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Class-Action Suit at BOP "Rape Club" in California Settled for Record $116 Million

After it was signed into law in 2003, the Prison Rape Elimination Act (PREA), 42 U.S.C. ch. 147 § 15601 et seq., remained unused for a decade while standards were developed and implemented to curtail rape and sexual assaults at prisons and jails nationwide. At that time, the Human Rights Defense Center (HRDC), publisher of *PLN* and *Criminal Legal News*, submitted comments to the U.S. Department of Justice (DOJ) criticizing the proposed standards and calling them flawed and insufficient.

That criticism proved prescient when a sexual abuse scandal erupted at the Federal Correctional Institution in Dublin, California, in early 2022. As *PLN* reported then, there were so many federal Bureau of Prisons (BOP) staffers accused of sexually assaulting prisoners—including coerced and non-consensual intercourse, oral sex, fondling and voyeurism—that the lockup earned a new nickname: the "rape club." [See: *PLN*, May 2022, p.28.]

For 103 prisoners who sued BOP for the abuse that they suffered, the nightmare finally came to a resolution on December 18, 2024, when the federal court for the Northern District of California approved a nearly $116 million settlement—the largest payout in BOP history.

Ten Staffers Charged, Seven Convicted So Far

Although allegations of sexual misconduct by BOP staffers at FCI-Dublin date back decades, the latest incidents occurred between 2019 and 2021. During testimony before a U.S. Senate subcommittee hearing on December 13, 2022, then-BOP Director Colette Peters acknowledged that the agency faced a "culture of abuse and a culture of misconduct." But details of what prisoners suffered at the "rape club" prove that to be a vast understatement.

The warden at FCI-Dublin when the scandal broke, Ray J. Garcia, was a 32-year BOP veteran. He had arrived at the facility in November 2020, and his duties included supervising PREA audits. He was also a serial sexual predator. After one victim came forward accusing Garcia of sexual abuse, investigators found pictures of nude prisoners on his government-issued cellphone. That resulted in his arrest in September 2021 on federal charges of forcing women to strip and then fondling, penetrating and taking photos of them.

Apparently convinced that a jury wouldn't believe the prisoners he was accused of abusing, Garcia went to trial. He also made the tactical mistake of testifying, which exposed him to cross-examination by prosecutors. When they were through, jurors convicted him on December 1, 2022, of seven counts of sexual abuse and one count of lying to federal investigators. Sentencing was held in March 2023, when the disgraced former warden received a 70-month prison term. At the sentencing hearing, U.S. District Judge Yvonne Gonzalez Rogers told him, "You entered a cesspool and then did nothing about it. You just went along with the ride and enjoyed the cesspool yourself." *See: United States v. Garcia*, USDC (N.D. Cal.), Case no. 4:21-cr-00429. [See also: *PLN*, Jan. 2022, p.30; and Feb. 2023, p.62.]

While Garcia was the highest-ranking BOP staff member charged in the scandal, other employees engaged in even more appalling misconduct. Former chaplain James Theodore Highhouse coerced sex from prisoners by appealing to their Christian faith, telling them that the Bible endorsed sex and that God wanted them to be together. He pleaded guilty to sexual abuse of

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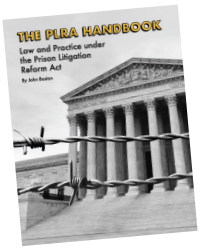

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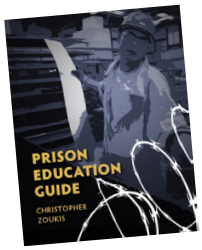

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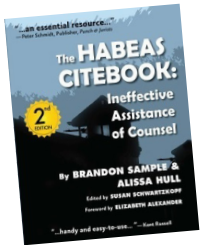

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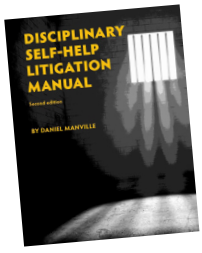

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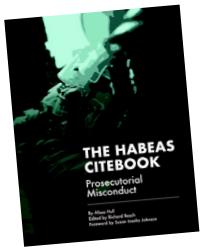

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BOP "RAPE CLUB" cont'd

a ward and, in November 2022, he began serving a seven-year sentence—more than double the recommendation in the federal sentencing guidelines.

"It's hard to come up with the right words to describe how egregious an abuse of these victims this was," stated U.S. District Court Judge Haywood S. Gilliam, Jr., who also ordered Highhouse, 49, to register as a sex offender following his release from prison. *See: United States v. Highhouse*, USDC (N.D. Cal.), Case No. 4:22-cr-00016. [See also: *PLN*, Nov. 2022, p.54; and June 2023, p.60.]

Prison technician Ross Klinger pleaded guilty to sexual abuse of a ward on February 10, 2022; he had been charged with giving money and gifts to three prisoners to induce them to have sex with him. He also reportedly offered to marry them and father their children. Following his transfer to work at another lockup, he used an email address under another name to stalk one of his victims. Klinger, 38, agreed to testify against his former colleagues in exchange for a lenient sentence of one year on home-detention. When she reluctantly went along with it on January 24, 2024, Judge Gonzalez Rogers bemoaned that Klinger's "conduct was particularly horrifying to [his] victims." *See: United States v. Klinger*, USDC (N.D. Cal.), Case No. 4:22-cr-00031.

Klinger's former supervisor at FCI-Dublin, guard John Russell Bellhouse, was initially charged with getting oral sex from a prisoner whom he called his "girlfriend," bribing her with jewelry and use of his office phone. When he was arrested in November 2021, a superseding indictment added charges related to another victim, too. Bellhouse went to trial and was found guilty on June 5, 2023; the 40-year-old was sentenced that December to 63 months in prison for two counts of sexual abuse and three counts of abusive sexual conduct. *See: United States v. Bellhouse*, USDC (N.D. Cal.), Case No. 4:22-cr-00066. [See also: *PLN*, Jan. 2024, p.18.]

Despite the serious nature of their charges, Garcia, Highhouse, Klinger and Bellhouse had all been released on bond or to home detention after they were arrested and charged. The fifth BOP employee to be arrested in connection with the Rape Club scandal, Enrique Chavez, was a guard assigned to supervise the kitchen. He was accused of sexually abusing a prisoner in March 2022. Apparently he wasn't paying attention, since that was *after* several other staff members, including Warden Garcia, had already been arrested and an investigation into sexual misconduct at the prison was underway. Chavez, 49, pleaded guilty on October 27, 2022, and he was sentenced to 20 months in prison in February 2023. *See: United States v. Chavez*, USDC (N.D. Cal.), Case No. 4:22-cr-00104. [See also: *PLN*, Feb. 2023, p.62; and July 2023, p.18.]

Another guard assigned to the kitchen, Andrew Jones, was charged with having oral sex and intercourse with three prisoners in 2020 and 2021 and then lying about it to investigators. He later admitted to sexually abusing two other victims, though he was not charged for that. Jones, 36, pleaded guilty to his charge on August 17, 2023, and three months later he received an eight-year prison term plus 10 years on supervised release. *See: United States v. Jones*, USDC (N.D. Cal.), Case No. 4:22-cr-00212. [See also: *PLN*, Jan. 2024, p.18; and April 2024, p.60.]

Former FCI-Dublin guard Nakie Nunley, 48, pleaded guilty on the same day that Jones did. A retired U.S. Air Force veteran, he supervised prisoners at a call center operated under contract to clients of UNICOR, BOP's prison industry. He also coerced several of them into engaging in sex acts with him. His guilty plea included 10 counts of sexual abuse involving five victims. When he was sentenced to six years in prison on March 28, 2024, the judge called him "cruel" and "predatory," as well as "perverse." *See: United States v. Nunley*, USDC (N.D. Cal.), Case No. 4:22-cr-00213. [See also: *PLN*, Jan. 2024, p.18; and Apr. 2024, p.60.]

Two other FCI-Dublin employees were reportedly placed on leave on March 23, 2022, a day after former prisoner Andrea Reyes implicated them in the scandal during a TV news interview. One of them, guard Nicholas Ramos, 37, died by suicide on August 21, 2022. No charges were ever filed against him or the other guard, Sergio Saucedo.

The next employee charged was the one whom prisoners called "the worst": Darrell Wayne Smith. The disabled U.S. Army veteran, whom his victims nicknamed "Dirty Dick," was still employed by the BOP when he was arrested at his new home in Florida on May 11, 2023. Smith, 54, was charged

with 15 counts of sexual abuse of a ward, aggravated sexual abuse and abusive sexual conduct; he was also accused of groping prisoners and having sex with two of them—once in a janitor's closet.

One of Dirty Dick's victims described him as a "pervert in its worst form." He was fond of siting in the dark outside prisoners' cells and watching them undress—often, bizzarely, while eating bananas. "Like every time we get out of the shower, opening a door, anything, he would be just standing right there looking, probably eating some bananas or something, just staring at us," recalled former FCI-Dublin prisoner Linda Chaney.

Smith's direct supervisor, unit manager Tess Korth, was disgusted by him, too. She reported his inappropriate behavior to then-Warden Garcia. But given that Garcia was engaging in sexual abuse of prisoners himself, it's not surprising that Korth's complaint accomplished nothing—except that she was later forced out of her job after reporting Smith, she said.

