On December 27, 2018, Prison Legal News editor Paul Wright interviewed Randall C. Berg, Jr., executive director of the Florida Justice Institute (FJI) in Miami. It is fair to say that no one has done more for Florida prisoners in that state’s history than Randy. He was also instrumental in developing the first Interest on Lawyers Trust Accounts (IOLTA) system, which is used to fund legal programs and assistance for the poor. Thus far, IOLTA has generated around $5 billion for legal services for people who otherwise could not afford them.

This interview took place on Randy’s last day as FJI’s executive director. He had been diagnosed two years earlier with ALS, also known as Lou Gehrig’s disease, and died of respiratory complications on April 10, 2019 at the age of 70.

Randy was one of PLNs earliest subscribers in the early 1990s and we became friends over the years. He represented PLN in two censorship cases against the Florida Department of Corrections (FDOC). I believe this was Randy’s last interview, and am sorry he did not get to see it in print and that Florida prisoners will not be able to see it either, since the FDOC continues to censor PLN statewide.

Randy was born in Georgia in 1949 but grew up in Jacksonville. He graduated from the University of North Carolina in Chapel Hill in 1971 and served three years in the Navy as a Lieutenant Junior Grade before attending George Mason Law School. He moved to Miami in 1978 to start FJI. Randy is survived by his wife, Carol, and his son, Randall Berg III.

This interview has been edited for length and clarity.

PW: At what point did you decide to go to law school?

RB: I actually decided to go to law school during my sophomore year in college. I had some really, really good professors who challenged me to rethink my political beliefs and what was going on in the country at the time in terms of civil rights and civil liberties, and I think the people that were really making a difference in society were lawyers in the civil rights movement. I finished law school in ‘78.

PW: That was around the time you started the Florida Justice Institute.

RB: Right.

PW: And this has been your sole job as a lawyer?

RB: Yes it has. I had an opportunity when I was in law school. I applied to a number of different places to intern during the summer after my first year and second year, but the place that challenged me the most in terms of a job offer was to intern for Bill Sheppard in Jacksonville.

PW: At that time he was a civil rights lawyer, correct?

RB: He was a civil rights lawyer and criminal defense attorney. I think he would probably put criminal defense first, civil rights second. Bill had been appointed by U.S. District Judge Charles Scott, who was overseeing the major prison class-action lawsuits in Florida. There was a pro se
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case that had been filed against the Duval County Jail in Jacksonville, and Judge Scott asked Bill if he would accept appointment to represent the plaintiffs. That was my first exposure to prisoner civil rights.

PW: So this time you were working with Bill Sheppard?

RB: I was working almost exclusively with Bill the first summer, mainly doing criminal defense research and writing for him, but also getting my feet wet [in] Miller v. Carson, which I considered the seminal jail conditions case in the Fifth Circuit at the time, if not the country. [Ed. Note: The Fifth Circuit Court of Appeals split in 1981, with Florida being moved to the newly-formed Eleventh Circuit]. It was truly kind of a soup to nuts lawsuit dealing with everything that the cases now deal with when you bring a conditions case against a county jail. So it dealt with not only overcrowding, but with medical care, food service, mental health care, exercise, you name it.

Bill did some research and found that the Florida legislature in 1949 had passed Florida Statute 951.23, which required the Florida Department of Corrections to promulgate rules and regulations concerning county jails, to inspect county jails—well, I should say county and municipal jails because they had municipal jails—and to bring enforcement actions against noncompliant facilities. After Bill won Miller, the county appealed to the Fifth Circuit. The Fifth Circuit affirmed Judge Scott's ruling but entered a separate decision in Miller v. Wainwright. At the time, Louie Wainwright was Secretary of the Florida Department of Corrections, and they found that [he] had a responsibility under Florida law...

PW: Which he never exercised.

RB: Which he had never exercised. Well, he had promulgated some rules and regulations. He had inspected some jails, but he had never done any enforcement actions. So the thing that intrigued me and one of the reasons I decided to accept the job starting the Florida Justice Institute was this case that came out of that decision, which was to be our first lawsuit.

The case was Arias v. Wainwright, and when I was finishing law school in '78, I met with [ACLU attorney Alvin] Bronstein, Ralph Knowles, a couple of very talented lawyers from Wilmer, Cutler and Picker-
Jail, and the guy that I interviewed down there to be the plaintiff was Willie Arias, and they had no outdoor rec. When I went in to interview Willie Arias it was up to the top [floor] and the guards would not go up with me because they said it was too violent.

They called it the “Texas Jail.” I couldn’t figure out for the life of me why would they call the Key West Jail – Monroe County Jail – the Texas Jail. It turned out they had actually purchased this prefab, all-steel jail from the State of Texas. And they had put it on a barge in Texas and taken it over to Key West and used cranes to put it up on top of the court house and then cemented the thing in with concrete blocks and everything. Since it was on the water in Key West, it rusted.

It was probably rusting the day they brought it in to Key West. There were holes so when inmates would take showers in this grungy, rusty jail, the water would leak and of course there were cracks in the ceiling so the inmates, when they would get pissed off because of the food or lack thereof or whatever they were being punished for in the Texas Jail, they would plug up the drain pipes of the showers. It would fill up with water and the water would leak down on the heads of the judges in the courtrooms and that was actually in the reports to Louie Wainwright, and they recommended that Wainwright take legal action against the Monroe County Jail, which of course he never did.

PW: Was this lack of interest or political will or...?

RB: Probably political will. Wainwright was the longest-serving DOC Secretary in Florida history, 30 years or something. And there was only one political party in Florida at the time, the Democrats. He decided [to settle] because they had no defense for not having enforced this statute. We alleged that by his failure to not enforce state law he had deprived the inmates of their civil rights and civil liberties, and that was the law back then. The law later changed with the Supreme Court’s decision in Pennhurst [State School and Hospital v. Halderman, 465 U.S. 89 (1984)], that state law does not grant a right to enforce it in federal court.

We settled the case. Wainwright wanted the plaintiffs’ lawyers to become his compliance counsel to him. We were the ones to enforce it and we were the ones to travel around with our experts, so I spent the next 15 years touring jails with our expert, Gene Miller.

PW: For a matter of perspective, you have been involved in Florida prison and jail litigation for 40 years now – your entire career as a lawyer – and you have seen where things were when you started out and kind of almost at the beginning, almost ground zero, of prison and jail litigation in Florida. Where would you say things are both at the jail level and the DOC level in the State of Florida today?

RB: Well, I think they are different.

PW: To just put things in perspective, how bad were conditions?

RB: Conditions were horrible.

PW: And we are talking the late 1970s, early ‘80s, right?

RB: It was actually the early ‘80s. We settled in I think ‘81, either ‘80 or ‘81, so it was the early ‘80s that we started doing the
enforcement tours and [the FDOC] started bringing enforcement actions against noncompliant jails. They started out doing it using assistant attorney generals, but it became politically kind of impossible for an attorney general to be, you know, trying to get votes in a county but also suing the county, so they ended up farming it out to a private firm in Tallahassee. This private firm did the enforcement actions so we’re actually dealing with the private lawyers who were bringing those actions.

PW: What were the main problems in the jails at that time?

RB: Primarily overcrowding, lack of exercise, abominable medical and mental healthcare, suicides, lack of staff.

PW: Everything that can go wrong?

RB: Yes. One of the things we did not settle in this case – it was a partial settlement – we did not settle whether the rules limited crowding levels. We never thought that their rules were to our liking. I think we later learned that some of the stuff they had done in the rules was okay. One of those things is when a jail is built, architects use square feet per inmate. It is a standard and all these jails had been built already.

PW: Right.

RB: So how do you go back and decide this cell may be 40 square feet per inmate, but if they are giving the inmate a lot of out-of-cell time...

PW: Right, then that is less important.

RB: That is less important. So the department came up with a very clever thing, they call it “factored capacity.” For the new jails they imposed a square foot per inmate standard, but for the existing jails they had factored capacity [which] was actually pretty good. I mean it rebounded to our clients’ favor so we liked the factored the best. But getting back to your question, the county jails were abysmal. We saw a huge surge in building county jails in the State of Florida. I think the number of inmates statewide then was maybe 20,000.

PW: Was that at the DOC level or the county level?

RB: County level, and today it is like 55,000. Our objective, our hope was that the counties would see it was impossible for them to build their way out of it and implement bail reform. But bail reform did not come about.

PW: They had built their way out, so to speak.

RB: They did, they built their way out of it.

PW: How did FJI come about from your work with Bill Shepard to become an independent organization?

RB: FJI was founded by a lawyer who had been head of the justice program at the Edna McConnell Clark Foundation in New York. Edna McConnell Clark was the woman who started Avon Products, and they had, I think, three different areas that they gave money to. One was justice programs, another was tropical diseases and there was a third one. I do not remember what the third one was, but the justice program was big and they were the initial funders. Rod Petrey is the guy who was head of the justice program and he was there for about four or five years and funded the ACLU’s National Prison Project. He funded the Basics Program for the American Bar Association. He tried to get the ABA involved in doing more prison reform stuff, the Mental Health Law Project which is now Bazelon, Native American Rights Fund [and] a lot of the do-gooder organizations.

He was from Florida. He had grown up in Haines City and when he left the Clark
Randy Berg Interview (cont.)

Foundation they gave him a going away present. It was a small grant of $150,000 to start the Florida Justice Institute. He had gotten to know Bill Sheppard in Jacksonville and asked Bill if he could recommend somebody to start the Florida Justice Institute. [Petry] had accepted a job as a banking lawyer in Miami with a small boutique firm, and had convinced them to give free office space to the Florida Justice Institute. He said, “All you need is one office for a lawyer and a secretary.” So he interviewed me. I had been clerking for a criminal defense firm in D.C., and I had a job offer from them or starting the Florida Justice Institute, and that was a no-brainer for me.

PW: You have spent literally 40 years representing prisoners and poor people. What is it that attracted you to doing this type of law as opposed to anything else?

RB: I think prisoners are the most underrepresented segment of our society there possibly is. I cannot think of any other segment of society that needed legal representation more than prisoners. I mean, they are shut off from society for the most part and they have no political will.

PW: They may have a will. They do not have a voice.

RB: Voice, yes. No political voice whatsoever and after hearing the plight of prisoners from reading letters and talking to them it does not take you long to see that these people need help and there are not lawyers out there that are going to help them unless somebody steps up to do it.

PW: My experience with prisoner rights litigation is that I started out in Washington and went national, and one of the things that really strikes me about Florida is how few lawyers in the private sector are willing to represent prisoners, which seems to be far fewer than in the rest of the country – even in other states in the Eleventh Circuit. Even in Alabama or Georgia it seems there are a few more lawyers. Do you have ideas or thoughts on why so few lawyers in Florida do these cases?

RB: Yes. I have run two pro bono programs during my tenure at the Florida Justice Institute, trying to get more lawyers to represent poor people, particularly prisoners. One was called the Public Interest Law Bank for the Dade County Bar and it later become Put Something Back; the other was the Volunteer Lawyer’s Project for the U.S. District Court. The one for the U.S. District Court was much more oriented to represent prisoners because we were mainly dealing with pro se cases that were primarily filed by prisoners.

So we were looking for lawyers to [provide representation] and I did that for 21 years. The reason I think lawyers in Florida do not step up is because Florida does not have the established practice or history that you see in some of the other major cities like New York, Boston, Washington, D.C. of doing pro bono work. That is the first thing.

PW: They seem like first off the major corporate firms in Florida do not seem to do much if any pro bono work of any kind, but even outside of that it seems like the personal injury bar and lawyers that look at cases to make a living do not seem to take that many prison or jail cases or even police violence cases for that matter.

RB: Well, that is true. I think it is the lack of history and every now and then, you know, if you make a big hit or get a big settlement and the word gets out, then you hear about lawyers taking these cases or calling you up and saying, “I’d be interested having one of those cases.” But they seem to think that these cases are easy to do and they are not.

PW: Right, if they were then everyone would be doing it. The FJI also does other types of cases. Can you talk about those?

RB: We have done a lot of housing discrimination cases over the years. We have done other civil rights and civil liberties cases. Some of them have to do with prisoners, but mainly deal with poor people.

PW: Can you give some examples?

RB: Sure. We did a vote dilution case with the ACLU of Florida, dealing with a county in Florida that decided it would count the prisoners in terms of making the districts....

PW: Even though prisoners cannot vote.

RB: Yes, knowing prisoners cannot vote and of course that results in vote dilution of people in the other outlying districts, so we did that case. We have done cases challenging the requirement that poor people be drug tested prior to getting benefits, got that struck as unconstitutional. There are a couple of other cases.

PW: And you have also done police shooting cases as well.

RB: Done police shootings ... as well as class actions. Did a class action against the Palm Beach County Sheriff’s Office for these things called “Tax Squads,” with [deputies] dressed in black. They went in primarily into Haitian communities and they would ostensibly be looking for crack cocaine, but they would sexually harass the women, steal the cocaine if they found it.

PW: Ah yes, Florida’s finest.

RB: We got that enjoined.
PW: You have actually litigated cases throughout Florida?
RB: Yes. We have had cases literally from Key West to Pensacola.
PW: I think one of my favorite quotes of yours is you refer to FJI as Florida's law firm of last resort.
RB: Yes.
PW: What do you think best exemplifies FJI's role as the law firm of last resort?
RB: Well, I think the case we just recently won challenging Florida's statute ... banning sex offenders from being on the Internet. We challenged that in federal court and won. Got the new version of the law enjoined and got the judge to enjoin the remainder portion, so it is successfully tabled right now. So people who are convicted sex offenders can use the Internet for commercial purposes and they can engage in entrepreneurship just like anyone else, because today's highway for making a living is the Internet. They are not shut out of being able to make their living.
PW: Over the 40 years that you have been at FJI, what would you say was your biggest or most significant case in terms of its impact? I know it's a tough call. You have had so many.
RB: Well, the first one that I worked on probably had the largest impact on conditions. . . . that was the Arias case that I did with, as a young lawyer, with the National Prison Project and Wilmer, Cutler and Pickering.
PW: Just because it impacted all 67 jails in the State of Florida?
RB: Right, and the consent decree lasted until the Florida legislature vacated the statute. So you see ... I mean it was not our objective to have massive jail construction across the state.
PW: Right.
RB: But the jails were so shitty that...
PW: That is what happened.
RB: That is what happened. The other thing that happened, I think, is the nature of the professionalism of the correctional officers changed. It used to be when we started the case that the sheriff's deputy who would crash the sheriff's new cruiser he had just purchased for him got shit-canned to the county jail to be a corrections officer. We started seeing more professionalism in corrections in Florida.
PW: Became more of a profession as opposed to a punishment?
RB: Right, exactly. I think that benefited our clients substantially. The one that had the largest legal precedence was Ancata v. Prison Health Services. It was the first case in the country from an appellate court finding a for-profit entity operated under color of state law for purposes of [42 U.S.C. Section] 1983.
PW: Yes. That company was Prison Health Services, which is now known as Corizon.
RB: Corizon, right. And then we also found that the governmental contracting entity still had a non-delegable duty to provide constitutionally adequate medical care, which later paved the way for West v. Atkins in the Supreme Court, but for years before West came down [Ancata] was the only case out there that held the for-profit entities liable for violating constitutional rights. There have been a number of others since then. Osterback v. Moore was our first and only challenge to solitary confinement and close management. I think that had a tremendous impact on decreasing the number of inmates held in solitary confinement as well as decreasing the number of prisons.
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prisons?

RB: I have different views on private prisons and private contractors that provide medical and mental healthcare. I have found private companies providing medical and mental healthcare to be worse than the state-run entities and that is ... I just do not think they can do it cheaper.

PW: Yes, and this is in the context that you were involved in cases requiring the FDOC to provide adequate care to prisoners.

RB: Correct.

PW: And you have litigated many, many medical neglect cases on behalf of prisoners over the decades.

RB: Right, in county jails and in state prisons. But by the same token I have found, although I am opposed to it philosophically, I have found that the privates tend to run a better prison than the Florida Department of Corrections. And I say that because they have figured out if they keep the inmates occupied, if they keep the prisons air conditioned, if they treat them decently....

PW: It is actually a better environment for everyone.

RB: It is a better environment for everyone and less of a headache for them to manage and they can actually run the prison probably safely with less staff and without any problems. But by the same token they also use a kind of carrot and stick approach that if you screw up they are going to send you back to the FDOC, though my clients prefer being in the private prisons.

PW: And in some respects it is almost as much of a testament of how bad the state and government-run prisons are in Florida.

RB: It is.

PW: And not how great or good the private ones are.

RB: It is, but as you know, Florida has no air-conditioned prisons and the privates are air conditioning their prisons. The other thing they have done is they have actually hired some pretty good wardens; they tend to hire federal BOP retired wardens, people that....

PW: Have experience.

RB: ... have experience and know what they are doing. Philosophically, I do not believe government should be contracting away police, military or prison functions.

PW: With a 40-year perspective on the criminal justice system in Florida, and I think you probably have as up-close a view as anyone else, you are also unique in having a statewide view, as you mentioned, from Pensacola to Key West. At this point you are retiring almost 40 years after you started this work. What is your takeaway on the criminal justice system in Florida? Is it better off now or worse off? I mean obviously it has changed, but is it changing for the better or for the worse after 40 years?

RB: It has changed, I would say, for the worse. There has been a 335 percent increase in the number of prisoners.

PW: I thought it was higher than that. It was like 500 percent just since....

RB: Yes. I am not using the right term, maybe comparison to the population.

PW: Okay.

RB: I think it is 300 and some percent, but nevertheless the amount of people per 100,000 we incarcerate has gone through the roof. It was 235 per 100,000 and now it is up around 500 and some or 600.

PW: At least we are not Louisiana with their 800 per 100,000, right?

RB: Right. So despite the fact that crime has gone down we are still incarcerating lots of people for long periods of time.
and the problem is we have increased the length of sentences. That is the real problem.

PW: And what would you say about conditions of confinement?

RB: The conditions have gotten much worse. Roof’s leak, there are [problems] with guards, it is total warehousing. There are no programs. There are no rehab facilities. There is no education to speak of. I mean all we are doing is warehousing these people. We are not making them better [than] when they go in. The goal ought to be to make them better when they get out, not worse.

PW: We report in Prison Legal News about the abnormally high death rate of prisoners in Florida prisons. Until a couple of years ago an average of 35 to 40 prisoners a year died and now we are up to over 300 prisoners a year.

RB: Yes. It is a huge increase. A lot of it has to do with the poor medical care given by Centurion now. It used to be Corizon and Wexford.

PW: Right.

RB: I think it probably also has to do with the prevalence of opioids and fentanyl and spice, or whatever.

PW: One of the things I have to say, as someone who has been reporting on prisons for almost 30 years, that struck me as being unusual about the Florida prison system is the brutality of the staff—and this goes to the regularity not just the brutality of the staff, and the impunity of the staff in well-publicized cases where they commit brutal murders and get away with it. Frank Valdes, around 20 years ago, was a death row prisoner beaten to death by guards.

RB: Yes, I knew Frank. He was my client. So was his co-defendant, William Van Poyck.

PW: They were convicted of killing a prison guard during a botched escape attempt.

RB: Right, right.

PW: They were on death row and Frank Valdes was beaten to death by....

RB: Stomped to death.

PW: Stomped to death by a group of guards, who were put on trial in state court and fully acquitted. Then we have the recent case, for example, of Darren Rainey, a mentally ill Florida prisoner who was scalded to death. And the Human Rights Defense Center is representing the estate of a Florida prisoner, Vincent Gaines, who was starved to death ... and we could go on.

These are just the incidents that we specifically know about that have gotten widespread public attention, and it seems that even compared with the other 49 state prison systems and the Bureau of Prisons, all of which have plenty of problems, that even given that baseline, Florida prisoners seem to be exceptionally brutal and exceptionally immune from any type of accountability. Do you have any thoughts on why that might be?

RB: It is a good question. Well, I do not think there is any will in the U.S. Attorney’s office to do anything dealing with prisons.

PW: And that is in the context that in other states, even in the South—Louisiana for example, or Texas—the U.S. Attorney’s office regularly prosecutes government employees who beat and kill prisoners.

RB: Yes, I do not think there is any will to prosecute Florida prison staff. I could not believe the U.S. Attorney did not do anything about Darren Rainey. I did not expect Kathy Rundle to do anything about it for sure.

PW: She’s the state attorney for Dade County, where the murder occurred.

RB: Yes. I never expected her to do anything about it, but I certainly expected the U.S. Attorney to do something.

PW: And this is in the context, too, that in Florida the Attorney General is not doing anything about it, but also within the Department of Corrections this seems to happen on a regular basis.

RB: It does. Every now and then you do hear about them taking some type of action against guards.

PW: To what do you attribute the dismal status of Florida prisons and jails?

RB: The perceived popularity of locking people up for a lot of crimes for long periods of time, and not spending an adequate amount of money to pay for the infrastructure necessary to house people for long periods of time.

PW: So basically, you’re saying they want to cage people, they just don’t want to pay the money it takes to cage them?

RB: Exactly. And [former Governor Rick] Scott came in and cut the budget dramatically for the Florida Department of Corrections. They have not decreased the population. The population is still hovering around 100,000 [prisoners], give or take. They did away with parole. The Commission on Offender Review has been pretty much non-existent in terms of releasing people. They arbitrarily and capriciously set presumptive parole release dates out into the stratosphere and these guys....

PW: Aren’t going to live that long.

RB: Yeah, they’re not going to live that long. They’ll reduce it a couple of years but not a realistic amount that the guys are
going to get out.

PW: So, I ask conversely, what could be done to improve conditions in Florida prisons and jails?

RB: Reduce the number of people they put in, close a number of [prisons] and have people serve much shorter sentences. I mean, you’ve got to realize you have a finite amount of money that the state is going to pay to incarcerate people, and you have to figure out how many people you can incarcerate for that amount of money. They’re incarcerating entirely too many people for too long a period of time. And they’re not adequately protecting the public. I mean, these guys are getting out, they’re much worse than when they went in. Most of them are going to recidivate and go right back to crime because they’re not learning anything. They’re not adequately dealing with their various addictions. It’s a disaster.

PW: So, as we sit here now, a number of FDOC officials, James Crosby and a bunch of his underlings from around 10 or 12 years ago, went to prison on corruption charges. We earlier discussed the brutality and the high-publicity murder cases of prisoners. Give me a sense of how endemic corruption and brutality is in the FDOC.

RB: You know, I don’t have anything to compare it to because I’ve lived in Florida pretty much all of my adult life. So in comparison to other states, I can’t tell you how endemic it is. I think politically, the Florida Department of Corrections Secretary is under the Governor and, as a result of that, the Secretary has to do everything to please the Governor. The budget has to be in line with what the Governor wants, otherwise the Governor rejects the budget.

PW: The bigger thing, too, is there doesn’t seem to be any oversight by anyone in the executive or legislative branches.

RB: I was getting to that. The first thing is the budget. The budget is way underfunded for what needs to be done. The second thing in terms of oversight is that the Inspector General really is like....

PW: A toothless tiger.

RB: A toothless tiger, and does whatever the [FDOC] Secretary wants him to do. And the Inspector General is probably even worse in terms of protecting the Governor. So, you have nobody within the executive branch doing anything about public corruption and brutality. You can’t expect the state attorney to do anything because they’re just – that’s not their constituency. They could care less about it.

PW: If anything, it’s a conflict of interest because their job is to defend the state agencies.

RB: No, it’s the Attorney General that defends the state agencies, not the state attorney.

PW: Oh, okay. You’re talking about the county level prosecutors.

RB: Yeah, the county level prosecutors.

PW: Okay.

RB: The state attorney, there’s no reason why they should ever get involved in bringing prisoners or correctional staff to task for abusing prisoners. I mean, it was kind of rare [the Valdez murder prosecution] that was done in the Starke area.

PW: Right, that was the first and last time the guards had been charged.

RB: And it was pretty well known that that was going to be a whitewash because seven out of 10 people [in the area] either worked for the Florida Department of Corrections or they....

PW: Are related to someone that does.

RB: Related to someone, or they make their livelihood off the Florida Department of Corrections. And then the U.S. Attorney has been nowhere in terms of prosecuting guards for guard-on-inmate brutality. The thing with the corruption with [former FDOC Secretary] Crosby, you know, that was pure greed on his part and his regional director’s part. They were getting kickbacks from the canteen company.

PW: Against that backdrop, what are your views on the federal judiciary as they pertain to prisons and jails in Florida?

RB: It’s gotten progressively worse.

PW: So, over your 40-year career, I
guess when you started litigating, Florida was still part of the Fifth Circuit because the breakup happened in 1981.

RB: Right, in '81, but there were still some good judges in the Eleventh Circuit.

PW: When you say it’s gotten worse, in what respect?

RB: Well, I think the Prison Litigation Reform Act has had a detrimental impact on the ability of prisoners to bring cases as well as lawyers representing prisoners to bring cases. I mean, you can’t expect lawyers to bring these large class-action cases that need to be brought for $211 an hour.

PW: And one would say that was the exact purpose of the Prison Litigation Reform Act – to strip prisoners of lawyers capable of representing them and depriving them of meaningful relief when they did prevail.

I’m going to ask you a separate question about the impact of the PLRA because I think you’ve got a perspective where you’ve practiced almost half your career pre-PLRA and you’ve practiced the other half of your career post-PLRA.

RB: Yeah.

PW: I think the consensus is that Congress passed and President Clinton signed the PLRA into law specifically to strip prisoners of lawyers capable of representing them and depriving them of meaningful relief when they did prevail.

RB: I think it’s been fairly effective. The most effective thing has been the ability of defendants to move to vacate consent decrees or judgments or settlements two years after any judgment or settlement is entered. And if not, from the beginning, even after the settlement is entered or approved or a judgment is entered, you have to begin defending the motion to vacate from the get-go. You’re almost beginning your next round of litigation immediately.

PW: And in part that’s because the government lawyers representing these agencies are more focused on getting out of the relief than they are about actually implementing the relief.

RB: Right.

PW: Okay. So we’ve talked mostly about the county jails and the Department of Corrections in Florida, but the federal Bureau of Prisons maintains a fairly large number of facilities. In fact, I believe the prison complex in Coleman is the largest federal prison complex in the country.

RB: Right.

PW: They also have a metropolitan detention center in Miami.

RB: Yeah, 15,000 federal prisoners in Florida.

PW: Okay, and I know that FJI has represented federal prisoners over the years as well. Do you have any big insights or takeaways?

RB: Medical care in the federal prison system is horrible. They are providing medical care with a lot of unlicensed doctors and physician assistants.

PW: And that’s because it’s the federal government, so state license requirements don’t apply.

RB: Exactly.

PW: From a civil or a human rights perspective, is there any difference in dealing with the BOP as opposed to the Florida Department of Corrections?

RB: Yes. Bivens cases are pretty much non-existent.

PW: And the reason for that is there are no attorney fee provisions.

RB: No attorney fee provisions. The U.S. Attorney usually cuts the defendants loose.

PW: Cuts them loose in the sense that they... RB: They won’t represent them.

PW: They won’t represent them or they won’t indemnify them if you win?

RB: Both.

PW: Because there have also been cases where the government will provide a vigorous defense right up until verdict. A jury comes back with a verdict, finds the BOP defendants liable, then at that point the government says, well, we’re not representing them and you’re on your own as far as collecting damages.

RB: Right. So for the most part if you bring an action – I’ve had this happen twice recently – you’re better off bringing a Federal Tort Claims Act challenge for damages as opposed to a Bivens action against someone individually. And the U.S. Attorney or Assistant U.S. Attorney will tell you that flat out. Don’t amend your complaint to make it a Bivens suit because if you do, you’re not going to get a dime.

PW: And that’s in the context that you have had a remarkable degree of success...
in terms of obtaining money damages for federal prisoners who have been mistreated and are the victims of medical neglect by the Bureau of Prisons.

RB: Yeah, we’ve had a couple of cases that have been successful. The other thing on those is, you know, you do have issues dealing with sovereign immunity but you also have a cap of 25 percent on fees.

