Prison Legal News

PUBLISHED BY THE HUMAN RIGHTS DEFENSE CENTER

VOL. 35 No 6
ISSN 1075-7678

Dedicated to Protecting Human Rights

June 2024

Contemporary Slavery: The Not-So-Secret Practice of Forced Labor Inside U.S. Prisons

by Douglas Ankney

"If we refused to work we had to stand on top of a wooden box in the sun. It was called 'doin' the scarecrow' and some guys passed out from the heat"—Florida prisoner Ronald Smith, quoted by formerly incarcerated journalist Ryan Moser in *Slavery and the Modern-Day Prison Plantation*, JStor Daily (Nov. 2023).

That quote is not a relic of the 19th century. Smith was talking about 1988, when he was part of a "gun squad"—a group of prisoners who toiled outdoors under the eye of guards on horseback armed with 12-gauge shotguns.

As *PLN* reported, prisons have not been left out of the modern effort to erase the names of slavers and Confederates from public buildings that once honored them. [See: *PLN*, Feb. 2022, p.32.] Name changes are easy. But what about the men and women caged inside the prisons, who are still routinely coerced to work for little or no pay? While most elected officials disavow any ambition to return to America's slaveholding past, the ugly practice continues. Slavery is almost "mandated" as appropriate "punishment" for crime in the U.S. Constitution. Apparently, the United States cannot break from the desire shared by many of its founders to enslave and dehumanize people. This article briefly examines the history of forced labor in America's penal systems; its current practice; and the slow slight winds of change seeking to bring an end to this immoral and inhumane practice.

INSIDE

History of Prison Slavery

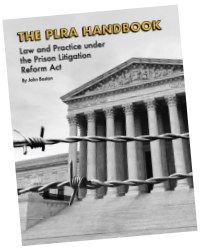
Chattel slavery—the horrific practice of buying, selling, and owning other people—was legally banned after America's Civil War in 1865. But slavery itself remained, and currently is, legal. Section One of the Thirteenth Amendment to the Federal Constitution reads:

"Neither slavery nor involuntary servitude, except as punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." According to the U.S. government—which in theory means the People of the United States—the immoral and reprehensible practice of slavery is both legal and acceptable as "punishment" for a crime.

For 200 years from the mid-1600s, slave plantations existed in the English colonies of North America, which became the United States. These agricultural and livestock businesses were run by masters and overseers, with slaves toiling in an oppressive atmosphere of fear and violence to harvest labor-intensive crops such as cotton, tobacco, rice and indigo. To maximize profits, plantation owners purchased enslaved Africans and their descendants, relying on their free labor while hiring white overseers to run the plantations.

The importance of the cotton trade—especially to Southern states—drove an increasing demand for enslaved labor in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri and Texas, as well as the Carolinas, Delaware, Maryland, Tennessee and Virginia. These enslaved men and women were often treated as disposable, and they were beaten, whipped, raped, maimed and even killed at the whim of the plantation owner. According to Frances Hunter's *Slave Society on the Southern Plantation*, the products of slave labor "furnished more than two-thirds of the materials of [the national] commerce."

After the Civil War, the Southern states remained economically dependent on the free labor of slaves. In the era of "Jim Crow" laws and "Black Codes," Black Americans were "convicted" of such crimes as "vagrancy" or "curfew violation." Once "duly convicted" of these "offenses," they were imprisoned. The state would then lease them to local farms and plantations. The state collected nine dollars per month per convict—but the working prisoners were

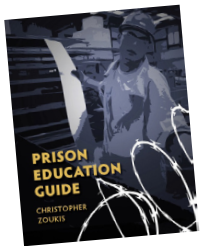


The PLRA Handbook: Law and Practice under the Prison Litigation Reform Act

John Boston ☐ ***Prisoners $84.95*** ☐ ***Lawyers/Entities $224.95***

ISBN-13: 979-8-9854138-0-9 • Paperback, 576 pages

The PLRA Handbook: Law and Practice under the Prison Litigation Reform Act is the best and most thorough guide to the PLRA provides a roadmap to all the complexities and absurdities it raises to keep prisoners from getting rulings and relief on the merits of their cases. The goal of this book is to provide the knowledge prisoners' lawyers – and prisoners, if they don't have a lawyer – need to quickly understand the relevant law and effectively argue their claims.

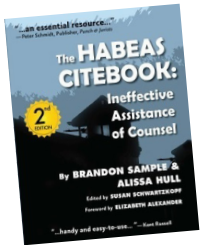


Prison Education Guide ***$24.95***

Christopher Zoukis

ISBN: 978-0-9819385-3-0 • Paperback, 269 pages

Prison Education Guide is the most comprehensive guide to correspondence programs for prisoners available today. This exceptional book provides the reader with step by step instructions to find the right educational program, enroll in courses, and complete classes to meet their academic goals. This book is an invaluable reentry tool for prisoners who seek to further their education while incarcerated and to help them prepare for life and work following their release.

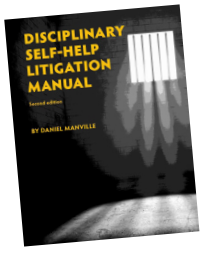


The Habeas Citebook: Ineffective Assistance of Counsel, Second Edition ***$49.95***

Brandon Sample & Alissa Hull

ISBN: 978-0-9819385-4-7 • Paperback, 275 pages

The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an invaluable resource that identifies hundreds of cases where the federal courts have granted habeas relief to prisoners whose attorneys provided ineffective assistance of counsel.

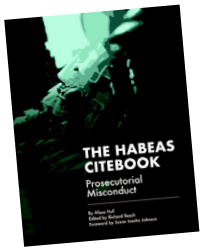


Disciplinary Self-Help Litigation Manual, Second Edition ***$49.95***

Dan Manville

ISBN: 978-0-9819385-2-3 • Paperback, 355 pages

The Disciplinary Self-Help Litigation Manual, Second Edition, by Dan Manville, is the third in a series of books by Prison Legal News Publishing. It is designed to inform prisoners of their rights when faced with the consequences of a disciplinary hearing. This authoritative and comprehensive work educates prisoners about their rights throughout this process and helps guide them at all stages, from administrative hearing through litigation. The Manual is an invaluable how-to guide that offers step-by-step information for both state and federal prisoners, and includes a 50-state analysis of relevant case law and an extensive case law citation index.



The Habeas Citebook: Prosecutorial Misconduct ***$59.95***

Alissa Hull

ISBN-13: 978-0-9819385-5-4 • Paperback, 300 pages

The Habeas Citebook: Prosecutorial Misconduct is the second in PLN Publishing's citebook series. It's designed to help pro se prisoner litigants identify and raise viable claims for potential habeas corpus relief based on prosecutorial misconduct in their cases. This invaluable title contains several hundred case citations from all 50 states and on the federal level, saving readers many hours of research in identifying winning arguments to successfully challenge their convictions.

☐ The PLRA Handbook
☐ Prison Education Guide
☐ The Habeas Citebook
☐ Disciplinary Self-Help Litigation Manual
☐ The Habeas Citebook: Prosecutorial Misconduct

Order by mail, phone, or online. Amount enclosed _____

By: ☐ check ☐ credit card ☐ money order

Name _____

DOC/BOP Number _____

Institution/Agency _____

Address _____

City _____ State _____ Zip _____

Human Rights Defense Center
Dedicated to Protecting Human Rights

PO Box 1151 • Lake Worth Beach, FL 33460 • Phone # 561-360-2523
WWW.PRISONLEGALNEWS.ORG • WWW.CRIMINALLEGALNEWS.ORG

Prison Legal News
a publication of the
Human Rights Defense Center
www.humanrightsdefensecenter.org

EDITOR
Paul Wright

MANAGING EDITOR
Chuck Sharman

ASSISTANT EDITOR
Jordan Arizmendi

COLUMNISTS
Michael Cohen, Mumia Abu-Jamal

CONTRIBUTING WRITERS
Douglas Ankney, Casey Bastian, Kevin Bliss, Eike Blohm, Matthew Clarke, Jo Ellen Nott, David Reutter, Mark Wilson

ADVERTISING COORDINATOR
Patricia Lamarca

HRDC LITIGATION PROJECT
Jay Hurst—*Litigation Director*
Josh Martin—*Staff Attorney*

***PLN* is a monthly publication.**
A one year subscription is $36 for prisoners and individuals, and $96 for lawyers, institutions and foreign subscribers. Prisoner donations of less than $36 will be pro-rated at $3.00/issue. Do not send less than $20.00 at a time. *PLN* accepts credit card orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without an SASE. *PLN* is a section 501 (c)(3) non-profit organization. Donations are tax deductible. Send contributions to:

Prison Legal News
PO Box 1151
Lake Worth Beach, FL 33460
561-360-2523
info@prisonlegalnews.org
www.prisonlegalnews.org

PLN reports on legal cases and news stories related to prisoner rights and prison conditions of confinement. *PLN* welcomes all news clippings, legal summaries and leads on people to contact related to those issues.

Article submissions should be sent to - The Editor - at the above address. We cannot return submissions without an SASE. Check our website or send an SASE for writer guidelines.

Advertising offers are void where prohibited by law and constitutional detention facility rules.

PLN is indexed by the *Alternative Press Index, Criminal Justice Periodicals Index* and the *Department of Justice Index.*

paid nothing. This "convict leasing" program was very lucrative for the farm/plantation owners who received the benefit of convict labor at discounted wages. States profited, too; by 1898, approximately 73% of Alabama's revenue came from convict leasing.

But unlike a chattel slave who held property value to his or her owner, the convicts held no similar value to the state. So they were quite frequently worked or whipped to death. David Oshinsky, historian of Mississippi's notorious Parchman Farm—which is now the state penitentiary—noted that it was said "[n]ot a single leased convict ever lived long enough to serve a sentence of 10 years or more."

Prisoners in the North fared little better. About 75% of all Northern prisoners were leased to factories, where they were forced to work 14 to 18 hours a day without pay. According to *Captive Labor—Exploitation of Incarcerated Workers*, a 2022 report from the American Civil Liberties Union (ACLU) and the University of Chicago Law School (UCLS), these prisoners were brutally punished for such things as "not working fast enough, for accidentally damaging equipment, and sometimes for no reason at all." Just as in the South, leased convicts in the North were subjected to brutal beatings and branding. In the 1890s, the equivalent of $30 billion (in today's dollars) of goods were produced by prison slaves "leased" to Northern factories. The majority of those caught in this vicious practice were impoverished immigrants and African Americans. Pressure to end it didn't mount until the late 19th century, when the use of convict labor in Northern factories was vigorously opposed not on humanitarian or moral grounds, but because the convicted laborers undercut jobs and wages of unionized workers. According to the report, "25 states capitulated to rising union pressure to scale back incarcerated labor programs."

It took longer to end convict leasing in the South. But by 1928, owing to public outrage, convict leasing was outlawed. Yet the perverse hunger to demean and dehumanize prisoners was soon fed in other ways. As sprawling prison plantations spread throughout the South, prisoncrats devised a system reminiscent of antebellum slavery. "Convict guards," each known as a "Trusty," were used to oversee the other prisoners. These select few prisoners were given special status and privileges—some were even armed with rifles—to keep the other prison slaves obedient and working. A pardon could be earned for shooting an escaping prisoner.

However, the trusties abused their positions. They preyed on the other prisoners with sexual violence, extortion and arbitrary abuses of authority that were condoned because of the money they saved in guard salaries. When the practice was specifically prohibited in Mississippi by *Gates v. Collier*, 501 F.2d 1291 (5th Cir. 1974), and then extended to Texas in *Ruiz v. Estelle*, 679 F.2d 1115 (5th Cir. 1982), the state of Texas had to double its paid staff of prison guards.

Coinciding with the rise of sprawling plantation prisons was the proliferation of "chain gangs." Originating in Georgia in the 1890s, crews of prisoners bound together by heavy chains were forced to work outside prison grounds. The practice of forcing these chained prisoners to build roads quickly spread to every state except Rhode Island. Other hard labor tasks such as digging ditches, breaking rocks and performing highway maintenance were soon thrust upon the chain gangs. Shotgun-toting guards, often mounted on horses, whipped prisoners they deemed to be lagging or whom the guards simply did not like.

In 1934, the U.S. Congress authorized the Federal Prison Industries program (known today as UNICOR), permitting federal prisoners to manufacture goods for government agencies. Most state prison systems adopted similar programs. Again, union opposition to the price advantage conferred by free prison slave labor prompted legislation to prohibit the sale of prison-made goods to private individuals and companies. By 1979, though, Congress bowed to prison profiteers and amended a 1935 law that had made interstate transportation of most prison-made goods a federal crime.

As amended, the Prison Industry Enhancement Certification Program (PIECP) permits prisons and private industries to partner in manufacturing goods using prisoner labor. Many states have since followed suit.

Current State of Affairs

In December 2023, a group of Alabama prisoner plaintiffs filed *Council v. Ivey*, USDC (M.D. Ala.), Case No. 2:23-cv-

00712, accusing the state Board of Pardons and Paroles of denying them parole simply so that the state Department of Corrections (DOC) may continue profiting from the prisoners' labor. As *PLN* reported, the plaintiffs—all of whom are Black—allege they are "leased" to 575 private firms and 100 government agencies which have profited from the forced labor system, enjoying a $450 million annual windfall over the past five years by using prisoners for landscaping, sanitation, metal fabrication, and fast-food work. [See *PLN*, Mar. 2024, p.34.]

Although the firms are required by law to pay minimum wage, that is well below what the average free-world worker in these industries earns. Alabama's minimum wage of $7.25 an hour—enacted in July 2009—pays $290 for a 40-hour workweek. But the Federal Bureau of Labor Statistics reported that the average weekly wage paid by Alabama firms to leisure and hospitality workers, which includes the fast-food industry to which many prisoners are leased, was $430 for the first quarter of 2023. The difference was pocketed by the firms who leased the prisoner workers. Plus, DOC takes a minimum of 40% of whatever the firms pay to the prisoners. Joining with the prisoners in the suit are: the Union of Southern Service Workers; and the Retail, Wholesale, and Department Store Union, Mid-South Council. Like their predecessors in the 19th and 20th centuries, these unions argued that "the artificially low wages that the prisoners are forced to accept for toiling in fast food and poultry processing have frustrated attempts to unionize workers in those industries," the prisoners' complaint noted.

However, the lion's share of industries operating within today's prisons are owned by the state. These industrial jobs are often touted for providing employment training. But rarely are any marketable skills taught. Generally, prisoners produce supplies for government agencies, such as office furniture, or they manufacture clothing and cleaning supplies for the prisoner population. Around 791,000 prisoners in America currently work, and the overwhelming majority earns pennies an hour. Only about 7.3% of all prisoners work industrial jobs, most of which are owned and operated by the state but with an ever-increasing number of private businesses using prisoner labor.

Seven states—Alabama, Arkansas, Florida, Georgia, Mississippi, South Carolina, and Texas—pay their prison slaves nothing. It is hardly coincidental that those seven states were also the sites of antebellum slave plantations. Parchman Farm, the 18,000-acre state prison farm that Mississippi designed like a plantation, opened in 1901 strictly for Black prisoners. Even after white prisoners arrived in 1917, racial segregation in separate housing "camps" was strictly enforced. The complex endures today as the state penitentiary, and it is often described as "the closest thing to slavery that survived the civil war." A disproportionate number of African Americans right now toil on the same ground as their enslaved ancestors, 12 hours every day in 100-degree heat, picking broccoli, squash and cotton for no pay.

The degrading practice is not restricted to Mississippi, though. Forty-seven-year-old prisoner Stone Norris said that in South Carolina, he and other state prisoners "worked the hay fields all day, stepping in human feces that farmers got from the nearby wastewater plant for fertilizer." The Department of Justice's Bureau of Justice Statistics reported in 2000 that about 29% of carceral facilities operated farms or other agricultural activities; with 373 facilities having farming or agricultural work programs. About 2.2% of America's prisoners work in farming, with the majority of those in the South.

By far, though, most prisoners work menial jobs simply maintaining the lockups that hold them: "More than 95 percent of public prisons and nearly 90 percent of private prisons have work programs that employ incarcerated people to support and maintain" the prisons that cage them, the ACLU/UCLS report noted. Government is the biggest beneficiary of prison slave labor. Prisoners produce over $2 billion in goods and perform $9 billion worth of prison support and maintenance—all of which goes to the state at next to no cost. Of the prisoners surveyed for the report, about 80% were in those facility-support jobs, with 30% working janitorial positions and 20% in food preparation.

Even where prisoners are paid, the echoes of slavery are too loud to ignore. Earning eight cents an hour, or less, cannot seriously be considered making a "wage." Prisoners who are faced with the choice of working or being confined in segregation—or hit with some other punishment—cannot be said to provide their labor willingly. Moreover, this forced work is often done without proper training or safety equipment. But there is almost never Workmen's Compensation paid when fingers or limbs are cut off or prisoners suffer other injuries. No social security deductions or payments are made on their behalf, either. There are of course no other programs to help finance their inevitable retirement. Nothing.

Winds of Change Fighting Winds of Resistance

In 2018, voters in Colorado amended their state constitution to ban slave labor inside state prisons. That made it the second state after Rhode Island in 1842 to purposefully abolish slavery "without exception." The Alabama prisoner plaintiffs who filed *Council v. Ivey* note that state voters adopted a new constitution in November 2022 that eliminates any exception for prisoners to the state's ban on slavery—one of six states to follow Colorado in making this change to the state constitution, along with Nebraska, Oregon, Tennessee, Utah and Vermont, as *PLN* reported. [See: *PLN*, Apr. 2023, p.63.] In at least nine other states lawmakers have introduced similar bills. Nevada residents

will vote on an initiative to abolish forced slavery in prisons in 2024. But as of May 2023, 16 state constitutions still allowed exception to their slavery bans for prisoners.

On the federal level, lawmakers from Oregon, Georgia and New Jersey have reintroduced legislation to revise the Thirteenth Amendment two times, with the latest effort on June 13, 2023. It is mainly supported by Democrats. Co-sponsor Sen. Jeff Merkley (D-Ore.) declared, "It's unacceptable that our Constitution allows slavery. It's way past time to remedy this clause." Sen. Cory Booker (D-N.J.) has sponsored the Fair Wages for Incarcerated Workers Act and Correctional Facilities Occupational Safety and Health Act, seeking to shore up protections for prisoners who work. As noted by Kamau Allen, cofounder of the Abolish Slavery National Network, the drive to abolish prisoner slavery is a "fast-moving train."

But as *PLN* reported, the Colorado DOC was still issuing disciplinary reports to prisoners who refused to work five years after state voters adopted the constitutional amendment to end the practice—a total of nearly 14,000 infractions since 2019. Meanwhile a suit filed by state prisoners Richard Lilgerose and Harold Mortis in February 2022 is seeking an injunction to prohibit DOC officials from charging prisoners with Class 2 disciplinary violations for refusing to work. The Class 2 charges carry possible sanctions of solitary confinement and loss of "good time" sentence reduction credits. In an August 2023 ruling, the state judge hearing the case held that loss of a privilege like good time credits may not violate the constitution, but isolation, like physical punishment, may be a violation. [See: *PLN*, Apr. 2024, p.13.]

Michael Gibson-Light, Assistant Professor of Sociology and Criminology at the University of Denver, observed that "slavery was not abolished" by the Thirteenth Amendment. "[I]t just changed," he said, so that "now the justifications were different. They had to do with law breaking. They had to do with vagrancy. They had to do, eventually, with drug use." These are all the "crimes" that have driven mass incarceration, and the modern-day leasing of men and women convicted and locked up for them. Former DOC prisoner Abron Arrington added that he "was actually 30 years a slave," referring to his long period of incarceration. Most of that time Arrington spent in isolation for refusing to work a 13-cents-an-hour prison job, preferring instead to study for his physics degree. He was granted clemency and released in 2019.

Community organizer Kym Ray of nonprofit Together Colorado said that the point of efforts to end DOC's forced-work policy was not to stop prisoners from the benefit of work programs but "to give people the choice." Gibson-Light agreed, saying, "[t]here's a reason it's called the Emancipation Proclamation, not the compensation proclamation. It's not a question about wages. The question is about freedom."

DOC still pays prisoners as little as 13 cents an hour. But some jobs rise to $2 an hour—still paltry, though a princely sum by comparison. However, the real profits go to about 100 Colorado companies that benefit from the prisoners' labor at wages far below market. Also benefitting are the state and local governments that use underpaid prison slaves for maintenance, housekeeping, and even dangerous work like firefighting.

Colorado's DOC, like most prison systems, attempts to justify its abusive labor practices by claiming prisoners benefit from the work experience and training post-release. Gibson-Light gave the lie to that, noting that "[y]ou can be a barber and make good money, but you get out and you can't get a barber license if you have a record."

The truth that prison jobs provide little to no post-release employment opportunities is revealed indirectly by DOC in its primary means to get prisoners to take these jobs: A threat of punishment. If the jobs had intrinsic value, prisoners would be willing to work them—not to avoid punishment, but to enjoy the benefits they offer.

Valerie Collins, an attorney with Toward Justice who represents Lilgerose and Mortise in their suit, said that arguing about wages "muddies the waters." "We did not bring wage claims," she said, "to keep the focus on the forced nature of the work itself, in the coercion that is used to extract the labor." Ray also had concerns other than wages. She wanted more protections and training for prisoners, many of whom "have lost fingers because they're working on faulty equipment or equipment they haven't been properly trained on."

A Win Brewing for Migrant Detainees

Closely related to the issue of prison slavery is the abuse of non-convicted detainees for their labor. In December 2021, the U.S. District Court for the Western District of Washington ordered private prison operator GEO Group to pay $37,585,387.61 in damages, attorneys' fees, costs and interest in a lawsuit that alleged GEO failed to pay minimum wage to migrant detainees held at the Northwest Immigration and Customs Enforcement (ICE) Processing Center in Tacoma.

Mourning Our Losses

MOURNING OUR LOSSES (MOL) IS SEEKING MEMORIALS, WRITING, AND ART

MOL was launched by a group of educators, artists, and organizers committed to the release of incarcerated people. In 2020, we began publishing memorials to honor the lives of our siblings dying from COVID-19 in jails, prisons, and detention centers. We continue to grow this platform for grief, healing, and reflection for all those affected by the death of a loved one due to poor conditions, negligence, violence, and mental health crises inside - the byproducts of mass incarceration.

We are driven by our prison experiences. Our crowd-sourced memorial site depends on our ties to you, our siblings inside. Our goal is to inform conversations about the dangers of mass incarceration by sharing stories of those we've lost. We teach the public that we're people – not numbers or "inmates." We don't use dehumanizing language in memorials, nor do we talk about the crime for which a person was convicted.

You can help by submitting a memorial for a loved one who died while incarcerated or related writing/photos/artwork (which we may not be able to return safely). When you submit, please include the name the person went by and your name (or if you want to be anonymous). Let us know if it's ok to edit errors, and if we can contact you to follow up. Write us at:

Mourning Our Losses
P.O. Box 162690
Atlanta, GA 30321

The Center is a 1,575-bed facility that has been owned and operated by GEO since 2005. Under contract with ICE, the firm confines people caught up in civil immigration proceedings. GEO is under contract to receive $700,292,089.08—or about $70,000,000 a year—to operate the Center. And with the exception of one abnormally low year, between 2010 and 2018 GEO reported annual profits ranging from $18,600,000 to $23,500,000. Those colossal profits enabled the generous executives of GEO to pay the immigrant detainee laborers—the ones who cooked, cleaned, and maintained the Center—a whopping one dollar every day.

In 2017, a group of 11,689 Detainees (Plaintiff Class)—along with Washington's Attorney General—sued GEO, alleging that the $1 pay per day violated Washington's Minimum Wage Act (MWA). The State and Plaintiff Class argued that they were employees and thus entitled to lawful wages under MWA. After an initial mistrial, the individual cases were severed at a second trial in the District Court. There a jury agreed with the State and the Plaintiff Class members, awarding $17,297,063.05 in damages to Plaintiff Class and finding GEO liable to the State for unjust profits in the amount of $5,950,340. That made a total damages award of $23,247,403.05. GEO sought remittitur of the Plaintiff Class damages, but the District Court denied GEO's motion on December 8, 2021. *See: Nwauzor v. GEO GRP., Inc.*, 2021 U.S. Dist. LEXIS 235308 (W.D. Wash.). However, because the cases were severed at the second trial, each Plaintiff Class member subsequently sought individual attorney fees. Four law firms represented the Plaintiff Class members.

Schroeter Goldmark & Bender of Seattle sought fees of $1,047,921.20 based on hourly rates between $300 and $500 for the services of attorneys Adam Berger, Kelli Carson, Lindsay Halm, Carson Phillips-Spotts, Rebecca J. Roe, Page Ulrey and Jamal Whitehead. These outstanding attorneys had experience ranging from six years to more than 30 years. The fee also included $170 per hour for paralegals.

Menter Immigration Law, PLLC, also of Seattle, sought fees totaling $33,355.00. The fee was based on the superb services of attorney Monica Menters, who had 20 years' experience but charged only $350 an hour.

Attorney Deven Theriot-Orr of Open Sky Law, PLLC in Kent requested $450 an hour for his exceptional service. Theriot-Orr also had 20 years' experience and his total requested fee was $61,412.60. The Law Offices of R. Andrew Fee in Nashville also sought fees totaling $147,012.50 based on a rate of $475 an hour for the Tennessee attorney's supreme skill after 10 years' experience.

Additionally, the State requested hourly rates of $320 to $417 for Assistant Attorneys General La Rond Baker, Andrea Brenneke, Marsha Chien, Patricia Marquez and Lane Polozola, all of whom have between 10 and 30 years of experience. The State requested an additional $191 an hour for an investigator and $136 an hour for a paralegal. The district court found all these fees were reasonable. Due to the difficulty of the case, the skill of the attorneys and the

fact that they had represented the Plaintiff Class on a contingency basis, the district court added a 10% multiplier, though the State did not ask for one. The district court also decided that the State's claim of unjust enrichment was sufficiently connected to a claim for lost wages to justify an award of attorney fees under MWA and the Wage Payment Collection Act, RCW 49.48.030. Since the State had additional discovery burdens and had to litigate in the U.S. Court of Appeals for the Ninth Circuit, whereas Plaintiff Class counsel did not, the district court determined the State was entitled to greater fees.

The district court rejected GEO's argument that attorney fees associated with the mistrial and fees for conferences between Plaintiff Class counsel and the State should be deducted. The district court concluded the fees were within reason and that preparation for the first trial could not reasonably be separated from the second trial. Altogether, the district court allowed $6,058,922.92 in attorney fees. However, regarding costs, the district court reduced the amount sought by Plaintiff Class counsel and the State. The court determined that the costs for equipment associated with Zoom calls were not recoverable. With deductions, the district court allowed $191,398.07 in costs. GEO is liable for the $6,250,320.99 in fees and costs regardless of any appeals it might seek. *See: Washington v. GEO GRP., Inc.*, 2021 U.S. Dist. LEXIS 238987 (W.D. Wash.); and *Nwauzor v. GEO GRP., Inc.*, 2021 U.S. Dist. LEXIS 238949 (W.D. Wash.).

The district court further determined that GEO owed an additional $8,087,663.57 in prejudgment interest on Plaintiff Class's damage award. The interest will continue to accrue at a statutory rate of 0.14%. *See: Nwauzor v. GEO GRP., Inc.*, 2021 U.S. Dist. LEXIS 235292 (W.D. Wash.). As of December 13, 2021, that meant GEO was liable for a total of $37,585,387.61.

GEO turned to the Ninth Circuit, appealing the jury's award of nearly $23.3 million in damages to Plaintiff Class and the State. In turn, the Ninth Circuit certified questions of law to the Supreme Court of Washington (SCOW), asking whether MWA applied to the detainees at the Center. In what may be fairly characterized as an ominous harbinger for GEO, the nine justices of SCOW unanimously held in December 2023 that MWA applied to the detainees.

Associate Chief Justice Charles W. Johnson authored the opinion, writing: "The certified questions in this case concern a challenge to a private, for-profit corporation's practice of paying civil immigration detainees less than Washington's minimum wage to work in its private detention center. We are asked to determine whether Washington's [MWA] applies to detained workers in a privately owned and operated detention facility. We conclude that it does." *See: Nwauzor v. GEO Grp., Inc.*, 2 Wn.3d 505.

Adam Berger, one of the attorneys representing Plaintiff Class, told local media: "This confirms what we've been saying all along, which is that detainees at the Northwest Detention Center who were cleaning, cooking, and maintaining the facility were employees of the company under Washington law, and should have been paid the state minimum wage, not a dollar a day for their labor." Washington Attorney General Bob Ferguson (D) called SCOW's ruling "a major victory for Washington workers and basic human dignity." The appeal will now proceed at the Ninth Circuit, and *PLN* will update developments as they are available. *See: Washington v. GEO GRP., Inc.*, USCA (9th Cir.), Case No. 22-35027.

Federal courts—both the district and appellate circuit—are bound by the highest state court's interpretation of a state statute. Consequently, the Ninth Circuit may not conduct its own interpretation of MWA and conclude that it does not apply to the Detainees. That does not mean, however, that the Ninth Circuit cannot reverse the district court judgment on other grounds.

Conclusion

Though chattel slavery was abolished almost 160 years ago, the immoral and inhumane practice of slavery is kept alive as "punishment for a crime." By failing to right this wrong, America also fails to come to terms with its racist past. Because slavery, like the genocide of indigenous Americans, is either immoral and reprehensible—or it is not. There is no middle ground. We do not have provisions that say "raping preteen children is prohibited except in cases of …." When something is immoral and reprehensible, there are no viable or compelling exceptions.

The practice of forced labor inherent in prison slavery is reprehensible in and of itself. That private industries should also profit from it is beyond outrageous. An *AP News* report in late January 2024 revealed that prisoner labor is used to produce an enormous number of products found in most American kitchens "from Frosted Flakes and Ball Park hot dogs to Gold Medal flour, Coca-Cola and Riceland rice." Prisoners work for minimal wages—some for no pay at all—in farming and production and have helped created a multi-billion empire for the benefit of companies like McDonalds and Walmart.

Yet prisoners do not have the safety or scheduling protections that workers on the outside have, and they face harsh consequences if they refuse to work. Even if sick or injured, a prisoner is required to work; if he or she refuses, that can be punished by solitary confinement, suspension of privileges or even changes to an anticipated release date. In the worst-case scenario prisoners die while performing forced prison labor duties.

One was Alabama prisoner Frank Dwayne Ellington. Sentenced to life in prison with the possibility of parole after stealing a man's wallet at gunpoint, the 33-year-old was killed in 2017 while cleaning a machine near the chicken kill line at Koch Foods. The whirling teeth of the machine grabbed his arm and pulled him inside, crushing his skull. Death was instantaneous.

The penal system is purportedly connected to "justice." And that includes the notion of putting things right. But how does using prisoner labor to profit private firms accomplish that? How does it in any way benefit victims of crime? If anyone could lay a possible claim to the fruits of a prisoner's labors, it would be the victim or victims who were harmed by that prisoner—not corporate executives seeking to line their own pockets.

Further, as labor unions correctly point out, using prisoner slave labor in industry harms those law-abiding unincarcerated citizens seeking to earn a living in that industry. America's economy operates within a capitalist, profit-driven engine arguably like none other before it. Where extreme gains may be made off the backs of others, exploitation and manipulation are sure to follow. But it does not follow that the machinations should be legal or condoned.

The paltry or nonexistent pay is not the real depravity of prison slavery. Instead it is the forced labor; the punishing of people for simply refusing to be exploited. Whether it be putting the person in isolation; extending his or her period of confinement through loss of good time credits; or even a decrease in available hours for visitation, it is simply wrong to punish a person in any manner for refusing to be exploited. Broadly speaking, some incarcerated persons are victimizers. That is, many criminal offenses involve perpetrators and victims. But the answer cannot be the further victimization of the victimizer. As a wise person once observed, the penalty for rape is not to rape the rapist.

The SCOW ruling is laudable, but its value to the ongoing battle to end prison slavery is limited. First, the ruling applies to civil immigration detainees. These people, although incarcerated, have not been duly convicted of any crime. Therefore the Thirteenth Amendment is inapplicable to them. Second, the ruling is based entirely on state law. And minimum wage laws vary from state to state. While it may seem that the process of ending prison slavery is a fast-moving train, it must have just recently left the station. If only seven states have abolished prisoner slavery in 160 years, that means 43 states and the federal government condone the practice. In other words, the overwhelming majority of Americans are yet in favor of slavery—regardless of how loudly their mouths may protest otherwise.

Florida prisoner Ronald Smith summed up the reality. While working on a prison crew assigned to cleaning along highways, he said: "When our bus pulled up to the side of the road, people passing in cars would throw beer cans at us and call us niggas … just like back in the day. Nothing has changed."

Additional sources: *AP News, CNN, NPR News, Tacoma News-Tribune*

From the Editor

by Paul Wright

This month's cover article discusses the current state of prison slavery in America. This has been an ongoing topic of coverage for *Prison Legal News* since we first started in 1990. The legal slave status of American prisoners is currently enshrined in the Thirteenth Amendment to the U.S. constitution which does not ban slavery but limits it to people who have been convicted of a crime. We are slowly seeing efforts to chip away at this, efforts that began in the 1970s as part of that era's prison reform movement.

The issue of prison slavery is multi-faceted and has a wide variety of impacts throughout society. The first and most obvious is the removal of 2 million-plus people from the active work force by caging them. Second is the fact that at least a million people are directly employed to guard the prisoners. Third is the impact the tiny percentage of employed prisoners has, coupled with the reality that prison slave labor is what keeps the American gulag running with the unpaid/nominally paid labor of the prisoners working in kitchens, laundries, landscaping, maintenance, industries, etc., for the prison and jail system.

It is gratifying to see the impact of *PLN's* long-standing coverage of prison slavery. The topic was first raised as a political issue by activists and reformers in the 1970s, but by the end of the 1980s it had largely faded from both the news cycle and political agenda. For over 34 years, though, PLN has had a steady drumbeat of news coverage of the exploitation of prisoner workers and the need to ensure that all prisoner workers be fairly paid and more importantly, keep their wages and also have safe working conditions and basic worker protections up to and including the right to unionize if they so desire. Through the 1990s and the 2000s we were pretty lonely on this topic, but the past decade has seen it slowly pick up steam. The issue is far from mainstream political success, but it seems to be headed there slowly if fitfully.

As this issue of *PLN* goes to press, former Pres. Donald Trump (R) has just been convicted of lying on business forms for paying $130,000 in hush money to adult film starlet Stormy Daniels. In many countries the path to political power often lies through a prison cell. The world leaders who have been imprisoned before becoming the leaders of their nation include: Fidel Castro, Nelson Mandela, Hugo Chavez, Winston Churchill, Vladimir Lenin, Joseph Stalin, Ho Chi Minh and many, many others. This may be one of the reasons why making prison conditions worse or more inhumane has rarely been a political issue outside the U.S.

