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Mississippi Prisons in Crisis

Prisons beset with gang-related violence, overcrowding, understaffing and weak funding.

by David M. Reutter

Between late last year and early April 2020, more than 30 Mississippi prisoners died due to gang violence, suicide or illness – over 10 times the average of 3.4 prisoner deaths per year between 2014 and 2018. Prisoner advocates blame budget cutting and mass incarceration policies that have left state prisons overcrowded, deteriorated and understaffed.

Dozen of reports by news organizations cast a pall on the state prison system.

The chaos within the Mississippi Department of Corrections (MDOC) began on December 29, 2019, after a conflict erupted between the Vice Lords and Gangster Disciples. It escalated into what officials called a “gang war” after South Mississippi Correctional Institution (SMCI) prisoner Terrandance Dobbins, a Gangster Disciples member, was killed and two others were injured.

According to officials, prisoners used cellphones to spread news of the war. Soon after, the riot at SMCI spread to Mississippi State Prison at Parchman and other prisons. Parchman, despite lock downs, was the scene of five murders and two other deaths in 30 days.

“They ran the guards out of the building last night,” a Parchman prisoner wrote about the all-night gang battles he witnessed on New Year’s Day 2020. “I don’t know what they’re going to do. They’re short on staff. They were banging all night. Don’t list my name. You’ll get me killed.”

The violence was a setback from improvements made during 40 years of federal oversight after a lawsuit was brought by the American Civil Liberties Union (ACLU), which resulted in the closure of Parchman’s Unit 32 in 2010. [See PLN, February 2011, p. 22.]

“The people of Mississippi should not think that their prisons have been converted to ‘country clubs.’ They are prisons where no citizen wishes to be incarcerated,” wrote federal Magistrate Judge Jerry Davis in 2011 when ordering an end to the confinement conditions that spawned the class action lawsuit. “However, they are humane and do not systematically subject the inmates to ‘cruel and inhuman punishment.’ That is the mandate of the Constitution and why this court has been involved all these years.”

Former MDOC Commissioner Christopher Epps reduced solitary confinement systemwide as a result of the lawsuit, and MDOC was hailed as a model of prison reform. Mississippi legislators in 2013 created a bipartisan Corrections and Criminal Justice Oversight Task Force. Tasked with reversing a 300 percent growth in the prison population over the previous three decades, its policy recommendations included saving taxpayers millions of dollars by reducing recidivism.

President Trump cited the state’s 2014 job training and rehabilitation initiatives as the model for federal prison reform legislation.

MDOC’s budget grew from $312 million in fiscal year 2011 to $359.7 million in 2015. But as the state moved on from four decades of federal oversight of its prison system, lawmakers began tightening the purse. Funding for MDOC was reduced to $334.6 million in 2018 and $344 million in 2019.

A joint investigation by the Mississippi Center for Investigative Reporting (MCIR) and ProPublica reported in 2019 that millions of dollars that were to be reinvested in reentry programming were used for corporate tax breaks instead. “Meanwhile, the number of prisoners is creeping back up, and the lack of funding and staff is contributing to worsening conditions,” they reported.

In 2018, then-MDOC Commissioner Patricia Hall addressed lawmakers to request an additional $22 million to repair Parchman’s Unit 29 and to raise pay for guards. In reply, House Speaker Phillip Gunn (R-Hattiesburg) told Hall: “I can’t just go in there and ask the House to fund that kind of money in an election year. Can’t
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### Mississippi Prisons in Crisis (cont.)

you just lock ‘em down?”

Also in 2018, then-Lt. Gov. Tate Reeves – who is now the governor – toured SMCI. Guards told him about dangerous conditions, understaffing due to low pay, and increased gang activity due to inadequately staff. Reeves barely responded to the concerns before leaving.

MDOC officials requested $78 million in additional funding for FY 2021. Nearly a third of that was to renovate Unit 29, which MDOC describes as “unsafe for staff and inmates.” Another $50 million was earmarked for guard pay raises. But Gov. Reeves asked lawmakers to leave MDOC’s budget the same despite past cuts and his vow that guards be “compensated fairly.”

His budget request conceded that “more investment” in MDOC may be necessary in the future, but he added that “we do not want to blindly request an increase to achieve a vague ambition. We want to ask for targeted investment.”

Reeves also asked the state Department of Finance and Administration to analyze MDOC spending to “accurately determine where taxpayers’ money is currently being spent (or misspent).”

He was not alone among state politicians who opposed adding money to the prison budget. In fact, the Joint Legislative Budget Committee proposed cutting MDOC’s budget by $8.3 million.

A pay raise for guards “doesn’t necessarily fix everything,” insisted Juan Barnett, the Democratic chair of the state Senate Corrections Committee. “We need to take our time and make sure we address all the issues as carefully as possible.”

As Gov. Reeves placed blame for MDOC’s problems on past administrations (of which he was also a part), he declared, “We know there are problems in the system. We don’t want to hide them. We want to fix them.”

### Gangs Fill Understaffing Void

In recent years, gangs have become more and more prevalent inside prisons. Some prisoners were gang members before they entered prison. Others joined to gain a feeling of belonging while others did so for protection.

There are a few things gangs have in common. Blood in, blood out is a common refrain, meaning it is necessary to engage in violence in order to get into a gang, and denouncing membership will also result in a violent encounter. Another commonality is that gangs seek to bring in revenue by engaging in criminality. Prisoners often feel they are left little choice but to join a gang.

“Most of the prison population is affiliated now,” one Mississippi inmate said, “or else they’re victims.”

This victimization often involves extortion. The gig involves finding a loner, or someone who lacks gang affiliation. Threats of violence are made and carried out if the prisoner or a family member doesn’t pay for protection. Calls are often made directly to family members. Then, there are scams that involve identity theft and drug dealing inside and outside of prisons.

 Competition for a piece of the small pie inside of prisons can be fierce. Step- ping onto another gang’s turf or straight up beefs among rival members can result in violence. These are normal routines inside of most prisons, but guards usually have their network of snitches to keep them abreast of things.

What happens when guards are on gang payrolls or collaborating with them, or there are too few guards to maintain control of an area? What has played out in Mississippi’s prisons provides an answer.

Gangs have taken control over beds, wall phones, and showers, charging a fee to use them. Prisoners who want to sleep in the bed assigned by guards are “breaking security” and must pay for the privilege. Eating without sharing or showering at the wrong time results in gang-instituted fines. These debts are paid with money, food, tasks such as carrying contraband for the gang, or even online currency like Green Dots.

Low guard pay is perhaps the biggest impediment to adequate staffing. Pay for Mississippi guards is the lowest in the nation, and a guard with a family of three from $25,650 to $30,370.

That’s significantly less than the pay for a manager at a Hardee’s in Mississippi, which starts at $36,000 a year. But it would put the state’s guard pay in line with its four neighboring states: Alabama, Arkansas,
Mississippi Prisons in Crisis (cont.)

Louisiana and Tennessee.

Low pay has left MDOC with 800 vacant guard positions. According to the state Personnel Board, MDOC had 1.591 guards in 2014, a number which had shrunk to 732 by December 2019. As of July 1, 2019, Parchman had one guard for every 11 prisoners. At Central Mississippi Correctional Facility there was one guard for every 17 prisoners. At SMCI, the ratio was one to 23. The federal Bureau of Prisons, on average, has a prisoner-to-guard ratio of just 9.3. Arkansas has one guard for every 6.6 prisoners and Louisiana has a 1-to-5.2 ratio.

“This is not a sustainable situation,” said David Fathi, director of the ACLU’s National Prison Project, who called SMCI’s guard to prisoner ratio “among the highest I’ve ever seen.”

The result is that guards “let inmates run the facility,” said Kenesha Lee, whose brother was attacked in a state prison. When she questioned a guard afterward, she said he acknowledged that he and his coworkers were “scared for their lives.”

State Rep. Jay Hughes (D-Oxford) toured SMCI in April 2019, when he said a prison counselor told him that she didn’t feel safe. A high-ranking prison official corrected her, saying, “It’s not that you didn’t feel safe. You aren’t safe.” The same official said that gangs were running the prison.

Through spokeswoman Grace Fisher, MDOC replied that it “denies alleged statements that gangs run SMCI or any other prison. Such an assertion contradicts the public safety mission of the agency.”

But the warden at Wilkinson County Correctional Facility (WCCF), a Mississippi prison operated by Management and Training Corporation (MTC), agreed with the SMCI official. The Marshall Project reported a December 2018 internal audit at WCCF found then-Warden Jody Bradley allegedly told gang leaders to “control their men.” Failure to do so, he warned, would result in the entire prison being placed on lockdown. The audit quoted Bradley as saying, “Using gangs in this way is just how Mississippi prisons operate. It ain’t right, but it’s the truth.” MTC denied that gangs were in control.

“That is in no way is the reality at the prison,” insisted Issa Arnita, MTC’s director of corporate communications.

The Mississippi Center for Investigative Reporting found similar allegations were made at MTC-operated East Mississippi Correctional Facility (EMCF), where a lawsuit claims MTC officials “depend on the gangs to run the facility.”

“The risk of harm created by gang and prisoner control over EMCF has manifested many times in assaults and extortion,” the suit claims.

Explosion of Violence

In January 2019 Hall warned legislators that a “staffing crisis” and “a pressure cooker type situation” was brewing at MDOC facilities.

“We’re asking them to come to work in dangerous-type environments doing dangerous work,” Hall said.

Many rejected working for such low pay and some who do supplement their pay by trafficking contraband. Jordan, a Mississippi prisoner said: “Man, it’s way bigger than gangs. It’s the administration. The administration in these prisons is the biggest gang… Some guards they come in here, they’re already affiliated with gangs.”

“I don’t feel safe due to the administrative staff,” agreed Charles, a prisoner at Parchman’s Unit 29. “They were known to give keys to inmates and let them come in on certain (other) inmates and stab and kill them.”

But for guards, allowing gangs to take control is the safer and more lucrative option. Moving contraband, such as cellphones, drugs, and tobacco, into the prison can generously increase their poverty-level pay.

“Certain players in the game are racking up mid-six figures. Numerous soldiers and guards are bringing in $100,000 to $200,000, easy,” said a former top gang leader in Mississippi’s prisons, who requested anonymity for fear of retribution. “This is now on an organized level of racketeering.”

It was in this setting that the December 29, 2019 riot at SMCI spilled over to other Mississippi prisons. MDOC ordered a systemwide lockdown to quell the violence. Its next response was to reopen Parchman’s Unit 32, loading prisoners onto vans and transporting them there. After a decade of being closed, the facility drew prisoner complaints of standing water, mildew and mold, a lack of running water for sinks and toilets, and paint peeling off the walls.

A prisoner named Jordan shared cellphone video of sewage flowing through his cell after he was transferred to Unit 32.

“We walked around for nine days with raw sewage up to our ankles,” he said. “They used a squeegee . . . (to push) the water out of our cells over into the shower area. We begged them for bleach . . . so we could clean ourselves. We didn’t receive cleaning supplies, but the toilets continued that night - they started overflowing.”
Since 2017, the federal Environmental Protection Agency (EPA) has cited Parchman's sewage system for violations. Since 2012, it has also been cited for nearly 100 violations of the Safe Drinking Water Act. In 2019, inspectors found at least 300 cells lacked power or lights, and more than 250 prisoners – 8% of the population – lacked bedding or mattresses.

The reports also documented holes in cell walls and prison doors, collapsing ceilings, broken toilets, sinks, drains and tile, exposed wiring, bird nests in windows, and vermin infestation.

While MDOC knew of these conditions at Parchman, and that things were even worse at the long-closed Unit 32, it nevertheless moved dozens of prisoners there. Parchman's Unit 32 was ill equipped and unprepared to house prisoners in January 2020. Guards even failed to ensure that a back door was locked. Two prisoners escaped but were later recaptured. Despite the fact the prison was in lockdown status, violence and death ensued over the following weeks:

- January 1, 2020: Walter Gates, 25, died after being stabbed to multiple times on New Year's Eve.
- January 2, 2020: Roosevelt Holliman, 32, was stabbed to death in what the coroner called a “gang fight.”
- January 3, 2020: Denorris Howell, 36, was reportedly strangled to death by his cellmate in what appeared to be a gang killing. In a video, other prisoners can be heard cheering on Howell’s murder.
- January 8, 2020: Prisoner A.D. Mills, 42, died of “natural causes” at a hospital.
- January 18, 2020: Gabriel Carmen, 31, was found hanging in his cell.
- January 21, 2020: James Talley, 36, and Timothy Hudspeth, 35, died of blunt force beating injuries following an altercation with other prisoners.
- January 22, 2020: Thomas Lee, 49, was found dead in his cell from what was labelled “an apparent suicide.”
- January 26, 2020: Joshua Norman, 26, was found hanging in his Unit 29 cell.

Conditions were long rough at Parchman's Unit 29 and it had been placed on lockdown on December 2, 2019. Atlanta lawyer Vanessa Carroll visited the prison in late January 2020, finding the lockdown was still in place, and that for nearly two months prisoners had not been given yard call. They hadn’t been afforded showers since December 28. The smell in the unit was “unbearable,” Carroll said, and “the lack of water and access to showers” was “making it impossible for the men to maintain basic hygiene.”

“One client has sores and a rash spreading over his abdomen that is likely a direct result of the unsanitary conditions,” the lawyer added.

After touring Parchman in late January 2020, Gov. Reeves blamed prisoners for “99%” of the problems. He was not alone in that assessment. Before he left office in early January, then-Gov. Phil Bryant told reporters:

“Someone asked earlier ‘Who’s responsible for what’s happening at Parchman?’ The inmates. The inmates are the ones that take each others’ lives. The inmates are the ones that fashion weapons out of metal. The inmates are the ones that do damage to the very rooms they’re living in.”

**Plantation Mentality**

In the late 19th century, Mississippi was a rigid apartheid state that dished out

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Mississippi Prisons in Crisis (cont.)

...cruel, gratuitous punishment to those it deemed criminals. Blacks bore the brunt, and they were arrested for petty crimes like gambling and vagrancy, which was defined as traveling without a permit or evidence of a job. Offenders were given hefty fines and sentences. Once in custody, the state then leased them to private companies to labor on railroads and plantations.

“The pride of Mississippi...is the ‘Parchman Place,’” a 1911 New York Times Sunday edition article read. “Actually instances have been known of when negroes were turned out of the penitentiary, given a new suit and $10 in money, they would not want to leave and would inquire if there was some way in which they could stay there.”

The reality, however, was far different. “The prisoners ate and slept on bare ground, without blankets or mattresses, and often without clothes,” wrote historian David Oshinsky in Worse than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice. “Convicts dropped from exhaustion, pneumonia, malaria, frostbite, consumption, sunstroke, dysentery, gunshot wounds, and ‘shackle poisoning’ (the constant rubbing of chains and leg irons against bare flesh).”

For the next 70 years, conditions remained little changed at Parchman. Those changes that did occur included the building of a maximum-security unit, a gas chamber and a solitary confinement wing. Then, in 1974, a federal court in the landmark prison conditions case of Gates v. Collier ruled in the prisoners’ favor and ordered the prison to desegregate, eliminate “Black Annie” (punishment by whip) and other unconstitutional forms of punishment, as well as ending forced field labor.

For the next 40 years, the court maintained oversight, ordering reforms such as the closing of Unit 32, which housed death row and “supermax” high-security-risk prisoners.

Notwithstanding Parchman’s history, Mississippi continues to publicly brag about its prisons. The state offers carefully orchestrated tours to schools, church groups, and the media, according to an account in The Intercept. As the tour bus passes prisoners working in the fields tending squash, broccoli and greens, the tourists are told the world addresses “inmate idleness.” The visitors’ center sports rocking chairs and vases filled with fake flowers. A hearty lunch consisting of grilled shrimp, teriyaki green beans, and pecan cobbler is offered to tourists, though not in the prisoner chow hall. While society continues to evolve, the rhetoric and reality of Parchman and Mississippi’s prison system have changed little from 1911. One prisoner tried to set the record straight for a group of tourists.

“There is no rehabilitation in Mississippi,” the Parchman lifer, who had served 40 years, told a tour group that included a journalist. “Don’t kid yourself.”

He noted that in the decades he had been at Parchman, sentences had gotten longer and programs had been stripped away. There used to be a choir, a radio station, and a print shop.

“All that’s gone,” he said.

Visitation has been curtailed and conjugal visits were eliminated. But then, those sentenced to prison time know not to expect much from officials. Survival has always been the nature of the prison game.

“Prison has always been violent,” said Al Coleman, who served time at Parch-
man in the 1990s. “It’s like walking into a zone with a bunch of time bombs waiting to explode . . . If you’re being treated like you’re nothing, like you’re a dog, an animal, and you’re not getting the right amount of food, water, you don’t have no way to use the restroom, the frustration constantly builds.”

**Turn the Page**

“Fix Your Prisons” read a T-shirt worn by Sally House at a January 11, 2020, protest outside Parchman. Protesters at a rally at the state Capitol yelled, “SHUT IT DOWN!”

The protest was fueled by pictures of conditions inside Unit 32, after prison officials reopened it in December 2019 in an attempt to break up “gang wars” that followed Terrandance Dobbins’ murder.

Using cellphones, prisoners sent pictures of the squalid conditions that were forced upon them. One of them showed five prisoners in striped jumpsuits lying on the floor of their filthy cell.

“I wanna thank those brothers behind the walls that had the courage to let the world know of the injustices,” said prison reform activist Sharon Brown. “To let the world know that they are beaten, broken, tired.”

In the wake of the violence, however, one legislative bill sought to allow sentences of up to 15 years for possession of a cellphone in a jail or prison.

“This proposal is just another attempt by the state of Mississippi to avoid account-
includes $10.28 per day for medical costs. The no-bid, 90-day contract paid CoreCivic $59.26 per prisoner per day if the maximum of 375 prisoners was maintained. MDOC must also pay for any off-site medical costs that exceed $2,500 per instance, and CoreCivic is not responsible for costs for treating AIDS, HIV or Hepatitis C, meaning the price tag could balloon even more.

In mid-January 2020, Mississippi Rep. Bennie Thompson signed a letter that the Southern Poverty Law Center (SPLC) sent to the federal Department of Justice (DOJ) requesting it to open an investigation into conditions in Mississippi's prisons. DOJ announced on February 6, 2020, that it would investigate conditions at four Mississippi prisons, including Parchman.

“The investigation will focus on whether [MDOC] adequately protects prisoners from physical harm at the hands of other prisoners at the four prisons, as well as whether there is adequate suicide prevention, including adequate mental health care and appropriate use of isolation, at Parchman,” a DOJ statement said.

Gov. Reeves’ office tried to paint the development in a positive light, with spokesperson Renae Eze expressing gratitude “that President Trump’s administration has taken a focused interest in criminal justice reform and that they care enough about Mississippi to engage in this critical issue.”

“As we continue our own investigations, we look forward to cooperating with them and working together to right the ship,” Eze added.

But prisoner advocates say Mississippi must acknowledge the core issues that led to its prisons imploding.

“Mississippi has a mass incarceration problem,” said Josh Tom, interim director of the Mississippi ACLU. “Dramatic increases in imprisonment over the last 40 years have brought prisons and jails across the state to the breaking point. Changes in law and policy, not crime rates, explain most of this increase.”

However, there are serious grounds for concern about the likelihood of Mississippi reforming its notorious prisons. On May 22, 2020, Gov. Reeves announced that the former warden of the state penitentiary in Angola, Burl Cain, was his nominee to take over MDOC. Cain, who turns 78 in July 2020, and who was subsequently con-


Rappers Jay-Z and Yo Gotti Help Prisoners in Mississippi Sue State Over “Inhumane and Unconstitutional Conditions”

by Bill Barton

Lawyers representing music stars Shawn “Jay-Z” Carter and Mario “Yo Gotti” Mims, along with Carter’s entertainment company, Team Roc, filed a federal lawsuit in the Northern District of Mississippi on January 14, 2020, on behalf of 24 prisoners held at Mississippi State Penitentiary at Parchman. The suit’s named defendants are then-Mississippi Department of Corrections (MDOC) Commissioner Felicia Hall and Marshal Turner, superintendent of the Parchman prison until April 2020.

The suit was filed by Blackmon & Blackmon of Canton and Alex Spiro and colleagues from Quinn Emanuel Urquhart & Sullivan in New York. Prior to filing, Team Roc sent a letter to Hall and then-Gov. Phil Bryant accusing MDOC of operating prisons that are “inhumane and unconstitutional.” Bryant’s term ended in January 2020 when his former lieutenant governor Tate Reeves, was inaugurated.

Spiro said the group was “prepared to pursue all potential avenues to obtain relief for the people living in Mississippi’s prisons and their families,” and concluded the letter with a warning: “Roc Nation and its philanthropic arm, Team Roc, demand that Mississippi take immediate steps to remedy this intolerable situation.”

Since December 29, 2019, at least 30 men have died in Mississippi prisons, most at Parchman. The letter to Bryant and Hall, in addition to mentioning lockdowns, general violence and a severe staffing shortage, also notes that inmates “are forced to live in squalor, with rats that crawl over them as they sleep on the floor, having been denied
these deaths are a direct result of Mississippi's utter disregard for the people it has incarcerated and their constitutional rights,” said the lawsuit.

Rukia Lumumba, founder of the People’s Advocacy Institute, elaborated:

“People are at their breaking point, the conditions are so horrific inside, that the conditions have caused the violence. If people are forced to live in cages that are put in place to break a person, then escalation can't be too far behind.”

“I just think it’s troubling where you have people, predominantly African-Americans, who are locked inside cages where they don’t have a voice to be heard — and are essentially the forgotten,” Spiro said. “It strikes us that there has to be a spotlight on this, otherwise we might not even be scratching the surface of the horror going on inside these prisons.”

The lawsuit names prisoners who died in January 2020, including:

Walter Gates, an inmate of Unit 29E at Parchman, was stabbed multiple times on New Year's Eve, and declared dead just after midnight.

Roosevelt Holliman, who was stabbed to death during a fight the next day.

Denorris Howell, a prisoner at Unit 29 at Parchman, was allegedly strangled to death by his cellmate on January 3.

State Rep. Robert Johnson and other Democratic lawmakers visited Parchman on January 10, 2020. They witnessed broken toilets full of waste and leaking ceilings. Referring to the prison's understaffing as "a recipe for disaster," he said that no one wanted "to make prison a country club."

"But there's basic and requisite standards to exist as a human being," Johnson continued. “And I don't think we're meeting those — not for employees, not for inmates.”

Prisoner rights advocates have asked the U.S. Department of Justice to investigate the MDOC, alleging that state leaders are “deliberately and systematically” putting prisoners at risk.

The lawsuit alleges that prisoners’ “lives are in peril” due in part to lack of adequate funding for the state’s prisons and the resulting understaffing. See: Amos v. Hall, USDC (N.D. Miss.), Case No. 4:20-cv-00007.
With COVID-19 still dominating prison and jail related news, it is worth keeping in mind that detention conditions did not miraculously improve because of a pandemic. Rather, already bad conditions have gotten steadily worse, inadequate and negligent medical care systems have been overtaxed, and their already limited capacity has been exceeded.

Meanwhile, releases of convicted prisoners at the state and federal levels due to COVID-19 have been small and slow. It appears the political class in this country, and the managers who run their prisons and jails, have confirmed that prisoners are viewed as expendable. Whatever happens, their jobs are secure, they seem to have concluded. It remains to be seen what the actual mortality rate of COVID-19 will be in prisons and jails, and if officials will accurately report it.

PLN will continue covering COVID-19 related developments as they occur, and it appears we are in for a long-term period of reporting on the topic. Our news and legal reporting have already begun to reflect that.

Some readers will note that court decisions we reported in the last issue of PLN have already been reversed. The good news is that appellate courts are moving quickly on lawsuits challenging COVID-19-related conditions; the bad news is that they are often reversing the district court rulings in favor of prisoners. We will continue working to bring readers the most timely and accurate information possible, but be advised that between the time PLNs is sent to the printer and when you receive it, things may already have changed.

I’ve been editing PLN for the past 30 years and this is not our first pandemic. In some ways, PLNs coverage of AIDS/HIV in the 1990s was similar: A relatively new disease was poorly understood and prisoners were denied adequate care and treatment as it swept through prisoner populations around the country.

By the end of the 1990s, AZT cocktails turned what had been a death sentence upon diagnosis at the beginning of the decade into a chronic but manageable disease. Of course, prisoners continued to be denied treatment and were discriminated against long after that, and still are in many cases. All the talk about a COVID-19 vaccine being just around the corner reminds me of the search for an HIV/AIDS vaccine, which has been discussed since at least the mid-1980s and remains as elusive as ever.

We remain highly interested in reporting on COVID-19 and its impact on prisoners around the country, so please contact us and let us know what is happening in your corner of the American gulag.

As a reminder, our other publication, Criminal Legal News, is also a monthly magazine that reports on criminal law, procedure, sentencing issues and policing and makes a great companion to PLN. A subscription to both ensures that readers are informed about all aspects of the criminal justice system. Subscription information can be found on page 45.

Many new subscribers are receiving PLN for the first time as part of a trial subscription we offered as the COVID-19 pandemic began to explode. I hope you find PLN informative and useful, and that you subscribe at the regular subscription rate when your trial subscription runs out. We rely on subscriptions to continue publishing and on advertising to keep our rates low.

If you patronize any of our advertisers, be sure to tell them you saw their ad in PLN! If you can make a donation above and beyond your subscription, please do so as that is what keeps us up and running. Right now, we are in probably the most critical time I have seen in the entire duration we have been publishing.

As I see protests across the world denouncing the scourge of police abuse and brutality in the U.S., and millions of protesters seeking justice and accountability for George Floyd, I wonder when we will see that attention turn to prisoners who have been murdered by the American carceral state. Darren Rainey is the Florida prisoner who was burned to death by state prison guards. Five years later, the medical examiner claimed his death was “accidental” and no one has ever been charged for his murder.

The Human Rights Defense Center, PLNs publisher, is currently suing the Florida DOC and Corizon on behalf of the family of Vincent Gaines. Mr. Gaines was STARVED TO DEATH by prison guards over a period of weeks, if not months. He entered prison weighing 180 pounds and was 5’ 10’’ tall. He weighed 110 pounds when he died, leaving prison in a body bag. [PLN, September 2018]. No one has been charged with his murder by starvation.

Each year thousands of prisoners die in American prisons and jails. Some, like Darren Rainey, tortured to death. Others, like Vincent Gaines, starved to death. Many die of medical neglect. Yet these ongoing deaths meet with political apathy and little media attention.

For 30 years, PLN has struggled to raise awareness around prison and jail conditions because I have long believed that if the public knew what was being done in their name they would demand change. We are seeing this happen with policing right now. Video after video showing unarmed men and women — disproportionately Black and uniformly poor — being murdered has sickened millions of Americans, who are finally noticing that police states are bad news for those being policed. Some of that attention needs to be focused on what is happening to prisoners, which is often much worse than what the police do.

Help us raise that same awareness around what is happening in prisons and jails. If you can make a donation to support our work, please do so. Follow us on Twitter and Facebook.

In addition, HRDC publishes a FREE daily e-newsletter, every business day, with the latest in criminal justice news and struggle. If you have pictures or video of human and civil rights violations behind bars, send it to us at content@prisonlegalnews.org.

Please support HRDC, this is a time we can all make a critical difference.
Florida’s Refusal to Release Prisoners During COVID-19 Resulting in Death Sentences  
by David M. Reutter

As the COVID-19 pandemic started to spread across the nation, so did the push to release prisoners from the “Petri dish” of close confinement that exists inside jails and prisons. While some Florida jails released non-violent offenders, the Florida Department of Corrections (FDOC) battened the hatches on its 93,000 prisoners to weather the storm.

To cope with its rising prison population in the 1990s, FDOC built human warehouses, or what is officially known as open bay dormitories. That resulted in anywhere from 80 to 200 prisoners living in the same building with double bunks spaced 3 feet apart. That has created a perfect environment for the highly contagious COVID-19 disease to spread.

As of May 18, 2020, FDOC reported statistics on 65 prisons: 1,106 prisoners at 14 prisons and 237 staff at 43 prisons tested positive for COVID-19. Nine prisoners have died, and three of the deaths were prisoners at Sumter Correctional Institution. Seven hundred ninety-three positive cases were at five prisons with open bay dorms. Those prisons are: Homestead CI (231), Liberty CI (191), Hamilton CI (137), Tomoka CI (132), and Sumter CI (102).

How each prison handled the pandemic varied. For instance, in addition to 191 positive results, Liberty CI also reported 1,733 negative results. That means every prisoner was tested at least once. By contrast, Sumter CI reported only 54 negative results to accompany its 102 positive results. Had more prisoners been tested, there would undoubtedly be more positive results at Sumter.

In mid-April, I experienced chills, a five-day headache, body aches and sinus issues, but I never developed a fever or cough. Most of the prisoners in my dorm report experiencing similar symptoms. Three prisoners were removed from my dorm with respiratory distress, and two were reportedly taken to hospitals for pneumonia or low oxygen levels. A random test of 10 prisoners was made in my dorm in early May. Of those, there were eight positives, one negative, and one who refused the test.

FDOC acted in March 2020 to prevent the spread of COVID-19 by canceling visits and prohibiting volunteers from entering its prisons. Yet other operations continued. At Sumter, the prison industry, Prison Rehabilitative Industries and Diversified Enterprises (PRIDE), continued to operate, and neither guards nor prisoners were allowed to wear masks. In fact, some prisoners who obtained masks from their work area and wore them on the compound had them confiscated by guards.

“The first case came from a PRIDE worker,” said a Sumter CI guard who requested anonymity. COVID-19 could only have entered the prison from a staff member, but it spread like wildfire once introduced into the prison. Sumter CI went into lockdown on April 8, 2020, with the first positive result.

In the ensuing weeks, every dorm went into medical quarantine at some point. That designation, FDOC says, was made when a prisoner exhibited COVID-19 symptoms or tested positive. In reality, the only difference between the lockdown and a medical quarantine was the latter required medical staff to take every prisoner’s temperature twice daily.

Prisoners who exhibited symptoms or tested positive were moved to an emptied open bay dorm. None had been removed from that dorm as of May 27, but more prisoners continue to be placed into it for isolation from the compound.

