or mistakes by police in 66 cases, by prosecutors in 44 cases and by the prosecution’s forensic experts in 29 cases (more than one type of misconduct or error may have occurred in each case).

Cook County Judge Tommy Brewer noted that such misconduct “remind[s] us that what we call the criminal justice system is often anything but just. And to the extent justice is lacking in our criminal justice system, it is not because of human frailties but often the deliberate malfeasance of those we entrust to run the system.”

The BGA/CWC report noted that in many of the cases, the actual perpetrator was never investigated even when the police had clues to his identity. One possible reason for this was a fear by police officials that investigating the actual perpetrator after a wrongful conviction had been discovered could reveal evidence of police incompetence or misconduct that would prove damaging in subsequent lawsuits.

The BGA/CWC study recommended banning testimony by jailhouse informants, videotaping all interrogations related to violent crimes, reforming lineup procedures to reduce errors and increasing the transparency of investigations into police abuses as ways to help prevent future wrongful convictions.

Oregon Increases Sex Offender Registration Requirements

The State of Oregon posts online, in a publicly-accessible registry, information related to around 700 “predatory” or sexually violent sex offenders. A bill introduced in the state legislature in 2011 would have increased the number of sex offenders listed online to more than 14,000. That legislation failed to pass, but another bill, which expanded certain sex offender registration requirements, did.

There are nearly 18,000 convicted sex offenders living in Oregon at any given time. About 3,100 are juvenile offenders. All must register with the state, but less than four percent currently have their information posted on the website of the Oregon State Police (OSP).

That would have changed under Senate Bill 67 (2011 session). According to SB 67, the OSP could post information on the Internet about all of the state’s registered sex offenders, whether they are on active supervision or not and whether or not they are classified as predatory or violent.

For adult offenders who are not designated predatory, SB 67 would have allowed the OSP to post their name, date of birth, city of residence, zip code, physical description, a contact name and telephone number at the supervising agency, and the name of any higher education institutions where the offender may be working or attending classes. Online information about juvenile sex offenders would not include a physical description or photo, and only a birth year would be listed.

The intent of SB 67 was to make information about all registered sex offenders publicly available by city, county or zip code, according to OSP Registry Manager Vi Beaty. However, unlike predatory sex offender information, which is mapped within a 1-mile radius of their registered address, the postings for non-predatory sex offenders would not be made available in map form.

“The public can pull their own lists,” said Beaty. But if they want more specific information about a particular non-predatory offender, they would need to call the OSP and provide a public safety justification for their request.

SB 67 was referred to a committee upon adjournment of the Oregon legislature in June 2011, and did not pass. Similar legislation will likely be introduced in the future.

Another bill related to sex offender registration requirements in Oregon did pass, however. House Bill 3204 (2011 session) requires sex offenders to register in Oregon if they were convicted of a sex offense in a different state and are required to register in that state. Further, sex offenders who do not reside in Oregon, but who work or attend school in the state, also have to register.

Sex offenders must register within 10 days following their “discharge, release on parole, post-prison supervision or other supervised or conditional release”; within 10 days of a change of residence; annually within 10 days of their birth date; and within 10 days of working at or attending an institution of higher learning, or of a change in work or attendance status at an institution of higher learning.

HB 3204 also created an affirmative defense to a charge of failure to report or register as a sex offender: If the person “reported, in person, within 10 days of a change of residence to the Department of State Police, a city police department or a county sheriff’s office, in the county of the person’s new residence,” provided that they have “otherwise complied with all reporting requirements.”

HB 3204 was signed into law by Governor John Kitzhaber on August 2, 2011, and went into effect the same day.


Washington Prison Video Surveillance Recordings Exempt from Disclosure Under Public Records Act

by Mike Brodheim

In an unpublished opinion, the Court of Appeals of the State of Washington affirmed a trial court’s order dismissing an action filed by a state prisoner who alleged that the Department of Corrections (DOC) had violated the Public Records Act (PRA) when it refused to release prison surveillance video recordings. In so doing, the appellate court held the DOC had established that the recordings included intelligence information that was essential to effective law enforcement, and therefore were statutorily exempt from disclosure.

Through counsel, Frederick Fischer, a state prisoner confined at the Monroe Correctional Complex, submitted a request under the PRA for copies of surveillance video recordings which purportedly showed that he had been assaulted in the prison law library on November 20, 2007. Why Fischer needed the video footage was not reported. After the DOC denied his PRA request, Fischer filed for relief in state court, which took evidence at a show cause hearing in October 2009 and then dismissed the action.

On appeal, the appellate court noted that, upon request, public records must be disclosed unless specifically exempted by statute. It further noted that RCW 42.56.240(1) exempted from disclosure intelligence information gathered by law enforcement agencies if disclosure of such information would compromise effective law enforcement activities. Fischer contended that the specific recordings he had requested were not exempt under that provision because the monitor on which the recordings were displayed could be viewed in “real time” by prisoners in the library, and hence were not “essential to effective law enforcement.”

The Court of Appeals rejected Fischer’s argument. The Court noted that “real-time images do not reveal which cameras are [actually] recording, the hours of recording, the resolution and field of view of recording cameras, or staff members’ ability to control specific cameras.” Nor do such images reveal “which housings are empty.”

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Prison Legal News 27 June 2012
Florida Closes Oldest Boy’s School, Best Known for Abusive Past

Despite a reputation for brutality, the Arthur G. Dozier School for Boys in Marianna, Florida remained in operation until budget cuts forced its closure in June 2011. The facility, which opened in 1900 as the Florida State Reform School, housed youthful offenders ages 13 to 21. While the public came to know the school for abuses inflicted on young prisoners at the facility, the 50,000 residents of Jackson County, located in a rural area of the panhandle, viewed it as an economic engine that drove their community.

Four years ago the state placed a plaque in front of the Dozier School that acknowledged its dark history. During the 1950s and early 1960s, staff members would beat boys in a small building known as the White House. Offenses as minor as having a “bad attitude” or talking to black prisoners at the segregated facility would result in employees hitting youths up to dozens of times with a three-foot leather strap, often leaving them bloodied or bruised. Boys were forced to lie on a blood- and urine-stained cot while they were beaten, and an industrial fan was turned on to drown out their screams. There were also accusations of rape and sexual abuse by school officials.

Further, it was initially alleged that 31 graves on the school grounds contained bodies of young prisoners who had died as a result of abuse at the facility; however, the Florida Department of Law Enforcement investigated and found no evidence supporting that claim. [See: PLN, March 2009, p.22]

“There’s been 111 years of child abuse at this place,” said Bryant Middleton, 66, who was held at the school in the 1960s. Middleton and other men who served time at the facility filed an unsuccessful class-action lawsuit over abuses at the Dozier School, which was dismissed in 2010. See: Middleton v. Florida Dept. of Agriculture, Circuit Court for Leon County (FL), Case No. 37 2010 CA 000001.

State Senator Mike Fasano has since introduced several claims bills seeking compensation for victims abused at the school, but the bills failed to pass, most recently in March 2012 at the close of the legislative session.

In a deposition, former Dozier School administrator Troy Tidwell acknowledged that he disciplined boys with a leather strap in the White House, but argued they were “spankings” that did not constitute abuse. In defending his actions he said, “I just did what I was told to do.”

Supporters of the school claimed it later changed its direction and treatment of young prisoners. “The employees that were there now, the administration that was there now, were working hard to help those residents better themselves and return home,” said state Representative Marti Coley. “I visited and was pleased with what I saw.”

In recent years the population at Dozier, which was renamed the North Florida Youth Development Center, dwindled from several hundred to around 90. Less costly facilities that are better able to handle such small populations made the school’s closure inevitable. “It’s old,” said Coley. “They showed me the numbers after they made their announcement and it is costly to maintain.”

When the school shut its doors in June 2011 almost 200 employees were put out of work, which made a significant dent in the local economy. Several family generations had spent their working lives at the facility.

As a final nail in the Dozier School’s coffin, on December 2, 2011 the Civil Rights Division of the U.S. Department of Justice (DOJ) released a report that criticized state officials for failing to protect residents at the school and at other state juvenile facilities. The report found that staff members used excessive force and imposed excessive discipline for minor infractions; that staff lacked appropriate training; that juveniles did not receive appropriate rehabilitative services; and that youths were subject to unconstitutional frisk searches.

“Although Dozier and JJOC [the Jackson Juvenile Offender Center on Dozier’s campus] are now shuttered, these problems persist due to the weaknesses in the state’s oversight system and from a correspondent lack of training and supervision,” the report stated. “Our findings remain relevant to the conditions of confinement for the youth confined in Florida’s remaining juvenile justice facilities.”

The DOJ report found “reasonable cause to believe that the state of Florida was engaged in a pattern or practice of failing to have proper measures of accountability that led to serious deficiencies” in its juvenile justice system.

C.J. Drake, a spokesman for the Florida Department of Juvenile Justice, said the state had taken action to address the problems identified in the DOJ report. “The issues at Dozier occurred long before this administration took office and it was this administration that closed that facility,” he noted. “We... do not tolerate misconduct or poor performance. If we identify it we seek to correct it, and if it’s not corrected it’s closed.”

In addition to the Dozier School, the Hillsborough Juvenile Detention Center East in Tampa, the Osceola Juvenile Detention Center in Kissimmee, the Desoto Juvenile Correctional Facility in Arcadia and the Seminole Juvenile Detention Center in Sanford were closed in 2011 due to budget cuts.


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June 2012 28
Prison Legal News
The Yale Law Journal

PRISON LAW WRITING CONTEST

The Yale Law Journal welcomes submissions for our first Prison Law Writing Contest. If you are or recently have been in jail or prison, we invite you to write a short essay about your experiences with the law. The three top submissions will win cash prizes, and we hope to publish the best work.

1. Background

The Journal is one of the world’s most respected and widely read scholarly publications about the law. Our authors and readers include law professors and students, practicing attorneys, and judges. The Contest offers people in prison the chance to share their stories with people who shape the law and to explain how the law affects their lives. Where permitted by state law, the authors of the winning essays will receive prizes: $250 for first place, $100 for second place, and $50 for third place.

2. Topics

Please write an essay addressing one of the following questions:

- What does fair treatment look like in prison?
- How does your institution deal with inmates who are violent or disruptive? Are people sent to solitary confinement? Is the disciplinary system fair, and does it help to maintain order?
- Tell us about a notable or surprising experience you’ve had with another person in the legal system—whether a judge, a lawyer, a guard, or anyone else. What did you learn from it?
- The goals of criminal punishment include retribution (giving people what they deserve), deterrence (discouraging future crimes) and rehabilitation (improving behavior). What purpose, if any, has your time in prison served? Should one of these purposes be emphasized more?
- Have you ever filed a grievance with jail or prison authorities to complain about conditions? Tell us about it, and explain how the grievance process works. Are grievances effective? How do prison authorities respond to them? How do you feel about federal law’s requirement that prisoners file grievances before suing about prison conditions in court?
- If you have been released from prison, what challenges did you face in reentering society?
- How, if at all, do you maintain relationships with your family while in prison? Describe the prison rules that govern how much contact you can have with your family. How has being in prison affected your family relationships?

Please do not discuss your innocence or guilt or ask for legal assistance with your case. Submissions are not confidential. Whatever you write will not be protected by attorney-client privilege. If you have an attorney, please speak with your attorney before submitting your work.

3. Rules

You may submit an essay if you have been an inmate in a prison or jail at any point from January 1, 2010, through September 30, 2012. We welcome essays of about 1000-5000 words, or roughly 4-20 pages. Please type your submission if possible. If you must write by hand, please be sure your writing is readable. Feel free to work together with others, but your essay should be in your own voice.