"Dirty Dick" went to trial in March 2025, and a dozen of his victims testified against him. His attorney argued that the prisoners shouldn't be believed because they were convicted felons—a common defense tactic when prison staffers are charged with misconduct. The jury, consisting of 10 men and two women, deadlocked; a mistrial was declared on April 14, 2025, and another trial was scheduled for September 15, 2025. *PLN* will update the results when the trial concludes. *See: United States v. Smith,* USDC (N.D. Cal.), Case No. 4:23- cv-00110. [See also: *PLN*, July 2023, p.17; and Jan. 2024, p.18.]

The most recent charges were handed down on June 25, 2025. Former guard Jeffrey Wilson, 34, was charged with five counts of sexual abuse of a ward, a prisoner identified as "C.S.," in a prison medical room between March 14 and August 16, 2022. Former fellow guard Lawrence Gacad, 33, was charged with abusive sexual contact with another prisoner identified as "S.L." between March 1 and June 14, 2022.

S.L. is one of the named Plaintiffs in the class-action suit that was settled, and Gacad was one of the named Defendants. If found guilty, both he and Wilson face lengthy prison terms and hefty fines—though it's doubtful they will be fully imposed, based on the sentencing history of other "rape club" staffers.

In fact, the DOJ press release announcing the charges took pains to identify the victims as female prisoners—as if their sex played a significant role in the crimes against them. It didn't, of course; rape is a crime of violence committed by one person exercising domination over another, and any competent legal professional knows that. Pointing out their sex only serves to blame the victims for the sexual abuse that they suffered.

Investigations, Staff Changes Ensue

Prison officials routinely describe incidents of staff sexual misconduct with terms like "isolated," blaming the abuse not on a corrupt system but on one "bad apple." The gross abuses committed by BOP employees at FCI-Dublin were not isolated, however; they were part of a culture of systemic, pervasive sexual violations committed by prison workers responsible for keeping prisoners

safe. If they were the actions of bad apples, then there were plenty of bad apples in the "rape club" barrel.

It's important to remember, too, that the sexual abuse occurred despite the existence of PREA standards that had been in effect nationwide for over five years. Among all prisons in the United States, FCI-Dublin had the highest number of staffers charged with sex offenses. But the criminal prosecutions were just the beginning.

Following Warden Garcia's arrest and abrupt departure, Thomas Ray Hinkle took over the leadership position at FCI-Dublin. He didn't last long, though. Hinkle, as it turned out, had openly acknowledged that he beat Black prisoners when employed as a guard in Colorado in the 1970s. He also described the sexual abuse suffered by prisoners at the "rape club" as "consensual"—although as all competent corrections officials know, prisoners are unable to give legal consent due to the immense power imbalance between the keepers and the kept. In a stunning example of the "Peter Principle"—that workers are promoted to their highest level of incompetence—Hinkle was named to head the BOP's Western Region in February 2022.

Even members of the union representing federal prison guards, the American Federation of Government Employees (AFGE), were displeased, and they picketed outside Hinkle's office, as *PLN* also reported. "The regional directors are the same. The people in central office are the same," stated Edward Canales, President of the AFGE chapter at FCI-Dublin. "How do we expect change when [it's] the people who are in office that make this environment toxic? It doesn't make any sense." [See: *PLN*, Feb. 2023, p.62; and Apr. 2024, p.60.]

Indeed, when BOP administrators commit misconduct themselves, it fosters an environment where guards and other line staff feel that they can engage in abusive behavior, too—or at least be subjected to less scrutiny. However, guard unions have also "repeatedly pushed for additional federal prison funding, highlighting what they say is an inadequate amount of money" needed for pay increases, staff retention and infrastructure repairs, as the Associated Press reported. Yet it's unclear how more funding would curtail sexual abuse by staff; if guards who are inclined to rape prisoners are paid more, they would simply be higher-paid rapists.

Once Hinkle left FCI-Dublin, he was replaced by Warden Thahesha Jusino, until she retired near the end of 2023. Next in line was Art Dulgov—who lasted as warden only until March 11, 2024. That's when he and Associate Warden Patrick Deveney, along with an unidentified guard captain, were walked off the job for unspecified reasons during an FBI raid on FCI-Dublin. Dulgov was replaced as warden by N.T. McKinney, a Deputy Regional Director, on an interim basis; McKinney, in turn, was later replaced by Charles Hubbard as acting warden.

A federal judge subsequently noted the BOP had gone through multiple wardens without being able to find one "capable of understanding and responding to the gravity of the situation" at the prison. Yet still the staffing crisis persisted, with five more staff members placed on administrative leave on January 24, 2024, including a guard captain. Two months later, another dozen employees at the lockup were reportedly under investigation, as *PLN* reported. [See: *PLN*, Apr. 2024, p.60.]

Lawsuits Ensue

Meanwhile, the incarcerated victims of the rampant sexual abuse at FCI-Dublin began suing in federal court—not only for monetary damages but also seeking injunctive relief. The California Coalition for Women Prisoners and eight individual plaintiffs filed a class-action complaint against the BOP in August 2023, represented by attorneys with the California Collaborative for Immigrant Justice and Rights Behind Bars in Washington, D.C., as well as Rosen, Bien, Galvan & Grunfeld LLP and Arnold & Porter, Kaye, Scholer LLP in San Francisco.

Rights Behind Bars brought suit on behalf of a dozen more prisoners on March 7, 2024. More suits on behalf of still more abused prisoners were also filed, including 29 by civil rights attorney Jaehyun Oh, a partner in the Jacob D. Fuchsberg Law Office in New York City. Many of those additional plaintiffs opted into the eventual settlement of the class action.

The class action was assigned to Judge Gonzalez Rogers, who also presided over five of the criminal cases involving former FCI-Dublin staffers. The complaint raised claims not only related to gross sexual misconduct but also to retaliation against prisoners who reported it—including placement in segregation—as well as inadequate medical and mental healthcare for victims of sexual abuse.

The district court held a hearing on the Plaintiffs' motions for class certification and a preliminary injunction in January 2024, in which Judge Gonzalez Rogers heard testimony about "the ongoing risks and occurrences of sexual assault, retaliation, and lack of access to basic human needs" at FCI-Dublin. The BOP waged a scorched earth campaign in response: Two weeks later, five prison employees were placed on administrative leave—including a guard captain who had testified for the BOP at the hearing.

On Valentine's Day 2024, Judge Gonzalez Rogers conducted an unannounced tour of the prison, speaking with both staff and prisoners. One month later—and four days after the FBI raid—the district court granted Plaintiff's motion for certification of a class consisting of "all people who are now, or will be in the future, incarcerated at FCI-Dublin and subject to FCI-Dublin's uniform policies, customs, and practices concerning sexual assault, including those policies, customs, and practices related to care in the aftermath of an assault and protection from retaliation for reporting an assault." On March 15, 2024, the district court also granted in part and denied in part the Plaintiffs' motion for a preliminary injunction. *See: Cal. Coal. for Women Prisoners v. United States*, 723 F. Supp. 3d 712 (N.D. Cal. 2024).

Pulling no punches, Judge Gonzalez Rogers called FCI-Dublin a "dysfunctional mess" that could "no longer be tolerated." Additionally, she said, "because of its inability to promptly investigate the allegations that remain, and the ongoing retaliation against incarcerated persons who report misconduct, [the] BOP has lost the ability to manage with integrity and trust." The district court noted that prisoners continued to face retaliatory acts "for making any kind of report, whether for malfeasance like sexual abuse or the enforcement of their rights, such as filing a medical complaint." A common retaliation was segregating prisoners who complained in the Special Housing Unit (SHU), where they were held in solitary or near-solitary confinement.

While the district court was skeptical that a "pervasive" sexualized environment existed at the facility, there was ample evidence of retaliation by staff. For example,

prisoners were subjected to cell searches, loss of privileges and strip searches after meeting with attorneys involved in the case. Additionally, "FCI-Dublin's long history of using the SHU to inappropriately quell inmates' First Amendment rights can no longer be countenanced," the district court declared, observing that the use of segregation "to deter false reports [of sexual abuse] will have the perhaps unintended consequence of deterring incarcerated persons from making true reports."

Further, the "zero tolerance" that BOP claimed for staff sexual misconduct was "not quite zero," the district court wrote. Some employees accused of abuse, it turned out, were not placed on administrative leave. Based on these findings, Judge Gonzalez Rogers granted in part the class members' motion for a preliminary injunction and appointed an onsite Special Master to monitor FCI-Dublin—the first time that a BOP prison had been subjected to such oversight by a federal court, as *PLN* also reported. [See: *PLN*, Apr. 2024, p.60].