As prisoners struggled to keep themselves safe from infection, advocates were pushing FDOC and state officials to release prisoners. While FDOC has a furlough program, it is rarely used. FDOC said in a statement it does “not authorize the release of entire subpopulations for an indefinite amount of time.” It noted that Correctional Medical Release (CMR) is an option if the Florida Commission on Offender Review approves an FDOC recommendation. On average, only one to two prisoners receive CMR annually.

As of June 5, the number of Florida prisoners who had had died of COVID-19 had climbed to at least 15. “People are being sentenced to death,” said Vanessa Grullon, whose asthmatic husband is at Tomoka CI.

Source: WFTV.com

Stop Prison Profiteering: Seeking Debit Card Plaintiffs

The Human Rights Defense Center is currently suing NUMI in U.S. District Court in Portland, Oregon over its release debit card practices in that state. We are interested in litigating other cases against NUMI and other debit card companies, including JPay, Keefe, EZ Card, Futura Card Services, Access Corrections, Release Pay and TouchPay, that exploit prisoners and arrestees in this manner. If you have been charged fees to access your own funds on a debit card after being released from prison or jail within the last 18 months, we want to hear from you.

Please contact Kathy Moses at kmoses@humanrightsdefensecenter.org, or call (561) 360-2523, or write to: HRDC, SPP Debit Cards, P.O. Box 1151, Lake Worth Beach, FL 33460.
EVER SINCE THE COVID-19 PANDEMIC ERUPTED, PRISONERS, THEIR FAMILIES AND ADVOCATES HAVE BRAZED FOR MAJOR OUTBREAKS AT AMERICA’S PRISONS AND JAILS. IT’S STILL NOT CLEAR JUST HOW BAD PRISONERS ARE GOING TO BE HIT, BUT NUMBERS ARE CLIMBING AT AN ALARMING RATE. AS OF JUNE 9, JOINT REPORTING BY THE ASSOCIATED PRESS AND THE MARSHALL PROJECT FOUND AT LEAST 43,967 PEOPLE IN PRISON HAD TESTED POSITIVE – AND THAT WAS AN 8 PERCENT INCREASE FROM JUST ONE WEEK BEFORE. ON THAT DATE, AT LEAST 522 PRISONERS HAD DIED OF COVID-19.

In early April, Attorney General William Barr ordered the Bureau of Prisons (BOP) to speed up early releases to home confinement due to “emergency conditions” created by the coronavirus. Instead, federal prisons – and state prisons and jails – have moved incredibly slowly, leading to multiple lawsuits across the country. Few social distancing measures have been put into place, while lockdowns and punishment have been employed in place of releases. “COVID-19 has led to an explosion in the use of solitary confinement in U.S. prisons, jails, and detention centers,” said a report released in mid-June by an advocacy group called Unlock the Box, with research provided by Solitary Watch and support from The Raben Group. “At least 300,000 people have reportedly been placed in solitary since the advent of the pandemic, an increase of close to 500 percent over previous levels.”

We’ve asked prisoners and their supporters to let us know what’s going on at their facilities, and are publishing excerpts each month.

These letters have been lightly edited for length and clarity.

Kentucky

A prisoner at Federal Medical Center, Lexington, a women’s federal prison, writes:

It’s Sunday April 26th and I haven’t been able to speak to my children in 2 days. I am asleep at 6:45 pm because during the COVID-19 outbreak, I am on lockdown. No movement, no exercise, no sunlight and barely any fresh food. What else are you to do in a 32-by-16 room with 16 other women? We eat standing elbow to elbow, yet somehow they justify this herding of us as “Safe.” I glance around and realize that my room is more evident of a senior housing development than anything. Weren’t the sick and anyone over 50 supposed to go home??

During the COVID-19 outbreak we have been stripped of our very limited freedoms and luxuries to be herded together even closer than normal with limited to no communication with our families. As a “Camper” we are all “low level” criminals. Drug cases that are usually casualties from the opioid crisis and tax crimes usually top the list. I am the latter, spending 21 months for underreporting my income on my taxes when I was 26 years old. I am now 35 and a mother to amazing little humans who are scared for my well-being daily. I am fortunately only a few months away from going home, but I write this for the hundreds of women who are stuck here. I am now wondering daily if my mental health state can withstand this level of torture. No sun, no gym, no outlet, hell we can barely move without being screamed at.

They are baiting all of us to have a mishap .... to break. Then the BOP has a solid and easy reason to deny us to the home confinement that Attorney General Barr directed them to grant us. As my eyes flutter to reality [at 7 a.m.], I hear it. I hear earth-shattering screams. The kind of screams that you can feel in your heart from a distance away. The kind that makes you want to drop everything and run to protect and comfort that person, no matter whom they are coming from. Yet, of course, we are reduced to staring and gawking out of our rooms and waiting to hear what has happened.

Death. Death is what happened. A woman here in our federal abode has just found out that her father has died in the midst of the pandemic from a newspaper! A newspaper! The man who gave her life has lost his and his daughter found out in the most insensitive manner plausible. Her family has been trying to contact her, but here at FMC Lexington they ignored the calls. A therapist didn’t offer her an ear to listen while she processed this heartbreaking info either. Funny thing is, she should be one of those released under the CARES Act.

Last weekend was full of hugs and tears of joy. All a part of the bipolar emotions since Barr has been directing the BOP to release prisoners. Many mothers and women signed papers with their Case Managers to go on home confinement. My roommate who came in with me last May got to sign her papers for release. When you live in tight spaces with someone, you become close, become an intricate part of each other’s lives. She is more like a little sister to me than a fellow Club Fed Member.

I don’t think I can recall many times in my life that I have hugged someone so tight. My heart burst for her. She gets a second chance at life and protection against this virus. She was going home. Not only do these women now get to lessen the burden on their families, but more importantly leave the Petri dishes we currently reside in. We live in constant fear that the guards will bring the virus in here to us.

Our healthcare is a joke. Some of the guards pick up extra shifts at the University of Kentucky hospital for inmates in care, and then walk right back through our same doors. We all know that if it comes in here, there will be deaths. Period. I look around my room that I am currently housed in and I shudder. These women become a part of your life no matter how hard you try to keep it separate. It breaks me to think of it. We have to all hope that it doesn’t hap-
If a person of trust violated you, we're here to hold them accountable.

If you were a victim of childhood sexual abuse, you are not alone. For decades, large organizations like the Catholic Church, the Boy Scouts of America and others turned a blind eye toward child sex abuse. In February, the Boy Scouts of America filed for bankruptcy. Victims of childhood sexual abuse within the Boy Scouts will soon have a deadline to file a claim. There is still time to seek justice against your abuser and the organization that protected them, but you must act now.

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that this is wrong.

I know we are prisoners and did something to be punished in the eyes of the federal government. The real question is when is enough enough? When did my 21-month sentence turn into a possible death sentence? When did it become rational to crowd us even closer during an age of social distancing? Not to mention that the warden took away our soap that was provided because we used it too much for their likings. Or was it too much for their budget? Yes, we are prisoners now, but not forever. We are Americans and we deserve better than this. What lesson do we learn for breaking the laws and rules while the Bureau of Prisons ignores every single one of them?

Please excuse any errors, as I had to type in 10 min segments. This needs a voice. We need a voice.

Massachusetts

A prisoner in Devens wrote:

On lockdown (again), this time because of the riots in the streets. There’s infected guys in the unit — all of us in here. So, there’s really nobody here. Staff won’t pick up mail, garbage, anything. They push a cart with food on it through a curtain and we hand it out ourselves. We push the cart back through to them. This morning the orderlies started yelling at staff about the garbage piling up in the common area. They finally came and gave us a cart to throw it in. We are supposed to be retested next week and if we are negative, we will stay here. If there are any positive guys, then they go to disciplinary segregation and wait until they are negative. For some reason, they are using disciplinary seg to house guys with the virus, instead of administrative seg. They say it’s because disciplinary seg isn’t allowed phones, mail, commissary, etc, so there’s no staff interaction. And no laundry service. We get punished for staff giving us this virus, in other words. This is so frustrating.

Texas

A state prisoner from Rosharon wrote:

In mid-March, after President Trump declared a national emergency due to the coronavirus, [the Texas Inmate Families Association – TIFA] donated hundreds of thousands of cases of Hot Pockets, Pizza Rolls, Pop Tarts, cereal bars and Gatorade to the Texas Department of Criminal Justice to be given to prisoners. TDCJ was giving it to staff members, instead, while we had bread in our sack meals. I had seen a prison guard walking with boxes of Pizza Rolls, Hot Pockets, Cereal Bars and Pop Tarts, giving them to other guards. I have also heard guards talking about these things being available to them.

Texas

A state prisoner from John Wynne Unit in Huntsville wrote in late April:

I’m an “at-risk” prisoner (former 2x cancer patient who underwent intensive chemo in the past) who decided to initiate a hunger strike on 3/30/20 seeking to bring awareness/reform to Governor Greg Abbott’s decree of ‘No Compassionate Releases’ for state prisoners. For my actions I was: a) removed from the general population on 3/30/20 before my strike was ‘official’; b) denied my phone privileges; c) met with harsh resistance from the unit’s administration, and placed and am still being housed in the ‘Quarantine Wing’ with administration’s knowledge that I am an at-risk individual with a compromised immune system.

I wrote an emergency grievance on 3/30/20 concerning my personal safety in light of being incarcerated amid this threat of COVID-19. By policy, this type of grievance is to be investigated and resolved and returned to me within 15 days. It has been 27 days today and I still do not have the grievance back. I’ve contacted the grievance department 3x since the 15-day time period has passed and no one seems to care about this. I’ve written to the classification department, the Major, and the head Warden about my being moved off this ‘Quarantine Wing’ where men who are COVID-19 positive or symptomatic are kept, but they do not seem to care about my physical or psychological welfare. I won’t even come out of my cell to shower because I’m afraid to contract the virus.
able through commissary.

In contrast to the TDCJ’s polices, inmates claim that medical care for COVID-19 and other illnesses are substandard. They have not received one hot meal in over 50 days, sack meals fall 500 calories short of the 2,200 calories required per day. Their clothing is only laundered and exchanged once a week, whereas the bedding has been laundered once within seven weeks. They cannot purchase cleaning supplies from commissary and they are not receiving out of cell time, thereby deprecating their mental health.

Recently, Texas taxpayers “coughed up” $45 million for 300,000 curative COVID-19 tests in order to perform mass testing at the TDCJ’s correctional facilities. Results are expected to take two to three weeks. During this unreasonable delay, unknown inmates and prison staff who are positive for COVID-19 continue to intermingle with those who were negative at the time of testing. The sole purpose of testing is to isolate infected persons from those who are not infected. This excessive delay has rendered all efforts to eradicate COVID-19 from the prison system meaningless.

**Texas**

*From a state prisoner at Wallace Pack 1 Unit in Navasota, late-May:*

Our Unit may sound familiar as we won Air Conditioning in a settlement in 2017 and as a subclass member I am ENTITLED to TEMPERATURES OF 88 degrees in my housing area.

As to COVID-19: 50 positive cases and 2 deaths are attributed to the virus. The unit is on a “precautionary lockdown” and I don’t see how they are being precautionary, cause what they are doing is not working as positive numbers continue to climb. They tested the entire unit on May 11th and 12th, and upon getting initial test results, they moved positive cases into the same dorm. The kicker is they didn’t get the results for over 10 days, so the positives were still housed with the negatives for at least that long as they were quarantined together. Then they moved the negatives to a bigger dorm that holds 110 offenders!!

We are confined to our cubicle and have been for 6 weeks now. We get a peanut butter and syrup sandwich with prunes for breakfast, (that’s after 12 hours since last meal) syrupy PB&J with 2oz or less meat sandwich for lunch and dinner. Twenty-five of the 60 here filed grievances on the food they been feeding us and it’s still the same non-nutritious meals here on the sack-lunch protocol that they hide from us in the law library.

We are supposed to get nutritious meals, but they not. They’re giving diabetics like myself 10–12 slices of bread a day to survive, hardly no meat, and prunes and raisins as fruit, zero vegetables and no HOT MEALS IN 6 weeks.

When we get it as it is making its way down the hallway here to the vulnerable geriatric handicapped offenders, so it’s not if but when we get COVID-19. And the constant supply of non-nutritious food is all we have to help our bodies fight off this deadly virus on a unit where the entire population has underlying conditions. Seems to me TDCJ is looking for coronavirus to replace the parole process and release us to our families in body bags as they get more government funds for every positive case confirmed on the Wallace Unit.
Unlike U.S., Many Governments Releasing Large Numbers of Prisoners to Reduce Threat of COVID-19

by Matt Clarke

Around the globe, governments are releasing prisoners in an attempt to mitigate the threat of COVID-19-related mass deaths in their jails and prisons. However, Third World countries are far ahead of most of the so-called “advanced” nations. They have released torrents of prisoners compared to a trickle in most Western countries, including the United States—where little is being done to ensure mass incarceration doesn’t become mass interment.

Iran

As of this writing, at 85,000, Iran is a leader in the number of prisoners released due to the pandemic. In a January 2020 report to the Human Rights Council, Iran reported holding 189,500 prisoners. Some estimates had put the number of Iranian prisoners at 240,000.

On March 9, 2020, Iran announced it would temporarily release 70,000 prisoners in response to the pandemic. None of them were political prisoners and all were serving sentences of five years or less. Later, the judiciary spokesman said 85,000 prisoners had been released, including “about 50% of the security-related prisoners,” code for political prisoners.

Javid Rehman, the U.N. Special Rapporteur on human rights in Iran, urged Iran to release all political prisoners from its “overcrowded and disease-ridden jails” to reduce the threat from the pandemic.

Simultaneous to the releases, Iran has harshly punished prisoners who protested about the risk of infection.

Turkey

On April 13, 2020, Turkey’s parliament passed a justice reform law that resulted in the release of 45,000 prisoners—some temporarily and others permanently. A second bill to release an additional 45,000 prisoners permanently was passed by parliament. Turkey’s prison population is estimated at 286,000 in a system designed to hold around 150,000, so the release covered about 16% of Turkish prisoners and that will double if the second bill passes. Prisoners held on serious charges, such as terrorism, were excluded from release. However, Turkish prosecutors often charge dissidents, political adversaries, civil rights activists, and journalists and lawyers who oppose the current regime with terrorism. Thus, according to the free speech organization Expression Interrupted, at least 101 journalists remain imprisoned in Turkey.

Indonesia

On April 2, 2020, the Indonesian Justice and Human Rights Ministry passed a decree permitting the release of about 30,000 prisoners serving time for minor offenses or who completed two-thirds of a drug sentence of 10 years or less.

“We will not release prisoners convicted for corruption, illegal logging, terrorism, drug crimes, gross human rights violations, or transactional organized crimes,” said Nugroho, acting head of the country’s prison system.

“We are trying to suppress the spread of COVID-19 in our prison system,” said Nugroho. “The inmates are vulnerable because most of them share a cell. The risk of contagion is high since our jails are overcrowded.”

“They will be given a medical check-up and the wardens will give them instructions. We don’t want them to infect anyone at home,” said Nugroho. “They will have to provide an address and a phone number, Most of them will stay with their family and they will not be allowed to get out of the house.”

Myanmar

Traditionally, Myanmar grants thousands of prisoners amnesty to mark its April New Year’s Day. This year it pardoned about a quarter of its 100,000 prison population that was housed in a prison system designed for 62,000.

“To mark Myanmar New Year, by respecting humanitarian ground and peace in mind of the people, the president pardons 24,896 prisoners from various prisons,” said a statement from the president’s office, adding that the 87 foreigners included in the amnesty would be deported.

As of mid-April, Myanmar had confirmed only 85 cases of COVID-19 and four deaths, but there were fears that the number was much higher and being under-reported due to insufficient availability of testing.

Bo Kyi, co-founder of the Assistance Association for Political Prisoners, said the country’s 76 official political prisoners were expected to be among the released. An unnamed Rohingya activist reported being told that around 1,500 imprisoned Rohingyas, an oppressed Muslim minority, would be released.

There had been growing pressure for the release amid the pandemic and what Human Rights Watch called “horribly overcrowded and unsanitary” jails.

India

India has over 450,000 prisoners in its jails, about 17% above capacity. Following a March 23, 2020, Supreme Court directive ordering states to consider reducing jail crowding in light of the COVID-19 pandemic, thousands will be temporarily released. The number of releases will vary from state to state, but apparently totals about 10%, around 45,000 prisoners.

According to a 2018 report from the National Crime Records Bureau, Uttar Pradesh had some of India’s most overcrowded jails, holding 104,011 prisoners in a system built for 58,914.

News reports on March 24, 2020, said there were 20 prisoners in the Baghpat jail isolated for suspected COVID-19. That was about 30% of the 68 cases reported in the state five days later.

A March 28, 2020, state government statement announced the release of 11,000 prisoners from 71 jails across the state. The releases were pre-trial detainees and convicted prisoners with sentences of less than seven years. They were released on an eight-week personal recognizance bail.

About 2,500 of the releases were convicted. None of the 234 political prisoners from Jammu and Kashmir held in the state’s jails were released.

Prior to the announced release of 11,000 prisoners from the 60 prisons...
throughout Maharashtra, the state held 36,195 prisoners in a system designed for 24,032. Like Uttar Pradesh, Maharashtra set up a committee to select prisoners to be released, limiting the releasees to those charged with crimes carrying seven years or less and excluding those “charged with serious economic offenses, bank scams and offenses that come under special Acts.”

Delhi released 419 prisoners on March 28, 2020—356 on interim bail and 63 on eight-week emergency parole. Its Tihar jail is one of the largest in India, with a capacity of 10,000, but holding over 18,000 prisoners. Jail officials announced the pending release of another 3,000 prisoners.

Activist groups have filed court documents seeking additional releases.

Uttarakhand announced the pending release of 855 prisoners from its 11 jails, some of which hold four times the number of prisoners they were designed for. The states of Haryana and Kerala have set up commissions following the high court’s order, but have not yet released any prisoners.

Philippines
The Philippines released 9,731 of its 136,000 prisoners in response to the pandemic after its Supreme Court ordered the release of pre-trial detainees unable to afford bail. Elderly and ailing convicted prisoners and those serving sentences of less than six months were also released. Many of the country’s jails are filled to five times their capacity and just two jails in the city of Cebu confirmed 348 COVID-19 cases among their 8,000 prisoners as of May 1, 2020. President Rodrigo Duterte launched a bloody crackdown on drug crime in 2016, divining the prison and jail overcrowding.

Thailand
Thailand announced the release of over 8,000 jail prisoners on April 13, 2020. Police arrested over 12,000 prisoners in response to the pandemic. This included over 480 Taliban prisoners released as the result of an agreement with the U.S.

Canada
Canadian Public Safety Minister Bill Blair initially told the press that 600 of the country’s 14,000 federal prisoners had been released for pandemic mitigation. He walked that figure back after VICE discovered those prisoners were just routinely-scheduled releases. VICE was only able to identify a single prisoner released due to COVID-19 and that prisoner had filed a lawsuit seeking release. Meanwhile, as of April 29, 2020, 285 Canadian prisoners had confirmed COVID-19 cases and others were complaining of being ill but unable to secure testing.

Other countries
Smaller-scale prisoner releases were announced in Morocco (5,000), Kenya (4,500), Ethiopia (4,011), Egypt (4,000), Bangladesh (3,300), Zimbabwe (2,528), Portugal (1,867), Bahrain (1,800), Democratic Republic of the Congo (1,200), Germany (1,000), Argentina (1,000), Cameroon (1,000), Uganda (833), Albania (600), Israel (500), Benin (400), and Nigeria (100).

Noticeably absent from prisoner-release announcements are most of the “civilized” countries of the West, such as the U.K., France, Italy and Spain and the smaller Western European countries. The world’s chief incarcerator, the U.S., also had a weak showing with only 16 states and the federal system releasing any prisoners from their jails and prisons for pandemic mitigation by mid-April 2020—a total of around 9,400, a tiny percentage of the nation’s approximately 2,300,000 prisoners. In Texas, the governor moved to block local officials in Houston from releasing nonviolent jail prisoners. Sadly, that seems to be a common attitude among American and Western European politicians—leave them locked up and let them die.


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Status of the Pandemic Heading into Summer

by Michael D. Cohen, M.D.

Though the coronavirus pandemic continues to rage in the United States and around the world, numerous areas of the country have staged re-openings. They were premature and poorly conceived, so it’s no surprise that half the states have increasing numbers of cases.

Several states subsequently had their largest single-day case reports, and hospitalizations also are rising. We are still in the first wave of this pandemic. A second wave is anticipated this winter. It is estimated that fewer than 5% of the U.S. population has been infected so far, so the population is largely still susceptible. Widespread disease can occur if uncontrolled community transmission is allowed to occur.

At press time, cases, hospitalizations and deaths continued to decline in New York, New Jersey and other states in the Northeast. It is believed that this is the result of slow and carefully calibrated re-opening of commerce. But numbers may be stabilizing at a plateau of 30 to 50 deaths a day in New York state.

Largest Clusters are in Prisons and Jails

The New York Times publishes lists of clusters of cases throughout the U.S. The largest cluster included over 2,000 cases at the Marion Correctional Institution in Ohio. The top five clusters were all prisons and jails, each with over 1,000 cases. Among the top 10, eight were prisons or jails, all with over 1,000 cases. The other two were meat-processing factories. Among the top twenty, 15 were prisons or jails, four were meat processing factories, and one was the Navy aircraft carrier Theodore Roosevelt.

Although the largest clusters are in prisons and jails, the largest number of deaths from COVID-19 are among nursing home residents. Roughly 50,000 nursing home deaths have been reported in the United States, out of 120,000 total deaths, 40% of the total as of June 17 when I am writing this.

Deaths Among Prisoners, Guards and Civilian Staff

The Times reported on June 16 that cases in jails and prisons are increasing rapidly. The total number of cases doubled to more than 68,000 in the past month. Deaths among incarcerated people also are rising. Close to 600 prisoners and prison employees have died from the virus.

However, thus far the epidemic in prisons has not been the deadly disaster that was anticipated. In one Ohio prison that tested all prisoners once, more than 80% of those who were infected had no symptoms. It was thought that prisoners would be at higher risk for more severe COVID-19 disease. Hard lives, more older prisoners than ever before, long-term organ damage from alcohol, smoking, HIV and hepatitis C, high prevalence of stress and high blood pressure all put prisoners at higher risk. We mourn all deaths, but wonder why, fortunately, prisoners are largely recovering, not getting more severe disease and dying.

No one knows for sure (yet). What factors may have made the prison population more resilient? Here are a few guesses. Jail and prison populations are largely young men and women under 40. Most younger people recover and often have no symptoms. What about increased physical fitness? Many prisoners value physical ability, muscle mass and stamina. What about diet? Could deservedly loathéd prison diets be less toxic than the usual fast food diets enjoyed by more and more of the free public?

What about obesity? Is the prison population fed less than the general public? What about smoking tobacco? Most prison systems prohibit smoking or limit it to the outdoor yard. Healthier lungs may have resulted in fewer severe cases of COVID-19. What about the tuberculosis vaccine BCG suspected of helping reduce the severity of the pandemic in some countries? Many immigrants to the U.S. come from areas of the world that routinely immunize BCG in infancy, such as Caribbean and Eastern European states. Many prisoners are immigrants from these countries.

Mitigation in Correctional Facilities

Several recent articles have discussed what needs to be done to control COVID-19 in prisons and jails.

The federal Centers for Disease Control and Prevention (CDC) published a report in its Morbidity and Mortality Weekly Reports on surveillance of correctional facilities in Louisiana. It found that many facilities had inadequate space to quarantine close contacts and had to resort to cohorting groups of exposed people in dormitories. Another finding: It is impossible to practice social distancing in dormitories. Of course these are not new ideas and were predicted in advance. It is useful, however, that such observations have been confirmed in print.

The CDC made the following recommendations to mitigate spread of the virus in facilities: suspend transfers and visitation; provide ready access to hand hygiene, including running water for prisoners and staff; symptom screening and 14-day quarantine at intake; symptom screening of staff at each shift; dedicated space for isolation of cases and quarantine of close contacts; symptom screening and coordination with public health in the home community before release; personal protective equipment (PPE) for staff and prisoners with duties that may expose them to infected prisoners; and assignment of staff to specific housing units.

They also reported on reasons prisoners did not report illness or symptoms or seek care. People did not report their illness because they did not want to be medically isolated. Also, required payment for medical visits was a factor in decisions not to report illness, symptoms or seek care.

An opinion article in the New England Journal of Medicine by Dr. Anne Spaulding at Emory University in Atlanta and several colleagues discussed how to prepare for COVID-19 in a correctional setting. The goals are to delay entry as long as possible; control transmission if it is already in a facility; and prepare to manage a large number of sick people.

Their recommendations included: population reduction through release of elderly and infirm prisoners and all those least likely to commit new crimes; suspend arresting and sentencing for low-level crimes and misdemeanors; isolate infected and suspect-infected people from general population; hospitalize those who are seriously ill; prepare for staff shortages that are likely to occur with widespread disease. They point out that reducing the burden of disease in prisons and jails will reduce the
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burden on stressed hospitals in the local community. Also, it is important to prevent prisons and jails from becoming reservoirs of disease from which the local community is repeatedly re-infected.

Releasing Prisoners to Control Spread and Protect the Vulnerable

Efforts have been undertaken to obtain release of prisoners, to protect the vulnerable from the disease and enable facilities to support physical distancing of a reduced population.

Lawsuits to free vulnerable prisoners, new state laws and advocacy for release of prisoners have been attempted in many states. Some releases and changes in arrest and bail practices have reduced populations in local jails. However, efforts to obtain release of convicted felons in state prisons have largely failed to achieve that goal.

One of the problems is the absence of any legal mechanism by which convicted prisoners can be released other than parole practices and executive clemency. Governors do not want to accept the political risks associated with clemency, especially in large numbers.

One strategy proposed in an Emergency Release bill in the New York legislature was to give the commissioner of the Department of Corrections and Community Supervision (DOCCS) “discretion” to release vulnerable people directly to parole in emergency circumstances such as a pandemic. Release was to be subject to a public safety review. Only people who had a home to be released to would be considered, so as not to further overburden homeless shelters in the home communities. Creating a legal mechanism for release of convicted felons directly to parole during the pandemic might have been a model for the nation.

This bill was being actively considered for passage in both the state Assembly and Senate in a package of COVID-specific reforms. While not explicitly requiring releases, it did provide a legal mechanism for release to parole where there was none readily available otherwise. It was widely believed that the DOCCS commissioner would have used his new discretion to release at least some of the prisoners at greatest risk for severe COVID-19 disease.

But it was not to be. Prisoner advocates, mistakenly believing that their broader proposals to limit segregation (HALT) and release older prisoners (Elder Parole; and Fair and Timely Release) could possibly pass this session, actively opposed the bill. Their bills are good, but they were not moving forward this session. The advocates found the Emergency Release bill to be too weak, unlikely to lead to much change in practice and very likely to push their bills off the agenda.

Seeing controversy, the legislative leadership killed the bill. However, since no state prisoners were being released due to COVID-19 other than accelerating parole by a few weeks or months, anything would have been better than nothing. Collaboration with legislators to achieve something on prisoner releases this session would have been a better approach and would not have permanently alienated former legislative allies.

Some Progress on Treatment

Recently announced research studies appear to have shown some positive results in treatment.

Remdesivir: This antiviral medicine was developed to treat Ebola, which is caused by another type of coronavirus. The study showed that patients treated with remdesivir had shorter time on an artificial breathing machine (ventilator) and shorter overall time in hospital. However, there was no effect on the number of people who died. This medicine is potentially useful because less time on a ventilator means the machines turn over more rapidly and can be used for more patients. There were insufficient numbers of ventilators to treat all the patients who needed them during the height of the pandemic in Italy.

Dexamethasone: This is a corticosteroid medicine that reduces inflammation. It is not an anabolic steroid that builds up muscles. It is an old drug that is already widely used, is readily available, and inexpensive. The study examined the effect of the drug on people treated with oxygen and people who required mechanical breathing with a ventilator. This is the first medicine that has been shown to reduce the number of people who died. Among people on a ventilator, 30% fewer people died. Among people treated with oxygen, 20% fewer died.

Persistent Disability Among Survivors

It is emerging that there are persistent consequences of more severe COVID-19 disease. People who have been hospitalized, treated in intensive care, sedated, and supported by artificial breathing machines often have persistent organ damage or disability. Physical therapy, occupational therapy, respiratory therapy, speech therapy, dialysis and special kidney failure diets, and counseling for depression are all needed to support people as they recover from COVID-19. These ongoing health care needs are just starting to be recognized. Among thousands of those who have recovered, there is still a long road ahead. The health-care system has not yet expanded rehabilitation services to meet these needs.

Final Words

The virus has spread widely, but efforts to diagnose, trace contact, and quarantine those who have been exposed have prevented initiation of uncontrolled community transmission in many areas. It is not too late to stop the virus from entering a facility. It is not too late to initiate measures to mitigate virus spread if it is introduced.

About the author: Michael Cohen was the medical director for the New York state juvenile justice system for 20 years and previously provided medical care for incarcerated adults at the New York City Rikers Island jail and at Greene CF in Coxsackie, New York. For 10 years, he participated in a support group for people with diabetes at Great Meadow CF in Comstock, New York. With the group, he co-authored the Prisoner Diabetes Handbook published by Southern Poverty Law Center and distributed by Prison Legal News. Heal the sick. Raise the fallen. Free the prisoners.
COVID-19 Pandemic Leads to Unrest in Prisons Around the Globe

by Matt Clarke

The COVID-19 pandemic, or rather government officials’ inept reaction to the pandemic, has led to unrest in prisons around the world—especially in South America and the Middle East. This has resulted in the escape of hundreds and the death of dozens of prisoners.

The typical initial response to the pandemic was for prisons to suspend visitation. Americans might see this as a minor inconvenience in an era of social isolation outside of prisons, but, in many poorer countries, visitors are a literal lifeline—bringing their loved ones food, clothing, and medicine. For those prisoners, suspension of visitation is life-threatening. It also causes the prisoners high levels of anxiety about the welfare of their families while simultaneously making the families worry about their incarcerated loved ones.

Often accompanying the suspension of visitation is a ban on phone calls (if they were available to begin with) and a slow down or stoppage of mail as guard shortages cause the prison administrations to shift staff away from the mail room and to higher priority areas or limit the personnel entering the prison to essential positions. This lack of communication, along with a frequent failure of prison administrations to inform prisoners about COVID-19 and the status of the prison with respect to the pandemic, generates additional anxiety and frustration that can boil over into rebellion.