As a convicted felon Trump joins the illustrious ranks of Eugene Debs, who ran for president from his prison cell in 1920 where he obtained over 3% of the vote. Debs had been convicted of sedition for opposing the draft and the U.S. entry into World War I.

It remains to be seen how Trump does at his sentencing, but if past American history is any guide, we have a very long, pathetic, sleazy and hypocritical trail of "tough on crime" politicians who have long campaigned on a police state platform of death and brutality, yet when they themselves are convicted of crimes they grovel before judges begging for mercy to be spared the punishment they have urged on countless others. This pantheon of groveling criminals includes: former Arizona Gov. Fife Symington (R), former Arkansas Gov. Jim Guy Tucker (D), former Illinois Gov. Rod Blagojevich (D), former U.S. Reps. Jesse Jackson, Jr. (D-Ill.), Anthony Weiner (D-N.Y.) and Dennis Hastert (R-Ill.), who was House Speaker, and many more.

Trump's conviction highlights the two-tier system of criminal justice in America, one for the rich and well connected and the other for the poor and unconnected. Starting with the access to the counsel of his choice. Various news media accounts claim that since leaving office Trump has spent over $100 million dollars in attorney fees for his myriad legal imbroglios. By contrast, in 2024 the budget of the Palm Beach County public defender's office, which is where Trump resides, had a budget of $18.3 million to provide legal representation in 50,000 cases a year. Trump remained free on bond and was able to harangue and insult the judge, prosecutor and court staff on an almost daily basis, an exercise in free speech unheard of for indigent criminal defendants.

Trump has not even been sentenced and Florida Gov. Ron DeSantis (R) has already announced that he will personally ensure Trump can vote in Florida, despite state laws saying the selected felons who can vote can only do so after they have completed the terms of their sentences in full.

We can only expect the contradictions to heighten from here. Political pundits and analysts alike are unsure if the felony conviction will impact Trump's popularity with voters. Ignored in this analysis is the long steady crisis of legitimacy the American criminal justice system has been undergoing for the past 30 years as a result of mass incarceration. One thing America is good at creating is criminals; with over 70 million convicted felons and more every year, it is likely accurate to say that every voter in America knows or is related to a convicted felon if they are not one themselves.

Trump's conviction for lying on forms about hush money payments to an adult film actress to buy her silence over an alleged sexual encounter also illustrates the dragnet nature of the American police state. Hundreds of thousands of Americans are convicted every year of crimes against the state that endanger and harm no one and are acts that are a crime because the state has made them crimes. The most obvious examples are on Rikers Island, where many are imprisoned on charges ranging from not paying subway fares to fraud as well as violent offenses.

On that happy note, enjoy this issue of *Prison Legal News* and please encourage others to subscribe. And yes, if Pres. Trump joins the ranks of our nation's 2.3 million prisoners, I will personally donate a subscription to *PLN* and *Criminal Legal News* to him, even though he is reputed not to be a big reader. We may soon learn his views on prison reform.

Dramatic Prisoner Escape in France Leaves Two Guards Dead

A massive manhunt was underway in France on May 14, 2024, after a prison van was ambushed at a highway toll booth by four armed accomplices of prisoner Mohamed Amra, 30. He escaped in the ensuing shootout, which also killed two guards escorting him and seriously wounded three others. The four attackers and Amra, nicknamed "La Mouche"—or "the Fly"—escaped in two vehicles later found abandoned and burned.

Amra has an extensive record of mostly mid-level crimes, the latest a burglary conviction with an 18-month prison term handed down on May 11, 2024. But he is also suspected of having ties to the "Blacks," one of several Marseilles drug-running gangs, which have been blamed for at least 50 fatal shootings in the past year. Amra's suspected involvement in a gang kidnapping that turned deadly brought him from Val de Reuil prison to a court hearing in Rouen, after which he made his escape.

Prosecutors say that gang drug trafficking is exploding across France. One of them, Nicolas Bessone, said that the gangs were successfully bribing unnamed court workers in Marseilles, which is considered the epicenter of the country's illegal drug trade. Before leaving the prison to attend the hearing, Amra made another escape attempt, sawing at the bars of his cell. That earned him a stint in a disciplinary unit.

The country's Minister of Justice, Eric Dupond-Moretti, identified the slain guards as Fabrice Moello, 52, and Arnaud Garcia, 34. Theirs were the first on-duty deaths of any French prison guards since 1992, Dupond-Moretti added.

Sources: *BBC News, CNN, The Independent*

Far-Right Claremont Institute Awards Extremist California Sheriff

The Claremont Institute, "nerve center of the American right," honored Sheriff Chad Bianco of California's Riverside County on November 9, 2023, with its annual Sheriff Award for being a "longtime patriot and tireless defender of America's founding principles."

For $450 a plate, subscribers attending the award dinner at the Hilton Hotel in Huntington Beach kicked off Claremont's 2023 Sheriffs Fellowship—a hush-hush program that schools law enforcement officers in far-right ideology of the Constitutional Sheriffs and Peace Officers Association (CSPOA), a controversial group whose member sheriffs embrace a discredited reading of the U.S. Constitution to proclaim authority superseding that of state and federal government officials.

Bianco may be a hero to the Claremont Institute and its members who long for a "Red Caesar" to ride a reactionary wave into despotic power, but to the *Press-Enterprise* of Riverside County, Bianco presides over a dysfunctional and chaotic jail system that spawns misconduct among its deputies and deaths among its detainees. The Institute for Research and Education on Human Rights calls Bianco "one of many sheriffs who hide behind constitutional sheriff mythology to justify law enforcement abuses of power."

Riverside County jails saw 19 in-custody deaths in 2022, the most since 2005, prompting the state Department of Justice to begin an investigation in February 2023. The county paid about $77 million in settlements between 2010 and 2020 related to sheriff's department misconduct, ranking it among the costliest to taxpayers in the nation. In comparison, neighboring Orange County, which has 50% more residents, paid just $14 million over the same period.

Jail deaths have continued to mount since. After Mark Spratt, 24, was jailed in January 2023, his cellmate Mickey Payne allegedly threw him over a railing to his death, angered that jailers had not replaced Spratt with a detainee who was Black, like Payne. In September 2022, Erik Martinez allegedly assaulted fellow detainee Ulysses Munoz Ayala, 39, who then died from his injuries because emergency call buttons were reportedly not working, and guards failed to monitor the lockup's security system. A lawsuit was filed over Spratt's death in October 2023 by attorneys with McCune Law Group in Ontario. *See: Est. of Spratt v. Cnty. of Riverside*, USDC (C.D. Calif.), Case No. 5:23-cv-02056. A suit was filed over Ayala's death the same month by Murietta attorney Lewis George Khashan. *See: Munoz v. Bianco*, USDC (C.D. Calif.), Case No. 5:23-cv-02063.

They are two of over a half-dozen suits pending on behalf of people who died while incarcerated in county lockups. In September 2023, three guards were arrested and charged with serious crimes: Brent Bishop Turnwall was allegedly under the influence of drugs while on duty; Christian Heidecker allegedly extorted four women and sexually assaulted one of them; and Jorge Alberto Oceguera-Rocha was allegedly found with more than 100 pounds of fentanyl in his car, as *PLN* reported. [See: *PLN*, May 2024, p.10.]

Reacting to Bianco's Claremont Institute award, criminal justice writer Radley Balko noted that the sheriff being celebrated "has not only tolerated abuse [and] overseen rampant misconduct … he's also just really shitty at his job."

Additional sources: *Desert Sun, The Guardian, Press-Enterprise*

Georgia Prisoner's Challenge to "Deplorable" Conditions Survives Motion to Dismiss

On October 3, 2023, the federal court for the Middle District of Georgia denied a motion to dismiss filed by defendant state prison officials in a prisoner's challenge to isolation in conditions he called "deplorable."

While incarcerated at Georgia State Prison (GSP) from November 1, 2018, to January 7, 2021, Khalid Mouton was held in the Tier II program, a benign-sounding name for segregation that lasted 23 to 24 hours a day, with "restricted access to property, visitation, phone calls, religious services and the prison's programs," according to the complaint he filed. Out-of-cell recreation time, in outdoor steel cages, was often denied for "weeks or months," he added. The extremely unsanitary conditions included broken plumbing, toilets that only guards could flush from outside cells, plus insects, vermin and mold in showers. Prisoners were not given cleaning supplies, either.

Due to these "deplorable" conditions, the complaint stated, Mouton's mental health reached a "crisis point": he experienced hallucinations, paranoia, panic attacks and began cutting his wrists. As a result, he was repeatedly sent to the Acute Care Unit (ACU), where conditions were, almost unbelievably, even worse: He could wear only a suicide prevention smock or paper gown; the bunks were covered in feces and blood; and he had no mattress, sheets or blankets. Prisoners in ACU were also denied hygiene items such as soap and toothpaste.

Then, in January 2021, Mouton had a stroke. Other prisoners told staff members that he was unresponsive and not retrieving his food trays, but it took several days before a guard noticed that he was unconscious. Mouton was airlifted to a hospital, where CT scans confirmed the stroke. A meaningful recovery might have been possible with treatment in the first 24 hours, but the delay left Mouton with permanent injuries; he can no longer walk—his right side is paralyzed—and must use a wheelchair; he cannot read or speak coherently and has memory loss; plus he faces increased risk of a reduced lifespan.

In his complaint, Mouton argued that problems at the prison which contributed to his injuries were compounded by understaffing; with a guard vacancy rate around 60%, required cell checks were not performed. Moreover, 14 prisoners had committed suicide between 2014 and 2018. Five more died in the Tier II program by suicide or homicide from 2020 to 2021. Other Tier II prisoners had suffered serious medical problems and experienced treatment delays. The defendants named in Mouton's lawsuit were allegedly aware of these issues based on staffing and incident reports, internal audits, letters from Mouton's attorney and "the alarming number of medical emergencies, suicides, homicides, and other preventable deaths."

Defendants moved to dismiss but were denied after the Court found that Mouton had "successfully alleged an Eighth Amendment violation" and that "GSP defendants' conduct violated clearly established law." Defendants argued that Mouton failed to establish the subjective component of his deliberate indifference claim because he referred to them collectively rather than setting forth "specific allegations about each individual defendant." But the Court rejected that argument, noting that while the complaint used collective language, it specified that *"each* defendant knew Mouton was experiencing a medical emergency, that *each* refused to check on him … ," etc.

Notably, the Court found that Mouton's allegations met the "more than gross negligence" standard for deliberate indifference claims established in *Wade v. McDade,* 67 F.4th 1363 (11th Cir. 2023), pointing to his claim that Defendants "ignor[ed] his unresponsiveness and other prisoners' pleas for help" when he had his stroke. Further, a "finding of deliberate indifference necessarily precludes a finding of qualified immunity" (QI) for Defendants on Mouton's medical needs claim, the Court continued. Likewise it found that QI was not appropriate for them on his conditions of confinement claim, either, since he had "sufficiently alleged that the conditions in Tier II and the ACU posed 'an objectively substantial risk of serious harm.'"

In short, the extremely oppressive, vermin-infested and unsanitary conditions to which Mouton was allegedly subjected during his two-year stint in solitary confinement, if proven true, rose to the level of an Eighth Amendment violation. Citing the various audits, reports and other documentation regarding deficiencies in Tier II—including understaffing and numerous prisoner deaths—the Court found that Mouton had adequately alleged supervisory liability against prison administrators, who had "abundant notice" of those problems. Accordingly, the motion to dismiss was denied. *See: Martin v. Holt,* 2023 U.S. Dist. LEXIS 178351 (M.D. Ga.).

Mouton, who has since been released from prison, filed suit through Beverly B. Martin as his next friend due to his "mental and physical incapacitation." He is represented by attorneys Alison Ganem and Atteeyah Hollie with the Southern Center for Human Rights, along with Samantha Funt and Zack Greenamyre of Mitchell & Shapiro LLP, all in Atlanta. The case remains pending, and *PLN* will update developments as they are available. *See: Martin v. Holt,* USDC (M.D. Ga.), Case No. 5:23-cv-0004.

After Takeover from CoreCivic, Oklahoma Prison Even More Short-Staffed

Five days after the Oklahoma Department of Corrections (DOC) took over a state prison from private operator CoreCivic on October 1, 2023, a ceremony was held to rename the former Davis Correctional Facility. On the same day, October 6, 2023, a prisoner stabbed a guard at the medium-security facility now known as Allen Gamble Correctional Center (AGCC)—in memory of another guard fatally stabbed at another DOC lockup—underscoring violence that continues to plague the prison and the 1,600 men incarcerated there.

CoreCivic failed to maintain sufficient guard staff, which dwindled to just 161 before the takeover. Since then, staffing is down even more to just 106 guards, DOC said. Some couldn't pass the state background check, according to DOC spokeswoman Kay Thompson. But 28% of the prison's staff opted to stay with CoreCivic and transfer to another of its lockups. CoreCivic's hourly pay for guards starts at $22.10, significantly higher than the $20.46 rate offered by DOC.

Oklahoma Corrections Professionals director Bobby Cleveland called low staffing a "big mess" for his union members, with a dangerously low ratio of one guard for every 15 prisoners. By comparison, the Arkansas DOC's ratio is just 1:8. DOC boosted guard pay 30% in 2022, but Cleveland said another hike is clearly needed.

Ironically, state Sen. Roger Thompson (R-Okemah) said during the renaming ceremony that he was "thankful this facility is now becoming a safe facility."

"I'm thankful for our private partners," he said, "but as the state is able now to begin taking some of these facilities, I believe we can take them to the next level."

DOC released no information about the stabbing except that the unnamed guard was fine. State prisons are plagued not only by low staffing but also by drugs and gang tensions, according to Emily Shelton, founder of advocacy group Hooked on Justice.

"I fear every day that I will get a phone call telling me my loved one is dead," she said.

AGCC has recorded at least four fatal stabbings since January 2022, including three prisoners and a guard. Another 14 non-fatal stabbings were also logged in that period. The prison's new name honors a DOC guard fatally stabbed at Oklahoma State Reformatory in June 2000, when he responded to help another guard who was stabbed but survived.

Source: *The Oklahoman*

Missouri DOC Models Re-entry Program on Norwegian Prisons

Dressed in maroon shirts—not prison jumpsuits—three prisoners joined the "Dynamo" program at Missouri's Northeast Correctional Center in November 2023. That brought total enrollment to 17 since the state Department of Correction (DOC) launched the initiative in April 2023, modeling it after Norwegian prison efforts to focus on re-entry, rather than punishment.

For Dynamo prisoners, that means keeping keys to their housing unit and exercise yard, with no restrictions on its use except to maintain the grass. Moving freely to their prison jobs or the library—even the canteen—they also share use of a dayroom furnished with a sofa, TV, laundry and refrigerator, plus plants and an aquarium. The men are responsible for maintaining their own cells, whose bright colors enliven a corner of the sprawling gray prison. Warden Clay Stanton says, "In a sense, they run it."

"We took them out of a structured environment and put them in a responsible environment," he explained. "They are now responsible for all aspects of upkeep of the place."

Importantly, he reported no fights, drugs, overdoses or rules violations, things that are also rare in Norway's prisons. As Columbia University law and doctoral student Alia Hahra noted, "That is so not how American prisons are structured"—not least because the U.S. prison system "is more of a catch-all for a lot of social safety-net failures" that the Norwegian government doesn't tolerate.

"Living in prison shouldn't be the punishment," said former DOC Director Anne Precythe, who stepped down in December 2023. "Their civil liberties have been stripped, but we still have a responsibility to allow them to live a life. Ninety-five percent of these people are coming home to our communities. If we haven't prepared them for what that looks like, they will not be successful."

Dynamo participants are older than 50, reflecting a prerequisite 15 consecutive years of incarceration. They must also have no program failures in the last five years, no assaults on staff and they must complete 15 hours annually in restorative justice classes. There are 33 remaining slots open, for which Stanton has received 300 applications from DOC's 23,700 prisoners. A similar program has begun at Algoa Correctional Center, too. Missouri Prison Reform founder Lori Curry said, "[W]e hope they expand this and learn from it, learn that people change and are more than mistakes."

Source: *St. Louis Post-Dispatch*

New York Court of Appeals Lets DOCCS Skate from Liability for Doctor's Malpractice on State Prisoner

by Douglas Ankney

On December 14, 2023, the New York Court of Appeals refused to hold officials with the state Department of Corrections and Community Supervision (DOCCS) liable for malpractice committed on a state prisoner by Dr. Jun Wang. Why? Because Wang is an employee of private pathology group Cortland Pathology, which is not under contract to DOCCS, so he is not entitled to indemnification by the state.

The underlying facts unfolded after Omar J. Alvarez developed a mass in his right armpit while held at Auburn Correctional Facility in 2012. Pathologist Dr. R. Wayne Cotie, who was under contract with DOCCS to provide medical services to state prisoners, removed a biopsy specimen and sent it to the pathology department at Cortland Regional Medical Center (CRMC) for examination.

Cortland Pathology had an exclusive contract with CRMC to perform all pathology examinations. Wang, a member of Cortland Pathology and also Medical Director of CRMC's pathology department, examined the specimen and concluded it was benign. But about one year later, the prisoner was diagnosed with Hodgkin's lymphoma. Meanwhile he developed paraplegia from spinal cord compression attributable to the delayed Hodgkins diagnosis.

Alvarez brought a medical malpractice action against CRMC, which subsequently filed a third-party complaint against Wang and Cortland Pathology, seeking contribution and indemnification. Wang, in turn, sought "defense and indemnification from the State, asserting that he was entitled to coverage under Public Officers Law § 17 and Correction Law § 24-a because the alleged acts or omissions giving rise to the malpractice action arose from the treatment of an incarcerated person at the request of DOCCS."

New York Attorney General Letitia James (D) "declined to defend and indemnify [Wang]," as the Court later recalled, "opining that [Wang] treated the incarcerated individual pursuant to his employment arrangement with CRMC and that, in the absence of any contract or agreement directly between the State and [Wang] to treat incarcerated persons, the State had no statutory obligation to provide defense or indemnification."

Wang commenced a CPLR article 78 proceeding to annul James' determination. A judge in state supreme court denied Wang's petition and the Appellate Division affirmed the denial. The New York Court of Appeals granted Wang's motion for leave to appeal.

The Court observed that under § 17, "the State has the obligation to defend and indemnify its employees in actions arising out of the scope of their public employment." It added that "an 'employee' is defined as 'any person holding a position by election, appointment or employment in the service of the state … whether or not compensated.'" Importantly, the Court noted that the statute "expressly excludes independent contractors from coverage."

Moreover, under § 24-a, the provisions of § 17 apply to "any person holding a license to practice a profession … who is rendering or has rendered professional services authorized under such license while acting at the request of the department or a facility of the department in providing health care and treatment or professional consultation to incarcerated individuals of state correctional facilities."

The Court opined it was "fundamental" in interpreting these statutes to "attempt to effectuate the intent of the legislature." And "the clearest indicator of legislative intent is the statutory text," the Court continued, pointing to *People ex rel. E.S. v. Superintendent, Livingston Corr. Facility*, 40 NY3d 230 (2023). A statutory construction "which renders one part meaningless should be avoided," per *Matter of Anonymous v. Molik*, 32 NY3d 30 (2018). Also, because the statute in question was "in derogation of common law, it should be narrowly construed," as held in *Morris v. Snappy Car Rental*, 84 NY2d 21 (1994).

Wang agreed that he performed the pathological services as a result of his contract with CRMC, but he contended that "the statutory language should be read broadly to encompass ancillary professional services rendered as a necessary component of a medical procedure performed at DOCCS' request, such as the pathological services provided here." The Court rejected that interpretation as so expansive that it would render meaningless the statutory provision "at the request of the department."

Further, "[t]he interpretation urged by [Wang] would also expose the State to an undeterminable expansion of financial responsibility for independent professional contractors, as it would require coverage of healthcare professionals with whom the State has no connection and without the opportunity for the State to assess the level of risk presented by those providers."

Finally, the Court opined that its interpretation was supported by § 24-a's provision that the State's duty to defend and indemnify "shall not be construed to impair, alter, limit or modify the rights and obligations of any insurer under any policy of insurance." In the instant case, that would include Wang's medical malpractice insurer. Accordingly, the Court affirmed the order of the Appellate Division with costs. *See: Wang v. James*, 2023 Slip Op 06405 (NY 2023).

Trans Detainee Sues Over Housing With Men on Rikers Island

Transgender Rikers Island jail detainee Dylan "Ali" Miles sued the City of New York and its Department of Correction on August 24, 2023, alleging her civil rights were violated when she was housed with men for two months before an August 2022 transfer to stand trial in Arizona.

Filed in federal court for the Southern District of New York, the suit notes that Miles was "born with male genitalia" but "identifies as woman" and "is in the process of transitioning into a woman" via hormone therapy. After her arrest, a Legal Aid Society attorney noted she was transgender to a Bronx criminal court judge, who allegedly promised, "I'll mark that down."

But Miles was placed in a jail housing area with men, where one guard allegedly responded to her objections: "We don't do the trans thing here." Another guard conducted a strip search and reportedly told her: "Nice tits, and that's one hell of a pussy." She was then placed in a cell with a detainee who raped her, forcing her to cover the security camera with her own shirt. When she complained, she was placed in a protective custody cell, where another detainee forced his way inside and raped her again.

After making yet another complaint, she was returned to a cell with the same detainee, who threw boiling-hot liquid in her face, she said, leaving her with injuries and vision loss. However, jail medical staff did not treat her, she added, instead placing her in "an open cage/cell," where for the next three days she was "repeatedly peed on, spit on, and called a trans faggot" by fellow detainees in an adjacent cage.

Once in Arizona, Miles was convicted in October 2022 on charges including harassment and disorderly conduct and jailed for 312 days, followed by three years of supervised probation. With the aid of Manhattan attorney Peter Sverd, she then filed suit against New York City. It remains pending, and *PLN* will update developments as they are available. *See: Miles v. City of N.Y.*, USDC (S.D.N.Y.), Case No. 1:23-cv-07538.

Additional source: *Daily Mail*

Texas Bankruptcy Court Rejects Proposed Settlement of Prisoner Claims Against Corizon Health

On April 11, 2024, a Texas bankruptcy court rejected a proposed $54 million settlement that would have paid just a fraction of the hundreds of millions of dollars owed to prisoners who won judgments or secured settlement agreements from Corizon Health. Citing concerns about timely access to court documents for incarcerated claimants—many proceeding *pro se*—Judge Christopher M. Lopez of the U.S. Bankruptcy Court for the Southern District of Texas chastised lawyers at both tables before his bench for not knowing whether affected prisoners were "even aware that there is a settlement."

As *PLN* reported, Corizon Health executed a "Texas two-step": It first spun off its profitable ongoing prison and jail healthcare contracts into a new firm called YesCare, and it then shunted its liabilities onto a separate company called Tehum Care Services, Inc., which promptly filed for bankruptcy protection. The ploy almost worked, too, before an inappropriate relationship was revealed between the settlement mediator and a lawyer working for Corizon Health. [See: *PLN*, Jan. 2024, p.29.]

One Arizona prisoner claimant who objected to the proposed settlement, Anant Kumar Tripati, 69, sent copies of prison mail logs showing that there was no way he could have attended at least two hearings in the case because notices didn't arrive until just one or two days before they were scheduled. He was not alone, noted Corene Kendrick, deputy director of the American Civil Liberties Union's National Prison Project; she said that because prisoners have limited internet access, they are heavily reliant on the highly unreliable U.S. Postal Service, as well as a prison mail room run by guards who have little disincentive to slow-walk mail delivery to prisoners they deem too litigious.

"If they don't have information or can't access it or be informed about it, they can't really do anything to protect their interests," agreed Paul Wright, founder and Executive Director of *PLN*'s publisher, the nonprofit Human Rights Defense Center.

The Corizon Health/Tehum Care Services bankruptcy is not the first use of the "Texas Two-Step," but it is the first in which most claimants are incarcerated, putting them at a severe disadvantage in a notoriously complex legal proceeding. The volume of documents produced so far is staggering; Judge Lopez's most recent order was entry number 1,506 on the case docket. So other prison and jail healthcare providers are no doubt watching to see if the strategy succeeds in avoiding a significant share of the liability for providing negligent care.

Success in this case would provide "a blueprint for other contractors to do the same thing," agreed attorney Jackie Aranda Osorno of legal advocacy nonprofit Public Justice. Pointing to lucrative new contracts that YesCare has secured in Maryland and Kentucky, she added "that *pro se* creditors are not being driven just by a desire to seek justice for themselves, but also to hold Corizon accountable more generally." *See: In re Tehum Care Svcs., Inc.*, USBC (S.D. Tex.), Case No. 23-90086.

Former Maryland Prisoner's $770,000 Judgment in Jeopardy

One of those seeking dismissal of the bankruptcy is David Hall, 30, who won a judgment against Corizon Health in a Maryland court for a permanent wrist injury resulting from negligent medical care he received from a company doctor at Anne Arundel County's Ordnance Road Correctional Center in July 2016.

Corizon Health Dr. Luis Rivera-Ramirez "diagnosed Hall with a fractured wrist, gave him an Ace bandage, and told him that his wrist would 'self-heal,'" as the Appellate Court of Maryland later recalled. That didn't happen. After his release, Hall endured surgery that was too late to correct the problem, leaving him with just 70% of his wrist's upward range of motion and 10% of its downward range. He sued, eventually securing a $3 million jury award in October 2021, "which was reduced to $770,000 pursuant to the statutory limits," the Court noted, pointing to Md. Code Ann., Courts and Judicial Proceedings § 3-2A-09(b)(1).

Before the jury got the case, Hall had waived money damages for the injury itself and said he wanted to be compensated only for his associated pain and suffering—to which his medical bills were irrelevant. In closing statements, his attorney then asked the jury for $100 for every day that Hall would live with limited wrist mobility for the remainder of his life. Corizon Health objected to any suggested per diem without letting jurors see the bills, but that objection was overruled. The company then appealed.

On February 14, 2023, the Appellate Court said that the trial court's decision "will not be disturbed on appeal absent a clear abuse of discretion," citing *Sidbury v. State*, 414 Md. 180 (2010). Dismissing Corizon Health's objections, it noted that Maryland allows per diem arguments, pointing to *Giant Food Inc. v. Satterfield*, 90 Md. App. 660, (1992). The Court also said it was "unaware of any support for the proposition that Hall's per diem argument was beyond the 'great leeway' afforded to parties in their closing remarks," quoting *Cagle v. State*, 462 Md. 67 (2018). Furthermore, the Court had previously found "no relevance in the submission of a bill for services submitted by a physician to the severity of appellant's pain and suffering" in *Wright v. Hixon*, 42 Md. App. 448 (1979).

Corizon Health also argued that the jury should have received a cautionary instruction that the per diem request was not probative. But the Court rejected that argument, too, noting that it "made clear in *Giant Food* that a court may provide, on its initiative, a cautionary instruction," but only "when the trial judge 'deems it appropriate.'" Accordingly, the judgment was affirmed, though the case was remanded for the trial court to correctly record that it was entered against Dr. Rivera-Ramirez and not Corizon Health; the Court called that a "clerical error." Hall was represented by attorneys with Orshan Legal Group in Pikesville, including Yosef Orshan and Chris Vasiliades. *See: Rivera-Ramirez v. Hall*, 2023 Md. App. LEXIS 124.

Hall said that Tehum Care Services' proposed settlement would have left him with just about $5,000, which "is not even going to cover my medical bills." A cooperating Texas attorney working on his case recently forwarded an offer from a firm there to buy the debt for $3,550 in cash. Orshan marveled that the bankruptcy attorney "actually considered that good news"—an indication of just how dim the prospects look for Hall and other claimants to recover what they're owed.

"If they approve a settlement, they are forcing people to take whatever they give them, and that is not right," Hall said.

Additional Sources: *Baltimore Banner, Bloomberg Law*

Private Prison Transport Guards Sentenced to Prison for Raping Detainees

by Douglas Ankney

Two former guards with Inmate Services Corporation (ISC), a private contractor that provided prisoner transports across the U.S., have been sentenced to federal prison for raping detainees in their charge. Marquet Johnson, 45, was sentenced on April 16, 2024, to 30 years in federal prison followed by five years of supervised release; he must also register as a sex offender. Fellow ISC guard Rogeric Hankins, then 37, was sentenced on July 11, 2023, to nine years in prison and three years of supervised release.

ISC provided transport for individuals arrested on out-of-state warrants. Hankins drove his ISC van to the jail in Olympia, Washington, on March 31, 2020, to transport detainee Jennifer Seelig to another lockup in St. Paul, Minnesota. En route, he parked at a Missouri rest stop on April 3, 2020, to let the detainee use the restroom. When she finished, Hankins took Seelig into the men's restroom and began forcing her shirt up. The detainee tried to resist, but Hankins forced her to "perform a sexual act on him," according to his plea agreement, before he "bent the victim over a toilet and raped her."

Johnson admitted raping other detainees he bent over rest stop toilets—nine of them in about as many months on the job. Afterward, he stalked his victims by email. While transporting "K.N.M." from Indiana to the jail in Texas' Hays County in July 2019, he stopped at ISC headquarters in West Memphis, Arkansas, and forced the pretrial detainee to perform oral sex on him. He also admitted raping another pretrial detainee named "P.B." in August 2019, en route from a jail in Oregon's Baker County to Missouri's Johnson County Jail; after successfully drafting his partner guard to pilot another van, Johnson took the detainee to a Super 8 motel and raped her, forcing her the next day to perform oral sex on him in the front passenger seat of the van after he pulled onto a secluded gravel road.

Another detainee, "T.L.P.," said he raped her on a trip from New Mexico to Colorado in November 2019. The assault happened in the back seat of the transport van that he had parked to let the other guard on duty fetch a snack; holding his gun against her cheek, he threatened things could "get ugly" if she didn't submit to his sexual demands. He was caught when she tricked him into thinking she had washed up afterward, but she actually preserved evidence of the assault. In addition to his admitted victims, another six detainees have accused Johnson of raping them, too. *See: United States v. Johnson*, USDC (D.N.M.), Case No. 1:23-cr-00092.

The Interstate Transportation of Dangerous Criminals Act (also known as Jeanna's Act) is the only federal law providing guidelines or standards for the private industry of transporting prisoners. Passed in 2000, it was a response to the escape of the killer of 11-year-old Jeanna North of Fargo, N.D., from a private prisoner transport company. The law is primarily aimed at preventing prisoner escapes, but it also provides for background checks of guards, including fingerprinting, a minimum 100 hours of training, a female guard for female detainees and specialized training in the area of sexual assault.

But former ISC guards Leila Brown and Christina Hall said none of that happened. Each received about 30 minutes of training "focused only on how to shackle an inmate and spray them with pepper spray in the back of the van if they would not comply with orders." Neither was fingerprinted. There were no background checks. Brown had no prior law enforcement or corrections experience at all. She also said that her former transport partner, Marius Nesby, bragged that he and a prior partner "indulged in sexual favors from female inmates."

Multiple Lawsuits Filed

Nesby and ISC were sued by Wisconsin detainee Sheenah Arenz, whom the guard groped repeatedly during a transport from Arizona. He was reportedly convicted later of sexually assaulting another detainee in the bathroom of an Illinois rest stop, which perhaps explains why he didn't show up to defend himself in Arenz's suit; she won a default judgment of $152,482 at the federal court for the Eastern District of Wisconsin on January 10, 2022. *See: Arenz v. Inmate Servs. Corp.*, 2022 U.S. Dist. LEXIS 4141 (E.D. Wis.).

New Mexico attorney Laura Schauer Ives is representing "T.L.P." in a suit for damages over her sexual assault. She won a $3 million default judgment against Johnson on October 25, 2023, in state court for Bernalillo County; however, it is unclear how she will collect from the now-incarcerated former guard. The case is still proceeding against ISC founder

and former owner Randy Cagle. *See: T.L.P. v. Inmate Svcs. Corp.*, N.M. 2nd Jud. Dist. (Cty. of Bernalillo), Case No. D-202-CV-2022-02122.

Another of Johnson's victims, Danielle Sivels, is represented in a separate suit by St. Paul attorneys Megan Curtis and Paul Applebaum, with co-counsel from Kaplan & Grady LLC in Chicago. On a 2015 extradition from Texas for violating her Minnesota probation, Sivels recalled sitting behind the guard as he drove and pulled her arms around his waist, leaving her hand resting on his holstered gun. A fellow guard in the passenger seat looked alarmed, she recalled, but didn't intervene. She was then forced, handcuffed and at gunpoint, to perform oral sex on Johnson in another rest stop bathroom stall. But she hesitated to report it because she thought Johnson was law enforcement and she wouldn't be believed. *See: Sivels v. Ramsey Cty.*, USDC (D. Minn.), Case No. 0:23-cv-00894.

ISC, which was based in Arkansas, has reportedly ceased operations. However, the firm agreed in federal court there in September 2023 to pay almost $1 million to settle claims by Colorado detainee Danzel Stearns; as *PLN* reported, his extradition to Mississippi should have taken 17 hours but instead stretched to nine "hellish" days, all while he was shackled in a seat with just a few stops for food or bathroom breaks. [See: *PLN*, Feb. 2024, p.60.]

Hankins, now 38, is being held by the federal Bureau of Prisons (BOP) at the Federal Correctional Institution in Seagoville, Texas. Johnson was not yet in BOP custody as of early May 2024. Asked about the convictions, Cagle told a Minneapolis TV reporter to "go fuck yourself." However, as Assistant U.S. Attorney General Kristen Clarke said after Hankins' conviction, "The privatization of positions in law enforcement does not change the fact that these individuals can and must be held accountable when they violate our civil rights laws."

Additional sources*: CBS News, KARE, KOB, Minneapolis Star Tribune*

Vermont Court Orders Centurion to Cough Up Records in HRDC Suit

by Matt Clarke

On November 7, 2023, a Vermont court ruled in favor of the Human Rights Defense Center (HRDC), publisher of *PLN* and *Criminal Legal News*, in its request for records from Centurion of Vermont related to its contract to provide medical, dental and mental health care to prisoners of the state Department of Corrections (DOC) between 2015 and 2020.

Pursuant to the Vermont Public Records Act (PRA), 1 V.S.A. subchapter 3, HRDC requested that Centurion disclose records related to any legal claims that resulted in expenditures of $1,000 or more. Centurion responded that it was not subject to the PRA. Aided by Burlington attorney Robert Appeal and in-house counsel, HRDC sued Centurion for disclosure.

The parties filed cross-motions for summary judgment. Centurion alleged it was not subject to PRA, and if it was, the records were not public records, and, if they were, the records were exempt from disclosure pursuant to 1 V.S.A. § 317(c).

But the Court found controlling the decision in *Hum. Rights Def. Ctr. v. Correct Care Sols., LLC,* 263 A.3d 1260 (Vt. 2021), agreeing with the nonprofit that Centurion's contract with DOC made it an "instrumentality" of the state and subject to PRA. Having picked the low-hanging fruit of PRA's application, the Court moved on to a thornier issue not decided in the earlier case, the extent to which the requested records are "public records" subject to disclosure.