Essays must be received by October 1, 2012. Email your submission to YLJprisonlaw@gmail.com if possible. If you do not have email access, please mail your work to: The Yale Law Journal, ATTN: Prison Law, P.O. Box 208215, New Haven, CT 06520-8215. Please include your name and the name of the institution where you are or were imprisoned, and tell us the best way to reach you now.
Federal Investigation, Prosecution Targets Indiana Sheriff’s Officers

by Derek Gilna

Several Lake County, Indiana Sheriff’s Department employees were the subject of a federal investigation into a gun-running scheme that resulted in criminal charges.

Lake County Sheriff John Buncich placed six staff members on administrative leave and stripped them of their law enforcement powers in May 2011 after they were served with subpoenas in the investigation. Those employees were Lt. Michael Reilly, Sgt. Joseph R. Kumstar, Capt. Marco Kuyachich and officers Ronald D. Slusser, Edward O. Kabella and Scott Shelhart.

The federal investigation culminated in the September 23, 2011 indictments of Kumstar, Kabella and Slusser on charges that they used their positions with the Sheriff’s Department to buy and sell fully automatic machine guns for personal profit. Kumstar was a former deputy chief, while Slusser was a SWAT officer; both Slusser and Kabella had federal firearms licenses. All three were charged with conspiring to provide false information to a federal firearms licensee, conspiring to provide false information to a federal firearms licensee, and conspiring to defraud an agency of the United States and making false statements under oath on a tax return.

Kumstar, Kabella and Slusser were accused of ordering dozens of machine guns and laser sights from firearms manufacturers, such as H&K, by claiming they were for law enforcement use by the Sheriff’s Department. Instead, they sold parts from the guns online for tens of thousands of dollars. Although Kumstar, Kabella and Slusser used county letterhead and purchase orders to obtain the weapons, they apparently paid for them using their own funds.

Kuyachich stated in a letter to the Sheriff’s Department that he was subpoenaed as a witness in the investigation, not as a suspect. Shelhart was cleared and reinstated to active duty in October 2011.

Kumstar, Kabella and Slusser agreed to plead guilty to the federal charges in September and October 2011, and resigned. They have not yet been sentenced. See: United States v. Kabella, U.S.D.C. (N.D. Ind.), Case No 2:11-cr-00134-JVB-PRC. The federal investigation included the FBI, IRS, ATF, Department of Defense and the FDA, which regulates laser devices.

It was initially thought the investigation involved the Sheriff’s Department’s discretionary fund, which might have been used to buy the weapons in the gun-running scheme. Under Indiana state law, a sheriff has sole discretion on how to spend profits from jail commissary and telephone funds, though he is required to submit reports regarding the fund to the county council twice per year.

According to former councilman and county financial consultant Larry Blachard, the Lake County Sheriff’s Department has not complied with the law. “We never received any reports. I can’t really say what was purchased was good or bad because I really don’t know. When I was on the council, my own feelings were that they were tax dollars... The majority of council [members] thought the law should be changed a little, so there’s some oversight by the fiscal body.”

Lt. Reilly and Sgt. Kumstar were reportedly in charge of discretionary fund audits that were criticized by the State Board of Auditors. State audits dating back to 2004 cited the department’s failure to provide accurate statements for the discretionary fund. In 2009, the auditors noted that “No individual in the Sheriff’s Department appears to have the responsibility of monitoring the fiscal activity or record keeping for the Sheriff’s Department.” However, there was no evidence that the discretionary fund was used to purchase the guns that Kumstar, Kabella and Slusser bought and sold.

Accountability problems with the Lake County Sheriff’s Department’s discretionary fund are apparently longstanding. During his previous term as sheriff in the 1990s, Sheriff Buncich was criticized for spending jail commissary funds on everything from steak dinners to conferences in Miami and Las Vegas.

Failure to Advise Defendant of Ineligibility for Early Release Credits Renders Guilty Plea Invalid

A trial court’s failure to advise a defendant of his or her ineligibility for early release credits renders a guilty plea unknowing and involuntary, the Division Three Court of Appeals for the State of Washington held in an unpublished ruling.

Michael Duke Coombes pleaded guilty to first-degree murder. Under Washington law, defendants convicted of first-degree murder must serve a mandatory minimum of 20 years before becoming eligible for earned release credits. RCW 9.94A.540(1)(a).

Coombes was not advised of this restriction prior to entering his guilty plea, and did not realize that he was ineligible for early release credits until he began serving his 300-month sentence. In fact, his judgment and sentencing orders left blank a section regarding the mandatory minimum, and a similar provision was struck from the plea agreement. Coombes subsequently filed a personal restraint petition seeking to withdraw the guilty plea.

Recognizing that “a defendant must be informed of all direct consequences of a guilty plea,” the Court of Appeals granted Coombes’ personal restraint petition and remanded the case to allow him to withdraw the plea.

“A recognized direct consequence of a guilty plea is the statutory prohibition against earned release credit during the period of the mandatory minimum sentence,” the appellate court wrote. As Coombes was not advised of the restriction on earned release credits, his guilty plea was unintelligent, involuntary and invalid, the Court of Appeals held.

The state argued that the trial court’s failure to advise Coombes of the statutory restriction on earned release credits was not material or prejudicial. The appellate court, however, rejected that argument based on materiality.

“A reviewing court cannot determine how a defendant arrived at his personal decision to plead guilty, nor discern what weight a defendant gave to each factor relating to that decision,” the Court of Appeals wrote. See: In re Coombes, 159 Wash.App. 1044 (Wash.App. Div.3, 2011); 2011 WL 240687.


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Prison Legal News 31 June 2012
CCA Anti-Prison Rape Shareholder Resolution Fails to Pass

As previously reported in *Prison Legal News*, PLN associate editor Alex Friedmann, who owns a small amount of stock in Corrections Corporation of America (CCA), filed a shareholder resolution with the company in November 2011. The resolution requested that CCA issue reports every six months on its efforts to reduce incidents of prisoner rape and sexual abuse at its for-profit facilities, including statistical data related to all such incidents during each reporting period. [See: PLN, April 2012, p.14; March 2012, p.18.]

According to Friedmann, who served six of his ten years in prison at a CCA-operated facility in Tennessee in the 1990s, the resolution was intended to prompt the company to focus on the issue of sexual assaults, particularly by CCA employees.

“If CCA has to report this information they will have a greater incentive to reduce rape and sexual abuse because it will make the company look bad if they have very high numbers,” he said. “And if they have to report this, the public, i.e., CCA shareholders, will be able to judge the effectiveness” of the company’s efforts.

In a letter to CCA’s board of directors, Friedmann wrote, “My resolution could not be filed with any other company outside the private prison industry because in no other industry do a company’s employees consistently engage in rape and sexual abuse.” Noting that CCA claims it has a zero-tolerance policy for sexual abuse, “this is an opportunity to prove it,” he stated.

Instead, CCA petitioned the Securities and Exchange Commission (SEC) to exclude the shareholder resolution, saying it planned to voluntarily produce less detailed reports related to rape and sexual abuse, claiming that reports on prison rape were part of the company’s ordinary business operations, and questioning Friedmann’s motives behind his resolution to have the company report on its efforts to reduce prison rape.

Friedmann obtained pro bono assistance from the law firm of Stroock & Stroock & Lavan LLP, and filed a response to CCA’s objections. The SEC rejected CCA’s arguments in February 2012, which led to the resolution being included in the company’s proxy materials along with a lengthy opposition statement from CCA.

“It’s a sad commentary when the nation’s leading private prison company, which routinely brags about being the fifth-largest corrections system in the country, strongly opposes a resolution that would require reporting on its efforts to reduce prison rape and sexual abuse,” observed PLN editor Paul Wright.

Friedmann drafted a formal solicitation statement in favor of the resolution, and, under SEC rules, required CCA to distribute it to approximately 4,600 shareholders at his expense. He also contacted a number of CCA’s institutional stockholders, asking them to support the resolution because it had an impact on investors.

“Shareholder resolutions are often framed in terms of risk, and indeed there are risks if CCA fails to reduce prisoner rape and sexual abuse, which include liability, adverse publicity and loss of business,” Friedmann said. “There is also the human cost to prisoners who are sexually assaulted at CCA facilities,” he noted.

After ISS Governance, one of the nation’s leading proxy advisory services, recommended that shareholders vote for the resolution, CCA took the deliberate step of issuing supplemental proxy materials urging shareholders to reject the resolution. Another proxy advisory firm, ProxyTell, also recommended a “for” vote on the resolution while a third, Glass Lewis, recommended an “against” vote.

Friedmann attended CCA’s annual shareholder meeting on May 10, 2012, and was afforded two minutes to formally present the resolution. During his presentation to the company’s executives and board members, Friedmann referred to CCA’s opposition to the resolution as “shameful” and “an affront not only to the reputation of this company and its employees and board members, but also to prisoners who have been sexually assaulted at CCA facilities.”

He noted that the resolution provided CCA with an opportunity to demonstrate it was willing to be transparent and publicly accountable in regard to its efforts to reduce incidents of rape and sexual abuse at its facilities, but that the company had failed to do so. CCA’s board of directors – including Thurgood Marshall Jr., who served as Cabinet Secretary under President Clinton, and former U.S. Senator Dennis DeConcini – had unanimously recommended that shareholders vote against the resolution.

Other activists attending the CCA annual meeting also made statements to the company’s executives and board members, including representatives from the Jesuits, the Sisters of Charity of the Blessed Virgin Mary, and a DC-based church with a number of ex-prisoner members. Outside CCA’s corporate office, several faith-based organizations staged a small protest during the meeting.

After Friedmann presented the resolution, CCA announced that it had failed to pass. The voting results, filed with the SEC several days later, indicated that 14.6 million shares voted in favor of the resolution and 64.35 million shares voted against, with 7.89 million shares abstaining and 5.33 million recorded as broker non-votes. Therefore, of the shares voting, around 18.5 percent voted for the resolution – or more than one in six of the voting shares.

“The results are significant,” said Friedmann, “particularly considering the public policy subject matter of the resolution and the fact that it was backed by a limited campaign initiated by a single shareholder – who is a former CCA prisoner, at that.” He commended the stockholders who voted 14.6 million shares for the resolution.

“Since almost 20% of the voting shares were in favor of this resolution, CCA’s management team should take notice – and action – accordingly,” added Wright, who noted that the SEC considers a 3% favorable shareholder vote to be successful enough to reintroduce a resolution the following year.

A number of national groups had expressed support for the resolution, including Just Detention International (www.justdetention.org), the nation’s leading organization working to stop prison rape and sexual abuse. Other supporting organizations included the National Center on Domestic and Sexual Violence; National Organization for Women; Justice Policy Institute; National Council of Women’s Organizations; National Center for Transgender Equality; Citizens United for the Rehabilitation of Errants (CURE); Justice Fellowship; National Lawyers Guild; Detention Watch Network; Partnership for Safety and Justice; and Enlace – an alliance of worker centers, unions and community organizations that works against corporate abuses.

The CCA shareholder resolution also generated a moderate amount of media coverage, including articles in *Truthout*, *Mother Jones*, the *Guardian* (UK), the *Nashville Business Journal*, the *Tennesse
Congregation Pidyon Shevuyim, N.A., a private Jewish organization that contracted with the Washington Department of Corrections (DOC), may not be sued under 42 U.S.C. § 1983 or the Religious Land Use and Institutionalized Persons Act (RLUIPA), the U.S. Court of Appeals for the Ninth Circuit held, as the organization is not a “state actor.”