PW: If there was one thing that you could change about the FDOC, what would it be?

RB: I would decrease the amount of people going in. I would decrease the length of sentences and I would shrink their budget to....

PW: That’s three things. [laughter]

RB: Well, I guess it would be to decrease the numbers going in. If they were operating with the same amount of money then, hopefully, they would provide for adequate medical care and adequate staff.

PW: One thing I wanted to ask, too, is you’ve been doing this for 40 years now. You’ve been representing, I’d say, by definition, the poorest and most oppressed people in the state of Florida for 40 years. As we sit here in your office you’ve received many, many awards over the years for the cases you’ve won and representation you provided. Have you encountered much official hostility for your legal activities?

RB: From prisoners or from corrections officials?

PW: I’d say from the government in general, as you’re probably the biggest hero for Florida prisoners.

RB: Yeah, and he still could file today if he wanted to. It’s just that we didn’t in that particular case. And there was a reason for that. We wanted to get medical care to these guys. If we sued them for damages and qualified immunity kicked in and [the defendants] appealed to the Eleventh Circuit, we’d be getting these guys medical care five years from now. So we filed a complaint within less than a month and moved for class certification and a preliminary injunction.

PW: And you won both?

RB: We won both. Immediate hearing. We won both. We got guys treatment now. We didn’t get them money. No, we didn’t get them money but we didn’t ask for money.

PW: Right. But overall, over 40 years of doing litigation, has there ever been any hostility?

RB: No, really hasn’t. I mean there have been a number of people in government that will say something to the press publicly, but behind their backs will say thank you very much for getting me the budget that I need. I’ve actually had sheriffs tell me that.

PW: Okay.

RB: [They say] without you suing us, we never would have gotten the money to build a new jail or adequately staff it.

PW: And I think in some respects that’s almost the flip side of prisoners’ rights litigation – at least indirectly, it’s expanded the size of the police state.

RB: Yes.

PW: You’ve been doing this for 40 years and looking back on things, do you have any regrets on anything you’ve done or didn’t do?

RB: Not at all.

PW: Is there anything you’ve done differently?

RB: Not at all. I kind of feel like, you know, Lou Gehrig. I don’t know if you know about his famous speech in Yankee Stadium after he was diagnosed with ALS. He got up and told the fans in Yankee Stadium, “don’t feel sorry for me.” He said, “I have lived a great life. I’ve done exactly what I wanted to do and I want to thank you for allowing me to do it.”

And I feel the exact same way. I have no regrets whatsoever. I went to law school to become a public interest lawyer. I’ve been a public interest lawyer for 40 years. Very few people who go to law school wanting to do this type of work actually end up do-

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**Randy Berg Interview (cont.)**

...and I can say I’ve done it, I’ve been successful doing it and I enjoyed it. I’ve had a good life.

PW: And you’ve been really good at it, too.

RB: Well thanks.

PW: I think as opposed to, “I want to be a civil rights lawyer and I’ve lost every case I’ve filed.” On that note, my closing question is going to be – which I think is such a really good note to end on – do you have any advice for people who are considering going to law school or for lawyers who are considering doing this type of work?

RB: Yeah, I do. And I give it to young lawyers all the time. If you’re going into the practice of law to make a lot of money, don’t be a lawyer. Go to business school. Be a business man and hire lawyers to work for you. On the other hand, if the reason you’re going to law school is to make a difference in society, be a public interest lawyer. Represent the unrepresented. It’s a doable profession. It’s very doable. And you just have to stick to it and not give up.

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**The Isolation of Being Deaf in Prison**

“I didn’t have a way to communicate. And they basically just flipped me the bird.”

by Jeremy Woody as told to Christie Thompson, *The Marshall Project*

**When I was in state prison in Georgia in 2013, I heard about a class called “Motivation for Change.” I think it had to do with changing your mindset. I’m not actually sure, though, because I was never able to take it. On the first day, the classroom was full, and the teacher was asking everybody’s name.**

When my turn came, I had to write my name on a piece of paper and give it to a guy to speak it for me. The teacher wrote me a message on a piece of paper: “Are you deaf?”

“Yes, I’m deaf,” I said.

Then she told me to leave the room. I waited outside for a few minutes, and the teacher came out and said, “Sorry, the class is not open to deaf individuals. Go back to the dorm.”

I was infuriated. I asked several other deaf guys in the prison about it, and they said the same thing happened to them. From that point forward, I started filing grievances. They kept denying them, of course. Every other class – the basic computer class, vocational training, a reentry program – I would get there, they would realize I was deaf, and they would kick me out. It felt like every time I asked for a service, they were like, fuck you, no you can’t have that. I was just asking for basic needs; I didn’t have a way to communicate. And they basically just flipped me the bird.

While I was in prison they had no American Sign Language (ASL) interpreters. None of the staff knew sign language, not the doctors or the nurses, the mental health department, the administration, the chaplain, the mail room. Nobody. In the barbershop, in the chow hall, I couldn’t communicate with the other prisoners. When I was assaulted, I couldn’t use the phone to call the Prison Rape Elimination Act (a federal law meant to prevent sexual assault in prison) hotline to report what happened. When they finally sent an interviewer, there was no interpreter. Pretty much everywhere I went, there was no access to ASL. Really, it was deprivation.

I met several other deaf people while I was incarcerated. But we were all in separate dorms. I would have liked to meet with them and sign and catch up. But I was isolated. They housed us sometimes with blind folks, which for me made communication impossible. They couldn’t see my signs or gestures, and I couldn’t hear them. They finally celled me with another deaf prisoner for about a year. It was pretty great, to be able to communicate with someone. But then he got released, and they put me with another blind person.

When I met with the prison doctor, I explained that I needed a sign language interpreter during the appointment. They told me no, we’d have to write back and forth. But when I encountered a new person, I can’t really read their lips. And I don’t have a high literacy level, so it’s pretty difficult for me to write in English. I mean, my language is ASL. That’s how I communicate on a daily basis. Because I had no way to explain what was going on, I stopped going to the doctor.

My health got worse. I came to find out later that I had cancer. When I went to the hospital to have it removed, the doctor did bring an interpreter and they explained everything in sign language. I didn’t understand, why couldn’t the prison have done that in the first place? When I got back to prison, I had a lot of questions about the medicines I was supposed to take. But I couldn’t ask anyone.

I did request mental health services. A counselor named Julie was very nice and tried her best to tell the warden I needed a sign language interpreter. The warden said no. They wanted to use one of the hearing prisoners in the facility who used to be an interpreter because he grew up in a home with deaf parents. But Julie felt that was inappropriate, because of privacy concerns. Sometimes, we would try to use Video Remote Interpreting, but the screen often froze. So I was usually stuck having to write my feelings down on paper. I didn’t have time to process my emotions. I just couldn’t get it across. Writing all that down takes an exorbitant amount of time: I’d be in there for 30 minutes, and I didn’t have the time to write everything I wanted to. Julie wound up learning some sign language. But it just wasn’t enough.

My communication problems in prison caused a lot of issues with guards, too. One...
Missouri Sheriff Hires Girlfriend to Run Jail; Both are Arrested

by Scott Grammer

James Sigman, 48, was elected sheriff of Texas County, Missouri in 2012. He now stands charged with robbery, assault, endangering the welfare of a child, unlawful use of a weapon, misuse of official information by a public servant and harassment. The charges stem from his alleged failure to stop his girlfriend, Jennifer Tomaszewski, 38, from misrepresenting herself as a peace officer, abusing prisoners at the county jail and putting residents at risk.

Once they brought me to disciplinary court, but they had me in shackles behind my back, so I had no way to communicate. Two of the corrections officers in the room were speaking to me. All I saw were lips moving. I saw laughter. One of the guards was actually a pretty nice guy, one of the ones who was willing to write things down for us deaf folks. He tried to get them to take the cuffs off me. He wrote, guilty or not guilty? But the others would not uncuff me. I wanted to write not guilty. I wanted to ask for an interpreter. But I couldn’t. They said, “OK, you have nothing to say? Guilty.” That infuriated me. I started to scream. That was really all that I could do. They sent me to the hole, and I cried endlessly. It’s hard to describe the fury and anger.

Prison is a dangerous place for everyone, but that’s especially true for deaf folks.

Jeremy Woody, 48, was released from Central State Prison in Georgia in August 2017, after serving four years for a probation violation. He now lives near Atlanta. He is currently suing Georgia corrections officials over his treatment in prison, with the help of the American Civil Liberties Union’s Disability Rights Program and the ACLU of Georgia. Woody spoke to The Marshall Project through an American Sign Language interpreter.

The Georgia Department of Corrections did not respond to a request for comment concerning allegations in this interview.

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From the Editor

by Paul Wright

This month’s issue of PLN is dedicated to the memory and work of Randall “Randy” Berg, a long-time advocate for prisoners’ rights and human rights who died on April 10, 2019 at the age of 70 following a struggle with ALS. I was fortunate to be able to interview Randy at length on his final day at work in December 2018, and believe that was the last interview he gave. I attended his memorial service, which was packed with friends and colleagues.

Randy was one of PLN’s earliest subscribers in the early 1990s, when we were still focused mostly on news and events in Washington State. He represented us when the Florida DOC censored PLN between 2003 and 2005, and again in a second round of censorship litigation between 2009 and 2019. I corresponded with Randy while I was in prison and then met him once I was released. I hope my interview does justice to his career and his lifelong commitment to advocating for prisoners and other marginalized populations.

I had originally planned to publish this interview at some later point when Florida prisoners would be able to read it, since the Florida prison system continues to censor PLN statewide. [See: PLN, Dec. 2018, p.12]. But given Randy’s recent death this seemed like a good time to run it, and to let the rest of the country know that we have lost a giant in the civil rights movement. One of the things that magnified the impact Randy had was that he practiced in Florida – a state with incredibly brutal and corrupt prisons and jails, and one where the civil rights bar is virtually non-existent. That meant he not only advocated for prisoners and the poor in Florida for four decades, but he also mentored and encouraged those few attorneys who were willing to take such cases.

On a happier note, by now PLN subscribers should have received a free sample copy of Criminal Legal News, and may want to subscribe to stay informed about developments in criminal law, sentencing and policing issues. We are working on a new book, The Habeas Citebook: Prosecutorial Misconduct, by former HRDC staff attorney Alissa Hull, which will focus on cases where convictions have been reversed in habeas petitions due to prosecutorial misconduct. We hope to have it ready to ship by the end of summer, and will keep our readers posted.

The Human Rights Defense Center continues to litigate cases involving prisoners, parolees and arrestees having their money taken from them being returned on fee-laden debit cards. If you or someone you know has been forced to accept a prison or jail debit card upon release and are interested in suing to recover the fees you paid, please contact HRDC at our Lake Worth, Florida address.

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

Los Angeles County to Pay Almost $4 Million for Sexual Abuse by Jail Deputy

by Douglas Ankney

In November 2018, the Los Angeles County Board of Supervisors agreed to pay $3.9 million to settle claims against the county, the Los Angeles County Sheriff’s Department (LACSD), Sheriff James McDonnell and Deputy Giancarlo Scotti. The Board’s decision ended a lawsuit brought by two former female prisoners and a potential suit by another.

Jennifer Ann Matthews said Scotti entered her cell at the Century Regional Detention Facility (CRDF), ordered her to expose herself, then forced her to perform oral sex on him. [See: PLN, Nov. 2017, p.1]. After she reported the incident to the LACSD’s Department of Internal Affairs, she was removed from her drug counseling and treatment program, reclassified to a higher security level and removed from her special diet reserved for pregnant prisoners. Additionally, she was threatened in the presence of jail staff by other prisoners who perceived Scotti as being a “cool guard,” and staff did nothing to intervene.

Thea Valerie Lampert accused Scotti of entering her cell at CRDF and ordering her to the showers, where he forced her to engage in oral sex and then raped her. Scotti threatened Lampert not to say anything to anyone. Lampert gave authorities a tissue that she had used to wipe off Scotti’s semen; after reporting the incident, she was removed from her cell and prevented from interacting with other prisoners.

Matthews and Lampert filed a joint complaint raising 16 causes of action, including that LACSD personnel were aware of Scotti’s assaults on numerous prisoners but did nothing to stop him. Claims against the county and Sheriff McDonnell included negligent hiring practices; failure to train, supervise and discipline employees; and maintaining unconstitutional customs, policies and practices – as evidenced by a failure to ensure CRDF was compliant with the Prison Rape Elimination Act, as lone male guards were allowed to observe nude female prisoners in their cells and in the showers. The Los Angeles County Board of Supervisors settled the lawsuit for $2,250,000.

Melissa Williams was also one of Scotti’s victims while she was incarcerated at CRDF, and the Board settled her claim for $1,650,000.

At least six women have been plaintiffs in lawsuits against Scotti and the LACSD. Scotti was charged with eight counts of sexual activity with a detainee in a correctional facility, and those charges remain pending. See: Matthews v. County of Los Angeles, U.S.D.C. (C.D. Cal.), Case No. 2:17-cv-07908-DMG-PLA. Additional sources: ktla.com, patch.com
Republican-Appointed Federal Judges Sentence Blacks More Harshly, Women More Leniently

by Ed Lyon

Under Article III of the U.S. Constitution, presidents nominate judges to sit on federal district and circuit courts, as well as the Supreme Court. Federal judges are appointed for life and serve until they retire, resign, die or are impeached. Politicians (including presidents) have historically been affiliated with either the Democratic or Republican party, and usually endorse their party’s platforms — though the idea behind lifetime judicial appointments was to give independence to judges to rule fairly and equitably in all cases without undue political pressure.

Harvard Law School professors Alma Cohen and Crystal Yang recently completed and released the results of an exhaustive study that examined sentencing records of 1,400 federal judges covering more than 500,000 cases from 1999 through 2015. Their resulting report was published in February 2019 in the American Economic Journal: Economic Policy.

For longtime PLN readers, it will come as no surprise to learn that regardless of a judge’s political affiliation, black defendants tend to receive longer sentences than defendants of other races. Interestingly, however, the study found that judges appointed by Republican presidents sentence black defendants to prison terms averaging around 90 days longer than judges appointed by Democrats.

“The racial gap by political affiliation is three months, approximately 65 percent of the baseline racial sentence gap,” according to Yang and Cohen. “We also find that Republican-appointed judges give female defendants two months less in prison than similar male defendants compared to Democratic-appointed judges, 17 percent of the baseline gender sentence gap.”

“Conservative judges are more likely to feel that, if a woman committed a crime, it must not have been her idea or she might have been forced to do it by circumstances,” Cohen opined. “A key takeaway is that our system of judicial appointments has deep and broad effects on judicial decisions,” he added. “Subsequent discussions of sentencing decisions and racial and gender disparity should pay close attention to the role of political leanings.”

U.S. Supreme Court Justice Neil M. Gorsuch, nominated by President Trump, disagrees with such politically aligned statements. “There is no such thing as a Republican judge or a Democratic judge. We just have judges in this country,” he said during his 2017 confirmation hearing.

Yet a March 2018 tweet from President Trump indicated otherwise: “We need more Republicans [appointed to judgeships] in 2018 and must ALWAYS hold the Supreme Court!”

Sources: thehill.com, newsweek.com, nytimes.com, aeaweb.org
On January 8, 2019, Montgomery County, Ohio agreed to pay $115,000 to resolve a federal civil rights lawsuit brought by a former jail prisoner who was pepper-sprayed while “largely strapped into” a seven-point restraint chair.

Charles Wade was being booked into the Montgomery County Jail on October 17, 2016 when the arresting state troopers informed jail staff that he was intoxicated. Video surveillance footage of Wade’s intake showed that he struck his head against a blue mat fastened to the wall while being searched. Sgt. John W. Eversole then ordered other guards to place Wade stomach-down on the floor, handcuff him and move him to the restraint chair. While Wade was on the floor, Eversole put his knee on the middle of his back. Wade asked why they were doing this as he was not resisting.

According to his subsequent complaint, Wade was taken to the restraint chair and his legs and abdomen strapped in while he was still handcuffed behind his back and four guards held his head and upper torso. “At that point [guard Joshua] Lighter, under the semblance of removing [Wade’s] handcuffs manipulated [Wade’s] hand and wrist causing severe pain, injury and evoking a reaction from [Wade],” Eversole sprayed Wade in the eyes and face with a long burst of OC pepper spray at close range. Wade was left in the restraint chair nearly 13 hours without being decontaminated. The spraying and lack of decontamination allegedly resulted in chemical burns to Wade’s eye, causing it to twitch involuntarily.

With the assistance of Dayton attorney Doug Brannon, Wade filed a federal civil rights action against Eversole – who is married to Assistant Montgomery County Prosecutor Erin Claypoole – and other county and jail officials. After U.S. District Court Judge Thomas Rose denied summary judgment on the claims against Eversole, the county settled the case for $115,000.

Montgomery County had previously paid $375,000 to settle a similar lawsuit brought by Amber Swink, who was pepper sprayed while fully restrained in a restraint chair. On November 15, 2015, former jail Captain Judith Sealey was convicted of misdemeanor disorderly conduct for spraying Swink. See: PLN, Aug. 2018, p.35.

Jail officials suppressed video footage of the Swink pepper-spraying, which did not emerge until a few months prior to the incident involving Wade. His complaint referred to Swink’s lawsuit and six others to demonstrate the jail’s “custom of tolerance or acquiescence” toward excessive use of force by guards. See: Wade v. Eversole, U.S.D.C. (S.D. Ohio), Case No. 3:17-cv-00051-TRM.

HRDC Files Public Records Suits, Argues GEO Group is a De Facto Public Agency

The Human Rights Defense Center (HRDC), the parent organization of Prison Legal News, has filed lawsuits in Texas and Vermont arguing that the GEO Group – one of the nation’s largest for-profit prison companies – is a de facto public agency that should be required to comply with public records requests.

Filed in the 225th Judicial District in Bexar County, the Texas case – Human Rights Defense Center v. The GEO Group, Case No. 2018CI16343 – resulted from a request submitted by HRDC that asked for records pertaining to complaints, claims, verdicts and settlements involving GEO facilities in that state.

However, nearly nine months after the request was filed, and after HRDC submitted a follow-up inquiry regarding the status of its request, GEO Group had not responded. Consequently, HRDC filed suit on August 27, 2018.

In its complaint, HRDC argued that GEO Group is a “[g]overnmental body” under Section 552.003(1)(A)(xii) of the Texas Government Code, and thus should fall under the purview of the Texas Public Information Act. That statute defines a “governmental body” as – among other things – “the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds.”

“GEO Corrections and Detention division is supported wholly by public funds. Without financial support from the [government], GEO Group would cease to exist,” HRDC argued. “GEO Group exists to carry out the fundamental government function of incarcerating individuals remanded to custody under legal authority. Without the underlying contract process and payment of public funds from the contracting agency, GEO Group could not detain and imprison people.”

The complaint seeks a ruling that GEO is subject to the Texas Public Information Act, while more broadly asking the court to declare the company a “governmental body.” HRDC is also seeking attorney fees and costs.

Vermont Redux

In May 2018, HRDC filed a similar lawsuit in Vermont, in the Civil Division of Superior Court, Washington Unit. The complaint in that case, Human Rights Defense Center v. GEO Group, Case No. 272-5-18Wncv, bluntly stated that “GEO stands in the shoes of the Department of Corrections.”

HRDC noted that in 2017 it had filed a request with GEO Group under the Vermont Access to Public Records Act, seeking documents related to payments in claims and lawsuits against the company or its employees over an eight-year period. Although GEO does not operate any facilities in Vermont, it previously held Vermont state
History Repeats Itself

The lawsuits in Texas and Vermont mirror other, successful cases previously filed in those same states by HRDC against another private prison firm.

In one of those suits, HRDC sought public records from Corrections Corporation of America, now known as CoreCivic, arguing the company was a de facto government agency and therefore must abide by Vermont’s public records law.

“By substituting for the Department of Corrections in housing and caring for Vermont prisoners, the defendant is a ‘public agency’ as that term is defined by Vt. Stat. Ann. tit. 1, § 317(b),” HRDC stated in its complaint. As with GEO Group, CoreCivic was housing Vermont prisoners at an out-of-state facility at the time.

Under Vermont law, a “public agency” is defined as “any agency, board, department, commission, committee, branch, instrumentality, or authority of the State or any agency, board, committee, department, branch, instrumentality, commission, or authority of any political subdivision of the State.”

HRDC prevailed in its public records suit against CoreCivic in 2015, with the company settling the case and producing the requested records. [See: PLN, July 2013, p.42].

Additionally, HRDC filed a public records suit against CoreCivic in Texas that resulted in a March 2014 order by a state district court which found the company was a “governmental body” for purposes of the Texas Public Information Act, and therefore subject to that law’s “obligations to disclose public information.” [See: PLN, April 2014, p.35; June 2013, p.46].

HRDC has filed successful public records suits against private prison companies in Florida and Tennessee, too, under the functional equivalent doctrine.

Additional sources: vtdigger.org, statutes.capitol.tx.gov

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In January 2019, the city of Gainesville, Florida followed the lead of Alachua County by deciding to terminate its contract with the Florida Department of Corrections (FDOC) to provide prisoner work crews for such duties as ground maintenance, filling potholes and trash detail. Activists from the Incarcerated Workers Organization Committee (IWOC) convinced Gainesville officials that the continued use of such work crews constituted “slave labor” and did nothing to promote rehabilitation.

Gainesville entered into a three-year contract (plus a potential three-year extension) with the FDOC in June 2016. The city agreed to pay $180,000 in exchange for services provided by a five-prisoner work crew; the services could be scheduled for any governmental agency or nonprofit organization, but not for private businesses. The contract stated the city would supply the work crew’s vehicle and any necessary equipment, as well as the supervising guard’s $54,000 annual salary and $750 for the prisoners’ protective equipment, first aid and safety gear.

Opponents to the use of prisoner slave labor addressed the city commission prior to a January 24 vote on the FDOC contract extension, which led to a decision against extending it. Mayor Lauren Poe thanked those involved for shining “a light on a very serious issue,” and called the termination of the work crew contract a “moral imperative.”

“It’s important that the Department of Corrections explain to the policymakers why using prison labor is a good use of taxpayer dollars,” stated County Commissioner Ken Cornell. “But more importantly why it’s good for the prisoners they’re ultimately responsible for.” He added the work programs should assist in post-release job placement and help to reduce recidivism. “That’s the kind of data you would expect to see unless we’re just using them for slaves,” he said.

The Alachua County Commission voted on January 22, 2019 to hire full-time staff for maintenance services that had been performed by prisoner labor, at an estimated cost of over $1 million per year.

At least 500 public entities contract with the FDOC for prisoner labor, including the University of Florida. Cornell said he hoped Alachua County’s contract termination would prompt others to do the same.

“We would like to see if we can be a catalyst for change throughout the state to help kind of fix this system of prison labor. Whenever county government either relies on or depends on free labor, it diminishes the value of paid labor,” he remarked.

City officials in Gainesville are funding a pilot program to pay at-risk youths to perform the work previously done by prisoners, at wages of $10.50 to $12 per hour.

Sources: theappeal.org, wjpb.com, gainesville.com, City of Gainesville Contract #W1063

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### Seventh Circuit Holds Heck May Not be Circumvented by Waiving Claims Related to Prison Disciplinary Punishment

by Matt Clarke

On February 5, 2019, the Seventh Circuit Court of Appeals held that a prisoner cannot waive challenges to portions of his prison discipline to circumvent the requirements of *Heck v. Humphrey*, 512 U.S. 477 (1994) and *Edwards v. Balisok*, 520 U.S. 641 (1997). Rather, an underlying prisoner disciplinary case must be terminated in the prisoner’s favor before a civil rights action with claims related to the disciplinary case can be brought.

Illinois state prisoner Jeryme Morgan received a disciplinary infraction due to an attack on other prisoners at the Menard Correctional Center. In the space on the disciplinary form for requesting witnesses at the hearing, he wrote “James Lewis” and “whereabouts.” Prison rules required that the potential witness be identified and a description of the witness’ testimony be provided. Prison officials were unable to locate a “James Lewis” at the facility, thus he was not called as a witness. Morgan was punished with loss of three months good-time credits, an additional year in segregation, one year on lowered status and multiple other restrictions.

He unsuccessfully grieved the failure to call his witness, then filed a § 1983 civil rights complaint in federal court alleging excessive force, deliberate indifference and due process violations. The due process claims were severed and, in an attempt to avoid the Heck rule, Morgan filed an affidavit abandoning “any and all present and future challenges” and waiving “for all time all claims” related to the portion of his disciplinary punishment that impacted the length of his confinement. The district court rejected his attempt to circumvent *Heck* and entered summary judgment for the defendants, dismissing the case with prejudice.

Morgan appealed. The Seventh Circuit noted that his affidavit was based on *Peralta v. Vasquez*, 467 F.3d 98 (2d Cir. 2006). However, it had already rejected the *Peralta* strategic-waiver strategy in *Haywood v. Hathaway*, 842 F.3d 1026 (7th Cir. 2016). “Prisoners cannot make an end run around *Heck* by filing an affidavit waiving challenges to the portion of their punishment that revokes good-time credits,” the Court of Appeals wrote.
The Court explained that “The favorable-termination rule is more than a procedural hurdle that plaintiffs can skirt with artful complaint drafting or opportunistic affidavits. Rather, it is grounded in substantive concerns about allowing conflicting judgments,” and is “a version of issue preclusion (collateral estoppel), under which the outstanding criminal judgment or disciplinary sanction, as long as it stands, blocks any inconsistent civil judgment.”

The appellate court noted that Morgan could have challenged the disciplinary action in state court and still might be able to do so. Should he be successful, the Heck rule would no longer apply. Therefore, it altered the judgment to reflect a dismissal without prejudice and affirmed the judgment as modified. See: Morgan v. Schott, 914 F.3d 1115 (7th Cir. 2019).}

**PLRA Attorney Fee Award Discussed after Oklahoma Jail Prisoner Awarded $35,001**

by Derek Gilna

James Jordanoff, a former pre-trial detainee at the Cleveland County Detention Center in Oklahoma, won a $35,001 judgment following a jury trial based on a First Amendment retaliation claim against ex-guard Josh Coffey.

The May 9, 2018 judgment included $1 in nominal damages plus $35,000 in punitive damages, and also provided for attorney’s fees for Jordanoff’s counsel, J. Wes Billingsley.

Jordanoff filed his original complaint pro se, and Billingsley took his case after Coffey’s motion for summary judgment was denied. Following the successful conclusion of the lawsuit, Billingsley moved for $157,811.75 in fees under 42 U.S.C. § 1988 but the district court reduced the fee award based on the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e(d), as well as § 1988(b)’s “reasonableness” requirement.

“The Court herein rejects Counsel’s challenges to the PLRA’s applicability and constitutionality before calculating the lodestar from Counsel’s billing records,” the district court wrote.

As noted by the court, the PLRA “imposes four potential limits on Counsel’s attorney’s fees award: (1) a reasonableness and tailoring requirement ensuring that fees are for work directly tied to the prisoner’s relief, id.; (2) a portion of the judgment (not to exceed 25 percent) must be allocated to satisfy an attorney’s fees award, with the rest of the award ‘paid by the defendant,’ id. § 1997e(d)(2); (3) a total cap on the attorney’s fees award of 150 percent of the money judgment, id. § 1997e(d)(2), ... which would limit Counsel’s award to $52,501.50; and (4) the award must be ‘based on an hourly rate’ no greater than 150 percent of the rate established under the Criminal Justice Act (‘CJA’).”

The district court rejected Jordanoff’s argument that “the PLRA – which classifies incarcerated and non-incarcerated pre-trial defendants differently for attorney’s fees purposes – violate[d] his Fifth Amendment right to equal protection under the law.” The court concluded that it “presumes the statute to be valid and will sustain the classification so long as it ‘is rationally related to some legitimate end.’”