The Court noted that HRDC's disclosure request was so broad that it could cover records not related to Centurion's contract with DOC. However, under PRA's broad definition of "public record," the records requested that are related to the DOC contract are public records, the Court said. It rejected Centurion's position that the records involved only its private business interests because the state had no control over how it handled its litigation,

"If, for example, Centurion provided such care to a prisoner who later came to believe that the care was negligent and sued Centurion, the Court is hard-pressed to see how related records would not reflect on the very government business undertaken by Centurion," the Court wrote. "The point is not that any such lawsuit had merit or that any decision to settle means that there was merit, but by directly arising out of the governmental undertaking delegated to Centurion, such records plainly would reflect government, rather than purely private, business."

For requested documents that were confidential settlements—the focus of the case—the Court held that they also were not exempt "by law" pursuant to 1 V.S.A. § 317(c)(1), since a secrecy agreement is not a law. The records were also not exempt pursuant to 1 V.S.A. § 317(c)(7) for containing potentially harmful personal information, the Court said, since no such examples of potentially harmful personal information were presented, and such information could be redacted by Centurion anyway.

The court ordered HRDC to clarify the scope of its records request and ordered Centurion then to produce the records, creating an index of any withheld, pursuant to *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). Centurion was also ordered to notify any third parties to confidentiality agreements that were part of the requested records of the potential disclosure so they could have an opportunity to intervene in the lawsuit. *See: Hum. Rights Defense Ctr. v. Centurion of Vt. LLC,* 2023 Vt. Super. LEXIS 170.

Michigan Makes Voting Rights Restoration Automatic for Prisoners at Release

On November 30, 2023, Michigan Gov. Gretchen Whitmir (D) signed HB 4983, a measure that makes voter registration automatic for state prisoners upon release. With that, the state became the first in the nation to make voter registration the default option for some 8,000 prisoners that it releases every year, though they may opt out if they wish.

The state has provided prisoners at release with the option to register since 2020, part of a program to supply them a state driver's license or I.D. Driver's license offices have also registered thousands of other state residents when they obtain, update or renew a license or state I.D. since 2018, after a ballot initiative passed that year, Proposal 3.

The new law adds the state Department of Corrections (DOC) to the list of state agencies making automatic registrations, as well as Tribal Governments that are authorized to issue I.D.s and the state Medicaid program. Ben Gardner, who is state campaign manager for All Voting Is Local, called the 2018 ballot measure "a huge step" that nevertheless left out "a lot of people" who weren't transacting with a driver's license office—hence the new bill and its push "to reach people where they're at."

"We wanted to include more than just driver's licenses so that we could really get people registered any time they're interacting with our government," agreed the bill's sponsor, state Rep. Penelope Tsernoglou (D), whose 75th District sits outside Lansing.

Michigan is able to make the change because it's one of 24 states allowing prisoners to have voting rights restored upon release, without any other conditions. But Erica Peresman, an attorney with Promote the Vote, said many released prisoners refused the option because they were "afraid of doing something wrong."

"We'd be out there at voter registration drives and people would say, 'no, I have a felony on my record,'" she recalled. "They didn't want to get in trouble, and they weren't necessarily going to listen to some lady standing on the street with a clipboard."

The new law also changes the way voter registration is handled for everyone else, putting opting out on the "back end" of the process by automatically registering people to vote and sending them notice by mail that includes instructions to opt-out then if they choose. It's a model tried in Colorado, where data shows it keeps more voters on the rolls.

Tsernoglou also sponsored HB 4534, a companion bill that would obligate DOC to educate prisoners at release about upcoming elections and voting by mail. Though it did not pass, she said it "would be a prime example of something we could do additionally, next year."

Another example would be helping released prisoners obtain a stable address. Percy Glover, who founded F.A.I.R. Voting Alliance after his release in 2004, said the state needs to do more to help released prisoners find not only housing but also jobs.

"Finding somewhere to live, having transportation, having basic needs met—that's the priority" for newly released prisoners, he said, so "we won't see significant turnout, as we should, without all these other layers."

Additional source: *Bolts Magazine*

BOP Has a Halfway House Problem

The Federal Bureau of Prisons (BOP) has faced challenges in implementing the First Step Act (FSA) since it was signed into law in December 2018 by then-President Donald J. Trump (R). Aimed at reducing prisoner population and associated costs, the law provided sentence credits earned with good behavior, enabling earlier release to halfway houses or home confinement. But by the end of 2023, the primary issue remaining was lack of halfway-house room for those who have earned enough credits to begin the release process. As a result, many release-eligible prisoners remain locked up.

BOP is struggling to meet demand for space at halfway houses, which play a crucial role in prepping prisoners for transition back into society, as it has exploded under FSA. That has left thousands of prisoners in their cells longer than intended. It took five years after FSA was enacted before BOP said it had finally solved seemingly intractable delays in the law's implementation—first with an inability to calculate earned credits and then with changing rules on credit acquisition—only to run face-first into a crushing lack of halfway house space.

One potential solution: the Federal Location Monitoring (FLM) program, which allows minimum-security prisoners to be monitored on home confinement by U.S. Probation rather than in halfway houses. The program is underutilized, however, with only a small percentage of eligible prisoners participating.

BOP's challenges with halfway houses extend beyond capacity issues, involving zoning difficulties, too. Attempts to open a halfway house in Hawaii have been unsuccessful, and delays persist in opening a new facility in Washington, D.C. Dana DiGiacomo, Administrator of BOP's Residential Reentry Management Branch, said the lack of room has led to a "90-day projection of 99% utilization" of available space.

The situation is unfair to prisoners and taxpayers, too, who are stuck with the financial burden of keeping prisoners celled. With expiration of the Elderly Offender Pilot Program in 2023, older prisoners with specific needs now also stay locked up longer than necessary. Expanding FLM could offer a viable and cost-effective alternative, but cooperation from federal courts is needed in order for it to succeed.

Source: *Forbes*

Other Jails Study Miami Diversion Program to Keep Mentally Ill from Repeated Incarceration

Faced with repeated jail admissions of people suffering from schizophrenia and other serious mental illnesses (SMI), the city of Miami has developed one of the nation's most comprehensive diversion programs, focusing on treatment and community integration rather than incarceration for those charged with misdemeanors or low-level felonies. The brainchild of state Circuit Court Judge Steve Leifman, it is being studied by other jurisdictions, including North Carolina, where Leifman traveled in October 2023 to meet with state Supreme Court Chief Justice Paul Newby and officials with the North Carolina Department of Health.

Approximately 1.7 million people with SMI cycle in and out of U.S. jails every year—that is, if they aren't killed before getting out. Suicide, drug overdoses and fatal beatings by violent guards take their toll in local lockups, where the rate of SMI is four to six times higher than in the general population. Leifman's program is the result of his decades-long mission to restructure the way the county's criminal justice system handles mental illness.

Defendants sent to diversion must follow a strict treatment plan, including therapy, 12-step meetings and regular court check-ins. Participants are shepherded by a team that includes a court case manager and a peer specialist who has conquered his or her own mental health challenges. The team helps participants secure food, clothing and housing, offering assistance in applying for benefits and enrolling in vocational rehabilitation, so that they can find work and pay for their own care and support.

Team leader Alejandro Aristizabal says three-quarters of those who complete the program will not get re-arrested within the next year. The court will stop monitoring participants after they finish the program and graduate, but to provide a safety net, they can remain connected to treatment and services indefinitely. Alretha Toombs, 61, had been booked into the Miami jail over 70 times in 40 years for low-level offenses connected to crack cocaine addiction. The diversion program has helped Toombs conquer her addiction and given her stability through medication, housing and job assistance.

The success of Miami's approach lies in its multifaceted support system, which not only diverts individuals from incarceration but also provides essential resources for their rehabilitation. Despite its success, securing consistent funding is a challenge. Leifman says political will and steadfast leadership are required to keep pushing reform forward in a system that usually comes up short in its treatment of mentally ill defendants.

Source: *PBS Frontline*

Los Angeles County Makes Jail Phone Calls Free

On December 1, 2023, phone calls became free for detainees and prisoners in Los Angeles County jails. The county's Board of Supervisors voted 5-0 on November 22, 2023, to amend the existing phone service contract with ViaPath Technologies—formerly Global Tel*Link (GTL)—to shift the cost of calls from the county's approximately 12,000 detainees and their families to the jail system's Inmate Welfare Fund (IFW).

When the Board first voted to study the idea in 2021, audits revealed that GTL kickbacks dumped about $15 million annually into the IFW. Along with profits from detainee commissary purchases, the fund balance grew to $32 million, use of which is limited by state law to goods and services provided for the benefit and education of detainees.

The county Sheriff's Department (LASD) taps the IFW for about $9 to $20 million each year for programming and another $5 to $14 million for facility maintenance. Under the revised ViaPath contract, up to $12.9 million will now come from the fund for calls. But since the county is losing the kickbacks, the hit on its budget is expected to be twice that amount.

The contract provides that the county will be billed no more than 4.2 cents per minute for calls, the rate that kicks in when total call volume falls under 9.5 million minutes. The minimum charge is 2.8 cents per minute if total monthly volume is at least 22.9 million minutes. A few hundred youth detainees in the county Probation Department also get free calls under the plan.

The nonprofit Prison Policy Initiative estimates that the average charge for a 15-minute call in a U.S. jail is about $3, though California's average is closer to $2. That's still a big hit for families bringing in just $576 a week, which is the federal poverty level for a household of four. That's why a lawsuit filed in state court in April 2023 accused the county of charging "extortionate and outrageous prices" for calls and commissary items in jails.

That suit, filed by attorneys with Rafkin & Assoc. LLP in Marina del Ray and McLane, Bednarski & Litt, LLP in Pasadena, demands a refund for a class of detainees held at the jail over the past two years for calls costs and commissary profits they paid—an amount the lawyers estimate in the tens of millions. The suit remains pending. *See: Johnson v. Cty. of Los Angeles*, Cal. Super. (Cty. of Los Angeles), Case No. 23STCV07316.

A 15-minute call at the jail could now cost the county as much as 63 cents, quite a bit more than the 37.5 cents that the state Department of Corrections and Rehabilitation pays since lawmakers made calls free for state prisoners in September 2022, as *PLN* reported. [See: *PLN*, Apr. 2023, p.43.]

In a statement, the office of Sheriff Robert Luna said that LASD "anticipate[s] that free phone calls will increase the communication between inmates and their families, which can aid in rehabilitation, strengthen relationships and assist in a smoother transition when the inmate is released from custody." But the statement also cited unspecified "concerns about the implementation details of this program."

Additional source: *Los Angeles Times*

Louisiana Fights Federal Court Order to Remedy "Callous and Wanton Disregard" for Angola Prisoners' Healthcare

by David M. Reutter

On November 6, 2023, the U.S. District Court for the Middle District of Louisiana issued a Remedial Order (RO) to correct unconstitutional healthcare at Louisiana State Prison in Angola. In a companion opinion, the Court found the state Department of Public Safety and Corrections (DPSC) did not provide Angola prisoners "care at all, but abhorrent and unusual punishment that violates the United States Constitution."

But rather than use the state's resources to address the deficiencies, DPSC is spending even more in attorney's fees on a trip to the U.S. Court of Appeals for the Fifth Circuit, which agreed to hear the case and stayed the RO on March 6, 2024. *See: Parker v. Hooper*, 2024 U.S. App. LEXIS 5445 (5th Cir.).

The state's decision is sadly predictable. Over 26 years have passed since the U.S. Department of Justice (DOJ) found in 1989 that DPSC failed to provide adequate medical and psychiatric care to Angola prisoners. A 1992 class-action lawsuit that DOJ joined attempted to address provision of healthcare. But a 2009 report ordered from consulting prison healthcare giant Wexford Health Sources still "found multiple medical care deficiencies." The district court said "the human cost" of DPSC's long delay was "unspeakable."

Though its RO was stayed, the district court's opinion is noteworthy for summarizing 11 cases of "callous and wanton disregard" for prisoner healthcare at Angola. One prisoner waited three months for a CT scan that was ordered after an X-ray revealed a suspected malignancy. The scan confirmed a lesion, but another four-month delay ensued before a pulmonologist ordered a biopsy—which never occurred. Over a year after the x-ray, the prisoner had surgery for partial removal of the cancerous lung. But chemotherapy was delayed, and the prisoner died.

Another prisoner "complained of chest pain for more than 16 months" before he saw a thoracic surgeon, who ordered a biopsy of a pulmonary nodule. "When finally performed, the biopsy revealed adenocarcinoma of the lung," the district court recalled, adding: "The patient died a week later." Yet another prisoner "underwent a colectomy due to untreated Chron's disease." Prison officials "failed to refer him to a gastroenterologist, failed to provide indicated immunosuppressive therapy, and failed to perform to adequate physical examinations." In what became a familiar coda, the district court noted: "The patient died."

Then there was a 65-year-old prisoner whose medical history included diabetes, severe coronary artery disease and heart failure. He showed up in the prison infirmary "with fevers as high as 103.6 degrees, altered mental state, and complaints of chest tightness." Yet he was locked down and not seen by a doctor for three days. Two days after returning to his cell, he was found vomiting. But medical staffers ordered emergency responders not to transport him to a hospital. The result: "He died in his cell the next day."

After a liability trial in the current class-action, which was filed in 2015, Angola was found to provide constitutionally inadequate clinical, specialty, emergency and infirmary care, as well as deficient medical leadership and organization. The district court further found constitutional violations in provision of care for prisoners with disabilities. Settlement negotiations failed, so a remedy phase trial was held. That resulted in the RO, under which three Special Masters were to be appointed: one physician, one nurse or nurse practitioner, and someone with "knowledge and expertise in handicap and disability access and accommodations." After that, Defendants would have 120 days to submit a proposed Remedial Plan for each area of deficiency. But DPSC's appeal has stayed that.

"Everything we found when we began investigating this case more than six years ago was occurring against the backdrop of Angola's brutal history of slavery and convict leasing," said Mercedes Montagnes, one of Plaintiffs' attorneys. "People were being forced out into the fields and into factories to work and were not being treated for their injuries and heat stroke. Men risk their lives at the prison rodeo every year, which generates millions of dollars in profits for the prison, and were not being treated for their broken bones. People were dying prematurely from treatable cancers."

Noting that Louisiana "has the highest percentage of its prison population serving life without the possibility of parole sentences in the United States," Nishi Kumar, another attorney representing Plaintiffs,

said that the age of Angola prisoners keeps rising "but the state has not appropriately changed its medical care to meet the consequences of its incarceration policies." Kumar called on Louisiana to "start paying to meet the constitutional standard for medical care and disability access, or start looking for mechanisms to release older prisoners who pose no risk to the public."

The prisoner class is zealously represented by attorneys from Promise of Justice Initiative in New Orleans, Cohen Milstein Sellers & Toll PLLC in New York City, Democracy Forward in Washington, D.C., Defend Louisiana, Disability Rights Louisiana, the American Civil Liberties Union of Louisiana and the Southern Poverty Law Center. *PLN* will update developments as they are available. *See: Lewis v. Cain,* USDC, (M.D. La.), Case No. 3:15-cv-00318.

Dixie Prison Growth Drives Number of Incarcerated Americans Above 2 Million Once Again

After two years of decline driven by the COVID-19 pandemic, the number of Americans held in federal and state prisons at the end of 2022 jumped 2% to a total of 1,230,143, according to a November 2023 report by the federal Bureau of Justice Statistics (BJS).

Covering both state and federal prison systems, the report also highlighted a remarkable geographic divide: The 11 states of the former confederacy accounted for 16,969 of those additional prisoners, representing two-thirds of all U.S. prison population growth. The remaining 39 states, by contrast, collectively added only 8,087 prisoners, or fewer than half as many.

Of those 11 former slave-holding states, only Virginia showed a reduction in its prison population. Within the group, almost all combined prison population growth—15,201 additional prisoners—occurred in the five states abutting the Gulf of Mexico: Florida, Alabama, Mississippi, Louisiana and Texas.

Texas continued to hold the most prisoners and Florida third-most, behind California. Populations in all state prison systems together grew by 2%, while the federal Bureau of Prisons (BOP) saw its prisoner count rise just 1%. At 12.9%, BOP's share of the country's total imprisoned population was a full 1% lower than it was in 2013.

The increase in prisoners followed eight consecutive years of declines. Still the total remains 21.7% below 2013's level. The number of men in prison is about 13 times higher than the number of women, but the latter number grew much more—4.9%, compared to 1.9% growth in the number of imprisoned men. *See: Prisoners in 2022—Statistical Tables*, BJS (Nov. 2023).

Another 663,100 in Jails

In a separate report released the following month, BJS estimated there were 663,100 people held in jails in the U.S. at the end of June 2022. That represented a 4% jump from the prior year. It also meant that 72% of the country's estimated 915,000 jail beds were occupied, down from an 85% occupancy rate 10 years earlier, when jails held 744,500 people.

As in prisons, the rate of jail population growth was higher for women than for men—9% v. 3%. The two groups were somewhat closer in size than in prison, too, with men outnumbering women 6 to 1.

The racial and ethnic composition of jail populations remained stable, the report said, with 48% white, 35% Black and 14% Hispanic. But the number aged 17 and under fell to 1,900, down from 5,400 in 2012.

Over the preceding year, jails held detainees an average of 32 days. That length of stay has been climbing since at least 2012, when the average jail stay was less than 25 days. That's particularly alarming, given that the share of those in jail who have not been convicted and are awaiting trial rose to 70%, compared to 67% in 2012. Of the total population in U.S. jails, the number of probation violators fell, while the number of parole violators rose. *See: Jail Inmates in 2022—Statistical Tables*, BJS (Dec. 2023).

Other Detention Facilities

That's a total of 1,893,243 Americans held in the 1,566 state prisons, 98 federal prisons and 3,116 local jails counted by the nonprofit Prison Policy Initiative (PPI) in March 2023. But PPI also counted over 100,000 more people detained in 1,323 juvenile lockups, 181 immigration detention centers, 80 Indian country jails, plus military prisons, civil commitment centers, state psychiatric hospitals and U.S. territorial prisons. That pushed the number of incarcerated Americans above 2 million, where it was before the COVID-19 pandemic slowed down courts and new admissions.

Additional source: Prison Policy Initiative

HRDC Files Suit for Exonerated Florida Prisoner Wrongfully Incarcerated Over 44 Years

On April 17, 2024, the nonprofit Human Rights Defense Center—which publishes *PLN* and *Criminal Legal News*—filed suit in federal court for the Middle District of Florida on behalf of Willie Williams, Jr., 79, seeking redress for over 44 years he spent wrongfully incarcerated for armed robbery and attempted murder based on a misidentification made under police hypnosis. Williams, who was paroled in 2020, spent another three years under state supervision before the state's Fourth Judicial District Conviction Integrity Review (CIR) unit discovered both the spurious identification and that police had destroyed evidence of the hypnosis session used to obtain it.

Williams was 31 on October 8, 1975, when he was a passenger in his own car—his license had been suspended—being driven by acquaintance Alfred Mitchell, 30. Unbeknownst to Williams as he waited in the car's passenger seat outside the Wesconnett Produce Store in Jacksonville, Mitchell went inside and robbed shop owner Katherine Farrah, 35, and a customer, David Phillips, 28, shooting each three times.

Based on the account of eyewitness Robert West, who was some 150 feet away from the store at the time, Jacksonville cops chased a green Buick as it sped away with two Black men inside, sideswiping another vehicle. Understandably alarmed, Williams demanded that Mitchell tell him what had happened in the shop, to which came this reply: "I just killed two people. Don't you be the third one."

When the car hit a second vehicle, Williams jumped out and ran. Police tracked and apprehended him nearby. Officers also tracked the vehicle as it hit a curb and stopped, and Mitchell ran into a nearby home and fatally shot himself. The gun he used, a black revolver, was one of two recovered; the other, a chrome-plated handgun found under the driver's seat in the Buick, was later matched to the bullets that wounded Farrah and Phillips. It was also matched to the bullet in a fatal shooting during a robbery two weeks earlier at Palm Furniture store. Mitchell's clothing, West recalled, matched the man's he had seen enter the store and drive away.

Nevertheless, detectives focused on Williams as the shooter, accusing him of stripping off the shirt that West recalled to explain that inconsistency. Farrah's wounds left her eyesight diminished, and Phillips also failed to identify Williams as the shooter. But one of the detectives on the case, Lt. Bryant R. Mickler, hypnotized him to make the identification. Evidence of the hypnosis session was then destroyed before cops called Phillips back to review the lineup of suspects one more time; predictably, he chose the man he'd been hypnotized to select.

Mitchell's sister-in-law reported that he confessed to the murder at the furniture store during a robbery to fuel his $200-a-day drug habit; she also said he had vowed not to go back to prison. But Williams' defense was not permitted to tell the jury any of this. Based largely on Phillip's testimony—even though it contradicted West's testimony—Williams was convicted in February 1976 of two counts of armed robbery and attempted murder. He received a ridiculously severe sentence for the crime: life in prison. A state appellate court upheld the conviction and sentence the following year.

After Mitchell's June 2020 release on parole, the Fourth Judicial District CIR unit—which was established by State Attorney Melissa Nelson—agreed to look into his case. CIR chief Shelly Thibodeau discovered that Phillips had been subjected to hypnosis, which the complaint notes is widely derided as "junk science." A petition to vacate Williams' convictions was granted on January 3, 2024. Nelson's office then dropped all charges against him.

The suit filed on Williams' behalf alleges his civil rights were violated by Jacksonville and Duvall County, as well as its police Dets. Charles D. Ritchey, W.J. Mooneyham, J.R. Starling and Hugh Fletcher. The estates of deceased Dets. Mickler and James Geisenburg are also named defendants. Williams is ably represented by attorneys with Loevy and Lovey in Chicago, including Jon Loevy and Lauren Carbajal, as well as HRDC in-house counsel Joshua Martin. Williams' advanced age adds urgency to the case; as HRDC founder and Executive Director Paul Wright said, "Now, I think is the time to call on the folks of the city government of Jacksonville to right this wrong." *See: Williams v. Ritchey*, USDC (M.D. Fla.), Case No. 3:24-cv-00367.

Additional sources: *Florida Times-Union*, National Registry of Exonerations, *WJAX*

Virginia Sheriff Sued After "Catfishing" Deputy Kills Family of California Teen Victim

A lawsuit filed on November 26, 2023, lays out the bizarre story of a Virginia Sheriff's deputy who "catfished" a California teen and murdered her family before abducting her and then turning his gun on himself as police closed in.

Austin Lee Edwards was a Virginia State Trooper near Richmond before resigning to become a deputy of Washington County Sheriff Blake Andis—300 miles away in the small town of Abingdon—on November 16, 2022. Nine days later, the 28-year-old drove 2,275 miles across the country to the Southern California home of a 15-year-old he had allegedly been "catfishing" over the internet by pretending to be a 17-year-old boy.

In the suit filed in federal court in the Central District of California, Mychelle Blandin, the aunt of the young victim, "B.W.," recalled that Edwards pretended to be a police detective in order to gain entry into the Riverside home shared by the girl and her mom, Brooke Winek, 38, who was Blandin's sister, as well as their parents, Mark Winek, 69, and Sharie Winek, 65. A neighbor who saw the girl leave with Edwards grew suspicious and called the cops.

They arrived and found the three Wineks shot dead inside the home. A nearby home was on fire. The neighbor provided a description of Edward's vehicle, which police tracked to San Bernardino County, almost 180 miles away. There Edwards allegedly opened fire on them and then fatally shot himself. The girl was unharmed.

Blandin's suit accuses Sheriff Andis of negligence in Edwards' hiring, noting a 2016 court order restricting Edwards' access to firearms after he cut himself and threatened to kill his father. That prompted state police to order a mental health evaluation, but a review of Edwards' hiring by the state inspector general confirmed that those evaluation results were missed.

Edwards' estate was also named a defendant, but no representative responded to the suit; the Court entered default judgment against it for Blandin on March 26, 2024. Plaintiffs are represented by attorney Alison P. Saros of Saros Law APC in El Segundo, with co-counsel from Taylor and Ring LLP in Manhattan Beach. *See: Blandin v. Washington Cty. Sheriff's Office*, USDC (C.D. Calif.), Case No. 5:23-cv-02344.

Additional sources: *The Guardian, KKTV, NPR News, WRIC*

Two Sentenced in Detainee's Fentanyl Death at North Florida Jail

Two detainees at Florida's Okaloosa County Jail were sentenced to federal prison on April 5, 2024, for smuggling fentanyl into the lockup and providing it to a detainee, who overdosed and died on Christmas Eve 2022. Gary Chase, 30, and Joshua Gervais, 28, were sentenced to 30 and 14 years, respectively, after pleading guilty to distributing fentanyl that resulted in death of another. Each was also ordered to serve three years of supervised release.

Chase had been arrested on December 22, 2022, for allegedly menacing a woman with a gun. Gervais' arrest six days earlier was for allegedly causing an auto accident that resulted in property damage and fleeing the scene. The office of county Sheriff Eric Aden also did not release the overdose victim's name. However, a jail booking was recorded on December 23, 2022, for a probation violation by Nicholas Leeray Hughley, 22, and an obituary said he died the following day.

More troubling than the lack of details from the sheriff was that the death was one of five recorded at the 594-bed lockup in just over three months, including fatalities of other unnamed detainees on October 19 and December 19, 2022, as well as January 17 and 21, 2023. Even more troubling: One of those, Jose Raymond Sanchez's death on January 17, 2023, was also blamed on a fatal fentanyl overdose—a month after the one attributed to contraband drugs traced back to Chase and Gervais.

"I'm just puzzled to the fact I just don't know how those drugs are getting in there," said Sanchez's mother, Jackie Brazzell. "Was there going to be an arrest for the drugs that they found in Jose's system and how did Jose get the drugs?"

The county called the deaths "unfortunate," but noted that the jail has full-time nurses and health-care professionals on staff, plus guards "continually take steps in suicide prevention and work tirelessly to eliminate illegal drug use and trafficking within the jail."

The last victim was identified by a friend as Zac Jernigan, 42. "There are some rules and regulations that need to be changed if we have five people dying in six months," said that friend, Paul Collingwood.

Acknowledging that the current lockup is overcrowded—and also facing floods and sinkholes—the county Board of Commissioners formed a team on January 16, 2024, to scout potential new jail locations, one month after the previously selected site was soundly rejected by neighboring landowners.

Sources: *Foster Folly News, Get the Coast, WEAR, WKRG*

Seventh Circuit: *Heck* Bars Civil Rights Challenges to Civil Commitment

by Matthew T. Clarke

On December 20, 2023, the U.S. Court of Appeals for the Seventh Circuit held that an Illinois prisoner's challenge to civil commitment as a sexually violent person after release cannot be raised under 42 U.S.C. § 1983, unless the underlying civil commitment is first terminated in his favor or shown to be invalid "through another outlet." The ruling extended application of the principal laid out in *Heck v. Humphrey*, 512 U.S. 477 (1994), that a civil rights challenge to prison disciplinary action is barred whenever a favorable ruling for the prisoner would necessarily imply that it was invalid.

After serving his eight-year Illinois state sentence for sexual assault, Timothy Bell was civilly committed under the state's Sexually Violent Persons Commitment Act (SVPCA), 725 ILCS §§ 207/1 - 207/99. Pursuant to that law, he remained incarcerated in an Illinois prison for another 16 years.

Bell filed a *pro se* federal civil rights action against state Attorney General Kwame Raoul (D) and the assistant attorney general who conducted his commitment proceedings. Proceeding pursuant to 42 U.S.C. § 1983, he challenged his continued incarceration for exceeding an alleged 15-year statutory cap. But during screening pursuant to 28 U.S.C. § 1915(e)(2)(b), the district court concluded that *Heck* barred the claim. Bell appealed.

The Seventh Circuit began by noting that Bell had been released from detention to home confinement during the pendency of his appeal. But it held that the change in Bell's status did not affect his suit, since he "remains in the state's SVPCA program despite being recently released to home confinement," which the Court called "a form of state custody" per 725 ILCS 207/40(b)(4).

Agreeing then with the district court, the Seventh Circuit held that *Heck* applied, barring Bell's claim. The Court noted that every other circuit to address the issue had ruled similarly, pointing to *Huftile v. Micco-Fonseca*, 410 F.3d 1136 (9th Cir. 2005); *Thomas v. Eschen,* 928 F.3d 711 (8th Cir. 2019); *Banda v. N.J.*, 134 F. App'x 529 (3d Cir. 2005); *Whitehead v. Bush*, 62 F. App'x 912 (10th Cir. 2003); and *Fetzer v. Secr'y, Fla. Dep't of Children and Families,* 2020 U.S. App. LEXIS 25758 (11th Cir.).

The Court said that Bell had several administrative options to challenge his continued commitment, or he could appeal the decision of a periodic review board to continue his commitment all the way to the state supreme court; should he exhaust his state appeals, he could file a federal petition for a writ of habeas corpus pursuant to 28 U.S. § 2254(b)(1)(A) and possibly a state law habeas petition as well. However, the Court noted that "Bell has taken advantage of these state-law avenues for relief several times, but each time has failed to appeal adverse rulings." So the Court reminded him that he must exhaust state remedies before pursuing federal habeas relief. The Court then affirmed the district court's judgment, also denying Bell's motion for appointed counsel. See: *Bell v. Raoul*, 88 F.4th 1231 (7th Cir. 2023)

Two Ohio Prisoners and Two Guards Tried for Assaults

Two Ohio prisoners have pleaded guilty to assaulting guards, while trials of two other guards accused of assaulting jail detainees in the state resulted in one conviction and one acquittal.

On October 25, 2023, Ohio prisoner Drequan K. Abdullah, 24, was found guilty of throwing urine on an unnamed guard two months earlier at Trumbull Correctional Institution. For that, he had six months added to the nine-year term he is serving for robbery and weapons violation convictions, pushing back his release to April 2027.

Another state prisoner, Marco Cardena, 34, was found guilty of assaulting an unnamed guard at Northeast Ohio Correctional Center in December 2021. He was handed an additional conviction for possessing a firearm at the lockup and sentenced on November 8, 2023, adding 54 months to the minimum 21-year term he is serving for a fatal shooting in October 2011.

The following day, on November 9, 2023, a mistrial was declared when a jury could not reach a verdict for guard Mark Cooper, 56, the only one of five members of a "cell extraction" team charged in the 2019 death of Alex Rios, 28, at the Richland County Jail. The county paid $4 million in December 2021 to settle a suit by Rios' survivors, as *PLN* reported. [See: *PLN*, Oct. 2022, p.60.] Cooper was retried and acquitted on all charges on April 24, 2024.

But on August 18, 2023, another jury found a former guard at the Pike County Jail guilty of using excessive force on a detainee. Jeremy C. Mooney, 49, was sentenced on March 27, 2024, to 100 months in federal prison, followed by three years of supervised release for an hour-long assault in November 2019 on Thomas Friend, 27, who was handcuffed and barefoot when the guard pepper-sprayed and hit him so hard that he broke his own hand—an injury for which Mooney then filed a workman's compensation claim. *See: United States v. Mooney*, USDC (S.D. Ohio), Case No. 2:22-cr-00201.

Sources: *Columbus Dispatch, Mahoning Matters, Sandusky Courier, WEWS, WKBN*

RECLAIM YourFUTURE azexpunge.org

EVER BUSTED FOR MARIJUANA IN ARIZONA?

YOUR CONVICTION COULD BE KEEPING YOU IN PRISON LONGER THAN YOU HAVE TO BE.

Now that recreational use of marijuana is legal in Arizona, the qualified attorneys from the Reclaim Your Future campaign can help you expunge certain past marijuana convictions* for **FREE.**

WHAT DOES EXPUNGEMENT MEAN?

It means that qualifying marijuana-related records are sealed and no longer available to the public. Expungement also eliminates some of the consequences of a marijuana offense. For example, the offense can **no longer be used as a prior offense to enhance a sentence** or to prove someone is a **repeat offender.**

What offenses qualify?*

Possessing, consuming or transporting:
- 2.5 ounces (70 grams) or less of marijuana

Possessing, transporting or cultivating:
- 6 marijuana plants or less at the individual's primary residence for personal use

Possessing, using or transporting:
Paraphernalia related to the consumption of marijuana

¿Qué delitos cumplen los requitos?

Poseer, consumir o transportar:
- 2.5 onzas (70 gramos) o menos de marihuana

Poseer, transportar o cultivar:
- 6 plantas o menos en la residencia principal del individuo con fines de uso personal

Poseer, usar o transportar:
- Parafernalia relacionada con el de marihuana consumo

*Federal and tribal offenses are not eligible for expungement. *Los delitos federales y tribales no son elegibles para eliminación.*

Write Us or Call!

RECLAIM YOUR FUTURE / RECLAMA TU FUTURO
4001 N. 3RD ST., SUITE 401
PHOENIX, AZ 85012
info@azexpunge.org | (800) 722-4026

Legal services provided by the Arizona Justice Project, DNA People's Legal Services, and their partners.
Reclaim Your Future is funded by the Arizona Department of Health Services.

SE HABLA ESPAÑOL. SERVICIOS LEGALES GRATUITOS.

The Mind-Breakers: The Case of Ramzi Bin al-Shibh

By Jeffrey St. Clair

This article originally appeared in Counterpunch on October 6, 2023. It is reprinted here with permission. Read the original at https://www.counterpunch.org/2023/10/06/the-mind-breakers-the-case-of-ramzi-bin-al-shibh/

On the first anniversary of the 9/11 attacks, Pakistani ISI (Inter-Services Intelligence) forces raided several houses in Karachi, hunting for suspected members of Al Qaeda. In one of the incursions, the Pakistanis captured a young Yemeni man named Ramzi bin Al-Shibh. Three days later, the Pakistanis turned Bin al-Shibh and Hassan bin Attash, a 17-year-old Saudi, over to the CIA, who renditioned the pair into what was known as the Dark Prison outside Kabul, where, according to an account Bin al-Shibh later gave to the International Red Cross, he was stripped of his clothes, denied food and water and kept shackled from the ceiling in a painful position for the next three days while loud music was blasted into his cell.

This was just the opening act in the prolonged torture of Ramzi Bin al-Shibh that took him to torture chambers in at least seven different countries in four years—Afghanistan, Jordan, Morocco, Poland, Gitmo, Romania, and Lithuania—and left Bin al-Shibh a broken man, psychologically shattered and physically depleted.

After four days in the Dark Prison, al-Shihb was apparently transferred to the Wadi Sir site in Amman, Jordan, where he was interrogated and tortured by the GID (Jordanian intelligence). According to a Human Rights Watch report, the torture included "electric shocks, long periods of sleep deprivation, forced nakedness and being made to sit on sticks and bottles."

From Jordan, Bin al-Shihb was flown to Morocco, where he was held in a CIA-financed prison near Rabat for the next five months and regularly interrogated by both the CIA and Moroccan intelligence. Many of these sessions were recorded, and the tapes sent back to Langley. In 2005, the CIA ordered all of the interrogation tapes of "high-level detainees" destroyed, but two years later two videotapes and an audio tape of Bin al-Shihb's interrogation were discovered under a desk in the CIA's Counterterrorism Center. The Agency had twice told a federal judge that no tapes of Bin al-Shihb's interrogation existed.