Brazil

On March 17, 2020, hundreds of prisoners escaped from four semi-open prisons or prison wings in Tremembe, Porto Feliz, and Mirandopolis in Sao Paulo state after the traditional Easter furloughs were canceled and visitation restricted. A statement by prison officials said it was necessary to cancel the furloughs to prevent the 34,000 prisoners under the semi-open regime from returning to prison and potentially bringing coronavirus with them.

The human rights news website Ponte estimated that 1,500 prisoners had escaped. Videos emerged showing hundreds of prisoners fleeing down streets and across a soccer field on a beach.

Although bloody prison disturbances and escapes are common in Brazil, the pandemic provided a whole new level of stress for the country’s 234,000 prisoners, a third of whom have no on-site healthcare facilities available and 9,000 of whom are over 60 years of age.

Colombia

In March 2020, protests about the administration’s lack of response to the pandemic erupted in 13 penitentiaries across Colombia. There were violent clashes with prison guards in several prisons, the worst in Bogota’s Modelo prison where at least 23 prisoners were killed in what Justice Minister Margarita Cabello described as a “massive and criminal escape attempt.” She went on to claim that there was “no sanitation problem” in La Modelo.

Oscar Sanchez, 42, a prisoner at La Picota, another Bogota prison, described the protests as “a massacre that until now has taken more lives than coronavirus in Colombia,” which at that time had 231 confirmed cases and two deaths.

“We are trying to launch an SOS,” said Sanchez, who added that the prisons were overcrowded, the administration was not giving prisoners information on how to protect themselves from COVID-19, and they feared guards would introduce it into the prison. “If there is one infection, it would be a time bomb.”

Venezuela

A ban on prisoners’ families bringing them food during visitation ignited a disturbance at Los Llanos prison in Portuguesa that left at least 47 prisoners dead and 75 injured. The 4,000 prisoners at Los Llanos survive on food brought by relatives, but such deliveries have been banned since March, due to COVID-19 and food shortages across the country, partly due to U.S. sanctions against the leftist government. Guards have been stealing food and some prisoners have been eating stray animals. Desperate, prisoners crowded the prison entrance, demanding change. Prison Minister Maria Iris Varela claimed the uprising was an attempt to escape. Another COVID-19-related disturbance occurred in mid-March 2020 at the Reten de Caimas prison in Zulia state, resulting in 10 prisoners’ deaths and several escapes. The human rights group Venezuelan Prison Observatory said the prisons are severely overcrowded.

Peru

Nine prisoners were killed during what authorities described as an attempt to “facilitate a mass breakout” at the Miguel Castro Castro jail in Lima. The jail has a capacity of 2,000, but holds 5,500 prisoners. The disturbance was sparked by a huge wave of COVID-19 in Peru’s jails, infecting over 600 prisoners with two fatalities at Miguel Castro Castro just before the disturbance. Sixty guards, five police officers and two other prisoners also were injured.

Dominican Republic

The COVID-19-related deaths of five prisoners at the La Victoria National Penitentiary in Santo Domingo led to an uprising by prisoners seeking release from the 1,500-capacity prison that houses 9,000. Prisoners used smuggled cellphones to release video of them setting fire to mattresses and throwing objects at guards and police while being sprayed with rubber-coated bullets.

At least five prisoners and a guard were injured in the melee.
Italy

More than a dozen prisoners escaped during an uprising at a 6,000-bed medium-security prison in Foggia after prison officials announced plans to restrict visitors. Another dozen prisoners died of drug overdoses after breaking into the prison’s infirmary during the March 18, 2020, disturbance.

Egypt

Egypt’s 114,000 prisoners live in filthy and severely overcrowded conditions without running water, adequate ventilation, or health care. Now they also live in fear of coronavirus. Some prisoners at Cairo’s sprawling Tora prison complex staged a week-long hunger strike to protest poor conditions, a lack of information about COVID-19, and a failure to disinfect cells, according to a human rights lawyer who helps prisoners.

Egypt’s prisons are overflowing with people who were arrested for protesting the government and charged with “misusing social media” and/or “helping a terrorist group.” When the family of one such prisoner, who was been held in Tora for over a year after he held up a placard saying “Freedom for prisoners” in Cairo’s Tahrir Square, protested prison conditions, they too were arrested and charged with “misusing social media.”

Sri Lanka

A protest against a ban on visitors, poor food quality, and overcrowding at the Anuradhapura prison in Columbo led to a scuffle with guards. The guards opened fire and eight prisoners were hit, two fatally. The prisoners depended on the visitors to bring adequate food. The country’s prisons have a capacity of 800, but hold up to 5,000 prisoners.

The prisoner unrest in counties that refuse to take steps to ameliorate the pandemic show that even the severely abused will only take so much before rebelling—even at the cost of their lives. Prison officials throughout the world are accustomed to withholding information and expecting blind obedience. The pandemic may introduce them to a new paradigm as prisoners fear mass incarceration will lead to mass death.


$1 Million Payout to Family of Man Who Died After Seizures in Montana Jail

by Kevin Bliss

The family of Roger Lee Wells will receive $1 million in compensation for his death on March 10, 2018, after he suffered several consecutive seizures without ever receiving proper treatment at the Cascade County Detention Center located in Great Falls, Montana.

Wells was arrested a week earlier on a domestic violence charge. He was housed in the medical/geriatric pod of the detention center and slept on the floor of the overcrowded cell with two others. He submitted several written requests to the medical department explaining the need for his anti-seizure medication, yet never received it.

It is the responsibility of the medical staff to address all written requests for medication within a 48-hour period. According to Wells’ attorney, none of his written requests were responded to. His family attempted to drop off his medication at the county jail, but the jail refused to accept it. Wells finally told a nurse while doing her rounds about his medication. After looking into the situation, the nurse ordered the medication for Wells. It arrived at the jail the day after he died.

Wells had his first seizure around 3 a.m. on March 10. His second seizure occurred as jailers were transporting him to a padded observation room, and his third as he was placed in the cell when the nurse arrived. Wells experienced a total of nine seizures in a 2½-hour time period before he died, most recorded by camera between observation checks.

Current Sheriff Jesse Slaughter stated that it was protocol in the jail to transport someone to the emergency room after their second seizure. The Division of Criminal Investigation found that while some nurses working at the jail were aware of this policy, the one on duty handling Wells’ case was not.

A Billings, Montana, attorney representing the Wells estate submitted a demand letter to Planned Parenthood of Montana, which has the contract to provide the jail with general medical services. The insurance carrier for Planned Parenthood paid a $1 million settlement in October 2019 and no lawsuit was filed.

Sources: billingsgazette.com, greatfallstribune.com

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Magazines are allowed in most State and Federal Prisons
Florida Guards and Prisoners Fear COVID-19 Infection

by David M. Reutter

Much has been made of essential employees as the economy shut down in an effort to “flatten the curve” of the COVID-19 pandemic. The focus has been on the bravery of health-care workers in hospitals and nursing homes. One group that has gone ignored are guards and other employees that help run jails or prisons.

Like a nursing home, a jail or prison crams a lot of people into a small, confined spaces. “The social distancing is next to impossible when you’re on top of each other,” said Kevin Gay, who runs the nonprofit Operation New Hope in Florida, which helps prisoners reacclimate to society upon release. “You’ve got a formula for disaster.”

By design, jails and prisons are isolated from society. That means the only way for COVID-19 to enter lock-ups is for it to be brought in by a someone from the outside.

The Florida Department of Corrections (FDOC) acted in mid-March 2020 to prevent its entry by suspending visits and volunteers from entering its prisons and by halting transfers or reception of prisoners from jails. Yet it failed to take other steps to prevent the spread of coronavirus. As of June 12, 2020, the FDOC website reported 1,608 prisoners who were positive for the virus; 50 were in medical isolation; 3,679 were in medical quarantine and 956 were in security quarantine; there were 237 staff who tested positive. In addition, FDOT reported 18 COVID-19 related prisoner deaths.

Staff who tested positive were sent home to self-quarantine for at least 14 days. Testing of all guards and employees, however, was not mandatory as the pandemic raged.

“We are randomly sampling staff and inmates from different pods based on the number of specimen containers available,” said Debbie Stilphen, spokeswoman for Florida’s Santa Rosa County Health Department, about testing at that Santa Rosa Correctional Institution. “The reason we are doing the sampling is to find out who might need to be tested in the process of our investigation.”

Prison staff were encouraged to self-report. FDOC posted a sign outside its prisons that listed COVID-19 symptoms. It advised staff to not enter the prison if they had any of those symptoms. Yet guards could be a COVID-19 carrier and never know it.

“All it takes is one or two officers coming in that asymptomatic and it’s like fire,” said Gay.

The World Health Organization reports as many as 40 percent of positive COVID-19 cases transmitting the virus are asymptomatic.

With an aging prison population and many prisoners already suffering from poor health or preexisting medical conditions, being in a prison or jail during a pandemic is a scary proposition for prisoners and guards. Guards, after all, have to return home to their families each day, creating a risk of infecting them. For prisoners, there was a constant fear of being infected because social distancing impossible in an open bay dorm and difficult even in dorms with two-man cells.

“Everybody is on edge,” said Florida prisoner David Denney. “We don’t want to get sick because this is not the place to get sick.”

Sources: orlandoweekly.com, news4jax.com, wsfv.com

COVID-19 and the Texas Department of Criminal Justice

by Ed Lyon

I’ve got a bad feeling about this.”

That’s a famous quote from Luke Skywalker, a character in 1977’s Star Wars, as his Millennium Falcon spacecraft emerges from faster-than-light speed only to find Alderaan, its destination planet, has been destroyed. But this phrase of foreboding was also recently echoed by Dr. Carolyn Salter, former mayor of Palestine, Texas—and for extremely good reason as it turned out.

Located in Anderson County, Palestine is home to five prison units of the Texas Department of Criminal Justice (TDCJ), the largest state prison system in the U.S. with over 135,000 people in custody. Palestine’s Beto and Coffield prisons are reportedly TDCJ’s largest prisons, and the total population of all five Anderson County jails hovers around 14,000.

With staff numbering about 2,000, TDCJ is also the largest single employer in the county, just as its 37,000 statewide employees make it the largest employer in Texas. [PLN, November 2015, pp. 56-57]

As early as February 2020, penology experts across the nation were warning that prisons could, and probably would, become huge Petri dishes for COVID-19. The overwhelming majority of prisoners are housed two to a 6-by-8½-foot closet with a tiny sink and toilet, small cramped dayrooms (for prisons that have dayrooms), tiny shower spaces and crowded dining halls that make social distancing physically impossible.

A group of elderly prisoners at TDCJ’s Wallace Pack unit near Navasota sued for masks and hand sanitizer in March 2020. U.S. District Judge Keith Ellison granted their request in a ruling that harshly criticized TDCJ for leaving the prisoners vulnerable to the disease. But an appeals court blocked his order in late April 2020. Meanwhile, TDCJ prisoners have sewn 700,000 masks for distributed throughout the system.

Anderson County reported its first COVID-19 case on April 2, 2020. By the following week, Beto had reported six cases. Ten days later, the number was 100, and by the last week of April the number had more than doubled to over 200, underscoring Dr. Salter’s concerns. Two of Palestine’s other prisons had begun reporting cases by then as well.

As of early June 2020, TDCJ had not tested the entire population of a single prison, having tested 71,168 prisoners, or about half its total prisoner population, for COVID-19. About 9.4 percent of those tests – a total of 6,666 – had come back positive, mirroring the 10 percent positive rate of testing in the rest of Texas. Almost 93,000 TDCJ prisoners and staff have been tested for the disease, with 7,654 positive results and 49 deaths, the most recent on May 28, 2020, when 70-year-old Estelle Unit prisoner Herman Martinez succumbed to the disease.

When the crisis first arrived in March
2020, TDCJ canceled in-person visitation and put its prisons on lockdown, isolating prisoners in their cells or dormitories, where they receive all their meals in paper sacks. TDCJ began transferring elderly prisoners and those with underlying health issues from Anderson County to prisons in southeastern Texas in April 2020 in order to position them closer to TDCJ’s John Sealey Hospital at Galveston, according to the Brazoria County Facts newspaper.

On April 16, 2020, Ramsey prison in Brazoria County received 31 of these prisoners. On April 21, two of those evacuees’ COVID-19 tests showed positive results for the virus. Senior warden Kristi Pittman immediately locked the unit down, successfully preventing the coronavirus from reaching the rest of Ramsey’s prisoner population.

Back in Anderson County, current Palestine Mayor Steve Presley accused TDCJ of undertesting and understating existing test results at the Beto unit. TDCJ replied that COVID-19 testing at the prison was being done. In such a small community, however, it did not take long for word to reach Mayor Presley that only Beto’s employees were being tested and even that was being conducted on a voluntary basis. TDCJ had also told the mayor unit-to-unit transfers had ceased, when in fact they had not.

“Did they think we couldn’t find out [the truth] in a town this small?” Presley fumed. “That people [who work for TDCJ] wouldn’t tell us?”

Brazoria County Facts also published statements from the county’s sheriff and Commissioners Court excoriating TDCJ’s decision not to apprise them of the decision to bring COVID-19 positive prisoners from the Anderson prisons to Brazoria County, which has an even larger number of TDCJ prisons. As it is in Anderson County, TDCJ is the Brazoria County’s largest employer.

But there is a rationale for testing staff first, according to Johns Hopkins University epidemiologist Dr. Chris Beyrer. He says that most viral outbreaks in prisons are introduced by staff. Because of the economic benefits to Anderson and Brazoria counties, and regardless of the danger to the general population, both counties will no doubt suffer through whatever TDCJ subjects them to. The focal point of the COVID-19 crisis will eventually come around to demonizing the prison population rather than the state agencies that should ultimately and legitimately shoulder the full blame for the enhanced COVID-19 dangers emanating from prisons.

Out of TDCJ’s current population of 135,800 prisoners, 79,552 – 58.6% – are eligible for parole release. [See PLN, February 2020, p. 44] Most of them are serving consecutive 3, 5, 7 and 10-year long parole set-offs. But many of these prisoners have earned advanced college degrees and become elderly. These groups have a less than 1 percent recidivism rate and pose a miniscule crime risk to whatever community they would be returning to. A failure to release many of them leaves the blame for any increase in the spread of the deadly COVID-19 virus in Texas via its prisons placed squarely upon the shoulders of TDCJ and Texas Board of Pardons and Paroles.

Sources: Brazoria County Facts, themarshall-project.org, texasmonthly.com, texastribune.org, tdcj.texas.gov
The Popularity of YouTube Prison Lifestyle Videos

by Anthony W. Accurso

With prison reform a hot topic that has gained nationwide attention over the last decade, prison lifestyle videos on YouTube offer a window into the prison experience for many Americans.

Collectively, the four most popular prison channels on YouTube have more than 2.1 million subscribers. The most popular with 1.2 million is the After Prison Show, hosted by Joe Guerrero, which features videos about reintegrating into society and what it was like in prison. What started out as grainy amateur vlogs has been going strong for three years now.

After 700 videos, Guerrero now earns a six-figure income from his social media presence and was able to quit his job as a laborer in a concrete factory.

About seven months after he started, he posted a video about how to make a prison tattoo gun, which racked up 2.3 million views. Before prison, Guerrero’s social media experience was limited to MySpace. “Until now, my life has been a constant failure,” said Guerrero. “I told myself that if I’m going to make it this time or if I’m going to fail, I want to show people what it’s like. A lot of people have no idea what it’s like to serve time and then try and restart their life.”

Many Americans want to know, though, and this likely stems from our record incarceration rate. At 698 Americans behind bars for every 100,000 people, the U.S. locks up more people per capita than any other nation on Earth, according to the Prison Policy Initiative. The organization says about 23 million people are confined nationwide.

Christina Randall has also been running a YouTube channel about her life behind bars and her reentry challenges. According to YouTube statistics, most of her 400,000 subscribers are in the 18-34 age bracket, and 92% of them are women.

“I have a lot of sons, mothers, daughters, fathers, aunts, uncles, and grandparents of people in prison who watch my videos to understand better what the person might be going through,” she said. Since the incarceration rate for women over the last 40 years has risen twice as fast as for men, it’s likely her viewers are also women who have been released from prison and feel a sense of community from Randall’s videos.

Former bank robber and federal prisoner Marcus “Big Herc” Timmons has risen to the status of social media star, and his videos are used to teach and inspire others.

Kevin Boyle, retired Army colonel and professor at American University’s School of Public Affairs, has had Timmons speak in person to his “Deprivation of Liberty” class. “Every college in America should have a class that features Big Herc,” said Boyle. “You can go on a prison tour, but to have somebody who is really authentic talk freely about that world is a totally different experience.”

Such videos may be at times controversial or voyeuristic — see How to Cut the Window Out of Your Jail Cell by Bryan Burton of Florida Prison Stories — but they draw attention to the stark reality of incarceration in America in a way that defies scripted stereotypes and sometimes misleading “reality TV” shows. “We absolutely need prison reform, look at our recidivism rate,” said Randall. “It’s labeled the Department of Corrections, but they’re not correcting anything.”

Sources: washingtonpost.com, nytimes.com, tampabay.com

Sixth Circuit Vacates Preliminary Injunction Regarding Elkton Prisoner Class Action

by Derek Gilna

On June 9, 2020, the federal Sixth Circuit Court of Appeals, in a split decision, vacated a preliminary injunction issued by a district court that directed the Bureau of Prisons (BOP) to determine which prisoners at Elkton Federal Correctional Institution Elkton were eligible for transfer or release because of a serious COVID-19 outbreak at that facility in Lisbon, Ohio.

Although the appeals court agreed that the district court had the authority to consider the matter under 28 U.S.C. 2241, and the complaint was not foreclosed by the Prison Litigation Reform Act, it agreed that the BOP had responded “reasonably” to the outbreak and that its actions did not give rise to an Eighth Amendment claim for “deliberate indifference.”

As noted in the June 2020 PLN, prisoners had won initial class certification after they argued that there was a “significant level of infection” of the virus at Elkton.

Attorney General William Barr directed federal BOP Director Michael Carvajal on April 3, 2020 to “move with dispatch” to save vulnerable prisoners, using “appropriate transfers to home confinement.”

Another similar lawsuit filed against the BOP regarding the infectious disease at the federal prison in Danbury, Connecticut, which did not seek an injunction, resulted in a settlement that meant transfers and releases to reduce the prisoner population.

However, class action certification was denied prisoners at FCI Oakdale in Louisiana, who in a similar case argued that the level of illness due to the virus, which had resulted in a number of prisoner deaths, was also due to “deliberate indifference.”

In the Sixth Circuit case, the dissent stated that the BOP’s various mitigation programs were much more impressive on paper than in reality, and that it had failed to follow Barr’s recommendations. The court also focused on grim facts not addressed in the majority opinion, noting that “six inmates at the prison had already died,
and more clung to life only with the aid of ventilators, all while the BOP failed to take action to allow the 837 medically vulnerable inmates in its charge at Elkton to follow public health guidelines by maintaining an appropriate distance between themselves and their fellow inmates."

The dissent went on to say, “[The fact that] ineffective measures here came in the form of multiple actions instead of a single one does not excuse the BOP’s choice to ignore methods that address this ‘cornerstone’ of respiratory-disease management. That failure is more jarring when one considers that both Congress and Attorney General Barr went out of their way to urge the BOP to take more aggressive measures to address the virus in its facilities.”

Nonetheless, federal district courts across the country have released scores of prisoners under the First Step Act of 2018, and the CARES Act of 2020, which gave judges the authority to release prisoners or transfer them to home confinement for a variety of reasons, including susceptibility to COVID-19.

The BOP, which has been accused of inconsistency in its release criteria, has also released hundreds of prisoners to home confinement or halfway houses, but is still facing hundreds of pending prisoner lawsuits seeking the same relief. See: Wilson v. Williams, Case No. 20-3447 (6th Circuit 2020) [1].

Man Sentenced to One Year For Shoplifting Dies In Prison During Pandemic

by Anthony W. Accurso

A New Jersey man who was sentenced to one year in prison died on May 10, 2020, while in custody at the Central Reception and Assignment Facility in Trenton, where prisoners go before they are sent to a regular prison.

According to court records, Ricardo Williamson was given a one-year sentence on a single charge of fourth-degree shoplifting for stealing watches and perfume totaling about $200 from the Macy’s at the Willowbrook Mall in Wayne, New Jersey. Williamson said he committed the crime to support his drug addiction.

Williamson agreed to a plea deal stipulating to a one-year sentence, but James Sheehan, his court-appointed attorney, asked the court to consider time served (he had already spent four months at the Passaic County Jail) because Williamson, 62, suffered from multiple chronic illnesses that required intensive medical care.

The prosecutor, Melissa Simsen, countered, arguing that there were “services (in prison) where the defendant can get medical treatment, so I don’t think it will be a hardship.”

“You continue to engage in criminal activity with this condition, so to say, ‘Well judge, I shouldn’t have to go to jail because my medical health is fragile and I could get very sick if I’m in jail and exposed to other folks who have illnesses,’ that’s not fair,” said Judge Justine A. Niccollai. “That’s not something that this court could, quite frankly, consider, because there is a punitive aspect (to the sentence).”

Williamson was transferred to the Central Reception and Assignment Facility as the coronavirus pandemic was escalating. He never left. The facility had logged just one death linked to the virus as of May 15, but it is unclear whether this number is accurate since testing is underutilized in prison settings. It is not certain that he died of the virus because the prison won’t comment on his medical history, citing medical privacy rules.

A NJ.com investigation found New Jersey’s prison system was ill-prepared to deal with the pandemic, and it took weeks to implement even the most basic protective measures like masks and hand sanitizer for prisoners. Williamson is one of more than 40 prisoners who have died in state prisons since the crisis began.

Williamson’s niece, Nina Kemp, said the family wasn’t notified of his death by the prison authorities. They learned of it when they were contacted by a reporter. Kemp said her “Uncle Ricky” was a “wonderful man” who loved to sing for her and her children.

“We made, as a state, a strategic decision that it made more sense to incarcerate him at $50,000 a year rather than figure out why it was that he was shoplifting,” said Rev. Charles Boyer, the head of Salvation and Social Justice. “He got a death sentence for shoplifting.”

Source: nj.com

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Source:
j.com
AFTER SEEING SURVEILLANCE VIDEO OF a group of prisoners drinking hot water from the same cup—allegedly attempting to raise their body temperature before it was checked by a nurse—and then sharing sniffs of a face mask, Los Angeles County Sheriff Alex Villanueva said at a press conference on May 11, 2020, that prisoners were “deliberately [trying] to expose themselves to COVID-19.”

It’s a story that sounds like it should come plastered with a “Don’t try this at your jail” warning: In that housing unit at North County Correctional Facility in Castaic, 21 prisoners subsequently tested positive for coronavirus—almost 40 percent of the unit’s population. From the end of April 2020, the county jail saw its number of coronavirus cases triple to 357.

“So, in this environment, and then considering the fact that the 21 tested positive out of that module, shows what their intention was,” Sheriff Villanueva said.

While it’s clearly a bad idea to infect yourself with the coronavirus to try to get released from jail, the sheriff made it just as clear that he wasn’t releasing anyone because of a positive coronavirus test.

“Somehow there was some mistaken belief among the inmate population that if they tested positive that there was a way to force our hand and somehow release more inmates out of our jail environment—and that’s not going to happen,” he said.

All of this came after the county announced in March 2020 it was releasing some inmates to cut down on crowding in the jails during the pandemic. It reduced its jail population from 17,000 to 12,000 since the outbreak. As of May 11, 2020, some 4,600 prisoners and detainees remained quarantined, including 2,000 at the Castaic facility where the video was shot. The footage was discovered when staff began looking at whether prisoners were practicing social distancing and wearing their masks.

“Lo and behold, we stumbled across footage that was very troubling to us,” said Bruce Chase, the assistant sheriff in charge of custody.

At the time the video was made, only those exhibiting symptoms—such as a fever—were tested for the coronavirus, which is spread person-to-person and causes COVID-19. Sheriff Villanueva said he’s considering criminal charges for those suspected of trying to intentionally catch the disease.

“I think their behavior is what convinces them,” he said.

“The bigger question is, what were they all doing in that room in the first place?” said Lex Stepping, director of campaigns and finance for Dignity and Power Now, a prisoner support group.

According to Stepping, social distancing would not have been possible in the room pictured in the video. A class-action lawsuit filed against the county in April 2020 accuses the sheriff of failing to provide inmates adequate social distancing measures or testing to fight the spread of the coronavirus. Activist Patrisse Cullors, who is lead plaintiff in the lawsuit, also complained of insufficient hand-washing supplies at county jails and said that Sheriff Villaneuva was attempting “to demonize incarcerated people” to explain the explosion of COVID-19 cases.

In May 2020, contact tracing of inmates testing positive for the disease at Wisconsin’s Dane County Jail led officials there to determine that one had intentionally concealed his symptoms, resulting in at least 32 other infections. The jail has recorded a total of 37 positive COVID-19 tests so far, and another 34 prisoners and detainees remain quarantined because they were exposed to someone who tested positive.

Sources: cnn.com, washingtonpost.com, wkow.com

SECRET BOP DOCUMENT RAISES RISK FACTORS, SECURITY LEVELS OF PRISONERS

A secret Federal Bureau of Prisons (“BOP”) document, obtained by ProPublica, is being used to evaluate the security levels of prisoners, leaving some who qualified for release to home confinement stuck in prison during the COVID-19 pandemic with little explanation of how they were evaluated.

The First Step Act of 2018 required the BOP to create a risk assessment tool and publicly post it on its website for public comment. The tool, dubbed “PATTERN” (Prisoner Assessment Tool Targeting Estimated Risk and Needs) by the BOP was posted on its website and public feedback raised concerns about racial bias and lack of transparency, BOP spokesman Justin Long acknowledged. But the feedback from the public did not call for categorizing prisoners under a harsher standard.

The secret 20-page document adopted by the BOP in early 2020 includes a method that sets a security level for all prisoners. Factors like age, classes completed in prison, and any history of violence increase or decrease a prisoner’s score, classifying them as either minimum, low, medium, or high risk.

The previously unpublished document does not appear to be finalized by the BOP and its existence surprised prison reform advocates and lawyer. “It really tanks the whole enterprise if, once an instrument is selected, it can be strategically altered to make sure low-risk people don’t get released,” Brandon Garrett, a Duke University law professor who studies risk assessment tools, said.

David Patton, a chief public defender in New York City, said that “there’s been nothing but confusion” by the BOP with its PATTERN tool. He said prisoners have questions about how they’re being scored “and we have no answers, because BOP doesn’t give us any.”

Using PATTERN to figure out who would qualify as minimum security in light of Attorney General William Barr’s memos to the BOP to step up its efforts to send vulnerable prisoners to home confinement during the pandemic showed the problems with the BOP’s tool. While 20 percent of federal prisoners fall into the minimum security category, only 1.8 percent were identified as qualifying for home confinement under the BOP’s current version of PATTERN.

L.A. COUNTY SHERIFF SAYS PRISONERS INTENTIONALLY TRIED TO CATCH CORONAVIRUS TO GET RELEASED

by Dale Chappell
Blayne Davis is in prison on nonviolent fraud charges at the minimum-security prison camp at the Pollock Federal Correctional Complex in Louisiana, propublica.org reports. In April 2020, he was scored as minimum risk under PATTERN, and he expected to be released to home confinement as prison staff called names of those who qualified. Davis wasn’t called.

When he pointed to his minimum security score under the chart in the 2019 policy that was publicly disclosed, a staffer handed him a different chart, more restrictive than the one he had. Under the old chart, any prisoner with a score of 21 or less was minimum risk. Davis had a score of just seven. But under the secret chart used by the BOP, any prisoner with a score of six or less is minimum risk. He missed it by one point, he was told, despite his good conduct and having completed 30 classes in prison.

Davis questioned the chart, which he said looked like someone hastily typed up and had some glaring typos. And it wasn’t on official BOP letterhead, like other BOP documents. Staff assured him it was official and that it had been printed off the BOP’s intranet system.

At the urging of Senators Dick Durbin and Chuck Grassley, who co-wrote the First Step Act, the Department of Justice’s Office of the Inspector General (“OIG”) is taking a closer look at the BOP’s efforts to keep more people in prison in the face of Barr’s directives to let them go. They want to know why the BOP has refused to follow the directives, and they’re taking a look at the BOP’s response to the pandemic — which has largely been stall tactics and a failure to respond to serious problems.

But those stall tactics weren’t used to delay releasing celebrity prisoners like former Trump campaign manager Paul Manafort and others, who were promptly freed from prison because of the COVID-19 crisis.

Source: propublica.org

**New York District Court Judge Denies Preliminary Injunction Against MCC Brooklyn**

*by Derek Gilna*

Federal District Court Judge Rachel P. Kovner on June 9, 2020, denied a “preliminary injunction that would release all MDC inmates whose age or medical condition places them at heightened risk from the virus and would manage almost every aspect of the facility’s COVID-19 response,” according to her opinion.

The judge noted the “high bar” that had to be met to obtain such sweeping relief, and she refused to find that the response of Bureau of Prisons (BOP) officials at the Brooklyn Metropolitan Detention Center (MDC) constituted “deliberate indifference” under the Eighth Amendment.

The judge noted that of the four original plaintiffs, two had already been granted compassionate release by their sentencing judges, and said that evidence at the preliminary hearing had revealed “several deficiencies in the MDC’s implementation of Centers for Disease Control and Prevention (CDC) guidelines that both parties have treated as authoritative. Those shortcomings merit a swift response from MDC officials — the institutional actors charged in the first instance with ensuring that their facilities are managed in accordance with appropriate standards of care.”

However, the court went on to say, “the facility’s aggressive response to a public health emergency with no preexisting playbook belies the suggestion that these apparent deficiencies are the product of deliberate indifference on the part of prison officials.”

While not disputing the seriousness of COVID-19 in the federal prison system, or its danger to those confined in tight quarters such as those at the MDC, the judge was apparently swayed by the relatively small number of reported cases. The court said that, “the available data gives reason for cautious optimism about the effectiveness of the facility’s COVID-19 response thus far.”