Wendy Still, a former chief probation officer for Alameda and San Francisco Counties, was named Special Master, reporting to the prison on April 12, 2024. Four days later, apparently desperate to avoid court supervision and dismiss the class-action suit, the BOP informed Judge Gonzalez Rogers that it was closing the prison. As it rushed to do so, more than 600 prisoners were shipped to other BOP lockups nationwide. In the confusion, many prisoners reported lost property, denial of hygiene supplies, harassment and retaliation after being moved. News of the prisoners' sexual abuse accusations and participation in the class-action case had traveled along the BOP grapevine, and staff used the transfers as a way to mete out their own form of revenge. "[B]eing an inmate of FCI-Dublin has definitely made all of us targets to such harsh treatments," several prisoners sent to the Federal Detention Center (FDC) in Miami stated.

The district court wasn't pleased with the ham-handed closure of the prison, calling it "ill-conceived" and "like Swiss cheese, full of holes." In a letter to BOP Director Peters, members of Congress, including Senate Judiciary Chairman Dick Durbin (D-IL), demanded answers for the "botched" closure and punitive transfers, as *PLN* reported. [See: *PLN*, July 2024, p.13.] The district court entered an order on May 8, 2024, requiring prison officials to provide status updates for each transferred prisoner to the Special Master and class counsel. As the district court warned, "the BOP cannot hide from or escape its obligations merely by closing FCI-Dublin."

The DOJ attorneys representing the BOP and prison employees didn't get the clear message the court was sending. On June 18, 2024, they moved to dismiss the class action, arguing that shutting the facility and moving all the prisoners had mooted the prisoners' claims. The motion was flatly denied. "The notion that the constitutional injuries alleged by FCI-Dublin's [prisoners] were comprehensively remedied by the facility's closure strains credibility," Judge Gonzalez Rogers wrote curtly. "Redressable injuries stemming from the [prisoners'] experiences at FCI-Dublin remain to be addressed, and the BOP is well aware of this fact."

In the meantime, Still, the Special Master, had issued a report that described her findings and recommendations. In it, she cited "numerous operational, policy and constitutional violations" at FCI-Dublin, noting "the failure of [BOP] Central Office and Regional Office management to correct significant and longstanding deficiencies that had previously been identified in multiple audits and investigations." Her report concluded, "It is unconscionable that any correctional agency could allow incarcerated individuals under their control and responsibility to be subject to the conditions that existed at FCI Dublin for such an extended period of time without correction."

The parties subsequently entered into settlement discussions, with Magistrate Judge Joseph C. Spero serving as a mediator. Finally realizing that they had run out of options and could not escape liability for the well-documented sexual abuse, retaliation and other violations at FCI-Dublin, the Defendants agreed to a proposed consent decree that was filed with the district court on December 6, 2024. The BOP had announced the permanent closure of the prison the day before, abandoning efforts to rehabilitate its sordid reputation and culture of pervasive staff sexual misconduct.

Injunctive Settlement Terms

The landmark class-action settlement was bifurcated, with the first part of the agreement covering injunctive relief and the second addressing monetary damages. Because FCI-Dublin had since been closed, the class definition was modified to include "all people who were incarcerated at FCI-Dublin between March 15, 2024 and May 1, 2024, and all named plaintiffs"— which included all those who had been transferred to other facilities.

With respect to injunctive relief, the consent decree specified that the "BOP Director will issue a formal, public acknowledgement to victims of staff sexual abuse"—an important recognition of the violations that prisoners suffered of both their bodies and their civil rights. Colette Peters wouldn't be making that apology, however, because she resigned—apparently under pressure—just hours after Pres. Donald J. Trump (R) assumed office in January 2025, as *PLN* reported. [See: *PLN*, Feb. 2025, p.10; and April 2025, p.51.]

To address issues related to the transfers when the lockup closed, the BOP must ensure that prisoners who were moved did not lose "good-time" sentence credits and were not placed in "non-earning status" for additional credits. Also, by July 1, 2025, the agency must provide a final decision on all property loss claims related to the transfers.

Subject to bed availability and other factors, former FCI-Dublin prisoners shall be housed "in a facility as close as practicable to the class members' primary residence,

and to the extent practicable, in a facility within 500 driving miles of that residence," the decree said, adding that prison assignments were also to be made "in the lowest security level facility possible." Prisoners eligible under the First Step Act or Second Chance Act will be released to community placement "as soon as practicable after the class member becomes eligible." Such releases will not be denied due to immigration status or solely due to the existence of a detainer filed by federal Immigration and Customs Enforcement (ICE).

The consent decree provides detailed procedures and protections for reporting retaliation, as well as physical or sexual abuse and PREA violations, including those reports filed at the Office of the Inspector General and the BOP's Office of Internal Affairs. Prison officials shall inform class members when a BOP employee accused of abuse "is no longer posted within the class member's unit" or "no longer employed at the facility," as well as when "the agency learns that the staff member has been indicted on a charge related to sexual abuse at a BOP facility … or … has been convicted on a charge related to sexual abuse at a BOP facility."

To address prior retaliatory acts by staff at FCI-Dublin, the BOP must now review all disciplinary reports issued to class members between January 1, 2020, and May 1, 2024. Those "that are found to contain due process, evidentiary, or other procedural violations" must be expunged. BOP must also adjust the prisoners' security classifications, time credits and release dates accordingly.

If class members are placed in SHU, they must receive a copy of the administrative detention order or incident report within 24 hours and be provided with administrative remedy forms and confidential legal calls with class counsel. No class member may be put in SHU solely for low (400 series) or moderate (300 series) disciplinary violations unless required due to security concerns. If placed in non-punitive ad seg, per BOP policy, a prisoner must be afforded phone time, access to correspondence and visitation under the same rules applicable to prisoners in general population, plus seven hours of out-of-cell exercise per week, along with a "reasonable amount" of personal property and access to programming and commissary services.

The BOP shall also inform class members about the status of their requests or referrals for medical and mental healthcare, including estimated wait times. Clinical staffing levels and wait times for outside medical providers will be monitored. Interpreters must be provided for non-English speaking prisoners. Additionally, class members may make confidential calls to Rape Crisis Centers upon request which will not count against their allotted phone minutes. All class members will further be afforded confidential access to class counsel, including a free phone call at least once a week. A phone number for class counsel shall be added to all class members' phone accounts and they will be able to place calls to that number "regardless of restrictions on phone access." The BOP must likewise provide class counsel with "ongoing and timely access" to the class members wherever they are located. Preliminary approval of the consent decree was granted by the district court on December 20, 2024.

Enforcement and $116 Million Award

To enforce these settlement provisions, the district court appointed Still, the Special Master, to serve as a Monitor to oversee the agreement. All costs and fees incurred by the Monitor and her staff will be paid by the BOP. Moreover, the class members shall be allowed confidential communication with the Monitor via phone, mail and e-messaging, and the Monitor will have "the ability to inspect BOP facilities and interview BOP staff" as needed.

As Monitor, Still's duties include reviewing concerns related to the class members, such as their medical and mental healthcare needs, PREA complaints, compassionate release requests, time credits, disciplinary incidents and SHU placements, as well as mistreatment during their transfers from FCI-Dublin. Class members may submit complaints concerning retaliation or staff abuse directly to the Monitor, who will issue monthly public reports on the BOP's compliance with the settlement terms.

Prison officials were also required to appoint a Liaison, reporting directly to a BOP Deputy Director, whose sole duties are to ensure compliance with the consent decree. Jennifer Knox was appointed as the BOP Liaison.

Class counsel described the settlement agreement as historic and unprecedented. "It is the first time in BOP history that monitoring will be enforced by consent decree across over a dozen federal women's prisons nationwide," stated Amaris Montes, an attorney with Rights Behind Bars, who added that "[t]his reflects the lived reality of the class members in their lawsuit: the problems at FCI-Dublin were not unique to that facility, and the BOP has failed people in its custody across the country."

Added Emily Shapiro, an advocate with the California Coalition for Women Prisoners and Dublin Prison Solidarity Coalition, "We will fight to ensure the agreement is fully implemented, and we will remain in daily communication with FCI-Dublin survivors and continue to demand their freedom, hold policy changes across the prison system, and ultimately, community-based alternatives to prisons and the gender violence they perpetuate."

The terms of the consent decree apply to all class members wherever they are housed, and the settlement will remain in effect for two years—though the BOP can move for early termination by demonstrating "substantial compliance" after 18 months. Some provisions were not included in the settlement, such as issuing U-visas to non-citizen prisoners who had been subjected to sexual abuse at FCI-Dublin, which would prevent them from being deported after completing their sentences.

The injunctive relief provisions of the consent decree received final approval from the district court on February 27, 2025. That same day, the BOP settled the monetary damages claims in the class-action suit for $116 million—the highest amount ever paid in a prison-related case, surpassing even a $100 million award to female prisoners in Michigan who were subjected to systemic sexual abuse, as *PLN* also reported. [See: *PLN*, Dec. 2009, p.30.]

The 103 class members included in the damages settlement will receive an average payout of $1.1 million each. The settlement did not resolve all outstanding cases, and other lawsuits over sexual abuse at FCI-Dublin remain pending. Attorney's fees and legal costs for class counsel have not yet been awarded but will be substantial. *See: Calif. Coalit'n for Women Prisoners v. Fed. Bur. of Prisons*, USDC (N.D. Cal.), Case No. 4:23-cv-04155.