Part of the CIA's Operation Greystone, which authorized the Agency to hold suspected terrorists in secret prisons and rendition them back and forth to other countries, the Moroccan black site was a kind of way station, where prisoners could be warehoused and interrogated, then shuttled to another site. Bin al-Shibh, who was already beginning to show signs of extreme mental distress, was kept in the Moroccan prison for five months before being shipped to Poland. He would return here two more times in the following four years. Bin al-Shihb's psychological instability would deteriorate with each new stop in the Agency's torture archipelago. People the CIA considered "high-value detainees" were kept on the move, from one black site to another, in large part to keep them out of reach of the US courts and international human rights investigators, a shell game with human beings. By the time Bin al-Shihb had been captured and hidden away, our old friend the late Michael Ratner and the Center for Constitutional Rights had already filed a federal lawsuit challenging the legality of the "secret prison" at Guantánamo.

By the CIA's own account, Bin al-Shibh had been one of their most cooperative detainees, talking freely. The videotapes from Morocco show calmly him answering questions while sitting at a desk. One former interrogator derisively described Bin al-Shihb as "folding like a wet suit." In the 9-11 Commission Report, Bin al-Shihb's interrogation is cited 119 times. Only Khalid Sheikh Mohammed is referenced more often.

Nevertheless, while Bin al-Shibh was detained in Rabat, the CIA was busy planning a much more aggressive approach to extract information from him, a routine of torture and abuse that would become the model for the Agency's "enhanced interrogation techniques." These methods were designed by psychologists like Bruce Jessen and James Mitchell, who had taken oaths to heal minds and then capitalized ($81 million in payments from the CIA) on fracturing them.

The rough stuff would begin in February 2003 near Szymany, Poland at a CIA black prison known as Detention Site Blue, where he was held for four months. But Bin al-Shihb had nothing left to give. He'd spilled all he knew. More than that he knew, most likely, in an attempt to appease his inquisitors. From here on, the point of his torture would be the torture itself. It would end up ruining his mind.

After Bin al-Shihb arrived in Poland, now in the custody of the CIA itself, he was once again stripped naked, and then placed in a diaper. His hands and feet were chained to the ceiling with, according to the CIA's own wording, his "arms outstretched over his head (with his feet firmly on the floor and not allowed to support his weight with his arms)." He was kept in a white room, flooded with bright white lights. After one of the bulbs blew out, one of the interrogators saw Bin al-Shihb flinch and cower in the corner of the room. In response, the torturers began to keep Bin al-Shihb in the dark and blast music into the room for 72 hours straight. The temperature of the room was kept cold. His head and face were shaved. For the first three or four weeks, he was kept on a liquid diet and denied any solid food. The CIA called this technique "sensory dislocation."

He was interrogated often, often multiple times a day. The same questions were asked over and over again, often interrupted by Bin al-Shihb being sprayed with ice-cold water from a house. Between the questioning, Bin al-Shihb was slapped repeatedly in the face and the abdomen. He was walled, kept in cramped stress positions and waterboarded. Bin al-Shihb would be chained for days, and not permitted to even use the toilet, so he was forced to stand and sleep in his own urine and feces and then hosed down while being taunted by the guards. He was ordered to call his torturers "Sir." When he failed to do so, he would be anally raped with rectal hydrations (EiTs). His interrogators noted that the procedures were used for "behavior adjustment," when Bin al-Shihb showed his interrogators a lack of respect. The torture went on for five months. What was the goal of this repeated abuse? According to the CIA's Inspector General, Bin al-Shihb's treatment was "designed

to psychologically 'dislocate' the detainee, maximizing his feeling of vulnerability and helplessness, and reduce or eliminate his will to resist." In fact, it seems to have done the opposite. While cooperative in the early months of his detention, Bin al-Shibh became, according to CIA interrogators, increasingly defiant. He also seemed to be going insane. He was hallucinating, talking nonsense, and acting paranoid. And who could blame him?

The problem for the CIA was what they should do with him. In June, they stuffed Bin al-Shibh on another ghost flight out of Poland and back to Rabat, Morocco, where he languished for three-and-a-half months before he was flown along with three other detainees (Abd al-Rahim al-Nashiri, Abu Zubaydah, and Mustafa al-Hawsawi) to in the then quasi-secret CIA prison at Guantánamo Bay, which had been cynically called Strawberry Fields. He was shackled, put in an orange jumpsuit and kept in his cell at Gitmo for another 90 days. By the time Bin al-Shibh arrived at Gitmo, the austere conditions at the camp had already led to 32 suicide attempts by 21 detainees and questions had begun to surface publicly about the legality of the prisoners' open-ended confinement. Many of the prisoners had been held for more than a year without any charges or any notice to their families that they had been detained. But with the Supreme Court poised to rule on how long the US could secretly hold the "ghost" detainees, the CIA decided to keep Bin al-Shibh out of reach from any subpoenas and he was once again covertly flown back to the Moroccan prison.

Why did the CIA invest so much time and money in the young Yemeni? What had he done? What did he know? Al-Shihb grew up in a poor family in the Yemen capital of Sana'a. His father died when he was 15. To help support his family, al-Shihb took a job as a clerk at the International Bank of Yemen, where he worked until 1995 when he applied for a visa entry into the US. His request was denied and Bin al-Shibh instead moved to Germany, where in 1997 he met and became roommates with the future 9/11 highjacker Mohammad Atta. Two years later, Bin al-Shibh traveled to Kandahar in Afghanistan and attended an Al Qaeda training camp.

Apparently, Ramzi bin al-Shihb was meant to be one of the 9/11 highjackers and was supposed to travel from Hamburg to the US to attend flight training school. Between June 2000 and October 2000, he applied four times for a visa to enter the US and was denied each time, largely because the State Department closed the window on visa applications by Yemenis. Blocked from entry into the US, al-Shihb later earned the nickname "the 20th highjacker," the missing member of the planned four teams of five. Whether this is actually the case remains unclear. But the Bush administration accused al-Shihb of being one of the key plotters of 9/11, recruiting highjackers, raising and moving money for the operation and playing the role of intermediary between Atta and Khalid Sheikh Mohammad, the alleged mastermind of the plot.

In January 2002, Bin al-Shibh was identified as one of the five most wanted terrorists by the FBI. Nine months later he was captured after the Pakistani ISI raid and shoot-out in Karachi.

By the time Bin al-Shihb was in the Dark Prison, John Yoo had already drafted his infamous Memorandum Regarding Military Interrogation of Alien Unlawful Combatants Held Outside the United States, which asserted that the use of physical coercion and infliction of mental torment, widely considered torture in the under US and international law, was legally acceptable under the Presidential directives of Bush's War on Terror.

Back in the Moroccan prison, something strange happened. According to the CIA, Bin al-Shibh, then suffering from chronic delusions, tried to recruit one of his Moroccan interrogators. It seems a little far-fetched, but the Agency used the incident as an excuse to move Bin al-Shibh once again, this time flying him from Rabat to Bucharest, where the CIA ran another black site prison code-named Brightlight. The prison was far from bright. It was in fact a large basement beneath the National Registry Office for Classified Information with cells that held some of the highest-valued prisoners of the war on terror, including Khalid Sheikh Mohammad. The prison was also a torture chamber, where some of the cruelest tactics were deployed to coerce confessions.

The cells at Brightlight were prefabricated and sat on springs, which intentionally kept the floors moving with each step in order to disorient the prisoners. Each new arrival was subjected to what came to be known as the "treatment": sprayed with cold water, slapped, tied up in stress positions, slammed against walls, and deprived of sleep for three days at a time.

The CIA interrogators apparently hated the Bucharest post. They were required to stay for three-month periods and weren't allowed to leave the building, even to eat. They were frustrated, too, by the lack of information they were getting from Bin al-Shibh and the other prisoners, whose information, if they had any left to impart, had gone stale long ago.

In his interview with the International Red Cross, Bin al-Shibh said that he had been restrained on a bed, unable to move, for one month, February 2005, and subjected to cold air-conditioning during that period." Bin al-Shibh also said he forcibly shaved to humiliate him. "First his head was shaved and then some days later his beard was also shaved off," Bin al-Shibh told his interviewers. "He was particularly distressed by the fact that the people who shaved him allegedly deliberately left some spots and spaces in order to make him look and feel particularly undignified and abused."

The Romanian black site was closed in November 2005 and where Ramzi bin al-Shihb was imprisoned for the next few months is murky. Some evidence points to him being renditioned to the CIA black site inside a concrete bunker at an exclusive riding academy outside Vilnius, Lithuania and

then several months later transferred once again back to the Dark Prison in Afghanistan, before finally being sent to the Camp 7 prison at Guantánamo on September 5, 2006, a kind of black site within a black site. By that time, Bin al-Shibh had spent 1305 days in the secret custody of the CIA, much of it in solitary confinement. Now he was in the hands of the US military, where he was soon charged with being part of a conspiracy in the 9/11 attacks and faced a death penalty trial before a Military Tribunal. The problem for the Military Commission was that Ramzi Bin al-Shibh was in no shape to stand trial. His mind had been mangled and the CIA had destroyed it with three-and-half years of near-constant abuse.

The conditions at Gitmo were scarcely better than those in Poland, Romania, or Morocco. The prisoners were kept in isolation, every movement restricted and monitored by a group of reservist guards known as Task Force Platinum. Even Bin al-Shibh's communications with his lawyers were secretly bugged and videotaped and mail between the lawyers had been opened and read. As was revealed in 2014, the FBI tried to recruit non-lawyer members of his defense team to spy on their colleagues. The plot was exposed when a linguist working on Bin al-Shibh's defense team told the lawyers of the attempt to turn him into a spy for the government.

But all of this snooping couldn't conceal the underlying problem for the government prosecutors: Ramzi Bin al-Shibh wasn't fit to stand trial, even under the secret terms of the Military Tribunals. The CIA's own psychologists had concluded as early as 2004 that al-Shihb's mind was being broken by his prolonged stints in isolation. But the Agency ignored the warnings and kept him in solitary confinement for another year and a half. By the time he arrived at Guantánamo, Bin al-Shibh was suffering from paranoid delusions and hallucinations. A U.S. Navy psychiatrist evaluated Bin al-Shibh shortly after he was transferred to the prison and determined he had an "Adjustment Disorder with Depressed Mood." A month later, the same doctor reported that Bin al-Shibh's condition had deteriorated and that he couldn't sleep either "day or night" because of flashbacks from the torture he suffered at CIA blacks. The doctor noted that the Bin al-Shibh complained about "noises, odors, and slight vibrations."

The pressure was on the doctors to get Bin al-Shibh ready for trial. But Bin al-Shibh believed it was the government doctors who were insane, not him. He called them, not without reason, "war criminals" and "monsters." He refused any medications after the injections from the first psychiatrist he saw made "him feel dead." Because Bin al-Shibh seemed unaware of his mental deterioration, and in fact became angry and disruptive when the possibility was mentioned, even by his lawyers, the doctor recommended that Bin al-Shihb be administered anti-psychotic medications without his consent. The doctor's memo said the detainee had a "history of fixed, firm, false beliefs…as a result of his delusional beliefs, the detainee becomes irritable, angry, and agitated episodically, which has resulted in two Forced Cell Extractions this month."

So, in early 2007 military doctors subjected Bin al-Shihb to four months of forced anti-psychotic medications. But the drugs didn't do anything to lessen his delusions and instead generated some severe

adverse side effects. Bin al-Shib still believes that he is being subjected to human experimentation by the CIA, which routinely disrupts his sleep and attacks him remotely with strange vibrations, especially during his daily prayers or when he is meeting with his lawyers. Bin al-Shihb says the attacks are abrupt and painful. The government shrinks told the court that al-Shihb was suffering from "persecutory delusional disorder," but they considered him able to stand trial.

Two years later, Bin al-Shihb was interviewed for three days by Xavier Amador, a professor of clinical and forensic psychology at Columbia University. Amador concluded that didn't understand the charges against him and suffered from a psychosis likely caused by his torture at the hands of CIA interrogators. Amador's report was buried by the government, now under the helm of Barack Obama, for four years.

In a 2016 hearing, Ramzi Bin al-Shihb told the court that the torture he endured at the black sites had continued at Gitmo, where he felt that he had been hit with some kind of rays that "make all my life terrible, upside down." Bin al-Shihb described the vibrations as like "sitting in a car with the engine on." In response, Military Judge James Pohl issued an order directing the government, "not to subject Mr. Bin al-Shibh to disruptive and harassing noises and vibrations" in the camp, the attorney-client meeting rooms and the holding cell outside court. Judge Pohl's order was posted on the outside of Bin al-Shibh's Camp 7 cell. Bin Shibh testified that the guards ignored the order and laughed at him. He accused the guards of routinely waking him soon after he fell asleep. "This will drive you crazy," he told the judge.

During the hearing, Bin al-Shihb described how the vibrations and noises—from a metallic buzzing sound to banging on walls—resembled the kind of torture inflicted on him at black sites. "Maybe the CIA is still at Camp 7, nobody knows," he said. Then a red light began to flash inside the courtroom and the video feed went black, replaced by a "Please Stand-By" message, an indication that security officers feared Bin al-Shihb was about to disclose classified information about the Agency and its torture program. Later Bin al-Shihb testified that his years in Guantánamo had been the "worst time in my life. Worse than the black sites."

Now 14 years after Amador's assessment, a three-member panel of US military doctors commissioned by the court has reached the same conclusion. In an 80-page report that remains under seal, the medical team determined that al-Shihb suffers from "Post-Traumatic Stress Disorder with Secondary Psychotic Features" and that he lacks the mental capacity to stand trial. The military doctors concluded that his shattered psychological condition was the result of his having been tortured by the CIA.

Colonel Matthew McCall, the military judge currently overseeing Bin al-Shihb's case, accepted the findings of the doctors and ruled that Bin al-Shibh was mentally unfit to stand trial and halted the proceedings against him, a ruling which marks the first time the US government has officially acknowledged the last psychological harm its "enhanced interrogation" methods had done detainees like Bin al-Shihb—a program of systematic torture that had been designed and implemented by psychologists on the CIA's payroll.

What happens to Ramzi Bin al-Shibh now? After 22 years in custody, the 51-year-old Yemeni man will be sent back for more treatment of the PTSD and psychosis he still doesn't believe he has, which will be administered by agents of the very same government who wrecked his mind in the first place. Yet, once you've been taken to the Dark Prison, no amount of therapy or drugs will bring you all the way back to who you once were.

The damage to Bin al-Shihb's mind is as real and agonizing as the prolapsed rectum and anal fissures meted out to Mustafa al-Hawsawi from repeated anal probings and rectal hydrations by his interrogators, debilitating wounds which have bled for the last 18 years. Even by the sadistic standards of the Yoo memos, these abuses qualify as crimes of torture, consisting of lasting injuries and prolonged pain. Yet, none of the architects of these grievous felonies, or the people who carried them out and covered them up, have ever been held to account, making the rule of law itself the ultimate victim of 9/11.

Sources: Mark Denbeaux, Adam Kirchner, Joshua Wirtshafter, and Joseph Hickman. "Spying on Attorneys at GTMO: Guantanamo Bay Military Commissions and the Destruction of the Attorney-Client Relationship" (April 2013). Available at SSRN; Roy J. Eidelson, *Doing Harm: How the World's Largest Psychological Association Lost Its Way in the War on Terror,* McGill University Press (2023); Mark Fallon, *Unjustifiable Means: The Inside Story of How the CIA, Pentagon and US Government Conspired to Torture,* Regan Arts (2017); Adam Goldman and Matt Appuzo, "Inside Romania's Secret CIA Prison," *Associated Press* (December 8, 2011); Steven Grey, *Ghost Plane: The True Story of the CIA Torture Program,* St. Martin's Press, 2006. Thomas Hammarberg, "Advancing Accountability in Respect of the CIA Black Site in Romania," Council of Europe Commissioner for Human Rights (March 30, 2012); Lisa Hijjar, *The War in Court: Inside the Long Fight Against Torture,* University of California Press (2022); Human Rights Watch, "Ghost Prisoner: Two Years in Secret CIA Detention" (February 2007); International Red Cross, "Report on the Condition of 14 'High-Value' Detainees in CIA Custody" (February 2007); Jane Mayer, *The Dark Side: How the War on Terror Turned Into a War on American Ideals,* Doubleday (2008); Alfred McCoy, *A Question of Torture: CIA Interrogation from the Cold War to the War on Terror,* Metropolitan Books (2006); Dana Priest, "CIA Holds Terror Suspects in Secret Prisons," Washington Post (November 2, 2005); Michael Ratner (with Michael Smith), *Moving the Bar: My Life as a Radical Lawyer,* OR Press (2020); Rendition Project, "Ramzi Bin al-Shihb"; Scott Shane, "Inside a 9/11 Mastermind's Interrogation," *New York Times* (June 22, 2008); Andy Worthington, *The Guantanamo Files,* Pluto Press (2007); US Department of Defense, "Combatant Status Review Tribunal Input and Recommendation for Continued Detention Under DoD Control (CD) for Guantanamo Detainee [Ramzi Bin al-Shibh], ISN: US9YM-010013DP(S)" (December 8, 2006); US Senate Select Committee on Intelligence. Report of the Committee Study on the CIA's Detention and Interrogation Program (December 9, 2014); John Yoo, Memo Regarding the Torture and Military Interrogation of Alien Unlawful Combatants Held Outside the United States, Office of Legal Counsel, US Department of Justice (August 2002).

Jeffrey St. Clair is editor of *CounterPunch*. His most recent book is *An Orgy of Thieves: Neoliberalism and Its Discontents* (with Alexander Cockburn). He can be reached at: sitka@comcast.net or on Twitter @JeffreyStClair3.

You were sent to a group home as a boy. You were sexually and physically abused. They covered it up. Your life was ruined. It's not your fault. And there is hope and help.

Many sex abuse victims end up incarcerated. They wonder how they got there. What they don't know is child sex abuse has devastating lifetime impacts, often leading to a lifetime of depression, anxiety, drug addiction and alcoholism, failed attempts at relationships, and sometimes crime – all just to cope.

If this is your story, there is help. And we're here for you. We've won millions of dollars for victims just like you. Many of our clients get the lives they want and deserve. They receive the care they need to be freed of the shackles of their abuse and trauma. And their abusers are held accountable.

We encourage you to contact us and find out how we can help you. We're here for you. And remember, what happened to you is not your fault.

Were you sent to any of these hell holes, or <u>any other</u> abusive group home?

- **Kiwanis Vocational Home**
- **Secret Harbor**
- **J Bar D Ranch**
- **Echo Glen**
- **OK Boys Ranch**
- **Toutle River Boys Ranch**
- **Boys Village**
- **Penrith Farms**
- **Excelsior**
- **Jesse Dyslin Boys Ranch**
- **Green Hill**
- **Maple Lane**
- **Naselle Youth Camp**

DARRELL COCHRAN | PFAU COCHRAN VERTETIS AMALA ATTORNEYS AT LAW

DARRELL@PCVALAW.COM | 253-777-0798

DARRELLCOCHRANLAW.COM

Bankruptcy Threatens $500,000 Settlement in Suit Alleging Housing Discrimination Against Former Prisoners in New York City

Formerly incarcerated residents of New York City appeared to land a punch in their fight to secure housing in the city's notoriously tight real estate market on August 14, 2023, when the Fortune Society, a nonprofit founded in 1967 that provides numerous reentry services—including housing assistance—to former prisoners and other justice-involved individuals in the city, agreed to settle a federal lawsuit for $500,000, plus policy changes to remedy housing discrimination against people with criminal records. However, a bankruptcy filing now threatens that agreement.

Fortune filed suit in 2022 against iAfford NY, LLC, a contractor hired by the city to handle applications for "hundreds, if not thousands" of subsidized housing units across its five boroughs. The company serves as a compliance monitor for the city's Department of Housing Preservation and Development (HPD), acting as gatekeeper for housing assistance applications.

HPD policy prohibits blanket bans on applicants with past criminal records; rather, a case-by-case assessment is required that takes into account the nature of the offense and evidence of rehabilitation, among other factors. That policy is consistent with guidelines issued by the U.S. Dept. of Housing and Urban Development (HUD) in 2016 and 2022.

After a Fortune client applied for housing and was denied by iAfford due to a criminal conviction, the organization launched an investigation in conjunction with the Fair Housing Justice Center. In three recorded phone calls, iAfford employees stated that people with criminal records—even misdemeanors—were excluded from housing assistance; one discouraged Fortune clients from even applying, saying, "it's a long process and then at the end, they're going to be like, aww, I'm rejected. They know all along … that they are criminals…". Two of the employees falsely claimed the blanket ban was due to HPD policy.

When Fortune filed suit in 2022 it alleged unlawful discrimination under the Fair Housing Act, 42 U.S.C. §§ 3601 et seq., and New York state laws. The complaint noted that iAfford's blanket ban on housing assistance to people with criminal records has "a severe disparate impact on Black and Latino individuals," as those racial groups are "widely known" to have disproportionately higher incarceration rates. Fortune pointed out that 65% of released prisoners nationwide are Black or Latino, a share that balloons to 75% in the state of New York. Around 90% of the organization's clients are Black or Latino.

Therefore, the complaint continued, iAfford's policies illegally discriminated against minorities seeking housing assistance. The company's blanket ban also harmed Fortune's mission by interfering with its ability to find housing for its clients, as well as requiring the non-profit to expend resources to conduct an investigation and "divert[ing] resources to education and outreach efforts … aimed at countering iAfford's discrimination"—including $11,000 spent to create advocacy videos about discriminatory housing bans.

iAfford made an offer to settle the case on August 1, 2023, which Fortune accepted two weeks later. As part of the agreement, reflected in a judgment entered by the federal court for the Eastern District of New York, the company agreed to refrain from "blanket denial of housing applicants with criminal histories" and comply with HPD policies and HUD guidance. It further agreed to provide training and adopt policies to ensure that compliance and submit annual reports on compliance measures for four years. The company also promised to pay $500,000 in damages, costs and attorney fees.

Less than two months later, on October 14, 2023, Fortune was back in the Court to request post-judgment discovery, arguing in a lengthy filing that it had become "apparent that iAfford did not intend to actually pay the $500,000 it offered and has indeed failed to pay any portion of it to date." To Fortune's collection attempts, iAfford had responded with "threats of imminent bankruptcy filings to strongarm Plaintiff into abandoning its efforts at execution." As the nonprofit summarized: "iAfford and its counsel wrongly induced Plaintiff to accept an offer of judgment for $500,000 despite knowing that Defendant could not pay anywhere near that amount, or perhaps anything at all."

Six days later, on October 20, 2023, iAfford made good on its threat and filed for bankruptcy. Fortune's motion was denied and its suit stayed pending the outcome of bankruptcy proceedings on November 2, 2023. *PLN* will update developments in the case as they are available. Fortune is represented by attorneys with Relman Colfax, PLLC in Washington, D.C. *See: Fortune Soc., Inc. v. iAfford N.Y., LLC,* USDC (E.D.N.Y.), Case No. 1:22-cv-06584; and *In re iAfford N.Y., LLC*, USBC (E.D.N.Y.), Case No. 1:23-bk-43825.

Additional source: *Bronx Times*

"Are You Freaking Kidding Me?" Former BOP Warden Accuses Guards of Recruiting Prisoners for Assaults at Troubled Lockup in Illinois

by David M. Reutter

Before he retired in July 2023, Warden Thomas Bergami was sent by the Bureau of Prisons (BOP) to the U.S. Penitentiary (USP) in Thomson, Illinois, with a mandate: Clean the place up. But Begami said he got little support for his reform efforts and was in fact actively opposed by guards—some of whom even goaded prisoners to assault him.

The latter claim was first made in a handwritten letter from 14 prisoners that arrived at prison nonprofit advocacy The Marshall Project (TMP) in late December 2022, headed "THIS IS AN EMERGENCY ISSUE!!!" The prisoners who wrote it said that guards angered by Bergami's reform efforts attempted to bribe them to attack him and one of his captains, offering to "poorly tighten their hand restraints" during the warden's walk-through so that they could slip free and assault him.

As *PLN* reported, USP-Thomson inherited the Special Management Unit (SMU) from USP-Lewisburg in Pennsylvania in 2018, while a lawsuit was pending there over abuse alleged by prisoners held in the high-security unit. By July 2023, the Washington Lawyers' Committee for Civil Rights and Urban Affairs had found evidence that 82 prisoners in the SMU at USP-Thomson had been assaulted or violently restrained by guards—39 of them while in restraints, and 28 of those assaulted repeatedly; additionally, there were 13 prisoners left in 4-point restraints from 24 to 96 hours, among 178 individual incidents of guards using restraints as a form of punishment or torture, leaving scars known as the "Thomson tattoo." By the time its closure was announced on February 14, 2023, it was BOP's deadliest unit, reporting at least seven deaths, including six homicides. [See: *PLN*, Feb. 2024, p.43.]

Most of the deadly violence was blamed on double-celling prisoners, with single-occupancy cells used to hold the worst in prolonged isolation. But guard use of force was commonplace, running up BOP's highest rate of pepper-spray use. Sex offenders were also "outed," putting them at increased risk of assaults that guards couldn't or didn't prevent.

Even before the closing was announced, guards pointed fingers at each other and at Bergami, blaming him for leaving 100 guard vacancies unfilled. Guard union officials also tallied 275 incidents in 2022 when frustrated and bored prisoners suffering mental illness exposed themselves to guards or masturbated in front of them.

Bergami said he quickly realized that SMU had an "enormous problem with inmate abuse," especially overuse of re-

straints. Guards were accused of falsifying disciplinary charges against Black prisoners. Staff attitude, the new warden said, was "the worst I've seen in 31 years" of work. He hired Denny Whitmore, another 30-year BOP veteran, as his associate warden. Both were reportedly horrified to find guards walking shackled prisoners backwards down the stairs, moving some without coats or shoes across the yard in freezing winter weather.

Concerned that restraints were being overused, Bergani ordered guards to stop using "black box" handcuffs, which are meant only for dangerous transfers, to move lower-security prisoners. He also required videotaped checks on chained-down prisoners. Watching one recording later, he found the shackled prisoner was compliant—making restraint unnecessary. "He was cool as a cucumber," Bergani recalled. "It didn't add up." But some guards pushed back, vowing to use the "black box" anyway and calling Bergamni "that f—-- motherfucker in charge," according to the account of one erstwhile whistleblower. Replied union Pres. Jonathan Zumkehr, "I will disagree 100%. That didn't happen." He called for Bergami's firing.

Though BOP didn't publicly undermine the warden, his attempts to terminate several guards were overruled. One allegedly threw away a prisoner's mail, which is a felony offense. Another was named in two prisoner lawsuits alleging excessive force. A second letter sent to TMP said that guards "suggested" the warden should be stabbed. A BOP investigator who interviewed some of the prisoners who signed the letter found their testimony "fairly consistent," yet he "could not confirm nor refute" their allegations. The guards that Bergami tried to fire were quietly returned to duty.

"When the regional director called me and said, 'Well, they looked into it and put [them] back on their post,'" the Warden recalled, "I'm like, 'Are you freaking kidding me right now?'"

Unsurprisingly, he and Whitmore soon retired. "My staff were saying to stab me and the captain," Bergami said. "I've got to worry about our safety."

"How do you root out the bad apples if you're not allowed to terminate those who have been recommended for termination?" Whitmore added.

Source: *The Marshall Project*

Contaminated Water a Longstanding Problem at Nebraska Women's Prison

"Water, water, everywhere, nor any drop to drink," goes the line from *The Rime of the Ancient Mariner.* As Coleridge dramatized, water is essential to life, yet most people take it for granted. For those incarcerated, their access to drinking water is entirely dependent on prison officials. At the Nebraska Correctional Center for Women (NCCW), prisoners have long complained about the quality of the water, which contains sediment, has a strong odor and is cloudy. New arrivals are told by other prisoners to avoid drinking it and not to wash their hair too often. Now a lawsuit filed on December 1, 2023, alleges it's so bad that it violates their civil rights.

State officials are well aware of this problem. As early as 2014, a water sample taken at the prison tested high for copper. Excessive amounts of copper can cause stomach ailments as well as liver and kidney damage. Copper levels were nearly twice as high in the lockup's nursery. The state Ombudsman's Office has received over 20 complaints concerning the water at NCCW, and the state Department of Correctional Services (DOCS) has reportedly spent "hundreds of thousands of dollars" on improvements to the water system. Regardless, prisoners at NCCW continue to report health-related issues blamed on the water, including gastrointestinal ailments, skin rashes, nausea and hair loss.

Tests in 2017 again found high concentrations of copper. "The copper is coming from the plumbing, not the groundwater," an engineer stated. Prison officials replaced a water tower tank and installed a reverse osmosis filtering system; however, the filtration system does not include water used for the laundry, showers, and sinks in some of the cells. Prison officials rejected replacing the facility's water pipes or lining them to prevent copper leaching, citing costs and security concerns. Instead, they opted in 2018 to inject chemicals into the water supply, including chlorine, to address pipe corrosion.

It took three years—until March 2021—before the chemical injection system became operational. Initial test results found copper levels even higher than before, though they later decreased. But prisoners have reported water quality problems continue, including discoloration and sediment, plus higher levels of iron and manganese. The latter, ironically, is caused by chlorine reacting with iron pipes. Chlorination also adversely affected the facility's reverse osmosis system.

Prisoner Christian Henderson has filed around 20 grievances, complaints and requests over water-related issues since 2021, noting that prisoners have to constantly clean the sinks in their cells because they are "stained brown" by the water. Henderson's requests for bottled water have been rejected. NCCW has spent at least $389,000 on its water system, but problems persist because the underlying issue—corrosion of the lockup's water pipes—remains unresolved.

The latest suit was filed *pro se* by prisoner Valeisha Walker, seeking an injunction to force DOCS to fix the problem. Yet a prison spokesperson insisted in response that there were "no unresolved issues" related to water quality at the lockup. NCCW prisoners who have no choice but to drink the cloudy, sink-staining, sediment-laden water would strongly disagree. Walker's suit remains pending, and *PLN* will update developments as they are available. *See: Walker* v. *Folts,* USDC (D. Neb.), Case No. 4:23-cv-3234.

The problem is not limited to one prison. A study published in May 2024 in the *American Journal of Public Health* found that at least 990,000 U.S. prisoners and detainees—including some 12,000 juveniles—are incarcerated in lockups where they risk exposure to "forever chemicals," a class of industrial byproducts that take decades to break down and may cause significant health problems. *See: Per- and Polyfluoroalkyl Substance Exposure Risks in U.S. Carceral Facilities, 2022*, Amer. Journal of Pub. Health (May 2024).

Additional source: *Lincoln Journal Star*

Lawsuit Alleges Black ICE Detainee Subjected to Racial Slurs, Choked in Restraint Chair at Pennsylvania Jail

by Matthew T. Clarke

According to a federal civil rights action filed by Pennsylvania Institutional Law Project attorneys Matthew A. Feldman and Evangeline Wright on November 15, 2023, a Black Jamaican migrant held for federal Immigration and Customs Enforcement (ICE) at the Pike County Correctional Facility (PCCF) was subjected to racial slurs by guards, who choked and pepper- sprayed him while he was strapped into a restraint chair. The infraction that brought down this terrible punishment? Guards said that Damion Davis, 44, used a homemade envelope to send his wife a letter, in violation of jail rules.

Born in Jamaica, Davis came to the U.S. in 1989. Though his father was a naturalized citizen, U.S. law then did not automatically extend derivative U.S. citizenship to Davis. A 2000 change in the law also was not made retroactive. He has thus been detained by ICE for violating immigration law since 2019 and held at PCCF pursuant to ICE's contract with the county.

On December 2, 2021, Davis wrote his wife a letter, sealed it in a homemade envelope and gave it to a guard to be mailed. The guard told him that homemade envelopes violated jail rules, so Davis would be receiving a disciplinary infraction. But no rule in the PCCF Inmate/Detainee Handbook prohibited homemade envelopes, so Davis asked to see a supervisor.

Sgt. Linda Forshay approached Davis' cell, accompanied by guards Fitzpatrick and Maurer. She ordered them to handcuff and shackle Davis, as if for transport. When Davis asked where he was being taken, she allegedly ordered them to slam him headfirst into the wall "until he shuts up." He was slammed a second time before arriving at the intake room along with several others, including guards Fagan and Wagonhoffer.

Since he was shackled, Davis was unable to comply with Fagan's order to disrobe and don an orange jumpsuit. For that he was pepper-sprayed multiple times directly in the face. His clothes were cut off. Then he was strapped naked to a portable restraint chair and wheeled to a very cold observation cell, where he was kept for about 10 hours.

When he complained that a woman seeing him naked violated the Prison Rape Elimination Act and asked for an ICE officer, Fagan responded with a laugh that he and Forshay believed he was suicidal—presumably their justification for his mistreatment. While he was strapped in the restraint chair, Wagonhoffer choked him. Staffers with PrimeCare Medical, the jail's contracted healthcare provider, repeatedly approved of his restraint. During the entire ordeal, he was allegedly subjected to racial taunts and slurs.

Davis suffered permanent diminished sight from the pepper spray that was not cleansed in a timely fashion. For causing his injuries, the complaint names Warden Craig Lowe, six guards, PrimeCare and two of its employees as Defendants. *PLN* will update case developments as they are available. *See: Davis v. Lowe*, USDC (M.D. Penn), Case 4:23-cv-01896.

His Appeal Lost for 28 Years, Texas Prisoner Finally Off Death Row

When sentenced to Texas' death row in 1988 for a murder committed the year before, Syed Rabbani was a healthy 23-year-old. Now 57, he is psychotic and blind, left almost entirely unable to move or speak by a stroke. An appeal he filed was lost by Harris County prosecutors for nearly three decades before it was granted by the state Court of Criminal Appeal in September 2023, tossing his death sentence and substituting one for life in prison.

"This case says nothing good about the way we treat the human beings in our criminal justice system," said Death Penalty Information Center Executive Director Robin Maher. "That a man so vulnerable could be simply forgotten is just inexcusable."

His attorney, Texas Office of Forensic and Capital Writs Director Ben Wolff, said he found Rabbani in "the most disgusting prison circumstance" ever witnessed in a 25-year career, his cell walls smeared with feces, the floor littered with dirty bed pads, mold furring the toilet.

Originally set to die in 1993, Rabbani was spared after pro bono appellate counsel Dick Wheelan filed a habeas petition, which triggered a psychiatric evaluation that resulted in a 1994 diagnosis of "mental illness of psychotic proportions." Wheelan died in 2008 without pursuing the appeal further. A successor appointed two years later, Staci Biggar, lacked qualifications to represent a capital defendant, Wolff later told the Court of Criminal Appeal after taking over the case in 2022. She also filed nothing to advance the case.