The court proceedings featured the testimony of numerous medical experts, who reached contrary conclusions as to the effectiveness of the BOP response. Despite the obvious deficiencies in the MDC’s handling of possible COVID-19 cases, and its at-risk population, the court said that, “petitioners have not shown a clear likelihood of success in demonstrating that they face "a substantial risk of serious harm" from conditions at the MDC, Lewis v. Siwicki, 944 F.3d 427, 430– 31 (2d Cir. 2019)... given the measures that prison officials have instituted to address COVID-19.” See: Chunn v. Edge, USDC (E. D. N. Y.), Case No. 20-cv-1590.

Additional source: courthousenews.com
**Who’s in SHU? A Survey of Solitary Confinement**

*By Terry A. Kupers, M.D., M.S.P.*

(Many thanks to Willow Katz and Dolores Canales for support and editing)

Prisoners consigned to solitary confinement or Security Housing Unit (SHU) are derided as “the worst of the worst.” But when I enter SHUs around the country in preparation for expert testimony in class action litigation, I find very ordinary people, with some exceptions. There are very bright people, and there are not so bright people, just as in the community. There are mean and ornery people and there are peaceful and very caring people, just as in the community (and in prison the peaceful and caring are much more numerous).

The exceptions include the fact that:

1. A disproportionate number of prisoners in solitary suffer from serious mental illness (SMI) — either they were diagnosed before entering solitary or they developed emotional problems on account of the harsh conditions — and that’s why, when I started touring supermax solitary confinement units in the ‘80s and ‘90s, I found that 50% of SHU-dwellers suffered from SMI;

2. A disproportionate number are people of color — the racism that permeates the “criminal justice” system does not stop at the prison walls; and

3. A large proportion of individuals in solitary confinement are very bright and very political — I think officers are intimidated by willful and very intelligent prisoners, and selectively send them to solitary. Of course, the subgroups can overlap, so there are no sharp boundaries. In any case, the population in SHUs are very far from “the worst of the worst.”

When I set out to interview and examine the plaintiffs in the *Ashker v. Governor of California* lawsuit about unconstitutional conditions and a lack of due process at the Pelican Bay State Prison SHU, I met men in the second and third categories, people of color and very bright and very political. There were not very many prisoners who suffer from SMI because prior litigation, *Coleman v. Governor of California*, resulted in a federal court order that SHU residents receive mental health evaluations and those suffering from SMI be transferred to special units, the Psychiatric Services Units (PSUs), where they might receive mental health treatment.

Of course, conditions in the PSUs closely approximate SHU conditions except that prisoners are moved from their cells to “cages” (the staff call them “treatment or programming modules”) for mental health sessions. A majority of the inhabitants of the Pelican Bay SHU were alleged to be “gang-affiliates” or members, based on “confidential information,” typically meaning other prisoners had informed they were gang-related. Those other prisoners were granted privileges or released from SHU in exchange for their “snitching,” and of course the prisoners in SHU had never been told what evidence there was against them, nor were they given an opportunity to defend themselves against the charge of gang-affiliation.

So, in an average case, a Latinx man from an East L.A. barrio was seen giving the high five to a suspected gang member, or wrote a letter to a cousin in prison who was suspected of gang-affiliation, and from then on he was classified gang-affiliated and sent to SHU. Alleged gang-affiliation was sufficient cause for the CDCR to consign prisoners to SHU for the remainder of their lives, unless they were willing to snitch on other prisoners (the “debriefing” process), reach the end of their prison sentence (parole), or die. Prisoners described their choices as “snitch, parole or die.” The Ashker settlement supposedly ended the practice of sending prisoners to SHU for alleged gang-affiliation alone.

The 24 prisoners I interviewed were all very bright, many were very well read, and all of them were very aware of and articulate about social injustices and inequities. On average, they had gotten into trouble with the law as teenagers, maybe were doing drugs, and in some cases were involved with street gangs. Almost all of them dropped out of school before graduating high school. They entered the criminal legal system in their late teens or early twenties, settled down and looked back with regret on their criminal ways (or, a significant number were actually innocent of the charges against them, having been falsely convicted on the basis of tampered or bribed witness identification, the same unfortunate process that would get them consigned to SHU and then denied parole).

I found myself face-to-face with men I found simpatico, and very interesting to talk to. I rarely find people in the wider community who have so thoroughly studied philosophy and history and are conversant with the theories not only of Freud, Marx, and Darwin, but also Malcolm X, Franz Fanon and Che Guevara. But in the Pelican Bay SHU these were studies and theories that might pop into the conversation at any moment. The men had started studying on their own as soon as they entered prison, earned their G.E.D.s, took college courses when permitted, and in many cases studied the law and became jailhouse lawyers, helping other prisoners with their appeals and legal cases.

In fact, the *Ashker v. Governor of California* lawsuit began as a *pro se* case (meaning prisoners act as their own attorneys) brought by plaintiffs Todd Ashker and Danny Troxell. Imagine how difficult it is to study law and file claims from a windowless cell with no library privileges except being able to request a few specific books or cases and hope officers will deliver them to the cell.

The Ninth Circuit Court of Appeals is currently considering post-settlement arguments about solitary confinement in the *Ashker v. Governor of California* class action lawsuit. There were prisoner hunger strikes from 2011 to 2013, led by courageous prisoners in the Pelican Bay SHU, that involved many thousand prisoners as well as large gatherings of family members and advocates in the community. The demands of the hunger strikers included a fair process for consigning prisoners to SHU, meaningful programs, and steps to win release from SHU. The California Dept. of Corrections and Rehabilitation (CDCR) actually agreed to these very reasonable demands when the case was settled in 2015.

The Ashker settlement should have been an important step in reversing the cruel trend toward confining a significant proportion of prisoners in solitary. Instead, the CDCR embarked on a nutshell game, transferring prisoners from SHU to what they called “general population” (GP) status. But conditions for those released from SHU to GP have been, on average, more like SHU conditions, with prisoners in their cells for more than 22 hours per day, very little in the way of programs, and, because
they spent so much time in SHU and then have insufficient access to rehabilitation programs, former denizens of the SHU have little chance of winning parole.

One of the issues in the current court proceedings in Ashker involves the “confidential information” the CDCR used to sentence prisoners to indeterminate SHU terms, and continues to use to block their parole. There is no due process if the prisoner is not permitted to know the evidence against him, and due process is one of the issues currently being considered by the Appeals Court.

I feel honored to serve as an expert witness in class action lawsuits aimed at ending unconstitutional conditions, abuse of prisoners and a lack of due process. When I step back and think about the meaning of this entire scenario, I find myself often returning to the fact that the men and women being deprived of their freedom and tortured are very bright, even capable of studying law on their own and pressing very complicated civil rights litigation, and they speak up for their rights when they are wronged. Combining this observation with the fact that they are being forced to endure solitary confinement conditions even after being released from SHU, we have to arrive at the conclusion that officers, in the name of our criminal “justice” system, are terrified of their intelligence, their righteous willfulness and their passionate quest for freedom.

In prison, the aim of staff and administration is to force compliance on the part of prisoners. Any time prisoners think for themselves, or (God forbid) stand up for themselves, the powers that be come down hard, consigning them to a windowless SHU cell for decades and then keeping them isolated and idle even after their release from SHU so they will be unable to participate in programs they need to win parole.

The staff’s dread of prisoners’ capacity to think for themselves, to think critically, and to demand their rights is the impetus to keep them locked in solitary and manipulate “confidential” evidence against them. The staff’s single-minded quest for prisoner compliance is foolhardy. After all, when prisoners leave prison we want them to be able to think for themselves, and think critically, so they can succeed in a technology-infused world of work and participate fully in democratic processes.

The overly compliant prisoner becomes a recluse after being released, whereas the jailhouse lawyers can work in law offices and the formerly incarcerated autodidact can perform in a high-level job. We see the pro-social and valuable results of prisoners’ self-education and courage in the Agreement to End Hostilities that was initiated by the lead plaintiffs in the Ashker case, a system- and community-wide agreement between people of all races/ethnicities and geographic groups, to avoid the kinds of interracial and geographic strife the CDCR repeatedly tries to foster.

The SHU is the ultimate weapon in the criminal injustice system’s retrograde and repressive attempt to bring prisoners to heal. But happily, it isn’t working. There are legal cases like Ashker v. Governor of California, with prisoners, jailhouse lawyers and their dedicated civil rights attorneys teaming up to win in court. And then there are the families of prisoners, activists in the community and legislators who write new laws limiting the use of solitary confinement and confidential information.

There are victories in the court cases — and that’s very important — but ultimately it is the combination of prisoner and community organizing with the prisoner-led lawsuits that makes real prison reform possible. And prison reform is part of the larger project of building community. As Zach Norris says in his hope-inspiring book, We Keep Us Safe: “Real safety results from reinstating full humanity and agency for everyone who has been dehumanized and traumatized, so they can participate fully in society.”

About the author: Terry A. Kupers, M.D., M.S.P., is a psychiatrist and professor at The Wright Institute, and the author of Solitary: The Inside Story of Supermax Isolation and How We Can Abolish It (Univ. of California Press, 2017). This story was originally published at the website Prisoner Hunger Strike Solidarity (prisonerhungerstrikesolidarity.wordpress.com).
Reports: COVID-19 More Prevalent Than Reported in Nation’s Prisons and Jails

by Kevin Bliss

The U.S. Centers for Disease Control and Prevention (CDC) published a report May 6 based on data gathered from 54 state and territorial health departments, claiming about 5,000 confirmed cases of COVID-19 among prisoners in state and federal prisons, jails and detention centers.

Two weeks later, Reuters prepared an independent study surveying only 13% of the nation’s incarcerated population and found 17,300 confirmed cases, already more than three times the number reported by the CDC. The Reuters report stated that facilities that performed mass testing of their detained population have reported as much as a 65% infection rate.

The United States holds more than 2 million people in some form of incarceration, either serving a sentence or awaiting trial, more than any other nation in the world.

Scant testing and inconsistent reporting have resulted in a massive understating of the people inside the system who are infected with COVID-19. Aaron Littman, professor at the University of California School of Law in Los Angeles, said of the dramatically low CDC tally, “We don’t have a particularly good handle” on cases of COVID-19 in our prison systems and jails, “and in some places we have no handle at all.”

Prisons have proven fertile ground for the quick spread of COVID-19 with overcrowded cell blocks, poor hygiene practices and inadequate sanitation. And jails are even worse as they are less-equipped to handle long-term care of medical patients and the ability to isolate large numbers of contagious detainees.

High turnover rates in jails and detention centers also risk constant exposure to infection to both those held within the jail and the communities of those being released. Those in prisons are less exposed to risk of infection — mainly through the introduction from staff and volunteers — yet the quick spreading of the virus is just as serious in the close-quartered living conditions.

With the onset if the virus in the United States, the availability of testing kits was limited, requiring that only those in prisons and jails showing symptoms be tested, meeting the minimum CDC guidelines. The CDC did not require universal testing, a sample population would be sufficient for determination of overall infection prevalence.

Epidemiologists are concerned about the reporting practices and the underrepresentation of the infection in prisons and jails because of the implications the spreading of the virus has on health officials and policymakers. Prisons and jails are seen as key pathways for the transmission of COVID-19 and consideration must be given not only to the care to those in custody of the jails and prisons, but also in their release and tracking the virus’ spread.

Dr. Thomas Pangburn of Wayne County, Michigan’s contracted health-care provider, Wellpath LLC, said jail detainees are the “last and least of the lost.” They are generally overlooked when it comes to testing kits and medical supplies. But, he said they “have the most vulnerable population in a very confined space meant for correctional housing — and not for medical care.”

Members of the criminal justice system and civil rights groups are concerned that facilities are ill-equipped to control the virus. Even staff and guards are being affected by the outbreak. The CDC reported 2,800 cases in correctional staff nationwide. Reuters once again said this total is greatly underreported; if mass testing were mandatory that number would be much higher.

The head of Wayne County’s deputy sheriffs’ union, Reginald Crawford, posted a message on Facebook after the jail lost a commander, a medical unit deputy, a doctor and the medical director to the virus. He said, “Working in the Wayne County jail has now become a DEATH sentence!”

The jail has since had more than 200 staff and detainees test positive for COVID-19.

Many jails and prisons are releasing high-risk prisoners and detainees to slow the spread of the virus. Organizations such as the American Civil Liberties Unions said this is critical because of the potential for spreading the virus in correctional facilities. Others, such as the victims’ rights group Marsy’s Law, criticize the decision because of how it affects victims and the lack of notification given of these releases.

Communities are concerned because people are being released early without first testing them for COVID-19 and those who are infected are not being provided with proper medical treatment or isolation conditions. And those who remain behind bars claim outbreaks violate their constitutional right to be free from cruel and unusual punishment.

Either way, as one of the more than 100 lawsuits filed nationwide states, “Failing to prevent and mitigate the spread of COVID-19 endangers not only those within the institution, but the entire community.”

By June 2, The Marshall Project reported that more than 40,000 prisoners had tested positive for COVID-19 — a jump of 18 percent in just six days. As of the same date, at least 496 prisoners had died of “coronavirus-related causes.”

Source: reuters.com
On May 22, 2020, Rodney Myers was removed from his position as warden of a federal prison in Oakdale, Louisiana, after severe criticism of his handling of the COVID-19 pandemic.

The former warden’s failure to isolate prisoners with confirmed cases of COVID-19 and requiring staff to work without adequate protection and after exposure to a confirmed case led to the prison being inundated with COVID-19 cases.

As of May 26, 185 prisoners at FCC Oakdale were known to have had confirmed cases of COVID-19. At that time, seven had died and 87 had recovered, leaving 91 active cases. Oakdale alone accounted for 12% of the 59 federal Bureau of Prisons (BOP) prisoners who had perished due to COVID-19 by then.

At the same time, 23 members of the FCC staff had confirmed cases of COVID-19, 10 of whom had recovered and 13 of whom had active infections.

The former warden’s failure to address the pandemic led prisoners, assisted by the American Civil Liberties Union of Louisiana and Katten Muchin Rosenman, LLP, to file a federal class-action civil rights lawsuit seeking release of the prisoners who are at high risk for serious illness or death due to COVID-19. See: *Livas v Myers*, USDC, (W.D. La.), Case No. 1:20-cv-00422.

The lawsuit was filed on April 6, 2020, less than a week after U.S. Attorney General William Barr issued a directive instructing the BOP to reduce the Oakdale prisoner population by conducting a case-by-case analysis of each prisoner’s case. The lawsuit argued that this process was too slow.

“Public health experts have repeatedly warned that COVID-19 will spread rapidly once it enters prisons, jails, and detention centers—both within the facilities and in the communities that surround them,” said senior staff attorney Somil Trivedi of the ACLU’s Criminal Law Reform Project. “The Department of Justice has finally recognized the tremendous humanitarian and public health crisis that our mass incarcerations crisis presents during this pandemic—around the country and especially in Louisiana.”

Unfortunately, a federal judge dismissed the lawsuit on April 22, 2020. “This ruling does not change the fact that our clients, the staff, and the surrounding community are all at grave risk due to Oakdale’s failure to adequately respond to this crisis. While it may be too late for the seven men who have died, it is not too late for the Bureau of Prisons to prevent further loss of life by releasing people out of harm’s way,” said ACLU of Louisiana senior staff attorney Bruce Hamilton.

The outbreak caused a rare alignment of the interests of the prisoners and staff at Oakdale. The prisoners filed a lawsuit, the union representing the staff filed an “imminent danger” complaint with the federal Occupational Safety and Health Administration and sent a letter to BOP Director Michael Carvajal complaining about Myers and his failure to properly respond to the pandemic.

The letter said staff transporting prisoners to areas known to have active COVID-19, such as local hospitals, quarantine units and isolation units or working in those areas, were not given proper Personal Protection Equipment (PPE) or trained in how to safely don and doff PPE.

Further, Myers did not notify staff when they had been exposed to prisoners who were known to be COVID-19-positive and did not allow staff who had been exposed and did not have proper PPE to quarantine for 14 days.

Myers also allegedly failed to educate prisoners and staff on the proper procedure to release prisoners from isolation, causing some prisoners to believe that prisoners with COVID-19 symptoms were being introduced into a general population area. This led to prisoner unrest and the deployment of pepper spray.

Myers allegedly failed to implement effective segregation of prisoners by housing, as ordered by the BOP, and continued to allow the potential introduction and spread of the virus by permitting prisoners to congregate in the Education Department and allowing them to be exposed to Education Department staff and other staff that traveled between prisons.

American Federation of Government Employees Local 1007 President Ronald Morris believes the letter led to the removal of Myers and his temporary assignment to the BOP’s South Central Regional Office in Dallas.

Additional sources: aclu.org, thecrimereport.org, KPLC.com

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SSG'S LOGO IS THE PYRAMID WITH THE FLOATING EYE SEEN ON THE BACK OF THE $1 BILL. GOVERNMENT TRANSPARENCY ADVOCATES HAVE EXPRESSED CONCERN THAT OTHERS BESIDES LAW ENFORCEMENT CAN PURCHASE ITS ITEMS.

FREDDY MARTINEZ, POLICY ANALYST FOR OPEN THE GOVERNMENT, SAID, "I THINK ONE OF THE BIGGEST CONCERNS I HAVE IS THE COST/SIZE/CAPABILITIES OF THESE DEVICES. THEY KEEP GETTING CHEAPER, SMALLER AND MORE CAPABLE ALL THE TIME, AND IT'S UNLIKELY THAT ONLY LAW ENFORCEMENT WILL BE THE ONLY ACTORS USING THEM."

MARTINEZ AND BERYL LIPTON OF MUCKROCK (ANOTHER GOVERNMENT TRANSPARENCY NONPROFIT) BOTH FILED FREEDOM OF INFORMATION ACT REQUESTS AT THE IRVINE POLICE DEPARTMENT OF CALIFORNIA TO OBTAIN COPIES OF THE SSG'S BLACK BOOK. IT LISTS A VARIETY OF SURVEILLANCE DEVICES CONCEALED IN ALARM CLOCKS, SMALL TREE TRUNKS, ROCKS AND TRASH CANS. SSG ALSO SELLS BLUETOOTH DEVICES THAT FIT COMPLETELY IN THE MOUTH FOR HANDS-FREE COMMUNICATION WITH NO VISIBLE SIGNS, RFID CLONING DEVICES FOR ACCESS CARDS AND Fobs, AND SHADOWING DEVICES FOR GAINING ALARM PANEL PIN CODES.

SSG IS REPORTED TO HAVE THREATENED OPEN THE GOVERNMENT AND MUCKROCK WITH LEGAL ACTION IF THEY REPORTED ABOUT THE ORGANIZATION OR ITS LITERATURE. THEY SAID THE BROCHURE WAS PROTECTED UNDER THE INTERNATIONAL TRAFFIC IN ARMS REGULATIONS AND THAT ANY RELEASE OF INFORMATION COULD RESULT IN HARM. "PLEASE UNDERSTAND THAT WHILE I UNDERSTAND A DESIRE FOR GOVERNMENT TRANSPARENCY, THE RELEASE OF INFORMATION COULD RESULT IN VERY SERIOUS JEOPARDY OF THE LIVES OF LAW ENFORCEMENT AND MILITARY USERS OF THE TECHNOLOGY RIGHT NOW."

THE AMERICAN CIVIL LIBERTIES UNION (ACLU) HAS FILED A FEDERAL LAWSUIT AGAINST A PRIVATE PRISON RUN BY CORECIVIC IN FLORENCE, ARIZONA, CLAIMING THAT STAFF HAS FAILED TO PROTECT ITS PRISONERS AND THE COMMUNITY FROM THE CORONAVIRUS, ACCORDING TO A STORY IN THE APPEAL AND COURT RECORDS.

ACLU Files Lawsuit Against CoreCivic Prison in Arizona over COVID-19 Failures

By Dale Chappell

The lawsuit alleges that CoreCivic staff have been “deliberately indifferent” to the risk COVID-19 poses to their health — that is, prison staff are aware of the risks but have done nothing about addressing those risks. The prisoners allege due process rights violations under the Fifth Amendment, and cruel and unusual punishment under the Eighth Amendment because, as the U.S. Supreme Court held in Farmer v. Brennan, March 30 mandate that people remain at least 6 feet from each other, citing World Health Organization and Centers for Disease Control and Prevention guidelines.

Quarantine, the lawsuit alleges, is poorly done, if at all. When new prisoners come into the facility, they’re placed in a room together without any masks for 14 days. Sometime quarantined prisoners have been released to the general population “by mistake” and returned to quarantine, potentially exposing the general population to COVID-19.

When staff does provide masks, the lawsuit said, there’s not enough to go around, and they’re ineffective against the virus. Staff make prisoner share masks when they have to leave the pod, and they are not required to wear masks in the pod. It also claims that staff mocks prisoners who wear masks, telling them they “don’t work against the virus.”

All five prisoners have filed numerous “emergency” administrative remedies, but only one got a reply from a unit manager who said that there were no COVID-19 cases in the prison and everything was “fine.” He said they were just “rumors.”

The lawsuit alleges that CoreCivic staff have been “deliberately indifferent” to the risk COVID-19 poses to their health — that is, prison staff are aware of the risks but have done nothing about addressing those risks. The prisoners allege due process rights violations under the Fifth Amendment, and cruel and unusual punishment under the Eighth Amendment because, as the U.S. Supreme Court held in Farmer v. Brennan,
The private prison run by CoreCivic houses prisoners for the USMS and the BOP. A spokesman for the USMS said in a statement, “These facilities are responsible for the medical care that USMS prisoners receive, and they work closely with state health departments and the Centers for Disease Control and Prevention to ensure that infectious diseases are promptly identified and treated. All training and protocols, quarantine decisions or policy adjustments are made at the facility level.”

A spokesman for CoreCivic refused to respond, but did say that the prison was screening its employees for COVID-19 symptoms and asking staff to “encourage appropriate social distancing” and providing them with face masks.

“I am very scared,” Maria Guadalupe Lucero-Gonzalez, one of the prisoner-plaintiffs, said. “I am in delicate health and am trying to survive in these difficult conditions” at the CoreCivic prison. Lucero is being detained at the private prison after violating her supervised release terms for re-entering the United States.

“What we are hearing is incredibly dire,” said Chase Strangio, staff attorney with the ACLU. “If there’s no way in this structure to prevent the spread of COVID-19, then there would need to be some reduction in the population.” See: Lucero-Gonzalez v. Kline, USDC (D. Ariz.), Case No. 2:20-cv-00901.

Additional source: theappeal.org
Michigan Prisoner’s Whistleblowing on GED Test Cheating Survives Summary Judgment

by David M. Reutter

A Michigan federal district court found on January 6, 2020 that allegations by a prisoner tutor that prison officials retaliated against him for blowing the whistle on GED test cheating were sufficient to survive summary judgment.

Munin Kathawa, a prisoner at Michigan’s G. Robert Cotton Correctional Facility (JCF), is a lifer who decided to use his talents as a tutor to help other prisoners earn their GEDs. “There is no dispute that Kathawa was an excellent tutor,” the court found.

From July 2016 to September 2017, Kathawa worked in non-party Laura Bendele’s classroom to help prisoners with learning disabilities and those who struggled to pass the GED. He was reassigned to Spencer Kinney’s classroom by Principal Brian Friedman after the latter received a report on concerns regarding Kathawa and Bendele.

Shortly thereafter, Kathawa was asked to help a prisoner who was due to go home in November. When the student passed with a 169 score, Kathawa was surprised. After questioning the student, he realized he could not have fairly passed the exam.

The student told him that Kinney and others had provided him with the exam answers. Kathawa documented eight other instances of cheating. Kathawa complained that the GED program was geared more towards testing than toward learning.

During a February 2018 staff meeting, the topic of the “overfamiliarity” between Kathawa and Bendele was discussed. The school guards were told that Kathawa should have no contact with Bendele, but this was never relayed to Kathawa. He was subsequently issued a misconduct report for being outside Bendele’s classroom. That report was dismissed on a technicality.

Meanwhile, Friedman received kites from other prisoners requesting that Kathawa be reassigned to Bendele’s classroom, which were viewed by officials that Kathawa was manipulating other prisoners. Kathawa was ultimately removed from his tutor position because prison officials alleged that Bendele had expressed concerns for her safety around Kathawa. Bendele was called into a meeting but refuted that account and subsequently was given a split schedule between JCF and another prison.

Prison officials recommended Kathawa be disciplined for filing allegedly frivolous grievances on the GED matter, and he was transferred to another prison. Because he was in a college program and should have never been transferred, he was returned to JCF. After he filed his civil rights complaint alleging his First Amendment right to freedom of speech was violated by the defendants’ retaliatory actions, they filed a motion for summary judgment.

The district court found that the “temporal proximity of Kathawa’s protected conduct to the adverse actions taken against him, and the substantial circumstantial evidence is more than enough to raise an inference of retaliatory intent in this case.”

While the record does not show the defendants had actual knowledge of Kathawa’s complaints about the GED program, the circumstantial evidence shows they had such knowledge. Additionally, they could not show that absent his complaints they would have taken the action of removing him as a tutor. The court also held the defendants were not entitled to qualified immunity. The defendants’ motion for summary judgment was denied. See: Kathawa v. Friedman, USDC (E.D. MI), Case No. 2:18-cv-13026.

U.S. Supreme Court Overturns Texas Federal Judge’s Order Granting COVID-19 Relief to Elderly Prisoners

by Matt Clarke

On May 14, 2020 the United States Supreme Court rejected a class-action lawsuit filed by two elderly Texas prisoners that would have forced the Texas Department of Criminal Justice (TDCJ) to provide masks, hand sanitizer and cleaning supplies to prisoners in an effort to combat the novel coronavirus that causes COVID-19.

On April 16, U.S. District Judge Keith P. Ellison had ordered TDCJ to provide prisoners at Wallace Pack Unit with equipment to protect them from contracting the coronavirus. The agency was also ordered to initiate “social distancing” and other practices to prevent the spread of the disease, which five days earlier had claimed the life of Pack Unit prisoner Leonard Clerkly, 62.

But on April 22, a three-judge panel of the Fifth Circuit Court of Appeals in New Orleans ruled in favor of TDCJ and overturned Ellison’s preliminary injunction.

Justices Sonia Sotomayor and Ruth Bader Ginsburg wrote separate opinions agreeing with the Appeals Court, though both noted they found “disturbing” issues in the case.

“Just a few nights ago, respondents revealed that numerous inmates and staff members at the Pack Unit are now COVID-19 positive and the vast majority of those tested positive within the past two weeks,” Sotomayor wrote.

Located about 60 miles northwest of Houston, the Pack Unit houses mainly elderly prisoners, many of whom suffer from medical conditions which, in addition to advanced age, make them more likely to suffer severe illness or death from COVID-19. “It’s a life or death matter,” said Ellison, who noted that retired U.S. District Judge Kevin Duffy died of the disease on April 1, 2020. “I’m absolutely persuaded of that.”

Laddy Curtis Valentine, 69, and Richard Elvin King, 73, filed the class-action lawsuit on behalf of all Pack Unit prisoners. Noting that New York City’s Rikers Island prison complex had a rate of coronavirus infections nearly 9,000 percent above the overall U.S. rate, the suit stressed that “Rikers is not an anomaly” but is rather “the canary in the coal mine.” It warned that TDCJ risks inflicting “particularly serious harm on plaintiffs” with its “inadequate response,” having failed to implement social distancing in the prison.
and testing only a small fraction of its prisoners for the virus so far.

“Death concerns me,” Valentine testified by telephone during a hearing before Judge Ellison on the injunction. “The rapid spread of it is my greatest concern, not just for myself but for quite a few others that are here in the unit too. Some are in worse condition than I am, and obviously, one has already died.”

Valentine works as a janitor at the prison and described the limited cleaning supplies available, along with crowding well short of accepted social distancing. TDCJ did not present any witnesses at the hearing.

Judge Ellison granted preliminary injunctive relief ordering TDCJ to provide Pack prisoners with access to hand soap, disposable hand towels, hand sanitizer, tissues or toilet paper, cleaning supplies, and masks— which could be made out of cotton fabric if frequently washed. He ordered frequent cleaning and sanitizing of common-use surfaces and items and new masks and gloves for the prisoners performing the cleaning. He placed restrictions on the transportation of prisoners into and out of the Pack Unit, requiring that new arrivals be quarantined for 14 days or tested for COVID-19 and departures be limited to releases and immediately necessary medical appointments.

Judge Ellison also ordered TDCJ to educate Pack prisoners on COVID-19, post signage and information on the disease and inform prisoners that the co-pay for medical treatment was suspended during the pandemic. He ordered TDCJ to come up with a plan to test all Pack Unit staff and prisoners for COVID-19. “The government has a constitutional duty to protect those it detains from conditions of confinement that create a substantial risk of serious harm,” Ellison said.

Texas Attorney General Ken Paxton, who is currently awaiting trial for securities fraud, said in a press release that Ellison’s order “prioritized the health concerns of convicted criminals over those of medical professionals” by requiring they be given personal protective equipment and coronavirus testing.

Researchers at Johns Hopkins University estimated about 43,000 cases of COVID-19 in Texas by mid-May, 2020, with nearly 1,200 deaths. But there was no announced shortage of gloves, as Paxton’s press release implied, and the masks Ellison ordered TDCJ to provide are not the N95-type used by medical professionals. Moreover, several cities near the Pack Unit were offering coronavirus testing to anyone who asked.

As of May 13, 2020, TDCJ reported that 1,775 of its approximately 140,000 prisoners had tested positive for the coronavirus, with 451 recoveries and 31 deaths. In addition, 677 staff members had tested positive, with 102 recoveries and 7 deaths. Over 42,000 prisoners remained on lockdown in an attempt to slow the virus’ spread.

The class action lawsuit had been filed with the assistance of attorneys John R. Keville, Denise Scofield, Michael T. Murphy, Brandon W. Duke, Benjamin D. Williams, Robert L. Green and Corinne Stone Hockman of Winston & Strawn, LLP, and Jeff Edwards, Scott Medlock, Michael Singley and David James of The Edwards Law Firm in Austin. See: Valentine v. Collier, USDC (S.D. Tex), Case No. 4:20-cv-01115.


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by Brandon Sample and Alissa Hull

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Alabama Should Release Elder Prisoners at Risk for COVID-19

by Ed Lyon

The efficacy of states continuing to retain elderly prisoners has been questioned by corrections experts for decades. The problems with continuing to needlessly incarcerate senior prisoners has become even more germane amidst the ongoing coronavirus crisis as activists, along with prison reformists, urge Alabama to release its aged state prisoners.