Dennis Florer, a Washington state prisoner, sued the Congregation after his requests for a Torah, Jewish calendar and consultation with a rabbi were denied. Florer had contacted the Congregation for assistance with his requests for religious materials and services. The Congregation, however, refused to help him until he proved he was Jewish.

For example, Florer was asked to fill out a form so the Congregation could determine whether he was born to a Jewish mother or had undergone a proper conversion to Judaism. The Congregation’s decision to send Florer the form was the result of extensive talks between the Congregation and the DOC about limiting access to Jewish services to only those prisoners who were considered “really” Jewish. Florer, however, refused to complete the form.

In his subsequent lawsuit, he alleged the Congregation’s refusal to provide him with access to Jewish religious materials violated his First Amendment rights and RLUIPA. The district court dismissed Florer’s suit, finding the Congregation was not a state actor for the purpose of liability under § 1983 or RLUIPA. Florer appealed and the Ninth Circuit initially reversed.

According to the appellate court, the Congregation acted under color of state law because the DOC “employed” the Congregation “to facilitate [its] policies for Jewish prisoners.”

For example, Florer’s access to Jewish religious materials and services was entirely contingent on approval by the Congregation, part of which depended on the “Congregation’s voluntarily offered determination that Florer was not Jewish.” Thus, the Ninth Circuit held, the Congregation assumed the DOC’s obligations and maintained control over Florer’s access to Jewish materials and services.

See: Florer v. Congregation Pidyon Shevuyim, N.A., 603 F.3d 1118 (9th Cir. 2010).

On July 14, 2010, however, the appellate court granted the DOC’s motion to rehear the case, and the initial ruling was withdrawn pending the rehearing. The issues on rehearing included: 1) Is there a genuine issue of material fact as to whether Florer could only get Jewish religious materials and instruction from the Congregation? and 2) Does evidence in the record support the conclusion that Florer exhausted the DOC’s grievance process before suing the Congregation? See: Florer v. Congregation Pidyon Shevuyim, N.A., 611 F.3d 1097 (9th Cir. 2010).

Following rehearing, the Court of Appeals issued a superseding decision on April 15, 2011. The appellate panel reversed itself, finding that the denials of Florer’s requests for religious materials and services were not pursuant to a governmental policy, and that the defendants were not state actors. The issue of exhaustion was not reached.

The Ninth Circuit held that, “As relevant to this appeal, our inquiry to determine whether a defendant acted ‘under color of state law’ is the same under RLUIPA as it is under § 1983.” The Court then examined whether the Congregation met the standards for being considered a state actor, and found it did not under either the “public function” or “joint action” tests. Further, “There is nothing in the record that indicates that Defendants blocked [Florer’s] access to other religious communities or his ability to request religious materials and information from other individuals and organizations.”

Accordingly, the district court’s grant of summary judgment to the defendants was affirmed. Florer’s petition for a writ of certiorari to the U.S. Supreme Court was denied on January 9, 2012. See: Florer v. Congregation Pidyon Shevuyim, N.A., 639 F.3d 916 (9th Cir. 2011), cert. denied.

Sources: SEC filings, HRDC press releases, Nashville Scene, Mother Jones
Ohio Wrongful Conviction Results in $2.59 Million Settlement

On April 25, 2011, Raymond D. Towler, 53, received a settlement of $2,592,571 after serving almost 29 years for a rape he didn't commit. The award included a $600,000 annuity to provide ongoing monthly payments plus a $1.91 million lump sum payment; $78,800 of the settlement went to Towler’s attorneys for fees and costs.

The Ohio Controlling Board agreed to settle Towler’s claim, which will be paid from the state’s Wrongful Imprisonment Fund, after he was declared innocent by a Cuyahoga County judge.

Towler was convicted in 1981 of rape, felony assault and kidnapping, and sentenced to life plus 12-40 years. DNA testing of semen recovered from the 11-year-old female rape victim’s underwear revealed that Towler was not the perpetrator, and he was released in May 2010. “They had the wrong person and it took them a while to work it out,” he remarked. Both of his parents had died while he was incarcerated.

Towler had been convicted based on eyewitness testimony from the victim and her 12-year-old cousin. Eyewitness testimony has been shown to be highly unreliable, and is a factor in a substantial number of wrongful convictions.

Another former Ohio prisoner who was exonerated based on DNA evidence, Clarence Elkins, attended Towler’s court hearing when he was freed. Elkins served almost 8 years in prison before being exonerated, and filed a lawsuit that resulted in settlements totaling $6.3 million. [See: PLN, July 2011, p.11]

“You can’t make up for 30 years with any amount, but I plan to keep moving forward,” Towler stated. He was employed as a mailroom clerk at Medical Mutual of Ohio and said he intended to keep working. “I don’t want this money to change my world around money.” Despite his years in prison, Towler expressed that he has “no hate for anyone.”

Only a few other prisoners exonerated by DNA testing have served more time than Towler. The Ohio legislature passed sweeping legislation in the wake of Towler’s exoneration in an effort to prevent further wrongful convictions. See: Towler v. State of Ohio, Ohio Court of Claims, Case No. 2010-7148-WI.

Sources: The Columbus Dispatch, www.blog.cleveland.com

Ninth Circuit Holds No Due Process Right Created by California’s Parole Scheme

The Ninth Circuit Court of Appeals has decisively dismissed any lingering hopes that the federal courts might continue to review denials of parole to California prisoners, in order to determine whether such denials were supported by “some evidence” of the prisoner’s current dangerousness as required by state law.

Echoing the words of an appellate panel that had ruled similarly a week earlier, the Ninth Circuit stated that, in the recent decision of Swarthout v. Cooke, 131 S.Ct. 859 (2011) [PLN, March 2011, p.40], the U.S. Supreme Court “was unequivocal in holding that if an inmate seeking parole receives an opportunity to be heard, a notification of the reasons as to denial of parole, and access to their records in advance, that should be the beginning and the end of the inquiry into whether the inmate received [federal] due process.”

California prisoner Kenneth Roberts was convicted in 1986 of second-degree murder. He was denied parole at a 2006 hearing, due to the parole board’s “professed concerns about the nature of his offense – at the time, the judicially-approved standard for such denials.

Roberts unsuccessfully sought relief in state courts, claiming that the parole board’s decision was not supported by sufficient evidence that he currently posed an unreasonable risk of danger to society. By 2008, this had become the new standard for parole denials, as clarified by the California Supreme Court in In re Lawrence, 44 Cal.4th 1181, 190 P.3d 535 (Cal. 2008), and as subsequently adopted by the Ninth Circuit in an en banc decision, Hayward v. Marshall, 603 F.3d 546 (9th Cir. 2010) [PLN, June 2010, p.24]. Roberts then filed a habeas petition in federal court.

Following then-existing precedent, the district court granted habeas relief. As in Lawrence, the appellate court held that beyond the due process requirements for parole hearings described in Cooke, no other process was due under the U.S. Constitution for parole denials.

As a “second and separate reason” for denying relief, the Ninth Circuit wrote that “because there is no Supreme Court
precedent holding that a state governor must conduct a second parole hearing before reversing a parole board’s favorable decision,” the Antiterrorism and Effective Death Penalty Act (AEDPA) precluded granting Styre’s habeas petition. See: Styre v. Adams, 645 F.3d 1106 (9th Cir. 2011).}

**Arizona Jails Refuse to Incarcerate Some Offenders**

In 2007, Glendale, Arizona resident Robert Ortis, 41, had an appetizer and a few drinks at a business lunch. Driving from the lunch to his nephew’s house, he began to feel weak and turned red. He recognized a high blood pressure event and was able to get off the highway but collapsed in the front seat before he could get out of his car.

Paramedics were called; they told Peoria police that Ortis smelled of alcohol. That led to a DUI conviction with a mandatory jail sentence in 2008. Ever since then, Ortis has been trying to serve his sentence. The only problem is that the jail refuses to accept him as a prisoner.

Peoria is in Maricopa County; thus, as instructed by his trial judge, Ortis reported to the Lower Buckeye Jail for booking into the Maricopa County Jail (MCJ) system. That’s when the problems began.

Medical screening revealed that Ortis’ blackout had been caused by runaway high blood pressure. He still suffers from uncontrollable high blood pressure and a rare ear disease that rendered him nearly deaf. That left county authorities unwilling to book him into the jail system despite multiple attempts by Ortis to serve his sentence.

MCJ Lt. Brian Lee said county medical staff determine “whether a person is not physically worthy of jail, because once in, they become our liability.” As a result, some people convicted of minor offenses are rejected at intake. Lee said the Sheriff’s Office may “make reasonable accommodations” for medical conditions, and people are rejected only when supported by medical evaluations. This includes “rare instances where people had skyrocketing blood pressure or someone detoxing off of alcohol or drugs.” Serious offenders are booked into the jail system regardless of their medical condition.

Phoenix’s top prosecutor, Aarón J. Carreón-Aínsa, said jail rejections are not a big problem but can occur for medical reasons, when court paperwork is incomplete or when a defendant shows up late or doesn’t have government-issued photo ID. Rejections made up almost 10% of the offenders who surrendered themselves at the MCJ in 2010, for example.

Peoria City Attorney Steve Kemp would like to see home detention with electronic monitoring implemented in cases of jail rejections. He believes that would provide “greater accountability over defendants’ whereabouts” than simply rejecting them and sending them away. According to Kemp, it would also allow such offenders to address their medical issues at home. In other words it would save the county money that otherwise would be spent to provide medical services if those people were jailed.

Arizona cities that already use home detention for certain misdemeanor offenders include Phoenix, Glendale, Scottsdale, Goodyear and Surprise. Scottsdale Court Administrator Janet Cornell said home detention is a useful tool for when the jail rejects offenders due to medical conditions, though its appropriateness is determined by the court on a case-by-case basis.

Unfortunately home detention would not help Ortis. He asked for it during his most recent attempt to be booked into jail, but DUI carries a mandatory minimum jail term and home detention is only possible after serving a minimum amount of time in jail. Thus, despite his best efforts, he cannot complete his sentence.

“I’m just tired of getting chucked around,” he said.

Source: Arizona Republic
A June 2011 study by Santa Clara University criminal law professor W. David Ball examines the extent to which overcrowding in California’s prisons is a function of decisions made at the county level about how to deal with crime. Ball’s report compiles data from a ten-year period (2000-2009) to show that California’s 58 counties use state prison resources at dramatically different rates, and that 18 counties in particular – dubbed “high use” counties – send many more felons to state prisons than their violent crime rates would seem to justify.

Ball’s report asks whether the citizens of one county should subsidize the decisions made by officials of another county, including district attorneys, judges, police and probation officers (all elected or appointed locally), to address crime with prison (as opposed to jail or probation) more often than their own law enforcement officials may deem appropriate. Given differences in local policy choices – and the fiscal impact of those differences – Ball argues that state officials should “create incentives for counties to behave differently” in terms of their response to crime.

The report proposes the use of a new metric, the “violent crime coverage rate” – the ratio of new felon admissions (NFA) to reported violent crime (murder, rape, robbery and aggravated assault) for a given county during a given year – to measure “justifiable” incarceration; that is, incarceration driven by violent crime as opposed to county policy choices. Ball suggests that defining “justified incarceration” in this way will enable state officials to devise policies to manage county use of state prison resources “without either penalizing crime-ridden areas or rewarding prison-happy ones.”

The report found state-wide annual averages of 185 NFA and 820 violent crimes, both calculated per 100,000 adult population at risk (APAR), yielding a statewide violent crime coverage rate of 22.5%.