Harrowing Details

The Manhattan attorney who represented many victims at FCI-Dublin, shared stories from 20 of them with *PLN*. Their identities were withheld, but the details of what

they endured were horrific, easily justifying the amounts they were awarded from the settlement.

"Jane Doe 1" said that she was forced to expose herself on several occasions to a prison official matching the description of Warden Garcia, who also photographed her without her consent. He groped her on one occasion; another time he took her hand and placed it on his erect penis while propositioning her for sex. "Jane Doe 2" said that he forced her to perform oral sex on him—twice. The two prisoners were awarded $1,300,075.61 each. A third victim, "Jane Doe 15," said that he forced her to strip and dance naked for him. She was awarded $360,000.

Four alleged victims of a guard matching Smith's description said that he forced them to expose themselves on several occasions. "Jane Doe 3" said that he also fondled her while he masturbated and then digitally penetrated her and raped her. She was awarded $1,275,000. "Jane Doe 4" said that he repeatedly propositioned her for sex, also groping her genitals over her clothes. She was awarded $975,000. "Jane Doe 8" said that she was repeatedly fondled; the guard also digitally penetrated her on three separate occasions. She was awarded $755,000. "Jane Doe 10" said that she was digitally penetrated on five occasions—once anally—and forced to have sex with another prisoner while the guard watched. She was awarded $710,000.

Two more of his alleged victims, "Jane Doe 11" and "Jane Doe 12," were groped, fondled and digitally penetrated, they said, and awarded $650,000 and $625,000, respectively. The first also said that another guard—who was not charged—repeatedly groped her and masturbated himself.

"Jane Doe 5" said that she was forced to perform oral sex on a kitchen guard who has not been criminally charged; he tried to rape her and digitally penetrated her when she fought back, she claimed. He also groped and fondled her, she said, forcing her to masturbate him. She was awarded $900,000.

Someone matching the description of Ramos, the guard who committed suicide, was accused by "Jane Doe 6" of repeatedly groping her breasts and rubbing his erection against her butt, while describing sexually explicit dreams he had about her. She was awarded $893,801.98.

A guard matching Nunley's description was accused by "Jane Doe 7" of forcing her to have sex with another prisoner while he watched and masturbated. "Jane Doe 9" said that he made her masturbate him. Both worked for him in UNICOR when he digitally penetrated them, they said. They were awarded $755,000 each.

Three more victims said that he rubbed his genitals against them and repeatedly fondled them. "Jane Doe 16" added that his sexual remarks persisted daily. "Jane Doe 14" said that he also forced her to strip and bend over as he spanked her and narrated sexual fantasies about her. "Jane Doe 13" said that he forced her three times to have sex with another prisoner while he watched, also making the other prisoner digitally penetrate her. They were awarded $325,000, $375,000 and $500,000, respectively.

A kitchen guard who was not charged pulled out his penis and put it on "Jane Doe 17," she said. She was awarded $300,000. "Jane Doe 19" said that he also engaged in unwanted touching with her on a daily basis, slapping her buttocks while making sexualized comments. She was awarded $280,000.

An unnamed paramedic who was not charged was accused by two other victims that Oh represented. Under guise of providing her medical treatment, he ordered "Jane Doe 18" to strip as he fondled her breasts on at least five occasions, she said. She was awarded $300,000. "Jane Doe 20" accused him of repeatedly ogling her body while making inappropriate comments and fondling her on at least seven occasions. She was awarded $230,000.

The Sad Conclusion: Nothing Unusual to See Here

While the consent decree entered in this case was indeed unprecedented, both in the scope of injunctive relief and the amount of monetary damages, the rampant staff sexual misconduct that led to the litigation was nothing unusual. Since *PLN* began publishing in May 1990, almost every issue has reported rapes or sexual assaults by employees at prisons, jails, juvenile facilities and other detention centers—both before and after the PREA standards were implemented. There have been so many reports of sexual abuse that *PLN* has run multiple cover stories compiling such incidents. [See, e.g.: *PLN*, April 2012, p.l; and Sept. 2013, p.1]. Having sex with prisoners is seen as a job perk by some staff members, while many others turn a blind eye to the abuse due to a longstanding code of silence among guards and other prison staffers.

There was also nothing unusual about the treatment of the FCI-Dublin employees charged with sexual misconduct. At least four of the eight staff members charged were released on bond or to home confinement despite the serious nature of the allegations against them. If the abusers weren't prison officials, it's unlikely they would have been granted pre-trial release.

Those convicted also received fairly lenient sentences, given their egregious conduct. None of the seven former staffers sentenced thus far received more than eight years in prison as punishment for raping and sexually assaulting prisoners under their custody and control. In any other context, such criminal acts would have resulted in much harsher punishment. But the FCI-Dublin Defendants apparently benefited from a "corrections employee" exception to lengthy prison terms.

This case involved another issue that's typical in the prosecution of BOP staff members who are sued by the prisoners they victimize: the dual role of the U.S. Attorney's office. Here, the U.S. Attorney vigorously defended the BOP in the class-action lawsuit, even as attorneys in the same office prosecuted FCI-Dublin employees whose actions led to the claims in the litigation. Even if the criminal and civil cases were firewalled by the U.S. Attorney, this apparent conflict of interest—which was identified by HRDC in its comments criticizing the PREA standards over a decade ago—raises serious concerns. Can the U.S. Attorney's office effectively seek to hold prison staff accountable in criminal prosecutions when evidence in those cases can be used to support claims that expose the federal government to liability in lawsuits defended by the U.S. Attorney?

Although this case resulted in the prosecution of multiple BOP employees, plus extensive injunctive relief and a record amount in monetary damages, the underlying problem remains. This will not be the last incident involving systemic sexual misconduct by corrections workers, and BOP officials need to learn from their

failure to protect prisoners from abusive staff members and from deficiencies in the existing PREA standards. Whether or not that happens now remains to be seen.

The $116 million damage award won't come out of the BOP's budget—it's "just taxpayer money," officials may rationalize. The former employees who were arrested and convicted will be replaced. And after the consent decree expires—in two years, if not sooner—it will be back to business as usual, unless there's a change in the BOP's culture of abuse and indifference. But until then attorneys who litigated the class-action suit will be scrutinizing the prison system.

"Without rigorous monitoring and enforcement, this [settlement] agreement is only words on paper," observed Kara Janssen, senior counsel at Rosen Bien Galvan & Grunfeld, LLP. "Class counsel will be closely watching BOP, going to the institutions, meeting with our class members, and will hold BOP accountable… This is the end of one chapter but much work remains for the next and we will be there to make sure it happens."

Additional sources: *AP News, The Guardian, KTVU, New York Times*

From the Editor

by Paul Wright

Over the years *Prison Legal News* has reported extensively on the rape of prisoners around the country. In 35 years of publishing, about every 4- or 5-years prison systems have a major scandal at their local women's prison where it comes to light that dozens of guards have raped or are raping scores or hundreds of women prisoners. For the past several years we have been reporting on the ongoing rapes, criminal prosecutions and civil litigation surrounding the massive rape of prisoners at the federal women's prison in Dublin, California. This issue of *PLN* is a few days late because just as we were wrapping it up a few more guards were indicted and we updated the story with the details.

The Dublin rapes are unique in some respects. It has led to the biggest damages payout in the history of the Bureau of Prisons (BOP). *PLN* has filed a FOIA request for a breakdown on the individual settlements and we will report it at a later date. Dozens of guards and staff, including the warden and chaplain have been charged and convicted of the rapes and dozens more investigations are still underway with more indictments coming. The biggest and historic development was for the first time a federal prison was placed under the supervision of a special master. And predictably, the BOP closed the prison rather than have any type of oversight.

The sheer scale and commonality of the rapes shows the lack of any accountability within the BOP in particular and prisons in general. If leadership starts at the top and the warden is raping prisoners and filming it on his government cellphone, and the chaplain is as well, it all goes downhill from there. Reading through the indictments and the civil complaints, guards were going to work and raping multiple prisoners on a single shift. Which begs the question, are they doing anything approximating work while they are cashing that taxpayer funded paycheck of theirs? Like most prison rape rings, this one went on for years if not decades.

In response to the litigation and closing the prison, all of the prisoners at Dublin, including the plaintiffs, were scattered to other BOP facilities around the country. Sadly, conditions there are not much better.

The BOP has been a troubled, decaying, poorly run and managed prison system for decades. Long ignored by the attorney general who is nominally in charge and by congress, it has lacked competent leadership for a long time. As we report in this issue of *PLN*, for the first time in its history, the BOP now has a former prisoner, Joshua Smith, appointed as the deputy director. So far, *PLN* appears to be the first news outlet to report that he acted as an informant who reduced his own drug sentence by testifying against his codefendants. Since he was released from prison he has shilled for Corecivic, the for profit private prison company FKA Corrections Corporation of America. I had the impression that President Trump was anti informant given his own experiences, but apparently not. Hopefully some long needed positive change results from this but the odds are long against it.

This issue reports HRDC censorship victories against the Milwaukee jail in Wisconsin and the Baxter County jail in Arkansas. We also recently settled a censorship suit against the Sonoma County jail in California and the Pacific County jail in Washington state. We will report the details in upcoming issues of *PLN*. Ensuring that prisoners can receive publications in general and HRDC publications in particular is a critical part of the work we do.