Statistics compiled from the five largest prison systems in the United States show that about 20 percent of the nation’s prisoner population are elderly – defined as 50 and older in the unique environment of a prison setting, according to many researchers and some state departments of correction. “That’s because people in prison are physiologically seven to ten years older than their chronological age due to a range of factors, including, but not limited to, the conditions and stress of incarceration and—outside of prison—a lack of access to adequate medical care and histories of substance use,” according to an article by the Vera Institute of Justice.

At first glance, Alabama’s statistical data indicates the state’s elderly prisoner population is well below the national average. The Alabama Department of Corrections (ADOC) warehouses around 22,000 prisoners and operates at a daily average of 170 percent of design capacity.

ADOC’s reported elderly prisoner population is composed of 942 medium and close custody prisoners, or 4.3 percent of its general population, and around 1,100 minimum-security prisoners, or 5 percent of its general population. That makes 9.3 percent of the total ADOC population “elderly,” which is less than half of the national average.

However, ADOC’s prisoner data is based on “elderly” being defined as 65 and over – 15 years higher than in some states. If Alabama defined “elderly” as over 50, its elderly population would be in the neighborhood of 20 percent.

Data collected for decades show that people age out of criminal behavior, making older prisoners of far less risk to the public upon their release. ADOC’s own handbook defines a minimum custody prisoner to be of no “risk to [himself] or others.” Of the 1,100 identified elderly minimum-custody ADOC prisoners, 107 are imprisoned for a non-violent felony, 112 have less than one fourth of their sentences remaining to serve, and 201 have served over 30 consecutive years of a life sentence with eligibility for parole, according to the Southern Poverty Law Center.

Prisoners held in such close proximity present a fertile ground for COVID-19 transmission. Law professors joined with law enforcement officials in recognizing this clear and present danger to human life and have petitioned Governor Kay Ivey to order the release of ADOC’s elderly prisoner population that are parole-eligible in order to avoid a “public health catastrophe.”

Stated Josiah “Jody” Rich, professor at Brown University and directing co-founder of the Center for Prisoner Health and Human Rights: “Each of those [elderly prisoners] could potentially occupy an ICU bed and a ventilator that is going to maybe be needed by somebody else to save their life.” [1]

Sources: splcenter.org, theappeal.org, usnews.com

$1.15 Million Settlement After South Carolina Prisoner’s Baby Born, Dies in Toilet

by Ed Lyon

A $1.15 million settlement was reached on January 31, 2020 in the case of a women who gave birth to premature twins, but one died in a prison bathroom.

In 2012, South Carolinian Sinetra Geter was sentenced to two years in prison for violating parole. She discovered she was pregnant just before sentencing. Her pregnancy was confirmed by the for-profit medical providers at Camille Graham Correctional Institution in Columbia. She was upgraded to a high-risk level when medical staff found she was carrying twins. This was Geter’s first pregnancy. She was not knowledgeable about the childbirth regimen. [See PLN, November 2019, p.52]

Six and a half months into her pregnancy, on October 11, 2012 she began having severe abdominal and lower back pains with cramps. Medical staff told her to rest. Guards forced her to go to work instead. She was seen at medical again at 1 and 4:30 p.m. Despite showing physical signs of being in labor, a doctor was never called.

Around 11 p.m. Geter was in severe pain and left her dorm bed for the restroom. Moving slowly, bent over and in obvious pain, neither of the guards observing her called.

The case settled on January 31, 2020. The SCDOC paid out $750,000, Medusustrial with MedFirst, each paid $200,000 for a total of $1,150,000. After attorney’s fees and litigation costs, Geter will receive $654,567.31. See: Geter, et al. v. South Carolina Department of Corrections, et al., Richland County Court of Common Pleas, Case No. 2015-CP-40-07561. [2]

Additional sources: therepublic.com, thestate.com
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

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July 2020
With Lives of Immigrant Detainees at Risk to COVID-19, Federal Judge Forces ICE’s Hand

by Christopher Zoukis

As a result of a ruling June 5, 2020, hundreds of immigrant detainees held by federal Immigration and Customs Enforcement (ICE) in south Florida may have to be released. That day a federal judge for the Southern District of Florida agreed the agency was likely “[shuffling] people around the country to make (its) population statistics...look better on paper” and said she remained skeptical that ICE’s commitment to protect them from COVID-19 “has meaningfully shifted since the start of the pandemic.”

The order by U.S. District Court Judge Marcia Cooke came a month after she appeared to walk back a two-week deadline she had given ICE to release 1,000 detainees in her original ruling April 30, 2020. The detainees were held in three detention centers in southern Florida: the Krome Detention Center (Krome) in Miami, the Broward Transitional Center (BTC) in Pompano Beach, and the Glades County Detention Center (Glades) in Moore Haven. In her April 30 ruling, Cooke excoriated the agency for a “deliberate indifference” to detainees’ risk of contracting the disease that “amount(s) to cruel and unusual punishment.”

However, in a clarification of that initial order issued May 5, 2020, Cooke allowed ICE instead to transfer its at-risk detainees to other detention centers “after first evaluating each detainee and making a determination as to the detainees’ eligibility for release.” Her ruling contained no guidelines for ICE to follow, leaving it up to the agency to make its own determination and sparking outrage from the lead attorney for plaintiffs in the case.

“The court is giving too much credit to ICE to do the right thing here,” said Rebecca Sharpless, director of the Immigration Clinic at the University of Miami. “My fear is that they will not release people and just move them around — a fear that already appears to be well-founded.”

Even before the clarification was issued, ICE had shipped hundreds of detainees from the three detention centers to other ICE facilities, including the Baker County Detention Center in North Florida, the Folkston ICE Processing Center in Georgia, and Pine Prairie ICE Processing Centers in Louisiana.

With her latest order in June, though, Cooke found that ICE had failed to make a good-faith effort to protect detainees from exposure to the disease — neither those transferred by ICE agents who often didn’t wear masks, nor those left behind in facilities still too crowded to practice social distancing — so she reiterated that ICE must comply with her original decision.

While not forced to release any detainees, ICE is still required to dramatically reduce its detainee population at risk for the disease without unnecessary transfers and without mass quarantine — effectively tying the agency’s hands and forcing releases, say attorneys for the immigrant detainees, who celebrated the most recent ruling.

The dizzying parade of orders by Judge Cooke came in response to litigation originally filed by the Southern Poverty Law Center (SPLC) on behalf of 34 immigrant asylum seekers whose underlying health conditions left them particularly vulnerable to COVID-19. All 34 were housed at Krome, BTC or Glades.

Cooke’s initial order mandated that ICE must reduce the “non-criminal and medically vulnerable populations” at the three centers from a combined total of about 1,400 to 350 because of problems detailed at all three facilities.

At Krome, the judge found that “social distancing is currently impossible . . . because the sleeping arrangements and some of the toilet and shower arrangements are too tight to permit it.” The same was determined true for Glades, where “the bunk beds are a paltry 12 inches apart [and] the distance between the upper bunk and the lower bunk is 34 inches.”

“Further, ICE has failed to provide detainees in some detention centers with masks, soap and other cleaning supplies, and failed to ensure that all detainees housed at the three detention centers can practice social distancing,” the opinion continued.

The judge’s newest order makes clear that ICE cannot transfer any detainee from the three centers without first advising the court of its intention to do so in a weekly report that also must include the results of a verbal screening for potential exposure to the coronavirus and a temperature check for the fever that accompanies COVID-19, as outlined in guidelines from the federal Centers for Disease Control and Prevention (CDC).

Moreover, the agency must quarantine new detainees and those suspected of COVID-19 infection — but not yet confirmed by testing — for 14 days, and they must be individually isolated. ICE has been massing quarantined detainees, a practice known as “cohorting,” by transferring all of them to Glades. Cooke’s original ruling looked at the practice and found ICE out of compliance with both CDC guidelines for correctional facilities and ICE’s own Pandemic Response Requirements (PRR).

As a result, ICE is still ordered to provide weekly PRR compliance reports and twice-weekly reports from the three facilities, with details about inmates housed in each. In addition, ICE must comply with CDC guidelines pertaining to providing masks, adequate soap and water, as well as cleaning materials, and the agency must provide COVID-19 educational and training materials to detainees and staff.

Importantly, Cooke’s new order also certifies a class of plaintiffs, not just the original 34, which includes anyone held in any of the three detention centers at any time and for any period since the original lawsuit was filed April 13, 2020. For example, a detainee booked into Krome on April 13, 2020, remains part of the class protected by the lawsuit no matter where he or she is subsequently transferred by ICE.

As of May 7, 2020, ICE reported 674 positive tests for the coronavirus at 41 of over 200 facilities nationwide holding more than 40,000 detainees. Its first detainee death was reported on May 6, 2020: 57-year-old Carlos Ernesto Escobar, a Salvadoran who had been held at OMDC since January.

Some 700 ICE detainees nationwide had been released because of coronavirus-
related concerns. That includes about 35 percent of BTC detainees who were over age 60. In April 2020, the agency said it would receive 2,000 kits monthly to test for the coronavirus from the federal Department of Health and Human Services. As of mid-May, fewer than 2,000 detainees had been tested.

In addition to SPLC, plaintiffs in the Florida suit were represented by attorneys from the Legal Aid Service of Broward County, Inc., Americans for Immigrant Justice, University of Miami School of Law, Rapid Defense Network, King & Spalding, Rapid Response Network and Prada and Urizar PLLC. See Gayle v. Meade, USDC (S.D. Fla.), Case No. 1:20-cv-21553 (May 1, 2020); Gayle v. Meade, USDC (S.D. Fla.), Case No. 1:20-cv-21553-MGC (June 5, 2020).

Additional sources: miamibook.com, nydailynews.com, thecentersquare.com, norwalkreflector.com, kpbs.org

11th Circuit Rules Florida Prisoner Claiming Sexual Assault by Guard Can Proceed With Cruel and Unusual Punishment Claim

by David M. Reutter

The Eleventh Circuit Court of Appeals reversed the grant of summary judgment for defendants in a civil rights action alleging a guard sexually assaulted and used excessive force upon a prisoner.

The ruling, on January 7, 2020, came in an appeal brought by Kirstin Sconiers. His lawsuit concerned events that occurred at Florida’s Marion County Jail on February 12, 2014. Sconiers was serving a sentence for a misdemeanor offense of exposure. On the day in question, he met with his attorney via video conferencing.

Upon completing the conference, guard Fnu Lockhart arrived to escort Sconiers back to his cell. According to Sconiers, Lockhart toyed with him like a yo-yo, telling him to sit and stand three times. When Sconiers questioned Lockhart about the treatment, he was pepper-sprayed and slammed to the floor.

Once on the ground, Sconiers says Lockhart pulled his pants down. Lockhart then forcefully penetrated Sconiers’ anus with his finger. An investigation ensued, but Sconiers hesitated before telling others about the sexual assault due to being embarrassed and an assumption that jail administrators were in league with the guards.

After Sconiers sued, acting pro se, the defendants moved for summary judgment. The district court granted the motion, and Sconiers appealed. Sconiers was represented by counsel on appeal. He argued the district court erred in resolving material issues of fact to enter the summary judgment and applying Boxer X v. Harris, 437 F. 3d 1107 (11th Cir. 2006) to dismiss the sexual assault claim.

The Eleventh Circuit noted that fact finding is reserved for trial and is inappropriate at the summary judgment stage. It held the district court improperly resolved facts related to the sexual assault and the pepper-spray claims.

First, the district court improperly found Sconiers “was fully clothed at all times during the encounter” with Lockhart and that Sconiers did “not state that his clothing was removed to facilitate the alleged assault.” The Eleventh Circuit found that Sconiers’ November 9, 2014, declaration filed in the record stated otherwise. While “Lockhart’s and his fellow guard’s strenuous assertions that this did not happen are true . . . those protestations cannot support summary judgment since Sconiers has sufficiently attested that these events did, in fact, occur.”

It was also held that the district court improperly found that Sconiers “experienced no bodily injury as a result of the attack.” While a medical examination concluded that Sconiers’ pain was from hemorrhoids, that was “not necessarily inconsistent with Sconiers’ allegation that Lockhart analy penetrated him with his finger.” Additionally, Sconiers reported stinging pain and blood on his toilet paper when defecating.

The Eleventh Circuit further found it improper for the district court to resolve facts relating to the use of the pepper spray and takedown. If Lockhart was treating Sconiers like a yo-yo in directing him to sit and immediately stand three times, there was no penological justification to pepperspray Sconiers, which meant the takedown would also not be justified.

The court then noted that its decision in Boxer X was partially abrogated by Wilkins v. Gaddy, 559 U.S. 34 (2010). Boxer X held that sexual abuse claims cannot be actionable if the prisoner did not suffer “more than a de minimus injury.”

The Wilkins court held that in Eighth Amendment excessive-force claims, the court shifted from an injury centric requirement to “the nature of the force — specifically, whether it was nontrivial and was applied maliciously and sadistically to cause harm.” Additionally, in 2013, Congress amended the Prison Litigation and Reform Act to allow sexual abuse claims in the absence of physical injury.

The district court’s order was reversed and the matter remanded for further proceedings. See: Sconiers v. Lockhart, F.3d. (11th Cir. 2020).

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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.
A prison health expert report found that Brooklyn’s Metropolitan Detention Center (MDC) is “not prepared to effectively contain any outbreak of COVID-19 and its practices put detainees and staff at grave risk of infection, serious illness, and even death.”

The April 3, 2020 report was a factor in a criminal defendant facing bank fraud conspiracy charges being sentenced to home confinement.

Dr. Homer Venters toured the 1,700-bed lock-up, interviewed 17 detainees and reviewed prison records. Venters, a medical doctor and epidemiologist, is the former chief medical officer for New York City jails. He was pegged to investigate conditions at MDC, a Bureau of Prisons (BOP) facility, to inform a federal court overseeing a proposed class-action civil rights lawsuit challenging conditions at MDC.

That lawsuit was filed after a January 2019 fire took out the jail’s power and heat. Prisoners were left in frigid conditions for a week. The jail also canceled all visits, including attorney visits. That spawned an ongoing lawsuit by the Federal Defenders of New York. See: Federal Defenders of New York Inc. v. Federal Bureau of Prisons et al., USDC (E.D.N.Y.), Case No. 1:19-cv-00660.

Venters found numerous problems in the administration of medical care at MDC. He noted that nurses do not always respond to a prisoner’s request for medical care and, when they do, they often do nothing more than take the person’s temperature. Two prisoners reported having asthma attacks, but the nurse fails to conduct a basic assessment of listening to their lungs and gauging their breathing.

“These responses raise the concern that MDC is not only failing to provide adequate COVID-19 response, but is failing to provide the most basic assessment of patients in other types of medical distress or emergency,” Venters said. He noted that not only are sick-call requests ignored, they are discarded, which is a “very alarming practice” because it means MDC “does not know how many requests were made, and how many were responded to.”

He also cited the cases of two detainees who reported “shortness of breath, chills, weakness to the extent he could not get out bed, and loss of taste and smell — all of which are signs of COVID-19 infection.” Those detainees made several requests for care that were ignored and when a nurse responded, one detainee’s temperature was taken. A normal reading resulted in the prisoner being placed back on his unit.

Venters found a “gross deviation” from the Centers for Disease Control and Prevention and prison health-care standards. “The MDC’s response to COVID-19 is largely reliant on a broken sick call system that does not function adequately,” Venters said.

U.S. District Judge Richard M. Berman noted MDC’s “deficient system” at the sentencing of Terrance Morgan, who pleaded guilty in October 2019 to conspiracy to commit bank fraud for a scheme to steal $2.5 million from a law firm’s bank account.

“I have to say it’s a very serious document. It’s not surprising to me. I’ve personally become acutely aware of the deficiencies at . . . MDC,” Berman said about Venters’ report. While Berman did not say MDC’s conditions were the reason for sentencing Morgan to 14 months’ time served, three months of home confinement, and four years supervised release, it was clearly a factor.

Berman said Venter’s report requires a response from BOP. The response, however, was to move to strike the entire report in the civil case or to depose Venters for a second time. See: United States v. Morgan et al., USDC (S.D.N.Y), Case No. 1:19-cr-00209.

Additional source: law360.com

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Oklahoma Jail Sued for Mocking Prisoner as He Died

Surveillance video released in January 2020 from the Ottawa County Jail in Miami, Oklahoma, provides graphic evidence of the neglect and abuse suffered by detainee Terral Ellis at the hands of jail staff in the days leading up to his death from septic shock and pneumonia in October 2015. The new video and audio evidence corroborated details provided to an attorney for Ellis’ family by at least 16 former prisoners who were in jail at the time he died and agreed to testify on his behalf.

“It’s a horrific, horrific death,” said Dan Smolen, an attorney specializing in jail death cases who is representing the Ellis family. “It’s jarring.”

Smolen filed a federal lawsuit on behalf of the Ellis family in the U.S. District Court for the Northern District of Oklahoma in 2017 against the county, the sheriff’s office and the jail’s nurse contractor. See: Burke, et al v. Ottawa County, U.S.N.C. (N.D. Okla), Case No. 17-cv-00325-JED-FHM.

Using descriptions from Ellis’ fellow inmates written two days after his death, the suit lays out its gruesome details.

On October 10, 2015, the 26-year-old Ellis took his grandfather’s advice and turned himself in to the jail on an outstanding warrant for an old DUI. He wanted to get his life on track and be an example to his toddler son. But twelve days later Ellis was dead, after jailers repeatedly mocked and ignored his pleas for help as he died.

Ellis entered the jail a strong, healthy man, but a few days later video captured by the jail’s surveillance system showed him bedridden, with his cellmates having to take care of him. Medical staff had diagnosed him with a “displaced rib” and told him to stay in bed.

“I literally had to hand-feed and water him,” wrote Michael Harrington, one of Ellis’ cellmates, in testimony to the court filings. “It got so bad that I had to give him cups to urinate in and then dump them out for him.”

Harrington wrote that Ellis said to him, “They’re not going to help me, are
they? I think I’m going to die.”

But before he did, Ellis got worse. He had a seizure, but staff accused him of faking it. When paramedics arrived, jail staff told them not to transport Ellis unless his condition was life-threatening. EMS did not fully evaluate Ellis before they left him at the jail because staff promised to monitor him closely.

When Ellis began begging for help, staff locked him in an isolation cell for some “cool-down time.” The cell reportedly had no sink, no toilet and no bed. Jail staff was supposed to check on him every 15 minutes, but the newly released video showed that they did not — contradicting official jail log reports to the contrary.

Early on the morning October 22, 2015, video showed Ellis asking staff for water. Detention Officer Johnny Bray refused, telling Ellis to get it himself. Ellis begged staff not to leave him.

“My legs! Please! Please don’t go anywhere,” he yelled. “Please dude. Wait, dude. I can’t believe y’all are doing this! Help! Help! Help! Somebody help!”

Staff ignored him. When jail contract nurse Theresa Horn arrived at work later that morning, Ellis begged her to look at his legs. They were turning “black” and mottling, an early sign of sepsis.

“I think I’m dying,” Ellis said.

Horn put in her report that she checked on Ellis, but video evidence showed that she wasn’t even at work when she supposedly checked on him, the complaint says.

“I’m sick and tired of f--king dealing with your ass,” Horn allegedly yelled at Ellis. “There ain’t nothing wrong with you!”

Those would be some of the last words Ellis heard before he died. Not only did the jail’s surveillance system capture video, but it also recorded audio, and all of the recordings of Ellis’ pleas for help were filed with his lawsuit in court. So were all of staff’s comments mocking him over the hundreds of hours of video and audio obtained by Smolen.

Horn can be heard on the video suggesting that Ellis died by suicide. The medical examiner determined that he died from septic shock, though it was also noted that Ellis had “a bedsheets tied loosely around his neck” that had left no marks.

“If you don’t have (the recordings), this is just some kid who died in jail because he got sick,” Smolen said. “I want people to understand this is happening, every day, all day long, in jails across the United States.”

While the county admitted that jail guards and the nurse didn’t follow department policy, its attorneys argued that Smolen “cannot show that any delay or denial of medical care was caused by any policy, practice or custom of the Ottawa County Jail,” and they asked to be dismissed.

Former Sheriff Terry Durborow, who was in office at the time of Ellis’ death, directly blamed the nurse in his recorded deposition.

“She refused to even go back in there and check on the guy,” he said. “She refused to do her job.”

Horn’s lawyer called her lack of care to Ellis an “inadvertent failure to provide adequate medical care” that “does not in itself amount to a constitutional violation.”

The Ellis lawsuit is still pending.

Sources: washingtonpost.com, tulsaworld.com, cbsnews.com, miamiok.com, publicradio.tulsa.org
Orleans Parish Sheriff, Wellpath, Sued Over Louisiana Jail Prisoner’s Fatal Overdose

by Matt Clarke

The mothers of three children of a prisoner who died of an overdose of fentanyl while incarcerated at the Orleans Justice Center, the Parish’s jail, have filed a lawsuit against employees of the Orleans Parish Sheriff’s Office (OPSO) and Wellpath (the jail’s contract provider of prisoner medical and mental health services), alleging they caused the prisoner’s death.

According to court documents, Edward Patterson was arrested on attempted murder charges in January 2015 and booked into the jail. On November 26, 2018, while still at the jail awaiting trial, he engaged in “abnormal behavior” after he was seen smoking an “unknown substance” and was taken to University Medical Center. By the time he arrived at the hospital, he had stopped displaying symptoms, so he was returned to the jail and to the same tier where he had obtained the drugs.

Five days later, another prisoner told jail staff that Patterson was unconscious on the floor of his cell. Instead of calling an ambulance, staff administered naproxen and performed CPR for a half-hour. Finally, they summoned emergency medical transportation. It was too late. He was pronounced dead after arriving at the hospital.

Aided by Metairie, Louisiana attorneys Wesley J. Blanchard and Eric J. Santana, the three mothers of Patterson’s three minor children filed a federal civil rights action pursuant to 42 U.S.C. § 1983 on November 27, 2019.

The lawsuit alleges OPSO and Wellpath employees failed to protect Patterson. The lawsuit specifically alleges that OPSO personnel failed to properly screen people being booked into the jail and Wellpath employees for drugs and that an unnamed Wellpath employee and a person booked into the jail smuggled into the jail the drugs that resulted in Patterson’s death.

It also alleged OPSO staff failed to properly monitor the prisoners’ living area, either in person or by video, and failed to prevent the overt use of drugs in the living area. It further alleged inadequate medical and mental health services at the jail, a lack of treatment for drug addiction, and inadequate training and supervision of personnel responsible for screening and monitoring prisoners and providing medical services.

Patterson was one of 20 prisoners who overdosed or were found unresponsive at the jail during six months in 2018, according to the report of federal court monitors in a previous civil rights action brought by the U.S. Department of Justice and Southern Poverty Law Center against OPSO that was settled by consent decree.

The monitors noted improvements in the provision of medical care at the jail but “lack of progress” in providing mental health services and acute medical care. During the same period, painkillers were found in the pocket of a prisoner who was transported to the hospital and two prisoners were given naloxone, a drug to counteract opioids, after being found unconscious. See: Johnson v. Gusman, USDC (E.D. La.), Case No. 2:19-cv-13949-MLCF-JCW.

Additional source: theappeal.org

Interview: Alec Karakatsanis of the Civil Rights Corps on Money Bail and Debtors’ Prisons

by Ken Silverstein

Alec Karakatsanis is the founder and executive director of the Washington, D.C.-based Civil Rights Corps. He previously worked as a civil rights lawyer and public defender with the Special Litigation Division of the Public Defender Service for the District of Columbia and as a federal public defender in Alabama, representing impoverished people accused of federal crimes. He also co-founded the nonprofit organization Equal Justice Under Law.

When was the Civil Rights Corps founded and what are its main goals?

Civil Rights Corps was founded in 2016, and its main goals are to use innovative litigation, advocacy, and storytelling to dismantle the criminal punishment bureaucracy. The goal is to desensitize people to the everyday brutality of the system and to highlight that the system is set up to serve the interests of white supremacy and wealth.

How big of a national problem is the money bail system? Can you briefly describe a particularly egregious case CRC is challenging?

The money bail system detains about 400,000 human beings in cages every single night, solely because they cannot make a monetary payment. Millions more each year are released, but their families have to pay billions to for-profit commercial bail-bond companies who profit off of their misery. We just won a case in Harris County, Texas, which will save almost 20,000 people from being jailed every single year in the Houston metro area alone. Prior to our lawsuit, bail hearings lasted just a few seconds, people had no lawyers, and tens of thousands of people were detained for the entire duration of their case each year just because they couldn’t afford a few hundred dollars. This is standard practice in thousands of jurisdictions across the country.

But the problem is not just money bail. It is the related systems of pretrial detention and for-profit supervision. As we start to win the fight against money bail, many jurisdictions are trying to find ways to keep the same people in jail using different practices, for example by calling them “dangerous” and denying bail or by misusing “risk assessment tools.” Similarly, jurisdictions are trying to control and surveil the people they release with drug testing, home confinement, forced treatment, and electronic incarceration using GPS devices and phones. Much of this charges people for their own surveillance, racking up more cycles of debt.

Your website describes the criminal...
legal system as “an assembly line that normalizes modern debtors’ prisons and
that uses the mass processing of criminal
cases to generate revenue on the backs of
the poorest people in our society.” Can you
describe a concrete example?

Civil Rights Corps, in partnership with
ArchCity Defenders and the Saint Louis
University School of Law Legal Clinics,
filed a landmark challenge to the City of
Ferguson's conversion of its legal system
into a mechanism for generating rev-

We began litigation, advocacy, and
communications work with our partners
and clients around the country as soon as
the pandemic hit. We have worked with
local organizers, incarcerated people and
their families, public defenders, and other
nonprofits around the country to bring class
action challenges to conditions in the jails
in Miami, Chicago, Los Angeles, Dallas,
Houston, Detroit, and several other places,
including Oakland County, Michigan, and
Prince George's County, Maryland. We are
trying to work with our clients and their
families to tell the truth about what our
society does to human beings in our cases,

Do you think the protests over George
Floyd's death and police violence in gen-

How is the COVID-19 pandemic
impacting your work and what action is
CRC taking on that front?

How are the COVID-19 pandemic
impacting your work and what action is
CRC taking on that front?

Is any notable reform possible given
that there are so few members of Con-
gress who seem willing to go very far on
the issue?

I do not expect Congress to do any-
thing other than to try to undercut the
energy that we are seeing in the streets. They
will do nothing meaningful unless a larger
movement forces it, and that’s why all of
our energy must turn toward asking how
we can each help contribute to that larger
movement.
Taxpayers of the state of Indiana will pay $425,000 to prisoner Jay Vermillion as the result of an agreement reached on October 21, 2019, between him and employees of the Indiana Department of Correction (IDOC). This agreement settled Vermillion’s § 1983 lawsuit alleging the IDOC employees unlawfully placed Vermillion in solitary confinement for 1,513 days; illegally confiscated, lost or destroyed all of his personal property; and denied his due process rights at three prison disciplinary hearings.

According to Vermillion’s suit, in July 2009, he was incarcerated at the Indiana State Prison (ISP) when investigators from the IDOC Internal Affairs Office informed him they were going to have criminal charges filed against him because they believed he was involved in the escape of three men from ISP that occurred earlier that month. Vermillion then exercised his constitutional right to cease answering the investigators’ questions. Ten minutes later, at the behest of the investigators, Vermillion was placed in ISP’s punitive segregation unit because of his refusal to answer their questions.

Two days later, Vermillion received a conduct report charging him with the offense of “trafficking” with ISP Counselor Don Bates in the Honor Housing Unit (where Vermillion was housed before being sent to the punitive segregation unit). However, the date and time the alleged trafficking occurred was while Vermillion was in the investigators’ office being questioned by them.

Vermillion told ISP Officer Dawn Walker that the investigators and other named employees could establish his whereabouts on the date and time of the alleged offense. Walker stated she would assist in obtaining statements from these employees, but she never did. On August 12, 2009, Disciplinary Hearing Board Chairman Bessie Leonard found Vermillion guilty of the charged offense at a hearing in which Vermillion received no advance notice, wasn’t permitted to call witnesses or present evidence, and denied a decision supported by “some evidence.”

Even though 30 days was the maximum allowable sanction, Leonard sentenced Vermillion to one year in disciplinary segregation. An hour later, Vermillion was transported to the Westville Correctional Unit (WCU), a super maximum-security facility. For the next three-and-a-half years, Vermillion faced complete isolation in a solid “concrete tomb” for 23–24 hours a day with no direct contact with others. He endured mace fumes, no recreation, no telephone, no work or income, other prisoners’ suicides, no religious services, no hot water, no hot meals, regular cell ransacking, and repetitive strip searches.

In the meantime, his appeal of the disciplinary offense made its way up the chain, each time being affirmed. In September 2010, the final reviewing authority, Charles Penfold, affirmed the conviction. It also was during this time that, in response to Vermillion’s requests for information on why he was being housed at the facility, WCU Director of Operations Gary Brennan ordered the destruction of all of Vermillion’s personal property — including photographs of his deceased wife and of his child.

In March 2011, Vermillion filed a petition for writ of habeas corpus in an effort to obtain relief from the bogus charge and punishment. Penfold then issued an unsolicited “second opinion” vacating the conviction and ordering a re-hearing. Subsequently, the habeas petition was dismissed.

The re-hearing was conducted in the exact same manner as the first, and with the same result. Perhaps most disturbing about this suit is that this process of a constitutionally inadequate hearing, guilty finding, punishment, affirmance on appeals, filing a habeas petition, issuance of second opinion, dismissal of habeas, and another re-hearing was repeated three times. Finally, in February 2014, instead of conducting a third re-hearing, IDOC authorities dismissed the charge and ordered the entire matter expunged from Vermillion’s record.

Despite the fact that Indiana law says the maximum allowable term of solitary confinement is 30 days; in spite of the fact that IDOC officials were aware that Vermillion’s due process rights were blatantly violated; and in spite of the fact that the IDOC agreed to settle the suit, IDOC spokesman Dave Bursten said, “We continue to deny any fault, wrongdoing, or liability with respect to this litigation.” See: Vermillion v. Plank, USDC (S.D. Ind.), Case No. 1:15-cv-605.