In the 18 “high use” counties, which include Alameda, Marin, Sacramento, San Francisco, Santa Cruz and San Diego, the report found annual averages of 122 NFA and 836 violent crimes per 100,000 APAR, yielding a low use coverage rate of just 14.6%.

Ball segregated Los Angeles County for separate analysis; with a population of 10 million people, it is too large to include within any of the other categories without skewing the results. With a violent crime coverage rate of 18.8%, Los Angeles would otherwise have fallen within the low use category.

In the remaining 25 California counties, deemed by Ball to be “middle use,” the report found an average annual coverage rate of 27.6%.

Significantly, using regression analysis, Ball determined that changes in violent crime rates account for only 3% of the variance in NFA rates. In other words, violent crime rates have little bearing on the number of state prison sentences meted out by the counties.

Ball illustrates this point by comparing Alameda (a low use county) with San Bernardino (high use). The two counties have similar population sizes and similar amounts of reported violent crime, as well as similar amounts of reported property crime. Yet from 2000 to 2009, San Bernardino sentenced 3.5 times as many felons to prison as Alameda County.

To put this in perspective, if all California counties incarcerated at the high use rate (35.9%), the state would have to find room to house an additional 26,000-plus NFAs each year and the cost to taxpayers, Ball estimates, would be an additional $890 million during the first year alone. Conversely, if all counties adopted the low use coverage rate (14.6%), 15,000-plus fewer prisoners would be sent to state prisons each year, with first-year savings estimated at more than $500 million.


The Last Gasp: The Rise and Fall of the American Gas Chamber, by Scott Christianson
(University of California Press, 2011).
344 pages, $18.95 paperback

Book review by Julie Etter

Scott Christianson’s new book, released in paperback in July 2011, continues the author’s prolific examination of the history of the U.S. criminal justice system. The Last Gasp looks at the American gas chamber by juxtaposing the gruesome specifics of this form of capital punishment against the social and political influences surrounding the chamber’s popularity and eventual decline as a means of execution.

Christianson’s research illustrates how the development of chemical warfare in World War I encouraged the “chemical-wartime-industrial-education complex” to lobby for the creation of peacetime uses for lethal gas after the war. Commercial uses included fumigation of immigrants at Ellis Island, and pesticides for agriculture as an efficient way to kill off pests and reduce threats of disease. Unfortunately, the concurrent popularity in the belief of eugenics and euthanasia led policymakers to reason that lethal gas could also be used as a form of capital punishment. Pseudo-scientific support helped influence the public to romanticize the use of hydrogen cyanide as a “painless” way to carry out executions.

The American gas chamber was first used in Nevada in February 1924, when murderer Gee Jon was executed. During the time the chamber was in use, 594 men and women met their deaths within it. North Carolina used the gas chamber most often, with 197 executions. As professional reports and eyewitness accounts collected over the decades revealed the agonized, brutal deaths of its...
victims, the public began to doubt the gas chamber’s purported humanity. Also, the early instability of the chamber’s structure put the safety of observers in question. In one infamous incident, all observers to an execution were ordered out of the adjoining rooms due to fears that the gas had leaked out of the chamber. While the Supreme Court declined to rule on the constitutionality of lethal gas, intense international pressure made the 1999 gassing of Walter LeGrand in Arizona the last such execution in the United States to date.

The idea of eugenics is pervasive in Christianson’s examination of the gas chamber. He shows how the advent of lethal gas executions in the United States in the 1920s and 1930s had a troubling parallel: American inventors and lawmakers championed the humanity of the gas chamber for condemned prisoners, while the Nazis used gas chambers as a form of mass murder in their pursuit of a pure Ayran nation through eugenics.

The Last Gasp offers evidence of American and German chemical patent exchange during the rise of the Nazi Party, which resulted in little to no criminal prosecution of the American business executives involved. While sometimes Christianson’s connection between the U.S and Nazi use of lethal gas is tenuous, the implication is shocking and begs a long-overdue examination of U.S. racism and anti-Semitism, and how the atrocity of the Holocaust might be more familiar to American penology than most people care to acknowledge.

Advocacy for eugenics among prominent U.S. citizens and the implied link to the Nazis’ use of eugenics in the Final Solution puts into perspective what it means to give a government unchecked power to kill off its own citizens – even those who have committed heinous crimes. Today, even a rudimentary examination of the U.S. justice system demonstrates the prevailing influence of eugenics: those deemed unfit for society are disproportionately poor, people of color and mentally disabled, as evidenced by the sprawling mass of our nation’s prison system.

Despite its topical focus, The Last Gasp’s analysis of eugenics raises arguments that could apply to the increasingly questionable use of lethal injection. The book also summarizes and discusses some of the landmark Supreme Court cases dealing with the concept of cruel and unusual punishment, and supplies great insights for the amateur legal reader seeking historical and social analysis of some of the best-known landmark cases regarding the 8th Amendment. The Last Gasp provides a new angle to argue against the death penalty; the book is filled with facts that you’ll want to read out loud to anyone willing to listen, and offers compelling insights and original research detailing the rise and fall of the American gas chamber.
Michael Eugene Rudkin, 41, a former BOP guard employed at the Federal Correctional Institution (FCI) in Danbury, Connecticut, apparently did not learn his lesson following his first conviction.

In 2008, Rudkin pleaded guilty to engaging in oral sex with a female prisoner at FCI Danbury in exchange for candy, cigarettes and alcohol. He had also plotted with the prisoner to kill his wife, offering her $5,000 from his wife’s life insurance policy. Rudkin was charged with these beautiful gifts!

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Handmade hemp tote bag had only played along with the murder-for-hire plot. “The evidence adduced at trial showed that Rudkin initiated the contact regarding the murder for hire and tenaciously pursued the [hit-man] contact that his fellow inmates procured for him,” the appellate court stated. See: United States v. Rudkin, 427 Fed.Appx. 824 (11th Cir. 2011).

This case draws some interesting parallels to another recent case involving a BOP guard, employed at FCI Coleman, who was convicted of arranging an assault that resulted in a prisoner’s murder (see related article in this issue of PLN, pg. 44).

Additional source: Orlando Sentinel

Pennsylvania County Prisons Not Reporting Critical Incidents

The Pennsylvania Department of Corrections (PDOC) requires county prisons to submit monthly “extraordinary occurrence” reports as part of the department’s duty to inspect local lock-ups and identify deficiencies. However, the accuracy of the self-reported data has been faulty in some cases and many county prisons fail to file the reports, according to a July 2011 series of news articles.

The PDOC has required “extraordinary occurrence” reports for over a decade. County prisons were required to submit the reports annually until the PDOC began demanding monthly reports in 2009. The reports quantify use-of-force incidents by guards, plus assaults, suicides, homicides, escapes, fires and other unusual events at the state’s 69 county prisons, which are equivalent to jails.

There is no penalty for failing to file the reports, as the PDOC has no jurisdiction over local prisons. “If reports are not received,” said PDOC spokeswoman Susan Bensinger, “it is listed as a deficiency for the upcoming inspection. When the county is deficient, they must provide a plan of action to remedy the deficiency.”

Two-thirds of all Pennsylvania county prisons failed to submit reports for one or more months in 2009 and 2010. In the first two months of 2011, 17 prisons did not submit reports for one or both months. The prison in Cambria County has failed
to file reports since 2009, and the Beaver County Prison did not report in 2010. The Lancaster County Prison missed two reports in 2009 and one in 2010.

“What does it mean if they don’t take seriously reporting requirements about crimes taking place in their facilities?” asked Grayfred Grey, a retired attorney and member of Have a Heart, a group concerned about jail operations.

The fact that county prisons lose points on PDOC inspections if they fail to file reports seems to be of little consequence to local officials. Their bigger concern is being compared to non-reporting facilities. “I don’t want to be compared unfairly to other prisons that aren’t reporting numbers,” stated Lancaster County Prison Warden Vincent Guarini.

The PDOC says the reports are necessary, even if they have no way to enforce compliance. “Our inspectors use the statistical information provided to determine if there are any trends developing,” said Bensinger. When a spike in suicides is identified, for example, the PDOC offers training resources to prevent such occurrences.

One potential trend is an increasing number of use-of-force incidents at the Lancaster County Prison. Such incidents increased from 254 in 2009 to 284 in 2010. The prison reported 109 use-of-force incidents during the first two months of 2011 alone.

“Lancaster County Prison is the ninth-largest county prison in Pennsylvania,” noted Jean Bickmire, a staff member with Justice & Mercy, a non-profit prison advocacy organization. “Yet its extraordinary occurrence reports place it much higher than we’d expect.” Some, however, question the accuracy of the county prisons’ self-reported data for the facilities that do file reports with the PDOC. “I suspect that there may be more incidents than are self-reported,” observed Mary Steffy, director of Mental Health America of Lancaster County.

Incidents at the Lancaster County Prison are representative of such concerns. PDOC records reflect two occasions when guards used batons against prisoners while subduing them. Guarini said guards at the prison do not carry batons, and that the PDOC “entered incorrectly” the information regarding those incidents. Bensinger replied that the information about the batons was included in the prison’s own report.

Another issue raises doubts about the accuracy of self-reporting by the county prisons. From 2008 to early 2011, Lancaster County Prison did not report any assaults by guards on prisoners. Yet in 2008, prison guard Silvestre Villarreal, Jr. assaulted a prisoner shackled to a bed at a local hospital, repeatedly punching him until nurses intervened. He was later charged and convicted. [See: PLN, Nov. 2009, p.1].

Another Lancaster County prison guard also was convicted of abusing prisoners, and two other guards were fired or resigned amid allegations of abuse. Yet apparently none of those incidents were included in reports submitted to the PDOC.

Further, a number of lawsuits have been filed against the county alleging excessive force or brutality by prison staff. In one of those cases, two former Lancaster County prison guards, Cindy Heistand and Betty Jane Robinson, testified at trial in October 2010 about abuses at the facility in a lawsuit filed by prisoner Paul Barbacano. Barbacano alleged that guards had slammed his head into doors and walls, and punched him in the head and face. The federal jury deadlocked, and the case settled for $75,000 in December 2010 before a retrial was held. See: Barbacano v. Guarini, U.S.D.C. (E.D. Penn.), Case No. 5:08-cv-05098-AB.

One state lawmaker said changes were needed to ensure accurate reporting. “I’m not pleased that Lancaster County Prison is not reporting statistics every month. There’s no excuse not to report every single month. This is true for all counties. They need to report every month on time,” said state Senator Mike Brubaker. “I’m committed to changing that legislatively, if that is indeed something I can do. If we need to offer new legislation, including penalties for non-reporting, I’m prepared to do that.”

Source: http://lancasteronline.com

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See page 53 for more information.
**Iowa Supreme Court Holds Billing for Fraudulent Prisoner Phone Calls Not a State Law Violation**

**by Brandon Sample**

A prisoner does not incur a “strike” under the Prison Litigation Reform Act (PLRA) unless his or her suit is dismissed entirely as frivolous, malicious or for failure to state a claim, the U.S. Court of Appeals for the Seventh Circuit held on November 2, 2010. On remand, the district court denied the defendants’ motion for summary judgment, crediting the plaintiff’s testimony that he had tried to exhaust the prison’s grievance process. The PLRA prohibits prisoners from proceeding in forma pauperis (IFP) if they have “brought” three or more actions or appeals that were dismissed by a court as frivolous, malicious or for failure to state a claim. 28 U.S.C. § 1915(g). The only exception to this three-strikes denial of IFP status is if the prisoner can show that he or she is in “imminent danger of physical injury.”