So what happened during the 28 years the appeal lay dormant before Wolff took it over? Rabbani initially filed several *pro se* suits naming defendants like "Brutal Country, U.S.A." and "all life forms in all galaxies." But a federal judge in 2003 barred him from filing future cases, citing "continued abuse of the court system"—though at that point Rabbani's own appeal had languished nearly a decade. In 2012, Harris County prosecutors told the Court of Criminal Appeal that Rabbani was not competent to stand trial, but no agreement was ever entered to restore competency. By the time Wolff saw him, Rabbani had "deteriorated past the point of possible recovery," the attorney told the Court.

Predictably, the state Department of Criminal Justice (TDCJ) pushed back against any suggestion that Rabbani suffered medical neglect while confined. "All inmates have access to comprehensive health care, including mental health care," insisted TDCJ Director of Communications Amanda Hernandez. Yet though Rabbani's reports of seizures date back to 2011, no treatment for epilepsy was recorded by TDCJ, not even after a 2017 seizure caused him to fall and hit his head. Another series of seizures in February 2022 came with acute pancreatitis, a heart attack and a stroke. That left the prisoner brain-damaged, his mobility and ability to communicate both extremely limited. As Wolff told the Court, TDCJ "essentially left Mr. Rabbani to rot in his cell."

At the Estelle Unit where Rabbani is held, TDCJ staffers sought to transfer him to hospice care, a request denied in November 2023 by a Harris County judge, who punted the decision to the state Board of Pardons and Paroles or Gov. Greg Abbott (R). Syed Fasaini, 34, a half-brother who surfaced in Rabbani's native Bangladesh in September 2023, offered to take in the prisoner were he paroled and deported.

"35 years in prison is too much punishment," Fasaini said.

"Texas has lost the moral authority to keep him confined," Wolff agreed. "What's confinement without purpose? What's punishment without purpose? It's torture."

Source: *Houston Landing*

Arkansas Sheriff Grilled Over Hit Netflix Show Filmed at Jail

An emergency ordinance passed by the Quorum Court of Arkansas' Pulaski County on April 22, 2024, demanded answers from county Sheriff Eric Higgins to questions about a TV show filmed at the jail in Little Rock. The county also returned a $60,000 payment from the producers of *Unlocked: A Jail Experiment*, which quickly shot to the top of the ratings after its release on the Netflix streaming service on April 10, 2024.

Filmed over a six-week period in 2023 by production company Lucky 8, the eight-episode documentary series follows detainees in a general-population area at the Pulaski County Detention Center (PCDC) as the Sheriff conducts an "experiment" that extends to them many of the same chances to earn privileges that had already been successfully implemented in a separate area for detainees preparing for release and re-entry into society.

But a turf war erupted in March 2024 when county Judge Barry Hyde got wind of the show, and he loudly protested that only he could contractually obligate the county to Lucky 8. The Quorum Court quickly passed an ordinance calling Higgins to task for a "no locks" tagline in the show's advertising, to which the Sheriff replied that guards were present during filming and the unit secured, though cell doors were opened. He also argued that it's the Sheriff's prerogative to determine who may enter the jail and what may be done there.

That didn't tamp down the brewing controversy, however. Detainee advocates like Pastor Eric Crowder-Jones with Another Chance Ministries praised the Sheriff for "giving those inmates the opportunity to become better by allowing them to govern their freedom, rather than to sit in a caged area and become bitter." Countered Arkansas First Responders Bureau Chief Roy Baker, "At no time should any inmate feel that they have even the smallest amount of freedom or reign within the detention facility."

Lucky 8 sent a promised $60,000 payment to the county to reimburse any additional costs incurred during the production. But the county returned it on April 9, 2024, saying it had no contract with the company to which the payment could be applied, adding also that it would not accept a donation, either.

The Quorum Court's most recent ordinance pressures Higgins to explain alleged discrepancies between his answers to the earlier queries and what was depicted in the show. The Court also wanted to know why show participants included detainees charged with sex crimes or capital murder.

Sources: *KATV, Variety*

Botched Idaho Execution Halted

by Douglas Ankney

On February 28, 2024, Idaho halted the execution of Thomas Eugene Creech, 73, after the all-volunteer team assigned to kill him was unable to find a suitable vein to establish the intravenous connection necessary for his lethal injection.

Creech, convicted of five murders in three states, was initially sentenced to death in 1983 for the murder of fellow prisoner David Dale Jensen in 1981. At the time of Jensen's murder, Creech was serving two life sentences for the murders of house painters John Wayne Bradford and Edward Thomas Arnold. But Creech "admitted to killing or participating in the killing of at least 26 people," as the Supreme Court of the U.S. recalled when hearing his appeal in *Arave v. Creech*, 507 U.S. 463 (1993), and "[t]he bodies of 11 of his victims—who were shot, stabbed, beaten, or strangled to death—have been recovered in seven States."

Placed on a gurney, Creech was wheeled into the execution chamber at Idaho Maximum Security Institution (IMSI) at 10:00 a.m. Three members of the killing team tried eight times to establish an IV in Creech's arms, legs, hands, and feet. But they could not access a vein of sufficient quality. Each time an attempted IV insertion was made, Creech's skin was cleaned with alcohol, injected with a numbing solution, and cleaned again. Each attempt took several minutes. One volunteer killer actually left the execution chamber to retrieve more supplies before IMSI's warden halted the execution at 10:58 a.m. The warden then approached Creech, whispered to him for several minutes, and gave his arm a squeeze.

Hours later, state Attorney General Raul Labrador (R) released a statement bemoaning that "justice has been delayed again." Creech's attorneys immediately moved the U.S. District Court for the District of Idaho for a stay, which was granted after Idaho confirmed it would not seek to execute Creech again before the death warrant expired. The state must now obtain another death warrant if it wants to carry out the execution.

The Federal Defender Services (FDS) of Idaho released a statement saying that a "badly botched execution attempt" is "what happens when unknown individuals with unknown training are assigned to carry out an execution."

"This is precisely the kind of mishap we warned the State and the Courts could happen when attempting to execute one of the country's oldest death-row inmates." FDS added.

Two Trips to Ninth Circuit

Creech and fellow Idaho death row prisoner Gerald Ross Pizzuto, Jr. sued Gov. Brad Little (R) and several DOC employees in March 2020, alleging constitutional violations in the manner and method in which Defendants intended to carry out their executions. The district court dismissed the complaint for lack of subject matter jurisdiction, finding the claims not ripe. Plaintiffs appealed, and the U.S. Court of Appeals for the Ninth Circuit then reversed that decision, holding that the claims were ripe. *See: Pizzuto v. Tewalt*, 997 F.3d 893 (9th Cir. 2021) The Court acknowledged that Creech's claims did not appear viable but said that he "should be permitted to amend the complaint on remand to advance any colorable claims."

On remand, the district court sua sponte dismissed the complaint for failure to state a claim, citing Fed. Rule of Civ. Proc. 12(b)(6). While that decision was pending, the State obtained a death warrant for Pizzuto, and his execution was imminent. The district court reasoned that amendment of the complaint would be futile and dismissed it with prejudice and without leave to amend. Creech appealed again. (Pizzuto was removed as a Plaintiff, but his execution did not occur.)

Back at the Ninth Circuit, the Court observed that "[a] district court that has received the mandate of an appellate court cannot vary or examine that mandate for any purpose other than executing it," citing *Hall v. City of Los Angeles*, 697 F.3d 1059 (9th Cir. 2012); however, the mandate "leaves to the district court any issue not expressly or impliedly disposed of on appeal," the Court continued, pointing to *S.F. Herring Ass'n v. United States DOI*, 946 F.3d.564 (9th Cir. 2019). Since the Court had not disposed of the issue of the futility of amending the complaint, the district court did not violate the Court's mandate.

The Ninth Circuit then agreed that, with the exception of three of Creech's claims, amendment would be futile. One of those claims was that his attorneys had a "right to access and inspect the execution chamber before execution, witness the entire execution procedure, and have access to cameras and phones during the execution."

The Court agreed that it has "long held that 'the public enjoys a First Amendment right to view executions from the moment the condemned is escorted into the execution chamber, including those initial procedures that are inextricably intertwined with the process of putting the condemned inmate to death,'" pointing to *Cal. First Amendment Coal. v. Woodford*, 299 F.3d 868 (9th Cir. 2002).

In Claim Four, Creech argued that Defendants' failure to provide information concerning the manner and method of execution—including the exact lethal injection drugs used, their expiration dates and source, as well as the location of intravenous tubes in the execution chamber, sites of injection on Creech's body and the training received by those administering the drugs—"raises a procedural barrier to challenging the constitutionality of [DOC's] execution process," in violation of the Due Process Clause of the Fourteenth Amendment. In its earlier ruling in the case, the Court had expressed skepticism about this claim because DOC issued an execution protocol far in advance of any executions. But in the interval between remand and this opinion, DOC had twice "suspended" its protocol in scheduled executions shortly before the date arrived. The Court concluded that Creech should be permitted to amend this claim on remand.

Finally, in Claim Nine, Creech argued that Defendant's failure to provide the information outlined in Claim Four prevented his attorneys from arguing an Eighth Amendment violation based on Creech's underlying health issues. Therefore, without the information, there was "a substantial risk that [Creech] will be subjected to severely painful execution, in violation of the Eighth Amendment," due to numerous medications he was prescribed, as well as his brain damage. The Court said that "[g]iven Creech's health conditions and medications, as well as the liberal public policy favoring amendment, we conclude that Creech should be afforded the opportunity to amend this claim." Accordingly, the district court's order with regard to Claims 1, 4, and 9 was vacated and remanded with instructions to allow Creech to amend and/or supplement. *See: Creech v. Tewalt*, 84 F.4th 777 (9th Cir. 2023).

Back at Ninth Circuit Three More Times

On remand, the district court once again sent Creech back to the execution chamber. In the weeks prior to his scheduled date there, Creech's attorneys filed several challenges to forestall the execution. But the Ninth Circuit rejected all of them, including a claim that his clemency hearing was unfair. *See: Creech v. Idaho Comm'n of Pardons and Parole*, 94 F.4th 851 (9th Cir. 2024). The Court also rejected a claim that the execution drugs were tainted, expired, and/or from an unknown source. *See: Creech v. Tewalt*, 94 F.4th 859 (9th Cir. 2024). And it rejected a claim that his death sentence violated the Eighth Amendment because it was imposed by a judge instead of a jury. *See: Creech v. Richardson*, 94 F.4th 847 (9th Cir. 2024).

Creech's supporters insist he is a deeply changed man. Many years ago he married the mother of a guard. Former prison officials said Creech had a reputation for expressing gratitude for their work and for writing poetry. His horrendously botched execution follows another in Alabama in November 2022, when officials called off the lethal injection of Kenneth Eugene Smith, 58; he was later suffocated with nitrogen gas in January 2024, his body shaking and convulsing for several minutes on the death chamber gurney before dying, as *PLN* reported. [See: *PLN*, Mar. 2024, p.24.]

Sources: *AP News, New York Times*

BOP Lifts Maximum Age for New Guards to 40

On October 1, 2023, the federal Bureau of Prisons (BOP) implemented a temporary policy raising the maximum age for guard candidates to 40. The previous upper age limit was 37. The new policy is aimed at solving a staffing crisis that has left nearly a third of guard positions vacant as the overall workforce at the agency has shrunk 20% over the past seven years.

Increased prisoner violence has been blamed for the chronic understaffing by officials at unions representing the guards, who also point to BOP's history of mismanagement and its failure to adequately address safety concerns. They point out that the crisis affects the mental and physical well-being of prisoners, too.

The new policy, effective through the end of the fiscal year in October 2024, is the latest effort by BOP Director Colette Peters to address the problem, which she has attributed to low wages and a lack of training, as well as mandatory overtime that results from shortstaffing, prompting even more in a negative feedback loop.

The new policy risks potential age discrimination claims from older candidates unable to meet the physical demands of the job. While BOP has a commitment to a "young and vigorous workforce," policy of its parent agency, the federal Department of Justice, acknowledges the potential value of experienced candidates. A forced retirement age of 57 for guards also raises questions about the policy's long-term success.

Many state prison systems have an upper age limit of 36 for new guards, including Texas and New York. However, in Florida and California, there is no limit at all.

Source: *Federal Times*

Colorado Law Creates "Rebuttable Presumption" Against Incarcerating Pregnant Women

On August 7, 2023, a new law took effect in Colorado directing judges to provide bonds and alternatives to incarceration for defendants who are pregnant or who recently gave birth. HB23-1187 was signed into law by Gov. Jared Polis (D) in May 2023 after it was adopted by state lawmakers goaded by release of video of the horrific ordeal suffered by Diana Sanchez, who gave birth alone in a cell in the Denver County Jail on July 31, 2018.

As *PLN* reported, Sanchez was eight months pregnant when she was booked into the jail for writing a bad check. She had a high-risk pregnancy, and following a medical examination a nurse told her to call for help if she went into labor. When she began having contractions the next day, she informed a guard, who told a nurse—who took no action. No ambulance was called, either. Instead, jail staff watched on security video while she went through five hours of labor before giving birth unattended in her cell. "That pain was indescribable," she said. "What hurts me more though is the fact that nobody cared." [See: *PLN*, Oct. 2019, p.49].

Represented by attorney Mari Newman with Killmer Lane & Newman LLC in Denver, Sanchez filed suit against the City and County of Denver, the city's Health and Hospital Authority, four guards and two nurses, claiming she suffered unnecessary pain and received inadequate medical care. But that's a charitable summary of the callous indifference they showed. Sanchez informed a guard that her water broke at 5:00 a.m. on July 31, 2018; when labor pains became acute over four hours later, guard Alexandra Wherry relayed the information to nurses Nina Chacon and Dorothy Gilkey, who sent technician Rikki Warmus to examine Sanchez. That trio then adopted a "wait and see" approach to her care, though Chacon provided Sanchez an absorbent pad to place under her body. Policy dictated that an ambulance should be called, but Chancon ordered a non-emergency transport to the hospital, which took an hour and 17 minutes to arrive. By that time, Sanchez's son, Jordan, had been born. The case settled in 2020 with an agreement by the City and County to pay $160,000 to Sanchez and Jordan; Denver Health Medical Center settled its part of the suit for an additional payment of $320,000. See: *Sanchez v. City & Cty. of Denver*, USDC (D. Colo.), Case No. 1:19-cv-02437.

The ordeal that Sanchez experienced resulted in policy changes at the jail, but the most far-reaching result is undoubtedly the new law. "While no system is perfect in responding to the medical conditions of pregnancy, correctional facilities and county jails are particularly ill-equipped to do so," the bill stated. It creates a "rebuttable presumption against detention" for pregnant and postpartum women that prohibits them from being jailed unless a court finds they pose a risk to public safety. In addition to bonds, sentencing alternatives include diversion programs, deferred sentences, and stays of execution.

Women who are already incarcerated can request a pregnancy test, which must

be provided within 24 hours; the law also extends to pregnant and postpartum juveniles. Notably, the rebuttable presumption against detention does not apply to pregnant or postpartum defendants convicted of a crime of violence. The legislation, codified at C.R.S. 18-1.3-103. 7, also removes the requirement under previous Colorado law for courts to admit information in a criminal case related to a defendant's substance abuse discovered during the course of pregnancy-related care.

Newman advocated for the new law, noting that it could have saved her client "and her baby from the horrible experience that they had to endure."

"Pregnant people should not be incarcerated," Newman emphasized. "That is my fundamental belief. I think this is a good start, and there's a lot more than can still be done."

Sadly, Sanchez is not the only pregnant detainee forced to give birth alone in a cell. Most recently, it was an unnamed detainee at Tennessee's Montgomery County Jail on August 29, 2023. Before that it happened to Kelsey Love at Kentucky's Franklin County Jail on May 15, 2017; as *PLN* reported, that cost the county a $200,000 settlement in 2021. [See: *PLN*, July 2021, p.53.] It also happened to Jazmin Valentine at Maryland's Washington County Detention Center on July 3, 2021; attorney's from Killmer Lane LLP are among those representing her in a suit pending at the federal court for the District of Maryland against jail healthcare contractor PrimeCare Medical. *See: Valentine v. PrimeCare Med., Inc.*, USDC (D. Md.), Case No. 1:22-cv-02446. It also happened to Ashley Caswell at Alabama's Etowah County Detention Center on October 16, 2021; she is represented by attorneys with nonprofit Pregnancy Justice in a suit pending at the federal court for the Northern District of Alabama. *See: Caswell v. Etowah Cty.*, USDC (N.D. Ala.), Case No. 4:23-cv-01380.

Additional sources: *KDVR, Miami Herald, New York Times, Washington Post, Westward, WTOP*

Executions Rise in 2023, Number on Death Row Falls

The number of American prisoners awaiting execution continued a decrease that began at the turn of the century, dropping to 2,331 in 2023, a 4.3% decline from 2022. Yet even though just five states executed prisoners during the year—Texas, Florida, Missouri, Oklahoma and Alabama—the total number of killings jumped by one-third by the end of 2023.

On a brighter note, the number of new death sentences was lower than the number of executions for the first time in 2023, with only seven states adding to their death rows: Alabama, Arizona, California, Florida, Louisiana, North Carolina and Texas. The federal Bureau of Prisons also picked up its first new condemned prisoner since the 2021 inauguration of Pres. Joseph R. Biden, Jr. (D): On August 2, 2023, a federal judge sentenced Robert Bowers, 50, to die for fatally shooting 11 people and wounding seven more at Pittsburgh's Tree of Life Synagogue in 2018, the deadliest assault on Jews in American history.

More Americans than not still support the death penalty, 53% to 44%. But in 2023, a Gallup poll for the first time found more people believe it is unfairly administered, by a margin of 50% to 47%. That may reflect the growing number of condemned prisoners who have been exonerated—and 2023 added three more, bringing the total to 195 since the Supreme Court of the U.S. (SCOTUS) greenlighted resumption of executions in 1976.

SCOTUS itself didn't provide death-row prisoners any relief, though, rejecting 33 of 34 requests to stay an execution since October 1, 2022. Over the past decade, the high court has also granted 18 of 21 requests made by states to lift execution stays. Last year, as *PLN* reported, the Court's conservative super-majority threw prisoners under the bus in *Shinn v. Ramirez*, ruling that no claim of ineffective assistance counsel may be raised on appeal that wasn't raised at trial—even though that would have to be done by the ineffective counsel himself. [See: *PLN*, Oct. 2022, p.44.]

2023 marked the ninth consecutive year that the total number of U.S. executions remained below 30. Most states have abolished capital punishment, 29 vs. 21. The 24 prisoners killed during the year were also older and had been held longer than in most previous years. *See: The Death Penalty in 2023: Year End Report*, Death Penalty Information Center (2023).

CDCR Loses Suit Over Release of Employee Misconduct Records

On April 2, 2024, the California Superior Court for Sacramento County ordered the state Department of Corrections and Rehabilitation (CDCR) to release results of internal investigations that had been sought by *KQED* in San Francisco on behalf of the California Reporting Project, a coalition of news organizations across the state.

In 2018, then-Gov. Jerry Brown signed into law S.B. 1421, known as the "Right to Know" law enforcement transparency act, allowing the public to obtain records of internal investigations into peace officers accused of dishonesty, serious use of force and sexual misconduct. Another law enacted in 2021 set a 45-day deadline for government agencies to respond to records requests.

In 2019, *KQED* requested five years of internal investigation records from CDCR, the state's largest employer of peace officers. But prison officials fought disclosure for over three years. They claimed to provide a total of 260 cases, but *KQED* found at least 10 more that the agency failed to disclose. Even more failures were found by Rosen Bien Galvan & Grunfeld, a law firm that has represented a number of California prisoners in civil rights lawsuits.

Alleging these were also failures to comply with the Right to Know law, *KQED* filed its complaint in June 2022. As the Court noted in its ruling, the parties did not dispute that the records were subject to disclosure, only how long CDCR had to respond. Plaintiff wasn't even trying to hold the agency to the 45-day limit in the law, given the volume of records requested. But CDCR said it had 45 days to provide records for each incident—which, given it has over 63,000 employees, could last a very long time.

In its ruling, the Court found CDCR's "current rate of production inadequate." It gave CDCR until August 1, 2024, to provide records in 40 incidents on KQED's "priority list" and until April 2, 2027, to provide the rest. Plaintiff was represented by attorneys with Davis Wright Tremaine LLP in San Francisco. *See: KQED v. Calif. Dep't of Corr. and Rehab.*, Cal. Super. (Cty. of Sacramento), Case No. 34-2022-80004025.

CDCR Dinged for Employee Discipline

Earlier, the Disciplinary Monitoring Unit (DMU) of California's Office of the Inspector General (OIG) found CDCR's handling of employee discipline was poor during the period from January 1 through June 30, 2022. Pursuant to California Penal Code § 6126 and 6133, OIG must "provide oversight of internal affairs investigations and the disciplinary process" for CDCR. DMU, composed of attorneys with a minimum eight years of law practice, is responsible for monitoring those investigations and processes.

Among the findings was OIG Case No. 19-0030597-DM, in which four guards were accused of punching and kicking a prisoner on April 25, 2019, with a fifth involved in a subsequent attempted cover-up. But the hiring warden waited 40 days too long, until July 19, 2019, to involve CIP, hampering its investigation. Consequently, the guards were not disciplined.

Perhaps most egregious was Case No. 21-0038852-DM, opened after a guard bit his son, assaulted his wife with a knife and threatened to kill her, and threatened to force responding law enforcement to kill him. OIG recommended firing him, but the hiring warden imposed only a 10% salary reduction penalty for two years.

The most prevalent deficiency DMU found was untimely delay in investigations. The worst performance was found in CIP's handling of allegations of use of deadly force, with 43% deemed "poor." In OIG Case No. 19-0031308-DM, a CDCR guard was arrested for shooting a private citizen in the thigh during an argument. The hiring warden recommended dismissal, but the guard resigned first. DMU found that CIP failed to add allegations that the guard: (1) lied about possessing and using a firearm; (2) abused his authority in arguing against his arrest because he was a CDCR guard; and (3) vandalized a vehicle.

In OIG Case No. 19-0031802-DM, two guards wrote false reports that a sergeant knowingly approved. All three employees lied during their interviews with Internal Affairs, and on July 10, 2020, the hiring warden fired them. But CDCR failed to timely document the dismissal to OIG, so the three were paid an extra 102 days until their dismissal notices were served October 20, 2020. *See:Monitoring Internal Investigations and Employee Disciplinary Process of the Calif. Dep't of Corr. and Rehab.*, OIG (Jan.-Jun 2022).

19 Guards Fired or Disciplined for Violence Resulting in $975,000 Payouts to Prisoners

One of the incidents uncovered by *KQED* resulted in payouts to two state prisoners totaling $975,000. After around two dozen

prisoners arrived at California Correctional Institution at Tehachapi on July 20, 2016, guards in the reception area gave them hot meals but no utensils to eat with. One of the recent arrivals complained, saying they shouldn't have to eat like animals. When guard Johnny Cababe, who was passing out food trays, rebuked prisoner Richard Carrasco, who had not complained, Carrasco challenged him to open the cell door. Cababe took the bait, and numerous other guards joined the fight, pepper-spraying Carrasco and hitting him with batons. After Carrasco was restrained, he was repeatedly kicked by Sgt. Robert Ruiz.

Another prisoner in the reception area, Joshua Heckathorn, had trouble breathing due to the residual pepper spray aggravating his asthma. The guards mocked him and reportedly told him to "stop crying like a girl." Sgt. Ruiz approached Heckathorn aggressively, balling up his fists, and they commenced to fight. Again, a number of other guards jumped in, striking Heckathorn with batons, splitting his scalp open and beating him unconscious. They continued hitting him after he was cuffed; then a guard deliberately shot Heckathorn in the leg, point-blank, with a rubber bullet.

Both of Heckathorn' s hands were broken, and the wounds to his head and leg had to be stapled shut at a hospital. Carrasco suffered severe injuries that included spinal stenosis which required surgery and resulted in a neurogenic bladder—loss of bladder control. He now has to use a catheter to urinate. He also must use a walker, was blind in one eye for 45 days, suffered permanent vision loss, and he had serious injuries to his shoulders and scapula. Both prisoners were disciplined with placement in segregation after the incident.

The guards tried to cover up the brutal beatings by filing false reports. The sergeant who shot Heckathorn in the leg, for example, described it as an "accidental discharge"; another guard falsely claimed that Carrasco had refused medical care. Some of the guards present in the reception area were not even mentioned in the reports.

When the incident was reviewed by Cpt. Edward Yett, to his enormous credit, he found "inconsistencies" in the fabricated reports and asked internal affairs to investigate. Someone soon wrote the word "rat" on his vehicle in the prison's parking lot. The investigation concluded that the guards had falsified their reports, lied during interviews and failed to report their use of force against Carrasco and Heckathorn. Eight guards, including Cababe and an unnamed lieutenant, were fired; at least three appealed their terminations and lost in superior court. Four staff members, including Ruiz, were allowed to resign. Seven others received pay cuts or suspensions. No criminal charges were filed, but then-Warden John Garza was transferred to another lockup, where he worked until his arrest for solicitation of prostitution in 2018.

Meanwhile, Carrasco and Heckathorn filed suit in federal court. The state reportedly settled Heckathorn's claims in 2018 for $575,000. According to documents provided to *PLN* by Carrasco, his case settled in early January 2021 for $400,000; of that amount, $169,790.54 went toward attorney fees and Carrasco received the balance of $230,209.46, less $1,304.63 for restitution he owed. Both prisoners were represented by Sacramento attorney Mark A. Redmond, as well as attorney Kresta Nora Daly with Barth Daly, LLP, also in Sacramento. *See: Heckathorn v. Holland*, USDC (E.D. Cal.), Case No. 1:17-cv-01416; and *Carrasco v. Cabahe*, USDC (E.D. Cal.), Case No. 1:19-cv-00724.

Additional source: *KQED*

Idaho Continues To Cell "Dangerously Mentally Ill" Without Charges

On November 14, 2023, Idaho Gov. Brad Little (R) secured a budget recommendation from the state Permanent Building Fund advisory council for a new $25 million facility jointly operated by the state's Department of Health and Welfare (DHW) and its Department of Corrections (DOC), providing a secure treatment facility for "dangerously mentally ill" patients.

The state will soon be the last to hold civilly committed patients in prison, once New Hampshire completes its new 24-bed forensic psychiatric hospital; ground was broken in September 2023 with completion expected in 2025. After that, those deemed too dangerous for the state psychiatric hospital will no longer be sent to prison in the Granite State—leaving Idaho alone to throw its mentally ill citizens in a cell without any charges.

Little made a similar request in the current legislative session. But even sitting on a $1.4 billion surplus at the beginning of 2023, lawmakers killed an effort to build the state its own secure psychiatric facility, which would have cost just $24 million. The most recent effort before that was led by former Republican leader of the state legislature Joe Stegner, who said the proposal's defeat in 2008 drove him from politics.

Currently, civilly committed Idahoans with the most severe symptoms are held in solitary confinement at the state prison, remaining there 160 days on average. A part-time psychiatrist, a part-time nurse practitioner and 12 other staffers and guards help deal with their severe psychosis as a search is made for an effective medication regimen that might allow other therapies to begin.

Checked at least twice hourly, these "patients" cannot leave their cells except to shower, and even then must be handcuffed, shackled and escorted by guards. Those who take their meds and calmly follow the rules can watch TV or use the microwave in a common area, where there are also phones and email kiosks available. For the rest, there are metal "restraint desks" bolted to the floor where they remain shackled.

"There's no color. There's no nice pictures. There's no couches," noted DHW coordinator Kasey Abercrombie. "It is prison. And when you think about this population in that setting, it is probably dawning on you how wild this is."

DOC spokesman Jeff Ray countered that guards assigned to the patients include "some of the best correctional professionals in our department." But mental health experts agree that psychosis and solitary confinement don't mix well—the federal court for the Northern District of California called it "the mental equivalent of putting an asthmatic in a place with little air." *See: Madrid v. Gomez*, 889 F. Supp. 1146 (N.D. Cal. 1995).

Sources: *New Hampshire Business Review, ProPublica*

More Alabama Prisoners' Families Say Their Corpses Were Returned Without Organs

More cases have surfaced in which families report organs missing from the bodies of loved ones who died in custody of the Alabama Department of Corrections (DOC). As *PLN* reported, the first was the family of Brandon Dotson, 43, who was murdered by a fellow prisoner at Ventress Correctional Facility on November 16, 2023—and whose body was returned to them five days later without a heart. [See: *PLN*, Jan. 2024, p.12.]

But it turns out that after 85-year-old Arthur Stapler died on September 23, 2023, during a 10-year incarceration for child sex abuse at the Hamilton Aged and Infirm Center, his son hired a private pathologist who found "an empty cavity" where his organs should be. Billy Stapler then phoned the autopsy department at the University of Alabama at Birmingham (UAB) to ask for the organs, only to learn "that they possibly got thrown away."

The family of Kelvin Moore, 42, said his body was also returned without organs after he died of a fentanyl overdose at Limestone Correctional Facility on July 21, 2023. When UAB completed an autopsy, it turned over his body to a mortician, who reported most of his organs were missing—leaving no way to verify his cause of death. The family later picked up most of the organs from UAB and buried them with Moore, who had survived over two decades of a life-without-parole sentence for attempted murder and attempted burglary.

Anthony Perez Brackins, 36, was serving 21 years for armed robbery when he died at Limestone on June 28, 2023, also of an accidental drug overdose. UAB returned his body without organs, too, even though he—like Moore and Stapler—was not an organ donor, and his family was never asked for consent. Worse, when the family asked UAB for the organs, an employee declared it was "too late now."

Marvin and Sara Kennedy got no organs except the eyes of Marvin's brother, Jim Kennedy, Jr., 67, after he died at Limestone on April 13, 2023, while serving 300 years for rape, sodomy and kidnapping. When Sara Kennedy phoned UAB, she recorded a six-minute phone conversation with an unnamed supervisor who said, "We've never had this request done before."

"Who buries somebody without their organs?" Kennedy demanded.

"Well, we do it all the time," the supervisor replied, explaining that "UAB is a teaching institution and any teaching institution that does autopsies, keeps their organs."

But that's against the law in Alabama, where medical examiners must notify next-of-kin when they retain the organs to determine the manner or cause of death. They must also get approval to keep organs for research or other purposes. State lawmakers are now working on a bill to make a violation of that law a Class C felony carrying a 10-year prison term.

A 2005 agreement between DOC and UAB apparently executed in violation of the law declares the warden is the "legally designated representative" and

"legally entitled to grant permission for the completion of an autopsy and the removal of organs or tissues for further study on [a deceased] inmate."

In a suit filed by Dotson's survivors in federal court for the Northern District of Alabama, an affidavit was provided on January 3, 2024, by the daughter of Charles Edward Singleton, a 74-year-old prisoner who died in November 2021 at Hamilton. After an autopsy at UAB, the body arrived at a funeral home, where the family was told that a viewing was not advisable because of "advanced skin slippage" blamed on the fact there were no organs in his body. A request to UAB to return the missing parts was never honored.

Lauren Faraino, an attorney representing Dotson's family, called the missing organs "absolutely part of a pattern" as she built her case for unauthorized organ removal. Plaintiffs then stipulated to a dismissal of the case on April 1, 2024; *PLN* will report additional information in the case as it is available. *See: Dotson v. Ala. Dep't of Corr.*, USDC (N.D. Ala.), Case No. 2:23-cv-01657.

Meanwhile Faraino is also representing the other five families in suits against DOC and UAB filed in the state's Fifteenth Judicial Circuit Court for Montgomery County. She pointed to a 2017 UAB Division of Autopsy report that said 23% of its yearly income from 2006 to 2015 came from DOC autopsies, each of which earns UAB a $2,200 fee, plus $100 for each toxicology test. The suit filed for Stapler's family says that "Defendants' appalling misconduct is nothing short of grave robbery and mutilation." *See: Stapler v. Hamm*, Ala. 15th Jud. Cir. (Montgomery Cty.), Case No. 03-CV-2024-900568.

On April 2, 2024, DOC Commissioner John Hamm proposed creating a 15-member Family Services Unit at each of the state's 14 major prisons tasked with facilitating communication to prisoners' families, including death notifications.

Additional sources: *Alabama Daily News, CNN, The Guardian, NBC News, WBMA*

$20.5 Million Settlement for Two Kentucky Prisoners Exonerated and Freed After 22 Years

by David M. Reutter

On September 7, 2023, the Louisville/Jefferson County Metro Government in Kentucky agreed to pay $20.5 million to settle a civil rights action alleging constitutional violations in the wrongful murder convictions and imprisonment of Jeffrey Dwayne Clark and Garr Keith Hardin.

Both now 54, they were 22-year-olds when found guilty in the 1992 stabbing death of Hardin's girlfriend, Rhonda Sue Warford, 19. Prosecutors charged the killing was part of a satanic ritual, pointing to Hardin's admitted involvement in satanism. But that admission was a lie made up by a dirty cop, who also tied the two to other evidence found at the crime scene. After 22 years of wrongful imprisonment, they were exonerated and freed in 2016 when DNA analysis of that evidence failed to find a match to them. But there was more to cast doubt on their 1995 murder conviction.

The lawsuit that they filed in 2017 alleged that disgraced Louisville police detective Mark Handy fabricated and manipulated evidence to wrongly convict them. The complaint noted that Handy had a reputation among colleagues as a "closer who could wrest a confession out of anybody." He falsely reported that Hardin admitted to performing satanic rituals by sacrificing animals, embellishing that lie by saying he had decided to "do a human."

"It became the linchpin of the case against Hardin and Clark," the complaint alleged. "But nothing in the statement was true."

Handy pleaded guilty in 2021 to perjury and fabricating evidence in two other cases that ended in wrongful convictions. He was sentenced to a ridiculously short prison term—just one year—and then served a ridiculously short portion of that, released after less than a month to home confinement by the state Department of Corrections in May 2021.

After the Innocence Project took up Hardin and Clark's case, a judge agreed that DNA from hairs found at the scene did not match either man, also citing Handy's questionable credibility in a 2016 order vacating their convictions. After they were released, the state attempted to retry them for murder, seeking the death penalty this time. However, the judge found that attempt was vindictive prosecution and dismissed the charges.

"They tried, essentially, putting two innocent people on death row after they were granted a new trial," said Elliott Slosar, one of the attorneys who represented Hardin and Clark.

The settlement guaranteed total payments of $7,925,000 each to Hardin and Clark. An interesting provision called for Hardin and Clark to receive 40%, or no more than $2.325 million each, of the proceeds in a lawsuit that was pending against General Star Indemnity Company. That raised the total that each could be paid to a maximum of $10.25 million. An award of attorney's fees is yet to be determined.

Clark was represented by attorneys with Loevy & Loevy in Chicago and Hardin by attorneys with Neufeld, Scheck, Brustin, Hoffman & Fredenberger in New York City. Their suit is still proceeding toward trial for remaining Defendant officials with Meade County and Kentucky State Police; *PLN* will update developments as they are available. *See: Clark v. Louisville-Jefferson Cty. Metro Gov't,* USDC, W.D. Kentucky Case No. 3:17-cv-00419.