We continue to receive reports of censorship of *PLN* and the books we distribute. If you are a prisoner subscriber to *PLN* and anything we send you is censored or not delivered by prison and jail officials please contact us and let us know as prison officials often do not inform us of the censorship. We are currently suing prison systems in Missouri, New Mexico and Illinois for censoring our materials.

If you are a prisoner in Hawaii, Alaska, Idaho or Tennessee and publications from HRDC have been censored please contact us and let us know as we have received sporadic reports of censorship issues we are investigating.

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

Free Calls in Massachusetts Lead to Defunded Prison Programs

In December 2023, Massachusetts became the fifth state to provide free phone calls in its prisons and the first in all local jails. Video calling and e-messaging were also made available at no cost [See: *PLN*, Mar. 2024, p. 15]. Those progressive reforms were the culmination of years of advocacy to reduce the excessive costs imposed on prisoners and their families simply to stay in touch, including efforts by the No Cost Calls Coalition.

The free phone calls and other communication options removed an "immense financial burden off some of the most disadvantaged households in the state," declared Aaron Steinberg with Prisoners' Legal Services. While the volume of calls from state Department of Corrections (DOC) facilities and jails more than doubled over the next year, the No Cost Calls legislation that resulted in free communications services also had unintended consequences.

Initially, there was a problem with supply and demand: too few phones for the increased number of prisoners who wanted to take advantage of the free calls, which led to fights. The distribution of tablets with a phone app in state prisons and some jails largely alleviated that issue but a larger one remained—the loss of lucrative phone revenue.

For decades, the business model of the carceral telecom industry has been based on "commission" kickbacks: To obtain contracts to provide phone services in prisons and jails, companies such as Securus and GTL (now ViaPath) pay a percentage of their revenue to the corrections agency. Historically, such commissions have often been 40% or more. Many prison systems and local jails became reliant on that source of income, which comes from inflated phone rates paid by prisoners and their families. When Massachusetts made the calls free, that revenue stream dried up.

As part of the No Cost Calls legislation, the state allocated funds to cover the loss of commission income. In the year after the bill passed, the DOC received $8.1 million while jails received $12 million. However, for fiscal year 2024-25, only $10 million was budgeted to compensate for the free calls statewide. The governor's office had requested $35 million.

"If that money doesn't come back to us, then I have to make a decision," stated Nicholas Cocchi, president of the Massachusetts Sheriff's Association. "The phones may get turned off." Renegotiating contracts with telecom companies could reduce the costs that corrections agencies pay for phone service. The Hampden County Jail, for example, pays under 2 cents per minute for calls.

Meanwhile, programs funded by the kickbacks that benefitted prisoners have lost their funding. The No Cost Calls bill also ended the 11% commission payments that the DOC and jails received from commissary sales. According to Lois Ahrens, director of the Real Cost of Prisons Project, those commissions went to law libraries as well as inmate benefit funds. They provided "stipends for people working prison jobs and for religious services," she wrote in an October 2024 press release, and also funded recreation and gardening equipment, library books, tablets, Lexis-Nexis and Westlaw subscriptions, and other resources for prisoners. The free calls legislation originally included protections against the loss of the commissary commission revenue, but those provisions were omitted from the final version of the bill.

When the commission payments ended on July 1, 2024, funding for the programs that depended on them likewise disappeared. By September of that year, the inmate benefit fund at MCI Norfolk had run out of money, Ahrens reported. "So far," she said, "there has been no indication how or if the DOC will fund law libraries or pay for the equipment, services and programs in every prison."

Worse, despite eliminating the 11% commission on commissary purchases made by prisoners, the prices didn't go down. Keefe Commissary Network, which contracts with the DOC, kept the prices the same and pocketed the commissions it no longer had to pay the prison system. "With the full profits, Keefe is netting a huge windfall," wrote Ahrens, "while programs supported by commissions are now defunded." As a result, the company is expected to reap an "additional profit of $1.2 million in the coming year," and DOC officials are "silent on what will happen next."

Sources: *Boston Globe*, *WGBH*, The Real Cost of Prisons Project

$12 Million for Former California Prisoner Exonerated After 17 Years

On June 18, 2024, City Commissioners in San Jose, California, voted to approve a settlement paying $12 million to Lionel Rubalcalva, 45, who spent 17 years wrongfully incarcerated for a 2002 gang shooting that he didn't commit.

Rubalcalva was arrested on April 8, 2002, for a drive-by shooting three days earlier that left 19-year-old Raymond Rodriguez paralyzed from the waist down. A Norteño street gang member, Rodriguez told detectives that he had most likely been targeted by members of the rival Sureño gang. Both he and his mother said they didn't suspect Rubalcalva, who was not a rival and had once belonged to another Norteño group. Cell tower data also confirmed Rubalcalva's alibi—that he was driving to a movie date 45 miles away in Hollister at the time of the shooting.

Nevertheless, police pressured Rodriguez and three others to testify that Rubalcalva was the shooter, after which the officials also falsely claimed that the identification was made without coercion. When Rodriguez later began to waiver, they paid him off, moving him and his mother to a nicer neighborhood—details that the office of Santa Clara County District Attorney George Kennedy never shared with Rubalcalva's defense attorneys.

Rubalcalva was convicted in 2003 and incarcerated in the state Department of Corrections and Rehabilitation, where he remained until the California Innocence Project took up his case in 2018. The following year, the Conviction Integrity Unit of current District Attorney Jeff Rosen opened a reinvestigation, eventually joining a habeas corpus petition filed for the prisoner. In 2019, after 17 years of wrongful imprisonment, Rubalcalva was freed and obtained a finding of factual innocence from state superior court.

The next year, with the aid of attorney and University of San Francisco School of Law Prof. Lara Bazelon, plus co-counsel from Neufeld Scheck & Brustin, LLP in New York City, Rubalcalva sued the City of San Jose and the County of Santa Clara, along with several of their officials, accusing them of violating his civil rights by fabricating the evidence used to convict him and withholding other evidence that supported his claims of innocence.

Defendants moved for summary judgment, arguing that the evidence did not support Rubalcava's claims and, even if it did, that they were entitled to qualified immunity (QI). On March 27, 2024, the federal court for the Northern District of California largely denied the motion, rejecting Defendants' claims to QI as well as claims that later eyewitness testimony was less persuasive than what was presented at trial on their behalf. *See: Rubalcava v. City of San Jose,* 2024 U.S. Dist. LEXIS 55718 (N.D. Cal.).

The city then began negotiating the settlement agreement, which included costs and fees for Plaintiff's attorneys. As noted by attorney Nick Brustin, no other arrests have ever been made in Rodriguez's shooting, so "[n]either Lionel nor the victims were served by the corrupt police work that led to an innocent man being prosecuted and the true shooter going free." *See: Rubalcava v. City of San Jose*, USDC (N.D. Cal.), Case No. 5:20-cv-04191.

Additional source: *Los Angeles Times*

14th Alabama Sheriff's Employee Pleads Guilty in Jail Detainee's Death by Freezing

A guard pleaded guilty in June 4, 2025, in connection with the death of a man held at an Alabama jail who died in freezing conditions in January 2023. The guard, Braxton Kee, 23, pleaded guilty to deprivation of rights under color of law, and could face up to a year in prison and a fine up to $100,000.

According to court documents, Tony Mitchell, 33, who was mentally ill, was arrested on January 12, 2023, after a relative requested a wellness check for him. When officers arrived at his house, they said he was talking about demons and portals to hell. Law enforcement said Mitchell then fired a weapon at an officer.

For the two weeks he was booked at Walker County Jail, guards held Mitchell in a freezing cell that had no bathroom, bed, or running water. Court documents described Mitchell as "almost always naked, wet, cold, and covered in feces while lying on the cement floor without a mat or blanket."

According to an *Associated Press* report, Kee voiced concerns about Mitchell's condition, but he did not take matters into his own hands when his concerns were dismissed. Mitchell died of hypothermia and sepsis due to medical neglect, according to his death certificate. His body arrived at an emergency room on January 26, 2023, with a temperature of 72 degrees Fahrenheit.

Kee was the 14th employee of county Sheriff Nick Smith who has been indicted or pleaded guilty for contributing to Mitchell's death. Of those, 11 had been convicted before Kee, including most recently another guard at the jail, Carl Lofton Carpenter, 55, who pleaded guilty in April 2025 to a federal charge of depriving the civil rights of the mentally ill detainee with a brutal kick to the groin during Mitchell's arrest, as *PLN* reported. [See: *PLN*, June 2025, p.33.] Like previous plea deals filed before Kee's, according to the *Washington Post*, the former guard blamed a "culture of retaliation [that] made him afraid to report Mitchell's deadly conditions."

Source: *Associated Press*, *Washington Post*

Latest Jail Booking Info Is Based on New Data Source

The U. S. Department of Justice (DOJ) has long collected and published statistics on local jails nationwide, including the number of such facilities and how many people are booked into them each year. Who are these people and why are they jailed? On November 17, 2024, the Prison Policy Initiative (PPI), a data-driven criminal justice reform organization, released a report that addressed those questions.