Gregory J. Turley, an Illinois state prisoner housed at the Menard Correctional Center, sued various Illinois prison officials alleging retaliation for grievances that he had filed. The district court denied Turley’s request for IFP status on the basis that he had accumulated at least three “strikes” under the PLRA. The court based this conclusion on three lawsuits that Turley had filed previously, each of which included some claims that were dismissed for failure to state a claim or for failure to exhaust administrative remedies. In one of the suits, though, Turley settled his claims that were not dismissed. In another case he lost on summary judgment. In the third lawsuit, the court granted summary judgment to the defendants after holding that Turley had failed to exhaust his administrative remedies under the PLRA.

Turley appealed the district court’s denial of IFP status in his grievance retaliation case, arguing that he had not “brought” three or more suits or appeals that were dismissed as frivolous, malicious or for failure to state a claim. The Seventh Circuit agreed.

“Section 1915(g) literally speaks in terms of prior actions that were dismissed as frivolous, malicious, or for failure to state a claim,” the appellate court wrote. “The statute does not employ the term ‘claim’ to describe the type of dismissal that will incur a strike.”

Consequently, the Court of Appeals found that a PLRA “strike” is only “incurred for an action dismissed in its entirety on one or more of the three enumerated grounds” in § 1915(g). In so holding, the Seventh Circuit joined the

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**On October 14, 2011 the Iowa Supreme Court held that a prison telephone company did not commit a “cramming” violation by improperly billing a third party for fraudulent collect calls made by a prisoner.**

Evercom Systems, Inc. provides phone services to more than 2,900 detention facilities nationwide, including the Bridewell Detention Center (Bridewell) in Bethany, Missouri.

On January 25, 2006, Evercom informed Iowa resident Ken Silver that on the previous day “over fifty dollars of collect calls had been accepted by his (Des Moines, Iowa) business line and that Evercom was placing a temporary block on his line.”

Silver denied accepting or having any knowledge of the calls. Evercom agreed to investigate and get back with him in 7-10 days. The next day, however, the company sent Silver a letter stating the charges would not be removed because “a thorough investigation” found no system deficiencies. Silver did not receive the letter because Evercom mailed it to an incorrect address; his local telephone company billed him $78.21 for the collect calls.

After several unsuccessful attempts to get Evercom to remove the charges, on February 27, 2006, Silver filed a complaint with the Iowa Attorney General’s office. Evercom quickly investigated and “concluded that the calls were not made to Silver’s business but [were] the result of a prisoner and an outside third party.”

“Glare fraud occurs when one caller dials into a telephone number associated with a particular telephone line (called a trunk) at the same time a caller is dialing out over the same trunk ... the two callers will simultaneously seize the ends of a single trunk and the charges will be billed to the number being dialed out over the trunk rather than to either of the persons on the call, even though the owner of the outgoing number will never actually be involved in the call.”

Evercom finally credited Silver’s account on March 22, 2006. Eight days later, Silver’s complaint was forwarded to the Iowa Utilities Board (Board). “The Office of Consumer Advocate (OCA) petitioned the Board for a determination that Evercom had committed a violation of a statute or rule regarding cramming and requested that the Board impose a civil penalty.”

Cramming “is the addition of a product or service to a customer’s account, for which a separate charge is made, without that customer’s verified consent.”

An administrative law judge found “it was undisputed that Silver did not receive or accept the [fraudulent] collect calls from Bridewell ... ‘there is no question that a cramming violation occurred and that Evercom violated Iowa Code section 476.103 [rule 199-22.23]’ when it billed Silver for five unauthorized calls.” As a result, the Board imposed a $2,500 civil penalty against Evercom.

The company appealed, and a state district court determined that there was no cramming violation, no statute or rule had been violated and the civil penalty should be rescinded. The Iowa Court of Appeals reversed and reinstated the penalty.

Evercom then appealed to the Iowa Supreme Court, which reversed the appellate court, holding that “a proper reading of the rule excludes all disputes regarding billing for collect calls from the definition of cramming.” As defined in rule 199-22.23(1), cramming “cannot include mistaken or improper billing of collect calls, particularly when it is the result of third-party fraud.” Therefore, the Supreme Court concluded that “the district court properly invalidated the Board’s decision and rescinded the civil penalty.” See: Evercom Systems, Inc. v. Iowa Utilities Board, 805 N.W.2d 758 (Iowa 2011).
Fifth, Sixth, Eighth and D.C. Circuits, which had reached similar decisions.

The appellate court also held that because “failure to exhaust administrative remedies is statutorily distinct from [dismissal for] failure to state a claim,” a “dismissal for failure to exhaust [] does not incur a strike.”

The judgment of the district court denying Turley’s motion for IFP status was accordingly reversed, and the case remanded for further proceedings. See: 

Turley v. Gaetz, 625 F.3d 1005 (7th Cir. 2010).

Following remand, on February 11, 2011 the district court considered Turley’s IFP motion and found he had alleged a facially valid retaliation claim, noting that “Prison officials may not retaliate against inmates for filing grievances or otherwise complaining about their conditions of confinement.” Claims against several of the defendants were dismissed, however, and the court declined to grant a temporary restraining order or preliminary injunction. See: Turley v. Gaetz, 2011 WL 615342.

The defendants filed a motion for summary judgment, alleging that Turley had failed to exhaust administrative remedies as required by the PLRA. The district court held a hearing pursuant to Pavey v. Conley, 544 F.3d 739 (7th Cir. 2008), then issued a ruling on March 23, 2012 denying the defendants’ summary judgment motion. The court found that Turley’s testimony – that he had filed grievances but never received a response from prison officials – was reliable and “backed by the evidence in the record.”

The district court held that Turley was “not required to further exhaust his remedies when he failed to receive a response from Defendants,” citing Walker v. Sheahan, 526 F.3d 973, 979 (7th Cir. 2008) and Dole v. Chandler, 438 F.3d 804, 809 (7th Cir. 2006) [PLN, July 2007, p.39], and found that grievance record-keeping at Menard was “inaccurate and unreliable.” However, as there was no evidence that Turley had filed a grievance related to his claim that the defendants retaliated against him by denying him prison job assignments, that claim was dismissed.

Turley’s lawsuit remains pending on the defendants’ second motion for summary judgment, which was filed on April 23, 2012. He is litigating the case pro se. See: Turley v. Gaetz, U.S.D.C. (S.D. Ill.), Case No. 3:09-cv-00829-SCW.
$47,500 Awarded to Massachusetts Prisoner Held in Segregation without Hearing

On January 27, 2012, a Massachusetts U.S. District Court awarded $47,500 to a prisoner for due process violations that resulted in 375 days of solitary confinement.

Massachusetts state prisoner Albert Ford filed a civil rights action alleging that his placement in the Department Disciplinary Unit (DDU) at MCI-Cedar Junction without a hearing, as a pretrial detainee and later as a convicted prisoner, violated his substantive and due process rights under the U.S. Constitution and the Massachusetts Declaration of Rights.

Ford began serving time at MCI-Cedar Junction in 1980 and was placed in the DDU in or about 1992 or 1993. While in the DDU on July 1, 2002, he was involved in an altercation that resulted in guards being stabbed and a nurse being taken hostage. Consequently, Ford was sanctioned with ten years in the DDU, which is a restricted solitary confinement unit.

Ford was later indicted in state court for armed assault with intent to murder for the incident involving the guards and nurse. With his sentence set to expire on January 7, 2007, the local sheriff’s office obtained approval from the district attorney for Ford to remain at MCI-Cedar Junction as a pretrial detainee, which is permitted under Massachusetts law.

Ford remained in the DDU upon expiration of his sentence until he was granted, and posted, bail in March 2007. On June 26, 2007, his bail was revoked on a charge of mailing heroin to a prisoner at MCI-Cedar Junction. Upon his return to prison, Ford was again placed in the DDU to continue serving his original ten-year sanction. He was continued on that status after pleading guilty to the armed assault and heroin charges, receiving a 4-5 year sentence.

In his civil rights complaint, Ford alleged that placing him in the DDU after his original sentence expired, after his bond was revoked and after his new conviction, without a hearing, violated his due process rights. Cross-motions for summary judgment were filed and the district court entered judgment in favor of Ford on November 16, 2010. The court found that James Bender, Deputy Commissioner of the Massachusetts Department of Correction, and Peter St. Amand, Superintendent of MCI-Cedar Junction, had violated Ford’s rights by keeping him in the DDU without a new hearing after he had completed his original sentence.

The district court held a damages trial in July 2011. The court found that Ford was only released from the DDU after the defendants were ordered to hold a hearing to determine if he should remain in DDU status. Ford was awarded $100 per day for each of the 375 days he was held in the DDU illegally, totaling $37,500. Further, the court awarded him $10,000 for mental anguish caused by being housed in the DDU after his bail was revoked.

The district court made a significant finding as to 42 U.S.C. § 1997e(e), which prohibits a prisoner from bringing a claim for mental or emotional injury while in custody without a prior showing of physical injury. The court held that an affirmative defense that must be raised in the defendants’ answer, and their failure to do so constituted a waiver. Additionally, the court found that § 1997e(e) does not preclude recovery for injuries caused by the deprivation of due process constitutional rights, as they are distinct injuries from claims for mental and emotional harm. See: Ford v. Bender, U.S.D.C. (D. Mass.), Case No. 1:07-cv-11457-JGD; 2012 WL 262532.

The defendants subsequently filed a motion to vacate the judgment or to alter or amend the judgment in their favor, which was denied by the district court on April 19, 2012. They have since appealed to the First Circuit, which remains pending.

Tenth Circuit Voids Albuquerque’s Attempt to Ban Sex Offenders from Libraries

by Derek Gilna

In a case of first impression, on January 20, 2012 the Tenth Circuit Court of Appeals affirmed a district court’s judgment invalidating an ordinance of the City of Albuquerque, New Mexico that prohibited registered sex offenders from entering the City’s public libraries.

The district court had granted summary judgment in favor of a John Doe plaintiff, ruling that the ban “burdened Doe’s fundamental right to receive information under the First Amendment and that the City failed sufficiently to controvert Doe’s contention ... that the ban did not satisfy the time, place, or manner test applicable to restrictions in a designated public forum.”

The Court of Appeals noted that the City of Albuquerque presented evidence as to the reasons or justifications for the ban, or whether the ban was narrowly tailored to specifically deal with the interest sought to be protected, or whether there was any alternative method for the banned class to obtain information available in libraries, the result might have been different.

Doe filed the lawsuit in response to a March 4, 2008 “Administrative Instruction” that barred all registered sex offenders from using Albuquerque public libraries. The suit, filed in October 2008, alleged violations of his civil rights under 42 U.S.C. § 1983, specifically violation of the right to receive information under the First Amendment and violation of the right to equal protection under the Fourteenth Amendment. Doe sought declaratory relief in the form of a ruling that the ban was unconstitutional, and injunctions barring the City from denying him access to its public libraries.

The City’s motion to dismiss was denied, and Doe filed a motion for summary judgment citing Ward v. Rock Against Racism, 491 U.S. 781 (1989), which set forth various tests as to the time, place and manner of access to public forums such as libraries. The City’s response argued that since Doe raised a “facial” challenge to the constitutionality of the ban, he had to show that the law could not be constitutionally applied under any circumstances, and thus Ward did not apply. The district court disagreed and granted summary judgment to Doe in March 2010. See: Doe v. City of Albuquerque, U.S.D.C. (D. N.M.), Case No. 1:08-cv-01041-MCA-LFG.
On appeal, in reviewing the denial of the City’s motion to dismiss, the Tenth Circuit noted that Doe’s complaint had met the tests established by Ashcroft v. Iqbal, 556 U.S. 662, 129 S.Ct. 1937 (2009) and Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007). The appellate court also noted that Stanley v. Georgia, 394 U.S. 557 (1969) and its progeny held “It is now well-established that the Constitution protects the right to receive information and ideas [and] ... is fundamental to our free society.” As such, there was no presumption of constitutionality for the sex offender library ban.