Additional Sources: *Louisville-Courier Journal, New York Times, WDRB*

$7 Million Settlement for Mentally Ill Detainee's Death in California's Santa Rita Jail

by Matt Clarke

In a settlement agreement effective October 23, 2023, California's Alameda County agreed to pay $7 million to the estate and progeny of a detainee who died while incarcerated at the county's jail in Santa Rita. The large settlement amount reflected the egregious neglect that allegedly contributed to the death of Maurice Monk, including a failure to provide the mentally ill detainee with necessary medication and ignoring his obviously deteriorating mental and physical health until he died, while also falsifying wellness checks.

Monk's corpse was found in his jail cell on November 15, 2021, lying in a puddle of his own urine that had been there for days. The floor of his cell was littered with unopened meal trays and unused cups of medication that guards and medical personnel had left there, allegedly without trying to see if he was in medical distress.

This sad story has even more tragedy at its core because Monk probably should not have been in jail at all. He was arrested the previous month after a verbal altercation with a bus driver who refused to let him board because he was not wearing a face mask, as required by COVID-19 protocols then in place. Later turned away from the courthouse for again not wearing a face mask, he missed a court appointment, leading to a $2,500 appearance bond that he couldn't begin to afford—which ultimately landed him in jail for his final, fatal stint.

This was not Monk's first time in the jail, and jail personnel knew that he suffered from schizophrenia, hypertension and diabetes. They even placed him in a section of the jail for prisoners with mental health issues that was supposed to have mandatory wellness checks every 30 minutes. Nonetheless, according to court documents, he did not receive the medication required to treat his mental illness during his final stay at the jail.

His family tried to get jail staff to accept Monk's medications from them or provide him medications from the jail's stock, but they were met with indifference. Neither jail personnel nor the medical staffers employed by its contracted health care services provider, Wellpath, made sure that he got the needed medications. Without those, Monk's mental health deteriorated until he was left sitting on his bunk muttering to himself, punctuated by periods of screaming. Maybe that's why, when deputies and nurses saw him lying on his bunk unmoving and without pants, they were not concerned enough to check on him.

"He lay in this [unnatural] position for several days as various deputies, standing at his cell door, dismissed his behaviors as 'Monk being Monk,' claimed the [urine] was spilled milk, or that they saw him move a single toe," noted the estate's attorneys, Patrick Bulena, Andanté D. Pointer and Ty Clarke of Pointer and Bulena in Oakland. Much of Monk's limited interaction with jail staff was captured by guards' body-worn cameras. Those recordings and the diligence of the family's attorneys led to the discovery of the abusive neglect—despite an autopsy that found the death was due to natural causes. See: *Est. of Monk v. Cty. of Alameda*, USDC (N.D. Cal.), Case No. 3:22-cv-04037.

Alameda County District Attorney Pamela Price noted that Monk may have died up to 72 hours before his corpse was discovered. "Mr. Monk, I am told, had a mental illness—a diagnosis," said Price. "We all know that mental illness is not a crime, and it should not be a death sentence in Alameda County."

Yet Monk's mental illness seems to have been treated as a crime. Why else was he incarcerated and neglected over a month for a trivial nonviolent misdemeanor likely related to his mental illness? Wellpath remains a defendant in the lawsuit, though it got some claims dismissed on January 30, 2024. *See: Est. of Monk v. Wellpath Cmty. Care,* 2024 U.S. Dist. LEXIS 18164 (N.D. Cal.). *PLN* will update case developments as they are available.

How Parole and Probation "No-Association" Conditions Hamper Successful Reentry

Once upon a time, parole and probation officers actually helped those under their supervision. In the rehabilitation-oriented 1970s, for example, they assisted in finding housing and employment, knowing that more support for a newly released prisoner made reoffending less likely. That approach changed during the get-tough-on-crime era which began in the 1980s and continues to this day. Now, parole and probation officials are more inclined to strictly enforce supervision conditions, sending people back to prison for "technical" violations.

But according to a report issued on November 8, 2023, by Prison Policy Initiative (PPI), a data driven non-profit organization that advocates for criminal justice reform, "no-association" conditions of community supervision that prohibit contact with those who have past criminal records—even family members, and even when the offense occurred decades before—often hinder successful completion of community supervision.

Approximately 3.7 million people are on parole or probation in the U.S., relying heavily on support networks of family, friends, co-workers and counselors. "Though research supports the unique benefits of these social connections," the report noted, "many states actually prohibit people on supervision from this contact, under the false impression that it will lead people into criminalized behaviors."

PPI counted 29 jurisdictions—including D.C. and the federal prison system—with standard parole rules that include no-association conditions. Another 10 jurisdictions have similar restrictions that are discretionary. The rules are sometimes vague; for example, Mississippi prohibits parolees from associating with "persons of bad reputation," though the law doesn't provide guidance on calculating a reputational score. Alabama and Georgia, which has the nation's largest probation population, bar association with "persons of disrepute or harmful character," again with no guidelines. A standard condition in California requires those on probation to "refrain from becoming abandoned to improper associations." As PPI notes, such rules are not only vague but archaic.

Restrictions most often prohibit associating with those who have felony convictions, or sometimes any convictions, or who are also on parole or probation. But this can bar spouses from having contact with each other. It can keep parents and their adult children apart or prevent siblings from interacting. It also prevents visiting family members in prison or jail, affecting a huge share of released prisoners; a 2016 report by the U.S. Bureau of Justice Statistics found that 59% of state and federal prisoners had an immediate family member who had been incarcerated.

Restrictions can extend to counselors, therapists, co-workers and even members of reentry support services who have past criminal records. However, it's those who have been through the criminal justice system themselves, including people previously on parole or probation, who can best provide advice and support to help navigate the supervision system and reentry process. While parolees and probationers may be able to request permission to associate with a specific person, granting the request is up to supervision officials, most carrying overly large caseloads, with zero incentive to risk blowback should there be a reoffense.

No-association conditions are also subject to interpretation. Does "association" mean living with someone? Seeing him or her socially? Phoning, texting or emailing? "Liking" a post on Facebook? According to law professor Fiona Doherty, such conditions are "purposefully—indeed, rigorously—unclear."

The PPI report cited several egregious examples of no-association conditions: A Texas probationer returned to prison for four years "for being seen near enough to a 'crack house' to be in association with people who sell drugs or engage in other illegal activity"; a federal prisoner on supervised release sent back to prison for 18 months "for speaking to a fellow member of his treatment group on the subway."

Association restrictions can limit where people on community supervision live and work, and whom they can rely on for financial support—despite standard conditions requiring parolees and probationers to maintain housing and employment. Such rules, according to the report, "make it even harder to find housing and work, arrange for transportation, participate in treatment programs, or otherwise succeed in reentry."

Given that some 24 million people in the U.S. have felony records, and up to 80 million have a criminal record of

some type, no-association conditions for parolees and probationers are obviously too restrictive. "The senselessness and cruelty of association restrictions undermine the very purpose of supervision, which includes helping people get the resources and build the relationships they need to achieve stability in the community," PPI stated. Such restrictions "perpetuate harmful assumptions" about those with criminal records, "set people up for failure," and "should be abolished as a condition of probation or parole." *See: Guilty by Association: When Parole and Probation Rules Disrupt Support Systems,* PPI (Nov. 2023).

Harris County Shipping Detainees from Overcrowded Jail to Mississippi CoreCivic Prison

On December 1, 2023, Harris County, Texas, began sending up to 360 detainees from the county's jails to a prison in Mississippi, under a contract with its private operator, CoreCivic. The County Commissioners Court approved the $11.3 million one-year agreement, which has renewal options, on November 14, 2023, just weeks after regulators from the state Commission on Jail Standards (TCJS) ordered the county to reduce population in its overcrowded jail.

Criminal court backlogs are blamed for overflowing the jail with 9,378 detainees—70% of whom are awaiting trial. Harris County Sheriff's Office Chief of Staff Jason Spencer said the county looked at proximity, price and track record before choosing Tallahatchie County Correctional Facility in Tutwiler, Mississippi, agreeing to pay CoreCivic $85 a day per detainee sent there to await trial from Houston, over 500 miles away.

Critics point to the prison operator's track record, with numerous accusations of short staffing, excessive force and substandard health care in some 100 lockups nationwide. TCJS has no authority to go after CoreCivic for jail standards violations outside the state and no counterpart in Mississippi to do so, either. The Mississippi DOC provides no oversight for the lockup, which also holds detainees under contract from jails in Vermont and South Carolina, as well as some awaiting federal trials in custody of U.S. Marshals.

Just as pressing is concern for fair administration of justice, since sending detainees so far away complicates their legal defense and may lead to unfair plea deals as cases are unnecessarily prolonged. Defense attorneys must confer with defendants via video calls, in which privacy is more difficult to secure. But Spencer insists only those whose court dates are in the distant future will be sent because "[i]t doesn't make any sense to send them out there for, you know, a week, and then bring them back."

Advocates say that the money spent on the new contract might instead go toward alternatives to pretrial detention, including remediating poverty and treating mental illness, both root causes of crime. Bail reform in low-level cases would also lower jail population, they argue. A 2020 Texas Jail Project consultant's report recommended prosecutors dismiss all non-violent felony cases older than nine months, since more than half end up being dropped or deferred.

Source: *Bolts Magazine, Houston Landing*

Florida County Pays $300,000 to Settle Jail Suicide Suit

by Matthew T. Clarke

On October 17, 2023, the estate of a detainee who committed suicide in Florida's Escambia County Jail accepted $300,000 to settle a federal civil rights lawsuit. Lukas MacKenzie Snelson, 24, was arrested on December 30, 2021, for second degree homicide of his grandmother, Fran Fournier, 75, grand theft of her automobile, and resisting arrest. As he was being booked into the jail, Snelson made suicidal comments. He was given a mental health evaluation and placed under observation in the infirmary for three days, then transferred to a cell.

The next day, Snelson began a suicide attempt by hanging himself from the cell bars with a bedsheet. At the time, guard trainee Gregory Morgan Oglesby and fellow guard Spiros Leonida Mumtzis were working in Snelson's housing area. They were responsible for making periodic cell checks to determine detainees' welfare. Despite multiple "checks" that they recorded, though, Snelson was left hanging for more than 40 minutes before he was found and released from his bedsheet ligature. When Emergency Medical Services (EMS) arrived about 15 minutes later, Snelson's heart had stopped beating. EMS was able to resuscitate him for transport to a hospital, but he died two days later when he was taken off life support.

An investigation by Internal Affairs at the jail determined that Mumtzis and Oglesby "clearly neglected their duties and failed to observe an actual living person during the alleged visual checks." They were found guilty of conduct prohibited by jail policies and procedures. They may also have not taken Snelson's suicide attempt seriously. Complicating their inadequate visual checks was a broken light in Snelson's cell, which was recorded in a maintenance work order on the jail's computer. The guards further failed to employ a flashlight to see into the cell.

Aided by Pensacola attorneys Ryan M. Cardoso and Gabriel G. Mueller of Cardoso Law, estate curator Charles P. Hoskin filed claims pursuant to 42 U.S.C. § 1983 and state law against the County, Mumtzis and Oglesby, accusing them of deliberate indifference to Snelson's serious medical needs, failure to protect him, inadequate training and negligence. The $300,000 settlement, which includes costs and fees for the attorneys, will be paid by the County's insurance carrier, less an $86,241.17 deductible. Snelson, who was unmarried, is survived by a two-year-old son and his mother. *See: Hoskin v. Escambia Cty.*, USDC (N.D. Fla.) Case No. 3:22-cv-25151-TKW-ZCB

Additional source: *North Escambia*

Memphis Jail Accused of Routine Over-Detention in Suit Over Detainee's Murder

A lawsuit filed on November 18, 2023, accused the Shelby County Jail in Memphis of routinely and deliberately denying release to eligible detainees. That's how Marcus Donald's family alleged the 38-year-old was still in the jail despite a court-ordered release earlier on November 17, 2022, when he was then murdered by cellmate Stephen Robinson.

The suit was filed in federal court for the Western District of Tennessee against Sheriff Floyd Bonner. Donald was one of 44 detainees to die at the jail since he assumed office in 2019. Most galling of all, the suit said, is that Donald shouldn't have been in the jail, since he earlier in the day pleaded guilty to a misdemeanor assault charge and was sentenced to time served.

But instead of being released, he was returned to the jail and placed in a cell with Robinson, who was being held for first-degree murder. The complaint recalled that Donald repeatedly begged jailers to move him for fear of Robinson, but his requests went ignored. So did jailers' assigned cell rounds, the suit continued, which were supposed to occur every 30 minutes; instead, surveillance video showed, Donald's cell was left unchecked for 79 minutes, during which time Robinson strangled him to death. The suit alleged blame for the delay can be chalked up to 85 guard positions left vacant at the lockup.

But it was the delay in Donald's release that could have been most easily avoided, the complaint continued, since jailers had "easy, immediate access" to the court-ordered release online. Though Plaintiffs predicted that Bonner "will claim his deputies cannot release inmates until someone from the court delivers those papers to their physical possession," the suit declared: "That will be a lie."

Donald's parents, Marilyn and Charles Donald, are represented in their suit by attorneys Jacob W. Brown and Sara K. McKinney of Apperson Crump PLC in Memphis, along with co-counsel from attorney Ben Crump, of his eponymous firm in Washington, D.C. *See: Donald v. Bonner*, USDC (W.D. Tenn.), Case No. 2:23-cv-02738.

Three days after the suit was filed, Robinson, 25, pleaded guilty to Donald's murder and was sentenced to a total of 76 years in prison. Donald's death at the jail occurred about a month after that of Gershun Freeman, a 33-year-old psychotic whose fatal October 2022 beat-down by 10 jail guards was captured on surveillance video.

Nine of them were indicted in September 2023, including two—Stevon Jones and Courtney Parham—who were charged with second-degree murder. The other seven charged with aggravated assault were Jeffrey Gibson, Anthony Howell, Damian Cooper, Ebonee Davis, Lareko Donwel Elliot and Chelsey Duckett and Charles Gatewood.

Bonner ran unsuccessfully for Memphis Mayor in October 2023, losing in a crowded field of 17 candidates to new Mayor Paul Young (D).

Additional sources: *Memphis Commercial Appeal, PBS News, WANT, WREG*

Atheist Chaplain Attends Atheist Oklahoma Prisoner During Execution

In the final hours before Oklahoma killed Phillip Hancock on November 30, 2023, he was attended by a chaplain, like almost all condemned prisoners. Unlike most though, Hancock was an atheist. So was his chaplain, Devin Moss. As the last minutes of Hancock's life ticked away, the two shared encouragement from the Christian New Testament to meditate on "whatever things are true."

Hancock, 59, was convicted of the 2001 murders of Robert Jett, Jr., 37, and James Lynch, 58, reputed members of an outlaw motorcycle gang who lured him to their home and tried to cage him before he wrestled a pistol from one and shot both dead. His pleas of self-defense went unheeded at trial but eventually persuaded the state Pardon and Parole Board to recommend clemency on November 8, 2023.

By then, Hancock was scheduled for lethal injection. With just hours to go, Gov. Kevin Stitt (R) refused to commute his sentence, without offering an explanation. In a viral video shot a year before, Stitt—who attends an Assembly of God church—offered a prayer in which he claimed "every square inch" of Oklahoma "in the name of Jesus."

Hancock was also raised in an Assembly of God church, through tumultuous family struggles and violence. His relationship with faith shifted after imprisonment, a quest for identity that ultimately led him to reject a god he perceived as "maniacal" and "narcissistic."

"The good Christians are going to strap me to a crucifix and put a nail in my vein?" he asked Moss. "Do they really think that their God approves of them?"

Moss, 48, was also raised Christian before rejecting the faith. He served as spiritual adviser during Hancock's last year, even moving from Brooklyn to Oklahoma the last few months. In a setting where faith usually plays a crucial role, he struggled to offer solace in the absence of religious belief.

"It's well known that people that really believe, that really have faith, die better," he said. "How can we help people die better that don't have supernatural faith?"

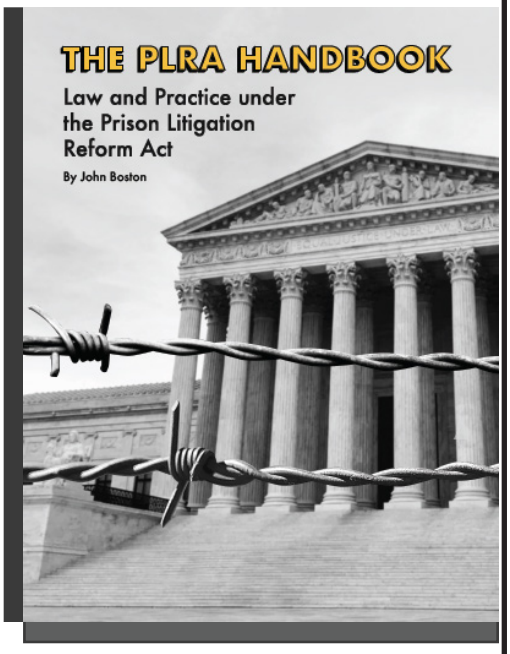
Hancock candidly admitted that he requested someone in the death chamber for fear of a botched execution, like the one in 2014 that tortured Clayton Lockett for 45 minutes before the needle was finally pulled from his arm. Lockett died of a heart attack shortly afterward, as *PLN* reported. [See: *PLN*, Oct. 2015, p.44.] But Hancock didn't let fear that recorded calls with Moss would be reviewed prevent him from exploring existential questions.

"Nonexistence didn't bother me before I existed," he eventually decided. "I don't think it's going to bother me after I'm dead."

As Hancock lay on the execution gurney, Moss circled back to that New Testament quote. "What is real is that you are loved," Moss told him. "What is true is you are not alone."

Sources: *Daily Mail, New York Times, The Oklahoman*

THE PLRA HANDBOOK



Law and Practice under the Prison Litigation Reform

By John Boston

Edited by Richard Resch

The PLRA Handbook is the best and most thorough guide to the PLRA in existence and provides an invaluable roadmap to all the complexities and absurdities it raises to keep prisoners from getting rulings and relief on the merits of their cases. The goal of this book is to provide the knowledge prisoners' lawyers – and prisoners, if they don't have a lawyer – need to quickly understand the relevant law and effectively argue their claims.

Anyone involved in federal court prison and jail litigation needs *the PLRA Handbook* – lawyers, judges, court staff, academics, and especially, pro se litigants.

Although *the PLRA Handbook* is intended primarily for litigators contending with the barriers the PLRA throws up to obtaining justice for prisoners, it'll be of interest and informative for anyone wishing to learn how the PLRA has been applied by the courts and how it has impacted the administration of justice for prisoners. It is based primarily on an exhaustive review of PLRA case law and contains extensive citations. John Boston is best known to prisoners around the country as the author, with Daniel E. Manville, of the *Prisoners' Self-Help Litigation Manual* – commonly known as the "bible" for jailhouse lawyers and lawyers who litigate prison and jail cases. He is widely regarded as the foremost authority on the PLRA in the nation.

"If prisoners will review The PLRA Handbook prior to filing their lawsuits, it is likely that numerous cases that are routinely dismissed will survive dismissal for failure to exhaust."

— Daniel E. Manville, Director, Civil Rights Clinic

THE PLRA HANDBOOK

Paperback, 576 pages

Prisoners: $84.95

Professionals: $224.95

(includes shipping)

Order by mail, phone, or online. Amount enclosed _____

By: ☐ check ☐ credit card ☐ money order

Name _____

DOC/BOP Number _____

Institution/Agency _____

Address _____

City _____ State _____ Zip _____

Human Rights Defense Center PO Box 1151 • Lake Worth Beach, FL 33460 • Phone # 561-360-2523

Dedicated to Protecting Human Rights WWW.PRISONLEGALNEWS.ORG • WWW.CRIMINALLEGALNEWS.ORG

Florida Prisons Playing "Whack-a-Mole" With Jailbroken Tablets

In an essay published in *Slate* on December 14, 2023, former Florida prisoner Ryan Moser said that officials with the state Department of Corrections (DOC) were "essentially playing whack-a-mole" in their efforts to combat an epidemic of "jailbreaking" prison-issued electronic tablets.

The tablets are issued free to prisoners under DOC's contract with messaging service provider JPay, a subsidiary of prison telecommunications giant Securus Technologies. The devices connect to the internet at kiosks unless prisoners hack into the operating software to enable connection via a contraband cellphone—a process known as "jailbreaking."

Moser said the only time he used a jailbroken tablet was one Thanksgiving when phones were down—which happens a lot, he added—so he risked disciplinary measures to make a desperate call to his family via WhatsApp. Providing free messaging would reduce the problem, he said. But JPay collects one 39-cent "stamp" for each message a prisoner sends, while DOC pays prisoners exactly nothing for the work they are compelled to do during their incarceration.

DOC could also give prisoners cheaper and more reliable access to phone calls, which are currently provided by Securus competitor ViaPath—formerly Global*Tel Link—at a charge of 13.5 cents per minute. Though some prisoners use jailbroken tablets to watch porn, Moser said most use WhatsApp to get around these charges and make free calls.

Connecting to Facebook to stay in touch with family and friends is another reason prisoners pay up to $300 to have tablets jailbroken. Prisoners who do so lose access to JPay's system, too, since the IP address of any tablet not synced at a kiosk for 30 days or more is locked out, also sending guards to investigate.

A prisoner with a modicum of technical ability can use a contraband cellphone or another jailbroken tablet to download software needed to update a particular model tablet and wipe it clean of JPay's proprietary software. "You would think that a device used by inmates would be highly secure, employing a superior level of cybersecurity protocols," one online pundit noted. "In reality, JPay tablets run on significantly outdated versions of the Android operating system that can be exploited for full unlocking."

It can cost the prisoner with a jailbroken tablet another $250 to bribe a guard to smuggle a $25 Amazon wifi-hotspot so he can connect to the internet. Even if that cost isn't shared with neighboring prisoners using it for their own jailbroken tablets, the whole $550 endeavor pays for itself in less than 65 hours on the phone with family and friends. For those who download the updating software, the cost can rise to $1,000, but jailbreaking tablets for a few other prisoners will recoup the investment and set up a handsomely profitable business.

All of which raises the question: Why has DOC let this mushroom when it claims to use "every tool at its disposal to mitigate contraband and illegal activity"? Maybe it doesn't care as much as it says it does about the risk that prisoners will be exposed to fraud, cyberstalking and kiddie porn. Or maybe DOC simply uses those threats to maintain control over prisoners by manipulating their access to the people they care about most.

Source: *Slate*

If You Write to *Prison Legal News*

We receive many, many letters from prisoners – around 1,000 a month, every month. If you contact us, please note that we are unable to respond to the vast majority of letters we receive.

In almost all cases we cannot help find an attorney, intervene in criminal or civil cases, contact prison officials regarding grievances or disciplinary issues, etc. We cannot assist with wrongful convictions, and recommend contacting organizations that specialize in such cases – see the resource list on page 68 (though we can help obtain compensation *after* a wrongful conviction has been reversed based on innocence claims).

Please do not send us documents that you need to have returned. Although we welcome copies of verdicts and settlements, do not send copies of complaints or lawsuits that have not yet resulted in a favorable outcome.

Also, if you contact us, please ensure letters are legible and to the point – we regularly receive 10- to 15-page letters, and do not have the staff time or resources to review lengthy correspondence. If we need more information, we will write back.

While we wish we could respond to everyone who contacts us, we are unable to do so; please do not be disappointed if you do not receive a reply.

Tuberculosis Outbreak Exposed Weak Washington DOC Response

Washington's Tacoma-Pierce County Health Department (TPCHD) issued an advisory to healthcare providers on December 13, 2023, to test for tuberculosis in anyone incarcerated by the state Department of Corrections (DOC) during an outbreak of the disease in 2021. Over 800 people were released from prison before officials identified their exposure to TB, and many still have not been notified or tested.

Washington state prisons had no tuberculosis cases from 2014 to 2020, when COVID-19 disrupted the system's healthcare protocols. The outbreak reported in 2021 then became the state's largest in 20 years. Thousands of prisoners were unknowingly exposed to the highly infectious disease. As it spread beyond prison walls, at least 28 people were infected and 2,900 more exposed. Many may be still carrying the disease.

DOC spokesperson Chris Wright said the outbreak was caused by suspending annual TB testing during the pandemic. Prisoners known to have had tuberculosis in the past were normally tested for TB on their birthday. A five-year absence of tuberculosis cases and overlapping symptoms with COVID-19 compounded delays in detecting cases. DOC leadership acknowledged the seriousness of the outbreak but defended their efforts to implement testing and prevention measures afterward.

Dennis Oya said he was patient zero of that TB outbreak. A Native American, he had contracted the disease at age 18, and it escalated into active disease in late 2019 while he was housed at Clallam Bay Corrections Center. He described his symptoms to an epidemiologist as "coughing hysterically." In fact, he fractured three ribs from cough compression yet struggled to receive proper diagnosis and treatment.

Oya was then transferred to Stafford Creek Corrections Center, where he believes he unknowingly transmitted TB to several others, including Andrew Lagerquist and Jesus Ancheta, his cellmates at different points. All three described delayed diagnoses, inadequate medical care, and harsh isolation conditions during treatment. Oya, Lagerquist, and Ancheta eventually cleared the TB from their bodies but suffer ongoing health issues due to the delayed treatment.

The state Department of Labor and Industries fined DOC $84,000 for safety violations that exacerbated the outbreak, as *PLN* reported. [See: *PLN*, Nov. 2022, p.36.] Inspectors found prison guards did not receive proper training and testing for their N-95 respirators, leaving them exposed to the contagious disease. However, no compensation was offered to affected prisoners.

Sources: *The Chronicle*, *KING*, *The Nation*

Eleven Years After Consent Decree Entered, New Orleans Jail Still Not Compliant

In a monitoring report on October 6, 2023, the Compliance Director with operational control over Orleans Parish Prison (OPP) in New Orleans found continued problems at the jail, such as an increase in prisoner-on-prisoner violence, overdoses and unnecessary use of force by guards. As *PLN* reported, unsafe and unconstitutional conditions at the jail, including high levels of violence, led to a class-action lawsuit that resulted in a 2013 consent decree and construction of a new jail facility. [See: *PLN*, Dec. 2017, p.12] As part of that agreement, the Compliance Director is tasked with issuing a monitoring report every six months.

The most recent report, running 162-pages, covered the six-month period ending with March 2023. It noted that "[t]oo often the failure to follow policy is blamed on lack of staff or training," but "[n]either is an acceptable excuse." Problems at OPP have been exacerbated by a growing population: Some 1,140 people were housed at the jail, more than a 40% increase since mid-2021.

The consent decree includes 174 provisions related to security, safety, violence reduction and medical care. The monitors found that OPP was in substantial compliance with just 76—44%—of those requirements, though it was in noncompliance with just 12, or 7%. The jail was found in partial compliance with the remaining requirements.

Areas of non-compliance included late, incomplete or missing incident reports; failure to timely review use-of-force incidents; prisoners roaming outside their cells and making improvised weapons; and failure to keep drugs out of the facility, resulting in two fatal overdoses.

The monitors reported improvements in 11 areas, including implementation of a classification system for prisoners. They also lauded creation of a Compliance and Accountability Bureau by Sheriff Susan Hutson to improve compliance with the consent decree. However, the "lack of significant progression and, in some cases, regression is due to a failure to follow the policies and procedures that have been put in place."

Inadequate staffing was driven by high numbers of employee resignations, terminations and retirements. "The level of staffing is extremely insufficient to adequately supervise inmates and allow for the safe operation of the facility," the monitors wrote.

With respect to medical and mental health care for detainees, "challenges remain in the provision of basic care, staffing, and recordkeeping," as well as a need for "improved collaboration with custody/security staffing." Specific deficiencies in medical care were mentioned, including one case where a prisoner's classic stroke symptoms went unrecognized by a nurse, resulting in permanent neurological damage.

The report also found "significant incidents of violence … during the monitoring period" plus "the continued presence of weapons, pills, narcotics, and other contraband in housing units." There were 256 prisoner-on-prisoner assaults and 132 uses of force during the first half of 2023. Several incidents were cited, including three fires set by prisoners and a slashing attack that, according to a news report, left a detainee cut "from ear to chin."

Additionally, guards often resorted to force "to gain control and compliance," but "the force used is more than necessary." In one incident, a guard who reportedly used pepper spray on a handcuffed and restrained inmate. Although the jail has an Early Intervention System (EIS) to flag staff members for inappropriate use of force, "no review of staff alerted under the EIS was documented or provided," and the Sheriff's office acknowledged "that the reviews did not occur."

The monitors recommended a number of improvements to ensure compliance with the consent decree, including reestablishment of a high security unit to house detainees who engage in violent or disruptive behavior. The consent decree remains in effect with oversight by the district court; class members are represented by attorneys from the MacArthur Justice Center. *See: Jones v. Hutson*, USDC (E.D. La.), Case No. 2:12-cv-00859.

Additional source: *New Orleans Times-Picayune*

$5 Million Settlement in Death of Georgia Prisoner Left by Guards in Cell on Fire

by David M. Reutter

On November 16, 2023, the Georgia Department of Corrections (DOC) agreed to pay $5 million to the estate of Thomas Henry Giles, 31, a mentally ill prisoner who died after guards left him for hours locked inside a cell on fire at Augusta State Medical Prison (ASMP). It was reportedly the largest payout ever for a state prisoner's death.

As a form of protest for being denied access to his counselor, Giles set fire to the mattress in his cell at about 2 p.m. on October 28, 2020. Guards Robert Roberson and Marcus Phillips watched as he used a shank to expose wires in a light fixture and sparked the blaze. But they took no action to stop him. Nor did they try to extinguish the fire. They also made no attempt to remove Giles. As smoke escaped the cell and filtered into the hallway, Sgt. Reggie Crite opened the food flap on Giles' cell door. But no one did anything else to dissipate the heavy smoke filling the cell. Crite did, however, open a door to vent smoke from the cell block.

Giles begged guard Brittney Seals to render aid and remove him from the cell. But she responded that escorting other prisoners took priority. As smoke billowed through the cellblock, guards moved two prisoners in adjacent cells around 3 p.m.. But it was not until after 5 p.m.—three hours after the fire started—that anyone entered Giles' cell. By then, he was dead.

"There were any number of opportunities to have prevented the fire in the first place or to have done something about it early on or later," said Zack Greenamyre, one of the attorneys who represented Giles' estate. "Those opportunities have continually gone lacking."

An autopsy found Giles had a carbon monoxide level of 76%, well above the 40% to 60% levels considered lethal. "While the decedent started the fire himself, based on the investigative reports, prison staff did not attempt to prevent or extinguish the fire and did not remove the decedent from his locked cell for several hours after the onset of the fire," the medical examiner's report stated. "As such, the manner of death is best classified as Homicide."

Yet DOC took no disciplinary or criminal action against the guards. *The Atlanta Journal Constitution* reported that only one of the guards involved is still employed at ASMP, promoted to a supervisory position.

One of Giles' sisters, Vanessa Loyal, served as Administrator of his estate and filed a civil rights lawsuit in federal court for the Southern District of Georgia on September 22, 2022, accusing DOC and its employees of deliberate indifference to his serious needs by failing to protect him from the smoke inhalation that caused his death. The $5 million settlement was reached on November 16, 2023, after discovery in the case laid bare the callous disregard for life shown by guards. It included costs and fees for Greenamyre and his Atlanta firm, Mitchell and Shapiro LLP, as well as another attorney for the estate, Natanya Brooks,

of Brooks Injury Law in Peachtree Corners. Under terms of the agreement, the state Department of Administrative Services paid $3 million, while Lexington Insurance Co. paid $1.3 million, plus $4,835 per month for 15 years beginning on December 15, 2023, and another $10,000 annually for 15 years beginning on August 4, 2024.

"I think they believed at the beginning they could get a discount on the case because probably that's what they always do," said Brooks. "And I think as the case progressed, depositions were taken, they realized that if it went to a jury, a jury was going to care that this is a real person, that this person was murdered, should have been taken out of his cell, and there's really no excuse from anyone." See: *Loyal v. Georgia Dep't of Corr.*, USDC (S.D. Ga.), Case No. 1:22-cv-00084.

Additional source: *Atlanta Journal Constitution*.

$500,000 Jury Award Cut to $250,000 for Pennsylvania Prisoner Brutally Beaten by Guards

by Douglas Ankney

Lack of expert testimony halved a $500,000 award made by a federal jury to Pennsylvania prisoner Michael Sherman Allen on November 1, 2023, for injuries sustained in a brutal 2019 beating at the hands of Robert Hollowood and fellow guards at State Correctional Institution (SCI) in Fayette.

Allen, who is an African-American, was previously held at SCI-Graterford when he filed an earlier complaint against several guards in July 2015. Before that case went to trial, one of the named defendants—guard Edward Settle—died. SCI-Fayette guards, apparently aware of the case and blaming Allen for Settle's death, called the prisoner a "snitch" and a "scum bag."

It was against this background that Allen observed Hollowood and two other guards—Juan Macias and Paul Gaffey—enter his cell at SCI-Fayette on February 25, 2019. Allen at the time was on the telephone, so he terminated his call and approached his cell to see why the guards were inside, finding that Hollowood was destroying his CPAP machine.

Gaffey prevented Allen from entering the cell to attempt to save the device and ordered him to strip naked in front of the other prisoners on the cell block. Allen complied. Surveillance video then captured Hollowood as he ran from the cell and attacked Allen, calling the prisoner "nigger" and falsely yelling that Allen had "punched a guard." That drew other guards into the melee. Allen was pinned face down on the floor.

"Break the nigger's fingers!" Hollowood yelled.

Guards could then be seen bending Allen's fingers one by one, trying to break them. As they stomped at Allen's face, head, and neck, he lost consciousness. But they weren't done with Allen, dragging his limp body down a flight of metal stairs. Allen was subsequently housed in a medical observation cell for several days before he was given false disciplinary reports and placed in the restricted housing unit.

With the aid of Harrisburg attorney Leticia C. Chavez-Freed, Allen filed a complaint pursuant to 42 U.S.C. § 1983, naming Hollowood as Defendant along with several other employees of the state Department of Corrections (DOC), including Secretary John Wetzel. The federal court for the Western District of Pennsylvania only partially granted Defendants' motion to dismiss the complaint on November 22, 2022, letting counts stand against Hollowood, Macias and Wetzel. *See: Allen v. Sec'y John Wetzel,* 2022 U.S. Dist. LEXIS 212223 (W.D. Pa.).

The case proceeded to a three-day trial beginning on October 30, 2023, after which the jury awarded Allen $250,000 on his battery claim and $250,000 on his claim of intentional infliction of emotional distress (IIED). At once, Hollowood moved for Judgment as a Matter of Law or a new trial, arguing that he was immune from liability for either tort because he was acting within the scope of his employment at the time. He also challenged the IIED award because Allen presented no expert medical testimony to support his claim that he suffered an actual emotional injury.