Accordingly, in a July 10, 2018 order, the district court awarded $47,764.10 in attorney fees to Billingsley. Pursuant to the PLRA, Jordanoff was ordered to pay $8,750.25 (25 percent of his damages) toward the fee award. See: Jordanoff v. Coffey, U.S.D.C. (W.D. Okla.), Case No. 5:15-cv-00939-R; 2018 U.S. Dist. LEXIS 114458.
Showtime’s “Escape at Dannemora” Left Out Torture and Abuse

The miniseries depicting a New York prison escape fails to show what happened to the men left behind.

by Katie Rose Quandt, The Appeal

“Escape at Dannemora” is based closely on Inspector General Catherine Leahy Scott’s 2016 report outlining the extensive state failures that made Sweat and Matt’s escape possible. As the miniseries depicts, their escape was enabled by employees’ disregard for rules, lack of oversight and lax security. Viewers see Mitchell nervously – but easily – smuggle hacksaw blades into the prison, hidden in frozen ground beef.

Once the escape took place, prison staff quickly tried to pass on the blame. Within hours of discovering Matt and Sweat’s absence on June 6, 2015, according to the Times, correctional officers took Patrick Alexander, who lived in the cell next to Matt, into a broom closet, punched him and slammed him against the wall while insisting he must know something about the escape. According to Alexander’s account, an officer grabbed the handcuffed man by the throat, lifted him out of his chair and slammed his head into a pipe while other officers threw punches. Multiple times that day, correctional officers put a plastic bag over his head and threatened to waterboard him. In March 2017, Alexander filed a lawsuit against the Superintendent of Clinton and a list of other Department of Corrections and Community Supervision (DOCCS) officials and correctional officers.

A DOCCS spokesperson said the department could not comment on ongoing or pending litigation, but added, “DOCCS has zero tolerance for violence within the facilities. Anyone engaged in misconduct will be disciplined within the facility and if warranted the incident will be referred for outside prosecution.”

Another man on the honor block, Victor Aponte, told the Times that an officer tied a plastic bag around his neck and tightened it until he passed out. A third, Reggie Edwards, said he was put in solitary for three weeks, and his belongings and wedding ring were thrown away. Some men said officers forbade them from telling medical staff how they got their injuries. By August, Prisoners’ Legal Services of New York had received 71 complaints of abuse from Clinton.

The abuse was covered up through false disciplinary tickets and worsened by the denial and delay of medical treatment, according to a 2016 report by the nonprofit Correctional Association of New York. One man described being awakened in the middle of the night, choked, thrown to the ground, beaten, strip searched and tightly shackled. When he asked what was going on, he said the officer replied, “ Shut the fuck up. This is what happens when people escape.” Despite later reporting significant pain and blood in his urine, he did not see a doctor or receive medical treatment. When he filed a grievance, he was given a ticket and locked down in his cell for 20 days.

Dozens of men incarcerated at Clinton were transferred to other facilities and placed in solitary confinement. In the highly charged atmosphere following the escape, the number of people in solitary confinement spiked at prisons throughout the state, increasing 14.4 percent between June and September 2015, at a time when New York had pledged to reduce its use of solitary.

None of this abuse was depicted in “Escape at Dannemora.” Executive producer and director Ben Stiller told the host of the Slate podcast “The Gist” that the series plot came largely from the inspector general’s report. That report, in turn, mentioned the abuse only in passing: “The need for oversight is particularly apparent in view of subsequent allegations of abuse by DOCCS personnel at Clinton and other state prisons that have emerged in the wake of the escape.”

Though the abuse escalated after Matt and Sweat escaped, mistreatment had long been the norm at Clinton, according to the Correctional Association’s report. Thirty-one people died at the facility between 2007 and 2013. Sweat said at his sentencing hearing that the harsh conditions were the impetus for his escape attempt. And the Correctional Association found that in many incident reports, “COs are writing up


The series, which has earned praise for its evenhandedness and authenticity, takes viewers through a dramatic retelling of the two men’s elaborate plot, the escape and the ensuing manhunt. But it ignores one of the most serious consequences of the break: the widespread retaliation carried out against the people left behind in Clinton and other New York prisons.

In August 2015, two months after the escape, a New York Times investigation outlined horrific abuse at Clinton, where men who had lived near Sweat and Matt on the “honor block” (a cellblock for those who have earned additional privileges) were tortured for information. This abuse served no useful purpose: The New York inspector general’s 150-page report on the escape did not implicate a single other incarcerated person, and instead blamed extreme negligence by prison staff and higher-ups in the Corrections Department, as well as direct assistance from Mitchell. Yet according to the Times, during an extended lockdown following the breakout, men in Clinton were repeatedly “beaten while handcuffed, choked and slammed against cell bars and walls.”

“Escape at Dannemora” never shows or references the torture going on inside the prison walls. Instead, the final episode depicts the 23-day manhunt through the wilderness that leaves Matt dead and Sweat wounded and recaptured, the inspector general conducting interviews and even Governor Andrew Cuomo touring the facility. When asked why they chose to omit this chapter of the story, representatives from the show said no one was available to comment on the decision.

In August, prison employee Catherine Leahy Scott, who oversaw the investigation, filed a lawsuit against the Department of Corrections and Community Supervision, the Governor’s Office, the Corrections Department and individuals for violating her constitutional rights by failing to conduct a thorough investigation. As Scott’s lawsuit pointed out, the investigation was so limited that it failed to find the names of 170 other employees who engaged in misconduct. The lawsuit also charged that some prison officials were negatively impacted by the investigation, as those who were found to have committed misconduct were disciplined and transferred away from Clinton.

But according to Leahy Scott’s report, mistreatment was widespread at Clinton. Her investigation revealed that: 71 complaints of abuse had been filed with the Correctional Association of New York, which has been closely monitoring conditions in Clinton since 2014; 95 incident reports, “COs are writing up
In jail, of which he served four. Gene Palmer, was sentenced to six months denied parole twice. A correctional officer, ration for repairs to the prison. She has been
Sanitation, racism, and brutality.”

In fact, the Correctional Association noted that “the June 2015 escape and its aftermath only exacerbated the abusive conditions and provided opportunities for
staff to utilize longstanding tactics of dehumanization, racism, and brutality.”

Several staff members resigned or were suspended because of their roles in the escape. Mitchell pleaded guilty to a felony and a misdemeanor, and was sentenced to two and a third to seven years in prison and ordered to pay almost $80,000 in restitution for repairs to the prison. She has been
denied parole twice. A correctional officer, Gene Palmer, was sentenced to six months in jail, of which he served four.

After Sweat was captured, he pleaded guilty to three felony counts, each add-
ing three and a half to seven years to his life sentence, as well as nearly $80,000 in restitution. But his real punishment happens inside the prison walls. At an
internal disciplinary hearing, Sweat was sentenced to six years of solitary confine-
ment, where he spends 23 hours a day in his cell without package, commissary or telephone privileges – and where, he told
Solitary Watch in a letter, he has suffered abuse and retaliation.

Sweat is unlikely to find relief after six years: People who escape or attempt to es-
cape are often labeled security risks and kept in “administrative segregation” for decades or even the rest of their lives. Amy Fettig of the ACLU National Prison Project said prison escapes are “all too often linked to staff misconduct, incompetence or both,” but that staffers frequently react “with hu-
miliation and extreme vengeance.” Sweat’s escape drew international media coverage, led to staff suspensions and scrutiny, and the manhunt cost the state $23 million in overtime alone.

Sweat went on a hunger strike while incarcerate in Attica Correctional Facility, writing in a 2018 letter that he did not trust
food delivered on unsealed trays by officers. “It’s now been over 4 months without eating the food they serve and surviving on liquid nutrients given to me by medical personnel and visit food from my fiancé twice a week,” he wrote, adding that he took “bird baths” at his sink instead of trusting officers to safely escort him to the shower.

He has been transferred several times over the past two years, and is currently in-
carcerate in Auburn Correctional Facility. Meanwhile, allegations of brutality have continued to trickle out of Clinton years after Sweat’s capture. In a federal lawsuit filed on December 28, 2018, Andrew Champion alleges that a fellow prisoner beat him into a coma in his cell in January 2018. According to Champion’s complaint, a correctional officer stood by inside the cell and watched.

This article was originally published by The Appeal (www.theappeal.org), a criminal justice news site, on January 10, 2019; it was co-published with Solitary Watch (www.solidarywatch.org). Reprinted with permis-sion, with minor edits. Copyright, The Appeal 2019.

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California: Placer County to Pay up to $1.44 Million to Settle Class-Action Suit for Jail Beatings

by Douglas Ankney

In March 2019, Placer County, California agreed to create a fund of $1,449,700 to settle potential claims arising from a class-action lawsuit filed on behalf of prisoners who were beaten by guards at the county’s two jails. Placer County had previously settled six suits and a claim arising from similar allegations for a total of $1.25 million.

The settlement agreement requires notification of potential class members who were in the jails from August 11, 2015 to August 14, 2018. It also calls for the sheriff’s office to track all use-of-force incidents and provide quarterly reports to the prisoners’ attorneys through December 2019.

According to the complaint, Paul Bangert, a homeless and mentally ill man, was held as a civil detainee at the Auburn Main Jail in connection with mental health court proceedings. He was placed under close observation in an isolation cell due to his mental health issues.

In May 2017, three guards, Robert L. Madden, Megan C. Yaws and Doe 1 (identified in news reports as Jeffrey Villanueva), burst into Bangert’s cell and tased him repeatedly. They struck him with their fists at least a half-dozen times on the back of his head, jumped on him and choked him into unconsciousness. He was then handcuffed and put in a restraint chair without receiving any medical treatment. [See: PLN, Jan. 2018, p.63].

The complaint alleged Sheriff Devon M. Bell had prior knowledge that guards were assaulting prisoners and engaging in cover-ups. In People v. Coleman, filed in Placer County Circuit Court, it came to light that in connection with a July 14, 2016 incident, portions of the Auburn Main Jail’s surveillance video recordings had been edited. The missing portions corresponded to the period of time a prisoner alleged he was beaten by five guards.

Bangert settled his claims for $250,000, and under the terms of the agreement will receive another $50,000 as an incentive fee for pursuing the class-action case.

Yaws, Madden and Villanueva were arrested and charged with “assault by a public officer” and “filing a false report” in connection with the beatings of Bangert and several other prisoners, including Phillip Daley, Jacob Gillespie and Jordan White. The charges against Yaws were dropped in April 2018 due to lack of evidence.

The class-action settlement received final approval from the district court on March 29, 2019. See: Bangert v. County of Placer, (E.D. Cal.), Case No. 2:17-cv-01667-KJN. Additional source: sacbee.com

Prisoner Enters Federal System Able to See, Leaves Nearly Blind; $2.6 Million Settlement

by Ed Lyon

Vananna Nhar, 22, was sentenced to a term in federal prison for selling firearms to an undercover cop. He entered the Bureau of Prisons in October 2011 with near-perfect vision and was assigned to FCC Butner in North Carolina. When he left in 2013, his eyesight was irreversibly damaged.

Nhar had glaucoma to begin with. Glaucoma is a group of diseases where high intraocular pressures within the affected person’s eyes damage the optic nerves, eventually resulting in blindness if not treated.

Nhar, of Asian descent, also suffered from what a federal mediator called a “secondary glaucoma” caused by Vogt-Koyanagi–Harada syndrome (VKHS), which is more likely to affect Asians, Native Americans and Hispanics. VKHS, an autoimmune disease, appears in melanin tissue encompassing brain and spinal cord membranes, the inner ears, eyes and skin.

At his initial medical screening, Nhar was referred to see an ophthalmologist within 30 days due to the severity of his VKHS-accelerated glaucoma. In a harbinger of things to come, that appointment occurred 19 days late. Nhar was referred to the retina clinic, which took 54 days – 24 days longer than it should have. Also, the prescribed monthly bilateral intraocular pressure checks Nhar was supposed to receive did not occur for six months. The mediator described this as a violation of the standard of care by the prescribing specialist – much more severe than a deviation from the usual standard of care.

During this time, Nhar submitted 11 polite requests for medical attention. He complained of “night blindness, seeing spots, decreased vision lateral peripheral fields,” as well as eye pain, film of the eyes, total peripheral vision loss and clouded visual fields with blackout areas. Those complaints fell under “Medically Necessary – Acute or Emergent” events requiring immediate attention, which he did not receive.

“I think that he was so nice that they just blew him off,” said one of Nhar’s attorneys, Gregory M. Kash.

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The mediator found this to be gross negligence and medical malpractice on the part of prison medical staff, and held the United States to be vicariously liable under the respondent superior doctrine in Nhar's claim filed pursuant to the Federal Tort Claims Act.

After another delay Nhar eventually received surgery, which included placing tubes in his eyes to drain fluid and reduce the pressure, but his vision loss progressed. Prison officials did not take him for recommended follow-up surgery, and upon his release he was legally blind.

The mediator awarded Nhar $2,600,000 in damages. Nhar and his attorney received a $1,092,000 check as an initial payment. Another check for $1,368,000 went to the annuity funding company to provide Nhar with guaranteed monthly payments for at least the next 35 years, and a fee check for $140,000 went to the annuity funding company. Nhar was represented by Kash and attorney Annemarie H. McAnally. See: Nhar v. United States, U.S.D.C. (E.D. NC), Case No. 5:16-cv-03019-D.

Additional source: newsobserver.com

Privately-Run British Prison in Shambles, Ministry of Justice Takes Control
by Scott Grammer

On August 13, 2018, Great Britain’s HMP Birmingham, operated by G4S (previously Group 4 Securicor), a private security company, had to be taken over on an emergency basis by the Ministry of Justice. An inspection of the prison found that prisoners were drinking, using drugs and committing acts of violence at will, and that the facility was crawling with roaches amid blood and vomit. The government took control from G4S, which had been awarded a 15-year contract to run the prison in 2011.

Britain’s Chief Inspector of Prisons, Peter Clarke, said the facility had experienced “dramatic deterioration” since the previous year’s inspection, and that the government should launch an investigation into conditions at HMP Birmingham, formerly known as Winson Green, the most violent prison in England.

In December 2016, HMP Birmingham was the site of a 12-hour riot involving as many as 600 of its 1,450 prisoners. Staff at the facility locked themselves into secure areas to avoid being assaulted; during an inspection, there was an arson attack on a staff car park that was supposed to be secure. Clarke said there had been an “abject failure” by the private prison operator.

Rory Stewart, Minister for Prisons, added, “It has become clear that drastic action is required. This step in means that we can provide additional resources to the prison while insulating the taxpayer from the inevitable cost this entails.” He told the BBC, “This is partly the responsibility of me, as prisons minister, of the government, and of G4S, which is why we have taken this unprecedented step of stepping in, taking control of the prison.”

He described the situation as being “commercially sensitive.” Richard Bugon, shadow justice secretary, said the problems at HMP Birmingham “should be a nail in the coffin for the flawed idea of prison privatization.”

Source: theguardian.com

The Habeas Citebook (2nd edition)
by Brandon Sample and Alissa Hull

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People with Traumatic Brain Injuries More Likely to Commit Crimes

by Ed Lyon

After Kansas City Chiefs linebacker Jovan Belcher murdered his girlfriend and then killed himself in 2012, an autopsy revealed he suffered from Chronic Traumatic Encephalopathy (CTE), a disease caused by blunt head trauma during football blocking. Problems associated with CTE and other types of Traumatic Brain Injury (TBI) include anger, aggression, depression, impaired judgment and poor impulse control, and as previously reported in Prison Legal News, people who have experienced TBI are more likely to commit violent crimes. [See: PLN, June 2017, p.22; Nov. 2013, p.18].

A hard blow to the frontal lobe, which processes emotions and behavior, can cause the same sort of degradation in brain performance as dropping a computer, according to Wayne Gordon, a professor of rehabilitation medicine at Mount Sinai School of Medicine in New York City. “If something went wrong with the central processing unit, it might be slower – you couldn’t save documents as easily – but it might chug along,” he stated.

For prisoners, who experience TBI at rates many times higher than the rest of the population, the implication is clear. According to Peter Klinkhammer, associate director of services at the Brain Injury Association of Minnesota, “If we don’t help individuals specifically who have significant brain injuries that have impacted their criminal behavior, then we’re missing an opportunity to short-circuit a cycle.”

Yet prisoners are often unaware of any link between past head trauma and their current problems, noted Elisabeth Pickelsimer, an associate professor at the Medical University of South Carolina. And prison officials find it less costly to ignore TBI diagnoses and treatment.

“It’s cheaper for them to just lock them up,” Pickelsimer observed.

Still, as Minnesota Department of Corrections neuropsychologist Adam Piccolino noted, the failure to address TBI-related problems means they are “apt to provide challenges to the offender post-release as they attempt to reintegrate into their respective communities.”

Sustaining a brain injury early in life tends to make people more aggressive when they grow older. A jail prisoner in Denver, Colorado, identified only as “Scott,” suffered TBI at age five at the hands of his foster father. He has since been struck on the head by a baseball bat, a crescent wrench and by gang members who assaulted him while incarcerated. He deals with constant agitation, restlessness, sweets and seizures.

Scott is enrolled in a new treatment program for prisoners with TBI, in which jail staff take extra time explaining things to him and allowing him to process the information. He attends cognitive training courses, and while there are no drugs approved specifically to treat CTE/TBI, he augments his therapy and cognitive training with psychiatric medication.

Scott is not alone. Research by the Brain Injury Alliance of Colorado revealed that 54 percent of Denver prisoners and probationers between 2013 and 2018 had a history of TBI. A 2007 study in federal prisons found a high percentage of TBI among female prisoners, with many revealing 10 or more incidents that left them unconscious, usually involving a violent encounter with someone else. Another 2007 study, conducted in Minnesota, found the incidence rate of TBI among prisoners was almost 83 percent.

Outside the criminal justice system, that rate drops to eight percent among the general U.S. population – about 24.6 million people – according to a 2012 study.

The Minnesota research identified the most common causes of TBI prior to incarceration as assaults, vehicle crashes and sports injuries. Once incarcerated, prisoners are at risk of TBI resulting from encounters with other prisoners – including a gang-initiation beating called “pumpkinhead,” which purposely attempts to induce brain swelling – as well as self-inflicted head trauma, especially among those placed in solitary confinement.

The University of Denver runs a project that screens jail prisoners to identify those with TBI, partnering with the Colorado Department of Human Services. Prisoners are initially questioned about head injuries sustained in accidents or violent incidents that resulted in loss of consciousness or left them comatose. Those with a history of such injuries are given a thorough neuropsychological screen to assess memory and measure reaction time.

Since it began in 2013, the University of Denver’s program has found that 96 percent of the jail’s high-risk population has experienced TBI. That finding, in turn, led to a $1 million federal grant to continue the research for four more years. Ten other states have since secured similar grant funding and are coordinating their efforts with Colorado to research TBI/CTE.

Denver jail case manager Amy Blackman is a former prison guard whose philosophy used to be “Nail ‘em and jail ‘em.” She has since learned that the explosive outbursts of violent behavior associated with TBI are strongly linked to domestic violence and other violent crimes prisoners have experienced.

The link between TBI and the cognitive, emotional and behavioral problems prisoners suffer was originally established at a National Institutes of Health conference in 1998. These problems also negatively impact prison management and prisoner safety. Other studies, like one conducted in 2005, have extended the link to so-called secondary conditions such as substance abuse, which affects a prisoner’s behavior while incarcerated as well as his or her successful reintegration into society after release.

As recognition of the link between crime and TBI spreads, advocates are working to increase TBI screening for prisoners. Yet a diagnosis can be extremely difficult, with similar traumas resulting in different brain injuries. An effective screening tool is critical, such as the TBI Questionnaire used in the Minnesota study, which revealed that only one of every 83 people with TBI self-reported having such injuries.

“They were told they had their bell rung – they got knocked out,” said Rebecca Desrocher, assistant program director at the U.S. Department of Health and Human Services’ Federal Traumatic Brain Injury Program. But since the injury typically happened long ago, most people do not associate it with latent behavioral problems.

Advocates hope to establish for judges and juries a comprehensive and reliable set of guidelines for TBI-related cases that address culpability as well as punishment and/or treatment for people who commit crimes due to the lasting effects of brain injuries. [ ]

Sources: denverpost.com, newsweek.com, brainline.org, scientificamerican.com
Securus Hacked Again; Passwords, Personal Information, Location Data Compromised

by Matt Clarke

Some readers may recall how a hacker targeted Dallas, Texas-based Securus Technologies, a prison telecom company, resulting in the records of some 70 million phone calls made by over 63,000 prisoners being released on the Internet in November 2015. That incident revealed Securus was recording prisoners’ calls with their attorneys. [See: PLN, Aug. 2016, p.1].

Another hack at Securus in May 2018 resulted in the release of usernames, email addresses, phone numbers, hashed passwords and security questions for 2,800 of the company’s customers – mostly law enforcement officials.

The passwords were hashed using MD5, an algorithm that can be easily defeated by experienced hackers, revealing the real passwords. Further, having the answers to security questions makes it easy for a hacker to establish a new password, effectively locking the legitimate user out for a hacker to establish a new password, answers to security questions makes it easy for a hacker to establish a new password, effectively locking the legitimate user out while giving the hacker unlimited use of the account.

Equally worrying was the location tracking service that may have been compromised. Securus partners with law enforcement to provide location tracking of cell phones, even if the GPS feature is disabled, without warrants. The company has cellular service providers send signals called “pings” to cell phones and use the phones’ distance from cell towers to determine their location. The service was intended to be used by providers of roadside assistance, but Securus exploited that loophole to make it available to law enforcement. Access to the compromised law enforcement accounts may give hackers access to that service too, and thus the ability to track cell phones.

Some of the hacked Securus accounts were labeled with law enforcement occupational designators such as “jail captain,” “jail administrator” and “prison warden.” Corrections officials regularly use the tracking service to determine the location of the recipients of phone calls made by prisoners.

“If this account is true, it demonstrates, yet again, that Securus is failing cybersecurity 101, in total disregard for the privacy of the Americans whose communications and private data it should be protecting,” said U.S. Senator Ron Wyden, a leader on privacy issues. “This incident is further evidence that the wireless carriers and FCC need to step up and do much more to ensure that Americans’ location data information and other personal information isn’t sold to companies like Securus that have demonstrated that they simply don’t care about cybersecurity.”

Senator Wyden asked the FCC to investigate the practice of providing location data without a warrant, which he called “abusive and potentially unlawful.”

Securus has been so lax with user information that it used actual customer data in screen shots displayed in its training manual.

“Securus is enabling [cell phone] tracking without a warrant and allowing users of their system to claim authority to do so without checking it. That’s a problem,” declared Electronic Frontier Foundation (EFF) staff attorney Andrew Crocker. “A concern with any system is if it’s not limited to authorized users who have the authority to engage in surveillance, then it’s doubly problematic.”

Even absent being hacked, the location tracking service has problems. In May 2018, the New York Times revealed that former Missouri Sheriff Cory Anderson had used the Securus tracking service to unlawfully track other people’s cell phones, including a judge and several highway patrolmen. The Times noted that the tracking service, which was intended for benevolent uses such as locating stranded motorists, lost children and missing Alzheimer’s patients, is easily abused as there is no oversight on how it is used.

Sources: motherboard.vice.com, businessinsider.com, esecutryplanet.com, gizmodo.com, cyberscout.com

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Prison Legal News
In March 2014, Mollianne Fischer’s term of probation for misusing a credit card was revoked and she began serving a two-year sentence at Arrendale State Prison. She appeared to be in good health at first, though later began vomiting and had trouble breathing and remaining continent. She requested medical care several times but prison medical staff accused her of faking her symptoms.

On May 25, 2014, Fischer was discovered lying on the floor of her cell. She was not responsive. A video obtained by the Atlanta Journal-Constitution showed prison guards handcuffing the semiconscious prisoner’s hands behind her back and screaming at her to “stand up.” At one point she begged, “Give me a minute,” to which a guard eloquently responded, “We don’t got a minute.” After the guards pulled Fischer to her feet, she collapsed. They put her face-down on a cart and took her to segregation. [See: PLN, April 2019, p.44].

“If we had gone to trial, we would have played [that video] over and over again,” said attorney Michael Perez.

For two and a half days, Fischer remained on the floor of her segregation cell until the morning of May 27. Only then, after lying in her own bodily waste, was she finally taken to a hospital. Once there she was diagnosed with pancreatitis, pneumonia, renal failure and sepsis. Fischer remained comatose for seven days.

When she was discharged from the hospital on June 17, 2014, she was assigned to the Pulaski State Prison and admitted to the infirmary so she could receive dialysis. Despite her serious condition, the DOC denied a medical reprieve requested by her parents. Dr. Yvon Nazaire refused to medicate Fischer with blood-thinning drugs to protect against clots, even though Fischer was largely immobile.

Nazaire would later say, “Yes, she was at high risk [for pulmonary embolism], but that doesn’t mean you’re going to put everyone with high risk on prophylaxis [preventive health care].”

Fischer subsequently experienced a pulmonary embolism due to a blood clot, which caused her brain to suffer from lack of oxygen to the point she was left in a vegetative state. After that occurred, and it was apparent her ongoing medical care would be very expensive, she was granted a medical reprieve and released to her parents.

Attorneys with the Champion Law Firm and Warshauer Law Group filed suit on behalf of Fischer’s parents, James and Angela. They learned that Dr. Nazaire had a history of patient neglect in emergency rooms, four malpractice death claims in New York and nine patient deaths during his 10-year employment with the Georgia Department of Corrections before he was terminated in 2015. [See: PLN, April 2019. p.44; Sept. 2018, p.38; Dec. 2017, p.18].

Georgia officials agreed to settle the case – which was removed from state to federal court – in July 2018 for $1,500,000, which was the largest settlement in a prison lawsuit in that state in over a decade. Of the settlement amount, $675,000 went to attorney fees and $821,029 to costs. See: Fischer v. Georgia Dept. of Corr., U.S.D.C. (N.D. Ga.), Case No. 2:16-cv-00143-RWS.

According to an August 31, 2018 article published by the Journal-Constitution, Fischer, 43, still resides with her parents and “cannot speak, receives nourishment through a feeding tube and wears a diaper that must be changed every few hours.” [1]

Additional sources: gainesvilletimes.com, thechampionlawfirm.com, warlawgroup.com, ajc.com

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Gladiator-Style Fight Club at San Francisco Jail Results in $60,000 Settlement

For a second time, the City of San Francisco has agreed to settle a prisoner’s lawsuit stemming from a fight club orchestrated by jail deputies and induced by fear.

Former prisoner Quincy Lewis filed a federal civil rights action against several deputy jailers in November 2017. Specifically, the lawsuit alleged that deputies Scott Neu, Clifford Chiba and Eugene Jones created their own Ultimate Fighting Championship (UFC)-type fight club where Lewis and other prisoners had to battle each other for food and to avoid punishments.

The prisoners were instructed by Neu and other jailers that they could not seek medical attention if they were injured and that strikes to the face were prohibited because they would draw attention to the fights, according to the lawsuit.

Deputies would place wagers on the combatants as they squared off in secluded areas of the jail. All of this was done for the jailers’ amusement.

According to Lewis’ complaint, Neu and other deputies had formed a gang within the jail called the “850 Mob” or “850 Mafia.” This referred to the Hall of Justice, which is located at 850 Bryant Street in San Francisco. It was alleged that Neu threatened Lewis and his family at times; in one incident, he said he would “take his cheeks.” The suit claimed that statement referred to anal rape.

In August 2016, San Francisco’s Board of Supervisors agreed to pay $90,000 to three other prisoners – Ricardo Pali-
June 2019

Prison Legal News

kiko-Garcia, Stanley Harris and Keith Richardson – who were victims of fights sanctioned by the “850 Mob.”

According to court records, Neu was fired and both Jones and Chiba were reassigned to positions with no contact with prisoners.

A spokesperson for the City Attorney’s Office said the $60,000 settlement in Lewis’ case, reached in November 2018, “represents a reasonable outcome given all of the circumstances, as well as the inherent risks and uncertainty of [going to] trial.” See: Lewis v. City and County of San Francisco, U.S.D.C. (N.D. Cal.), Case No. 3:17-cv-06405-WHA.