In its review of the district court’s summary judgment order, the Court of Appeals found that the ban “can survive constitutional scrutiny only if the City, as the party with the burden of proof, makes a showing that the ban is narrowly tailored to serve a significant governmental interest and leaves open ample alternative channels of communication.”

The Tenth Circuit said attempts to argue that Doe’s challenge must meet the test set forth in United States v. Salerno, 481 U.S. 739 (1987) or Citizens United v. FEC, 130 S.Ct. 876 (2010) did not apply under this set of facts, where there was no “tailoring” done by the City. “By prohibiting registered sex offenders from the ... public libraries, the City’s ban precludes these individuals from exercising ... a fundamental right,” the appellate court wrote.

What decided the case, however, was the Tenth Circuit’s determination that the City had not met its “summary judgment burden.” The City “provided no justification or reasons for its ban ... the City did not present any evidence that its ban was narrowly tailored to serve its interest in providing a safe environment for library patrons... By not making any showing as to alternative channels of communication, the City failed to meet its Rule 56 burden in responding to Doe’s motion ... we must conclude ... that the City’s ban does not constitute a permissible time, place, or manner restriction under the Ward test ... [and] affirm the district court’s grant of summary judgment in favor of Doe.” See: Doe v. City of Albuquerque, 667 F.3d 1111 (10th Cir. 2012).

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Seven Florida Prison Guards Arrested

Seven Florida state prison guards, employed at two facilities at opposite ends of the state, have been charged with criminal misconduct in unrelated incidents.

The first four arrests occurred on June 10, 2011, when U.S. Marshals arrested South Florida Reception Center (SFRC) guards Alexander McQueen, 30, Guruba Griffin, 31, Scott Butler, 32, and Steven Dawkins, 30. All were indicted on federal charges of conspiring to violate the civil rights of prisoners at SFRC.

The four guards were accused of attacking juvenile prisoners in “Bravo” dorm with a broom and mop in February 2009. They then forced the prisoners to fight each other. When an unidentified guard walked by and saw injuries to one prisoner, the guards who were later indicted told him, “You need to go.”

McQueen was also charged with trying to “corruptly persuade” the guard who had walked by, who became a witness in the case. Additionally, McQueen and Dawkins were charged with obstructing an investigation by filing false reports that claimed one of the prisoner’s injuries resulted from a fall in the shower.

“I have ordered the immediate termination of the officers arrested today at the South Florida Reception Center,” said then-Florida Department of Corrections (FDOC) Secretary Edwin Buss.

Griffin pleaded guilty to one count of deprivation of rights under color of law, and was sentenced on February 22, 2012 to 12 months in prison and one year on supervised release.

The other three SFRC guards went to trial on October 18, 2011. Dawkins was convicted on one count of filing a false report, and sentenced on January 30, 2012 to one month imprisonment plus one year on supervised release. McQueen, convicted of conspiracy and filing a false report, was sentenced to concurrent terms of 12 months plus one year on supervised release on January 30, 2012. Butler was acquitted of one count of deprivation of rights under color of law.

In a separate case, three FDOC guards, employed at the Wakulla Correctional Institution, were arrested on July 6, 2011 by state law enforcement officers.

Major Joseph Garrison, 39, was charged with one count of official misconduct, Captain Megan Dillard, 31, was charged with 13 counts of official misconduct and guard Andrew Gazapian, 23, was charged with one count each of official misconduct, battery and fabricating evidence.

The official misconduct charges were related to false disciplinary reports filed against 13 prisoners. Another prisoner was beaten during a prison-to-prison transfer after making a disparaging remark about Dillard; he was later sprayed with chemical agents by Gazapian. Gazapian then filed a false report claiming the prisoner had bitten him on the thumb, but an investigation revealed that Gazapian bit himself.

“I have no tolerance for the kind of behavior they are accused of,” said Buss, who praised other FDOC employees who reported their co-workers’ misconduct to the prison system’s inspector general. “Those officers refused to allow bad behavior. They have the courage and integrity worthy of the corrections profession.”

The charges against the trio of Wakulla guards remain pending; if convicted, they risk losing their accrued retirement benefits.


Second BOP Guard Convicted in Connection with Prisoner’s Murder

by Brandon Sample

A second federal Bureau of Prisons (BOP) guard who helped arrange an assault on a prisoner that resulted in the prisoner’s death has been convicted of federal civil rights violations.

On July 8, 2010, Michael Kennedy was found guilty of violating the civil rights of Richard Delano, a former prisoner at the U.S. Penitentiary I in Coleman, Florida. Delano was killed in 2005 after his cellmate, John Javilo “Animal” McCullah, attacked him in exchange for a pack of cigarettes provided by Kennedy.

Kennedy helped arrange the assault after one of his BOP coworkers, Erin Sharma, was injured a month earlier by Delano. Delano had allegedly grabbed Sharma’s arm through the food trap in his cell door, leaving her with bruises.

As payback, Sharma and Kennedy conspired to have Delano assaulted; for example, they lied to the shift lieutenant in order to have him moved into a cell with McCullah. McCullah, who was serving a life sentence, beat Delano into a coma in exchange for the pack of smokes and because Delano had a reputation as a snitch. Delano died 13 days later and McCullah was transferred to the BOP’s supermax facility in Florence, Colorado.

Sharma was convicted in July 2009 of violating Delano’s civil rights, and sentenced to life in prison. [See: PLN, Jan. 2010, p.30]. She appealed her conviction and sentence, which were affirmed by the Eleventh Circuit Court of Appeals in an August 24, 2010 ruling that found her actions were “the proximate cause of Delano’s death.” See: United States v. Sharma, 394 Fed.Appx. 591 (11th Cir. 2010), cert. denied.

Kennedy, convicted of conspiracy against rights and deprivation of rights under color of law, was sentenced on December 16, 2010 to 108 months in federal prison plus two years on supervised release and 50 hours of community service. See: United States v. Kennedy, U.S.D.C. (M.D. Fla.), Case No. 6:09-cr-00217-ACC-DAB.

Kennedy appealed the district court’s application of a vulnerable victim enhancement used to increase his sentence, which was affirmed by the Eleventh Circuit on September 23, 2011. “[I]nmates can be vulnerable victims ... by virtue of being confined in a cell with another inmate, and therefore unable to escape his assault,” the appellate court wrote. See: United States v. Kennedy, 441 Fed.Appx. 647 (11th Cir. 2011).

Sources: www.ocala.com, www.digitaljournal.com, Department of Justice press release

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Washington Prisoners Have No Right to Inspect Records Under Public Records Act

by Brandon Sample

Prisoners who request records from the Washington Department of Corrections (DOC) under the Public Records Act (PRA) do not have a right to inspect records without cost, the Court of Appeals, Division II held in a corrected ruling entered on March 4, 2011. The appellate court’s opinion joins a similar, earlier decision reached by the Court of Appeals, Division III.

DOC prisoners Derek E. Gronquist and Byron A. Mustard requested that they be allowed to inspect various records maintained by the DOC. The PRA allows requesters to ask for inspection instead of copies of records, but the DOC only allows prisoners to inspect their central file and medical file. Gronquist and Mustard wanted to inspect other records.

The DOC offered to provide Gronquist and Mustard with copies of the requested records, but they refused to pay for the copies, insisting that they be allowed to inspect the records instead. The DOC declined to permit inspection.

Gronquist and Mustard then filed suit, arguing that the DOC’s refusal to allow them to inspect the requested records without cost violated the PRA. The trial court entered judgment in favor of the DOC, and Gronquist and Mustard appealed.

Citing the decision of the Court of Appeals, Division III in Sappenfield v. Department of Corrections, 127 Wash. App. 83, 110 P.3d 808 (Wash. App. Div. 3 2005), review denied, the Court of Appeals, Division II held that the PRA did not require the DOC to honor Gronquist and Mustard’s request for inspection.

“The unique nature of prisoner requests for PRA disclosures,” the appellate court wrote, “entitled [the DOC] to adopt reasonable rules to protect both the records and its essential agency functions.”

The Court of Appeals, Division II noted that the DOC did not deny the prisoners’ “requests or fail to identify withheld documents.” Rather, Gronquist and Mustard “simply refused to pay for the copies.” The judgment of the trial court was accordingly affirmed. See: Gronquist v. Department of Corrections, 159 Wash.App. 576, 247 P.3d 436 (Wash. App. Div. 2 2011), review denied.

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Prison Legal News 45 June 2012
Former Luzerne County Correctional Facility guard John Gonda, known as “G-Unit,” was the subject of an investigation called Operation Avalanche after authorities received tips he was selling “large quantities [of drugs] in the Wilkes-Barre area.” The probe targeted the Outlaws Motorcycle Club, and Gonda was among 22 people charged in connection with a $3.6 million cocaine distribution ring.

When investigators raided Gonda’s home they found six bags of cocaine, a marijuana pipe, a digital scale and seven firearms. The charging affidavit said he was an “associate” of the Outlaws. He was convicted on charges of participating in a corrupt organization, conspiracy to deliver cocaine and delivery of cocaine.

Sentenced in November 2010 to one-to-two years in prison, Gonda was made immediately eligible for work release by Luzerne County Senior Judge Chester B. Muroski. Gonda obtained a job as a property manager, which permitted him to leave prison during the work week from 8:00 a.m. to 7:00 p.m.

Shortly after Gonda was sentenced, Judge Muroski also granted his request for weekend furloughs, which allowed him to be released from 8:00 a.m. to 4:00 p.m. on weekends for “family care hours.” His furlough request noted that before being jailed he cared for his totally disabled father.

Of course, Gonda’s willingness to testify against other Luzerne County prison employees may have helped him receive a lenient sentence, work release and weekend furloughs. Gonda, described as a key witness, testified in March 2011 that he had purchased cocaine from former Luzerne County prison guard Christopher J. Walsh. Another guard, Joseph Ciampi, 43, who was named in grand jury records as buying cocaine but not charged, also testified against Walsh.

In addition to Walsh, prison guard Jason D. Fierman, former prison nurse Kevin D. Warman and former prison Capt. John M. Carey were charged on March 10, 2011 with drug-related offenses as part of Operation Broken Trust. Carey was accused of receiving cocaine from other prison employees, including Gonda, and from former prisoners. Fierman allegedly sold cocaine and prescription drugs inside the prison, while Warman was accused of using fake names or the names of prisoners to obtain prescription drugs from pharmacies. Warman and Carey had previously been fired; Walsh and Fierman were suspended following their arrests.

“All allegations that individuals in positions of authority are using their powers to commit crimes or compromise law enforcement activities are an extremely serious matter,” said Acting Attorney General Bill Ryan. “These crimes are not only a violation of the public trust but also a clear threat to public safety.”

Although not criminally charged, Ciampi was suspended without pay for 18 days and later demoted in April 2011. “He was not arrested, but we believe some of his actions were of poor judgment. He accepted the demotion,” said Assistant County Solicitor Stephen Menn. Ciampi resigned the following month.

Despite the damning testimony from Gonda and Ciampi, Walsh was acquitted at trial on March 7, 2012, with the jury deliberating for just over an hour. According to Walsh’s attorney, Walsh will seek to regain his job as a prison guard.