To delve beyond the raw numbers of jail admissions, PPI collaborated with the Jail Data Initiative (JDI) for more detailed demographic information. They found that an estimated 7.6 million people were booked into jails in 2023; however, only around 5.6 million were unique admissions. The rest were people jailed multiple times that year, which puts the total number of bookings into better perspective.

In regard to racial data, PPI reported that "Black people are overrepresented in every part of the criminal legal system, including jails, and this new data reveals that not only are Black people jailed at alarmingly high rates, but they are jailed again and again." According to data compiled by JDI directly from online jail records, 32% of unique admissions and 29% of repeat admissions were of Black people—far above their 14% share of the total U. S. population.

Other minorities are likewise disproportionately impacted. Native Americans and Indigenous people are incarcerated at rates two to four times higher than whites and had the highest rate of multiple jail bookings among all racial groups—33% of Indigenous people admitted to jail were booked twice or more during the year.

With respect to gender, about 25% of jail admissions are women, and from 2021 to 2022 the percentage increase in women who were jailed (9%) was three times the percentage increase for men (3%). PPI reported that "at least 80% of women booked into jail were mothers, including over 55,000 women who are pregnant when they are admitted." Due to a dearth of reported data, no statistics were provided for trans and non-binary people among jail admissions.

While there was scanty information about people who were unhoused prior to their arrest, the available data indicated 42% of homeless people jailed had been admitted two or more times during the year. That is, they were especially subject to arrest and detention. "This finding adds to the existing evidence of law enforcement's ineffective but disproportionate and deliberate targeting of people experiencing homelessness," PPI wrote.

Why are these millions of people being jailed? The DOJ has not reported charging data for jail admissions for more than two decades. The statistics collected by JDI from 2021 to 2023 reveal that 14% of bookings, based on the most serious charge, were for drug-related offenses; 19% were for property crimes; 31% were for public order charges such as disorderly conduct and public intoxication; and 10% were for DUI or traffic violations. Violent crimes accounted for 26% of people who were jailed.

"In many ways," PPI concluded, "our findings from this analysis support what we already knew: people who are arrested and booked more than once per year often have other vulnerabilities, including homelessness." Further, "people who are arrested and jailed are often among the most socially and economically marginalized in society." The JDI data used in the report were extrapolated from records obtained from 648 jails nationwide.

Source: Prison Policy Initiative

$340,000 for Former Massachusetts Prisoner Whose Baby Was Stillborn

by Douglas Ankney

On February 3, 2025, a former Massachusetts prisoner dismissed claims arising from a stillbirth she suffered while incarcerated at Massachusetts Regional Women's Correctional Center (MRWCC). In return, Lidia Lech agreed to dismiss all claims over the tragedy that she had lodged against Hampden County Sheriff Nick Cocchi, whose office operated the lockup, as well as Dr. Dorothy Von Goeler and other staffers with Baystate Health, which was contractually obligated to provide healthcare to MRWCC prisoners.

Lech was pregnant when she was imprisoned in October 2013. Because a uterine rupture during a previous pregnancy had resulted in a miscarriage, her pregnancy was considered high risk, and she was scheduled to deliver her baby by caesarian section in mid-January 2014. But in mid-December 2013, she began to complain that her baby was "withering away inside of her," according to the complaint she later filed. In response, staff called her "overbearing," she said.

On January 2, 2014, Lech complained of vaginal bleeding to guard Natalie Cruz. When she then saw a nurse, Lech confided that she believed she was going into labor. Lech was then transported to a Baystate hospital, where staffers examined her and found that her baby was dead—from a suspected placental abruption which deprived the fetus of oxygen.

Lech then filed suit in 2017 under 42 U.S.C. § 1983 in federal court for the District of Massachusetts, accusing Defendants of violating her Eighth Amendment and state-law rights with deliberate indifference to her serious medical need. She claimed that from December 22, 2013, until her baby's death, she sought medical attention almost every day, informing Defendants of decreased fetal movements, vaginal discharge, a "dropping feeling" in her abdomen, and a "bulging sensation" on her right side. She alleged that Defendants ignored and, at times, belittled her medical complaints,

refusing all but her last request to go to the hospital.

The Defendants disputed the allegations. They said the medical notes for each of Lech's visits reported no pregnancy-related symptoms and that nothing indicated she requested to go to the hospital. Her case proceeded to trial in 2022, where the judge made two evidentiary rulings that later became the subject of appeal.

First, the Defendants sought to admit recorded phone calls that Lech made to her family and boyfriend while at MRWCC. They argued that the recordings demonstrated that she did not make any mention of her claimed pregnancy-related symptoms in conversations with her loved ones. Defendants also argued that the calls revealed how Lech lied about topics unrelated to her medical care—showing her general character for untruthfulness.

Second, Lech sought to admit the testimony of her close friend Alfred Zygmont, who visited her at MRWCC twice during the relevant time period. He would testify that Lech had informed him of her concern over the recent symptoms and also of the Defendants' failure to respond to them.

Over Lech's objection, the district court admitted the recorded phone calls and they were played to the jury. But Zygmont was not allowed to testify on the grounds that his testimony served only to "bolster" Lech's testimony and was not crucial to her case. The jury then returned a verdict in favor of the Defendants, and Lech appealed.

First Circuit Reversal Sets Up Settlement

On February 2, 2024, the U.S. Court of Appeals for the First Circuit ordered a new trial. The Court began by observing that Federal Rule of Evidence 608(b) "bars the credibility-related use of some extrinsic evidence," as held in *United States v. Winchenbach*, 197 F.3d 548 (1st Cir. 1999). "[E]xtrinsic evidence includes any evidence other than trial testimony," the Court continued, per *United States v. Balsam*, 203 F.3d 72 (1st Cir. 2000). Under the rule, "extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness," the Court quoted. While it permits a party to question a witness about recorded false statements, the playing of the recordings "to introduce specific instances of her past conduct for the purposes of showing her alleged penchant for untruthfulness" was prohibited, the Court declared, pointing to *United States v. Mateos-Sanchez*, 864 F.2d 232 (1st Cir. 1988).

Regarding Zygmont's testimony, the Court said that it had explained before that under Federal Rule of Evidence 801(d)(1)(B)(i), "a witness's prior statement is excluded from the rule against hearsay—and thus may be admissible—'when three conditions are met: (1) the declarant testifies at trial and is subject to cross examination; (2) the prior statement is consistent with the declarant's trial testimony; and (3) the prior statement is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive,'" quoting *United States v. Chiu*, 36 F.4th 294 (1st Cir. 2022).

The district court, in making its finding, determined that Lech failed to satisfy prong (3)—deciding that Zygmont's testimony wasn't offered to rebut any claim by the Defendants that Lech was fabricating her claim, so the testimony only served to bolster Lech's testimony about her symptoms. But the First Circuit opined that the record rather showed that the crux of the Defendants' theory of the case was that Lech had not informed them of her symptoms. Indeed, the cross-examination of Lech and the playing of the inadmissible tapes were designed to attack her credibility for truthfulness and to convince the jury to believe the Defendants' version of the events. "For this inquiry," the Court said, it must consider "whether there is 'some degree of fit between the alleged fabrication and the prior statement,'" quoting *Chiu*.

The First Circuit concluded that the district court had abused its discretion with regard to the evidentiary rulings in issue. And given that "the case centered on a credibility battle between Lech and the [Defendants]," it was not harmless error to allow Defendants to present evidence impugning Lech's credibility for truthfulness while simultaneously excluding evidence corroborating the truthfulness of her claims. That is, it was not "highly probable that the error did not affect the outcome of the case," as held in *Nieves-Villanueva v. Soto-Rivera*, 133 F.3d 92 (1st Cir. 1997). Accordingly, the Court vacated and remanded the case for new trial. *See: Lech v. Goeler*, 92 F.4th 56 (1st Cir. 2024).

The parties then proceeded to reach their settlement agreement and its payout, which included fees and costs for Lech's attorneys: John R. Godleski and David J.M. Rountree, both of Greenfield; and Felicia H. Ellsworth, Daniel S. Volchok, Lisa Bevilacqua and Simon J. Williams of Wilmer Cutler Pickering Hale and Dorr LLP in Boston. *See: Lech v. Von Goeler*, USDC (D. Mass.), Case No. 3:17-cv-30024.

Additional source: *Springfield Republican*

JPay Loses Bid to Revoke Class Certification in Washington Prisoners' Challenge to Crummy Products and Service

Over five years ago, in May 2020, Washington prisoners Michael Linear and Lonnie Burton filed a complaint in state court against prison telecom JPay LLC, which held the exclusive contract with the state Department of Corrections (DOC) to provide prisoners their "sole means of access to any electronic content, email, games, music, or internet access."

JPay, the prisoners said, had "abused its monopoly by devising a scheme that baits inmates into purchasing excessively priced products and services, withholds the terms and conditions on those products and services from inmate review, and subjects inmates to a protracted sham trouble-shooting process that neither results in a repair or refund."