On January 3, 2024, the Court examined the first claim and determined that Hollowood "comes up well short of his burden" to prove that he was acting within the scope of his employment when he assaulted the prisoner. However, the Court agreed with the guard that Allen's IIED claim suffered from a lack of expert medical testimony to support his claim of an actual injury. There, the Court substituted an amended judgment that omitted the IIED award but sustained the $250,000 award for battery. *See: Allen v. Wetzel*, No. 2:19-cv-01258 (W.D. Pa.).

Texas Detainee Raped in Jail Sues Macy's for False Facial-ID Match That Led to Arrest

A lawsuit filed on January 18, 2024, accuses retail giant Macy's of employing faulty facial recognition technology that falsely identified a Texas man as an armed robbery suspect, landing him in a Houston jail where he was raped by fellow detainees. Harvey Murphy, Jr., 61, was released from the Harris County Jail shortly after the October 2022 assault, when prosecutors verified his alibi that he had not even been in Texas the previous January when the robbery occurred.

In fact, Murphy was in Sacramento when someone held up both a Houston Macy's department store and a nearby Sunglass Hut in January 2022. Anthony Pfleger, head of loss prevention for Sunglass Hut parent Essilorluxottica, reviewed surveillance footage of the robbery suspect from cameras installed by property owner Kimco, using Macy's facial recognition software to match the face to Murphy. A salesclerk held at gunpoint during the crime also identified him as the robber when shown a photo by police.

When Murphy returned from California to Texas later that year, he tried to renew his driver's license and was arrested on the outstanding warrant. Denied bond, he spent 10 days in jail before three unnamed detainees sexually assaulted him in a bathroom.

"It scares me to think we're heading in a direction where one of my kids can be incarcerated for doing nothing wrong, based on this technology," said Murphy's attorney, Daniel Dutko of Rusty Hardin & Assoc. LLP in Houston.

As Murphy's complaint notes, experts warn that facial recognition technology is easily corrupted by poor lighting and out-of-focus cameras that commonly plague video surveillance. Studies show the technology's error rate is 9.3%, but that balloons by a factor of 10 when comparing a face on a current video to a photo more than 18 years old—meaning the tech was over 90% likely to make a false match to Murphy's ancient mugshots, which date to a youthful brush with the law in the 1980s.

Essilorluxottica is also a named defendant in the case, along with Pfleger and other Sunglass Hut employees, as well as Kimco. *See: Murphy v. Essilorluxottica*, Tex. Jud. Dist. 125 (Harris Cty.), Case No. 2024-03265.

Additional source: *Washington Post*

Watchdog Finds "Alarming Conditions" at BOP Women's Lockup in Florida

by David M. Reutter

When confronted with prisoner complaints, officials often produce glowing inspection reports and blame prisoners for destroying prison infrastructure. All too often, though, inept supervision is to blame for failure to maintain facilities. As many prisoners will tell you, when an inspection is looming, the prison is transformed in preparation.

The U.S. Department of Justice (DOJ) Office of the Inspector General (OIG) has a new "on-sight inspection program." The second unannounced inspection made under the policy occurred from May 22 to 26, 2023, at the Federal Correctional Institution (FCI) in Tallahassee, a low security prison built in 1938 that was converted in 1992 to house female prisoners for the federal Bureau of Prisons (BOP). A satellite detention center for males was opened in 1996. Inspectors highlighted four areas of concern in their report on FCI-Tallahassee: food service, facilities condition, staffing shortages and prison safety and security.

A June 2022 survey of prisoners resulted in 55% rating food quality poor. Surveyed prisoners also said that outdated food was being served. The unannounced OIG inspection found "alarming conditions" in food service and storage. "[M]oldy bread had been served" at lunch and "discolored and rotting vegetables were being stored," perhaps for future use, but in any event too near food preparation areas. Inside food storage and freezer units, inspectors found insects and "likely evidence of rodent droppings." Rodents had apparently "chewed through the exterior of food packaging," and damaged food containers "had warped or were leaking." A large hole found in a nearby wall provided access to rodents and insects.

The chow hall contained "numerous broken stools, with sharp edges that could cause injury" or "be used as weapons," plus "cracks in the walls and loose ceiling tiles." Additional "serious infrastructure and facilities issues" were found throughout the prison. In housing areas, "water frequently leaked from ceilings and windows in or near [prisoners'] living spaces." Inspectors observed "poor conditions inside communal inmate bathrooms." However, conditions in the detention center housing areas exhibited no serious issues.

Staff shortages were a serious concern. Forced overtime was the norm. The lack of staff raised safety issues, but the introduction of contraband seemed to be of the greatest concern to inspectors. It was also

noted that guards failed to regularly conduct rounds. Inspectors further found guards do not consistently enforce rules and often directed offensive language towards prisoners, which "undermined trust between staff and inmates." Issues were identified from inadequate security camera coverage and improper use of restrictive housing.

On the heels of the inspection, OIG made no recommendations but promised to monitor BOP efforts to address the issues found. See: *Inspection of the Federal Bureau of Prisons' Federal Correctional Institution Tallahassee,* DOJ/OIG Report No. 24-005 (November 2023).

Report Finds Current Path of Florida Prison System "Unsustainable"

by David M. Reutter

Florida Department of Corrections (DOC) leaders have come before the state legislature repeatedly to warn that it is a system operating in crisis. In a presentation on November 15, 2023, by global consulting firm KPMG, which was selected in 2022 by the state Department of Management Services to present a 20-year DOC master plan, the prison agency's "current path" was described in one word: "Unsustainable."

Lawmakers responded to the crisis in recent years by raising pay for DOC guards to $45,760 annually as of July 2023. Despite that and signing bonuses, too, DOC continued to experience a 26.3% turnover rate. Yet many of those same politicians have rejected overtures for criminal justice reform as part of the solution.

"We have asked for too long for DOC to do too much with too little," said the chair of the Senate Appropriations Committee on Criminal and Civil Justice, Sen. Jennifer Bradley (R-Clay). "The salary increases have been helpful in changing the trajectory of our staffing challenges, but aging infrastructure, making sure that we have enough beds to meet increasing projections, remain big challenges."

DOC currently cages about 85,000 prisoners, 14,000 of them serving life sentences, so its headcount is projected to mushroom past its 88,873-maximum capacity for safe operations sometime in 2024. Worse, KPMG's Lawrence Spinetta told lawmakers, the projection for 2042 was between 107,000 to 123,000 prisoners.

Among the available options, "modernize" was first and most expensive. KPMG estimated an $11.9 billion price tag to build three new prisons and two hospitals while closing four older prisons. The plan would also reopen 8,294 beds across 16 prisons in the next four years and build 4,640 new beds at existing sites across 18 prisons by 2030.

Politicians were also presented another option, "manage." KPMG said that it would cost $9 billion to build two new prisons and two new hospitals while closing three prisons. This plan would also add 8,294 beds in the next four years and build 4,640 beds at existing sites by 2030.

The last choice, called "mitigate," would cost $6.3 billion to build one new prison and two hospitals, while otherwise adding the same 12,934 beds in the short-term that were presented in the first two options.

Sen. Ed Hopper (R-Pinellas) asked if federal authorities would intervene should politicians opt to maintain the status quo. In response, KPMG's Bill Zizic said that what his team "witnessed in other states is a trend of class-action lawsuits regarding conditions of confinement, regarding all sorts of these various factors—provisions of health care."

"The consequences can be dire and can be very expensive," he added. "And I think the biggest one is it can actually erode your public safety system but also the confidence that the public has in the public safety system."

An immediate crisis exists in DOC's provision of medical care. "For instance, today there are 644 inmates who have advanced dementia, traumatic brain injuries, or other complex health issues that need specialized housing to supplement the outpatient care being provided today," KPGM's Julie Walburn said. At any given time, some 1,150 prisoners need hospital-level inpatient care, she said, but only 1,121 inpatient beds are available.

The report included a recommendation to spend $582 million to air condition Florida prisons. Sen. Jonathan Martin (R-Fort Myers) scoffed at the idea since "there's literally been zero injuries, zero deaths in Florida, due to the lack of air conditioning." He suggested paying guards more instead.

But Zizic pointed out that air conditioning is "very important from a working condition perspective" for staff retention, as well as safety and efficiency of prison operations.

Source: *Florida Phoenix*

Settlement Obligates Washington DOC to Provide Gender-Affirming Care to Trans Prisoners

On October 10, 2023, a settlement was reached in a suit filed by Disability Rights Washington (DRW), a federally funded agency that advocates for the rights of people with disabilities, accusing the Washington Department of Corrections (DOC) of violating the rights of transgender prisoners by denying medical and mental health care.

DRW was the sole plaintiff in the complaint, which accused prison officials of denying gender-affirming treatment to trans prisoners; discriminating against them due to disabilities including gender dysphoria; and subjecting them to routine cross-gender strip and pat-down searches—all alleged violations of their Eighth Amendment guarantee of freedom from cruel and unusual punishment, as well as the Americans with Disabilities Act, 42 U.S.C. ch. 126, § 12010 et seq., and the Rehabilitation Act, 29 U.S.C. § 701 et seq. DRW and DOC had entered into a negotiated pre-litigation agreement in 2019, which culminated in the complaint filed concurrently with the settlement.

The complaint notes that the suit was prompted by DOC's failure to provide adequate gender-affirming care to transgender, non-binary and intersex prisoners—including hormone replacement therapy, facial hair removal, voice therapy and counseling. Further, prison medical staff "discouraged people from seeking medical care related to their gender identity" and even "encouraged transgender people in their care to detransition or not pursue gender-affirming [G-A] care." Medical providers delayed or denied hormone therapy for years in some cases.

Additionally, DOC "maintained an effective ban on [G-A] surgery to treat gender dysphoria" until 2020, after it entered into negotiations with DRW. Prison officials had contracted with a consultant, Stephen Levine, to evaluate trans prisoners for surgery, despite criticism from a federal court in a prior case that found he had misrepresented the standards of care and was not credible. *See: Norsworthy v. Beard*, 87 F.Supp.3d 1164 (N.D. Cal. 2015).

Transgender prisoners were denied adequate means of expressing their gender identity, as DOC often did not allow them access to "shaving and grooming tools, undergarments, gender-affirming clothing and religious garments, and prostheses," the complaint continued. The lack of G-A medical and mental health treatment caused some trans prisoners to engage in "self-harm incidents and suicidal ideation."

DOC agreed to settle the case by implementing a number of policy changes, including designating a statewide G-A Mental Health Community Consultant, G-A Medical Specialist and back-up Medical Specialist, as well as a G-A Mental Health Specialist at each major state prison. Further, the agency agreed to deliver G-A "medical and mental health care according to the Guidelines for Healthcare of Transgender Individuals, consistent with the state's HCA Transhealth Program," and to provide trans prisoners with G-A "clothing, medical and hygiene items." The agreement also obligates DOC to ensure privacy protections for the status and gender history of transgender prisoners. Prison staff must also ensure that trans prisoners are searched by a guard of the gender the prisoner formally requests, with any cross-gender searches approved by the facility's superintendent, duty officer or community corrections supervisor.

DOC will be responsible for collecting quality assurance data concerning trans prisoners, including strip searches, provision of G-A clothing and other items, staff training, and medical and mental health treatment. This data will be shared at least quarterly with DRW, which will monitor compliance with the settlement terms for three years while the district court retains jurisdiction over the case.

As part of the settlement, DOC will pay DRW $300,000 annually during the monitoring period. DRW also received $1.5 million in attorney fees and costs. According to staff attorney Ethan Frenchman, the settlement was "one of the best and most comprehensive consent decrees in the country concerning the treatment of transgender people in prison or jail." See: *Disability Rights Wash. v. Wash. Dep't of Corr.*, USDC (W.D. Wash.), Case No. 2:23- cv-01553.

Additional source: *KUOW*

Over $71,000 Awarded to Michigan Prisoner for Sexual Abuse by Guard

by Matt Clarke

On September 28, 2023, the federal court for the Western District of Michigan awarded a state prisoner $16,975.00 in attorney fees and $4,459.91 in costs in a civil rights lawsuit over his sexual abuse by a state Department of Corrections (DOC) guard. The Court had previously awarded $50,000 in compensatory damages to Patrick Grover on June 30, 2023, including $30,000 to reimburse the costs of counseling sessions.

Grover was incarcerated at Oak Correctional Facility in September 2019 when guard Traci Lange (now Perez) began working in his housing unit. She soon approached him and "commented favorably on his physique," according to the complaint he later filed. She added that "he needed a woman like her and that she could pull strings to get him home." Grover recalled he was "uncomfortable" with her "interest and tried to distance himself from her." But she began "blowing him kisses during rounds, and she wrote him letters in which she stated that 'she wanted to have sex with him.'"

"On a number of occasions," the complaint recalled, Perez asked him "to show her his private parts," and she took him to closets and other places off-camera "to have sex with him."

Should he refuse or report her, Perez threatened, she would claim he had raped her. "She also threatened to take disciplinary action against him and otherwise 'make his life miserable if he stopped having sex with her.'" She further claimed to be friends with a deputy warden, a captain and several guards who would retaliate against him. Perez also threatened Grover's cellmate with segregation should he report the abuse.

Grover then paid other prisoners to report the abuse. One who filed a grievance was immediately retaliated against. Eventually, Grover filed a complaint under the Prison Rape Elimination Act, after which he was subjected to retaliation, he said. He then retained attorney Daniel Randazzo of Rochester Hills to file a federal civil rights complaint against Perez and six other DOC officials who allegedly had actual knowledge of the abuse.

All Defendants but Perez were dismissed from the suit without prejudice for Grover's failure to exhaust administrative remedies against them. Perez then defaulted. In later proceedings, she did not contest having sex with Grover or writing him letters about it, which were entered into evidence. But she claimed he extorted her to write them and they were untrue.

During the hearing on damages, Perez also claimed the sex was consensual, but her default eliminated that defense. Clinical social worker and psychotherapist Mary Petersen testified about the trauma Grover suffered from the abuse and estimated it would take five years of weekly sessions for him to recover. Describing Grover's requested $250,000 in compensatory damages as "excessive," the Court awarded him $30,000 to compensate for the costs of the 182 sessions at $160 per session and $20,000 for emotional and mental distress caused by the sexual abuse. *See: Grover v. Perez*, 2023 U.S. Dist. LEXIS 112871 (W.D. Mich.). That was followed by the Court's award of costs and fees, bringing the total award to $71,426.91. *See: Grover v. Perez*, USDC (W.D. Mich.), Case No. 1:21-cv-00252.

It is interesting that the Court found $250,000 excessive in a case involving repeated and long-term sexual abuse of a prisoner by a guard who not only threatened retaliation but also carried through on those threats. Would that amount be considered excessive were the prisoner female and the guard male? The psychological harm resulting from sexual manipulation by someone in a position of power is just as great.

Conflicting Reports from New Hampshire Prison Officials Before Guard Charged in Psychiatric Detainee's Death

Former New Hampshire prison guard Matthew Millar, 39, was arrested on February 8, 2024, and charged with second-degree murder in the death of Jason O. Rothe, 50, a detainee in the Secure Psychiatric Unit (SPU) at New Hampshire State Prison. Prosecutors allege Millar killed Rothe by kneeling on his back for several minutes during restraint, causing him to suffocate.

The state Department of Corrections (DOC) initially cleared Millar and five other guards involved after reviewing the April 2023 incident. However, a statement confirming that was retracted, and DOC admitted that no review was ever completed. Rather it was halted when state officials learned that the federal Department of Justice was investigating Rothe's death.

Millar's employment with DOC ended on December 13, 2023. His attorney said he would plead not guilty to the charge. Prosecutors said they do not intend to charge other guards involved in Rothe's restraint, though DOC spokesperson Jane Graham reported that those guards were placed on administrative leave and then returned to work in areas without patient contact for an unspecified period before resuming full duty.

Rothe was civilly committed to the state psychiatric hospital in 2019 before safety concerns prompted a transfer to SPU in 2022. DOC imprisons 39 patients in SPU, but 17 of them, like Rothe, have never been criminally charged. His death is one of three recorded there in the past 10 years.

"The fundamental problem here is: This is a prison. This is not a hospital," said Beatrice Coulter, a former SPU nurse who co-founded Advocates for Ethical Mental Health Treatment.

According to the probable cause affidavit, a verbal altercation erupted between Rothe and Millar on April 29, 2023. Unnamed additional guards attempted to de-escalate the situation, providing Rothe snacks to calm him down and "combat the delusion that he was being starved." After 10 minutes, the guards decided to remove him from the day room, a violation of policy since Rothe's behavior was non-threatening. Millar then "placed his knee on Rothe's upper-back and neck area as a method of restraint," the affidavit said.

An October 2023 autopsy report said that Rothe died due to "combined traumatic (compressional) and positional asphyxia"; his death was ruled a homicide. Investigators noted that Millar had "received training on asphyxia and use of force which detailed the risk of death inherent with the specific manner of restraint he applied," but ignored that training when he restrained Rothe. State Attorney General John Formella (R) said the murder charge "was not made lightly" but was based on "a careful and thorough review of the facts and the law."

Sources: *AP News, WMUR, Valley News*

Elderly Ohio Prisoner Beaten by Cellmate Despite Warning Guards, Who Cheered Attack

In a lawsuit filed in federal court for the Northern District of Ohio on March 18, 2024, state prisoner Darryl Smith accuses Mansfield Correctional Institution (MCI) guards of ignoring warnings he was being threatened by his cellmate, cheering when he followed through on those threats and assaulted Smith.

Smith, 72, is serving 102 months for arson and parole violations. He was held in protective custody (PC) at Turnbull Correctional Institution before a December 2021 transfer to MCI. But officials there allegedly ignored PC instructions from the state Department of Rehabilitation and Corrections (DRC) and placed him in general population.

Within two months Smith notified them that cellmate Daniel Williams had alcohol and a homemade knife fashioned from a "spork" eating utensil, with which he had threatened Smith. Later that same day, on March 18, 2022, Williams made good on his threat and stabbed Smith. But rather than intervene, guards allegedly cheered on the attack, calling Smith a "snitch" and a child molester. According to his complaint, Smith has never been accused of child molestation.

Smith was taken to the infirmary, where photos were taken of his injuries only to be destroyed later, he said. He was also charged with fighting and placed in "the hole"—solitary confinement—where he remained for 11 days before his acquittal on the disciplinary charge. He was then returned to general population in a different cell.

Smith complained directly to Warden Tim McConahay about his ignored warning and about another guard, Inspector Lisa Booth, who reacted to a grievance he filed by telling Smith to "keep his mouth shut." Booth allegedly retaliated by confiscating Smith's legal documents, which she called contraband and had destroyed. The prisoner was also convicted of a related disciplinary infraction and banned from filing grievances for 90 days.

Not quite 18 months later, in September 2023, Smith was again disciplined with the same sanction after he was sucker-punched in the chow line by a fellow prisoner he'd never before met, Christopher Adams. Again, Smith said, video evidence from guards' body-worn cameras was destroyed.

That's when his complaint takes an interesting turn. During discovery for another case in state court, MCI officials produced documentation that Adams was disciplined for assaulting Smith on September 5, 2023. However, Adams had been released on parole two days before that. Warden McConahay then allegedly ordered records altered to show Adams was found not guilty.

Smith's complaint further notes that neither assault he suffered was ever reported to the state Highway Patrol, in violation of policy. His suit names DRC Director Annette Chambers-Smith and other prison system officials. Smith is represented by Tallmadge attorney Larry D. Shenise. *PLN* will update developments as they are available. *See: Smith v. Chambers-Smith*, USDC (N.D. Ohio), Case No. 1:24-cv-00505.

Additional source: *Advance Media Ohio*

U.N. Panel Finds Rampant Racism in U.S. Criminal Justice System

In what will surprise few prisoners, a report by an appointed panel of the United Nations (UN) Human Rights Council (HRC) released on September 26, 2023, found "shocking" human rights violations and "staggering" racial disparities in U.S. criminal justice agencies.

The report was authored by panel members Yvonne Mokgoro, former justice of the Constitutional Court of South Africa; Tracie Keesee, president of the Center for Policing Equity; and law professor Juan Mendez, who previously served as the UN's Special Rapporteur on torture and inhumane treatment.

Pulling no punches, the panel called stark racial disparities evidence of the "worst version of a racist criminal legal system," part of "a direct legacy of slavery [that] dates back to the foundation of the country." Rejecting the "bad apple" theory that minimizes the role of institutions in discrimination, Mendez cited "strong evidence suggesting that the abusive behavior of some individual police officers is part of a broader and menacing pattern." In a country where police kill over 1,000 citizens every year, Black people are three times more likely to be killed by cops than whites and 11 times more likely to suffer from police misconduct. Meanwhile few police officers—just 2% over the past decade—have faced charges. But at least 217 reported settlements in lawsuits involving police misconduct from 2009 to 2022 resulted in more than $2.34 billion in damages.

"Black people are the most incarcerated and most criminally supervised" citizens in the U.S., the panel noted—4.5 times more likely to be incarcerated than whites and almost three times more likely to be on parole or probation, a "manifestation of the entrenched systemic racism" against minorities. Black women, especially, are "more likely to be restrained and shackled than their white counterparts."

The report also touched on racial disparities in cash bail, extended pre-trial detention, detention of juvenile offenders, solitary confinement—especially of the mentally ill—and "death by incarceration" sentences such as life and life without parole. The so-called war on drugs also exacerbates these racial disparities, as does the death penalty and political disenfranchisement.

Forcing prisoners to work at slave wages or no wages, the report argued, amounts to "a contemporary form of slavery." Prisoners at the plantation-style Louisiana State Penitentiary in Angola, "the majority of them Black men," toil in fields and even pick cotton, "conditions very similar to those of 150 years ago."

Noting that the U.S. is a party to the International Convention on the Elimination of Racial Discrimination, the panel offered 30 recommendations, including ending the war on drugs; abolishing life sentences and the death penalty; strictly regulating solitary confinement; and discontinuing use of "free or poorly paid prison forced labor." The report is required reading for anyone who doubts the U.S. criminal justice system has pervasive racial disparities or wants to learn more about the issue. *See: International Independent Expert Mechanism to Advance Racial Justice and Equality in the Context of Law Enforcement,* UN HRC (Sept. 2023).

Additional source: *Reuters News*

Georgia Prisoner Stabs Warden

Georgia's Telfair State Prison went on lockdown on March 21, 2024, after a prisoner stabbed Warden Andrew McFarlane with a homemade knife. McFarlane, 54, a 25-year veteran of the state Department of Corrections (DOC), was not seriously injured in the attack, according to DOC spokesperson Joan Heath, who added he was "examined by facility medical personnel for superficial wounds and is expected to be okay."

The assault occurred during a contraband shakedown about 11:30 a.m., when a limited lockdown order went ignored by prisoners in one housing area. McFarlane was stabbed during an ensuing disturbance. The number of times that he was stabbed was unknown. DOC also didn't say how many prisoners were involved in the disruption nor how long it lasted.

Responding guards deployed "less-lethal munitions," Heath said, clarifying that meant tear gas. The entire prison was then placed on lockdown, though no additional injuries were reported and only minimal damage. Housing 1,400 of the state's most dangerous prisoners in "close custody," the prison is severely understaffed; at the time of the assault there were just 36 guards, one for every 38 prisoners. That's over four times the 1:9 average ratio reported by the federal Bureau of Prisons.

Source: *Atlanta Journal Constitution*

$700,000 Jury Verdict for Wisconsin Prisoner Denied Due Process in Disciplinary Hearing

by David M. Reutter

On November 27, 2023, the U.S. District Court for the Eastern District of Wisconsin denied state prison officials' motion for new trial. That left standing a jury verdict finding that prisoner Adam Young was denied procedural due process in a disciplinary action, awarding him $700,000.

Young and several other Kenosha Correctional Center (KCC) prisoners were transported to work for a local employer on July 30, 2017. A guard dropped them off and left. But the employer was closed that day. The prisoners were left stranded in the parking lot in 80-degree weather. Realizing that no one was coming to pick them up for at least 11 hours, they started walking back to KCC. When they came across a phone, they called to be picked up.

Young was arrested the next day at the work site and issued a major disciplinary report for "escape" before transport to Racine Correctional Institution. At a disciplinary hearing, he was found guilty, sentenced to 60 days disciplinary separation and lost his work release privileges. After exhausting administrative remedies, Young filed a civil rights action alleging a procedural due process violation.

The case proceeded to a jury trial in July 2023. There it was established through testimony of hearing officer Michael Mayer and an email from prison official Patricia Goss that she chose Mayer to fill in for her to conduct the hearing. Mayer testified that Goss also emailed a suggested penalty for Mayer: "60 days separation." He further explained that this was Goss's "way of telling [him] what would be the appropriate disposition."

Based on this, the Court concluded the record supported a procedural due process violation because a juror could find that Mayer was not an impartial trier of fact, since Goss had pre-selected the punishment for Young.

Mayer also testified that "[b]ased upon testimony" from the trial, he agreed that "a mistake was made prior to [Young] leaving for the work site by DOC staff." It was further established through Goss that the work site should have closed at 2:30. Yet no one called to say the prisoners would be delayed. Several headcounts were conducted while the prisoners sat at the work site, when they should have been at KCC, yet no one declared them "escaped" until after they voluntarily returned. A reasonable juror, the Court found, could thus conclude that the experience of the sham disciplinary hearing was "inherently degrading and humiliating" and constituted an emotional distress injury. Furthermore, the reputational ramifications could be inferred by a juror to impact earning wages and/or finding employment.

The Court also took state Justice Department attorneys to task "for their dereliction, obfuscation, and failure to file their arguments in a manner that was procedurally proper." The case represented

"a cautionary tale of what happens when lawyers try a case before a jury without the benefit of having first undertaken meaningful preparation."

Thus, finding the jury's verdict well supported, the Court denied Defendants' motion for a new trial. The Court's order left intact the jury's award of $150,000 in compensatory damages for the procedural due process violation from Mayer and $350,000 from Goss, plus $100,000 in punitive damages against each official. Young is to be commended for proceeding *pro se* throughout the case. *See: Young v. Mayer,* 2023 U.S. Dist. LEXIS 218694 (E.D. Wisc.).

Lawsuit Over Mailroom Abuses by Washington DOC Leads to Policy Changes

A settlement reached on November 1, 2023, between the Washington Department of Corrections (DOC) and current or former state prisoners resulted in changes to prison mail policies. While incarcerated at Monroe Correctional Complex (MCC), Adam Bauer, David Cochran, Dylan Downey, Michael Morales and Jessien Perry joined Carmella Holt, one of Morales's family members, in filing a suit challenging the prison mailroom's practice of "unlawfully censoring constitutionally protected mail" between prisoners "and their family, friends, legal counsel, and the courts."

Specifically, Plaintiffs alleged that photos of fully clothed women were rejected by mailroom staffers who found them "too provocative"; however, pictures of mostly nude men were not intercepted. Furthermore, prisoners' legal mail was opened outside their presence and sometimes rejected, with rejection notices often not provided, in violation of prisoners' due process rights. Lastly, Defendants—including MCC mailroom Sgt. Melvin E. Hopkins—allegedly retaliated against prisoners who complained about prison conditions in their correspondence with others.

The complaint alleged violations of DOC's mail policy with respect to both written letters and e-messages sent to and from prisoners through a service provided by private vendor JPay. With respect to legal mail, the complaint described several incidents wherein mail from courts and attorneys was improperly opened and rejected or processed as regular mail.

Regarding mail rejected due to sexually explicit content, mailroom staff disallowed photos of women wearing clothes they thought were too tight or dresses that were too short. Yet some MCC prisoners "subscribe to exercise or health-related magazines, which prominently display near-naked, sometimes oiled men," the complaint noted. It included a magazine cover with a man wearing only a thong and a photo showing an "apparently entirely naked [man], his genitals covered only by a guitar," which had been allowed.

Censorship at times bordered on the absurd. When one of the plaintiffs teasingly wrote to a correspondent that he loved her and wanted her to text him or "Imma spank that ass," his e-message was rejected for including "threats of physical harm/criminal activity."

The lawsuit further contended that Defendants used "their control of the mailroom to stop inmates [from] communicating complaints and grievances about prison conditions to those outside the prison," including criticism of MCC's response to the COVID-19 pandemic. In apparent retaliation for grievances and complaints, mail and e-messages sent to Plaintiffs were delayed weeks or sometimes months. When a former MCC prisoner sent an e-message to his daughter critical of Sgt. Hopkins, mailroom staff forwarded it to him and he issued a disciplinary report ordering the prisoner to "cease his behavior at once."

In violation of DOC policy, mail rejection notices often were never sent to the recipient or sender, thus they could not be appealed. When notices were provided, they failed to include reasons or "rejection numbers," making appeals impossible. The complaint raised claims under the First and Fourteenth Amendments, including an equal protection claim for rejecting photos of clothed women while allowing pictures of almost-nude men, as well as a right-to-counsel claim under the Sixth Amendment.

In the settlement agreement between the parties, DOC agreed to revise its Rejection Notice Form 05-525 and replace several sections of its mail policy 450.100. The revised rejection notice includes clear instructions for filing appeals and specific definitions for what constitutes sexually explicit materials. The revised mail policy provides detailed rules for appealing rejections and processing legal mail; it also specifies that prison staff "are strictly prohibited from using mail rejections as a form of retaliation." The changes apply to all DOC prisons statewide.

The suit did not seek monetary damages, and each party paid its own attorney fees. Plaintiffs were ably represented by attorneys from Davis Wright Tremaine, LLP in Seattle. *See: Bauer v. Wash. Dep't of Corr.*, USDC (W.D. Wash.), Case No. 2:21-cv-00453.

News in Brief

Alabama: Four months after a judge found no probable cause to prosecute former Mobile Metro Jail guard Kimberly A. Henderson, 32, for contraband smuggling, charges were reinstated in a new indictment that resulted in her rearrest on March 22, 2024, *WPMI* in Mobile said. As *PLN* reported, Henderson was fired after her initial arrest in September 2023. [See: *PLN*, Nov. 2023, p.63.] But Mobile County Judge Zack Moore made his probable cause ruling on November 2, 2023, when Henderson described how she was on the phone at the jail relaying a question from a mutual friend and not trying to slip it to detainee Jessica Odom, a former fellow coworker fired and arrested two weeks earlier on suspicion of smuggling fentanyl to jail detainees. Another judge, George Zoghby, reduced Odom's bail from $1 million to $750,000 in December 2023; she has yet to be indicted.

Alabama: Autauga Metro Jail Warden Larry Nixon told the *Montgomery Advertiser* that termination proceedings had already been started against Jesse Morgan Rogers, 37, when the guard showed up at the jail in uniform on April 16, 2024. It was unclear why he was being fired then, but the process was fast-tracked after Nixon told Rogers to leave and the guard responded with a threat to burn down the jail and everyone in it. Rogers now faces a felony charge for making a terroristic threat. He was booked into the lockup, where he'd worked just 14 months, on a $15,000 bond.

Alabama: The *Birmingham News* reported that a guard with the state Department of Corrections (DOC) was arrested on April 18, 2024. Leshonnon Belser, 39, faces a misdemeanor charge of third-degree promoting prison contraband for allegedly smuggling cell phone chargers and food to an unnamed prisoner at Ventress Correctional Facility in Clayton, where she worked. Her current employment status is unclear.

Belarus: Political prisoner Katsiaryna Novikava, 38, smuggled a description of deplorable conditions in which she is held to an ally—writing the details on toilet paper, according to a report by the *Washington Post* on April 15, 2024. Novikava is among 1,385 enemies of Pres. Alexander Lukashenko jailed since the dictator secured "re-election" to a sixth term in 2020 voting that was widely decried as fraudulent. Arrested in June 2023 wearing only a nightshirt, Novikava said she was beaten and assaulted during numerous interrogations. Those continued to her January 2024 trial, where she was convicted and sentenced to a 78-month prison term for inciting hatred. More beatings have followed since, as well as bullying and denied medical care, she said, while "letters almost never arrive" and "[e]ven drawings [are] banned."

California: Former state Department of Corrections and Rehabilitation (CDCR) guard Stephen Crittenden, 44, pleaded guilty on April 11, 2024, to taking $45,000 in bribes to smuggle contraband cellphones to prisoners at California Medical Facility in Vacaville, *KXTV* in Sacramento said. The scheme ran from 2021 to 2023, before

his employment with CDCR ended. Crittenden was arrested in September 2023, as *PLN* reported. [See: *PLN*, Dec. 2023, p.63.] At sentencing in September 2024, he faces up to 10 years in federal prison and $250,000 in fines.

California: On April 11, 2024, two CDCR guards trying to handcuff prisoner Brandon Keen, 39, were injured when he grabbed a weapon and stabbed them, according to *CBS News*. A third guard was also injured in the fracas. All three were treated at a hospital and released. None was named. Keen was charged with attempted murder and moved to restricted housing in another unnamed prison. He is serving 25 years for a second-strike mayhem conviction in 2013, plus a life sentence for second-degree murder and assault since he was incarcerated.

Canada: *CBC* reported that Newfoundland dentist Dr. Louis Bourget got the minimal criminal sentence on April 9, 2024, for letting a Bishop's Falls Correctional Centre guard extract teeth from a prisoner he'd escorted to Gander Family Dental Clinic, while another guard recorded with his cellphone. As *PLN* reported, Bourget and guard-cum-dentist Ron McDonald pleaded guilty to assault charges in September 2023, though charges against cameraman guard Roy Goodyear were dropped. [See: *PLN*, Nov. 2023, p.63.] Bourget's "absolute discharge" sentence carries no jail time or probation, and he won't have a criminal record, after Justice Melanie Del Rizzo said that "a criminal conviction is not in the public's interest." He has already completed sanctions imposed by dental boards in Nova Scotia, Newfoundland and Labrador.

Florida: BOP prisoner Pedro Jose Collazo-Prieto, 26, pleaded guilty in federal court on March 21, 2024, to dealing drugs inside the Federal Correctional Institution in Miami, the *Miami Herald* reported. He was caught after failing a urine test, when guards searched him and found 17 grams of marijuana plus 50 grams of cocaine divided between more than 20 plastic baggies.

Florida: Former DOC guard Kirk Walton, 36, pleaded guilty on March 27, 2024, to the fatal beating of a mentally ill prisoner in February 2022. The *Miami Herald* said fellow former guard Jeremy Godbolt, 30, also pleaded guilty a week before to second-degree murder in the assault on Ronald Gene Ingram, 60. As *PLN*, reported, the guards beat Ingram after he threw urine at them, leaving him in a transport van where he was found dead hours later. [See: *PLN*, July 2022, p.63.] Both will be sentenced later in 2024, when two other former guards, Ronald Conner, 26, and Christopher Rolon, 31, are set to stand trial for their roles in the attack.

Florida: Duvall County Jail guard Jordan Weiss was arrested and suspended on April 8, 2024, for assaulting a detainee who was engaged in an unidentified sex act in front of others. *WJXT* in Jacksonville reported that when Weiss ordered him to stop, the detainee fled, but the guard caught up to him, hitting and pepper-spraying him though he was unresistant. The detainee was not seriously injured. Weiss had been a jail employee for two years.