Meanwhile, Neu was charged with four counts of felony assault, four counts of criminal threats and a number of other misdemeanor charges. Both Jones and Chiba also were charged. [See: PLN, June 2016, p.17].

However, the criminal charges were dismissed by prosecutors in February 2019, with Superior Court Judge Ross Moody granting their motion. The dismissal was not with prejudice, which leaves open the possibility of the charges being refiled.

The primary issue tainting the prosecution was a parallel investigation by criminal investigators and internal affairs division (IAD) officers in the sheriff’s department. In the possible melding of the two investigations, compelled statements and their results, made to IAD officers, cannot be used in criminal proceedings where a person cannot be compelled to answer incriminating questions pursuant to the Fifth Amendment.

Compounding problems with the case was the destruction of evidence by the IAD. Despite a preservation order for a laptop hard drive used by IAD Sergeant David Murphy, the drive was destroyed by someone in the division. Entries concerning the case stored on that drive were essential to investigate officer-involved shootings, uses of force and in-custody deaths.

Defense attorney Harry Stern contested that move and the dismissal of the charges without prejudice, arguing instead for dismissal with prejudice. Stern interpreted Judge Moore’s comments when granting the prosecution’s motion to dismiss to mean “if they [the prosecutors] try to go through this again they’re going to have a tough road to hoe.”

Sources: sfexaminer.com, sanfrancisco.cbslocal.com, sfchronicle.com, ktvu.com

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Natasha McKenna, a diagnosed schizophrenic, died at age 37 at a jail in Fairfax County, Virginia, where she was being held awaiting transfer to Alexandria on charges of assaulting a peace officer. Alexandria officials had failed to take custody of McKenna three times during her eight-day stay at the Fairfax County jail.

During preparation for her transfer, McKenna began struggling with deputies after one of them coaxed her into being handcuffed. A crisis team responded, which precipitated a lengthy ordeal with deputies in bio-hazard suits struggling with a nude McKenna in her soiled cell in an attempt to put her in a restraint chair with a spit hood over her face.

One prisoner who witnessed the incident said McKenna was making sounds that someone possessed by demons might make. No doubt the four times she was tased by the crisis team contributed to those inhuman noises.

“You promised me you wouldn’t kill me. I didn’t do anything,” McKenna reportedly said while she was being removed from her cell.

McKenna stopped breathing shortly after she was secured in the restraint chair; she was taken to a hospital where she died after she was taken to a hospital where she died after she was taken to a hospital where she died after she was secured in the restraint chair; she was taken to a hospital where she died after she was secured in the restraint chair; she was taken to a hospital where she died after she was secured in the restraint chair; she was taken to a hospital where she died after she was secured in the restraint chair.

Her family sued the sheriff and deputies, extraction, blurring McKenna's naked body. Her family sued the sheriff and deputies, extraction, blurring McKenna's naked body. Her family sued the sheriff and deputies, extraction, blurring McKenna's naked body. Her family sued the sheriff and deputies, extraction, blurring McKenna's naked body.

As a positive outcome stemming from McKenna's death, Sheriff Kincade and Fairfax County initiated a diversion program for mentally ill detainees in 2016; the program's purpose is to divert people with mental health problems into treatment programs rather than jail. Further, staff at the Fairfax County jail no longer use Tasers.

California jails do not have policies prohibiting Perkins Operations, which are deemed “special operations” overseen by the

Sources: theguardian.com, washingtonpost.com, praised.com

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California Cops Impersonate Prisoners to Obtain Evidence, Confessions

by Ed Lyon

It is not uncommon to see police officers on TV shows masquerade as criminals to obtain evidence and even confessions from suspects. Many people may not be aware that this is an example of art imitating life. Such law enforcement practices were vigorously challenged in the latter half of the 20th century, with an eventual ruling by the U.S. Supreme Court in June 1990 that upheld their legality.

The gist of the decision was that a police officer pretending to be a criminal did not constitute compelling a suspect to speak if the cop was passively listening and would not have heard anything that other people within earshot could hear. Subsequent cop-planting schemes became known as Perkins Operations, named after the losing appellant in the Supreme Court case. See: Illinois v. Perkins, 496 U.S. 292 (1990).

On February 3, 2019, three teenagers and a 25-year-old man were shot to death in Palm Springs, California. The teens were in a car that had collided with a parked jeep, and the adult victim was found about half a mile away. Jose Larin-Garcia, 19, was discovered nearby, hiding under a truck and wearing bloody clothes. He was later allowed to leave a hospital after cops were unable to discern probable cause to hold him. A gang task force arrested him the next day trying to board a Florida-bound bus with a ticket bought under an alias name; an earlier search of his home uncovered a gun, a large amount of ammunition and an illegal high-capacity magazine.

A Perkins Operation commenced the following day when “law enforcement agents were placed inside the cell” with Larin-Garcia, according to Riverside County Sheriff investigator Jarred Bishop. Larin-Garcia reportedly told the cops who were pretending to be fellow prisoners that “he knew he was screwed, was afraid his mother might also be charged in connection with the murders” and believed a gun had been found at the crime scene.

Regarding the legitimacy of Perkins Operations, California defense attorney Joseph Tully noted, “There’s no expectation of privacy in a jail cell.” He added a case might be made if the prisoner already had an attorney before a Perkins Operation began, but even then, if the suspect freely and voluntarily spoke, it would be difficult to challenge evidence obtained through such an operation.

California’s jails do not have policies prohibiting Perkins Operations, which are deemed “special operations” overseen by the

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Whitney C. Kubik, Criminal Defense Attorney

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law enforcement agencies conducting them, according to California Board of State and Community Corrections spokesperson Tracie Cone.

Larin-Garcia has pleaded not guilty to four counts of first-degree murder and other charges, and is being held without bail at the Cois M. Byrd Detention Facility. A March 14, 2019 news report indicated he will undergo a psychiatric evaluation. 

Source: desertsun.com

Ocean County, New Jersey has agreed to pay $1.975 million to settle a class-action lawsuit, where the class was defined as “All persons who were admitted into the Ocean County Correctional Facility during the period between November 28, 2005 through December 28, 2007, after being arrested only on a non-indictable matter, such as a disorderly persons offense or violation, traffic infractions, civil matters or other non-indictable occurrences, and were subject to a strip search upon their entry into the Ocean County Correctional Facility in the absence of reasonable suspicion.”

“Minor offenders entering a county jail should not be strip searched,” said attorney William Riback who, along with Carl Poplar, represented the class members. He said the suit was filed to stop blanket strip searches of people arrested for traffic offenses, petty disorderly offenses, misdemeanors, child support arrears and contempt of court.

The county denied any wrongdoing but agreed to pay up to $1,200,000 to settle what could be as many as 7,530 claims. An incentive award of $10,000 each was awarded from the settlement fund to class representatives Richard Wright and April Wedding. Another named plaintiff, Edward Bizarro, died before the settlement was reached.

Ocean County further paid an additional $150,000 to administer the settlement plus $625,000 in attorneys’ fees. The settlement agreement also provides injunctive relief, requiring the county to end its policy and practice of strip searching, without reasonable suspicion, all non-indictable pretrial detainees. A final hearing on the proposed settlement was held on April 17, 2019.

Each claimant may receive up to $300 in damages regardless of the number of times he or she was strip searched or incarcerated during the settlement period. If more than 4,000 claims are approved, then each award will be reduced on a pro rata basis. See: Bizarro v. Ocean County, Superior Court (NJ), Docket No. OCN-1644-17.

Additional sources: Associated Press, nj.com, oceancountystripsearch.com, app.com

New Jersey County Pays $1,975,000 to Settle Suit Over Unlawful Strip Searches

by Douglas Ankney

Is someone skimming money or otherwise charging you and your loved ones high fees to deposit money into your account?

Prison Legal News (PLN) is collecting information about the ways that family members of incarcerated people get cheated by the high cost of sending money to fund inmate accounts.

Please write to PLN, and have your people on the outside contact us as well, to let us know specific details about the way that the system is ripping them off, including:

- Fees to deposit money on prisoners’ accounts or delays in receiving no-fee money orders
- Costly fees to use pre-paid debit cards upon release from custody
- Fees charged to submit payment for parole supervision, etc.

This effort is part of the Human Rights Defense Center’s Stop Prison Profiteering campaign, aimed at exposing business practices that result in money being diverted away from the friends and family members of prisoners.
Texas: Prosecutorial Misconduct May Stymie Death Sentence

On October 26, 2006, Paul David Storey, then 21, and his accomplice, Mark Devayne Porter, robbed Putt Putt Golf & Games, a miniature golf course in Fort Worth, Texas. During the course of the robbery they shot and killed assistant manager James Cherry. Porter pleaded guilty in exchange for a life sentence while Storey went to trial, was found guilty and sentenced to death in September 2008.

Prosecutors told the jury: “It should go without saying that all of [James Cherry’s] family and everyone who loved him believe the death penalty was appropriate.”

Except that was not what Cherry’s family believed, and his parents said prosecutors lied. In a letter to the governor, Glenn and Judith Cherry stated, “We do not want to see another family suffer through losing a child and family member. Due to our ethical and spiritual values we are opposed to the death penalty.”

Under current Tarrant County District Attorney Sharen Wilson, a Conviction Integrity Unit has been established. In a letter to Wilson, the Cherrys wrote: “Paul Storey’s execution will not bring our son back, will not atone for the loss of our son and will not bring comfort or closure.”

The Texas Court of Criminal Appeals stayed Storey’s execution in April 2017, less than a week before he was to receive a lethal injection, and ordered District Judge Everett Young to hold an evidentiary hearing based on claims of prosecutorial misconduct.

Judge Young issued his findings in May 2018, stating, “had this evidence [of the Cherry family’s opposition to the death penalty] been disclosed, there is a reasonable probability” the jury would have reached a different decision. He recommended Storey’s sentence be changed to life in prison without parole and forwarded the evidence, his findings and recommendations to the Court of Criminal Appeals.

The case remains pending, while Storey remains on death row.

Sources: dallasnews.com, texastribune.org

Michigan Hit with Multiple Lawsuits Related to Women’s Prison

by Douglas Ankney

The State of Michigan and the Michigan Department of Corrections (MDOC) have been named defendants in three separate lawsuits concerning the Women’s Huron Valley Correctional Facility (WHV).

In August 2018, the state agreed to pay almost $750,000 to settle a complaint that was brought by the U.S. Department of Justice (DOJ) on behalf of female guards at WHV. The suit was filed in federal court and alleged that, due to the overwhelming number of duty assignments at WHV unnecessarily designated for women only, female guards were forced to work excessive amounts of overtime that jeopardized their health and safety. They often worked in excess of 12 hours per shift, and the state paid $5.2 million in overtime at WHV in 2014-15, not including holiday pay.

Additionally, the lawsuit claimed that female guards were denied transfers to other facilities in order to accommodate the female-only post requirements at WHV. The denial of transfers resulted in fewer job opportunities and promotions. The DOJ argued that the state “cannot lock workers in or out of a job because of their sex.”

MDOC spokesman Chris Gautz said the state “will lift a freeze on female officers at WHV can be opened to male guards. As part of that settlement, prison officials designated 267 duty posts female-only. Most of those assignments were in the housing units. Since then, the MDOC has unnecessarily applied the gender-based designation to other duty posts, including food service, library and security camera monitor. Gautz said the state will examine whether more positions at WHV can be opened to male guards.

In a third case, U.S. District Court Judge Stephen Murphy allowed a lawsuit filed by women prisoners at WHV to proceed, though he denied class-action status because the diverse claims required individualized fact-finding. That lawsuit alleges WHV is overcrowded; prisoners are packed into former closets, offices, classrooms and recreation areas that have been converted into housing areas. They are denied classes which are required before they can be released on parole. They are deprived of adequate recreation, clothing, medical treatment, toilet paper and feminine hygiene products.

MDOC Director Heidi Washington denied overcrowding is an issue, but a letter from an official in then-Governor Rick Snyder’s office stated, “the department is aware of the overcrowding issues ... and is working on resolving this.”

In 2008, the MDOC consolidated its three adult women’s prisons into the Women’s Huron Valley Correctional Facility. Randy Atlas, a Florida architect specializing in prison design, said when state officials converted offices, storage rooms and recreate...
Tommy G. Thompson, who served as governor of Wisconsin from 1987 to 2001, has recently said he regrets building so many prisons during his tenure.

In April 2018 he wrote an op-ed for the Journal Sentinel, stating he had “come to believe that our corrections system and incarceration practices are both financially unsustainable and provide questionable outcomes.”

“We lock up too many people for too long. It’s about time we change the dynamics. I apologize for that,” Thompson stated.

The former governor mentioned he would like to see Wisconsin prisons converted into vocational schools so prisoners can receive training and help with the state’s worker shortage.

“The way we warehouse prisoners right now is not the right way…. Some people have to be in prison, there is no question about it. But we have too many people locked up that should be rehabilitated, retrained and allowed to get out and take a job. We need the workers,” Thompson declared.

However, another former Wisconsin governor, Scott Walker, said he saw no value in visiting state prisons and criticized Democrats for suggesting that the prison population should be reduced. Walker, who served in the state Assembly in the 1990s, was lead sponsor of the “truth-in-sentencing” law that ended parole in Wisconsin. During his first term as governor, he ended his predecessor’s early-release program.

Walker survived a recall election in 2012, the first governor in the history of the United States to do so. He was targeted for recall after signing the Wisconsin Budget Repair Bill, which was intended to limit the collective bargaining power of state employees. He lost his bid for a third term as governor to Tony Evers in 2018.

Source: jsonline.com
Louisiana State Prisoners Routinely Held Past Scheduled Release Dates

by Kevin W. Bliss

IN THE WAKE OF A 2017 STATE AUDIT that revealed Louisiana prisoners were regularly being held for weeks, months and sometimes even years past their scheduled release dates, a 2019 investigation of court records reviewed by the Times-Picayune, a New Orleans paper, found that at least one prisoner was over-detained in a state prison or local jail every week over the previous decade, with one prisoner serving 960 days after his sentence ended.

Where to place blame has been the subject of multiple lawsuits filed against the state Department of Corrections (DOC) and the Orleans Parish Sheriff’s Office (OPSO), which serves the city of New Orleans. When contacted by an attorney from the Orleans Public Defender’s Office, Stanislav Moroz, five days after his client’s sentence expired in 2018, OPSO responded that it was up to the DOC to authorize a prisoner’s release, even from a parish jail. But the DOC said it could take up to 90 days to calculate how much of a sentence must be served; only after that process is complete can it issue an official release date.

Moroz’s client, Johnny Traweek, had pleaded guilty to second-degree battery after spending seven months in OPSO’s custody awaiting trial because he couldn’t afford bail. The 66-year-old believed he was innocent, but guessed a judge would not sentence him to more than the time he had already served. He was correct — the court sentenced him to seven months with credit for time served. Traweek went back to his cell to await the call for his release — but that call did not come for 22 days, and then only after Moroz intervened.

“We certainly don’t think it’s right or perhaps even legal, but it’s part of what we expect to happen,” Moroz said. “DOC gives themselves a lot of time to calculate when people are eligible to be released. That’s their policy.”

Moroz filed a lawsuit on behalf of Traweek in February 2019, citing 14 other cases of over-detention. Those were among 46 prisoners held past their release dates in 2018 alone, the attorney found, when tasked by the Orleans Public Defender’s Office with determining the number of over-detention cases.

In 2016, Rodney Grant had just been released after serving a seven-year sentence for simple burglary and unauthorized entry of an inhabited dwelling when he was rearrested on a 16-year-old warrant for simple burglary. He pleaded guilty before Criminal District Court Judge Camille Buras, who imposed a sentence of one year in DOC custody with credit for the seven years he had just served, telling OPSO attorney Blake Arcuri to request an expedition of Grant’s release.

Arcuri forwarded the request to Sheriff Marlin Gusman, noting that Grant “really shouldn’t have to actually serve any time.” However, OPSO followed a procedure it claimed was dictated by the DOC, sending Grant from the New Orleans jail to the Elayn Hunt Correctional Center in St. Gabriel, 68 miles away. Since the DOC has no electronic records transmission system, Grant was forced to wait for his paperwork to be completed at OPSO and then wait again for an OPSO employee to make a weekly drive to hand-deliver the paperwork. That process took 13 days.

State Rep. Joe Marino, who helped pass Louisiana’s 2017 criminal justice reform bill, was taken aback to hear that local sheriffs still physically transport paperwork to the DOC.

“Almost everything we do now in the criminal justice system is done electronically,” he observed. “I’m not sure what the logistics would be for a statewide system but maybe it is time for a resolution authorizing a study to determine how to get this done.”

By the time Grant’s paperwork reached Elayn Hunt, the DOC had already transferred him to the Madison Parish Correctional Center, a facility run by private prison contractor LaSalle Corrections.

When Judge Buras learned of the situation she called both Sheriff Gusman and the warden at Madison. When nothing happened, the judge held a hearing — over two weeks after requesting expedition of Grant’s release — in which she vacated his sentence and substituted a judgment of “credit for time served.” But the DOC continued to hold Grant. After several more calls, Judge Buras finally secured his release — 27 days late — and Grant was put on a bus back to New Orleans.

State and federal courts have found over-detention to be unconstitutional. The Fifth Circuit Court of Appeals held in 2011 that a “timely release” is one that occurs within 48 hours of the expiration of a sentence. Now a senior judge in that court, Judge Julie E. Carnes was on the federal bench in Atlanta when she ruled in 2005 that she was “unable to find any case” in which over-detention was “constitutionally permissible.”

“The criminal justice system is based on the idea that if you do a crime you serve your time and then you go free,” said civil rights attorney William Most. “And that going free part is not being carried out correctly in Louisiana.”

Most represents Grant, who is one of five clients with over-detention lawsuits pending against the DOC and local sheriff’s offices. Two other cases have settled for a total of $250,000.

State prison officials incorrectly calculated “good time” credits for Kenneth Owens, shaving about three and a half years off his 21-year sentence for attempted manslaughter instead of the nearly seven years he deserved. The DOC settled his lawsuit in 2016 for $130,000. Prison officials also incorrectly recorded a 10-year sentence for James Chowns, who actually received a five-year sentence plus ten years of probation after pleading guilty to two counts of aggravated incest. By the time the error was identified and corrected, Chowns had served 960 days past his release date. The DOC settled that suit for $120,000 in 2018.

“When a court sentences somebody, you have a debt that has to be paid just like if you have a debt with the bank,” said Shreveport attorney Nelson Cameron, who represented both Owens and Chowns.

“It would not be right if you went to the bank after paying your loan off and they demanded you pay 50 percent more.”

It’s also expensive for taxpayers. In addition to the settlements in his clients’ over-detention cases, Cameron calculated
In March 2019, Governor John Bel Edwards took up the challenge of “improving our system of releasing eligible state offenders in a timely manner,” according to communications director Shauna Sanford.

DOC general counsel Jonathan Vining agreed, saying “there needs to be a group put together of all the stakeholders ... to figure this out,” but he warned, “If you just pass a law that says, ‘DOC do it better,’ that’s not going to get us to where we need to be.”

Source: nola.com

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Juan Sanchez spent 32 years at the helm of Southwest Key Programs (SKP), a private contractor that operates shelters for the federal Office of Refugee Resettlement (ORR), which has custody of unaccompanied migrant children apprehended by Immigration and Customs Enforcement (ICE), as well as the children of immigrants detained by ICE while their asylum requests are processed.

As of February 2019, more than 11,000 immigrant minors, ranging in age from a few months to 17 years, were in ORR custody, held in shelters at about 100 different sites. SKP has bedspace to house nearly half of that population – up to 5,000 children – in the 24 shelters it operates for ORR in Texas, Arizona and California. In 2018 the firm received nearly $500 million from ORR, more than any other shelter operator, placing it at the center of a national debate over President Trump’s policy of forcibly removing immigrant children from their parents and detaining them in separate facilities.

At the height of the controversy in 2018, state inspectors found 246 violations at SKP shelters, including employees who were drunk on the job, rotten food and shampoo dispensers filled with hand sanitizer. At Casa Padre – a former Walmart store converted into a shelter run by SKP – U.S. Senator Jeff Merkley was refused admittance.

The scrutiny led to allegations of financial improprieties at SKP. With 8,000 employees and annual gross revenue of more than $400 million, the company – which is a registered nonprofit – was sitting on over $61 million in cash as of fall 2017. SKP does not own its facilities but rather leases them from real estate investors, two of whom were top executives at the firm. The U.S. Department of Health and Human Services (HHS), which oversees immigrant shelter grants, said forensic accountants were reviewing SKP’s finances.

Sanchez resigned from SKP in March 2019, a month after the resignation of chief financial officer Melody Chung. Jennifer Nelson, Sanchez’s wife, retains a top executive position at the firm. According to its most recently available tax return, SKP paid Sanchez $1.5 million in 2017. His wife received another half-million, while Chung was paid $1 million.

Sanchez and Chung are also two of the landlords who lease shelter facilities to SKP. Asked about potential self-dealing by the New York Times, both executives vowed to sell their interests in the leased property. In his resignation email sent to SKP employees, Sanchez said he “can no longer bear” the “unfair criticism” leveled against him. Chung’s resignation letter wished that “the Lord [would] continue to bless the company abundantly.”

For at least three Guatemalan children separated from their parents and sent hundreds, sometimes more than a thousand miles away, the shelters have proved not a blessing but fatal. At an SKP-run facility near Brownsville, Texas, a 16-year-old whose identity has not been released died in April 2019, according to HHS spokesperson Evelyn Stauffer.

The teenager developed symptoms after arriving at the shelter on April 20, 2019, and was transferred to a local hospital, Stauffer said. Treated and returned to the shelter the same day, the child did not improve, was sent back to the hospital several days later and died due to undisclosed causes on April 30.

That death followed those of Jakelin Caal Maquin, 7, and Felipe Alonzo-Gomez, 8, in December 2018. Jakelin and her father had been apprehended with a group of other undocumented immigrants near the southern U.S. border in New Mexico. Felipe was taken into custody close to El Paso.

In October 2018, SKP shuttered its Hacienda del Sol facility near Youngstown, Arizona, days after the release of a blurry video that appeared to show the company’s staff pushing one child and dragging another. In January 2019, the Maricopa County Sheriff’s Office announced it had completed an investigation into the incident without finding sufficient evidence to press charges for criminal child abuse.

However, when interviewed for the New York Times, many detained children reported seeing or being subjected to physical abuse, leaving them with nightmares and reluctant to talk about their ordeal.

“I don’t want to remember,” said one 10-year-old, who nevertheless recounted watching a kindergartner being injected with something after misbehaving in class.

The kindergartner’s father had recently been deported, and it overwhelmed the child. The 10-year-old said he feared being injected, too. All the children who were interviewed stated they lived in fear of punishment at the shelters.

One 11-year-old boy from Guatemala, who spent six weeks at a shelter in Chicago operated by another nonprofit called Heartland Alliance, said he had to ask permission to hug his sister. At a shelter where an 8-year-old girl named Sandy was confined for two months, boys and girls were kept separate and punished if they went near each other. The day after Sandy was reunited with her mother, at a party thrown for her, Sandy reportedly began screaming and crying and shoved a toddler who tried to give her a hug and kiss, shouting for the boy to stay away.

According to Dr. Colleen Kraft, president of the American Academy of Pediatrics, the longer a child remains in government custody and separated from their parents, the greater the potential for emotional and physical trauma.

“The foundational relationship between a parent and child,” she said, “is what sets the stage for that child’s brain development, for their learning, for their child health, for their adult health. And you could have the nicest facility with the nicest equipment and toys and games, but if you don’t have that parent, if you don’t have that caring adult that can buffer the stress these kids feel, then you’re taking away the basic science of what we know helps pediatrics.”

In February 2019, activist Patricia Okoumou scaled the outside of SKP’s office building in East Austin, Texas while chanting, “Free the children. Let them go.”

After a hospital examination, police said she would be charged with trespassing and booked into jail.

Sources: chicagotribune.com, nytimes.com, texastribune.org, latimes.com, fronterasdesk.org, fox7austin.com
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Illinois: Settlement in Suit Against Private Prison Medical Contractor is a Disclosable Public Record

The Illinois Department of Corrections (DOC) contracts with a private company, Wexford Health Sources, Inc., to provide medical and mental health care in state prisons. In 2012, prisoner Alfonso Franco died from cancer; three years later, Wexford settled a lawsuit filed by Franco’s estate, the terms of which were not disclosed due to a confidentiality agreement.

The Illinois Times and one of the paper’s reporters, Bruce Rushton, filed a Freedom of Information Act (FOIA) request pursuant to 5 ILCS 140/7(2) with the DOC, seeking a copy of the settlement as part of an investigation into the medical treatment that Franco received. The DOC asked Wexford for a copy of the settlement and received a redacted version.

The Times filed a public records suit against the DOC, seeking an unredacted copy of the settlement, which the DOC did not have. Wexford intervened in the case, arguing the DOC could not comply because the company had the unredacted settlement and did not have to disclose it. Wexford reasoned that as a private contractor, its services did not “directly relate” to a government function within the meaning of section 7(2) of Illinois’ FOIA statute. The circuit court ruled against the Times, which appealed.

The appellate court reversed on January 8, 2019. Section 7(2) of the FOIA statute was enacted specifically to address the “growing concern related to the privatization of government responsibilities and its impact on the right of public information access and transparency.” Since Wexford had contracted with the DOC, a governmental body, to provide medical care to state prisoners, the settlement agreement was directly related to a government function within the meaning of section 7(2) of the statute.

The circuit court’s ruling was reversed with instructions to review the settlement in question to determine if the full document or only a redacted version should be released. See: Rushton v. Department of Corrections, 2019 IL App (4th) 180206 (IL App. 4 Dist. 2019).

According to a 405-page report entered in a class-action suit in Illinois federal district court in 2015, Wexford’s deficiencies in providing services at DOC facilities included delays in treatment, insufficient follow-up care and shoddy record-keeping. From 2004 to 2009, the report found, the company had settled 38 claims or lawsuits nationwide for a combined total of $3.1 million, not including jury awards.

Additional sources: municipalminute.ancelglink.com, modernhealthcare.com

Lawsuit Against New York Jail, CCS Survives Motion to Dismiss

by Derek Gilina

A federal civil rights complaint brought by the estate of deceased Monroe County, New York pre-trial detainee Pedro Sanchez, Jr. has survived a motion to dismiss filed by the county jail’s medical provider, Correct Care Solutions (now known as Wellpath), and several of the company’s medical staff, according to a December 2018 ruling. The district court’s rejection of the defendants’ motion means that discovery can continue preparatory to a jury trial.

According to the court’s order, Sanchez was admitted to the Monroe County Jail around January 20, 2015, where he remained until he was taken to a hospital in an unresponsive state less than two weeks later.

“On the morning of February 1, 2015, at or about 7:30 AM,” the court wrote, “Mr. Sanchez was assaulted by two inmates at the Monroe County Jail who repeatedly punched him, including in the abdominal region ... [and] he was discharged back to the jail at or around 12:00 PM with his arm in a sling.

“On February 2, 2015, Mr. Sanchez died after bleeding internally from a lacerated spleen,” the court continued. “In the twenty-seven (27) hours preceding his death, and with increasing frequency in the hours leading up to his death, Mr. Sanchez exhibited medical symptoms commonly associated with a ruptured spleen and internal bleeding, including severe pain and burning in his abdomen and near his rib cage,” as well as other serious medical problems.

Despite the fact that there is “a high recovery rate for splenial injuries when the condition is timely treated,” the court noted that did not happen here. “[Plaintiff’s] Second Amended Complaint indicates that he essentially bled to death internally at the jail in full view of the individual defendants over a period of many hours in which the only medical care that he received was the administration of two doses of pain medication and the taking of his vital signs through the bars of a cell several times. This was the only care he was provided, despite the fact that he was screaming, writhing on the floor, threatening to kill himself due to the extreme pain.”