Additional source: indystar.com

Policy Change Leads to Gang Riot at Utah Prison

On January 11, 2020, a group of about a dozen protesters gathered outside the administrative offices of the Utah Department of Corrections (UDOC) in Draper. They were there to express their anger over a policy change, one that ended a five-year-old effort to segregate members of the rival Sureño and Norteño gangs in the state prison system and resulted in a bloody riot at Central Utah Correctional Facility (CUCF) on November 6, 2019.

Roni Wilcox helped to organize the protesters, all of whom are related to prisoners at the Gunnison facility. After the November riot left her loved one stabbed nine times, she and Sue Steel, the wife of another prisoner, reached out to 30 politicians to discuss the policy change that put prisoners’ lives in jeopardy. Of the 30, only UDOC Public Information Officer Kaitlin Feldsted responded, issuing a statement that said UDOC constantly works to increase the security and safety of prisoners while helping them move away from gang activity and toward successful reentry.

Feldsted’s statement included a list of measurements to be implemented, which included new conflict resolution programs and new security equipment for better contraband and weapons controls. But Wilcox...
and Steel said even the guards at the Gunnison facility were concerned because the measures listed in the statement were not to be implemented until after the schedule change occurred.

“T’m scared for my officers,” Wilcox recalled one sergeant said to her. “T’m scared for what is going to happen to the inmates and the officers. We know how bad this could be. We don’t want this to happen.”

Wilcox and Steel readily admit that their loved ones incarcerated at the prison are gang members. But this is not so much a matter of choice for these men as it is an accident of birth: They were born into gangs that their fathers and grandfathers also belonged to. Walking away from that is not as easy as it sounds, they stress.

On the day of the November riot, without any precautionary measures yet in place, cell doors opened and a violent confrontation between four gang members ensued. A CUCF prisoner was able to report details of the aftermath in a letter he was writing: armed guards in bio-hazard suits, prisoners lying in pools of blood, and crowd-control grenade burn marks on the floors.

“It’s never acceptable to put human beings in a situation knowing that they’re going to assault each other and stand back and watch. That’s not OK,” said Wilcox, who added that the prisoner related to her was stabbed nine times the morning of the riot.

Two years earlier at the state prison in Draper, another gang fight occurred in a similar situation that left three prisoners critically wounded from homemade shanks.

“Every inmate deserves to live safely within the prison system, whether they are incarcerated for life or until reentering the community and successfully exiting the criminal justice system,” wrote UDOC director Mike Haddon in a letter to prisoners’ families.

The segregated schedule for the two gangs was never intended to be permanent, he said, but rather designed to buy time for UDOC to put other measures in place: improved security to keep contraband and weapons from entering prisons, faster response to altercations by guards, as well as training to “give a gang-involved inmate constructive tools to work through conflicts without violence.”

Moreover, the old policy had limitations that Haddon called “problematic”: It separated members of just two gangs, and it limited their access to programs, treatment and work opportunities, which could delay their release dates. As a result, he urged family members to get behind the new policy and encourage their incarcerated loved ones to “disengage from the behaviors associated with inmate violence.”

At the protest, prisoners’ loved ones shared news of a fight at the Draper facility five days earlier on January 6, 2020. UDOC’s Felson said that a fight had taken place that day, though there was a fight the next day, January 7, 2020, which put a prisoner in the hospital.

Then, after protesters left, another brawl broke out on January 11, 2020, which left seven Draper prisoners injured and another in the hospital. Felson said the cause—though unknown—was unrelated to the schedule change. In fact, she insisted, while altercations continue to occur in the prison, their frequency has declined since the new policy ended the old segregated schedule.

Sources: gephardt daily.com, abc4.com, sltrib.com
Thirty-six-year-old Ashley Via Menser of Lebanon, Pennsylvania, is battling both cervical and ovarian cancer from prison after being convicted and sentenced in January 2020 for shoplifting $109.63 worth of groceries.

As her case progressed through court, her cancer progressed, too. She was scheduled for an oncology appointment at Hershey Medical Center on the afternoon of January 22, 2020, prior to having a hysterectomy to remove the aggressively encroaching cancer. Without the surgery, Menser’s prognosis was dire: She would be dead inside of a month.

“She has no choice, it’s life or death,” said her mother, Stephanie Bashore. “The doctors sat there and told us this.”

But first Menser had to face a judge for sentencing on her conviction of shoplifting from a Weis Markets store in September 2018. Her lawyer, Robert Scot Feeman, had high hopes that Lebanon County Common Pleas Court Judge Samuel A. Kline would delay or defer sentencing in the case so that Menser could keep her medical appointment.

Judge Kline was unswayed, sentencing Menser to state prison for a term of 10 months to seven years. Bashore said the sentence left her daughter in shock.

“She’s just sitting there, all upset because she thinks she’s going to die in jail,” Bashore said.

Eight days later, on January 31, 2020, Pennsylvania Lt. Governor John Fetterman took to Twitter on Menser’s behalf, calling on Kline to grant Menser mercy. The prosecutor did not recite any facts from Menser’s medical record, such as her nine-year battle with ovarian cancer nor a diagnosis for post-traumatic stress disorder for which she had been taking prescribed medication for years.

On February 6, 2020, Judge Kline denied Menser’s motion for a sentence reduction, ruling that “defendant has failed to provide additional information which would effect the decision of the Court.” In accordance with his earlier directive, Menser was moved to the State Correctional Institute in Muncy.

Lebanon County prosecuting attorney Pier Hess Graf responded to Fetterman’s tweets by defending Kline’s sentencing in the case, pointing to prior non-violent convictions on Menser’s record—a total of 13 for shoplifting as well as welfare fraud and endangering the welfare of children.

“I felt it necessary to respond, given the lack of factual information, which seem to permeate the majority of comments, articles or ‘tweets’ about Ms. Menser and her case,” Graf said.

The prosecutor did not recite any facts from Menser’s medical record, such as her nine-year battle with ovarian cancer nor a diagnosis for post-traumatic stress disorder for which she had been taking prescribed medication for years.

A 2016 estimate by the federal Bureau of Justice Statistics said cancer contributed to 22 percent of all U.S. prisoner deaths. It is the leading cause of death in Pennsylvania’s state prison system.

Fetterman has so far not yet asked Pennsylvania Gov. Tom Wolf (D) to grant a pardon in the case.

Sources: lancasteronline.com, wgal.com, usatoday.com

Maine Court Rules Prisoner’s Rights Violated by 22 Months in Segregation Without Meaningful Review but Awards No Damages

On September 24, 2019, a Maine state court found that a state prisoner’s rights were violated when he was held in segregation for 22 months without “meaningful periodic review.” However, the court denied the prisoner’s request that it impose limitations on the Maine Department of Correction (DOC) concerning the duration that prisoners can be subjected to segregation, nor did it award him damages.

In September 2014, at the behest of Maine State Prison Deputy Warden Troy Ross, prisoner Douglas Burr was placed on Emergency Observation Status in the Special Management Unit—essentially the most restrictive form of segregation in the DOC. Over a month later, a disciplinary hearing was held during which he was accused and convicted of smuggling drugs into the prison.

There were numerous irregularities in the disciplinary process. The disciplinary infraction was not written within the time limits of DOC Policy 20.1. No evidence was presented, and no witnesses testified at the hearing.

The hearing officer did not receive the training required by Policy 20.1. The hearing was not held in a timely manner. Nonetheless, Burr was found guilty and sentenced to 30 days in disciplinary segregation, loss of 20 days of good conduct time, and a $100 fine.

Burr continued to be held under the most restrictive conditions for 10 months. During that time, he was locked in an 8-by-12-foot cell except for five hours of recreation—in shackles—each week. He was allowed three showers, one non-contact visit, and one phone call each week.

He was held another 12 months in segregation under slightly less restrictive conditions. He was repeatedly told he would not be released from segregation.
until he admitted to smuggling contraband into the prison. Nonetheless, he maintained his innocence.


On March 23, 2015, the court issued an order finding that the DOC could not hold Burr in segregation indefinitely. On January 27, 2017, the court issued an order granting defendants summary judgment on the issue of damages and denying them summary judgment based on mootness. The court specifically found that the matter was one of great public concern and the mootness exception applied so that the claim was still alive despite the fact that Burr had been released from segregation.

At trial, Burr presented video testimony from prison expert Larry Reid. Burr also testified about the harshness of conditions in segregation. Guard Captain John Howlett testified that he repeatedly recommended Burr for release from segregation because “to be honest with you, I never had any problem with him,” but he was overruled by Ross each time.

The court found that there was nothing in the record to indicate that Burr ever physically attacked anyone or made threats of violence in the months before he was placed in segregation or that he engaged in misconduct of any kind while in segregation. Thus, his lengthy retention in segregation without meaningful periodic review violated his rights under Rule SOC.

The court had previously ordered his forfeited good conduct time restored and fine rescinded. It repeated that order, but found—in light of significant improvements to the DOC’s segregation procedures during the pendency of the case prompted by Frontline’s “Solitary Nation” report—it could not order changes in DOC policies or impose a cap on the duration of segregation. See: Burr v. Bouffard, Me. Superior Ct., Kennebec Co., Case No. cv-AP-14-57. Additional source: bangordailynews.com

New Jersey Jail Detainee Dies While Reportedly Begging for Water

by Douglas Ankney

Forty-one-year-old Atlantic County jail detainee Mario Terruso, Jr. died after coughing up blood and begging for water, according to a report in nj.com in September 2019.

Alan Wright, who knew Terruso for about 15 years, was working as a jail runner delivering food trays and cleaning carts when he saw Terruso in the admissions area.

Wright said Terruso was sweating profusely and “heaving every 30 to 60 seconds” while begging two nurses for water. The nurses were laughing and accusing Terruso of feigning illness in order to be taken to the hospital, the story said. One of the nurses asked Wright if Terruso “acts like that on the street.” According to Wright, Terruso went about an hour without receiving medical attention.

Then Terruso was suddenly placed into an ambulance. After learning that Terruso had died at the AtlanticCare Regional Medical Center around 1 a.m., Wright contacted his wife to post what he’d witnessed on Facebook. Wright also stated he heard jail guards bragging afterward that they had repeatedly punched Terruso in the face.

Wright was later contacted by the Office of the Attorney General. A spokesman from that office confirmed that the death was being investigated but no disciplinary action was imposed against jail personnel. Terruso was taken to the jail due to failure to appear in court on a family matter.

Source: nj.com
ON February 10, 2020, cybersecurity research team vpnMentor reported the discovery of an unsecured cloud storage server containing data from JailCore, an online management and compliance application used by jails to streamline functions like logging prisoner checks. While some of the information generated is public, other information is potentially sensitive or protected by federal medical information privacy laws.

The vpnMentor team, led by Noam Totem and Ran Locar, discovered the data security breach on January 3, 2020, while conducting a large web-mapping project. What it came upon was a data “bucket” on an Amazon-hosted S3 server that was “completely unsecured and unencrypted,” containing just over 36,000 files generated by JailCore software. Anyone browsing the web who happened upon the right URL could access all of the bucket’s contents.

This included nonpublic logs noting dates and times prisoners used the bathroom, received a meal tray or were given prescription medications, along with the name and dosage of each drug, as well as the name—and sometimes the signature—of the jail staffer administering it. Much of the information is covered by federal medical information privacy protection laws. The files also contained public information on prisoners, such as names, birthdates, and mugshots.

Founded in 2017 and based in Brentwood, Tennessee, JailCore is a subsidiary of CRS Technologies, LLC, which also owns Correctional Risk Services, a provider of medical insurance to jails that covers healthcare services for prisoners and detainees requiring offsite treatment. It was founded in 2004 by Steve Kreal, who still maintains the employee-health benefits company he founded in 1983, Stephen M. Kreal and Associates.

In addition to JailCore’s unencrypted server, vpnMentor was unable to find a privacy policy or terms of service for JailCore, which it called “odd” for technology firm. According to vpnMentor, the exposed information could help a thief steal the identity of a prisoner, and the lack of normal lines of communication would delay a prisoner’s discovery of the theft. The company did not open all the files in the bucket, but those it accessed came from jails in Florida, Kentucky, Missouri, Tennessee, and West Virginia.

The research group first informed JailCore directly about the data breach on January 5, 2020. After JailCore refused to accept disclosure of the findings, vpnMentor informed the Pentagon on January 15, 2020. By the next day, the leaky S3 bucket had been secured.

JailCore issued a belligerent response, claiming that most of the entries in the database were dummy entries used to test it and that only a few logs tracked real prisoners’ medication. It also claimed that prisoners have no privacy rights and—are in fact property of the county in which they are jailed.

“These are incarcerated individuals, not free citizens,” read a statement from JailCore founder and CEO D. J. Kreal, who is the son of Steve Kreal. “Meaning the same privacy laws that you and I enjoy, they do not. I would implore you to get all facts straight before writing/publishing anything. You cannot look at this like an example of a private citizen getting certain private information hacked from the cloud. These are incarcerated individuals who are PROPERTY OF THE COUNTY (this is even printed on their uniforms) ... they don’t enjoy our same liberties.”

Of course, jail inmates are not county property, only their uniforms are. Prisoners’ medical records are also protected by the same federal privacy laws that protect free citizens. Further, many are pretrial detainees who have not been convicted of anything and enjoy most of the same rights as those outside of jail.

In April 2020, the younger Kreal announced a new app to help jails assess and track individuals infected with the coronavirus that causes the COVID-19 disease. Kreal said the product “is designed to be extremely intuitive so very few mistakes are made.”

Sources: vice.com, vpnmentor.com, correctionalnews.com, bizjournals.com

NaphCare, Oregon Jail’s Private Healthcare Provider, Required to Disclose Records in Detox Death Suit

by Mark Wilson

AN Oregon federal court in January 2020 compelled NaphCare, Inc., the private medical care provider for the Washington County Jail (WCJ) in Hillsboro, to disclose lawsuits and financial records in a wrongful death action stemming from the June 2017 detox death of a detainee.

County officials terminated a jail health-care contract begun in 1998 with Corizon Health, Inc., following a $10 million damage award against the county and the Tennessee-based firm for the 2014 withdrawal-related death of a jail detainee. [PLN, May 2019, p.35]. Since then, the contract has been awarded to Alabama-based NaphCare, Inc., a private, family-owned company providing health care to more than 80,000 prisoners in 53 city and county jails and federal prisons throughout the nation.

On June 25, 2017, Dale Thomsen was booked into the WCJ, and NaphCare registered nurse Kathy Dement conducted an intake medical screening. She did not identify any signs of alcohol abuse or possible detox, court records show. But that evening Tammy Thomsen, wife of the 58-year-old, called the jail to warn that her husband had previously suffered a brain injury and currently suffered from a seizure disorder and alcoholism.

Tammy Thomsen made additional attempts to warn jail staff in the following days that her husband would need medical attention once he inevitably began to detox. WCJ officials had previously estimated that 80 percent of detainees entering the jail were at risk of suffering drug or alcohol withdrawal while in custody, and NaphCare’s contract specifically includes a responsibility to provide monitoring and programming for inmates “in the throes of detox.” Neverthe-
less, it is unclear whether her concerns were reported to NaphCare medical staff.

During the early morning hours of June 28, 2017, guard Jeff Smith reported that Dale Thomsen was hallucinating. Smith asked NaphCare licensed practical nurse Katie Black to evaluate Thomsen because he was "not acting normal." Black saw that Thomsen was "very hyper verbal and anxious," continually calling Smith "Jim" and asking him to "tell Debbie I'm going to be late." She also noted that Thomsen had elevated blood pressure and a rapid pulse.

Black sent an alert to require follow-up monitoring of Thomsen's abnormal vital signs and schedule him to see mental health staff. However, an alleged error in the NaphCare scheduling system prevented the mental health evaluation request from being seen until the next business day. Smith reported that "medical" determined that Thomsen was not detoxing but ordered him moved to a single cell.

By 7:30 a.m. on June 28, 2017, Thomsen became disruptive, talking to himself and kicking his cell door. He appeared confused and angry, complaining that he had been kidnapped and mistaking a blanket tied around his waist for a shirt. Guards moved Thomsen into an intake holding cell, where he continued "yelling obscenities" while ramming and kicking his cell door repeatedly for over three hours beginning around 8:30 a.m.

At about 11:48 a.m., a guard discovered that he had collapsed. WCJ staff performed CPR and other resuscitation measures until paramedics arrived. Thomsen was transported to a hospital where he was pronounced dead of cardiac arrest.

On behalf of her late husband's estate, Tammy Thomsen brought a federal lawsuit against NaphCare, Washington County and several individual WCJ employees. A decade's worth of documents were sought from NaphCare to determine its history and policies regarding prisoners suffering detox. After several months, Thomsen's attorneys moved on January 21, 2020 to compel the company to comply with their request.

NaphCare objected, claiming that the request was vague, overbroad and that any information from previous litigation was already a matter of public record that Thomsen's attorneys could access. But the court granted the motion, although it limited the time covered to a period beginning three years before Thomsen's June 2017 death.

Meanwhile a concurrent battle was being waged over five years' worth of financial records that Thomsen's attorneys sought to determine NaphCare's worth for purposes of requesting punitive damages. NaphCare resisted disclosure, arguing that the request came too soon and wasn't appropriate "until plaintiff has made a prima facie showing of entitlement to recover punitive damages." NaphCare also objected to disclosure of past records, arguing that only current financial information is relevant to the punitive damages issue.

Citing Prueitt v. Erickson Air-Crane Co., 183 F.R.D. 248 (D. Or. 1998), the court held that a prima facie showing is not required, but it agreed with NaphCare that five years was too long a period, and it limited the company's disclosure to financial documents for its current fiscal year. The court was also careful to note that additional financial information may be subsequently discoverable. See: Thomsen v. NaphCare, Inc., USDC (D. Or.), Case No. 3:19-cv-00969. [1]

Additional source: oregonlive.com
Federal Court Allows Lawsuit Over Sexual Assault of Female Connecticut Prisoner to Proceed

by Matt Clarke

On October 8, 2019, a federal court denied summary judgment on some claims against seven Connecticut Department of Corrections (DOC) supervisory personnel who Cara Tangreti, a former prisoner at the state’s only women’s prison, alleged placed her in danger of repeated sexual assaults. Four guards were fired and three prosecuted for the sexual assaults, but none were named as defendants in the lawsuit.

“Cara was addicted to opiates and wrote bad checks against her stepfather’s account. She was in a minimum security drug treatment program trying to get help,” said Providence attorney Antonio Ponvert III, who represents her. “For that, she received what amounts to a life sentence.”

In February 2014, Tangreti was incarcerated at the York Correctional Institution, which has 425 acres containing numerous buildings. She was housed in the Davis Building, a stand-alone, minimum-security 85-bunk building. Three guards were assigned to Davis at all times—one upstairs, one downstairs, and one “rover.”

According to her complaint, soon after she arrived at Davis, guard Jeffrey Bromley sexually assaulted and raped her numerous times. These sexual assaults occurred in blind spots, areas not covered by cameras at Davis, frequently in the building’s laundry, his office, or the basement.

Tangreti used a note to report this “relationship” to another guard, Daniel Crowley. Instead of acting on the information, he kissed her on the mouth and threw away the note. Independently, Bromley told Crowley about the “relationship.” The latter also failed to act on that information.

At least five other guards and Davis Counselor Supervisor/Unit Manager Christine Bachmann knew about the improper “relationship” and did nothing to stop it or report it, the complaint alleged.

In the fall of 2014, Bromley was transferred away from Davis because another prisoner complained of sexual assault and harassment. Then guard Matthew Gillette allegedly raped her. Guard Kareem Dawson also allegedly sexually assaulted Tangreti multiple times.

After Tangreti was finally able to report the abuse, an investigation ensued and Bromley, Gillette, Dawson, and Crowley were fired. All but Crowley were also criminally prosecuted. The internal investigation substantiated wrongdoing on the part of prison personnel.
Tangreti filed a federal civil rights action pursuant to 42 U.S.C. § 1983, alleging Eighth Amendment violations, with pendent state claims of recklessness and intentional infliction of emotional distress (IIED) against the supervisory personnel. The defendants moved for summary judgment.

The court held that DOC Commissioner Scott Semple, DOC PREA Director/Coordinator David McNeil, York Warden Stephen Faucher, York Deputy Warden Stephen Bates, York Administrative Operational Lt. Douglas Andrew, and York PREA Compliance Lt. Modikiah Johnson were entitled to qualified immunity on the Eighth Amendment claim as Tangreti had not shown that they were responsible for the guards who sexually assaulted her, or did not respond appropriately to her reported sexual assaults when informed of them. Although those defendants knew about the lacking cameras and blind spots, Tangreti had not proven that their slow movement toward acquiring cameras was an unreasonable response that caused the sexual assaults.

The court did not grant summary judgment to Bachmann who had an office on the same floor with Bromley, saw indications of the inappropriate “relationship” and failed to report it because she “did not consider this to be a serious incident.” Further, she admitted knowing he was “being too close to the inmates” and “always walking the line of inappropriateness.” Therefore, the court found there was sufficient evidence that Bachmann “was aware of a substantial risk of sexual assault, generally at Davis, specifically by CO Bromley, and specifically against Ms. Tangreti.”

The court found that a reasonable juror could conclude there was an affirmative causal link” between Bachmann’s failure to report what she knew and the sexual abuse of Tangreti. Therefore, she was not entitled to qualified immunity on the Eighth Amendment claim at this stage of the litigation.

Because the claim against Bachmann kept the federal case alive, the court analyzed the state claims against all the defendants. The court granted summary judgment on the IIED claim to all of the defendants except Johnson, who allegedly sexually harassed Tangreti. It denied summary judgment to all defendants on the recklessness claim, noting that the evidence could conceivably support a claim of recklessness.

Thus, the lawsuit is proceeding against all seven defendants for recklessness and additionally against Johnson for IIED, and against Bachmann for Eighth Amendment violations. The trial is set to begin September 2, 2020. See: Tangreti v. Semple, USDC (D. Conn.), Case No. 3:17-cv-0142O-MPS.

Additional source: courant.com
On January 31, 2020, the Ninth Circuit Court of Appeals reversed the grant of summary judgment in a civil rights action alleging a guard at California’s Kern County Jail (KCJ) made sexual comments to a female juvenile detainee, groomed her for sexual abuse, and looked at her inappropriately while she was showering.

Samantha Vazquez entered KCJ in January 2015 and was placed in the juvenile unit. She was assigned to work details that included laundry, kitchen, and cleanup. Her complaint contended that guard George Anderson, 45, purposely selected her to work “details” with him.

In a deposition, Vazquez said Anderson inappropriately called her “babe” and told her she had a “big butt.” He also “grabbed [her] face,” “touched her shoulders” and talked with her about her shower gown.

She described one incident while she was in a room alone with Anderson and he described a “rated R” dream. He told her that in his dream, she “grabbed him by his T-shirt,” “gave him a kiss,” and “after that [they] ended up going to a room and, like, having fun and stuff.” Subsequently, Anderson told her “to get close to him,” and he “wanted his dream to come true.”

Anderson also instructed Vazquez which shower stall to use. Vazquez testified that he watched her shower three or four times. She ultimately informed substance abuse specialist Francisco Maldonado about Anderson’s conduct, and an investigation ensued after he reported it to officials. The allegations were sustained, and the process to terminate Anderson began.

During a deposition, Anderson admitted he may have been alone with Vazquez once and that he remained on a few occasions at the staff counter while female juveniles were showering. Both acts violated KCJ policy.

Vazquez’s lawsuit names Anderson, his supervisor Heath Appleton, and Kern County. They moved for summary judgment, and the district court granted that motion, concluding the sexual abuse claim did not reach the “harm of constitutional proportions.” The court further found the right to privacy claim was not based on sufficiently frequent conduct to merit a violation. Finally, the court found the defendants were entitled to qualified immunity. Vazquez appealed.

As to the privacy claim, the Ninth Circuit’s order noted that prisoners have a right to not have guards of the opposite sex view their naked bodies, and that Anderson’s conduct violated KCJ policy. The evidence Vazquez presented was sufficient for a jury to find in Vazquez’s favor.

As to the Fourteenth Amendment claim of a right to bodily integrity, the Ninth Circuit found Anderson’s conduct could be found to be “so egregious, so outrageous, that it may fairly be said to shock the contemporary conscious.” Additionally, there was no legitimate governmental purpose for his conduct, so Vazquez’s claim of her Fourteenth Amendment right to be free of punishment could also be validated by a jury. The court found the rights alleged to be clearly established, making qualified immunity unavailable to Anderson.

The claim against Appleton alleged he failed to intervene on more than one occasion when he saw Anderson alone with a female ward, and that he was aware of Anderson’s prior incident of supervising female wards’ showers. Thus, a jury could find that Appleton knew of Anderson’s prior violation and failed to act, making him liable under a theory of supervisory liability.

The district court’s order granting defendant’s motion for summary judgment was reversed. See Vazquez v. County of Kern, et al., 949 F.3d 1153 (9th Cir. 2020)

On April 28, 2020, a California court of appeal affirmed the judgment of a lower court sustaining the demurrer of nine counties that were sued by jail prisoners and their families as a challenge to excessive jail phone rates as an unconstitutional tax under Proposition 26.

The counties contracted with telecommunications providers that are not parties to the lawsuit to have an exclusive right to provide prisoner telecommunications services in exchange for a percentage — generally over half — of what the companies charge for the calls. Los Angeles County is typical in that it receives the greater of 67.5% of the charges, or $15 million annually. The rates are exorbitant but, under Penal Code § 4025, the counties are required to deposit their commissions in an inmate welfare fund.

Plaintiffs alleged the commissions were an unlawful tax that violated the California Constitution because none of the commissions had been approved by voters. Proposition 26 (Art. XIII C, § 2, Cal. Const.) makes all taxes imposed by local entities subject to voter approval with seven exceptions.

The defendants filed a challenge to the legal sufficiency of the complaint called a demurrer. The basic premise was that the plaintiffs were not the people who were paying the governmental entity, so they had no standing to challenge the tax. The trial court sustained the demurrer.

Aided by attorneys Ronald O. Kaye and Barrett S. Litt of Kaye, McLane, Bednarski & Litt and Michael S. Rapkin and Scott B. Rapkin of Rapkin & Associates, plaintiffs appealed. The Human Rights Defense Center, which publishes PLN and CLN, filed an amicus brief in the case.

The court of appeal noted that “the general rule is that a person may not sue to recover excess taxes paid by someone else. Plaintiffs may have paid exorbitant charges to the telephone provider, but they did not make any payment to the county and they had no legal obligation to do so.” Therefore, the Court agreed with the trial court that the plaintiffs lacked standing and should seek relief from the legislature.

“We do not agree with plaintiff that,
because the counties are unjustly enriched by their contracts with the telecommunications companies, we should provide inmates a remedy for the exorbitant telephone charges they must pay. It is the legislative branch, not the courts, that must provide that remedy...

“In the end, the pertinent point is that no precedents support plaintiffs’ claim that a consumer who pays charges to a third-party vendor—including one that has inflated its prices to recover the cost of a tax it pays to a local government—has standing to seek a refund of those charges from the taxing authority.”

Plaintiffs had also argued there was a disparate effect on Blacks and Latinos, compared to the overall population, in violation of California Government Code § 11135, because they were disproportionately represented among the jail prisoners. The court rejected that argument, noting that the comparison should have been with other prisoners’ families, not the general population. Plaintiffs made no claim that Black and Latino prisoners and their families were treated differently from other prisoners and their families, so no disparate treatment was alleged.

Further, the Legislature established a basis for treating prisoners’ families different from other taxpayers in Penal Code § 4025. Also, there was no coercion shown to support a claim under the Bane Act, Civ. Code § 11135, because they were disproportionately represented among the jail prisoners. The court rejected that argument, noting that the comparison should have been with other prisoners’ families, not the general population. Plaintiffs made no claim that Black and Latino prisoners and their families were treated differently from other prisoners and their families, so no disparate treatment was alleged.

Ex Post Facto Oregon Parole Postponement Claim Not Cognizable in § 2254 Proceeding

by Mark Wilson

On October 31, 2019, an Oregon federal court held that a claim that extended parole postponement pursuant to the retroactive application of a new law violates the ex post facto clause is not cognizable in a 28 USC § 2254 federal habeas corpus proceeding. Such a claim may be brought instead in a federal civil rights action pursuant to 42 USC § 1983.

Oregon prisoner Shayne Martin Jacobs was convicted of two counts of murder in 1981. The Oregon Board of Parole and Post-Prison Supervision ultimately established a July 7, 2009 release date for Jacobs. During a 2008 hearing, the Board applied the law in effect in 1981 to postpone Jacobs’ release to the maximum possible, two-years, upon finding that he suffered from a present severe emotional disturbance that rendered him a danger to the health or safety of the community. This postponed his release to July 7, 2011.

During a 2010 hearing, the Board again found that Jacobs suffered from a present severe emotional disturbance, rendering him a danger to the community. This time, however, the Board retrospectively applied a 2009 law that purported to authorize the Board to postpone release up to ten years. The Board ultimately postponed his release five years, establishing a new release date of June 7, 2016.

After exhausting state administrative and judicial remedies, Jacobs filed a § 2254 federal habeas corpus action. He argued that the five-year parole postponement based on the retrospective application of the 2009 law violates the ex post facto prohibition of the United States Constitution.

The district court granted the government’s motion to dismiss, finding that ex post facto claims are not cognizable in federal habeas corpus cases.

“Only claims that will necessarily lead to an earlier release fall within the core of habeas corpus,” the Court noted. “Were the Court to find an ex post facto violation, Petitioner would not be entitled to earlier release, only more frequent parole consideration where the Board could continue to defer his parole if appropriate.”

Citing Wilkinson v. Dotson, 544 U.S. 74, 82 (2005) and Gordon v. Premo, 757 Fed. Appx. 627, 627-28 (9th Cir. 2019), the Court found that Jacobs’ s ex post facto claim did not lie at the core of habeas corpus because success in the federal habeas proceeding “would result only in speedier parole consideration and not necessarily Petitioner’s speedier release.” Wilkinson made clear that if the claim is not cognizable in a § 2254 action, it may be brought, instead, in a federal civil rights proceeding pursuant to 42 USC § 1983. See; Jacobs v. Kelly, USDC (D. Or.), Case No. 6:19-cv-00342-HZ.
High School Journalists Garner National Attention by Exposing School’s Use of Prisoner Labor

by Douglas Ankney

A

mherst-Pelham Regional High School (APRHS) English teacher Sara Barber-Just was rubbing sleep from her eyes at 5:30 a.m. while reading the June 28, 2019, online edition of The New York Times. Then her jaw dropped in amazement when she saw the story about her journalism class’ article exposing the school’s use of prisoner labor. “I think that’s a wonderful recognition for a student newspaper to have The New York Times call you and say they want to talk about your high school journalism,” Barber-Just said.