Florida: Former DOC guard Rachel Marie Drumm, 38, was arrested on April 12, 2024, after stonewalling demands for a DNA test from investigators who alleged that her child born in November 2021 was fathered by a prisoner at Sumter Correctional Institution, where she worked. The

PLN Needs Your Photos, Videos, Verdicts and Settlements!

We are expanding the multimedia section on PLN's website, and need more prison and jail-related content! We know many of our readers have pictures and videos related to prison and criminal justice topics, and we'd like to post them on our site. We are seeking *original* content only – photos or video clips that you have taken yourself.

Please note that we are *not* seeking articles, editorials, poems or other written works; only photos and videos. They can be taken inside or outside of prison, but must relate to prisons, jails or criminal justice-related topics. By sending us multimedia content, you are granting us permission to post it on our website. Please send all submissions via email to:

CONTENT@PRISONLEGALNEWS.ORG

Please confirm in your email that the photos or videos are your original content, which you produced. Also please provide some context, such as where and when they were taken. Your name will not be posted online or otherwise disclosed. Please spread the word that PLN needs photos and videos for our website.

We also need verdicts and settlements in cases won by the plaintiff. Note that we are *only* seeking verdicts, final judgments or settlements – not complaints or interim orders in cases that are still pending. If you've prevailed in court against prison or jail staff, please send us a copy of the verdict, judgment or settlement and last complaint so we can post them on our site and potentially report the case in PLN. If possible, please e-mail your submissions; we cannot return any hard copy documents. Send to:

Prison Legal News
PO Box 1151
Lake Worth Beach, FL 33460
content@prisonlegalnews.org

Villages-News reported that he is Jonathan Marrero, 44, who is serving an armed robbery sentence through 2025. Drumm listed the child's last name as Marrero on the birth certificate, and investigators found videos she sent to the prisoner's JPay account in which she encouraged the child to "say goodnight to dada." It was unclear when or how her employment with DOC was terminated. She is being held without bond in the Sumter County Jail.

Georgia: State prisoner David Cassaday, 55, was indicted on federal charges on April 5, 2024, for allegedly making and mailing two bombs in 2020 to the federal courthouse in Anchorage, Alaska, and a Justice Department office building in Washington, D.C. *CNBC* reported that Cassaday is serving a life sentence for a 1993 kidnapping. DOC spokeswoman Joan Heath said he "manipulate[d] primarily items he was authorized to possess into makeshift explosive devices." How or why he mailed them was unclear, as was the reason for the four-year delay in charging him.

Georgia: On April 8, 2024, agents with the state Bureau of Investigation (GBI) arrested Walton County Jail guard Owen Thomas, 39, for the alleged sexual assault of an unnamed detainee at the lockup, *WSB* in Atlanta reported. He was also charged with violating his oath of office and booked into the Barrow County jail. GBI said the investigation was ongoing.

Kansas: *KAKE* in Wichita reported that former Jackson County Jail guard Lucas A. Ray, 36, was sentenced to 18 months of probation on March 29, 2024, after pleading no contest to smuggling unidentified contraband to detainees in exchange for bribes paid via cash apps. That allowed Ray to avoid spending an underlying eight-month sentence in prison. A tip led to an investigation, and Sheriff Tim Morse fired Ray at the end of August 2023, after 32 months on the job.

Kentucky: On April 3, 2024, former state DOC guard Trista Fox, 39, got a one-year prison sentence, probated for three years, after pleading guilty to having sex with an unnamed prisoner at Kentucky State Penitentiary. The *Murray Ledger & Times* reported that Fox admitted to third-degree felony rape to avoid prison time in a February 2024 plea deal. But she is barred from future law enforcement employment in the state. She must also serve five years of post-sentence supervision and register as a sex offender for the next 20 years.

Mississippi: Four unnamed Yazoo County Regional Correctional Facility guards are facing charges that they helped a quartet of detainees escape the jail on March 24, 2024. *WXXV* in Gulfport reported that Marlon Willis, Marcus Green and Deliuwon Stowers were recaptured the next day; Glen Bassett was not apprehended until April 18, 2024. An unnamed fifth detainee who attempted escape with the others was thwarted.

Missouri: On April 8, 2024, the U.S. Attorney for the Western District of Missouri said that former Jefferson City Correctional Center guard Paul E. Schofield, 35, and his wife, Sara E. Schofield, 31, were sentenced to 40 years and 35 years in federal prison, respectively, after they admitted producing child pornography. As *PLN* reported, the couple was accused of abusing a four-year-old victim from July 2019 to June 2022, after tipped-off investigators found a video of the pair assaulting the unconscious child on their cellphone. [See: *PLN*, Oct. 2022, p.64.]

New Hampshire: Former state DOC guard Theophilus Osabutey, 41, avoided prison time when he was given a two-year suspended sentence on March 22, 2024, after pleading guilty to striking a compliant prisoner at the State Prison for Men in July 2022. The *Union Leader* reported that Osabutey must also complete anger management training and 50 hours of community service in addition to surrendering his work certification. He is barred from seeking future employment in law enforcement or corrections, and he has been placed on the state's "Brady" list of decertified sworn personnel whose testimony is no longer considered entirely credible.

New Jersey: On April 12, 2024, a state court jury found Cape May County Jail guard Jonathan Perez, 34, guilty of sexually abusing an unnamed girl under 13 "over an extended period of time," *WKXW* in Trenton reported. Perez was suspended without pay by the county DOC after his February 2024 arrest. He remains in the Atlantic County Jail awaiting sentencing set for June 2024.

New Jersey: After Paterson Police Department detainee Anthony Juliano, 30, made a brief escape on April 21, 2024, the officer guarding him was given a 30-day suspension, the *Paterson Press* reported. Off. Matthew McKoy let Juliano slip away from St. Joseph's University Medical Center; why the detainee was there was not disclosed, nor the time and place he was recaptured, nor the details of the warrant on which he had been arrested four days earlier.

New Jersey: Former Passaic County Jail guard Lorenzo Bowden, 39, pleaded guilty on April 18, 2024, to conspiring with two fellow guards who took a handcuffed detainee to a jail "blind spot" not under video surveillance and assaulted him in January 2021. *North Jersey Media Group* reported that Bowden admitted standing by and watching as the unnamed detainee was knocked down and beaten by Sgts. Jose Gonzalez, 45, and Donald Vinales, 38. Charges against them remain pending. As *PLN* reported, all three guards were arrested in January 2024 for the beat-down, allegedly carried out in retaliation after the detainee splashed them with urine; none of them reported it and all denied it to investigators. [See: *PLN*, Apr. 2024, p.61.] They also denied meeting afterward, when they agreed to the coverup.

New York: On top of a seven-year prison term for slashing a fellow pedestrian with a box cutter in July 2022, state prisoner Darius Williams picked up two more seven-year terms when he was sentenced on March 13, 2024, for a pair of assaults on guards at Rockland County Jail while held there awaiting trial. The *Rockland/Westchester Journal News* said that in one incident on February 13, 2023, Williams sucker-punched an unnamed guard as he removed the detainee's handcuffs. Two days later Williams again mixed it up with guards who responded to a broken lock in his cell. That brought his total term to 21 years.

New York: Testifying at the trial of a Rikers Island jail detainee on April 18, 2024, fired guard Darius Murphy described smuggling drugs soaked onto the pages of the popular manga comic book *Demon Slayer*, according to the *New York Daily News*. It was his love of the genre that got the guard in trouble; he successfully delivered one issue but kept another to read before making a second delivery attempt in May 2020, when he was caught. Hoping for leniency when he is sentenced, he was testifying at the murder, racketeering and drug-trafficking trial of accused Bully gang leader Moeleek Harrell and three accomplices: Derrick Ayers, Franklin Gillespie and Anthony Kennedy. Fellow former guard Patrick Legerme also detailed his smuggling in the 2022 trial of another drug kingpin at the jail, James Albert, as *PLN* reported. [See: *PLN*, Feb. 2023, p.28.] Neither has yet to publish a book about their escapades, like former guard Gary Heyward's 2015 tome, *Corruption Officer: From Jail Guard to Perpetrator Inside Rikers Island*. Heyward spent two years in state prison for taking $1,500 in bribes to smuggle a cell phone, drugs and tobacco into the jail before he was caught and fired in 2006. He now works for the New York City Housing Authority, which promoted him to building superintendent on March 17, 2024.

New York: Former Schoharie County Jail guard Timothy J. Feldman, 22, got a two-to-six-year prison sentence on February 29, 2024, for attempting to enter a Saratoga Springs bar with a loaded "ghost" gun while off-duty the summer before. *WGRB* in Albany said that a bar bouncer discovered the weapon and alerted cops, who determined the firearm was an unregistered and untraceable "ghost" gun. Feldman admitted he had no permit for it and constructed it from parts ordered online. It was unclear when his employment ended at the jail. He pleaded guilty on October 26, 2023.

New York: A planned lockdown during the solar eclipse on April 8, 2024, was lifted by the state DOC—but only for six prisoners at Woodbourne Correctional Facility. That was in settlement of a suit they filed in federal court for the Northern District of New York arguing that preventing them from observing the phenomenon violated their religious beliefs—as a Baptist, a Muslim, a Seventh-Day Adventist, two practitioners of Santeria and even an atheist, lead plaintiff Jeremy Zeilinski. The *New York Times* reported that the prisoners were represented *pro bono* by attorneys with Alston & Bird in Washington, D.C. *See: Zielinski v. N.Y. Dep't of Corr. and Comm. Svcs.*, USDC (N.D.N.Y.), Case No. 9:24-cv-00450.

North Carolina: On March 21, 2024, Mecklenburg County Sheriff Gary McFadden announced he had fired and arrested Melissa Gordon, 53, for allegedly smuggling unidentified contraband to an unnamed detainee at the county's Detention Center-Central. *WBT* in Charlotte said that Gordon had been a guard at the lockup since January 2020. She was McFadden's second deputy fired that week; James Scott was let go on March 19, 2024, three days after his arrest for violating a domestic violence protective order, *WCCB i*n Charlotte reported. Scott had been employed since September 2022.

North Dakota: Former Heart of America Correctional Center guard Anthony Aadland, 31, appeared in court on February 15, 2024, to face felony charges for having sex with two jail detainees. The *Minot Daily News* said that he denied having sex with one unnamed woman, but when

asked about the other replied, "Okay." He is held in the Bottineau County Jail.

Pennsylvania: Former George W. Hill Correctional Facility guard Damon W. Joyner, 44, was sentenced to 11-and-a-half to 23 months at the lockup on April 1, 2024, after pleading guilty to taking part in a smuggling ring. As *PLN* reported, fellow guards searched him as he arrived for work on December 13, 2022, finding three baggies in his waistband with cigarettes, tobacco, marijuana, Xanax, suboxone and Tylenol. [See: *PLN*, Feb. 2023, p.63.] The *Delco Times* said that former jail detainee Anthony J. Pierre, 30, got two-to-four years in prison followed by five years of probation after pleading guilty to his role in the scheme in April 2023. His girlfriend, Jessica L. Desimore, 25, got three years of probation in January 2023 after admitting to muling Joyner the drugs. Her sentence runs concurrent to an 18-month term for drug possession and trafficking.

Pennsylvania: On March 5, 2024, a Philadelphia judge vacated the sentence of state prisoner Ronald Johnson, 61, freeing him after more than 34 years behind bars. The *New York Times* said he will not be retried for the 1990 murder of Joseph Goldsby. His attorney, Jennifer Merrigan, said the conviction had been based "solely on the false testimony of two witnesses," and cops hid testimony from two other witnesses who identified a different killer. Days later, on March 18, 2024, Charles "C.J." Rice, another state prisoner exonerated in November 2023, saw his attempted murder charges dismissed after prosecutors declined to retry him for a 2011 shooting that injured four people. Rice, 30, had been free on bail since his conviction was tossed, after serving almost 12 years of a 30-to-60-year sentence before the Pennsylvania Innocence Project successfully argued that he received ineffective assistance of counsel at trial. His attorney allowed testimony about a shooting in which Rice himself had been the victim, which prosecutors argued established a retaliatory motive for the subsequent crime. But only one of the four shooting victims could identify him, and she misremembered his cornrows as long dreadlocks. No one ever followed up, either, with a 911 caller whose description of the shooter's clothing did not match what Rice was wearing.

Pennsylvania: State Correctional Institution at Benner guard Kevin B. Hoch, Jr., 40, was charged on March 7, 2024, with plotting to smuggle 10 sheets of paper soaked in "K2" synthetic cannabinoids to a prisoner, the *Centre Daily Times* reported. Prison staffers discovered a recorded call between Hoch and the unnamed prisoner's mother, who mailed the contraband to the guard's home. State DOC investigators intercepted it and replaced the drug-soaked sheets with plain ones, watching as the guard took the package inside. They said he "got into a little financial situation, gambling online," before getting involved in the scheme. Hoch was an eight-year DOC veteran.

Pennsylvania: After repeatedly punching an unnamed Allegheny County Jail detainee—even after a supervisor deployed a Taser on him—guard Robert Veith, 49, is out of a job, *KDKA* in Pittsburgh reported. Jail surveillance video captured the incident on January 3, 2024, while Veith and other guards conducted window checks of prisoner cells. County police were called and arrested Veith for harassment, official oppression and simple assault. Just over six weeks later, on February 24, 2024, Dauphin County Prison guard Scott Petrasic was hit with the same charges after a body-worn camera caught him dragging an unnamed detainee into a cell by her pants, pulling them down and exposing her. The same camera had just recorded him pushing her into a wall after losing his grip on her jacket during a search, *WHTM* in Harrisburg reported. He was charged with assault and suspended without pay on March 24, 2024.

South Carolina: Former Greenwood County Detention Center detainee Tavon Dorsett Morton, 36, was sentenced to 20 years in prison on March 28, 2024, for assaulting a guard at the lockup in August 2023, *WSPA* in Spartanburg reported. Morton had been arrested after an argument erupted in gunfire outside a home in May 2020, injuring the homeowner. Charged with attempted murder, Morton then had his bond revoked in February 2023. Six months later he punched the unnamed guard and threw him head-first onto the concrete floor, sending him into a seizure.

South Carolina: Former Tyger River Correctional Institution guard Jacob Johnson, 37, was fired and arrested on April 9, 2024, for allegedly assaulting an unnamed

prisoner the month before. Johnson is accused of grabbing the prisoner by the "neck/jawline area" and pinning him against a wall on March 8, 2024, the *Spartanburg Herald-Journal* reported. He was charged with second-degree assault and battery and misconduct in office.

South Carolina: A former guard at Darlington County's W. Glenn Campbell Detention Center was arrested on April 14, 2024, on charges that she smuggled contraband hidden in a deodorant container to detainees. *WPDE* in Florence reported that Kilenna Michelle Wright, 39, was charged with furnishing contraband to prisoners and misconduct in office. She no longer works for the county DOC, but it was unclear when or how her employment ended.

Tennessee: Anderson County Jail guard David A. Berruquin, 28, was fired and arrested on April 13, 2024, when he was accused of taking a contraband cellphone into the lockup and possessing child sex materials found during a search of his home, the *Charlotte Observer* reported. The state Bureau of Investigation began looking into the guard on April 5, 2024, when a detainee accused him of sexually assaulting her. He was put in the Anderson County jail and charged with introduction of contraband into a penal facility and sexual exploitation of a minor. He was released after posting a $100,000 bond.

Tennessee: Fired Bradley County Jail guard Krystl Lyn McClure and husband Chase were booked into the jail on April 20 and 21, 2024, respectively, on charges they kidnapped, abused and neglected at least one unidentified child between September and December 2023. *WTVC* in Chattanooga reported that when the allegations surfaced, McClure was still on probationary employment status and was let go, according to Sheriff's Office spokesman Lt. Robert Jones.

Texas: The U.S. Attorney for the Southern District of Texas announced that former BOP guard Justin M. Gonzalez, 26, was arrested on April 8, 2024, for allegedly taking cash bribes to smuggle unidentified contraband to unnamed prisoners at the Federal Correctional Institution in Three Rivers. It was unclear when or how his BOP employment ended.

Virginia: State cops arrested DOC guard trainee Kanasia Taylor on March 27, 2024, charging her with attempting to smuggle a cellphone to an unnamed prisoner at Sussex I State Prison. *WRIC* in Richmond said the phone and a charger were found in a hair scrunchie she set down before entering a body scanner on her way to work. DOC investigators said she expected an unspecified bribe.

Virginia: Three suspected MS-13 gang members held at Sussex I State Prison attacked two fellow prisoners on April 2, 2024, killing one and also "Rivan," a K-9 dog that responded with guards. *WWBT* in Richmond said that all four prisoners were undocumented migrants from Central America when they committed various felonies for which they were incarcerated. A fifth prisoner was injured but survived the assault.

Virginia: The *Petersburg Progress-Index* reported that former BOP guard Daniel Thomas, 37, pleaded guilty on April 10, 2024, to participating in a smuggling conspiracy at the Federal Correctional Complex in Petersburg in 2022. Thomas, who had worked at the lockup since 2015, was recruited by prisoner William Hall, who worked on a detail for which Thomas was a pipe fitter supervisor. An unincarcerated co-conspirator in Kentucky, Kayla Cronin, 29, provided Thomas the contraband, including steroids and tobacco, which he smuggled to Hall, who resold it to fellow prisoners, returning the proceeds to Cronin to pay off and resupply Thomas, keeping the scheme going. They were discovered when Hall was transferred to a New Jersey BOP lockup. He and Cronin have already pleaded guilty. All three await sentencing in July 2024.

Washington: Less than three days after escaping from Monroe Correctional Facility, state prisoner Patrick Lester Clay, 59, was back in custody on April 29, 2024, *KIRO* in Seattle reported. He was serving a two-year sentence for burglary, malicious mischief, theft and harassment when his job as a prison porter took him into a maintenance office, where he stole keys to an employee's truck and drove off, abandoning it in a nearby Seattle neighborhood the next day. Prosecutors said they are now considering escape and theft charges.

West Virginia: The federal court for the District of West Virginia sentenced BOP prisoner Stephen C. Crawford, 45, to serve almost 16 more years for fatally stabbing fellow prisoner Arvel Crawford, 24, in 2015 at the U.S. Penitentiary (USP) in Hazelton. The two were not related, according to *WV News* in Clarksburg. Stephen Crawford's 188-month sentence follows his December 2023 conviction for voluntary manslaughter, assault with a dangerous weapon and assault resulting in serious bodily harm. He was ordered to serve three years of supervised release, though he will not likely live that long; he was already serving a 108-year term for shooting a pregnant woman in the head in 2004 and then fatally shooting her boyfriend, Juan Curtis, when

he arrived at the Washington, D.C. home that he and Tiffany Smith shared. She and her baby survived. The victim at USP-Hazelton, Arvel Crawford, was serving a sentence for two other D.C. murders: he killed Nolan Cooper, 61, in 2008 with a bullet that passed through Johnquan Wright, 18, in a revenge shooting Crawford carried out at 17; he also killed his father, Arvel Alston, 40, during a botched 2009 robbery they attempted of a drug dealer, the *Washington Post* reported. Uniformed D.C. cop Reginald L. Jones, then 40, pleaded guilty to acting as lookout in that crime, netting him a 15-year sentence in 2011.

Wisconsin: Already facing charges for driving drunk with a loaded gun on the car seat beside him the previous August, Milwaukee County Jail guard Weston Rolbiecki, 24, was suspended and charged with misconduct in public office for allegedly punching a detainee in the throat on March 12, 2024. The *Milwaukee Journal-Sentinel* reported that the unnamed detainee had just arrived at the jail from a mental health facility and was changing into his jail uniform when Rolbiecki demanded his socks, and the detainee threw one in the guard's face. A fellow guard's body-worn camera then captured Rolbiecki as he hit the detainee, knocking his head against the wall. A detective who interviewed Rolbiecki said he left the cell to "cool off" because "he realized he was getting mad and that it could've gotten a lot worse."

Wisconsin: State prisoner Jay Conklin, 50, was charged on April 1, 2024, with soliciting a pair of fellow Stanley Correctional Institution prisoners to kill the prosecutor who secured Conklin's second and most recent conviction for child sex abuse. *WEAU* in Eau Claire reported that one of the prisoners told investigators how Conklin said the unnamed prosecutor had conspired with Conklin's mother to "railroad" his conviction so she could take custody of his kids. The same prisoner then told Conklin that he had a cousin who could carry out the hit, and an undercover agent pretending to be the cousin recorded Conklin making the murder-for-hire deal.

Wisconsin: On April 5, 2024, state prisoner Gregg Phillips, 44, had 40 years added to the life sentence he is serving for a 2004 double murder, after a jury found him guilty of attempted homicide for stabbing a Waupun Correctional Center guard with a homemade knife on Christmas Eve 2023. The *Daily Dodge* said that security cameras captured the assault, which left the victim with 13 wounds. Phillips also bit the wrist of a second guard who responded, before a third guard was able to subdue him. Neither guard was named. "It needed to be done," Phillips reportedly laughed, "It didn't matter who…it was just because [the guard] was a blue shirt" and "a blue shirt needed to die." As he was disarmed, the prisoner added: "I quit, I'm done."

Wisconsin: The *Kenosha County Eye* reported that Racine Correctional Institution guard David A. O'Brien, 39, was in court on April 15, 2024, to face charges that he drugged and date-raped four women over a 12-year period with his roommate, psychologist Dr. Austin Gonzalez-Randolph, 40. The victims, who were allegedly raped vaginally, orally and anally, said they recalled drinking with the men but quickly became much more drunk than they should have been given what they had. O'Brien is free while awaiting trial on $10,000 bail; Gonzalez-Randolph also posted bail of $30,000.

Human Rights Defense Center Book Store

FREE SHIPPING on all book orders OVER $50 (effective 9-21-2022 until further notice). $6.00 S/H applies to all other book orders.

Prison Profiteers: Who Makes Money from Mass Incarceration, edited by Paul Wright and Tara Herivel, 323 pages. **$24.95**. This is the third book in a series of Prison Legal News anthologies that examines the reality of mass imprisonment in America. Prison Profiteers is unique from other books because it exposes and discusses who profits and benefits from mass imprisonment, rather than who is harmed by it and how. **1063**

Prison Education Guide, by Christopher Zoukis, PLN Publishing (2016), 269 pages. **$24.95**. This book includes up-to-date information on pursuing educational coursework by correspondence, including high school, college, paralegal and religious studies. **2019**

The Habeas Citebook: Ineffective Assistance of Counsel, 2nd Ed. (2016) by Brandon Sample, PLN Publishing, 275 pages. **$49.95**. This is an updated version of PLN's second book, by former federal prisoner Brandon Sample, which extensively covers ineffective assistance of counsel issues in federal habeas petitions. **2021**

Prison Nation: The Warehousing of America's Poor, edited by Tara Herivel and Paul Wright, 332 pages. **$54.95**. PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. **1041**

The Celling of America, An Inside Look at the U.S. Prison Industry, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. **$24.95**. PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. **1001**

The Criminal Law Handbook: Know Your Rights, Survive the System, by Attorneys Paul Bergman & Sara J. Berman-Barrett, 16th Ed, Nolo Press, 648 pages. **$39.99**. Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy-to-understand question-and-answer format. **1038**

Represent Yourself in Court: How to Prepare & Try a Winning Case, by Attorneys Paul Bergman & Sara J. Berman-Barrett, 10th Ed, Nolo Press, 600 pages. **$39.99**. Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. **1037**

Writing to Win: The Legal Writer, by Steven D. Stark, Broadway Books/Random House, 303 pages. **$19.95**. Explains the writing of effective complaints, responses, briefs, motions and other legal papers. **1035**

The Blue Book of Grammar and Punctuation, by Jane Straus, 201 pages. **$19.99**. A guide to grammar and punctuation by an educator with experience teaching English to prisoners. **1046**

Legal Research: How to Find and Understand the Law, 19th Ed., by Stephen Elias and Susan Levinkind, 368 pages. **$49.99**. Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. **1059**

All Alone in the World: Children of the Incarcerated, by Nell Bernstein, 303 pages. **$19.99**. A moving condemnation of the U.S. penal system and its effect on families" (Parents' Press), award-winning journalist Nell Bernstein takes an intimate look at parents and children—over two million of them - torn apart by our current incarceration policy. **2016**

Blue Collar Resume, by Steven Provenzano, 210 pages. **$16.95**. The must have guide to expert resume writing for blue and gray-collar jobs. **1103**

Protecting Your Health and Safety, by Robert E. Toone, Southern Poverty Law Center, 325 pages. **$10.00**. This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how to enforce your rights, including through litigation. **1060**

Spanish-English/English-Spanish Dictionary, 2nd ed., Random House. 694 pages. **$15.95**. Has 145,000+ entries from A to Z; includes Western Hemisphere usage. **1034a**

The Merriam-Webster Dictionary, 2016 edition, 939 pages. **$9.95**. This paperback dictionary is a handy reference for the most common English words, with more than 75,000 entries. **2015**

Roget's Thesaurus, 709 pages. **$9.95**. Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. **1045**

Beyond Bars, Rejoining Society After Prison, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alpha, 224 pages. **$14.95**. Beyond Bars is a practical and comprehensive guide for ex-convicts and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more. **1080**

Directory of Federal Prisons: The Unofficial Guide to Bureau of Prisons Institutions, by Christopher Zoukis, 764 pages. **$99.95**. A comprehensive guidebook to Federal Bureau of Prisons facilities. This book delves into the shadowy world of American federal prisoners and their experiences at each prison, whether governmental or private. **2024**

Merriam-Webster's Dictionary of Law, 634 pages. **$19.95**. Includes definitions for more than 10,000 legal words and phrases, plus pronunciations, supplementary notes and special sections on the judicial system, historic laws and selected important cases. Great reference for jailhouse lawyers who need to learn legal terminology. **2018**

The Best 500+ Non-Profit Organizations for Prisoners and Their Families, 5th edition, 170 pages. $19.99. The only comprehensive, up-to-date book of non-profit organizations specifically for prisoners and their families. Cross referenced by state, organization name and subject area. Find what you want fast! **2020**

Deposition Handbook, by Paul Bergman and Albert Moore, 7th Ed. Nolo Press, 440 pages. **$34.99**. How-to handbook for anyone who conducts a deposition or is going to be deposed. **1054**

Please Note: Book orders are mailed via the U.S. Postal Service with delivery confirmation. PLN does not assume responsibility to replace book orders once their delivery to the destination address (facility) is confirmed by the postal service. If you are incarcerated and placed a book order but did not receive it, please check with your facility's mailroom before checking with us. If books ordered from PLN are censored by corrections staff, please file a grievance or appeal the mail rejection, then send us a copy of the grievance and any response you received

Prisoners' Self-Help Litigation Manual, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 928 pages. **$69.95**. The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Includes detailed instructions and thousands of case citations. Highly recommended! **1077**

How to Win Your Personal Injury Claim, by Atty. Joseph Matthews, 9th edition, NOLO Press, 411 pages. **$34.99**. While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents. **1075**

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

Disciplinary Self-Help Litigation Manual, by Daniel Manville, 355 pages. **$49.95**. By the co-author of the Prisoners' Self-Help Litigation Manual, this book provides detailed information about prisoners' rights in disciplinary hearings and how to enforce those rights in court. Includes state-by-state case law on prison disciplinary issues. This is the third book published by PLN Publishing. **2017**

The PLRA Handbook: Law and Practice under the Prison Litigation Reform Act, by John Boston, 576 pages. **Prisoners - $84.95, Lawyers/ Entities - $224.95**. This book is the best and most thorough guide to the PLRA provides a roadmap to all the complexities and absurdities it raises to keep prisoners from getting rulings and relief on the merits of their cases. The goal of this book is to provide the knowledge prisoners' lawyers – and prisoners, if they don't have a lawyer – need to quickly understand the relevant law and effectively argue their claims. **2029**

Everyday Letters for Busy People: Hundreds of Samples You Can Adapt at a Moment's Notice, by Debra May, 287 pages. **$21.99**. Here are hundreds of tips, techniques, and samples that will help you create the perfect letter. **1048**

Federal Prison Handbook, by Christopher Zoukis, 493 pages. **$74.95**. This leading survival guide to the federal Bureau of Prisons teaches current and soon-to-be federal prisoners everything they need to know about BOP life, policies and operations. **2022**

Locking Up Our Own, by James Forman Jr., 306 pages. **$19.95**. In Locking Up Our Own, he seeks to understand the war on crime that began in the 1970s and why it was supported by many African American leaders in the nation's urban centers. **2025**

Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A., by Mumia Abu-Jamal, 286 pages. **$16.95**. In Jailhouse Lawyers, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned advocates who have learned to use the court system to represent other prisoners—many uneducated or illiterate—and in some cases, to win their freedom. **1073**

The Habeas Citebook: Prosecutorial Misconduct, by Alissa Hull, 300 pages. **$59.95**. This book is designed to help pro se litigants identify and raise viable claims for habeas corpus relief based on prosecutorial misconduct. Contains hundreds of useful case citations from all 50 states and on the federal level. **2023**

Arrest-Proof Yourself, Second Edition, by Dale C. Carson and Wes Denham, 376 pages. **$16.95**. What do you say if a cop pulls you s to search your car? What if he gets up in your face and uses a racial slur? What if there's a roach in the ashtray? And what if your hot-headed teenage son is at the wheel? If you read this book, you'll know exactly what to do and say. **1083**

Caught: The Prison State and the Lockdown of American Politics, by Marie Gottschalk, 496 pages. **$27.99**. This book examines why the carceral state, with its growing number of outcasts, remains so tenacious in the United States. **2005**

Encyclopedia of Everyday Law, by Shae Irving, J.D., 11th Ed. Nolo Press, 544 pages. **$34.99**. This is a helpful glossary of legal terms and an appendix on how to do your own legal research. **1102**

*** ALL BOOKS SOLD BY PLN ARE SOFTCOVER / PAPERBACK ***

To Pay by Credit Card, Go to Our Website: www.prisonlegalnews.org or Call Us at 561-360-2523

Subscription Rates

	1 Year	2 Years	3 Years	4 Years
Prisoners/Individuals	**$36**	**$72**	**$108**	**$144**
Professionals (attorneys, agencies, libraries)	**$96**	**$192**	**$288**	**$384**

Mail Payment and Order to:

Human Rights Defense Center
PO Box 1151
Lake Worth Beach, FL 33460

Please Change my Address to what is entered below: ☐

Ship Order To:

Name: _____

DOC #: _____

Suite/Cell: _____

Agency/Inst: _____

Address: _____

City/State/Zip: _____

Subscription Bonuses

2 year subscription include 2 extra issues
3 year subscription include 4 extra issues
4 year subscription include 6 extra issues

(All subscription rates and bonus offers are valid as of *1/1/2022)*

Subscribe to Prison Legal News

6 month subscription (prisoners only) - $20 _____
1 yr subscription _____
2 yr subscriptions (2 bonus issues) _____
3 yr sub (4 bonus issues) _____
4 yr sub (6 bonus issues) _____
Single back issue or sample copy of PLN - $6.00 _____

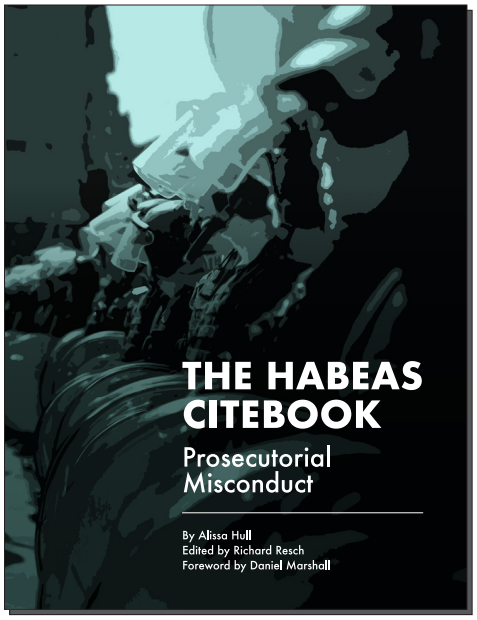
Book Orders

_____ _____ _____
_____ _____ _____
_____ _____ _____
_____ _____ _____
_____ _____ _____

Add $6.00 S/H to BOOK ORDERS under $50 _____
FL residents ONLY add 7% to Total Book Cost _____
TOTAL Amount Enclosed: _____

*** NO REFUNDS on PLN subscription or book orders after orders have been placed. ***
*** We are not responsible for incorrect addresses or address changes after orders have been placed. ***

Introducing the latest in the Citebook Series from Prison Legal News Publishing



The Habeas Citebook: Prosecutorial Misconduct

By Alissa Hull
Edited by Richard Resch

The Habeas Citebook: Prosecutorial Misconduct is part of the series of books by Prison Legal News Publishing designed to help pro se prisoner litigants and their attorneys identify, raise and litigate viable claims for potential habeas corpus relief. This easy-to-use book is an essential resource for anyone with a potential claim based upon prosecutorial misconduct. It provides citations to over 1,700 helpful and instructive cases on the topic from the federal courts, all 50 states, and Washington, D.C. It'll save litigants hundreds of hours of research in identifying relevant issues, targeting potentially successful strategies to challenge their conviction, and locating supporting case law.

> The Habeas Citebook: Prosecutorial Misconduct *is an excellent resource for anyone seriously interested in making a claim of prosecutorial misconduct to their conviction. The book explains complex procedural and substantive issues concerning prosecutorial misconduct in a way that will enable you to identify and argue potentially meritorious claims. The deck is already stacked against prisoners who represent themselves in habeas. This book will help you level the playing field in your quest for justice.*
>
> —Brandon Sample, Esq., Federal criminal defense lawyer, author, and criminal justice reform activist

The Habeas Citebook: Prosecutorial Misconduct

Paperback, 300 pages

$59.95

(includes shipping)

Order by mail, phone, or online. Amount enclosed _____

By: ☐ check ☐ credit card ☐ money order

Name: _____

DOC/BOP Number: _____

Institution/Agency: _____

Address: _____

City: _____ State: _____ Zip: _____

Human Rights Defense Center
Dedicated to Protecting Human Rights
PO Box 1151 • Lake Worth Beach, FL 33460 • Phone # 561-360-2523
WWW.PRISONLEGALNEWS.ORG • WWW.CRIMINALLEGALNEWS.ORG

Prison Legal News
PO Box 1151
Lake Worth Beach FL 33460

Change Service Requested

Non-Profit Org.
U.S. Postage
PAID
Portland OR
Permit No. 3142

06/24 — **Subscription Renewal**
The above mailing address for *PLN* subscribers indicates how many issues remain on the subscription. For example, if it says "10 LEFT" just above the mailing address, there are 10 issues of *PLN* remaining on the subscription before it expires. IF IT SAYS "0 LEFT," THIS IS YOUR LAST ISSUE. Please renew at least 2 months before the subscription ends to avoid missing any issues.

Change of Address
If you move or are transferred, please notify *PLN* as soon as possible so your issues can be mailed to your new address! *PLN* only accepts responsibility for sending an issue to the address provided at the time an issue is mailed!