In concluding that a viable cause of action had been pleaded against CCS and its agents, the court found the “Defendants recognized that Sanchez needed a doctor but chose to make him wait until a doctor would be at the facility during regular office hours, rather than calling a doctor at home or having Sanchez transported back to the hospital. Moreover, while the medical defendants may not have known exactly what was wrong with Sanchez, they had enough information to conclude that his condition was potentially quite serious inasmuch as it was an excruciatingly painful condition in the left side of his chest affecting his breathing, blood pressure, heart rate and skin color.”

However, the district court also found the complaint failed to establish a Monell claim against Monroe County, which requires the existence of a formal policy endorsed by the local government agency, or a practice so persistent and widespread that it constitutes a custom or usage of which supervisory authorities were aware or one that can be inferred from evidence of deliberate indifference. The court further dismissed a medical malpractice claim for failure to obtain a certificate of merit prior to filing.

The district court concluded that concern for CCS’s “profit margin” ... creates an incentive to ‘delay or deny care’ and to ‘reduce labor costs’ by hiring too few staff and/or inexperienced staff; Correct Care ‘routinely’ has nurses perform ‘medical
A class-action lawsuit accuses the Florida Department of Corrections (FDOC) of confiscating prisoners’ “lawfully purchased property without compensation” so the department and its vendor, JPay, could realize profit through a new contract.

The suit concerns prisoners’ loss of music files accessible only via their MP3 and MP4 players, in order to allow a new tablet program to go into effect.

In 2011, the FDOC entered into a contract with Access Corrections that let prisoners purchase music players and digital songs. The players cost $99.95 for 4MB storage capacity or $119.95 for an 8MB player. The songs cost $1.70 each, and prisoners were required to buy them in lots of five. The contract with Access ended in April 2017, netting the FDOC around $1.4 million in commissions from 6.7 million digital song purchases.

A “widely-distributed advertisement” promised prisoners who bought the MP3 and MP4 players that, “Once music is purchased, you’ll always own it!” They were told they could buy as many songs as they wanted and store them on a “cloud-based library” by deleting or adding songs to their player by connecting to a kiosk.

Then, in April 2017, the FDOC terminated its contract with Access, which is owned by the Keefe Commissary Network, and implemented a Multimedia Tablet Program through a new contract with JPay. Under that program, prisoners were required to surrender their music players when receiving a tablet, or by January 23, 2019 in any event, and were not allowed to keep the players or any of the digital songs they had bought. [See: PLN, Feb. 2019, p.26].

The FDOC formulated a standard response to grievances filed on this issue. “It is unfortunate that the music cannot be transferred, however, we hope that overtime [sic] the family and inmate will see added value of the new program.” The inability to transfer songs from the Access music players to the JPay tablets was “necessary” to allow “the new vendor’s ability to be compensated for their services,” prison officials stated.

The lawsuit, filed on February 19, 2019, alleges violations of due process and the Takings Clause of the Fifth Amendment; it seeks injunctive relief to restore access to the prisoners’ previously purchased digital music. The proposed class members are represented by attorneys with the Florida Justice Institute and the Social Justice Law Collective. See: Demler v. Inch, U.S.D.C. (N.D. Fla.), Case No. 4:19-cv-00094-RH-GRJ.
In May 2018, commissioners in Cook County, Illinois agreed to establish a $5,263,000 fund to settle four lawsuits, including one certified as a class-action, alleging a complete denial of dental treatment for prisoners at the Cook County Jail (CCJ). The claims arose because, in a 2007 “cost-cutting measure,” the county eliminated all but one dentist at the jail to provide treatment to more than 6,000 prisoners.

Commissioner Larry J. Suffredin said the county’s explanation was that dental treatment was not considered part of required medical care at the time.

“I think we now understand that dental is essential to healthcare,” he said. Because the Cook County Health and Hospital System now provides medical care at CCJ, the federal district court dissolved a consent decree entered in 2010 and released the CCJ from court oversight.

The § 1983 class-action complaint, filed in 2009, described prisoners repeatedly requesting dental treatment because they were experiencing severe tooth pain, bleeding gums and lost fillings. They were denied care for months, resulting in permanent damage, unnecessary and excessive pain, and inability to sleep. One plaintiff was required to have at least 14 teeth extracted and unable to sleep. One plaintiff was unable to sleep. One plaintiff was prevented from eating solid food and fell and had to be assisted with a wheelchair. He also showed other symptoms of extreme medical distress yet the nurses refused to use a saline IV, which would have helped him.

Before approving the settlement, the judge required medical care at the time.

Final approval of the settlement was granted by the district court in August 2018. A total of 18,388 claims were filed by August 15, 2018. Because that was a higher number than expected, the average award to each class member was $100, with no class member receiving more than $3,000. Claims were to be paid on a “first in-first out” basis until either May 21, 2019 or the date the funds are exhausted, whichever comes first.

The class was represented by Chicago attorneys Joel A. Flaxman, Kenneth N. Flaxman, Thomas G. Morrissey and Patrick W. Morrissey. See: Smestek v. Sheriff of Cook County, U.S.D.C. (N.D. Ill.), Case No. 1:09-cv-00529.

Additional source: chicagotribune.com

Corizon to Pay Over $5 Million for Depriving Prisoners of Dental Care

by Douglas Ankney

A lawsuit over the 2015 death of a Colorado jail prisoner has resulted in a settlement for $3.7 million. Corizon will pay the estate of Tyler Tabor a total of $3 million. The settlement includes a $3.7 million payment to the estate of Tyler Tabor, who died at the Adams County jail in 2015.

The settlement was approved by the district court in August 2018. The plaintiffs in the three other cases also received $15,000 each in incentive awards, while class member Tom Tuduj received $3,000 for appearing at a deposition. Four additional plaintiffs named in the class-action suit each received $15,000, while class member Tom Tuduj received $3,000 for appearing at a deposition. The plaintiffs in the three other cases also received $15,000 each in incentive awards, to be paid from the fund.

After attorney’s fees and costs of $2,220,000 and an administrative payment of up to $300,000 were deducted, the fund had a balance of $2,880,000 to settle claims filed by the class members, who included: “All inmates housed at the Cook County Department of Corrections from January 1, 2007 to October 31, 2013 who made a written request for dental care because of acute pain and who suffered prolonged and unnecessary pain because of a lack of treatment.”

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Additional source: chicagotribune.com

Corizon Settles Lawsuit Over Colorado Jail Prisoner’s Death for $3.7 Million; County Pays Another $200,000

by Matt Clarke

A lawsuit over the 2015 death of Tyler Tabor, a Colorado jail detainee, has resulted in a settlement for $3.7 million. Corizon will pay the estate of Tyler Tabor a total of $3 million. The settlement includes a $3.7 million payment to the estate of Tyler Tabor, who died at the Adams County jail in 2015.

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Additional source: chicagotribune.com
agreement, the Tabor family and their attorneys were barred from talking about the case or settlement, or disparaging Corizon. However, the settlement was disclosed in November 2018 when Lane notified the court of Corizon’s failure to pay the agreed amount and filed a motion to enforce. Corizon’s response was that the company had a “cash flow” problem and would have to make the remaining payments in installments, with the final payment being made in February 2019.

At the time, the plaintiffs had yet to even recover the full amount of their attorney fees and costs, which totaled $1,645,021.63. The district court denied the motion to enforce on November 19, 2018, stating, “the Supreme Court [has] held that federal courts ordinarily lack jurisdiction to enforce settlement agreements that arise from and resolve prior federal litigation, unless the court has incorporated the terms of the settlement into its order of dismissal or there is an independent basis for federal jurisdiction. Here, neither party asked the Court to embody the terms of their settlement as part of any order dismissing the claims against Corizon."

Thus, to enforce the private settlement agreement, the plaintiffs would have to do so by “commencing a new action sounding in contract and paying a new filing fee, not by asking this Court to resolve a dispute that is entirely collateral to the existing action.” See: Estate of Tabor v. Corizon Health, Inc., U.S.D.C. (D. Colo.), Case No. 1:16-cv-01587-MSK-NRN.

Sources: denver.cbslocal.com, westword.com, The Appeal

Ohio Restaurateur Founds Hot Chicken Takeover, Hires Ex-Cons

by Scott Grammer

In 2013, Joe DeLoss founded Hot Chicken Takeover in Columbus, Ohio. HCT is a “Nashville Hot Chicken” restaurant that has nearly 50 employees, 70% of whom have had trouble finding work due to criminal records or other issues. DeLoss has also worked to establish other programs to help such people, such as food service training and financial aid programs. Since then, two other HCT locations have opened in Columbus.

The recruiting website for the company says its brand mark is a chicken with an asterisk. “That asterisk represents the mission: to create extraordinary experiences for extraordinary people – our team, customers, community partners and our neighbors. As a Fair Chance Employer, HCT provides supportive jobs to men and women who need a fair chance at work.”

As an example of what Hot Chicken Takeover does, consider Shannon Wilson. She has worked for the company for two years and is now an executive coordinator for the firm. Before that, she was in prison. At 31 years old, she was incarcerated for nearly four years and had been addicted to drugs for 15 years. She was released with no clothes, money or food, and was hired by Hot Chicken Takeover as a dishwasher “just like everyone else,” she said. “It’s a wise business choice to hire people who will work hard and stay in their job,” Wilson added. HCT’s employee retention rate is twice that of similar businesses.

The company offers cash advances to employees who need them, to keep them away from predatory lenders. Workers are taught to live on a budget and save, and HCT matches certain savings for things like a security deposit on an apartment. Wilson said her boss believes that “if someone isn’t stable in their personal life, they won’t be stable in their professional life.”

Sources: accessventures.org, usatoday.com, foodandwine.com, hotbickentakeover.com, hctjobs.com

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On February 15, 2019, a federal jury ruled that Mark Pajas, Sr. should not have died at a jail in Monterey County, California, prompting an award of $1.6 million to his family in a wrongful death suit.

Pajas, 56, was riding a bicycle the wrong way down a street on January 19, 2015 when King City Police Officer Steve Orozco tried to pull him over, then rammed into him. Pajas was arrested for “recklessly driving,” transporting a controlled substance for sale and resisting arrest. After being taken to a hospital he was booked into the Monterey County jail, where staff did not adequately monitor him as he detoxed from heroin. Less than 24 hours later he was found dead, facedown in his own vomit.

Pajas’ family was told that he died from an overdose. That turned out to be false. He actually died from a cardiac event involving arrhythmia, possibly exacerbated by opiate withdrawal and substance abuse, according to the medical examiner.

The jury reviewed evidence indicating that guards at the jail did not conduct any safety checks for almost half an hour before Pajas was found dead in his detox cell. They were supposed to conduct checks every 15 minutes. The jury held jail officials had violated Pajas’ rights by failing to provide necessary medical treatment.

Monterey County jail officials had been sued over inadequate medical and mental health care in other cases. In a 2018 settlement, for example, the county paid $2.85 million to the family of Sandra Vela, who committed suicide following negligence by jail staff.

Yvette Pajas, the 42-year-old daughter of Mark Pajas, said the jury award gave her family justice. Monterey County officials must make changes so no more prisoners die unnecessarily, she added.

“When it gets reported that somebody died in jail who was addicted to drugs, there may be this idea that this is someone who’s just a throwaway,” said attorney Lori Rifkin, who represented Pajas’ family. “I think that this trial really exposed that that’s not true. That’s not how people deserve to be treated.”

Following the verdict, the plaintiffs – Pajas’ wife and four adult children – waived their motion for costs in exchange for the defendants waiving their right to appeal. See: Villarreal v. Monterey County, U.S.D.C. (N.D. Cal.), Case No. 5:16-cv-00945-BLF.

L.A. Sheriff Claims Jail Reforms Resulted in More Violence; Court-Appointed Monitors Disagree

Newly elected Los Angeles County Sheriff Alex Villanueva held a press conference in late January 2019, claiming that court-ordered reforms in the county’s jail system had caused an increase in violence among its 18,000 prisoners – and that the previous sheriff had covered it up. But experts and court-appointed monitors said he was using faulty statistics in an attempt to undermine the reforms.

A 2011 FBI investigation found L.A. County jail deputies frequently used excessive force, especially against the mentally ill. Affidavits signed by prisoners, civilian monitors and some clergy members testified to unprovoked attacks by the deputies. There was also evidence that deputies encouraged prisoner-on-prisoner attacks to provide a pretext for their own use of force to crack down on the violence.

That investigation led to the convictions of former long-term Sheriff Lee Baca and Undersheriff Paul Tanaka, who had covered up the abuse. [See: PLN, June 2017, p.42; April 2013, p.15; March 2013, p.1]. The county ended up paying millions of dollars to former prisoners who suffered injuries from beatings by jail guards.

In 2012, an independent blue-ribbon advisory panel created by the county’s Board of Supervisors found a “persistent pattern of [deputies using] unreasonable force” against prisoners. The panel’s 600-page report recommended hiring an independent inspector general to provide oversight, reforming the complaint-resolution process, more timely discipline for violations of departmental policy and additional video cameras in the jails to verify complaints.

Faced with lawsuits, the sheriff’s department struck separate deals with the ACLU and the U.S. Department of Justice (DOJ) to implement jail reforms designed to decrease violence and improve mental health care. The ACLU, DOJ and the lead court-appointed monitor, Richard E. Drooyan, all thought the reforms were working well.

Then Sheriff Villanueva alleged that his predecessor, Jim McDonnell – elected in 2014 and narrowly edged out by Villanueva in 2018 – had falsely claimed violence in the jail system was down when in fact it was up. From 2013 to 2018 – during McDonnell’s term in office – prisoner-on-deputy assaults rose 204% to 544, according to Villanueva, while prisoner-on-prisoner attacks rose 31% to 3,632 and incidents involving significant use of force by deputies increased 99% to 349.

Drooyan, who chaired the blue-ribbon advisory panel, disagreed. He noted that record-keeping was poor prior to the 2015 court settlement – which itself mandated the heightened reporting on which Villanueva relied – so comparisons of pre-settlement statistics to more recent data were inherently inaccurate. For example, a staff member taking a disoriented prisoner by the arm to guide him down a hallway must be reported as a use of force under the arm to guide him down a hallway but was not reported at all. Likewise, deputies who illicitly beat prisoners were unlikely to report their actions.

“I do not believe that anyone in the Department has intentionally misled me,” said Drooyan, who questioned Villanueva’s findings and asked him to provide documentation of his claims that the former sheriff had covered up jail violence. “Without accurate data to serve as a benchmark, it is not possible to draw any reliable conclusions or comparisons regarding the level of violence.”
force and violence in the jail during your predecessor’s tenure,” he added.

“Sheriff Villanueva is entitled to his own opinion, but not his own facts,” stated McDonnell, who denied any attempt to cover up levels of violence in the jail system.

Villanueva, a former street cop who periodically clashed with his superiors and struggled to be promoted, won his surprise election victory over McDonnell with the backing of the union that represents sheriff’s deputies. He has since vowed to walk back jail reforms, such as reinstating the use of metal flashlights at the jails – specifically banned by the settlement because deputies frequently used them to assault prisoners – as well as establishing a “truth and reconciliation panel” that would rescind the disciplinary firings of 68 deputies.

In December 2018, Sheriff Villanueva reinstated one of his campaign volunteers, deputy Caren Carl Mandoyan, who had been terminated in 2016 for domestic abuse against his ex-girlfriend, who is also a deputy, ignoring a decision by the county’s Civil Service Commission that upheld Mandoyan’s discharge. The Board of Supervisors went to court seeking to block Mandoyan’s re-hiring; it also directed the sheriff to stop reinstatement cases of terminated employees.

But in February 2019 the sheriff had reinstated deputy Michael Courtial, who was fired in 2018 for unreasonable force and failing to de-escalate an encounter with a suspect. Mandoyan and Courtial join at least four other deputies re-hired since Villanueva took office.

“Reinstating deputies who have been fired for dishonesty or the excessive use of force is a significant step backwards and sends the wrong message to members of the department responsible for custody operations, many of whom have embraced the reforms that have been implemented and have worked hard to change the staff culture in the jail,” Drooyan warned the sheriff in an April 2019 letter.

“The sheriff just continues with his bullheaded mantra of, ‘Oh, the deputies didn’t get due process,’ and doesn’t give much more than that because there isn’t a good answer for what he’s doing,” said Peter Eliasberg, chief counsel for the ACLU of Southern California, who added that the court-approved jail reforms are at risk.

“What really worries me is he’s sending a message to [the deputies’ union] and Sheriff’s Department employees that you can go back to the bad old days and you can behave the way deputies were behaving before, which was to run the place with brutality and excessive force on a widespread basis,” Eliasberg observed. Source: nbclosangeles.com, latimes.com, laist.com

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**THE AMERICAN PRISON WRITING ARCHIVE**

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In December 2018, the U.S. District Court for South Carolina granted class-action status in a lawsuit filed against the Department of Corrections (DOC) by state prisoners claiming they received inadequate medical care due to a lack of testing during intake to check if they had hepatitis C (HCV). The complaint also alleged that prisoners who tested positive for the disease did not receive appropriate treatment.

Untreated HCV attacks the liver and increases the risk of kidney, Parkinson’s and heart diseases, as well as diabetes, B cell lymphoma and other forms of cancer. Other more benign, yet unpleasant symptoms include arthritis, chronic depression and fatigue. In 2013, HCV was a factor in more deaths than 60 other infections combined, including HIV and tuberculosis.

When people with HCV are released from prison they can spread the disease through intravenous drug use or sexual contact. Diagnoses of HCV soared more than 200 percent in 30 states from 2010-2014 according to Yale University researchers, who noted that due to the high incidence of HCV among prisoners, “failure to scale up treatment in prisons dooms any effort to eliminate hepatitis C in America.”

Represented by attorneys Christopher Bryant with Yarborough Applegate LLC and Reuben Guttmann with Guttmann, Buschner & Brooks PLLC, the class-action suit against the DOC was originally filed by prisoners Russell Geissler, Bernard Bagley and Willie James. They argued the DOC had violated their Eighth Amendment rights by failing to provide adequate HCV treatment.

Based on court rulings establishing prisoners’ right to medical care, due to their inability to obtain it elsewhere, the U.S. Supreme Court has effectively made prisoners the only group with a constitutional right to receive healthcare, noted Robert Katz, a professor at Indiana University’s Robert H. McKinney School of Law.

The Centers for Disease Control (CDC) recommends testing all people at risk for HCV, including those born between 1945 and 1965, those who received a blood transfusion before 1992, and prisoners. The CDC has further promulgated a medical standard of care that includes treatment for people with chronic HCV unless there is a short life expectancy even with treatment.

According to its written policy, the South Carolina DOC does not test for HCV “except in certain limited circumstances,” none of which correspond to the CDC’s recommended testing protocol. The DOC currently spends about $1 million of its $70 million annual healthcare budget on HCV testing and treatment.

The FDA approved direct-acting antiviral (DAA) drugs for treatment of HCV in 2013. [See: PLN, July 2014, p.20]. The medication has few or no side effects and is 90-95 percent effective in curing chronic HCV after a 12-week treatment course, at which point the disease is no longer transmissible. But a DAA regimen costs over $20,000, so a change in South Carolina’s HCV testing and treatment procedures would require a substantial increase in the DOC’s budget.

The lawsuit accuses DOC director Bryan P. Stirling of deliberate indifference, alleging that DAA treatment would not only improve prisoners’ quality of life and reduce their long-term healthcare costs but also would prevent them from transmitting the disease upon release.

Since the suit was filed, two DOC physicians – Dr. James Grubbs and Dr. Ansal Shah – have given sworn affidavits in support of the prisoners’ claims; as a result, the plaintiffs have asked the court to dismiss them as defendants.

In a proposed partial settlement, the DOC said it would agree to provide “opt-out” HCV testing to all incoming prisoners as well as those currently incarcerated with more than 24 months left to serve. The district court has granted preliminary approval, but final approval by the court remains pending and the partial settlement does not affect the rest of the litigation. See: Geissler v. Sterling, U.S.D.C. (D. SC), Case No. 4:17-cv-01746-MBS.

Another lawsuit over HCV treatment for prisoners, against the Colorado DOC, settled in September 2018. Filed by the state chapter of the ACLU, with pro bono assistance from attorneys Christopher Beall, Neal Cohen and Dana Katz with the Fox Rothschild law firm, the case was granted class-action status to secure timely treatment for HCV-positive prisoners.

Colorado’s prison population is around 20,200, of which 2,280 were estimated to have HCV – just above 11 percent of the population. The rate in the general, non-incarcerated population is less than one percent, based on 2013 data. HCV has been the primary cause of death among Colorado prisoners for many years despite treatment breakthroughs such as DAA. [See: PLN, July 2017, p.1].

Before receiving treatment, prisoners were required to complete months-long drug and alcohol abuse classes as well as therapeutic community programs. Their liver-enzyme numbers also had to reach near-critical levels. This meant it could take years before any treatment began. The DOC announced it would provide HCV treatment to just 70 prisoners in its 2017-18 fiscal year – a rate that would take over 32 years to treat all state prisoners with HCV.

As a result of the litigation, the Colorado DOC agreed to spend $41 million over the next two years to treat all prisoners suffering from HCV. Prison officials will no longer require them to attend prerequisite programs before receiving treatment, and will submit quarterly reports to class counsel regarding the treatment regimens and progress.

Additionally, the DOC will pay $175,000 in attorney’s fees to the ACLU Foundation. Following the settlement, the case was administratively closed in April 2019. See: Aragon v. Raemisch, U.S.D.C. (D. Colo.), Case No. 1:17-cv-01744-RBJ.

Class-action lawsuits over HCV treatment have also been filed in Alabama, Idaho, Indiana, Missouri, North Carolina, Vermont and Tennessee. In Missouri, the class certification was upheld by the Eighth Circuit in December 2018. [See: PLN, April 2019, p.22]. Prisoner advocates suing Massachusetts, Minnesota and Pennsylvania have reached settlements, the latter modeled after the one in Colorado, according to attorney David
say he “will not tolerate further foot-dragging.” The ruling initially applied to around 7,000 prisoners. [See: PLN, Dec. 2017, p.24].

Randall Berg, Jr., president emeritus of the Florida Justice Institute, served as class counsel in the suit – which was one of the first to establish a legal precedent for HCV testing and treatment for prisoners. He called the court’s ruling “a big win.” [Ed. Note: See this issue’s cover story].

On April 18, 2019, Judge Walker expanded the number of Florida state prisoners eligible for HCV treatment to include those in the early stages of the disease. The DOC “can no longer use resource limitations and implementation difficulties as an excuse to delay treatment,” he wrote. In response, the state appealed his order, as well as the class certification, to the Eleventh Circuit. The Florida legislature has approved $50 million to provide HCV treatment to prisoners in the budget for fiscal year 2019-2020. See: Hoffer v. Jones, U.S.D.C. (N.D. Fla.), Case No. 4:17-cv-00214-MW-CAS.

Some states are not waiting for lawsuits before stepping up HCV treatment in their prison systems. Michigan and New Mexico have voluntarily started DAA treatment for prisoners. In 2018, California lawmakers budgeted $105.8 million to treat some 22,000 prisoners infected with HCV after a lawsuit was filed. [See: PLN, April 2018, p.28].

For other states that have not yet taken action, the main sticking point is the cost – especially for DAA drugs. A state DOC has no legal authority to access medication discounts provided to the federal Medicaid program and the Veterans Health Administration. But according to Dr. Anne Spaulding with Emory University in Atlanta, an infectious disease and prison health care specialist, the U.S. Department of Health and Human Services could allow states to use the so-called nominal pricing mechanism available to federal medical systems by classifying prisons as “safety net” healthcare providers.

Spaulding estimated the cost of full DAA treatment would drop to $2,000 to $4,000 per patient. “We would love to get a state to try to go and get that price,” she stated. 

Additional sources: thestate.com, prnewswire.com, aclu-co.org, foxrothschild.com, westword.com, usnews.com, tampabay.com
Second Circuit Reinstates Prisoner’s Lawsuit Dismissed for Failure to Comply with F.R.C.P.

by Matt Clarke

On February 15, 2019, the Second Circuit Court of Appeals reinstated a prisoner’s pro se lawsuit that had been dismissed for failure to comply with Federal Rules of Civil Procedure 8 and 20. In doing so, it held that such sua sponte dismissals should be reviewed de novo.

Connecticut state prisoner James A. Harnage filed a federal civil rights action alleging that various medical staff at the University of Connecticut Health Center and the MacDougall-Walker Correctional Institution failed to adequately treat his medical conditions.

The district court ordered him to amend the complaint because his referral to multiple defendants by group names did not give individual defendants adequate notice of the specific actions for which they were being sued. Harnage submitted an amended complaint. The court then dismissed the case with prejudice under 28 U.S.C. § 1915A for failure to comply with F.R.C.P. Rules 8 and 20, and Harnage appealed.

The Second Circuit noted that Rule 8 requires a pleading to contain “a short and plain statement of the claim showing that the pleader is entitled to relief,” while Rule 20 permits the joinder of multiple defendants only if the claims against them resulted from the same “transaction, occurrence, or series of transactions or occurrences.” The appellate court held that, while the amended complaint “may not represent the paradigm of notice pleading, it is not the incomprehensible labyrinthian proximity of unrelated and vituperative charges” that Rule 8 was intended to curb.

The district court’s central complaint in this regard was that Harnage failed to include the specific dates of his requests for medical care and when he was seen by medical staff. The Court of Appeals noted that “the failure to allege specific dates does not run afoul of Rule 8, especially where, as here, the plaintiff lacks ready access to his medical records.”

The Second Circuit also disagreed with the district court’s conclusion that the complaint asserted more than one distinct claim against multiple defendants. “The amended complaint alleges that the defendants’ actions (or inaction) individually and cumulatively resulted in the denial of adequate medical care for Harnage’s hemorrhoid condition. These allegations are thus sufficiently related to constitute a ‘series of transactions and occurrences.’” Further, Harnage’s claim that he was denied adequate medical care in violation of the Eighth Amendment “is clearly a common question of law, if not fact, with respect to the named defendants.”

However, Harnage had failed to adequately state a claim against three of the 17 named defendants, the appellate court found. It therefore affirmed the judgment with respect to those defendants and reversed as to all other defendants.

The Court of Appeals wrote in a footnote that “While it is well-established that dismissal under § 1915A for failure to state a claim is reviewed de novo, we have yet to enunciate a standard for reviewing a dismissal under § 1915A for failure to comply with Rules 8 and 20.” It adopted the de novo standard for review for such dismissals in this case, which remains pending on remand. See: Harnage v. Lightner, 916 F.3d 138 (2d Cir. 2019).

Supreme Court Again Prevents Texas from Executing Intellectually Disabled Prisoner

In an unusual case where prosecutors sided with the defense and the Chief Justice of the U.S. Supreme Court crossed sides, convicted Texas murderer Bobby James Moore has again been ruled intellectually disabled and therefore not a candidate for execution.

Moore was convicted of shooting 70-year-old James McArble in the head during a 1980 attempted robbery of the Birdsall Super Market in Houston. One of a group of three robbers who targeted the business due to the store clerk’s advanced age, Moore was captured 10 days later in Louisiana after his accomplice, shooter Willie Albert Koonce, turned himself in and fingered Moore.

Moore was 20 years old at the time, having dropped out of school after failing ninth grade. At 13 he could not demonstrate a basic understanding of the days of the week or months of the year. Even in 2013, long after he was convicted and sentenced to death, he racked up the lowest score on a test of executive-level brain function ever recorded by the expert evaluating him.

Over 20 years after his conviction, lawyers representing Moore presented a state district court judge with evidence that his IQ was about 70 – significantly below the national average of 100 – and asked for a ruling on his intellectual fitness, citing the U.S. Supreme Court’s 2002 ruling in Atkins v. Virginia that the intellectually disabled cannot be executed. The judge ruled Moore intellectually disabled in 2014.

Former Harris County District Attorney Devon Anderson took the case to the Texas Court of Criminal Appeals (TCCA), which overruled the lower court and found Moore was not disabled, using the so-called Briseño factors – a set of seven questions used to evaluate mental fitness that is named for a 2004 case involving another Texas plaintiff.