As the prisoners noted, the firm's kiosks provided access to the terms of service only *after* they clicked a button accepting them—at which point the kiosk "timed out" within two minutes, long before they had a chance to locate and read the relevant terms. Worse, one of those terms they were forced to accept before they could review it was an agreement to submit to arbitration to resolve any disputes—including challenging excessive fees, like a $8.95 for a $40.00 deposit into a prisoner's account.

Sure enough, JPay responded with a motion to compel arbitration, which the Superior Court of Washington for Mason County granted, and the state Court of Appeals, Division II, affirmed. Linear and Burton then appealed to the American Arbitration Association (AAA), challenging the class-action waiver in JPay's binding arbitration provision. JPay—a subsidiary of Dallas-based Securus Technologies—responded by filing suit in federal court for the Northern District of Texas to foreclose the prisoners' objections, also asking the court to determine that the class-action waiver in the binding arbitration clause was enforceable.

However, the prisoners outsmarted JPay; each claimed damages of $50,000, well below the $75,000 threshold to assume diversity jurisdiction of a case in another state, as outlined in the rules for federal courts—which also prevented JPay from combining claims of two or more defendants to satisfy that requirement. The Northern District of Texas therefore determined it lacked jurisdiction to hear the case and dismissed JPay's complaint on August 15, 2023. *See: JPay LLC v. Burton*, 2023 U.S. Dist. LEXIS 142178 (N.D. Tex.).

The AAA then issued its ruling on December 8, 2023, finding the class-action waiver in the terms of service "unconscionable and unenforceable." The prisoners' request for attorney's fees was denied, though, and they were left owing a share of $2,400 in AAA's administrative fees. But the Arbitrator's $10,000 fee was charged to JPay. *See: Linear v. JPay LLC*, Amer. Arb. Assoc. Case No. 01-22-0000—3053.

Remanded back to Washington, the case was reopened and the prisoner Plaintiffs filed an amended complaint. JPay filed another motion to compel arbitration, but this time it was denied. In its order issued on May 20, 2024, the court found persuasive the prisoner's argument that the AAA Arbitrator's ruling called into question their assent to other provisions of the terms of service agreement. Moreover, JPay had never filed an answer to the amended complaint.

Things continued to go south for JPay on July 8, 2024, when Plaintiff's request for class certification was granted. "These claims all focus on a common practice of JPay retailing products like music, movies, video games, and video visits that were not made available to inmates and, despite inmates complaining to JPay about the product or service not functioning or not being delivered to them, JPay refused to resolve the issue and never reimbursed the inmate," the court recalled.

Finding that meant there was sufficient commonality of potential claims, the court said they were sufficiently numerous, too, potentially coming from thousands of state prisoners. Moreover, there was adequate class counsel, the court determined, agreeing then that class certification was proper. Linear was appointed class representative, and his attorneys from Breskin Johnson Townsend in Seattle were appointed class counsel.

The three classes certified included "[a]ll consumers incarcerated at a public facility in the state of Washington" between May 22, 2016 through December 16, 2020, who:

1. "purchased digital media products, including music, movies, or video games, from Defendant JPay … complained to JPay through its trouble ticket process about a purchased product that did not work, and JPay did not resolve the issue or reimburse the consumer within one month of the complaint."
2. "purchased digital media products, including music, movies, or video games from Defendant JPay … complained to JPay through its trouble ticket process about a purchased product that did not work, and JPay did not resolve the issue or reimburse the consumer within 72 hours of the complaint."
3. "purchased video visits from Defendant JPay, or whose family members purchased video visits from Defendant JPay … that did not work and JPay did not reimburse the consumer or paying family member within one month of the scheduled visit."

JPay filed a motion to vacate the order. But it was denied on December 9, 2024, leaving the case to proceed to trial. *PLN* will update developments as they become available. *See: Burton v. Securus Techs.*, Wash. Super. (Mason Cty.), Case No. 20-2-00201-23.

Over One-Third of Older Texas Prisoners Suffering Cognitive Impairment

by Matthew T. Clarke

A recently published study of cognitive impairment (CI) among older prisoners held by the Texas Department of Criminal Justice (TDCJ) showed that over 35%—more than 1 in 3—suffered from some form of CI.

The study used a random and representative sample of 143 of the state's 20,202 prisoners aged 55 and over at the time; their mean age was 61.3. Each participant took the Montreal Cognitive Assessment (MoCA), a screening tool which involved a 15-minute interview with a masters-level psychologist. The MoCA has "high sensitivity for the detection of MCI [mild cognitive impairment] and dementia, especially in persons with low formal education," the study report noted. Scores under 23 indicated CI while those under 18 indicated dementia, under MoCA scoring guidelines.

The results also showed that 9.1% of TDCJ participants "met the threshold for dementia." Blacks, Hispanics and those suffering from serious depression "had a higher prevalence of a positive screen for MCI or dementia." Alarmingly, only 15.4% of those who screened positive for dementia had a prior diagnosis of dementia in their medical records, indicating a severe under diagnosis of dementia among Texas prisoners.

This was the first look at CI in a randomized study of older state prisoners. "Given the dramatic increase in older incarcerated patients in recent years, cognitive impairment represents one of the most challenging and costly health care issues facing the U.S. correctional system," the report noted. Moreover, "impairment in executive cognition and impulse control can hinder older adults' ability to navigate the criminal justice system, in particular limiting their ability to engage in fair plea bargaining and sentencing."

Although the MoCA is a screening tool that cannot diagnose CI, it has an 87% specificity with respect to both MCI and dementia. The results of the study were largely similar to three comparable studies of populations outside prison, given that those studies were of persons 62-90 or over 64. *See: Journals of Gerontology: Series B*, Vol. 78, Issue 12, p.2141.

Trump Pardons Virginia Sheriff Convicted of a Bribes-for-Badges Scheme

On May 27, 2025, President Donald Trump (R) issued an unconditional pardon for Scott Jenkins, 53, a former Northern Virginia sheriff who was sentenced to 10 years in federal prison for 12 counts of conspiracy, fraud, and bribery. The pardon reportedly came hours before Jenkins was due to report at the prison. As *PLN* reported, Jenkins received a jury conviction in December 2024 on charges related to taking bribes totaling more than $75,000 [See: *PLN*, Dec. 2024, p.61].

The ex-sheriff accepted the money in the form of campaign contributions from at least eight people, including two undercover FBI agents. In exchange, he appointed several local businessmen as "auxiliary deputy sheriffs" within his department. These positions allowed Jenkins to issue the men badges, identification cards, guns, and body armor, as well as grant them the ability to avoid traffic tickets and carry concealed firearms without a permit. Two of the appointees—Frederick Gumbinner and James Metcalf—had previously pleaded guilty and were sentenced in March 2025 to three years' probation along with fines of $100,000 and $75,000, respectively.

Throughout the trial, Jenkins maintained his innocence despite a trove of photos, audio recordings, and videos that prosecutors claimed showed him accepting the bribes. One image presented to jurors featured Jenkins receiving $15,000 in a gift bag outside of a steak house. After Jenkin's conviction, he appealed directly to Trump to intervene in his case. "I believe if [Trump] heard the information," Jenkins said in April during a webinar hosted by the Constitutional Sherriffs and Peace Officers Association, "I know he would help if he knew my story."

The corrupt former sheriff's pardon is yet another example of a flurry of contentious pardons that Trump has issued since taking office. Other than granting clemency to the 1,500 defendants involved in the January 6, 2021, attack on Congress, most of Trump's pardons so far have focused on political allies convicted of financial crimes, with recipients including: Ross Ulbricht, founder of the online drug marketplace the Silk Road; Rod Blagojevich, the former Illinois governor who tried to sell the Senate seat left vacant by Barack Obama; and Michele Fiore, a Nevada Republican who was convicted for stealing $70,000 she had collected for a police memorial. Trump announced Jenkins's pardon on Truth Social, writing that he had been "dragged through HELL" and that he "doesn't deserve to spend a single day in jail." *See: United States v. Jenkins,* USDC (W.D. Va.), Case No. 3:23-cr-00011.

Additional sources: *NBC4 Washington*

New Jersey Supreme Court Refuses Guard's Challenge to Firing for Failing to Report Kiss with Prisoner

by Douglas Ankney

On July 23, 2024, the saga of the kiss heard 'round the New Jersey judiciary came to an end when the state Supreme Court held that the failure of former prison guard Brian Ambroise to report his kiss with a prisoner—identified as "J.O."—was sufficient to support his termination from employment with the state Department of Corrections (DOC).

In a videotaped interview on October 7, 2016, J.O. informed staffers with the Special Investigation Division (SID) at the Edna Mahan Correctional Facility (EMCF) that she and Ambroise had a sexual relationship. J.O. stated that Ambroise kissed her and performed oral sex on her while the two of them were inside a storage closet. J.O. provided investigators with Q-tips that she had purportedly used to swab her mouth and vaginal area after the alleged incident. J.O. also informed the SID that Ambroise brought her contraband and passed notes between her and another prisoner.

Lt. Kristen Larsen and Det. Sgt. Aaron Lacey of the Hunterdon County Prosecutor's Office, along with SID Senior Investigator Michael Kubik and Principal Investigator Jerome Scott, then conducted a videotaped interview of Ambroise. Prior to the interview, Ambroise waived his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), but requested the presence of a union representative. That request was denied. During the interview, Ambroise gave differing accounts of the alleged sexual encounter, at first denying the oral sex then admitting to it. However, he consistently admitted that he kissed J.O. and failed to report the kiss.