Carey pleaded guilty to a misdemeanor charge of possession of a controlled substance and was sentenced in January 2012 to 18 months’ probation. Warman pleaded guilty to fraudulently obtaining prescription drugs; he was sentenced on May 11, 2012 to 18 months in an intermediate punishment program that includes house arrest with electronic monitoring. Warman had implicated former Luzerne County deputy warden Sam Hyder, saying the deputy warden had received prescription drugs, but Hyder denied the accusations and was not charged.

Fierman, the last Luzerne County prison employee charged with drug offenses, is scheduled to go to trial in June 2012.


### Judge, Not Jury, Must Resolve Questions about Administrative Exhaustion

Factual disputes surrounding whether a prisoner properly exhausted administrative remedies under the Prison Litigation Reform Act (PLRA) prior to filing suit must be resolved by the court, not a jury, the U.S. Court of Appeals for the Second Circuit held on July 26, 2011. In so ruling, the Second Circuit aligned itself with similar decisions from the Third, Fifth, Seventh, Ninth and Eleventh Circuits.

Rafael Messa sued numerous New York Department of Correctional Services (NYDOCS) employees after he was injured during an altercation with guards. Messa did not file any grievances about the incident before filing his lawsuit. Instead, he argued that he was not required to exhaust because he had been threatened with further violence by guards if he complained about the incident. Additionally, he alleged that NYDOCS staff refused to assist him in preparing his grievances. Messa contended that he needed help because he spoke only Spanish and was illiterate.

Messa’s case was set for trial after the district court denied summary judgment to the defendants. However, several days prior to trial, the court decided sua sponte to conduct a hearing on the exhaustion issue. After considering testimony from Messa and NYDOCS officials, the district court found that Messa’s excuses for failing to exhaust were contrary to the evidence. Accordingly, the court dismissed Messa’s suit due to non-exhaustion.

On appeal, Messa argued that the district court violated his Seventh Amendment right to a jury trial by refusing to submit the exhaustion issue to a jury. The Second Circuit disagreed.

While the Seventh Amendment guarantees the right to a jury trial “[i]n suits at common law, where the value in controversy shall exceed twenty dollars,” this right does not apply to all factual disputes that may arise in a case, the appellate court held.

Instead, the Seventh Amendment’s guarantee of a jury trial applies only to “the ultimate determination of issues of fact by the jury.” Exhaustion of administrative remedies, according to the Court of Appeals, does not go to the ultimate issue in

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of fact in a case, but rather is “a matter of judicial administration” unrelated to “the merits of the underlying dispute.” As such, the Seventh Amendment’s jury trial guarantee does not extend to the resolution of factual matters related to exhaustion.

This conclusion is reinforced by the text and purpose of the PLRA, the Second Circuit explained, as exhaustion of administrative remedies “is a condition that must be satisfied before the court can act on an inmate plaintiff’s action.” The judgment of the district court was therefore affirmed. See: Messa v. Goord, 652 F.3d 305 (2nd Cir. 2011).

$500,000 Settlement in Pennsylvania Jail Prisoner’s Medical-Related Death

A $500,000 settlement has been reached in a federal lawsuit involving the death of a prisoner at Pennsylvania’s Fayette County Prison. Terry Johnson, 48, died in his cell in February 2007 after he was denied medical care.

The suit, filed by Johnson’s wife, Lorraine, named several prison employees and the facility’s medical contractor, PrimeCare Medical, as defendants. Shortly after Johnson’s arrest on February 22, 2007 for violating a restraining order against trying to contact his wife, he began complaining of abdominal pain.

He had developed a perforation in his intestines and contracted peritonitis, an infection of the membrane that covers the inner wall of the stomach. The perforation was a complication of gastric bypass surgery that Johnson had had in 2002. Although he required immediate medical attention, guards ignored his pleas for help. He died in his cell at 9:00 a.m. on February 23, 2007.

The lawsuit claimed that Johnson endured “30 hours of unnecessary and excruciating pain, suffering, and agony” prior to his death. The $500,000 settlement, reached in December 2011, will be paid by an insurance liability fund run by the State County Commissioners Association.

The settlement came after several days of testimony at trial; no admission of liability was made by the prison or its employees. The jury subsequently entered a verdict in favor of PrimeCare Medical, which was not a party to the settlement. See: Johnson v. Medlock, U.S.D.C. (W.D. Penn.), Case No. 2:09-cv-00234-LPL.

Additional source: www.pittsburghlive.com
The American Civil Liberties Union released a report in August 2011 that calls for reforming the U.S. criminal justice system. The report makes recommendations for systematic reforms, front-end reforms and back-end reforms; it reviews policy changes and their results in six states that have successfully implemented bipartisan criminal justice reforms, and details similar efforts in four other states.

“Since President Richard Nixon first announced ‘the War on Drugs’ forty years ago, the United States has adopted ‘tough on crime’ criminal justice policies that have given it the dubious distinction of having the highest incarceration rate in the world,” states the report’s introduction. “These past forty years of criminal justice policy making have been characterized by over-criminalization, increasingly draconian sentencing and parole regimes, mass incarceration of impoverished communities of color, and rapid prison building.”

However, recent budget deficits of historic proportions have caused some policy makers to look for ways to reduce the enormous expense of the justice system. The ACLU report describes how states with long histories of being “tough on crime” have embraced alternatives to imprisonment with less punitive measures. Such reforms “not only make more fiscal sense, but also better protect our communities.”

The rate of incarceration in the United States grew 700% between 1970 and 2010. As a result, our nation has “almost a quarter of the world’s prisoners in the entire world, although we have only 5% of the world’s population.”

Before discussing successes in Texas, Kansas, Mississippi, South Carolina, Kentucky and Ohio as a result of implementing bipartisan criminal justice reforms, the report recommends three major types of reforms. These “evidence based” practices are backed by social science and economic evidence that proves their success and demonstrates that mass incarceration is not necessary to protect public safety.

Systemic reforms “affect criminal justice policies at large, undertaking a holistic evaluation or reform of a state’s criminal justice system.” Requiring evidence-based criminal justice practices and risk assessment instruments ensure that policies are “crafted based on criminology or science rather than fear or emotion.”

To prove that policies actually achieve their stated goals, states should implement other policies to obtain research on results and effect. A commission should periodically review new or existing policies and require agencies to issue reports on the progress and success of policies after they are implemented.

Mississippi, Kentucky and Ohio are examples of the successful application of “risk assessment instruments to individuals throughout the criminal justice process, including in the pretrial process, sentencing process, and parole and probation decisions.” An accurate fiscal analysis is necessary to examine the impact in years following implementation of new policies, which “are often where cost savings are realized.” South Carolina undertook such an analysis when implementing legislation to reform its criminal justice system. The state expects the law will save $241 million, including $175 million in construction costs, by reducing the prison population by 1,786 prisoners by 2014.

The ACLU report also advocates for front-end reforms. The purpose of front-end reforms is to “reduce the unnecessary incarceration of individuals in jails and prisons.” Such reforms “recognize that prison should be an option of last resort, reserved only for those who really need to be incarcerated.”

To reduce the nearly $9 billion in taxpayer dollars spent to house about 750,000 people in local jails across the nation each year, reliance on pre-trial detention must be curtailed. Kentucky and California have enacted laws that limit pretrial detention only to those who pose high threats to public safety. Kentucky’s success came from abolishing commercial, for-profit bail bondsman and establishing a uniform bail schedule for non-violent felonies, misdemeanors and violations.

Of the nearly 1.7 million people arrested in 2009 for nonviolent drug charges, 90% were charged with possession only – draining billions of taxpayer dollars and millions of law enforcement hours with little benefit to public safety. Kentucky and California have decriminalized or defelonized drug possession. Drug treatment and other sanctions for those with substance abuse problems and other low-level offenses are being used in lieu of prison in Kansas, Texas, Mississippi, South Carolina, Kentucky and Ohio. Sentencing disparities between cocaine and crack have been eliminated in South Carolina and Ohio.

Further, eliminating mandatory minimum sentences or “three strikes” and habitual offender laws helped Ohio, South Carolina and Texas reduce their prison populations without endangering public safety. Reclassifying low-level felonies to misdemeanors eliminated prison time in South Carolina, Kentucky and Ohio for offenders who formerly were sent to prison for crimes such as simple drug possession or non-violent low-level theft.

Back-end reforms aim to “shrink the current and returning incarcerated population and focus on parole and probation reforms.” One such policy reform is the elimination of “truth-in-sentencing” laws that require prisoners to serve at least 85% of their sentences before release. Mississippi made 3,000 prisoners eligible for parole in 2008 by partially repealing its 1995 truth-in-sentencing law.

Extending good time credits for program participation and good behavior by prisoners provides incentives for conduct that reduces recidivism. Some states are using non-prison alternatives for technical parole and probation violations, while Louisiana and Ohio are requiring their parole boards to use risk assessment tools and receive training to make parole decisions based on evidence rather than instinct.

Finally, Texas, Kentucky and Ohio require that savings from criminal justice reform policies be reinvested in programs that reduce crime. This results in declines in prison populations and corrections budgets while also protecting the public.

The ACLU report analyzes the acts of each of the six states that have successfully implemented criminal justice policy reforms. Each has seen reductions in their prison populations, saving taxpayers millions of dollars. The report also examines reform efforts in California, Louisiana, Maryland and Indiana, and concludes by outlining the positive and negative trends affecting criminal justice legislation in 2011.

The ACLU report is available on PLN’s website and at www.aclu.org.
JOIN THE PRISON PHONE JUSTICE CAMPAIGN!

A national coalition of media and criminal justice activists, led by the Human Rights Defense Center, Working Narratives and the Center for Media Justice, invite you to join a campaign to fight the high cost of prison phone calls.

We need those inside our nation’s jails, prisons and detention centers to speak up about the impact of the cost of prison phone calls on you and your family. With your support we will advance a state-by-state legislative challenge, while also pushing the Federal Communication Commission (FCC) to take action.

WHAT YOU CAN DO:
Send a brief letter to the Federal Communications Commission explaining the impact the high costs of prison phone calls have had on you and your family. Address the letter “Dear Chairman Genachowski,” and please speak from your own personal experience. You must state the following at the top of the letter: “This is a public comment for the Wright Petition (CC Docket #96-128).” Your letters will be made part of the public docket in the case.

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Only with your support will we end the abusive cost of prison phone calls. Encourage others to join us in this struggle!
**California:** Saul “Scrappy” Perez, 23, and William Lloyd Coats, 45, incarcerated at the Glenn County jail, were charged with drug-related offenses after being caught smoking pot in the jail’s exercise yard on January 24, 2012. A guard noticed unusual activity near the toilet area on the yard, and a search uncovered an undisclosed amount of marijuana and a lighter. Both Coats and Perez tested positive for marijuana use.

**California:** Zachary William Johnson, 32, escaped from the John Latorraca Correctional Facility in El Nido on February 14, 2012 with help from both his wife and girlfriend. After managing to abscond from the jail, Johnson’s girlfriend, Jeannette Segovia, 40, helped him take a taxi to his wife, Dawn Hathaway, 25. When sheriff’s deputies tried to stop the taxi, the driver got out and Johnson drove off, leading the deputies on a high-speed chase that ended when officers used a spike strip. Johnson was booked into the Merced County Jail and his wife and girlfriend were arrested on charges of aiding and abetting. Sheriff Mark Pazin opined that Johnson had escaped because he “wanted to spend some time with his lady friends on Valentine’s Day.”

**Florida:** On December 28, 2011, the Third District Court of Appeal held that state prisoner Randy Chaviano, 26, serving a life sentence for second-degree murder and drug possession with intent to sell, would receive a new trial because the court reporter in his original trial could not produce a transcript of the proceedings. The court reporter, Terlesa Cowart, ran out of paper in her stenoigraphy machine during the trial. She transferred an electronic copy of the transcript from the machine to her computer, but that copy was destroyed by a virus. Thus, almost the entire transcript from the trial was lost, which prejudiced Chaviano’s appeal. Cowart was subsequently fired.