Moore appealed to the U.S. Supreme Court, which in a 5-3 decision overturned the TCCA’s ruling in 2017, though all of the justices sharply criticized the Briseño factors as “an unscientific ‘invention.’” The seven questions made reference to a fictional character in John Steinbeck’s Of Mice and Men that was “untied to any acknowledged source” and lacked support from “any authority, medical or judicial.”

The majority of the Supreme Court Justices furthered criticized the TCCA and its “lay stereotypes” for confusing the adaptive abilities of intellectually disabled persons in a tightly structured situation like prison – where Moore was functioning well – with a life history that evidenced a failure to adapt in non-structured settings. Chief Justice John Roberts voted with the minority. See: Moore v. Texas, 137 S.Ct. 1039 (2017).

Moore’s case went back to Texas. By
that time, Harris County had elected a new district attorney, Kim Ogg, who defeated Anderson and assumed office in January 2017. She filed a brief with the Texas Court of Criminal Appeals asking for a life sentence for Moore instead of death.

"I'm doing what I believe the law requires," Ogg stated.

The TCCA disagreed, and in June 2018 again found Moore fit for execution. Cliff Sloan, an attorney representing Moore, criticized the court for being "inconsistent" with the Supreme Court's ruling. Robert Dunham, with the Death Penalty Information Center, observed the TCCA had "simply thumbed its nose in the high court's face."

But the TCCA also held the Briseno factors should no longer be used to determine a death row prisoner's fitness for execution, substituting instead the fifth edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-V) to define intellectual disability.

The case was again accepted on appeal by the U.S. Supreme Court, which in February 2019 again reversed the TCCA and held that "on the basis of the trial court record, Moore has shown he is a person with intellectual disability." It was a 6-3 decision, with Chief Justice John Roberts this time dissenting. See: Moore v. Texas, 139 S.Ct. 666 (2019).

Although insisting he still believed the 2017 majority was wrong to interfere with the TCCA's decision, Roberts said he was determined nonetheless to uphold the precedent established in that ruling, which he said the Texas Court of Criminal Appeals had not followed, focusing again on Moore's current adaptive capabilities rather than those he possessed at the time of his crime.

"That did not pass muster under this Court's analysis last time," Roberts wrote. "It still doesn't."

Death penalty scholar Margery M. Koosed, professor emeritus at the University of Akron School of Law, called Roberts' opinion "reassuring."

District Attorney Ogg said her office had "disagreed with our state's highest court and the attorney general to stand for justice in this case. The U.S. Supreme Court agreed."

Moore's attorney, Sloan, added: "We greatly appreciate today's important ruling from the Supreme Court, and we are pleased that justice will be done for Bobby Moore."  

Sources: usatoday.com, deathpenaltyinfo.org, bloomberglaw.com

Denver, Colorado Pays $30,000 Settlement Over a $50 Bond Fee

by Ed Lyon

Denver, Colorado resident Mickey Howard, often homeless and unemployed, was arrested on June 9, 2018 and charged with public intoxication and domestic violence. He had $64 when he was booked into jail.

The next morning at his arraignment, a judge set Howard's bond at $10 – an amount he could easily afford out of pocket. Except, however, the police would not release him because they did not have enough money to cover the bond fee of $50. He had already been charged $30 for a booking fee to pay for being fingerprinted and having his mug shot taken.

Howard languished in jail under these circumstances for five days before the Colorado Freedom Fund stepped in to pay the required fee to secure his release. By then, however, he had lost his job and housing.

With assistance from the ACLU, Howard filed a federal lawsuit pursuant to 42 U.S.C. § 1983, seeking an end to all such fees plus unspecified monetary damages. The city and county of Denver quickly capitulated, offering a $30,000 settlement that was accepted in December 2018.

Additionally, Denver's Department of Public Safety announced an end to its pre-trial monitoring program, which cost releasees as much as $55 per day. El Paso County, Colorado had already paid $195,000 to 184 people who remained in jail because they couldn't afford the $55 daily monitoring fee in a separate lawsuit also brought by the ACLU.

"I started this case to get justice and make change," Howard said in a news release. "Nobody should be stuck behind bars because they cannot pay. With the ACLU's help, we have made lasting change, and that makes me proud."

The settlement was finalized and the case dismissed on January 30, 2019. See: Howard v. City and County of Denver, U.S.D.C. (D. Colo.), Case No. 1:18-cv-02593-CMA-STV.

Additional source: denverpost.com
New Jersey Women’s Prison Again Under Investigation for Staff Sexual Abuse

by Kevin W. Bliss

In April 2019, an eighth guard at New Jersey’s Edna Mahan Correctional Facility for Women (EMCF) was arrested and charged with official misconduct and criminal sexual conduct.

Ciera Roddy, 32, faces charges similar to those that resulted in the conviction of Jason Mays, a senior guard at the same facility.

The 46-year-old Mays was sentenced in July 2018 to 16 years in prison and life-time supervised parole, and must register as a sex offender following his convictions for sexual assault, sexual contact and official misconduct involving two prisoners at EMCF.

Roddy had been transferred to the Adult Diagnostic Treatment Center in Woodbridge just before her arrest. Hunterdon County Prosecutor Anthony P. Kearns III said Roddy was being held at the Somerset County jail awaiting her first court appearance.

A joint investigation by Kearns’ office and the Special Investigations Unit of the state Department of Corrections (DOC) uncovered an inappropriate relationship between Roddy and an EMCF prisoner while the guard was still assigned to the facility. Employed with the DOC since November 2017, Roddy joins Mays and at least six other former employees at the 650-bed prison who have been charged since 2015.

Mays was arrested in October 2016 along with fellow guards Brian Ambrose and Ahnwar Dixon. Following an internal investigation, senior guards Joel Mercado and Ronald Coleman also were charged. [See: PLN, April 2019, p.40; Dec. 2018, p.44].

Dixon, 39, pleaded guilty to three counts of second-degree official misconduct in July 2018, while Ambrose, 34, was found not guilty of sexual misconduct and assault in November 2018. Coleman, 39, is still awaiting trial on charges of official misconduct and sexual assault.

Mercado, 37, who was also an academy instructor for DOC recruits, pleaded guilty in February 2019 to sexual misconduct with prisoners between 2013 and 2015. Kearns pointed out that the New Jersey law which prohibits “any form of sexual contact between officers and inmates” was part of the curriculum that Mercado taught.

A 2016 audit of EMCF by the U.S. Department of Justice (DOJ), to gauge compliance with the Prison Rape Elimination Act (PREA), awarded the facility high marks for having more than 90 cameras with no blind spots. But testimony at Mays’ trial revealed that some minimum-security areas, such as the 40-bed residential cottage to which he was assigned, did not have cameras, while video from cameras in other areas was erased after just 30 days of recorded footage.

Lt. Hector Smith was questioned about the security of employees coming to work and the potential for smuggling contraband that could be exchanged for sexual favors. He said security was extremely lax at EMCF.

“Here, you can drive your car into the facility, which is very, very strange,” Smith said.

According to a series of reports compiled in 2017 by NJ Advance Media, DOC officials had not publicly acknowledged the full scope of the sexual abuse problem at the prison even though another guard at the facility, Thomas Seguine, and institutional trade instructor Joel Herscap, both pleaded guilty to official misconduct that year and were sentenced to prison. [See: PLN, Dec. 2018, p.44; Aug. 2017, p.63; July 2016, p.63].

As a result of the investigations, former DOC Commissioner Gary Lanigan had his re-nomination put on hold so that lawmakers could question him about the scandal. He retired in May 2018, and Governor Phil Murphy named Marcus Q. Hicks as acting commissioner.

In May 2018, the DOJ opened its fourth civil rights investigation in three years at EMCF. Former state Attorney General Christopher Porrino had also ordered an independent investigation the year before, after which the state senate passed two bills in 2018 to address concerns regarding sexual abuse by prison staff: one formulated strict reporting requirements and the other limited cross-gender strip searches.

Michael Campion, head of the U.S. Attorney’s Civil Rights Unit, is conducting an inquiry at EMCF focused on “the institution’s ability to protect prisoners from sexual abuse ... to determine whether there are any systemic violations of the U.S. Constitution.”

Current New Jersey Attorney General Gurbir S. Grewal promised, “In the end, we will all share the same objectives: to ensure safe, lawful and appropriate conditions of confinement at Edna Mahan, and to identify and resolve any issues that may be working against that effort.”

Hicks stated DOC officials have spoken with representatives of the DOJ’s civil rights investigation and will cooperate fully.

“We are trusted with the responsibility of protecting our inmate population and will implement the necessary and appropriate reforms to ensure the safety and security of the offenders in our care,” he said.

Spokeswoman Alexandra Altman added the DOC “is committed to holding officers to the highest standards and there will be serious consequences for those who jeopardize the safety and security of the offenders in our care.”

Sexual abuse by staff at EMCF has been documented since 1994, when guard Kevin Brodien admitted to a sexual relationship with a prisoner. Guard Stewart Sella allegedly raped prisoners Jacqueline Heggenmiller and Tammy Davis between 1997 and 1999, while another guard, Regina Davis, helped cover up the abuse. Both were fired in 2000 when the allegations finally reached then-DOC Director Dean Campbell.

“The claims of systemic abuse at the Edna Mahan Correctional Facility were troubling not only because of the nature of the abuse, but because they were an open secret for far too long,” said state Assemblywoman Yvonne Lopez.

“These women did not forfeit their humanity or civil rights when they were imprisoned,” agreed fellow state lawmaker Valerie Vainieri Huttle.

The two legislators co-sponsored a bill to require the state’s Office of Victim-Witness Advocacy to set standards ensuring the safety of women prisoners, which would
be monitored by unannounced visits and supplemented by random surveys to identify victims of sexual assault or misconduct. The bill was one of five the assemblywomen have introduced in the wake of the sex abuse scandal at EMCF.

Leslie Sinemus, Mays’ attorney, said she was planning to appeal the former guard’s conviction. But while she called the investigation flawed that led to charges against her client, she also said it proved that the DOC’s policies left prisoners at risk of sexual assault and guards at risk of being falsely accused. As a solution, she called for the use of body cameras for guards and more cameras to provide surveillance in all areas of the facility.

“The things need to happen, not only for the protection of the inmates but also for the protection of the officers,” Sinemus stated.

Brenda Smith, a law professor at American University who serves as director of the Project on Addressing Prison Rape, agreed there is a problem with sexual abuse at EMCF, including how prison officials corroborate such claims.

“Well, lose, or draw, whether it happened or didn’t happen, what you absolutely can say is they don’t take sex abuse in custody seriously,” Smith said. “Because if they did, they’d have different procedures in place.”

Sources: nj.com, mycentraljersey.com, womeninbeyond.org, insidersnj.com

Prosecutorial Misconduct Records Protected by Colorado Supreme Court and SCOTUS

by Ed Lyon

In a February 2019 decision that impacts access to public records, the U.S. Supreme Court (SCOTUS) refused to review a unanimous ruling by Colorado’s Supreme Court issued eight months earlier which denied The Colorado Independent access to court documents in a capital murder case. That ruling leaves Colorado as the only state without a presumptive right to public access to criminal case court records.

By October 2018, The Independent had received friend-of-the-court (amicus) filings for its SCOTUS appeal from 56 state and national media outlets, including the Denver Post, New York Times and Washington Post, as well as the Associated Press, National Public Radio, BuzzFeed and Sinclair Broadcast Group. They were joined by 21 First Amendment scholars.

Two of those scholars, Alan Chen and Justin Marceau with the University of Denver’s Sturm College of Law, argued that the state’s highest court had denied public access to court records “without requiring the demonstration of any valid reason, much less a compelling one, for shielding them from public scrutiny.”

The case arose following the conviction of Sir Mario Owens for the 2004 murder of Gregory Vann in Aurora, as well as a separate conviction the following year for the murders of Vivian Wolfe and Javad Marshall-Fields. Marshall-Fields had been wounded in the attack on Vann and planned to testify against Robert Ray, who also was convicted of Vann’s murder. Vann was a friend of Marshall-Fields, the son of a Colorado state representative, whose girlfriend was Wolfe. [See: PLN, March 2012, p.1].

A 2017 investigation revealed that a juror at Owens’ trial had lied on disclosure forms that failed to reveal relationships with other witnesses and relatives of the alleged victims. The office of 18th Judicial District Attorney George Brauchler knew about the juror misconduct but did not reveal it to the defense. A ruling by Senior District Court Judge Christopher Munch denied Owens a new trial based on juror misconduct, quoting state case law that established a precedent requiring only “a fair trial, not a perfect trial.”

The court records sought by The Independent were of a ruling issued after Owens’ attorneys filed a motion to disqualify Brauchler’s office from the case, which the court denied. At the time, Brauchler was the Republican candidate for state attorney general, and he successfully fought to keep the documents about his office’s knowledge of the juror misconduct sealed. Brauchler lost in the November 2018 elections.

About 8,000 petitions for judicial review are filed annually with the U.S. Supreme Court, but only around 70 are granted, according to scholar Adam Feldman.

“We knew going in that this would be a long shot,” said Susan Greene, editor of The Independent. “But our news team and board are proud to have stood up and challenged the Colorado Judicial Branch’s secrecy habit and questioned what it seems to interpret as its unbridled authority to shroud from public view whichever records it chooses, regardless of the reason.”

Owens, Ray and another prisoner, all convicted by Brauchler’s office, make up Colorado’s entire death row population. All are black, even though blacks represent only five percent of Colorado’s general population. See: People v. Owens, 2018 CO 55, 420 P.3d 257 (Col. 2018), cert. denied.

Source: coloradoindependent.com

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Criminal Appeals  Habeas Corpus Writs  Parole Hearings  Re-Sentencing  Prisoners’ Rights
Regular readers of Prison Legal News are well aware of the abysmal reputations that private, for-profit prisons have earned. Apparently word travels and people on the outside eventually listen and pay attention to such matters, as the citizens of Lancaster, Pennsylvania demonstrated when they decided to say no to GEO Group.

For over a decade, post-release reentry programs in Lancaster County have been provided by a group of nonprofit organizations. Recidivism rates were low, and parolees received job and housing assistance through the Community Action Partnership and Reentry Management Organization. The YWCA offered support groups and counseling for prisoners who were sexually assaulted while incarcerated. Compass Mark worked with the children left behind whenever a parent was arrested, until he or she was released.

All of these services were funded via a month-to-month allocation by the county with a total annual expenditure of around $100,000.

In 2018, county commissioners Josh Parsons and Dennis Stuckey decided to put an end to the ad hoc manner of contracting for and funding the successful work by nonprofits in these areas. The county wanted to cap parolee housing costs at $1,000 for the 90-day program period and begin helping children of incarcerated parents when they were convicted of a crime rather than at the time of their arrests (when studies indicated counseling should start).

A bidding system was set up by the county’s purchasing department that was so byzantine the nonprofit groups decided not to even try submitting a bid. Private prison firm GEO Group did, at a projected cost of $361,000 annually—a significant increase over the prior cost for the reentry programs.

On April 23, 2018, assured of its success as the sole bidder, GEO released a statement announcing it was looking to even try submitting a bid. Private prison firm GEO Group did, at a projected cost of $361,000 annually—a significant increase over the prior cost for the reentry programs.

On April 23, 2018, assured of its success as the sole bidder, GEO released a statement announcing it was looking forward to providing services for parolees in Lancaster. However, local residents had something else in mind.

Led by Michelle Hines, an organizer for Lancaster Stands Up, citizens began packing the county commission meetings—events that usually drew two to three spectators at most. The large turnouts were referred to by commissioners as “a distraction,” according to Hines, who added: “I don’t think they were expecting to have to make this decision in the light of day. I don’t think they expected such a community response.”

After hearing from religious figures, nonprofit leaders, parolees and ordinary citizens, the county commissioners soon learned how negatively people felt about GEO Group. They also realigned their focus on the success of the reentry services already in place and functioning. By July 2018, GEO had become persona non grata in Lancaster, and the commissioners voted to create a staff position to oversee reentry services, funded by the county prison’s commissary account, rather than contract with GEO.

“These big corporations over and over again come into our communities, buy people off, and then are able to perpetrate harm against everybody here,” Hines stated. “For a really long time I’d been watching this happen and it just felt like an impossible thing to fight back against, and I feel so empowered to be in a position to have enough people power in our community to be able to fight back.”

GEO Group vice president Monica Hook criticized Lancaster County’s decision, saying released prisoners would “not be afforded the opportunity to receive GEO’s high quality, evidence-based reentry services and the best opportunity for successfully reentering society.”

Sources: inequality.org, lancasteronline.org, pennlive.com

Oregon Transitional Leave Violations Require Morrissey Due Process Protections

In a case of first-impression, a federal district court held that Oregon prisoners have a protected liberty interest in transitional leave that may not be revoked without procedural protections required by Morrissey v. Brewer, 408 U.S. 471 (1972).

Oregon created an Alternative Incarceration Program (AIP) that allows some prisoners to participate in programs that reduce their sentences. The Oregon Department of Corrections (ODOC) also created a Short Term Transitional Leave (STTL) program that allows release to the community up to 90 days before a prisoner’s established release date.

John Thomas Bristol was sentenced to 35 months in prison with a 36-month post-prison supervision (PPS) term on a 2014 drug conviction. ODOC officials approved him for AIP, and moved him to the AIP Substance Abuse Treatment Program on October 28, 2015.

After completing the first component of the program, the ODOC approved Bristol for STTL to begin on June 29, 2016 and continue until September 27, 2016, when his PPS term would start. In accordance with STTL guidelines, Bristol was released under the supervision of Multnomah County Community Corrections, and moved into a private transitional home.

In addition to STTL’s “General Conditions,” Bristol was subjected to several special conditions of release. One was to submit to the ODOC’s “structured sanctioning process as described in DOC rule 58.” That rule specified prisoners may be subject to revocation of leave, returned to prison and subjected to other sanctions for violating any STTL conditions. The rules also allowed removal or suspension from the STTL program for administrative or disciplinary reasons.

ODOC officials terminated Bristol’s transitional housing on August 11, 2016 because a routine urine screen tested positive for codeine. The ODOC granted his supervising officer’s request for a Transitional Leave Suspend and Detain Order, and recommended his removal from the STTL program.

Bristol was arrested on the suspend-and-detain order and held in jail without a hearing for ten days. He was then returned to prison.
On August 25, 2016, the ODOC issued Bristol a misconduct report. Prison officials denied his attorney’s request to attend the disciplinary hearing. Bristol’s requests to continue the hearing and to present hair follicle drug testing evidence to challenge the positive urine screen also were denied.

Following the hearing, Bristol was found guilty of a transitional leave violation and disobedience of an order. The superintendent approved the hearing officer’s findings on September 9, 2016.

After serving the remainder of his original prison term, Bristol was released to PPS on January 27, 2017. He then filed suit, arguing that his STTL was revoked without affording him any Morrissey due process protections. He sought declaratory and injunctive relief, as well as damages. The parties filed cross-motions for summary judgment.

The district court first rejected the ODOC’s argument that “Bristol did not have a protected liberty interest in his STTL status and, as such, the procedural protections required by Morrissey do not apply.” The court ultimately found that Bristol’s release conditions closely resemble those of the pre-parolee in Young v. Harper, 520 U.S. 143 (1997). Accordingly, “the STTL program provided Bristol with sufficient freedom to confer a protected liberty interest requiring Morrissey’s procedural protections.”

Finding it was undisputed that the ODOC “failed to provide Bristol with all of Morrissey’s procedural protections in connection with their revocation of his transitional leave,” the district court concluded that “their failure to do so violated Bristol’s right to due process guaranteed by the Fourteenth Amendment.”

The court held that the defendants were immune from damages, however, because Bristol’s liberty interest in the STTL program was not clearly established at the time of the violation.

“Although the facts of this case are closely aligned with those in Young,” the court wrote, “the early release program and state regulatory framework in Young were not so closely aligned as to deem the application of Morrissey clearly established.”

The district court granted Bristol injunctive relief on November 27, 2018, ordering the ODOC to vacate his disciplinary order. Given that he had been released to PPS and was no longer subject to AIP or STTL, the district court found Bristol lacked standing for injunctive relief requiring prison officials to promulgate rules and procedures in accordance with Morrissey. The court also rejected Bristol’s request for declaratory relief, finding that it was barred by the Eleventh Amendment because it addressed only past violations rather than a continuing violation of his rights.


HRDC Prevels in New Mexico Public Records Suit

by Ed Lyon

The Human Rights Defense Center (HRDC), the parent organization of Prison Legal News, has prevailed in a lawsuit filed in New Mexico state court after Otero County violated provisions of the state’s Inspection of Public Records Act (IPRA).

On June 19, 2018, HRDC requested records from Otero County Manager Pamela Helmer, consisting of documents from January 1, 2010 to the date of the request relating to or concerning any and all claims or lawsuits resulting in payouts of $1,000 or more against the county’s sheriff or sheriff’s employees.

Around two weeks later, Otero County Attorney Michael Eshleman responded that outside counsel was employed to defend the sheriff’s office against any such claims or legal actions, thus the requested records were the property of those attorneys and not public under the IPRA. Also, any cataloging of those records by the county would be creating new records, which is not a provision of the IPRA.

A second records request by HRDC, identical to the first, was submitted to the public records officer of the Otero County Detention Center on August 3, 2018. A nearly identical response was returned by Eshleman four days later.

On August 31, 2018, HRDC filed suit in state court against Otero’s Board of County Commissioners and other county officials for violating the IPRA. After only 10 months, the parties reached a settlement whereby HRDC would receive the requested records as well as $18,000 from Otero County. See: Human Rights Defense Center v. Board of County Commissioners for the County of Otero, 12th Judicial District Court of Otero County (NM), Case No. D-1215-CV-2018-00864.

“The public has a right to know how taxpayer money is being spent to resolve lawsuits against law enforcement agencies, and government officials cannot conceal such payments by farming out litigation defense to private counsel,” stated PLN managing editor Alex Friedmann. [1]
A study published by the Public Library of Science on October 18, 2018 found that prisoners with HIV tend not to retain their level of care after being released, and that those who are re-incarcerated fare even worse. The study reported that during a three-year post-release evaluation period, retention in care “diminished significantly over time, but was associated with HIV care during incarceration, health insurance, case management services, and early linkage to care post-release.”

The report “merged statewide databases from the Connecticut Department of Correction and Connecticut Department of Public Health on all people living with HIV who were released from prisons or jails in Connecticut ... between 2007 and 2011.” Each individual in this group was followed for three years after release to track retention in care and viral suppression (an indicator that the HIV infection has been so weakened through treatment that it cannot be detected in the blood).

Most participants in the study were unmarried men who were either black or Hispanic, who had acquired HIV through intravenous drug use. The report found that those who retained care following their release from prison or jail did well, but only 67.2% maintained their level of care for one year, 51.3% for two years and 42.5% for three years after release. Those who were re-incarcerated were more likely to retain medical care, but less likely to show viral suppression.

Dr. Frederick Altice, director of Yale’s HIV and Prisons program and the study’s co-author, said that in some states, prisoners are re-enrolled in Medicaid before release, but in other states it can take longer. Altice, who has been treating HIV patients since the early ’80’s, said, “[HIV] is a chronic disease. People don’t need services six weeks after release. They need them immediately.”

Dr. Cato T. Laurencin, a professor at the University of Connecticut and founding editor of the Journal of Racial and Ethnic Health Disparities, noted the post-release period may be key in the fight to eliminate new transmissions of HIV. “We are now talking about the fact that we believe that we can end new cases of HIV in our lifetime,” he said. “We need to see changes in this setting. And if we’re not, that tells us we’re not on course.”

The study found that former prisoners who had health insurance were more than twice as likely to reach viral suppression, and those who received intensive case management were twice as likely to show viral suppression at the end of the three-year study period.

A 2009 report by the Public Library of Science revealed that at any given time, 1/6 of all HIV patients are incarcerated.

Sources: npr.org, journals.plos.org

California Jail Prisoners Claim Sleep Deprivation; Court Issues Injunction

In March 2019, Judge James Donato of the U.S. District Court for the Northern District of California issued a preliminary injunction that prohibited Alameda County’s jail system from depriving prisoners of their constitutional right to sleep. Judge Donato ordered jail officials to revise their practice of 3 a.m. medication calls and 4 a.m. breakfast, and directed the parties to work out the rest of the details to resolve the prisoners’ claims.

Attorneys Yolanda Huang and Dennis Cunningham represented two classes of plaintiffs who were allowed to combine their complaints addressing excessive sleep deprivation, which they argued violated the Eighth Amendment’s prohibition against cruel and unusual punishment.

The lead plaintiffs in one of the cases, Tikisha Upshaw and Tyreka Stewart, filed a complaint against the Santa Rita Jail challenging its practices of keeping cell lights on 24 hours a day, hourly security checks requiring guards to wake prisoners to ensure they are alive and uninjured, night drills for new employees practicing forced relocation of prisoners to other areas of the jail, and early medication and meal calls.

All of those factors limited the prisoners – who were pre-trial detainees not yet convicted of a crime – to just one or two hours of uninterrupted sleep each night, they said, which resulted in sleep deprivation that impaired their memory, caused depression and anxiety, and lowered their immune system.

As a result, the complaint stated, “prisoners find themselves short-tempered and irritable, experience difficulty exercising emotional control, unable to handle frustration and often lack the necessary behavior controls demanded by the jail system,” leaving them to “suffer disciplinary and punitive consequences with ensuing additional deprivations.”

In the other lawsuit, lead plaintiffs Jaclyn Mohrbacher and Andrea Hernandez filed a complaint claiming a “pattern and practice of aggressively misogynistic, apparently programmatic, maltreatment of women prisoners” that caused two miscarriages and an unattended birth in solitary confinement.

Cunningham said the issue of sleep deprivation in the case came to light among the other claims being litigated. The plaintiffs argued that depriving women prisoners of sleep caused systemic inflammation associated with pregnancy, and contributed to postpartum depression, negative birth outcomes and pre-term delivery.

Judge Donato stated in his order, “the body has to sleep, I’m sold on that.” He was not willing to completely abolish nighttime safety checks, but felt a compromise of issuing sleep masks and ear plugs to prisoners to mitigate the inconvenience was appropriate.

“There is no question that running a jail is an extremely difficult task, and the discretion of the sheriff’s department to solve problems and protect the health and safety of detainees should be treated with a substantial measure of deference,” Donato wrote. “But the Constitution does...
Third Circuit: Female Jail Guard Loses Discrimination, Wrongful Termination Case

by David M. Reutter

On December 31, 2018, in an unpublished ruling, the Third Circuit Court of Appeals upheld a summary judgment order in a lawsuit that alleged employment discrimination. The appellate court found that officials at Pennsylvania’s Franklin County Jail (FCJ) had properly terminated the plaintiff, a female guard, after a prisoner accused her of inappropriate conduct.

Lisa Hatch worked at FCJ from 2008 until she was fired in 2014. While there was “an extensive factual background with respect to Hatch’s employment history at FCJ, particularly in regard to alleged instances of improper conduct,” the Third Circuit focused only on the disciplinary incident that led to her termination.

Jail prisoner Karl Rogers reported on February 17, 2014 that Hatch made personal and sexual comments to him, that she was on “psycho meds for her nerves,” and that she complained about her job and other staff members. His complaints led to an investigation by FCJ’s Prison Rape Elimination Act Investigation Team. Pursuant to that investigation, Hatch was asked to prepare an incident report describing her interactions with Rogers. In interviews, she substantiated some of his claims. As she was writing the report, Hatch requested and was granted leave under the Family Medical Leave Act, which put the investigation on hold.

When she returned to work, the investigation resumed and she was terminated. Hatch then filed suit, alleging disability discrimination, retaliation and a hostile work environment. The district court granted summary judgment to the defendants and Hatch appealed.

The Third Circuit noted that to prevail on her disability discrimination claim, Hatch had to provide evidence that would allow a factfinder to disbelieve the non-discriminatory reason for the firing or to determine that discrimination was “more likely than not a motivating or determinative cause of the adverse employment action.” Hatch relied solely on her own affidavit, which the Court of Appeals said was insufficient, standing alone, to meet her evidentiary burden.