APRHS student Spencer Cliche had overheard in a conversation that the school was using prisoners from Massachusetts Correctional Institution-Norfolk to reupholster chairs in the auditorium. Cliche approached Barber-Just with the idea of investigating and reporting the story in The Graphic (APRHS’ quarterly paper).

After confirming with APRHS Superintendent Michael Morris that the school was using prisoner labor, Barber-Just encouraged Cliche and the rest of the class to not simply condemn the practice, but to investigate and write a story.

The class contacted Cara Savelli, spokeswoman for the Massachusetts Department of Correction. Savelli said prisoners perform work for schools, nursing homes, veteran’s agencies, and other public service providers with a dual purpose of giving prisoners “valuable, marketable experience,” while the recipient agencies gets “a quality product at a reasonable price.” And most prisoners value the time spent performing a meaningful skill, even though earning only a few pennies up to a dollar an hour.

Conversely, prisoners aren’t provided proper safety equipment and aren’t eligible for compensation if injured on the job. They cannot form a union or engage in collective bargaining. Plus, their labor deprives local citizens of work.

In this case, Wellspring Upholstery Cooperative (Wellspring) had lost the bid to reupholster the chairs. Wellspring hires formerly incarcerated and other low-income people and pays them up the $25 per hour for their labor. “We expected to do several school auditoriums a year, but over our five-and-a-half years in operation, we have hardly done any,” said Fred Rose, co-director of Wellspring. He attributed the lack of work to competition from the cheaper prisoner labor.

After the students’ 3,000-word essay appeared in The Graphic, Morris announced in an email to parents that APRHS would never again use prisoner labor. Cliche summed it up best by stating, “[W]hat’s exploitative is taking that need and that want [of prisoners], and then paying them such miniscule wages.”

Sources: nytimes.com, themarshallproject.org, gazettenet.com

Florida’s “Pay-to-Vote” System Struck Down

by David M. Reutter

A

Florida federal district court declared portions of Florida’s felon voting system unconstitutional. It issued injunctive relief that orders a new process put in place for indigent persons who owe financial obligations as part of a criminal sentence.

In 2018, 64.55% of Florida voters approved Amendment 4, which restored the voting rights of some convicted felons “upon completion of all terms of sentence including parole or probation.” It specifically excluded persons “convicted of murder or felony sexual offenses.” [See PLN, October 2018, p. 32.]

The Florida Legislature responded by enacting a law that defined “upon completion of all terms of sentence including parole or probation” to mean all legal financial obligations (LFOs) “contained in the four corners of the sentencing document.”

That legislation was challenged in a class action lawsuit. The district court granted a preliminary injunction that prevented action against the named plaintiffs registering to vote or voting. The Eleventh Circuit Court of Appeals affirmed, holding that Florida cannot prevent an otherwise eligible felon from voting just because the felon failed to pay LFOs the felon is genuinely unable to pay. Then, the Florida Supreme Court held that “all terms of sentence including parole or probation” covers fines, fees, costs, and restitution. [See PLN, June 2020, p. 62.]

The class action suit then proceeded to trial. In his 125-page ruling, U.S. District Judge Robert Hinkle wrote, “This pay-to-vote system would be universally decried as unconstitutional but for one thing: each citizen at issue was convicted, at some point in the past, of a felony offense.” In ruling on the merits, the court said, “Whatever might be said of a rationally constructed system, this one falls short in several respects.”

The court did not find racial discrimination, but it took issue with the purpose behind the LFOs. “Florida has chosen to fund its criminal justice system by assessing . . . fee[s] . . . from those adjudged guilty.” It concluded this amounted to a tax that violates the 24th Amendment.

To cure that violation, the court entered declaratory and injunctive relief. It declared Florida’s system violates the constitution where it is applied to persons who are unable to pay LFOs and requires LFO payment where the amounts owed are unknown and cannot be determined with diligence. It declared that when persons can pay LFOs there is no constitutional violation, but it becomes an unconstitutional tax when LFO payment is a condition of voting.

The State was ordered to allow persons to request an advisory opinion on voting eligibility. If it could not provide within 21 days of the request “a statement of the amount of any fine or restitution at must be paid to make the requesting person eligible to vote” or determine the person is ineligible to vote it could not take any action to prevent the person from registering to vote and from voting.

The State’s assertion “a person is able to pay will have no effect” where “(a) requesting person had an attorney appointed or was granted indigent status in the last proceeding that resulted in the felony conviction,” (b) a financial affidavit submitted in a felony proceeding established indigency
Sexual Assault of Colorado Prisoner Deemed Constitutional Violation; Her Case Can Proceed

by David M. Reutter

On February 10, 2020, the Tenth Circuit Court affirmed a ruling denying qualified immunity to a guard who allegedly sexually assaulted a Colorado prisoner. The court’s order set a firm date for when sexual assault was deemed a constitutional violation.

Before the court was an appeal brought by Bruce Bradley, a guard at the Denver Women’s Correctional Center. He appealed the district court’s denial of his motion to dismiss on qualified immunity grounds. That motion was filed in a civil rights action filed by former prisoner Susan Ullery.

She alleged events that occurred between 2014 and 2016. Specifically, Ullery alleged that she worked in canteen services under Bradley’s direction. Her complaint alleged Bradley engaged in verbal harassment of her, that he groped her crotch and breasts, and would “repeatedly approach [her] from behind and forcefully press his genitals into her buttocks” and “moan mmmmm in [her] ear.”

Her April 10, 2018, complaint alleged that sexual abuse violated her right to be free of excessive force under the Eighth Amendment and the Fourteenth Amendment and the right to be secure in her bodily integrity under the Eighth Amendment. She also asserted claims against prison supervisors who were not party to the appeal.

The Tenth Circuit noted the complaint did not state specific dates of the alleged abuse, but that did not prevent it from holding that any conduct prior to expiration of the two-year statute of limitations, which in this case would be April 10, 2016, were time barred.

It then turned to Bradley’s claim that the right to be free of sexual abuse was not clearly established as a constitutional right at the time of the events at issue.

That argument was rejected by the Tenth Circuit. In so holding, the court said “the clearly established weight of persuasive authority in our sister circuits as of August 11, 2015, would have put any reasonable corrections officer in Defendant’s position on notice his alleged conduct would violate the Eighth Amendment.”

The court cited precedents from every circuit court except the Eleventh Circuit to determine there was a “consensus of cases of persuasive authority” on the issue as of August 11, 2015. As such, the district court’s order was affirmed and Ullery’s lawsuit can proceed. See: Ullery v. Bradley, F.3d. (10th Cir. 2020)

Delaware Changes Prison Health Care Provider Due to Lawsuits Against Prior Contract Holder

by Jayson Hawkins

March 2020 brought sweeping changes to the way people lived and worked as the impact of the coronavirus pandemic spread across the country. Prisons, where social distancing was often difficult or impossible to practice, proved especially vulnerable to COVID-19, yet the Delaware Department of Correction pushed ahead with a switch to a new health care provider.

Centurion of Delaware LLC accepted responsibility for the medical and behavioral health care of the state’s prisoners effective April 1.

“It’s tough enough to transition to a new medical and behavioral health [provider] in 30 days,” commented Claire DeMatteis, Delaware DOC commissioner, “but doing so in the middle of a health pandemic is remarkable.”

The sudden switch reflects a loss of confidence in the state’s previous provider, Connections Community Support Programs, which agreed to void its annual $60 million contract three months ahead of schedule. Connections was facing lawsuits from two hospital systems after amassing nearly $10 million in unpaid bills for services provided to Delaware prisoners. Connections was also under investigation by the state Justice Department.

The court cited precedents from every circuit court except the Eleventh Circuit to determine there was a “consensus of cases of persuasive authority” on the issue as of August 11, 2015. As such, the district court’s order was affirmed and Ullery’s lawsuit can proceed. See: Ullery v. Bradley, F.3d. (10th Cir. 2020){CELL}

Source: delawareonline.com

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Texas Attorney General Finds GEO Documents Are Public Information

by Matt Clarke

On May 1, 2020, the Texas Attorney General’s Office issued an opinion holding that all records related to a private prison contractor’s operations in the state were public information subject to the Texas Public Information Act (TPIA). The opinion bars an effort by the GEO Group to shield some of its Texas records from scrutiny by the Human Rights Defense Center (HRDC), the Florida-based nonprofit that publishes Prison Legal News and its sister publication, Criminal Legal News.

In January 2020, TPIA was amended with language to clarify that “public information” from a “government body” includes records from a “confinement facility operated under a contract with any division of the Texas Department of Criminal Justice” (Texas Government Code § 552.003(l)(A)(xi)).

HRDC filed its request February 6, 2020, seeking information on any payments totaling at least $1,000 that GEO Group had made since 2010 on claims or lawsuits related to its operation in the state, now totaling more than a dozen jails and prisons.

But GEO Group refused the request for records predating the 2020 TPIA amendment, arguing that before that time it was not considered a government body and so it did not have to comply with a TPIA request. The firm – the country’s largest private prison contractor, with nearly $2.5 billion in 2019 revenues – asked the attorney general’s office for its opinion on February 24, 2020.

In response, the attorney general’s opinion found that the information was public information within the meaning of the Act and GEO must release all parts of it not subject to an exception to disclosure under the Act.

“Private prisons have a long history of corruption and fraud, which is perpetuated by a lack of transparency,” said HRDC executive director Paul Wright. “Concealing the expenditure of taxpayer dollars deprives the public of knowledge about how well or poorly their tax money is being spent. The Attorney General’s office recognizes the importance of transparency around the private prison industry.”

Although the opinion contains language limiting it to the current information and situation, it tacitly holds that the amended definition covers documents made prior to the amendment of the Act, so the records of private prison companies are subject to disclosure under TPIA. This is a solid win for HRDC and prisoners held in Texas private prisons. See: Texas Attorney General’s letter opinion # OR2020-12334.

Oregon Federal Court: 8th and 14th Amendments Mandate Miller Hearing

by Mark Wilson

An Oregon federal court held that a sentence that prohibits a juvenile offender’s possible release until he is 88 years old violates the Eighth Amendment and the Fourteenth Amendment’s Due Process Clause because it denies a “meaningful opportunity” for release.

The Eighth Amendment requires a state to hold a hearing for a juvenile serving a life sentence at which the person’s youth at the time of the offense must be treated as a mitigating factor and his rehabilitation considered in light of the transient immaturity and impulsivity at the time of the offense. The hearing must be held early enough in a person’s lifetime that it affords the juvenile a chance for a meaningful life outside of prison, not geriatric release. (See: Miller v. Alabama, 567 U.S. 460 (2012); and Montgomery v. Louisiana, 577 U.S. 136 S.Ct. 718 (2016). This hearing is commonly known as a “Miller hearing.”

When Oregon prisoner Sterling Ray Cunio was 16 years old, he and another teenager committed a double homicide. Cunio was convicted of two counts of aggravated murder, two counts of kidnap-napping and two counts of robbery. He was sentenced to two consecutive life sentences and a consecutive 280-month determinate sentence on the non-homicide offenses.

Under Oregon law, Cunio will not begin serving the 280-month consecutive nonhomicide sentence unless and until the Oregon Board of Parole and Post-Prison Supervision (Board) orders his release from the indeterminate life sentences to the determine consecutive sentences.

In October 2012, the Board imposed a 576-month-to-life prison term and an April 2042 release date on the indeterminate life sentences. Assuming the Board does not postpone that April 2042 release date, Cunio will begin serving the consecutive 280-month determinate sentence at that time. Thus, the earliest he could be released from confinement is April 2065, when he would be 88.

Cunio brought federal suit against the Oregon governor, board chairman and director of the Oregon Department of Corrections (ODOC), seeking declaratory and injunctive relief. He alleged that his de facto life sentence without a meaningful opportunity for release deprives him of due process of law and constitutes cruel and unusual punishment. He requested that the Court order defendants to immediately provide “a hearing at which he has a meaningful opportunity to obtain release and to provide such a hearing every two years thereafter if defendants do not release” him.

In granting Cunio’s motion for summary judgment, the court first observed that the 2019 Oregon Legislature changed Oregon’s sentencing scheme for children tried as adults by enacting Senate Bill 1008. Among other things, that bill requires a hearing for every juvenile who has served 15 years in prison. However, that legislation applies only to sentences imposed on or after January 1, 2020, so it does not apply to Cunio or any of the estimated 187 other Oregon youth who remain in adult prison.

The Court noted that the Board chair and ODOC director testified in favor of
SB 1008’s passage. During their legislative testimony, both defendants reported that they were testifying at the direction of their boss, the governor.

“Nonetheless, Defendants in this litigation claim that Oregon’s sentencing scheme — the very scheme that they testified should be changed moving forward — suffers from no constitutional infirmities as applied to Mr. Cunio,” the court noted. “Yet the central truth driving Miller and SB 1008 is that people convicted of crimes as children, even murder, are very likely to be rehabilitated and are entitled to a hearing where a trier of fact determines whether to release them from prison.”

After analyzing the applicable Supreme Court precedents, the court held that “Miller applied to a state with a discretionary sentencing scheme.” Citing Moore v. Biter, 725 F.3d 1184, 1191 (9th Cir. 2013), the Court also concluded that Eighth Amendment protections extend to “an aggregate term-of-years sentence that results in a de facto life without parole for a juvenile.”

Given that Cunio cannot be released until he is 88, the Court granted him summary judgment on his first claim, concluding that “Oregon’s bifurcated sentencing scheme denies Plaintiff a meaningful opportunity for release.”

The Court also granted Cunio summary judgment on his due process claim, finding “that the combined effect of the Parole Board’s 2012 decision to refuse to hear evidence of Plaintiff’s rehabilitation and the consecutive sentencing guidelines sentences deny Plaintiff of the release hearings to which he is entitled.” See: Cunio v. Brown, USDC (D. Or. 2020) Case No. 6:14-cv-01647-MK.

Rhode Island Pays $380,419 to Settle Prison Guard Hiring Discrimination Suit

by Matt Clarke

In December 2019, the Providence Journal received a requested breakdown of money paid to applicants for prison guard positions with the Rhode Island Department of Corrections (DOC). The DOC sent a spreadsheet of 251 payments of between $286.63 and $3,096.36, totaling $380,419.

The money was part of a September 2017 settlement of a discrimination lawsuit brought by the U.S. Department of Justice (DOJ) in 2014. The lawsuit alleged the DOC’s practice of subjecting guard applicants to written and video examinations eliminated minorities at far greater rates than whites. The DOJ said that since 2000, 59 percent of Black, 67 percent of Hispanic, and 33 percent of White job applicants had been screened out.

In court documents, the DOJ estimated “an additional 52 African-American applicants and an additional 55 Hispanic applicants would have been hired by the State as correctional officers ... absent the disparate impact of the pass/fail use of the initial and revised written exams and the video exam.”

The Journal found it curious that the number of payments vastly exceeded the number of potential claimants cited in the settlement agreement and that the persons receiving the payments were only identified by their initials.

According to Kathleen Kelly, executive legal counsel to the DOC, “The individuals who received the money are claimants who failed the DOC correctional officer entrance exam at some time between 2000 and 2013 and filed for compensation with the Department of Justice under the terms of the agreement. In weighing the balance between the identification of these private citizens, along with the amount of money each received, against the public’s right to disclosure I have determined that these individual’s privacy rights take precedence.”

This seems to violate a state law that says, “Settlement agreements of any legal claims against a government agency shall be deemed public records.” DOC officials claim the state does not know whom the payments were made to because that was determined by the DOJ.

The settlement agreement also required the DOJ to give priority hiring status to 18 Black and 19 Hispanic claimants who were screened out of the hiring process between 2000 and 2013, award them retroactive seniority, and make back payments to the state pension fund on their behalf.

The DOC said it deployed a new examination in August 2019 and was seating a new class of guard trainees. See: United States of America v. State of Rhode Island Department of Corrections et al., USDC (D.R.I.), Case No. 1:14-cv-00078.

Additional source: providencejournal.com

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Former Prisoners Shut Out of Coronavirus Loans

by Jayson Hawkins

The first phase of economic relief stemming from the COVID-19 crisis included $350 billion in loans aimed at keeping U.S. small businesses afloat. The CARES Act, as approved by Congress, offered hope of surviving the pandemic to any business with fewer than 500 employees.

The Small Business Administration (SBA), which was tasked with distributing the loans, included a provision that seemed to target a specific demographic. A question on the loan application asked if any of the owners of the business had been convicted of a crime.

No statistics were available as to the number of small-business owners with criminal histories, but because individuals with past felonies are barred from many jobs it is common for them to open their own business. The SBA reports over 30 million small businesses nationwide, and with The Sentencing Project estimating that up to 100 million people in the U.S. have past convictions or arrests, the portion of business owners who have been entangled in the criminal justice system is believed to be significant.

Under previous administrations, the SBA had taken into account criminal convictions of those applying for loans, and the banks that distribute loans do regular background checks on applicants. Such measures are seen as safeguards, especially during times of disaster when some seek to take unfair advantage of emergency funds.

With the national economy facing an unprecedented challenge, however, economists have argued there has rarely been such dire need to cut through red tape and funnel money into businesses without delay.

The CARES Act created the Paycheck Protection Program (PPP), intended to help small businesses continue to employ their staffs for the duration of the pandemic. The SBA explicitly barred anyone from the program who had pending criminal charges or a conviction for a felony within the previous five years. The application itself went even farther by probing into whether an applicant had been on felony parole or probation, taken a "no contest" plea, or agreed to a diversion program in the last five years.

Another part of the CARES Act provided for additional loans to small businesses affected by disasters, but the application included a three-part question covering criminal history that did not allow for differentiation between current or decades-old convictions, nor between violent and non-violent crimes.

A frustrated business owner who had a conviction from 10 years ago drew an analogy between the loan restrictions and if the rescue teams during Hurricane Katrina had stranded all those who had ever been marked with criminal charges.

“We have never seen such a sweeping mandatory disqualification based on criminal record, in any area of the law,” stated the Collateral Consequences Resource Center website, a nonprofit that highlights the impact of local, state, and federal laws on people with criminal records. Margaret Love, who operates the site and was U.S. Pardon Attorney under President Bill Clinton, further noted the residual impact on the nation’s economy when one factors in all the employees of those small businesses owned by former convicts who will also lose their jobs.

Source: themarshallproject.org

HRDC Prevails in Censorship Suit Against Kentucky Prison System, Wins $104,711

by David R. Reutter

A Kentucky federal district court awarded the Human Rights Defense Center (HRDC) and its co-counsels $104,711.37 in attorney fees and costs in a lawsuit alleging the Kentucky Department of Corrections (KDOC) censored books sent to prisoners.

The court’s May 15, 2020, order resolves all issues in a lawsuit HRDC brought in July 2017 that alleged KDOC violated First and Fourteenth Amendment rights. The complaint challenged KDOC’s policy and practice of banning books sent by HRDC and other publishers “because the books were not purchased by prisoners, but rather were sent to them as gifts, and/or because the sender was not on a pre-approved vendor list.” It also alleged KDOC failed “to provide senders of censored mail constitutionally adequate notice and an opportunity to appeal the censorship of the mail to the intended prisoner.”

From July 2016 to the filing of the complaint, HRDC sent 158 soft-cover books to prisoners. It identified 26 books HRDC sent to prisoners “which were censored by Defendants.” More may have been censored, but since KDOC “failed to provide HRDC any notice or opportunity to appeal these censorship decisions” it had to rely on prisoners informing it of the censorship. Thus, how many of the 131 complimentary books sent to prisoners by HRDC and subsequently censored by KDOC could not be determined.

In July 2019, the parties entered into a settlement agreement that resolved HRDC’s injunctive relief claims. KDOC changed its policies to allow prisoners to receive publications that are gifted and scraped the publisher vendor list. HRDC also received $26,000 in damages.

The settlement designated HRDC as a “prevailing party” entitled to the award of attorney fees. For the work of six attorneys and four paralegals, HRDC sought $102,910 in fees and $2,091.17 in costs. It subsequently agreed to withdraw .4 hours of post-deposition work and $39.80 in costs.

KDOC objected to 62.6 hours of pre-litigation work, arguing HRDC “failed to explain how these activities were ‘necessary to secure the final result obtained from the litigation.’”

The court, however, said the improper standard is “whether a reasonable attorney would have believed the work to be reasonably expended in the pursuit of success at the point in time when the work was performed.” It found the entries at issue were reasonable, for HRDC explained it wrote prisoners and families to determine what “was happening at KDOC facilities as it related to the improper censorship and rejection of its publications.”

The court overruled some of KDOC’s objections and sustained others. The hours...
it struck were minimal. It awarded HRDC $102,660 in attorney fees and $2,051.37 in costs. HRDC was represented by General Counsel Dan Marshall, Bruce Johnson from the law firm of Davis Wright Tremaine, LLP in Seattle, and Greg Belzley of Belzley, Bathurst & Bentley in Kentucky. See: Human Rights Defense Center v. Ballard, USDC (E.D. Ky.), Case No. 3:17-cv-00057.  

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

Connecticut City Settles Suit Over Prisoner’s Suicide for $1,393,000

by Matt Clarke

On December 10, 2019, the City of Meriden, Connecticut, settled for $1,393,000 a lawsuit brought by the estate, minor son, and minor daughter of a woman who committed suicide while being held at the Meriden Police Department.

Late in the evening of January 18, 2016, Meriden city Police Officer Mark Novak responded to a complaint about excessive noise. He encountered Erica A. Moreno, 29, and arrested her after he discovered that she had an outstanding warrant. He took her to the police department and searched her, removing her hair ties and shoes laces. Soon after, Officer Margaret Smusz performed a more thorough search of Moreno and took some small earrings from her. Then Officer Jimmy Fong escorted Moreno to a women’s holding cell.

None of the officers confiscated the drawstring to Moreno’s sweatpants or performed a suicide-risk evaluation on her. At about 3:25 a.m., Sgt. Michael Boothroyd found Moreno in her cell hanging from the drawstring. He had her transported to a local hospital. She was flown by helicopter to a larger hospital, where she died a week later. A search of her cell turned up a small metal cylinder in the toilet.

Aided by New Haven attorneys Steven J. Errante, Marisa A. Bellair, and Daniel P. Scholfield, Moreno’s estate and two minor children filed a state lawsuit alleging negligence against the city, the police department, and eight named police officers.

An internal investigation concluded that Fong and Smusz violated policy by failing to remove the drawstring and canister and failing to properly monitor Moreno. They were given 15-day suspensions with an additional 15 days of suspension held in abeyance for two years.

Corporation Counsel Michael Quinn said the city’s insurance carrier decided to settle the lawsuit and the decision did not require approval by the City Counsel. The insurance policy has a $100,000 deductible, which the city will pay. The agreement to settle was reached in June 2019 but not completed until December of that year. See: Cortes v. City of Meriden, Superior Ct., Judicial District of New Haven, Case No. NNH-CV17-6071272-S.

Additional source: myrecordjournal.com
COVID-19 Changes the Face of Education in the Nation’s Prison Systems

by Kevin W. Bliss

The COVID-19 pandemic has forced prisons across the country to alter the educational programs they offer. The change has highlighted the inequality in available technology between different state prison systems and revealed that many educators are concerned not only with education, but also with the prisoners’ emotional and social well-being.

Maine Correctional Facility, for example, offers education via the video meeting application Zoom, using the internet from an administrative computer. Officials at Saginaw Correctional Facility in Michigan waived a ban on communication between volunteers and prisoners so that Delta College professors could instruct pupils via email. “At Great Meadow Correctional Facility in New York, college classes are postponed and graduation is cancelled,” The Marshall Project reports.

According to Mia Armstrong, writer for Slate.com, just as the U.S. education system inherently has glaring inequalities based on the individual’s financial means, so too there are disparities among prisons. “Many college administrators say corrections officials have bent over backwards to make sure college classes continue, but without laptops, tablets or an easy way to securely access the Internet, many college programs have had to put their semesters on pause. With classes on hold, some incarcerated students won’t be eligible for important incentives. In some state prisons, earning a college degree while behind bars could result in a sentence reduction through ‘good time’ credit programs,” The Marshall Project reports.

States have shut down all forms of visitation in their prisons because of the virus, including spiritual and educational program volunteers. Continued education is now based on a prison’s technological capabilities and that difference could be anything from being able to conduct coding classes and podcasting to simply having closed-circuit televisions and slide projectors. Some prisons can only support correspondence classes. Students receive their assignments and information through the postal service and send their homework back the same way. There is no interaction, and questions for instructors could take weeks to answer.

Some prison systems are experimenting with kiosk- and tablet-based electronic messaging boards for communication. Others use Canvas and Blackboard instruction facilitated by student clerks or Zoom and Skype with live classrooms. But, these systems by reason of social distancing carry small classrooms — and are costly. Some states have even denied similar proposals introduced into their prisons because of the added risks and necessary resources the programs hold for the prisons.

Educators are concerned about the precedent the pandemic is setting for future access to higher education and the social and emotional well-being that engenders. In-person programming assists in rehabilitation, providing prisoners some of the ties and emotional support needed for positive rehabilitation. “For me when I was incarcerated, the idea of people volunteering ... it was like the community, it was like the outside world being able to come in, and it reminded me that I get to get out,” stated Ernst Fenelon, Jr., senior program coordinator of the Prison Education Project. “So it was this connection that mattered to me, and a lot of what helped me sustain my transformation to return back to a productive citizen of society.”

Armstrong suggests that the pandemic has redefined the role of the prison educator. Not only do they facilitate information and provide creative ways to continue education, but they now also advocate for prisoners’ safety and push for the early release for vulnerable populations.

Sources: slate.com, themarshallproject.org

Former CoreCivic Nurse in Colorado Claims Sex Discrimination, Retaliation After Filing Complaint About Poor Medical Care

by Dale Chappell

A former CoreCivic nurse who worked at the private, for-profit company’s Bent County Jail in Colorado filed a federal lawsuit March 18, 2020, claiming sex discrimination by her supervisors after she filed complaints about the lack of medical care to prisoners.

CoreCivic workers at the Bent County Jail go by pseudonyms to protect their identity. When it was revealed that Danette Karapetian, who went by “DJ,” was using her old stage name from when she was a Hawaiian Tropic bikini model 25 years ago, her supervisor harassed her about it, her lawsuit filed in the U.S. District Court for the District of Colorado says. Within the next four months, nurse Supervisor Angie Turner reportedly set on a path to get Karapetian fired, and when that happened she sued.

Karapetian’s lawsuit raised three interrelated issues that she says were the bases for her termination: (1) “sex discrimination” by supervisors; (2) “retaliation for engaging in protected activity in opposition to sex discrimination”; and (3) “wrongful discharge in violation of public policy” after Karapetian filed complaints about poor medical care at the jail.

The first claim stemmed from Turner’s admission to coworkers that she was “angered and upset” about Karapetian’s past and was “looking for a reason to discipline and fire Ms. Karapetian as a result,” court papers say.

Karapetian says Turner looked at her “through the lens of sex-based stereotypes of her bikini-modeling past,” and she began “concocting” stories that she was “flirting” with prisoners. Turner, the lawsuit claims, accused the prisoners of “grooming” Karapetian for sexual relations. This led to retaliation and less-favorable terms and conditions of employment because of her sex, she says. She also was held to higher standards than her male counterparts and female coworkers who conformed to sex stereotypes.
Karapetian pointed to witnesses in her lawsuit who could testify that Turner escalated things and spread false rumors that she was moonlighting as a stripper, and that Turner showed “visible outrage and disgust” about Karapetian’s past modeling days. Turner created a “hostile work environment,” Karapetian’s lawsuit says.

She also filed complaints that Turner was withholding medical care from prisoners. Around mid-July 2018, Karapetian reported that diabetic prisoners were not having their blood sugar levels checked as required. When Karapetian one day told Turner that the diabetics were lined up for their daily checks, Turner ordered her to tell them that blood sugar checks were “cancelled.” Four days later, Turner again cancelled their finger stick tests. Karapetian filed a complaint that Turner’s actions “violated standards of care” and put the prisoners at “an unnecessary risk.”

Karapetian filed complaints with CoreCivic’s “Ethics Line” about the poor medical care and that Turner was allowing “medical negligence” at the jail. She also complained that Turner was retaliating against her and talking about firing her to other jail employees. Karapetian’s lawsuit says that jail workers warned her to “stay away” from Turner.

On September 14, 2018, Karapetian says she arrived at work and was called to talk to Turner. She was told that she was being disciplined for what Karapetian calls “pretextual reasons” and “false accusations.” Her lawsuit cites state and federal laws that protect her whistleblower-type claims and which prohibit retaliation against healthcare workers who file complaints about patient care and safety.

Karapetian seeks back pay, compensatory and punitive damages of an undisclosed amount, and interest. She also seeks attorney’s fees and expenses. She is demanding a jury trial. She is being represented by Hunter A. Swain of Swain Law, LLC, and J. Bennett Lebsack of Lowery Parady Lebsack, LLC. See: Karapetian v. CoreCivic, USDC (D. Colo.), Case No. 1:20-cv-00747.

Florida Prisoners Win 3.9 Million in Media Credits in MP3 Player Lawsuit

by David M. Reutter

The Florida Department of Corrections (FDOC) agreed to place 3.9 million Tablet Media Credits into the accounts of prisoners who bought songs through the now-defunct digital music player program.

In 2011, FDOC allowed prisoners to purchase MP3 programs through a contract with Access Corrections. Over the six-year life of the contract, prisoners bought 30,299 players at around $100 apiece, plus 6.7 million songs for $1.70 each. FDOC received $1.7 million in commissions from Access. [See PLN, February 2019, p.26].

A “widely distributed advertisement” promised prisoners who participated in the digital music program that, “Once music is purchased, you’ll always own it!” Songs that could not be stored on the player due to memory space would go on a “cloud-based library” by connecting to a kiosk. Then, in 2017, FDOC terminated the program to enter into a contract with JPay, Inc., for a Tablet Program. Prisoners were required to turn over their MP3 players by January 23, 2017.