**Florida:** Belle Glade mayor Steve Wilson had a second job until February 2, 2012: He worked as a corrections probation supervisor at the GEO Group-run South Bay Correctional Institution. He retired, however, while under investigation for compromising a confidential FBI database; had he not retired he would have been demoted for violating prison policy. According to FDOC records, Wilson had let another employee log into the National Crime Information Center (NCIC) database using his name and password, to conduct criminal background checks. That employee had not received security clearance to access the database. “Certainly he violated all types of rules,” said retired detective Tom Whatley. Wilson did not face any criminal charges.

**Iowa:** Terrell Lillybridge, 30, headed back to federal court in March 2012 on a petition to have his supervised release revoked. His offense? He was accused of stealing Girl Scout cookies from another resident at a halfway house where he was staying after being released from federal prison. Plus he didn’t report that he had lost his job at a factory. According to a report filed in federal court, Lillybridge took the cookies on February 25, 2012 and the theft was caught on a surveillance camera. On March 16, the court ordered him to serve six months in prison followed by another year on supervised release. Federal officials said the “allegation concerning stolen Girl Scout cookies was not a basis for the revocation,” though it was cited in the revocation petition.

**Montana:** An escape from the Tacumbu prison near the capital city of Asuncion was thwarted by a dog, according to a February 2012 news report. Three prisoners had dug a tunnel from their cell to outside the facility and were in the process of escaping at dawn when the dog began barking, which caused a guard to take notice. “Because of a stray dog we couldn’t escape,” said Hilario Villalba, one of the unlucky prisoners. “When I reached the street, sticking my head out, the stupid dog barked and alerted a guard.”

**Ohio:** Edwin E. Dulaney, Jr., 47, a guard at the Richland County Jail, resigned in February 2012 when he was indicted on five counts of unauthorized use of law enforcement databases. Dulaney was accused of looking up information on the Ohio Law Enforcement Gateway system multiples times over a three-month period. “You’re not permitted to just look people up,” said prosecutor Brent Robinson. “He was looking up people out of curiosity.”

**Paraguay:** According to FDOC records, Wilson had a second job until February 2, 2012: He worked as a corrections probation supervisor at the GEO Group-run South Bay Correctional Institution. He retired, however, while under investigation for compromising a confidential FBI database; had he not retired he would have been demoted for violating prison policy. According to FDOC records, Wilson had let another employee log into the National Crime Information Center (NCIC) database using his name and password, to conduct criminal background checks. That employee had not received security clearance to access the database. “Certainly he violated all types of rules,” said retired detective Tom Whatley. Wilson did not face any criminal charges.

**Tennessee:** On March 4, 2012, Kevin Jerome Cox, 45, director of operations at the Hill Detention Center, a Davidson County Sheriff’s Office facility, was arrested in Murfreesboro on charges of weapons possession and violation of the implied consent law. Cox was found unconscious in a vehicle that was still in drive; his foot was on the brake. He smelled of alcohol and had slurred speech and bloodshot eyes. Two loaded handguns, a Glock and a revolver, were found in the trunk of his car.

**Texas:** Prisoners at the Liberty County Jail had access to soft-porn movies on a cable TV channel for months before jail officials took action, even though guards were documenting the problem. “4 Dorm watching porno channel again,” one guard wrote in a log entry on February 3, 2012. The prisoners had managed to bypass Comcast’s control box to gain access to the adult entertainment channels. Comcast delayed fixing the problem, claiming it

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*Prison Legal News*
wasn’t possible for prisoners to view those channels. “What bothers me is that it went on for so long,” said Liberty County judge Craig McNair.

Washington: On January 30, 2012, following a brief standoff, police officers arrested Anthony Rodriguez, 33, a state prison guard at the Washington Corrections Center. Rodriguez allegedly choked and threatened to shoot his wife as they were going through a divorce. The next day he accompanied his wife and children...
News in Brief (cont.)

to Skyline Elementary school, where his wife reported the incident and police were notified. Rodriguez drove off, refused to stop, avoided spike strips and would not leave his car for about 45 minutes after finally stopping before he surrendered. A loaded 9mm handgun was found in his car. Rodriguez was jailed with bail set at $500,000.

Washington: Zane Nixon, a guard at the Remann Hall juvenile facility in Tacoma, was arrested on November 23, 2011 for groping at least eight women near Pacific Lutheran University. He was charged with one count of rape, two counts of indecent liberties and seven counts of assault with sexual motivation. Nixon reportedly admitted to the incidents, saying he was “depressed and lonely and [he] grabbed a few girls.” He was fired five days after his arrest.

Washington: In another Facebook-related news report, Pierce County jail guard Alan L. O’Neill, 41, was busted for having two wives and charged with bigamy in March 2012. O’Neill initially married in 2001 when he was named Alan Fulk, then left his wife in 2009, changed his name and remarried. When his second wife created a Facebook page, the site suggested adding O’Neill’s first wife as a friend under the “people you may know” feature. After being charged, O’Neill was placed on administrative leave from his job at the jail. “About the only danger he would pose is marrying a third woman,” quipped Pierce County prosecutor Mark Lindquist.

Zimbabwe: A guard at the Chikurubi Prison Farm killed himself with a gunshot to the head on January 31, 2012 in front of prisoners at the facility. The guard, identified only as Runatsi, reportedly killed himself after it was discovered that he was having adulterous affairs with other prison employees’ wives. The Zimbabwe Prison Service confirmed that a guard at the camp had shot and killed himself.

### Criminal Justice Resources

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<td><strong>ACLU National Prison Project</strong></td>
<td>Handles state and federal conditions of confinement claims affecting large numbers of prisoners. Publishes the NPP Journal (available online at: <a href="http://www.aclu.org/national-prison-project-journal-fall-2011">www.aclu.org/national-prison-project-journal-fall-2011</a>) and the Prisoners’ Assistance Directory (write for more information). Contact: ACLU NPP, 915 15th St. NW, 7th Fl., Washington, DC 20005 (202) 393-4930. <a href="http://www.aclu.org/prisons">www.aclu.org/prisons</a></td>
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<td><strong>Amnesty International</strong></td>
<td>Compiles information about prisoner torture, beatings, rape, etc. to include in reports about U.S. prison conditions; also works on death penalty issues. Contact: Amnesty International, 5 Penn Plaza, New York NY 10001 (212) 807-8400. <a href="http://www.amnestyusa.org">www.amnestyusa.org</a></td>
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<td><strong>Center for Health Justice</strong></td>
<td>Similarly provides online resources for families of prisoners related to parenting, children of prisoners, prison visitation, mothers and fathers in prison, etc. Contact: F&amp;CN, 93 Old York Road, Suite 1 #510, Jenkintown, PA 19046 (215) 576-1110. <a href="http://www.fcnetwork.org">www.fcnetwork.org</a></td>
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<td><strong>The Fortune Society</strong></td>
<td>Provides post-release services and programs for prisoners in the New York City area and occasionally publishes Fortune News, a free publication for prisoners that deals with criminal justice issues, primarily in New York. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. <a href="http://www.fortunesociety.org">www.fortunesociety.org</a></td>
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<td><strong>Innocence Project</strong></td>
<td>Provides advocacy for wrongly convicted prisoners whose cases involve DNA evidence and are at the post-conviction appeal stage. Maintains an online list of state-by-state innocence projects. Contact: Innocence Project, 40 Worth St., Suite 701, New York, NY 10013 (212) 364-5340. <a href="http://www.innocenceproject.org">www.innocenceproject.org</a></td>
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<td><strong>Just Detention International</strong></td>
<td>Formerly Stop Prisoner Rape, IDI seeks to end sexual violence against prisoners. Provides counseling resources for imprisoned and released rape survivors and activists for almost every state. Contact: Stop Prisoner Rape, 3325 Wilshire Blvd. #340, Los Angeles, CA 90010 (213) 384-1400. <a href="http://www.justdetention.org">www.justdetention.org</a></td>
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<td><strong>Justice Denied</strong></td>
<td>Although no longer publishing the prison magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, and includes all back issues of the Justice Denied magazine and a database of more than 3,000 wrongly convicted people. Contact: Justice Denied, PO. Box 68911, Seattle, WA 98168 (206) 335-4254. <a href="http://www.justicedenied.org">www.justicedenied.org</a></td>
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<td><strong>National CURE</strong></td>
<td>Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the CURE Newsletter. $2 annual membership for prisoners. Contact: CURE, PO. Box 2310, National Capitol Station, Washington, DC 20013 (202) 789-2126. <a href="http://www.curenational.org">www.curenational.org</a></td>
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<td><strong>November Coalition</strong></td>
<td>Publishes the Razor Wire, a bi-annual newsletter that reports on drug war-related issues, releasing prisoners of the drug war and restoring civil rights. A subscription is $10 for prisoners and $30 for non-prisoners. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 684-1550. <a href="http://www.november.org">www.november.org</a></td>
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<td><strong>Partnership for Safety and Justice</strong></td>
<td>Publishes Justice Matters three times a year, which reports on criminal justice issues in Oregon. Free to Oregon prisoners, $7 for other prisoners and $25 for non-prisoners. Contact: PS&amp;J, 825 NE 20th Avenue #250, Portland, OR 97232 (503) 335-8449. <a href="http://www.safetyandjustice.org">www.safetyandjustice.org</a></td>
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<td><strong>The Sentencing Project</strong></td>
<td>The Sentencing Project is a national policy research and advocacy organization that works for a fair and effective criminal justice system by promoting sentencing reform and alternatives to incarceration. They produce excellent reports on topics related to sentencing policy, racial disparities, drug policy, juvenile justice and voting rights disenfranchisement, which are available online. Contact: The Sentencing Project, 1705 DeSales St, NW, 8th Fl., Washington, DC 20036 (202) 628-0871. <a href="http://www.sentencingproject.org">www.sentencingproject.org</a></td>
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Represent Yourself in Court: How to Prepare & Try a Winning Case, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 528 pages. $39.99. Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. The authors explain what to say in court, how to say it, etc.

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Deposition Handbook, by Paul Bergman and Albert Moore, Nolo Press, 352 pages. $34.99. How-to handbook for anyone who conducts a deposition or is going to be deposed.

Finding the Right Lawyer, by Jay Foonberg, ABA, 256 pages. $19.95. Explains how to determine your legal needs, how to evaluate a lawyer’s qualifications, fee payments and more.

Spanish-English/English-Spanish Dictionary, Random House. $8.95. Two sections, Spanish-English and English-Spanish. 60,000+ entries from A to Z, includes Western Hemisphere usage.

Writing to Win: The Legal Writer, by Steven D. Stark, Broadway Books/Random House, 283 pages. $19.95. Explains the writing of effective complaints, responses, briefs, motions and other legal papers.

Actual Innocence: When Justice Goes Wrong and How to Make It Right, updated paperback ed., by Barry Scheck, Peter Neufeld and Jim Dwyer, 403 pages. $16.00. Describes how criminal defendants are wrongly convicted. Explains DNA testing and how it works to free the innocent. Devastating critique of police and prosecutorial misconduct.

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Beyond Bars, Rejoining Society After Prison, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alpha, 240 pages. $14.95. *Beyond Bar* is a practical and comprehensive guide for ex-convicts and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more.


A Dictionary of Criminal Law Terms (Black’s Law Dictionary® Series), by Bryan A. Garner, 768 pages. $29.00. 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 navigate your way through the maze of legal language in criminal cases.

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