The Court also found that “the timeline of events leading to Hatch’s termination contradicts her claim of retaliation.” Further, the evidence she presented as to her hostile work environment claim did “not rise to the level of severe or pervasive.” The district court’s summary judgment order was therefore affirmed. See: Hatch v. Franklin County, 755 Fed. Appx. 194 (3d Cir. 2018).

Additional sources: courthousedenews.com, latimes.com, patch.com, missionlocal.org
On February 8, 2019, the Seventh Circuit Court of Appeals held that a district court erred when it reframed a former Illinois jail prisoner's lawsuit over denial of a legal publication as a broad First Amendment challenge to the facility's policy of prohibiting prisoners from receiving newspapers.

Joseph Miller was a federal prisoner being held at the Jerome Combs Detention Center in Kankakee, Illinois in 2012 and 2013. Because there was no law library at the jail and no access to federal case law, Miller's family purchased a subscription to the Chicago Daily Law Bulletin (CDLB) to help him understand and assist with his case.

The jail decided that CDLB was a newspaper, which was prohibited by policy, and confiscated each issue without notifying Miller. Miller filed a pro se federal civil rights lawsuit, claiming the jail's disposal of CDLB, especially without notice, violated the First Amendment and the Fourteenth Amendment's due process clause.

The defendants filed a motion for summary judgment, reframing Miller's claim as a broad First Amendment challenge to the jail's prohibition against newspapers, which it justified as necessary to control the amount of paper in cells for security reasons because prisoners had used newspapers to conceal contraband and clog toilets. The court accepted the reframing and argument that allowing newspapers would strain staff resources for sorting mail, and granted the summary judgment motion.

Represented by counsel, Miller appealed.

The Seventh Circuit noted that the jail's mail policy did not prohibit the receipt of newspapers, but prisoners were barred from possessing them. The CDLB was apparently deemed a "newspaper" because it was printed on newsprint, yet the jail allowed prisoners to receive Prison Legal News, which also uses newsprint. PLN had previously filed a censorship suit against the jail that resulted in a $112,000 settlement and policy changes in 2015. See: Prison Legal News v. County of Kankakee, U.S.D.C. (C.D. Ill.), Case No. 2:14-cv-02290-CSB-EIL.

The Court of Appeals held the district court had erred in converting Miller's narrow challenge to the prohibition against his receiving a legal publication, CDLB, into a general challenge to the jail's prohibition against receiving newspapers. The Court noted that Miller's pro se complaint "was remarkable for its clarity and precision," alleging jail personnel violated his civil rights by confiscating a legal publication (not a newspaper) that he needed because, unlike what the district court found, the jail had no law library or research materials concerning federal case law. He also clearly raised a due process issue – lack of notice of the confiscation – which the district court failed to address.

The Seventh Circuit found the jail had revised its publication policy soon after the lawsuit was filed, permitting some newspapers, and transferred Miller just days after he submitted his complaint, rendering his request for injunctive relief moot. Thus, the district court should have ruled on the narrow issue of whether confiscating Miller's legal publication without notice violated his civil rights.

The judgment of the district court was vacated and the case remanded for further proceedings. Following remand, counsel was appointed to represent Miller. See: Miller v. Downey, 915 F.3d 460 (7th Cir. 2019).

Texas Lawmakers Consider State Jails a "Complete Failure"

In 2019, the Texas House Committee on Criminal Jurisprudence issued a report that called the state jail system "a complete failure." Created in 1993, the category of crime known as a state jail felony was intended to segregate certain nonviolent, low-level offenders – especially those convicted of property crimes and drug charges – that lawmakers thought less deserving of punishment in a state prison and more entitled to a second chance.

"The idea was that you don't want to mix them with a population of hardened criminals we're truly scared of, where the hardened criminals coach up the emerging criminals," explained state Rep. James White, head of the House Committee on Corrections.

Instead, defendants convicted of state jail felonies – the category now covers over 170 crimes, punishable by six months to two years in jail and/or fines up to $10,000 – would be placed on probation, receiving rehabilitative services and programming to target their "underlying issues," such as substance abuse and mental illness. To establish the state jail felony category, lawmakers reclassified a number of Class A misdemeanors; a similar number of third-class felonies also became state jail felony offenses.

Two years later, in 1995, Texas opened its first facility for state jail prisoners. By that time, "the idea was that those who are on probation and are having trouble with complying with the conditions would be able to go to state jail for a short period and get on the right track," said Marc Levin, vice president of criminal justice at the Texas Public Policy Foundation (TPPF), a conservative group.

But, added TPPF’s Derek Cohen, "The problem is that we never funded the rehabilitation component, so we ended up making a system of short-term warehousing for offenders that either had persistent drug addiction or low-level felony offenses."

With few rehabilitative services and little programming available to prisoners who were held in state jails without even good-conduct time – sentencing enhancements were specifically prohibited in the authorizing legislation – the state jail system became a revolving door. The re-incarceration rate for offenders within three years after release soared to 63 percent, far higher than the state prison system's 45 percent. The re-incarceration rate for state jails currently stands at 31 percent, versus 20 percent for those released from state prisons.

How did this happen? Rep. White pointed to the "tough on crime" attitudes that spread later in the 1990s, after the state
jail system was established.

“That early ’90s [idea of] we’re going to treat the addiction and help address the [criminal] tendencies of the justice-involved kind of got swallowed up with the tough-on-crime thing,” he said.

State prisons quickly filled to capacity, sending overflow prisoners to the state jail system’s 17 facilities. Currently about half of the 21,500 prisoners held in state jails have been convicted of violent crimes, but there is no space for them in state prisons. When the legislature abolished mandatory probation for state jail felons in 1999, the state jail system – already housing violent offenders and plagued by high rates of rearrest and re-incarceration – began to fill with just the sort of recidivist criminals it was not designed to handle.

Further, there is section 12.44 of the Texas penal code, which allows a court to sentence a state jail felony defendant to a term less than the 180-day minimum. Taking into account time spent awaiting trial in county jails, many defendants opt for a plea bargain that results in a shorter “12.44 sentence” in the state jail system.

“All the parties are going to agree to that,” observed Shannon Edmonds, a prosecutor’s legislative liaison with the Texas District and County Attorneys Association, “because that means that case moves off the docket and that the next child abuse case, or robbery case or whatever can be dealt with.”

Expenses associated with community supervision, such as courts costs, childcare and drug screening, also make shorter 12.44 sentences more attractive, added Doug Smith, senior policy analyst for the Texas Criminal Justice Coalition (TCJC).

As a result, the average sentence served in a state jail is just over nine months – long enough to lose a job, a home or family connections, but not long enough to complete an effective substance abuse treatment or job training program. With such short sentences, less than one percent of prisoners released from a state jail have any probation time left to serve, during which they could get similar help under community supervision.

The administration of state jails has already been merged into the state prison system. Rep. White hopes his fellow lawmakers will consider limiting the use of 12.44 sentences as well as incentivizing local communities to come up with innovations, such as a 2016 initiative in Harris Country that put all low-level drug convictions on one court docket to better supervise completion of rehabilitative services – the completion rate is now 91 percent – and to divert more cases, now up to 85 percent, to community supervision.

According to the TCJC, another option is pretrial programs, which offer an alternative to state jail sentences. “They allow counties to interrupt the cycle by more immediately connecting arrestees to community-based substance use or mental health treatment, which address the underlying causes of criminal behavior; and through rigorous supervision, these programs create strict accountability,” the organization states on its website.

“[This helps mitigate the risk of releasing a person before trial who may have a history of criminal justice involvement due to untreated substance use or mental health issues. The results of such programs are significant: Diverting people from jail and into community-based services ($7/day) produces 30-50 percent lower recidivism rates, depending on whether the individual was to be sentenced to county jail ($60/day) or state jail ($53/day).”

Sources: texastribune.org, kdbnews.com, statesman.com, kut.org, yourglenrosetx.com, texascjc.org

WASHINGTON STATE PRISONER PROPERLY DENIED VISITATION WITH DAUGHTERS

by David M. Reutter

In an unpublished opinion, the Washington Court of Appeals held on December 18, 2018 that a prisoner was properly denied visitation with his daughters, who were victims of his crimes.

John M. Pino pleaded guilty in 2009 to three counts of first-degree child molestation. His 150-month-to-life sentence included provisions that barred him from contacting his three minor daughters, who also were covered by three Sexual Assault Protection Orders (SAPOs) that prohibited all contact.

In 2016, the SAPOs were amended to allow visitation while Pino was incarcerated.

The daughters, now adults, sought permission to visit their father. Officials with the Washington Department of Corrections (DOC) denied their applications and appeals related to the denials.

Pino filed a personal restraint petition, alleging the denial of visitation with his daughters was a violation of due process, as well as arbitrary and capricious. The appellate court noted that Pino’s judgment and sentence restrict him from contact with his daughters, despite the amended SAPOs.

Additionally, “DOC policies still prohibited visitation of an offender’s domestic violence victims regardless of any no contact orders.” While the SAPOs allowed in-person visits, DOC policy required permission from the “Superintendent” and the “appropriate Deputy Director/designee.” No such approval was in the record.


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Prison Legal News
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June 2019
Jessica Canterbury
Jailed North Carolina Teenager Commits Suicide; $650,000 Wrongful Death Settlement
by Ed Lyon

After a troubled and tormented life, capped by a year of being assaulted and bullied in a Durham, North Carolina adult jail, 17-year-old Uniece Fennell hanged herself in her cell.

Uniece was raised in California. Her father, an abusive drug addict, had recently been released from jail when she and her twin brother were born. By 2003, her father had become so uncontrollable that Uniece’s mother had him removed from their home and eventually the family relocated to Durham, hoping for a fresh start. Uniece’s brother had disappeared, so he was left behind.

After a fight at school, Uniece was recommended for mental health care by a school evaluator. Once her brother found and rejoined the family, she settled down but was forced to move to a different school for her safety. She was then released, without a mental health evaluation or counseling, back to the general jail population where the mental and physical abuse by adult prisoners continued. Four months later, on March 23, 2017, Uniece tied a bed sheet to a bar on her cell window and hanged herself. [See: PLN, Sept. 2017, p.20].

For years, through at least two sheriff’s administrations, the design of the bars on cell windows had been the subject of debate by the county commissioner’s court and other officials. The design easily allowed suicide by hanging, as did the ventilation grills. Unsurprisingly, the jail had a high suicide rate.

A team of attorneys consisting of Ian Mance, Whitley Carpenter and Ivy Johnson from the Justice Project of the Southern Coalition for Social Justice, and attorney Hank Ehliies with the Policy Council Concerning Law Enforcement and the Mentally Ill, represented Uniece’s estate. The parties reached a settlement that was formalized with a complaint and settlement agreement filed in federal court.

The settlement terms included the removal of all suicide hazards from the jail; providing separate detention areas for youthful detainees to keep them away from adult prisoners; mandatory Crisis Intervention Training for jail guards; hiring a licensed clinical social worker to be on 24-hour call at the facility; developing a system to inform a juvenile prisoner’s relatives in the event of any life-threatening situations like a suicide attempt; and a $650,000 payment, inclusive of attorney’s fees and costs, to Uniece’s mother.

“Losing a child is the most difficult thing I have ever experienced. It was impro-
In mid-August 2015, diabetic Nebraska prisoner Aron Lee Boyd-Nicholson was washing clothes in his cell when he began experiencing classic heart attack symptoms — including chest pain, dizziness and weakness — before he collapsed. Nurse Carolyn Moore tested his blood-sugar levels, then instructed him to return to the infirmary the following day if his symptoms continued.

Boyd-Nicholson's symptoms had worsened by the next morning to include nausea. Other diabetic prisoners and a case manager could see he was in acute pain and distress, so a wheelchair was procured and Boyd-Nicholson was taken to the infirmary by the prisoners when they went for insulin.

Licensed Practical Nurse (LPN) Stephanie Snodgrass and Registered Nurse (RN) April Rollins pointedly ignored Boyd-Nicholson at the infirmary. When the situation was pointed out to the nurses by prisoner Alberto Vasquez, Rollins told Vasquez to mind his own business.

Despite a detailed protocol for medical procedures when patients presented with symptoms like those Boyd-Nicholson was experiencing, he was returned to his cell. He continued to suffer for the next five days, filing two treatment requests and a grievance. All were ignored.

On August 17, 2015, an Emergency Response Team was sent to Boyd-Nicholson's cell; an EKG was finally performed by prisoner Aron Lee Boyd-Nicholson at the infirmary. When Boyd-Nicholson was taken to the infirmary, Stephanie Snodgrass and Registered Nurse April Rollins pointedly ignored Boyd-Nicholson at the infirmary. When the situation was pointed out to the nurses by prisoner Alberto Vasquez, Rollins told Vasquez to mind his own business.

Despite a detailed protocol for medical procedures when patients presented with symptoms like those Boyd-Nicholson was experiencing, he was returned to his cell. He continued to suffer for the next five days, filing two treatment requests and a grievance. All were ignored.

On August 17, 2015, an Emergency Response Team was sent to Boyd-Nicholson's cell; an EKG was finally performed and he was transported to a hospital. There, he was diagnosed as suffering from a heart attack (myocardial infarction) with complete obstruction of his right coronary artery, causing parts of his heart muscle and tissue to die.

There is a clockwise rotation of 90 degrees.

The NCLC report addresses industries that “profit[] from financial extractions from individuals based on their exposure to the criminal legal system.” It states, “The corrections industry operates for the primary purpose of maximizing profits for its owners—creating strong incentives to achieve new forms of monetary extraction in addition to shifting the burden of existing costs.”

The authors point out that many of these for-profit correctional businesses “have adopted a so-called ‘offender-funded’ model, whereby the costs of administering criminal legal functions are shifted from public budgets to individuals who have contact with the legal system. Companies have aggressively marketed their services to states and localities as a way not only to achieve costs savings for existing corrections functions—but also, in many cases, to generate new revenue streams through kickback payments.”

While government agencies may see savings, the savings do not come from increased efficiency in the provision of correctional services, which is often how these industries pitch themselves to the public. In fact, “total costs to communities are likely to be significantly higher under commercialization, due to the combination of industry profit-seeking and contractual arrangements that share proceeds between the private company and the state.”

As one example, the authors cite a case in which Tennessee’s Giles County and the companies generated profits by extorting impoverished people through threats to jail them if they could not pay, or extending the length of their probation and thus increasing the probation fees charged.”

The report spotlights unusual and often unheard-of industries. For instance, the authors note that “companies have emerged to offer people who are suspected by retailers of criminal activity (typically shoplifting) the opportunity to avoid possible referral to law enforcement by paying hefty fees.” They also discuss other major for-profit corrections industries that the public may not know about or fully understand, including businesses that provide prison and jail communications, financial, commissary and healthcare services.

The body of the report lays bare a number of worrisome commonalities within the prison industrial complex that encourage abuses and financial exploitation, such as companies taking advantage of the threat of criminal charges combined with consumers’ lack of understanding of their rights. The hard part is not understanding the report’s detailed findings; rather, it’s how to address and fix the problems it identifies in our nation’s profit-driven criminal justice system.

Source: nclc.org

Federal Court Approves $3 Million Settlement for Death of Virginia Jail Prisoner Jamycheal Mitchell

by Scott Grammer

IN A CASE THAT INVOLVED CIRCUMSTANCES she called “heartbreaking and shocking,” U.S. District Court Judge Rebecca Beach Smith approved a $3 million settlement in a wrongful death suit filed by the family of Jamycheal M. Mitchell, a 24-year-old man who, according to the complaint, suffered from bipolar disorder and schizophrenia. Judge Smith stated that while awaiting trial at the Hampton Roads Regional Jail, Mitchell died “amid his own feces and bodily fluids on August 19, 2015, from ‘wasting syndrome.’” [See: PLN, Nov. 2018, p.32; July 2018, p.44; Feb. 2017, p.24].

According to the lawsuit, the 6’1” Mitchell went from over 180 pounds to 144 pounds during his 100-day stay at the jail, and was locked alone in a cold, air-conditioned cell with no water, mattress, sheets or blanket. The complaint further stated that he was denied his psychotropic medications and had been “forced to the ground, dragged, sprayed with mace, stood upon, punched and kicked,” as well as mocked and laughed at by jail staff.

His alleged crime? Stealing $5.05 worth of soda and snacks from a 7-Eleven store.

Mitchell had been found incompetent to stand trial by a Virginia state court which, on May 21, 2015, entered an order directing that he receive treatment to restore his competency. The complaint alleged that a state investigation found Portsmouth General District Court Clerk Lenna Jo Davis and her employee, Kelly N. Boyd, did not forward the court order to the state hospital for more than two months after it was issued. Then the order “was never acted upon because Defendant Gail Hart, an Eastern State Hospital admissions employee, simply shoved the order in a drawer; she never entered Mitchell’s name into the log used to manage incoming patients to Eastern State Hospital.”

The lawsuit claimed that a report by the “Virginia Department of Behavioral Health & Development Services ... found that Hart’s drawer contained a ‘significant number of [competency restoration orders] that had not been entered.’”

A February 20, 2019 report by the Commonwealth’s Attorney for the City of Portsmouth noted that NaphCare, the for-profit company that provided medical services at the jail, had initially “declined to make its employees available for full
interviews.” The report said “The death of Jamycheal Mitchell in Hampton Roads Regional Jail was tragic and likely avoidable,” though it added “The totality of the evidence ... shows that Mr. Mitchell was likely deteriorating mentally and physically before he went into custody, meaning that the actions and inactions of correctional officers and NaphCare staff potentially contributed to but likely did not directly cause Mr. Mitchell’s weight loss or death.”

The report further observed that “The public can and should demand that NaphCare would comply with the criminal investigation into its employees’ actions in a timely manner. The company failed to do so, and its dilatory conduct prolonged this investigation unnecessarily... The Commonwealth’s Attorney’s emails to NaphCare’s lead counsel went unanswered for weeks and even months. It took NaphCare roughly 18 months to produce 14 of 22 requested individuals for interview, and some essential witnesses were never produced.”

Referring to staff at the jail, the report concluded: “This case is a sad referendum on how people in positions of power and responsibility become cogs in an unfeeling wheel, immune to the plight of the weakest and most vulnerable among us.”

The settlement in the wrongful death case was approved by the federal district court on March 19, 2019. Judge Smith said her approval order “does not change the circumstances of Jamycheal Mitchell’s tragic and needless death, but it does bring some closure to his family, as well as heightened public awareness of the inadequacy of the penal system as a proper setting in which to address mental health issues.” See: Adams v. NaphCare, Inc., U.S.D.C. (E.D. VA), Case No. 2:16-cv-00229-RBS. [7]

Additional source: pilotonline.com

$300,000 Settlement in Lawsuit over Minnesota Prisoner’s Suicide

by Matt Clarke

In December 2018, Minnesota agreed to pay $300,000 to settle a lawsuit brought by the family of a prisoner who committed suicide while guards ignored orders to keep him under constant observation, then forged documents to cover up their lapses.

William Roy St. John, 47, had a lengthy history of mental illness and suicidal behavior when he committed suicide at the Minnesota Correctional Facility-Oak Park Heights. He was serving time for aggravated armed robbery and had started his sentence on April 12, 2012. While at Oak Park Heights he had frequently expressed suicidal ideations and had multiple serious suicide attempts, including one on August 13, 2015 when he was housed in the Administrative Control Unit (ACU) – a super-max segregation part of the 450-bed maximum-security prison.

His last suicide threat was sent to prison staff on November 11, 2015, triggered by his fear that he would soon be transferred back to the ACU. Clinical Program Therapist Lindsey Jennelle received the note threatening suicide on November 13, 2015, but ignored it.

Due to his mental health history, St. John was housed in a mental health unit on continuing observation status with a continuing observation order (COO) in place. At the time of his death, the order required that he be held in an observable cell or room with continuous observation by staff, direct observation of medication, physical observation every 30 minutes and logging of observed behavior every 15 minutes.

On November 14, 2015, guard Tendeh Brownell released St. John from his cell via remote control to allow him a 30-minute exercise period. The COO required that St. John be kept under direct physical observation when outside his cell. Guards Matthew Elmore and Ian Sinclair failed to do so. Instead of exercising, St. John went to the shower, where there were no surveillance cameras.

Brownell made false entries in the log book showing he had St. John under observation. When the 30 minutes for exercise were up and St. John did not respond to Brownell’s orders over the intercom to return to his cell, a search was conducted. Sinclair saw a towel covering the observation window for the shower and, when he looked inside, discovered St. John’s body hanging from a ligature attached to a security grate over a light fixture. St. John was taken to a hospital but died the next day when removed from life support.

Aided by Minneapolis attorney Frederick J. Goetz, St. John’s son and three brothers filed a federal civil rights action with pendent state claims against Brownell, Elmore, Sinclair, Jennelle and the state. On December 13, 2018, the federal magistrate judge issued a report and recommendation concerning the disbursement of a $300,000 settlement reached by the parties. St. John’s son and one brother, Jeffery LaCroix, who was appointed by the court to act as trustee in the case, received about $60,924 each. The other two brothers received $35,474.50 each. Also included in the settlement were $100,000 in attorney fees and $7,203.85 in costs.

“He was a father, a brother, a grandfather, an uncle, a friend, but most importantly he was a human being,” said LaCroix. “We hope because of his death laws are being changed within the prison system [to keep this] from happening to other inmates, so other families won’t have to suffer as we did.”

The settlement agreement was finalized and approved by the district court in January 2019. See: LaCroix v. Brownell, U.S.D.C. (D. Minn.), Case No. 0:18-cv-02448-PJS-SER. [8]

Additional source: kstp.com
Private prison medical care firm Wexford Health Sources, Inc. filed a motion in U.S. District Court for the Northern District of Illinois, asking for judgment as a matter of law after being found liable for policies that created an atmosphere of deliberate indifference to the medical needs of Stateville Correctional Center prisoner Lamont Hall. Wexford contended that it could not be held responsible when the physician it employed at Stateville, Arthur Funk, was not held liable for the same claims.

Hall suffered a self-inflicted gunshot wound to his penis, which required surgery. The first surgery left a hole in the underside of his penis which needed constant medical attention and treatment. Before Hall was able to receive follow-up surgery, he was incarcerated on unrelated charges. He stated that upon his arrival at Stateville he received inadequate medical care and was denied the second surgery. He was forced to perform self-catheterization four times a day without the aid of a numbing agent, and sometimes went a week without proper medical supplies. Hall said his condition required that he sit while urinating. All of this subjected him to embarrassment and the ridicule of other prisoners.

Represented by attorney Jack R. Bierig with Sidley Austin LLP, Hall filed suit against Dr. Funk and Wexford for infliction of emotional distress and deliberate indifference. The trial was held in April 2018, and the jury found in favor of Dr. Funk but held Wexford liable for deliberate indifference. In an April 13, 2018 verdict, it awarded Hall $125,000 in compensatory damages plus $300,000 in punitive damages, all to be paid by Wexford.

The company filed a motion for judgment as a matter of law, arguing the verdict was inconsistent. Case law indicated the jury could not hold an organization liable when the individual defendant in its employ was found not to have inflicted harm. The district court ruled that the Seventh Circuit had clarified this point, stating institutional liability was possible if the institution set forth policies that created an environment of deliberate indifference. Wexford’s policy of denying “elective” surgeries qualified as a policy that was clearly and deliberately indifferent to Hall’s medical needs.

In the alternative, Wexford asked the district court to grant a new trial raising some of the same arguments. The court found the company had not shown that the jury’s verdict was a miscarriage of justice. The only viable argument Wexford may have had was that the jury instructions misstated the law because they did not inform the jury they had to find Wexford’s policies themselves to be deliberately indifferent. Yet the firm had waived its right to that argument when it failed to object to the jury instruction. In fact, Wexford contended that the instruction was legally accurate, just had not been adhered to by the jurors.

The district court denied Wexford’s motion on all grounds and granted Hall $531,250 in attorney fees plus $20,508.05 in costs. Wexford filed a notice of appeal to the Seventh Circuit on April 15, 2019, which remains pending. See: Hall v. Funk, U.S.D.C. (N.D. Ill.), Case No. 1:14-cv-06308.

Additional source: chicagotalks.org

Over $980,000 in Damages, Fees Awarded in Deliberate Indifference Case Against Wexford

by Kevin W. Bliss

Eighth Circuit Holds Guards Not Liable for Disregarding Prisoner’s Stroke Symptoms

by Matt Clarke

The Eighth Circuit Court of Appeals held on March 7, 2019 that prison guards could not be held liable for failing to act on a prisoner’s self-reported symptoms that medical staff had incorrectly diagnosed as the flu.

Barton Roberts was incarcerated at the Minnesota Correctional Facility in St. Cloud in September 2015 when he began vomiting and experiencing headaches, dizziness and numbness, which started on a Friday night and continued or worsened throughout the weekend. During the weekend he neither ate nor left his cell and complained of severe illness to guards on multiple occasions, but received no medical attention.

On Monday, his symptoms subsided sufficiently that he could stand and leave his cell. He asked another prisoner to tell the guards that he was too ill to work, but failed to sign up for sick call or submit a written request for medical care. He spoke about his condition to three guards that day, two of whom told him that the medical department had been notified.

The next day, Roberts was taken to Washington County for a court appearance. There, he told an examining nurse about his symptoms. She instructed him to drink water and keep an eye on himself.

Two days later he returned to the prison, where he informed the intake nurse about his illness. She took him to the duty physician, who kept talking to him “about the flu” and attributed his vertigo to an abscessed tooth, which was then surgically removed. That afternoon, Roberts experienced numbness in his face and was transported to a hospital where he was diagnosed as having suffered a stroke.

Roberts filed a federal civil rights lawsuit in March 2016, alleging deliberate indifference to his serious medical needs. After his claims against other defendants were resolved, the district court granted summary judgment to the three guards Roberts spoke to on the Monday following his first symptoms. Roberts did not claim deliberate indifference to the diagnosis and treatment of the stroke he suffered after the tooth removal. Rather, with the support of an expert witness, he claimed that he had suffered a stroke the preceding Friday and the guards were deliberately indifferent to his need for medical attention following that earlier stroke.

None of the three guards had worked during the weekend, so the first they heard of Roberts’ symptoms was on the following Monday. The district court found they could not be held liable for failing to obtain emergency medical treatment for Roberts because he could not expect a
Illinois Court Rules Indefinite Detention of Sex Offenders Due to Lack of Approved Housing Unconstitutional

by Scott Grammer

Paul Murphy is indigent and homeless.” So begins a decision by U.S. District Court Judge Virginia M. Kendall, released on March 31, 2019. Murphy, convicted of possession of child pornography in 2012, was sentenced to three years probation. His probation was later revoked due to several violations. Murphy had been approved for release in March 2014, but as of the date of Judge Kendall’s ruling he still had not been freed because he “was unable to find a host site that the [Illinois Department of Corrections] would approve.”

The lawsuit, brought by a class comprised of affected sex offenders like Murphy, challenged the constitutionality of such practices by the IDOC. Judge Kendall wrote, “At the very heart of the liberty secured by the separation of powers is freedom from indefinite imprisonment by executive decree. The Attorney General and [IDOC] Director’s current application of the host site requirement results in the continued deprivation of the plaintiffs’ fundamental rights and therefore contravenes the Eighth and Fourteenth Amendments to the Constitution of the United States.”

As the judge explained, “Illinois, like many states, requires sentencing courts to follow a term of imprisonment with a term of mandatory supervised release. Supervised release is a form of post-confinement monitoring intended to assist individuals in their transition from prison to liberty. Most supervised release terms are determinate, but some – including those that apply to several sex offenses – are indeterminate, meaning they range from three years to natural life. The clock on these terms does not start ticking until sex offenders are out of prison, but some never make it that far because they are indigent and the State demands that they first secure a qualifying host site before it will release them. Many offenders successfully complete their entire court-ordered terms of incarceration yet remain detained indefinitely because they are unable to find a residence due to indigence and lack of support.”