A class action lawsuit filed on February 19, 2019, alleged the confiscation of the MP3 players and loss of music was a violation of the Takings Clause under the Fifth Amendment. The parties reached a settlement on May 14, 2020.

Under terms of the agreement, FDOC will make available to the class 3.9 million tablet media credits, which is equivalent to $1 for each credit. FDOC had already provided 100 tablet media credits to each member of the class, which included current Florida prisoners who purchased 75 or more songs and had those files taken from them.

Prisoners who purchased more than 100 songs under the digital music program received “one (1) Tablet Media Credit for each additional song over 100 that they purchased under the Digital Music Program.” Those credits are not “currency or damages, and cannot be exchanged for currency.” They can, however, be used to purchase music, videos, games, and email stamps through the Tablet Program.

The class was represented by attorneys from the Florida Justice Institute, which FDOC agreed to pay $150,000 in attorney fees as part of the settlement. See: Demler et al. v. Inch, USDC (N.D. Fla.), Case No. 4:19-cv-00094.
Prisoners Replace New Orleans Sanitation Workers Striking for Coronavirus Hazard Pay

by Kevin Bliss

**Arizona:** A Maricopa County grand jury indicted Daniel Davitt, 60, on January 14, 2020 on charges of second-degree murder in the death of Lower Buckeye Jail guard Gene Lee on October 30. Buckeye Jail video shows Davitt talking to Lee on October 29, then suddenly grabbing Lee by the throat and pushing him backward, using his right leg to knock Lee off his feet. Lee sustained a head injury that put him in a coma; he died the next day. Davitt was moved to the Pinal County Jail on Halloween. The Arizona Republic uncovered records that Davitt had filed a civil rights complaint against Lee over a December 2018 incident, that Davitt characterized as sexual harassment and voyeurism. It was dismissed on October 22, 2019 for failure to “state a claim upon which relief may be granted.” Davitt was notified of the complaint’s dismissal the day before the attack. Pinal County records show Davitt is being held without bond.

**Australia:** The British Medical Journal Case Reports published a story in October 2019 on the first case of a “prison-acquired marijuana-based rhinolith.” A rhinolith is a calcium and magnesium stone that forms around a foreign body in the nose. It was found in a 48-year-old man with recurrent headaches after a CT of his brain was performed, which revealed “an incidental” 19x11mm calcified lesion in the right nasal cavity. In a follow-up interview, the patient remembered that 18 years earlier he had been in jail and stuffed a balloon with marijuana in his nose to hide it from guards during a visit from his girlfriend, who supplied it. He never got to smoke it, because he couldn’t get the balloon back out and concluded that he must have swallowed it. Despite chronic nasal problems, he never made the connection. Doctors removed a “rubber capsule containing degenerate vegetable/plant matter.” The patient reported his nasal problems were swiftly resolved.

**California:** Otay Mesa Detention Center is run by CoreCivic and holds ICE detainees and prisoners of the U.S. Marshals Service awaiting trial or sentencing in federal criminal cases. By June, more than 200 prisoners, nine medical staff and 29 CoreCivic employees had tested positive for coronavirus. In April, Otay Mesa Detention Resistance revealed that CoreCivic was requiring prisoners to sign liability releases in exchange for masks. Women reported being threatened with pepper spray. CoreCivic denies that force was used. Assemblywoman Lorena Gonzalez, Otay Mesa Detention Resistance, and others groups tried to deliver masks to the prisoners, but they were barred. Now CoreCivic has blocked Otay Mesa Detention Resistance phone numbers. CoreCivic spokeswoman Amanda Gilchrist stated, “We took this action at the direction of our government partner,” referring to ICE. The agency says, “ICE has temporarily blocked detainee calls at Otay Mesa Detention Center to a specific San Diego-area phone number after detainee calls to this number resulted in detainees exhibiting highly disruptive behavior.” Pueblo Sin Fronteras member Alex Mensing’s number was also blocked, which he verified with Telmate, the facility’s call provider.

**Cambodia:** In late May 2020, Interior Minister Sar Kheng said Cambodia had been looking for ways to relieve overcrowding in prisons. The country’s “war on drugs” has caused the prison population to increase nearly 78 percent. Several reports had circulated saying 10,000 prisoners would be released, raising some alarm. Kheng sought to assure the public, “Those who are incarcerated or convicted for misdemeanors and have nearly completed their sentences are almost certainly able to be released, except for criminal cases.” He said the government

Waste disposal workers, called “hoppers,” of Orleans Parish went on strike May 5, 2020, demanding the city of New Orleans provide them with better personal protective equipment (PPE) and hazard pay due to the coronavirus outbreak, according to *Pay Day Report*. People Ready, contracted through Metro Disposal to provide workers, fired the strikers and replaced them with prison laborers from a nearby work-release center in Livingston Parish.

Striking sanitation workers continued to protest outside Metro Service Group’s New Orleans East headquarters, wearing signs that read “I AM A MAN.”

Workers demanded that the company have trucks repaired, provide proper PPE daily (such as masks and gloves), sick leave due to the coronavirus outbreak, personal protective equipment (PPE) and hazard pay. Every time we go out there we could catch the virus.”

Hootie Lockhart, manager of Lock5, said he was not aware of the strike. He said when he found out about it, he took his workers off the job. “We won’t be back. Not as long as there’s a labor issue,” he said.

People Ready stated that the workers were never fired and would be welcome back at any time. The strikers had yet to come to an agreement to resolve the situation.

The city’s contract mandates that employees receive $10.25 per hour. Prisoners who performed the services will have their pay adjusted accordingly.

Sources: *paydayreport.com*, *WWLTV.com*, *nola.com*
was looking at alternative ways to rehabilitate the offenders and that authorities would be monitoring the progress of those released.

Minister of Justice Koeut Rith agreed that pardoning minor offenders to avoid overcrowding was allowed by law. Kheng released statistics in March, indicating that there were 39,000 detainees in Cambodian prisons, only 11,000 of whom had convictions, leaving two-thirds in pre-trial status. Actual prison capacity is about 26,593. Rith's office is also taking steps to relieve the courts' logjam, authorizing judges to fast-track misdemeanor cases, increase bail approvals and offer more suspended sentences.

Florida: Private prison operator GEO Group filed a lawsuit in May 2020 against Netflix over its new series Messiah. In episodes three and four, the protagonist is held at an immigration facility in Texas, which GEO claims is identified with the company's logo. GEO Group claims that use of the logo and the depiction of the facility defames the company. In the show, the detainees are held in overcrowded cells, without beds, surrounded by chain-link fencing. In the complaint, GEO Group states, "Unlike in Messiah, GEO does not house people in overcrowded rooms with chain-link cages at its Facilities, but provides beds, bedding, air conditioning, indoor and outdoor recreational spaces, soccer fields, classrooms, libraries, and other amenities that rebut Messiah's defamatory falsehoods." The complaint continues, "Netflix's use of the GEO Trademarks served no purpose other than to harm GEO's good will and reputation." Although the depictions take place in Texas, GEO Group, which is headquartered in Boca Raton, filed the lawsuit in the U.S. District Court, Southern District of Florida.

Florida: House Bill 1125, known as the Jury Duty bill, was introduced to the Florida House in January 2020. The bill sought to prohibit jail time as a sanction for missing jury duty. The bill arose from a September 2019 incident that received national coverage. Palm Beach County Judge John Kastrenakes ruled Deandre Somerville, 21, guilty of contempt of court for missing the start of a civil trial as his jury duty. Somerville, who had no criminal record, had overslept and missed his ride to court. Somerville was sentenced to 10 days in jail, 150 hours of community service, a year of probation, and a $223 fine. He was also ordered to write a "sincere" apology. The sentence sparked national outrage. Daily Show host Trevor Noah, quipped, "You know racism is bad in America when a black man can get thrown in jail at someone else's trial."

Ultimately, Kastrenakes vacated the charges after Somerville had spent 10 days in jail and submitted the written apology. Nonetheless, HB 1125 died in the Criminal Justice Subcommittee in March.

Idaho: Miranda Ackerman, 29, turned herself in to the Ada County Jail in June 2020, after a warrant was issued for her arrest; she was released on her own recognizance. Ackerman was known as Miranda Jeffers during her stint as a guard at the Idaho Maximum Security Institution. She resigned in April when an investigation was initiated concerning sexual relations between her and an unnamed prisoner between February and March of 2020. The prison barbershop was their preferred trysting spot. Ackerman was charged with felony sexual contact with an adult inmate while a prison guard, and misdemeanor introducing of contraband. The contraband in question are graphic, racy photos of herself she gave to the prisoner. Her first court date was scheduled for June 29.

Indiana: Former Madison Correctional Facility guard Kristen Wolf, 28, was formally charged on May 28 in a bizarre double homicide that occurred on May 11 at the Carrie House West in Indianapolis. The Marion County Prosecutor's Office filed two counts of murder, one count of attempted murder, and one count of attempted battery with a deadly weapon. Wolf is being held at the Marion County Jail without bond. Her pre-trial conference is scheduled for September 30. Victim Victoria Cook, 24, was dead at the scene from stab wounds. Dylan Dickover, 28, died later at Eskenazi Hospital, also by stabbing, and the third victim, Elizabeth McKugh, 33, was in critical condition. A black, blood-stained, knit watch-cap with an Indiana Department of Corrections patch, found at the scene, led to Wolf. Investigators later uncovered an alleged "manifesto," dated May 11, in a search of Wolf's home, suggesting Wolf was inspired by serial killers and was prepared to die. Police believe Cook and Wolf had dated the same man. Wolf was fired on May 22.

Kansas: "For a bail bondsman agent who'll go the extra mile to get you out of a bad position, reach out to A Girard Bonding Co.," promises the firm's owner on his MapQuest listing. However, owner Merlin "Jack" Nelson, 87, of Girard, had expectations that a Crawford County Jail prisoner might "go the extra mile" for him. In October 2019, the Crawford County Sheriff's Office stated they were investigating allegations that Nelson had attempted to get a woman at the jail to perform sex acts in exchange for bond. Sheriff Danny Smith said there was only one victim "that we know of right now." The victim's identity has not been released. Nelson was arrested on October 30, 2019 and posted a $5,000 bond the same day. It is a felony under Kansas law for a bail bondsman to have any form of consensual sex with a person who is the subject of a surety or bail bond agreement.

Kentucky: It's still not clear what prompted maximum security prisoners at the Louisville Metro Department of Corrections jail to break an interior dorm window with a water cooler in the early morning hours of May 31, 2020. Nine prisoners climbed through the broken window into a walkway, where more windows were broken, encouraging 20 more prisoners to join in the destruction, causing damage to more windows, a computer, chairs and other equipment. There were ongoing protests over the police murder of Breonna Taylor at the time, but none of the prisoners involved in the destruction were arrested protesters. Four prisoners were treated for minor injuries by LMDC medical staff, three were taken to the hospital by EMS and released back to Louisville Metro. No staff were hurt.

Louisiana: Livingston Parish was shocked when SWAT team leader Dennis Perkins and his wife, Cynthia Perkins, a teacher at Westside Junior High School in Walker were arrested for alleged child pornography in October 2019. On December 17, the two were indicted on 150 felonies. A Westside parent filed a lawsuit against the couple and the school board over cupcakes her daughter ate at school that were prepared by the Perkins and contaminated with Perkins' semen. In March 2020, a third suspect, Melanie Curtin, was indicted for aggravated rape and video voyeurism. She is accused of facilitating the November 2014 rape of an adult. Curtin posted $350,000 bond. The Perkins are being held without bond. A new 404(B), described as "extremely graphic," was filed in April 2020. It includes a secret video made during a traffic stop of a woman's cleavage and semen. In March 2020, a third suspect, Melanie Curtin, was indicted for aggravated rape and video voyeurism. She is accused of facilitating the November 2014 rape of an adult. Curtin posted $350,000 bond. The Perkins are being held without bond. A new 404(B), described as "extremely graphic," was filed in April 2020. It includes a secret video made during a traffic stop of a woman's cleavage and genitals as she searches for her driver's license. Prosecutors allege, "The unidentified female is clearly unaware she is being recorded."

Mexico: Los Zetas cartel boss Moises Escamilla May, also called "Fatty May," died in a hospital on May 8, 2020, two days after being diagnosed with COVID-19. He was
serving a 37-year sentence at the maximum-security Puente Grande State prison in Zapotlanejo, Jalisco state, for weapons and drug offenses as well as for organized crime. A regional leader of the “Old School Zetas,” the main cocaine supplier for Cancun, “Fatty May” was known for the savage beheading of 12 people in the Yucatan in 2008. The Mexican health ministry reported on the cartel boss, without naming him, on May 7, “He wasn’t suffering from any disease and started showing breathing symptoms on May 6,” it said. It was the Jalisco public prosecutor’s office that confirmed the death of “Fatty May” and his identity to Agence France-Presse (AFP). It is not known how many more COVID-19 cases have been diagnosed at the Puente Grande State prison.

Mississippi: Shelley Griffith, 29, was a prison guard at the Central Mississippi Correctional Facility in Pearl in 2016. In May of that year, she and fellow guards Reginald Brown, 27, and Sharalyn McClain, 28, entered the cell of Leon Hayes. They were all wearing boots. The three kicked, punched and stomped on Hayes. All three were indicted in June 2019 for the assault resulting in bodily injury to Hayes, involving the use of a dangerous weapon, “a shoe with a foot in it.” All three pleaded guilty in 2017 to “violating the civil rights of an inmate by using excessive force against him.” Brown was sentenced to 60 months in prison and a $1,500 fine in March 2019; he began his sentence the following month. Griffith was sentenced to 70 months in prison in January 2020, and McClain had still not been sentenced as of press time. The DOJ would not explain the delays. Hayes is representing himself in a federal lawsuit against the former guards.

Morocco: Morocco’s General Delegation for Prison Administration and Reintegration (DGAPR) moved swiftly to contain COVID-19 and announced that 75 Moroccan prisons were coronavirus-free as of June 7. The DGAPR had instituted a comprehensive action plan in May to inhibit the spread of the virus in the prisons. New prisoners were given medical exams, and vulnerable groups were identified. Movement within the facilities was limited. In April, DGAPR coordinated with the judicial authority to switch to remote hearings. More than 2,890 were held April 27 to June 26.

Each prison has been assigned a mobile medical unit to treat infected prisoners, while minimizing contamination. Large-scale testing began at all prison facilities in late April. Of the 66 confirmed COVID-19 cases at “Tangier 1,” 48 patients had recovered and 14 were in quarantine, two died, two were released and one was still in treatment. Eleven of the 26 “Tangier 1” infected employees were still in quarantine and 15 had recovered.

New Jersey: Bayside State Prison guard Joseph DiMarco was suspended and banned from state facilities “pending a thorough and expedited investigation” for mocking the police killing of George Floyd in a video. NJDOC did not name DiMarco in a Facebook posting on June 9, but said, “We have been made aware that one of our officers participated in the filming of a hateful and disappointing video that mocked the killing of George Floyd.” The NJDOC post thanked the public for alerting it to the video. Local media identified DiMarco, who took part in the video, which was filmed during a Blue Lives Matter counter protest against a peaceful Black Lives Matter march in Franklin Township on June 8. Marchers passed a white man kneeling on the neck of another white man in a reenactment of George Floyd’s killing. The video shows a man yelling, “Comply with the cops and this wouldn’t happen.” Trump 2020 signs and American flags served as the backdrop.

New York: U.S. District Judge Kenneth Karas sentenced former Harrison Police Chief Anthony Marraccini, 55, to 18 months in federal prison. Marraccini, who reported to prison in July 2019, pleaded guilty to tax evasion six months earlier. He served with the Harrison Police Department for 32 years and was chief from 2012 until 2016, after which he was put on paid administrative leave for falsifying time sheets, in a matter separate from the IRS issue. Over six years Marraccini hid more than $2.5 million in revenue from his Coastal Construction home improvement business and failed to report rental income from properties in Purchase and Rye. He owed $782,000 to the IRS and almost $120,000 in state taxes. Judge Karas gave Marraccini less than the 24-30 months he sought by prosecutors, citing Marraccini’s “exceptional police career.” Marraccini was also ordered to pay a $25,000 fine and will serve a year of post-release supervision.

North Carolina: Lauren Del Zimmer-
**Pennsylvania:** Eight days after Richard Lenhart, 49, of Pittsburgh was found unresponsive in his cell at the Allegheny County Jail, advocacy groups held a vigil on April 19, 2020 at Point State Park to remember prisoners who have died inside the jail. The Radical Youth Collective, Jailbreak, 1Hood Media, and Bukit Bail Fund wished to draw attention to the problem of prisoner suicide at Allegheny. Just weeks later, Robert Blake, 36, was found hanging by his uniform at the jail on May 28. Prisoner advocates have recommended that Allegheny County Jail integrate behavioral care with primary care and improve training and staffing to reduce the number of prisoner deaths. They have also suggested that fixtures be replaced with ones that are suicide-resistant. The U.S. Department of Justice reported in February 2020 that suicide is the leading cause of death for prisoners in county jails across the country and accounted for 31 percent of all county jail deaths between 2006 and 2016. Of 104 statewide, Allegheny County Jail has reported eight suicides in the last five years through March.

**Russia:** Paul Whelan, a former U.S. Marine, was convicted of espionage in a Moscow court and sentenced to 16 years’ hard labor on June 15, 2020. Whelan also carries Irish, British and Canadian citizenship. He was detained by Russian authorities in December 2018 under suspicion of spying. He has been held in Moscow’s Lefortovo prison since his arrest. The closed trial began on March 23. U.S. Ambassador to Russia John Sullivan has said, “This secret trial in which no evidence was produced is an egregious violation of human rights and international legal norms.” Standing behind a glass screen, Whelan held a sign, “Sham Trial! Meatball Surgery! No Human Rights! Paul’s Life Matters! Decisive action from POTUS and PMs Needed! Happy Birthday Floral!” Sergey Lavrov, the Russian foreign minister, says Whelan was caught “red-handed” with a flash drive containing “state secrets.” Whelan’s family says he had gone to Moscow for a wedding. Whelan’s lawyer contends that Whelan thought the flash drive held family photos. Whelan had been director of Global Security for auto parts supplier BorgWarner.

**South Carolina:** Lloyd Ray Franklin, 76, was fired by the South Carolina Department of Corrections after his arrest in September 2019. Franklin worked at the Livesay Correctional Institution in Spartanburg. He was assigned to drive the prisoner litter crew. According to the arrest warrant, Franklin would drive to specific locations along Interstate 85, so prisoners could pick up contraband left for them “by unknown individuals.” No information was available about how the scheme was uncovered or what type of contraband was retrieved. Franklin was arrested on a charge of providing contraband to prisoners and released the same day.

**Texas:** “She felt like she made a mistake. She’s remorseful about it and hopes to move on,” said Brenda Alicia Fuentes’ attorney, Rudy Moreno, during a video conference on May 26, 2020 in which Fuentes pleaded guilty to sexually abusing a prisoner at the 1,300-bed East Hidalgo Detention Center.
East Hidalgo is owned by GEO Group and holds prisoners for ICE and the U.S. Marshals Service. Fuentes was a cook supervisor there when she performed fellatio on a prisoner in 2018. Her sentencing is scheduled for August 2020. She faces a maximum sentence of 15 years. In November 2019, a grand jury also indicted a medical assistant and four prison guards accused of giving prisoners contraband for cash. In a twist, former East Hidalgo guard Amber Marie Estrada, 21, Fuentes' daughter, was indicted in March 2020 under suspicion of smuggling contraband into the facility in exchange for cash and a horse.

Texas: A former ICE prisoner filed a federal lawsuit on May 27, 2020 against CoreCivic, for a rape she says happened in June 2018 at the Houston Processing Center, the day before she was deported. CoreCivic operates eight such ICE sites. The plaintiff, identified as Jane Doe, says she and two other women were moved to an isolated part of the prison and sexually assaulted for over an hour by three men wearing plainclothes and face coverings. The women were put on a bus to Laredo the next day. Soon after, in Mexico, Jane Doe found she was pregnant. A daughter was born in early 2019, after a traumatic C-section. The defendants include CoreCivic, Houston Processing's Warden Robert Lacy Jr., and Assistant Warden David Price, four CoreCivic subsidiaries, the U.S. government and the "assailants." ICE renewed CoreCivic's Houston Processing contract through 2030 for $50 million in March 2020. The two years prior to 2018 saw at least eight reported sexual assault allegations per year. CoreCivic claims to have "a zero-tolerance policy for all forms of sexual abuse and sexual harassment."

Vermont: Many state residents might be surprised to learn that since 2018 there have been nearly 250 Vermont prisoners housed at a private prison in Mississippi, namely, Tallahatchie County Correctional in Tutwelier, a maximum-security prison run by CoreCivic. In February, a notice was posted at the prison saying, "All outgoing general correspondence is subject to being read in part or in full and searched for contraband before it is sent to the post office." Prisoners were told that envelopes should be left unsealed to facilitate the searches. CoreCivic had tried this once before but backed down after the Vermont prisoners complained. Vermont DOC mail policy does not allow for blanket searches of outgoing mail. Jailhouse lawyer Kirk Wool said the searches would have a chilling effect on correspondence. The Vermont DOC contacted CoreCivic, which reversed its position and agreed to handle outgoing mail in the manner of Vermont in-state prisons.

Washington: Spokane County was the only local government in Eastern Washington large enough to qualify for a direct CARES funding payment from the federal government. The county received...
about $90 million. The money must be spent by December 30, 2020. In May, Detention Services Director Mike Sparber asked the county commissioners to use some of the COVID-19 response and recovery money on temporary fabric buildings, called Sprung Structures, to expand the Spokane County Jail, which has been overcrowded for decades. Sparber argued that the COVID-19 funds could be used because the buildings would allow the county to keep prisoners farther apart during the pandemic. The buildings, which are expected to last 15 years, take a few weeks to build. Expanding the jail was on the commission agenda before the pandemic. Sabrina Ryan-Helton, a client advocate for the Bail Project, said, “This funding is intended to help our economy recover, and incarceration is hell on the economy.” Survey respondents believed the money should go to local business recovery and replenishing nonprofits that have been helping citizens affected by the virus, not redirected to create more jail space.

**Washington:** Monroe Correctional prison guard Jason Dominguez, 34, was booked into the Snohomish County Jail in October 2019 after a mother found sexual messages on her daughter’s Facebook page. Other messages were texted and Snapchatted. Dominguez, a father of two, is still being held on two counts of second-degree rape and one count of communicating with a minor for immoral purposes, on a $250,000 bond. He is on administrative leave from WADOC pending the outcome of the investigation. Dominguez was an avid volunteer with Girl Scouts and his children’s school PTA groups. Both groups say he had passed numerous background checks. The alleged abuse began in 2017 during a sleepover at Dominguez’s house, when the girl was 13. Prosecutors have confirmed that other girls have now said that Dominguez groped or kissed them. At least four trial dates were set and then continued. The current date for a jury trial is set for October 2020.

**West Virginia:** Pamela Gail Adkins, a prisoner’s mother, and former Huttonsville Correctional prison guard Mark Steven Taylor were sentenced in January 2020 for conspiring to smuggle methamphetamine and heroin to her son. Central West Virginia Drug Task Force had set up surveillance in Craigsville in February 2019. Taylor admitted Adkins had paid him $500. Adkins was picked up in a traffic stop nearby. U.S. At-
torney Mike Stuart said, “Since becoming United States Attorney, I’ve had many parents tell me they feel a sense of relief when their son or daughter is arrested because at least while incarcerated they won’t have access to drugs. Not Adkins. She wanted deadly meth and heroin delivered to her incarcerated son…Their drug smuggling scheme has them both headed to federal prison.” Taylor got 24 months for possession with intent to distribute; Adkins received 14 months for distribution of methamphetamine and heroin.

**Wisconsin:** Kuan Barnett, 20, filed a lawsuit in March 2020 against two former prison guards in Madison federal court, relating to an October 2018 beating he was subjected to in his cell at Columbia Correctional. Barnett seeks punitive compensatory damages for conspiracy, battery, intentional infliction of emotional distress and use of excessive force in violation of the Eighth Amendment. In October, Barnett had spit at guard Russell Goldsmith from his cell. The next day he spit at guard Tara Woodruff. Later that day, according to the lawsuit, Goldsmith and guard Michael Thompson went to the cell. They allegedly beat Barnett after Woodruff opened the cell, then dragged him to a restraint chair. A video of the events later surfaced. Goldsmith and Thompson later admitted to lying in their official report, which claimed Barnett had pretended to hang himself. Goldsmith resigned and pleaded no contest to abuse of a penal facility resident and misconduct in public office, serving 18 months’ probation. Thompson was fired and pleaded no contest to disorderly conduct and obstructing an officer. He served a year of probation. Woodruff and three other guards are also named in the suit.

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### Criminal Justice Resources

#### Amnesty International
Campaigns for the worldwide abolition of the death penalty. Publishes information on torture, gun violence, counter-terrorism, refugees’ rights and other human rights issues. No legal services are provided. Reports on the U.S. and other countries are available online at: www.amnesty.org.

#### Black and Pink
Black and Pink is an open family of lesbian, gay, bisexual, transgender and queer prisoners and “free world” allies who support each other. A national organization, Black and Pink reaches thousands of prisoners across the country and provides a free monthly newspaper of prisoner-generated content, a free (non-sexual) pen-pal program and connections with anti-prison movement organizing. Contact: Black and Pink, 6223 Maple St. #4600, Omaha, NE 68104 (531) 600-9089. www.blackandpink.org

#### Center for Health Justice
Formerly CorrectHELP. Provides information related to HIV in prison – contact them if you are not receiving proper HIV medication or are denied access to programs due to your HIV status. Contact: CHJ, 900 Avila Street, Suite 301, Los Angeles, CA 90012 (213) 229-0985; HIV Hotline: (213) 229-0985 (collect calls from prisoners OK). www.centerforhealthjustice.org

#### Centurion Ministries
Centurion is an investigative and advocacy organization that considers cases of factual innocence. Centurion does not take on accidental deaths or self-defense cases or cases where the defendant had any involvement whatsoever in the crime. In cases involving sexual assault, a forensic component is required. Cases that meet this criteria may send a 2-4 page letter outlining the facts of the case, including the crime you were convicted of, the evidence against you and why you were arrested. You will receive a return letter of acknowledgement. Contact: Centurion, 1000 Herrontown Rd., Clock Bldg. 2nd Fl., Princeton, NJ 08540. www.centurion.org

#### Critical Resistance
Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in California, New York, and Portland, Oregon. Publishes The Abolitionist newsletter. Contact: Critical Resistance, 1904 Franklin Street #504, Oakland, CA 94612 (510) 444-0484. www.criticalresistance.org

#### FAMM
FAMM (Families Against Mandatory Minimums) advocates against mandatory minimum sentencing laws with an emphasis on federal laws, and works to “shift resources from excessive incarceration to law enforcement and other programs proven to reduce crime and recidivism.” Contact: FAMM, 1100 H Street, NW #1000, Washington, DC 20005 (202) 822-6700. www.famm.org

#### The Fortune Society
Provides post-release services and programs for prisoners in the New York City area and occasionally publishes Fortune News, a free publication for prisoners that deals with criminal justice issues, primarily in New York. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. www.fortunesociety.org

#### Innocence Project
Provides advocacy for wrongfully convicted prisoners whose cases involve DNA evidence and are at the post-conviction appeal stage. Maintains an online list of state-by-state innocence projects. Contact: Innocence Project, 40 Worth St., Suite 701, New York, NY 10013 (212) 364-5340. www.innocenceproject.org

#### Just Detention International
Formerly Stop Prisoner Rape, JDI seeks to end sexual violence against prisoners. Provides resources for imprisoned and released rape survivors and activists for almost every state. Contact: JDI, 3325 Wilshire Blvd. #340, Los Angeles, CA 90010 (213) 384-1400. www.justdetention.org

#### Justice Denied
Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, which includes all back issues of the Justice Denied magazine and a database of more than 4,500 wrongfully convicted people. Contact: Justice Denied, P.O. Box 66291, Seattle, WA 98166. www.justicedenied.org

#### National CURE
Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters (such as federal prisoners and sex offenders) that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the CURE Newsletter, $2 annual membership for prisoners. Contact: CURE, P.O. Box 2310, Washington, DC 20013-2310 (202) 789-2126. www.curenational.org

#### National Resource Center on Children and Families of the Incarcerated
Primarily provides research, fact sheets and a program directory related to families of prisoners, parenting, children of prisoners, prison visitation, mothers and fathers in prison, etc. Contact: NRC-CFI at Rutgers-Camden, 405-7 Cooper St. Room 103, Camden, NJ 08102 (856) 225-2718. https://nrccf.camden.rutgers.edu.

#### November Coalition
Advocates against the war on drugs and previously published the Razor Wire, a bi-annual newsletter on drug war-related issues, releasing drug war prisoners and restoring civil rights. No longer published, back issues are available online. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 680-4679. www.november.org

#### Prison Activist Resource Center
PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners and supports activists working to expose and end the abuses of the Prison Industrial Complex and mass incarceration. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. www.prisonactivist.org

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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.

The Ceiling of America, An Inside Look at the U.S. Prison Industry, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. $22.95. PLN’s first anthology presents a detailed “inside” look at the workings of the American justice system.


The Merriam-Webster Dictionary, 2016 edition, Random House. 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.

The Federal Rules of Civil Procedure, Practitioner’s Desk Reference 2017, by A. Benjamin Spender, 439 pages. $54.95. This concise compilation of the Federal Rules of Civil Procedure and portions of Title 28 of the U.S. Code most pertinent to federal civil litigation provides attorneys and pro se litigants with a handy resource that facilitates quick reference to the Rules.

Beyond Bars, Rejoining Society After Prison, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alfreda, 224 pages. $14.95. Beyond Bars is a practical and comprehensive guide for ex-cons 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.

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Criminal Procedure: Constitutional Limitations, 8th ed., by Jerold H. Israel and Wayne R. LaFave, 557 pages. $49.95. This book is intended for use by law students of constitutional criminal procedure, and examines constitutional standards in criminal cases. 1085

Prisoners' Self-Help Litigation Manual, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 928 pages. $54.95. 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


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

Advanced Criminal Procedure in a Nutshell, by Mark E. Cammack and Norman M. Garland, 3rd edition, 534 pages. $49.95. This text is designed for supplemental reading in an advanced criminal procedure course on the post-investigation processing of a criminal case, including prosecution and adjudication. 1090a

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