Judge Kendall pointed out that “[t]here are no halfway houses or transitional housing facilities in Illinois that will accept an individual convicted of a sex offense.... Additionally, the IDOC does not permit any sex offender to use a homeless shelter as his or her host site. This group of people is also ineligible for work release programs that the IDOC provides.” She added that “for someone who is homeless, it is virtually impossible to comply with the IDOC’s application of the host site requirement.... Thus, the defendants’ application of the host site requirement constitutes cruel and unusual punishment.”

Her ruling concluded by stating: “The Illinois Legislature thought it best to rehabilitate sex offenders by reintegrating them, like all other convicted felons, into the community after prison. The Constitution thus entitles them to the same conditional liberty that all other releasees receive. Because the defendants’ current application of the host-site requirement permits the indefinite detention of the plaintiffs, it breaches the promises enshrined in the Bill of Rights.”

The class-action suit remains pending on several still-unresolved matters, such as what manner of relief the plaintiffs are entitled to and other issues which are the subject of current settlement negotiations. See: Murphy v. Raoul, U.S.D.C. (N.D. Ill.), Case No. 1:16-cv-11471; 2019 U.S. Dist. LEXIS 54881.
News in Brief

Alabama: “The public should know that the state, its officers, representatives, or employees would never request any type of payment in the form of a prepaid money card or other similar method,” the director of the Alabama DOC’s Investigation and Intelligence Division, Arnaldo Mercado, said in a November 9, 2018 press release, after six people masqueraded as a law firm to defraud a prisoner’s family. “The suspects led the family to believe the law firm could get charges against their family member dropped, or sentence reduced, if the family agreed to pay for the services,” the press release added. The suspects also filed a fake insurance claim in the victim’s name. Family members paid for the services using prepaid money cards and wire transactions. Alabama prisoner Trederris Cowan, 27, was accused of being the ringleader; he was already serving four years on a 2015 theft conviction. His new felony charges include theft of property, identity theft and conspiracy to commit insurance fraud. Four co-conspirators outside of prison were arrested on first-degree theft charges on November 8, 2018, including Willie Edward Wells, Adrienne Mary Collins, Latoya Howell and Alexia Danielle Collins, while a warrant was issued for Kimeya Pringle.

One of the ex-prisoners who attended the White House gathering was Gregory Allen, who was released under the First Step Act after serving eight years of a 20-year federal prison sentence.

“Two months ago, I was in a prison cell,” he said. “Now I’m in the White House.”

Sources: usnews.com, whitehouse.gov, washingtontimes.com

President Trump Wants Focus on Hiring Ex-Prisoners, Hosts Them at White House

by Scott Grammer

On April 1, 2019, President Donald Trump hosted ex-federal prisoners at the White House for the 2019 Prison Reform Summit and First Step Act Celebration. He said he wants to promote efforts that help federal prisoners find jobs after they are released. The President noted that people with criminal records face unemployment rates five times the national average of 3.8 percent.

“When we say ‘hire American,’ we mean all Americans, including former inmates who have paid their debt to society,” he declared.

President Trump said a “Second Step Act” would focus on “successful re-entry and reduced unemployment for Americans with past criminal records,” with a goal of cutting unemployment rates for ex-prisoners to the single digit range within five years. The White House reported that Trump’s budget for the next fiscal year proposes more than half a billion dollars for helping ex-prisoners succeed.

The President also stated during his speech that the First Step Act gives non-violent prisoners “opportunities to participate in vocational training, education, and drug treatment programs. When they get out of prison, they will be ready to get a job instead of turning back to a life of crime.”

[See: PLN, April 2019, p.1; Jan. 2019, p.34].

He added, “And I’m really—I’m thrilled to report that, since I signed the First Step Act, more than 16,000 inmates have already enrolled in drug treatment programs. And my administration intends to fully fund and implement this historic law. It’s happening, and it’s happening fast. And it’s a lot for some people to understand. As soon as they understand it, they say, ‘Wow, why didn’t we do this a long time ago?’”

One of the ex-prisoners who attended the White House gathering was Gregory Allen, who was released under the First Step Act after serving eight years of a 20-year federal prison sentence.

“Two months ago, I was in a prison cell,” he said. “Now I’m in the White House.”

Sources: usnews.com, whitehouse.gov, washingtontimes.com

California: Court of Appeal Holds Possession of Marijuana in Prison Still a Felony Despite Proposition 64

by Chad Marks

Isaiah J. Perry was serving time in a California state prison when he was charged with possession of marijuana under Penal Code Section 4573.6. He was eventually sentenced to two years for committing that offense, to run consecutive to his existing sentence.

Perry moved the court to recall or dismiss the sentence after California voters passed Proposition 64, which made it legal for people 21 years or older to possess up to 28.5 grams of marijuana.

The Solano County Superior Court denied Perry’s petition, concluding that he failed to state a basis for relief because Prop. 64 did not amend Penal Code Section 4573.6. That statute specifically prohibits possession of marijuana by prisoners.

Not content with that decision, Perry tried his luck again eight months later by filing another petition in the trial court arguing he was entitled to relief under Prop. 64. His second petition met the same fate as his first.

He then appealed to the Court of Appeal for the First Appellate District. His argument was that he would not have been guilty of an offense under Penal Code Section 4573.6 had Prop. 64 been in effect at the time of his offense because, as a result of the amendments to Section 11357 and addition of Section 11362.1, possession of 28.5 grams or less of cannabis is not prohibited by Division 10 of the Health and Safety Code.

The appellate court rejected that argument in a March 1, 2019 ruling, explaining that Prop. 64 did not legalize the possession of marijuana in prison or otherwise affect the operation of Penal Code Section 4573.6.

Even with Prop. 64, cannabis possession is still prohibited in California in a number of specific circumstances, and its possession or use in prison is excluded from the state’s marijuana legalization laws.

Accordingly, the Court of Appeal affirmed the trial court’s decision. See: People v. Perry, 32 Cal. App. 5th 885, 244 Cal. Rptr. 3d 281 (Cal. Ct. App. 2019), modified and rehearing denied. 
Alaska: An August 2017 uprising at the Fairbanks Correctional Center resulted in the indictment of 13 prisoners on felony riot and third-degree felony criminal mischief charges. Five were convicted at a jury trial on July 17, 2018; the small courtroom in Fairbanks required separating the 13 defendants into groups for trial. Three more prisoners were arraigned on November 21, 2018. The riot involved “breaking windows in the facility as well as pouring soap and water on the floors,” according to state troopers. “Chemical irritants” were used to quell the disturbance. Under Alaska law, a riot consists of five or more people engaging in “tumultuous and violent conduct.” Two of the prisoners told the Daily News-Miner that the incident was a nonviolent protest against transfers from two-man cells to dormitory bunk housing that were announced by staff with no explanation. Bunk housing is usually for prisoners with short sentences.

California: State Senator Nancy Skinner introduced the “Getting Home Safe Act,” SB 1142, in the state legislature in August 2018, after Jessica St. Louis was found dead at the Dublin–Pleasanton BART station on July 28, 2018. St. Louis had been released from the Santa Rita Jail at 1:12 a.m., and walked a mile to the closed rapid transit station. At 5:30 a.m. she was found dead of a suspected overdose. The bill is intended to end late-night jail releases. At a rally held on August 19, 2018, Jessica Nowlan, with the Young Women’s Freedom Center, said, “Releasing people in the middle of the night with no support, no resources, with no transportation is a harmful practice.” Sheriff’s office spokesman Sgt. Ray Kelly countered, “If we shut down release operations for continuous periods of time, we would be holding people over their incarceration times and then we’d get sued because it would be illegal detentions of people.”

Camaroon: English-speaking separatists in north- and southwest Cameroon want a separate state, the Republic of Ambazonia, independent from the majority French-speaking West African nation. To that end, on July 29, 2018, fifty armed separatists staged a jailbreak at the prison in Ndop. “Shooting from everywhere” and breaking down the doors, “the assailants doused fuel around the prison buildings before setting it agight,” according to witnesses, allowing 163 prisoners to escape. William Benoit Emvoutu Mbita, a local official, said prisoners who voluntarily returned would be transferred to a prison in Bamenda. That facility, however, was also stormed by gunmen “under cover of darkness” on September 26–28, 2018, with 80 prisoners escaping.

Colorado: When Philippa McCully filed a lawsuit against the El Paso County jail in April 2016 for excessive use of force during her five-day stay at the facility in April 2014, a “fight club” culture was revealed. The county and the jail’s medical provider, Correct Care Solutions, settled the case for $800,000 in July 2018. [See: PLN, Jan. 2019, p.46]. Newly re-elected Sheriff Bill Elder downplayed the concerns and a jail spokesman stated, “Nobody used force when it wasn’t warranted. Nobody baited an inmate into using force. They were doing their job and using force within the guidelines of the office.” Six “letters of counseling” and four “letters of reprimand” were issued to jail employees, though no one was demoted. McCully’s attorneys credited a 2014 photo of a beaming Deputy Sandra Rincon as a turning point in their lawsuit. The photo showed Rincon wearing a tiara and holding a cake with “5-0” candles. She was celebrating 50 use of force incidents against prisoners – the highest number that year.

Connecticut: In a plea deal, Nikki Yovino’s felony charges were reduced to two counts of falsely reporting an incident, a second-degree misdemeanor, and a single count of interfering with police, also a misdemeanor, on August 24, 2018. Yovino, who was a student at Sacred Heart University in 2016 when she falsely accused two other students of rape, was sentenced to three years in prison, to be suspended after she serves one year, followed by probation. That was only two months more than Alphonso Reid – the man eventually arrested on her false rape claim – spent in jail awaiting trial. Reid is now suing Yovino and Sacred Heart, as are the two football players who were initially accused. The university already settled a $1 million defamation lawsuit and issued an apology to Gary Douglas, yet another falsely-accused suspect, for circulating a poster on campus with his picture and naming him as a possible rapist. Yovino admitted to making up the story to elicit sympathy from someone she wanted to date.

Delaware: On July 20, 2018, a federal judge denied a motion to dismiss and held prisoner Lawrence Dickens could pursue his lawsuit against former Vaughn Correctional Center warden David Pierce and two deputy wardens for denying him prompt medical attention. In August 2014, Dickens injured his bicep tendon after he collided with another prisoner during a softball game. He didn’t get to see an orthopedist until 19 days later, past the 10-day window in which surgery to repair the tendon would have been effective. As a result, he is now permanently injured and has limited use of his arm. Pierce was the warden at Vaughn until he was placed on administrative leave three weeks after a major riot on February 1, 2017 that resulted in the murder of Sgt. Steven Floyd. [See: PLN, April 2018, p.38].

Florida: Trisha Denlinger, 49, had already been in jail 60 days when she was sentenced to 30 months in prison after pleading no contest to unlawful possession of a handcuff key and conveying tools to aid escape. Denlinger’s husband is incarcerated at the Florida State Prison in Raiford. During an April 2018 visit she purchased a sealed, prison-approved chicken sandwich, opened it, microwaved it and handed it over for inspection. A plastic handcuff key was found inside. It is unclear where she was concealing the key before putting it in the sandwich, as her personal items had gone through an X-ray scanner when she entered the prison. Denlinger will receive credit for the 60 days she spent in jail; her scheduled release date is July 28, 2019.

Florida: The mailroom at the Bay Correctional Facility was locked down on July 24, 2018 after an employee reported a rash and difficulty breathing while handling packages. According to GEO Group, the private company that runs the prison, she was taken to Bay Medical Center for observation, where she was reported in stable condition. A hazmat team from the county’s Emergency Management Division and the Bay County Sheriff’s Office Bomb Squad spent over three hours taking air and physical samples from the mailroom. Ambulances were on standby, but nothing was found to explain the employee’s symptoms. “It’s better for us to come in and clear the building before they go back to normal operations,” said Joby Smith, the Emergency Management Division Chief for Bay County.

Georgia: As previously reported by PLN, former Georgia DOC Captain Edgar Daniel Johnson was charged with sexually assaulting prisoners at the Emanuel
Women's Facility. [See: PLN, July 2018, p.62; Jan. 2017, p.56]. He pleaded guilty and was sentenced in June 2018 to 51 months in federal prison, to be followed by three years of supervised release. Once released, he will have to register as a sex offender. His sentence covered three counts of willfully depriving the prisoners of their Eighth Amendment rights, three counts of obstruction and one count of maliciously conveying false information about explosive materials, for making a false bomb threat and conveying false information about explosive
Eighth Amendment rights, three counts of
offender. His sentence covered three counts
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p.62; Jan. 2017, p.56]. He pleaded guilty
had prompted the beating, but the witness
it was believed that missing food items
beaten by Manisha Pokharkar, a prison
 diciation on August 8, 2018. Michelle Urrutia spent the night at the Cook County jail for driving with a suspended license; weeks later, she was at a barbecue when a sheriff's employee informed her, "You know we can see everything in the holding cell ... including you guys using the washroom?" Attorney Thomas Zimmerman told reporters "There are male sheriff's deputies who are viewing and recording females using the toilet in the holding cell." A sheriff's spokesman responded, "We vehemently deny the allegations that there are hidden or secret cameras focused on detainees' private parts or the toilet areas of holding cells." Urrutia noticed the fixed video camera in the cell but thought a privacy screen obscured its view; however, the camera actually has "bird's eye" coverage of the holding cell. Zimmerman said he will seek an emergency order to preserve existing video evidence.

India: An eyewitness was deposed in the Manjula Shetye murder case in December 2018. Shetye was serving a life sentence at the Byculla Women's Prison on June 23, 2017, the day she died after being beaten by Manisha Pokharkar, a prison jailer, and five other staff members. At first it was believed that missing food items had prompted the beating, but the witness said Shetye had requested a transfer out of Byculla due to harassment by Pokharkar. Shetye asked about the transfer during the
jail superintendent's weekly rounds, sparking Pokharkar's anger. "All six [jailers] took turns with the stick and beat her," according to the witness. Prisoners who tried to help Shetye were warned that they too would be beaten. She later died due to internal bleeding, and her death sparked a riot at the prison. Dr. Vishwas Roke at the JJ Hospital was suspended earlier in 2018 for issuing a false death certificate that indicated Shetye had died due to a fall.

Indiana: Former Tippecanoe County
civilian jail officer Braden Mark Tolle, 27, was sentenced on February 22, 2019 to one year in prison, a year of community corrections and a year on probation. Tolle was arrested in August 2018, along with Bryan R. Ball, 37, on charges of conspiracy to provide a firearm to convicted felon Justin Joel Sands, 37. As a felon, Sands was prohibited from owning any firearms. An investigation into the smuggling of chewing tobacco into the jail revealed the plot to sell a pistol to Sands; texts on Tolle's phone gave him away. Ball, another jail employee, was the intermediary between Tolle and Sands. Tolle received $400 of the $500 sales price from Jimmie D. Miller, Jr., 66, one of Sands' outside contacts. Ball, Miller and Sands were charged with conspiracy to provide a firearm to an ineligible person.

Kansas: Aramark food service em-
ployee Brandon Carr, 21, was booked into the Shawnee County jail on June 17, 2018 after "reportedly kissing and fondling a female inmate" at the Topeka Correctional Facility. Aramark has been the food service provider for Kansas state prisons since 1997. Chris Collum, a spokesman for the company, stated: "We have zero tolerance for misconduct of any kind and terminated this person's employment immediately."

Kentucky: Stephen Renfrow, a former Hardin County Detention Center guard who accepted a plea deal in June 2018 after giving tobacco to a prisoner in exchange for sex while guarding her during a hospital stay, is now being sued by that prisoner. [See: PLN, Aug. 2018, p.63]. On August 11, 2018, the woman filed suit against several Hardin County jail workers, seeking compensatory and punitive damages. She claimed the sex was not consensual and only happened because another deputy left her alone with Renfrow. She named Lt. Jamie Motter in the lawsuit for blaming her for the alleged rape and discouraging her from reporting it, saying she would get into trouble if she filed a complaint.

Louisiana: The Louisiana DOC fin-
ally realized that staff members may be smuggling drugs after two prisoners at the notorious state penitentiary in Angola died on July 18, 2018 due to overdoses. John Hatfield, 31, and Kenneth LaCoste, 42, overdosed on synthetic marijuana, aka "mojo," according to anonymous Louisiana state government sources. An immediate search of the Transitional Unit at Angola found small amounts of synthetic mari-
juana and amphetamines. A subsequent shakedown by 100 guards and K9 teams netted two ice pick-type weapons, seven cell phones and four phone chargers. Ward
en Darryl Vannoy cited low pay and high staff turnover as challenges to controlling contraband. DOC spokeswoman Natalie Laborde said employees will soon have to pass through scanners as they enter state prisons to go to work; she also noted that recently approved pay raises should attract "better quality and more committed em-
ployees," who presumably will be less likely to smuggle contraband.

Maine: A former Penobscot County jail prisoner, identified as "Carla," was happy with her job in the facility's laundry room until she realized her duties included look-
ing at naked pictures of Corporal Steven Buzzell and touching his erect penis. She described events after her release as "a whole other sentence." Buzzell continued to seek meetings with her and send her photos of his genitals. She was not alone. The jailer had been harassing prisoners, colleagues and jail volunteers for over a decade before a co-worker alerted Human Resources. Prisoners felt the risk of reporting him outweighed the benefits, while fellow guards feared being targeted for reprisals if they "snitched." Clare Davitt, now a Bangor city councilwoman, said she regretted not coming forward when she became a target of Buzzell's inappropriate photos and messages when she was a jail library volunteer. Buzzell resigned in June 2018, but is still certified to work as a corrections officer.

Missouri: Referring to Governor Mike Parson's decision to shutter the Crossroads Correctional Center, Missouri Department of Corrections Director Anne Precythe stated, "This was all a business decision at the end of the day." She estimates the $20.6 million saved by closing the facility will be shifted to salary increases for prison staff. The current average salary is $31,300 per
year. Low pay and high turnover is believed to have contributed to a May 2018 riot at Crossroads that left the prison on lockdown for four months with some prisoners being housed in segregation due to a lack of bed space. Half of the Western Missouri Correctional Facility will be converted to maximum security to accommodate the prisoners moved from Crossroads when it closes. Staff from Crossroads will be able to transfer to other facilities. The closure of the prison should be complete by summer 2019.

**New Jersey:** Immigrants’ rights group Make the Road New Jersey picketed Wells Fargo Board member Maria R. Morris at her house in Westfield on July 24, 2018. The protest signaled a new strategy of targeting banks that provide funding to private prison operators. Community organizer Nedia Morsy announced to the crowd, “Immigrants in your community are being detained and imprisoned in private jails that your bank finances. We demand that you withdraw financing.” Morris was out of town on the day of the protest; her husband accepted a box of petitions and promised to relay the concerns. In an email, Wells Fargo spokesman Kevin Friedlander acknowledged the ongoing immigration debate, saying, “However, we do not as a corporation take positions on public policy issues that do not directly affect our company’s ability to serve customers and support team members.” He noted that Wells Fargo is not a shareholder in GEO Group or CoreCivic – though the bank holds shares through its mutual funds.

**New Mexico:** On January 15, 2019, the family of prisoner Keith Kosirog, who committed suicide, filed suit against the Central New Mexico Correctional Facility (CNMCF), prison staff and Centurion Correctional Healthcare, the company contracted to provide medical services at the facility. The family of Adonius Encinias, who also killed himself at the prison, filed a similar lawsuit on March 21, 2019. Both prisoners had documented mental health issues. Kosirog was transferred from a jail to CNMCF for “safekeeping” by a judge after a competency hearing. DOC policy mandates housing pre-trial detainees separately from convicted prisoners, so Kosirog was placed in solitary confinement. A bill to keep mentally ill prisoners in solitary no longer than 48 hours passed in 2017, but was vetoed by then-Governor Susana Martinez, who said the bill “oversimplifies and misconstrues isolated confinement.” On April 3, 2019, Governor Michelle Lujan Grisham signed nearly identical legislation, HB 364, which sets limits on placement in solitary and requires detailed quarterly reports on the practice. The bill also requires quarterly reports on litigation settlements involving private prisons in the state.

**New York:** The Incarceration to Education Coalition is a NYU student activist organization that seeks to make New York University more user-friendly for former prisoners. On December 5, 2018, the group led an occupation of the Kimmel Center for Student Life that lasted six days. They sought agreement from the NYU administration to cut ties with Aramark, the school’s dining hall food service company, which also provides food services for prisons. The occupation ended after the administration
agreed to “create a committee that will begin investigating the financial feasibility of self-operated dining services at NYU. The university will also create a standing committee within the University Senate to address NYU’s relationship to mass incarceration.”

**Oklahoma:** Johnny Edward Tall Bear was convicted of the 1991 murder of a homeless man in Oklahoma City and sentenced to life without parole. The state enacted a post-conviction DNA testing law in 2013, and in November 2017 the blood evidence from the murder scene was re-tested. Joyce Gilchrist was the forensic analyst at the time of Tall Bear’s trial. The re-testing found her serology evidence to be false; the evidence she presented in five other cases was also proved to be flawed. [See: PLN, April 2015, p.1; Oct. 2010, p.1]. There were numerous inconsistencies in the state’s case against Tall Bear, but the new DNA tests, which eliminated him as a suspect, led the Oklahoma County District Attorney to join with the Innocence Project in a motion to vacate his conviction. The motion was granted on June 11, 2018 after Tall Bear had served 26 years in prison. Tragically, Tall Bear died in a DUI accident in March 8, 2019 after swerving into oncoming traffic while trying to pass a car and crashing into a school bus, killing himself, his passenger and a 12-year-old student.

**Pennsylvania:** A data breach occurred in April 2018, but the Department of Corrections did not alert the 13,100 prisoners, 680 DOC employees and 11 others whose data may have been compromised until July 13, 2018. The DOC claims it took the intervening months to analyze the data and determine who was affected; only then did it move the data to a secure state server and terminate its contract with Accreditation, Audit & Risk Management Security (AARMS). “Upon learning of this security incident, the Department of Corrections moved quickly to limit any potential harm to individuals and made contact with the authorities,” DOC Secretary John Wetzel said in a statement. Prison officials did not confirm or deny that DOC data was accessed by unauthorized parties, but offered a year of credit protection to people who received a letter notifying them about the data breach.

**Pennsylvania:** Former Primary Care Medical nurse Danika Alexander, 27, was originally charged with institutional sexual assault, which was reduced to a misdemeanor count of official oppression in a plea deal. Co-workers had noticed “unusually high foot traffic” to her work area, which prompted an investigation. Alexander’s phone revealed 39 calls, in June and July 2017, from a prisoner that had been recorded and indicated they had a sexual relationship. The prisoner gave details to investigators and Alexander admitted to touching and kissing him. Chief Deputy District Attorney Matthew Falk justified the reduced charge, noting that Alexander had not forced herself on the prisoner and saying, “The essence of this crime was the inappropriate abuse of power.” On July 10, 2018, Judge Kelly L. Banach told Alexander that her behavior was “skeevy,” and sentenced her to 23 months in jail.
City of Washington Mayor Scott Putnam. Washington County released video footage of the incident following a Right to Know Law request by the Observer-Reporter newspaper. The video shows Harris on the phone with the jail’s warden while arguing with Moore, then Moore places her under arrest. Harris, who continues to work at the jail, filed a lawsuit on July 21, 2018 against Moore and the police department.

Russia: Yevgeny Makarov’s attorney, Irina Biryukova, released a bodycam video to Novaya Gazeta, an independent newspaper, that showed a naked and handcuffed Makarov being beaten by guards at Prison Number One, north of Moscow, in June 2017. The ten-minute video plays to the sound of Makarov begging his tormentors to stop. “The guards feel they can get away with it, so they carry on using force,” said Biryukova, who fled Russia after receiving death threats. Despite the arrests of the abusive guards, human rights experts on the UN’s Committee Against Torture don’t believe that signals a shift away from torture by Russian prison staff. A whistleblower reported that “appropriate” force was used by Russian prison staff. A whistleblower.

South Carolina: On New Year’s Day 2017, a former lieutenant at the Broad River Correctional Institution, Nicole Jenice Samples, 36, was having a bad day and decided to take it out on two juvenile offenders who were making too much noise. She and two deputies applied “mechanical restraints” that connected their wrists and ankles, commonly known as “hog-tying.” The practice is forbidden under Department of Juvenile Justice rules. The juveniles were left in restraints for over two hours, and Sample instructed the deputies to lie on incident reports. Two weeks later she was suspended without pay, then fired on February 2, 2017. The FBI, South Carolina Law Enforcement Division and U.S. Attorney’s office investigated the case, and Samples pleaded guilty to two counts of deprivation of civil rights. On August 1, 2018, U.S. District Court Judge Mary Geiger Lewis sentenced her to one year and one day in prison, to be followed by two years of supervised release.

Tennessee: Jeri Dawn Patrick, 47, a former Sullivan County jailer, turned herself in to her former workplace on July 17, 2018 after being indicted for physically assaulting a female prisoner at the jail and falsifying a report. Previously, in March 2017, Sullivan County jail guard Edward Smith, Jr. was indicted for assaulting a prisoner. He was granted judicial diversion in August 2018, which will clear his record if he meets court requirements of completing 120 hours of community service and refraining from alcohol and drug use after serving a year in jail. The Sullivan County jail is severely overcrowded and has been under investigation since 2014. As of early 2019, the facility housed an average of 950 prisoners but had only 619 beds. The county commission approved just over $1 million for 20 more jail employees in May 2019, but that will not alleviate the overcrowding – or the staff misconduct.

Texas: Edward Perret, 35, was charged with felony escape following his four-minute taste of freedom on July 23, 2018. Perret appeared in court that day and was arrested on a motion to revoke his probation. He managed to get out of his restraints and ran off just as the transport vehicle arrived at the Bexar County jail. Deputies were able to catch him less than a block away, and four minutes later he was back in custody. He was sentenced to a maximum of four years in prison on the felony escape charge on September 17, 2018. Perret had made a previous escape attempt in 2016.

Virginia: Richmond sheriff’s deputy and jail chaplain Matthew Eli Mellerson was arrested on June 7, 2018 for engaging in “carnal knowledge of an inmate.” The grand jury indictments covered incidents from September 17 to 23, 2017, but further investigation revealed that Mellerson had lured at least three male prisoners into having sex in November 2017 and January and February 2018. The grand jury indicted him on six counts of carnal knowledge of an inmate and two counts of sexually abusing an inmate. According to the Richmond jail’s database, Mellerson was booked into the facility on May 23, 2019 and listed as a “prosecution” on the first six charges. The disposition of the remaining two charges is unknown.

Washington: A former Washington State “most wanted” fugitive, Jacob Ozuna,
36, aka “Kapone,” died of severe blunt-force trauma after being attacked by fellow Norteno gang members at the Yakima County jail on December 9, 2018. Surveillance video showed Julian Luis Gonzalez, Deryk Alexander Donato and Felipe Luis, Jr. striking and kicking Ozuna, then dragging him feet first down a set of stairs as his head struck each stair in turn. The three were charged with aggravated first-degree murder, with bond set at $1 million each; they pleaded not guilty and face a potential sentence of life without parole. Ozuna had been on the run after the May 10, 2018 killing of another Norteno gang member, Dario Alvarado III, before being caught in Montana and extradited to Washington.

**Wisconsin:** Former jail guard James Ramsey-Guy, 38, pleaded no contest to a misdemeanor count of obstructing an officer and was sentenced to 30 days in jail on March 7, 2019. Former jail Lt. Kashka Meadors, 40, received 60 days in February 2019 after pleading no contest to abuse of residents of penal facilities; she was accused of ordering Ramsey-Guy to shut off the water to Terrill Thomas’ cell at the Milwaukee County Jail in April 2016, as punishment for flooding his cell. Thomas spent seven days in solitary without water and died due to dehydration. Armor Correctional Health, the company contracted to provide medical services at the jail, was charged with seven misdemeanor counts of intentionally falsifying health care records in connection with his death. Nancy Evans, the jail commander, pleaded no contest to misconduct in office for lying during the investigation, and received a 90-day sentence. Thomas’ family settled a wrongful death lawsuit in May 2019 for $6.75 million, which will be reported in a future issue of PLN. \[graphic\]
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