At the conclusion of the interview, Ambroise was arrested on charges of second-degree sexual assault and second-degree official misconduct. The following day, the SID served Ambroise with a preliminary notice of disciplinary action seeking his removal for conduct unbecoming a public employee and other violations of DOC policies.

As previously reported in *PLN*, a jury acquitted Ambroise of the charges in 2018. (See: *PLN*, Nov. 2020, p.34). But at a DOC disciplinary hearing, all the administrative charges against Ambroise were sustained, and he was sanctioned with termination from employment. Ambroise appealed the DOC's decision.

At a June 2021 hearing before an Administrative Law Judge (ALJ), New Jersey State Police forensic scientist Katherine Meakim testified that, although Ambroise could not be excluded as a source of the Q-Tip DNA, it would match only one in 3,190 men. But Meakim had no knowledge of the chain of custody of the Q-Tips and admitted that Ambroise's DNA could have been lifted from a water bottle or cup. Scott, from SID, testified that it was error to deny Ambroise's request for a union representative at the interview.

Ambroise then testified, walking back his admission to a sexual relationship with J.O.; it was only under intense questioning by investigators, he said, that he felt pressured to tell them what they wanted to hear in order to receive a lighter sentence. In his new version of events in the supply closet, J.O. ambushed him with a kiss, and he ordered her back to her cell. He did not report this, he added, because he handled the situation with a verbal reprimand. Ambroise also confirmed that J.O. asked him to smuggle contraband but did not report it because such requests were common at EMCF. Ambroise also conceded delivering a "harmless" message from J.O. to another prisoner.

The ALJ dismissed all but one charge—failure to report the kiss—finding J.O.'s recorded interview not credible. Ambroise's recorded confession was found to be coerced and involuntary, and little weight was given to the DNA evidence because there was "no source of collection identified, or any testimony about chain of custody." It wasn't entirely clear to the ALJ that the kiss was an unusual incident but should have been reported anyway "out of an abundance of caution." Ambroise's sanction was modified to a 20-day suspension.

The DOC Fights Back

The DOC appealed to the state Civil Service Commission, which largely adopted the ALJ's ruling. However, the Commission disagreed with the ALJ's assessment of the kiss, saying it "c[ould not] fathom how any custodial staff in a correctional facility for women could reasonably interpret an unwarranted kiss as anything but an unusual incident that needed to be reported."

The Commission also reversed the ALJ's dismissal of an "undue familiarity" charge. Based upon Ambroise's own admission that he passed a message between J.O. and another prisoner, the Commission concluded that his actions demonstrated that he was willing to violate DOC policy on their behalf—establishing that he was "unduly familiar" with the prisoners. His sanction was again modified to a six-month suspension with back pay, benefits, and seniority.

The DOC turned next to the Appellate Division, but it affirmed the Commission's decision. The state Supreme Court granted the DOC's petition and certified the case for review, conditioning reversal of a state agency on a finding that its decision was "arbitrary, capricious, or unreasonable or … not supported by substantial credible evidence in the record as a whole," as held in *Henry v. Rahway State Prison*, 81 N.J. 571 (1980).

Under this standard, the high Court said it must examine: "(1) whether the agency's action violates express or implied legislative policies, that is, did the agency follow the law; (2) whether the record contains substantial evidence to support the findings on which the agency based its action; and (3) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors," as laid out in *Mazza v. Bd. of Trs., PFRS*, 143 N.J. 22 (1995).

Drawing on *Bowden v. Bayside State Prison*, 268 N.J. Super. 301 (N.J. App. 1993)—which upheld firing a DOC guard for gambling with prisoners—the Supreme Court said that Ambroise's firing was based on the "unique expertise" that the DOC brought to bear in "conclud[ing] that Ambroise can no longer be trusted to work in a prison facility." The agency's "assessment should have been afforded significant weight," the Court continued, "because the gravity of Ambroise's conduct cannot be understated." Given that he "tarnishe[d] the institution by knowingly compromising the safety and security of himself, his fellow officers, and the inmates," a six-month sanction was "disproportionate to the serious and highly concerning offenses found in this record, and therefore, it is arbitrary, capricious, and unreasonable." Accordingly, judgment of the Appellate Division was reversed, and the DOC's termination sanction was reinstated. *See: In the Matter of Ambroise*, 258 N.J. 180 (2024).

Oregon Prisoners Can Now Seek Economic Damages for Future Lost Income More Easily

by David M. Reutter

On January 30, 2025, the Supreme Court of Oregon held that prisoners seeking to state a claim for economic damages in the form of future lost income need not plead an "enforceable right" to future employment and that the lack of a legal right to employment is not an automatic preclusion to such a claim.

Prisoner Arnold R. Huskey sued the Oregon Department of Corrections (DOC) and others for breach of contract and civil rights violations. Among other things, Huskey sought damages based on lost future wages and employment opportunities. Years prior, Huskey sued DOC and obtained a settlement agreement that purportedly involved DOC orally agreeing not to retaliate against Huskey.

The settlement was the contract underlying the breach of contract action. The breach was based on DOC allegedly violating its oral promise by creating, without Huskey's permission, training videos that included footage of him and portrayed him in a negative manner. As a result, Huskey suffered $11,640 in economic damages due to DOC officials denying him job assignments, training, and other income-generating opportunities.

The trial court accepted the defendant's argument to dismiss the action, finding that economic damages could not be pleaded by Huskey because Article I, section 41(3) of the Oregon Constitution provides that "no inmate has a legally enforceable right to a job or to otherwise participate in work… or to compensation for work or labor performed while an inmate." The Court of Appeals affirmed, and the Oregon Supreme Court granted Huskey's petition for review.

The appellate court relied on the Constitutional provision to find Huskey could not state a claim. The Oregon Supreme Court, however, eschewed the Constitutional argument in lieu of common law arguments. The Court found that Huskey pleaded facts to support claims for breach of contract and lost future income. Precedent, the Court wrote, "reject[s] the contention that a lack of a 'right' to future employment is fatal to a claim alleging economic damages based on future earnings."

In *Tadsen v. Praegitzer Industries, Inc.*, 928 P.2d 980 (1996), the Court held that "[a]t-will employment may be a factor that bears on whether the proof is sufficient in a particular case, but the right to terminate someone's employment does not establish as a matter of law that an employee cannot prove the existence of front pay damages." That holding was subsequently reiterated in the context of a claim for fraudulent misrepresentation. *See: Cocchiara v Lithia Motors, Inc.*, 297 P.3d 1277 (2013).

Therefore, the Oregon Supreme Court concluded that Article I, section 41(3) places prisoners "in no different a position than that of the at-will employment status of most Oregonians." While the Constitutional provision "may be a factor that bears on whether [Huskey] can prove, by a preponderance of the evidence, that [DOC]'s alleged retaliation against him caused his loss of future income, [ ] the lack of a right to employment does not establish, as a matter of law, that [Huskey] cannot prove economic damages in the form of lost wages." Hence, it was an error for the trial court to dismiss Huskey's complaint.

The decision of the Court of Appeals was thus partially reversed and the case remanded. Before the Court, Huskey was represented by Portland attorney Edward A. Piper of Angeli Law Group LLC. *See: Huskey v. Or. Dep't of Corr.*, 564 P.3d 142 (2025)

Bold New Orleans Escape Calls Attention to Poor Jail Conditions

At around 12:30 a.m. on May 16, 2025, 10 detainees escaped from a New Orleans, Louisiana jail through a small rectangular hole in a cell wall. Images showed a metal toilet and sink torn from the wall; etched above the hole was a smiley face with its tongue out and taunting messages that read "We Innocent" and "To (sic) easy LOL." The brazen escape from the Orleans Parish Justice Center went undetected until a routine morning headcount more than seven hours after the men had sprinted out of the facility and into a nearby neighborhood.

By that evening, three of the escapees—Kendall Myles, 20, Robert Moody, 21, and Dkenan Dennis, 24—had been captured. In a press conference, Orleans Parish Sherriff Susan Hutson claimed that they were able to escape due to "defective locks," and that it would have "almost impossible" for them to flee the facility without outside help.

Three jail employees were immediately placed on leave and, in the following weeks, at least 16 people were arrested for allegedly aiding the escapees. Those arrested included Sterling Williams, 33—a jail maintenance worker who, although perhaps unaware of the plot, admitted to shutting off the water that allowed the toilet and sink to be removed—as well as Darriana Burton, 28, a former Orleans Parish Sheriff's office employee who is believed to be the girlfriend of escapee Derrick Groves, 27.

As the manhunt expanded, escapees Gary Price, 21, and Corey Boyd, 19, were captured in New Orleans on May 19 and May 20, 2025, respectively. Lenton Vanburen, 26, was arrested in Baton Rouge on May 26, 2025, after police were tipped off that he was sitting on a bench near a department store. Two of the escapees—Jermaine Donald, 42, and Leo Tate, 31—led officers on a high-speed chase in Walker County, Texas before being apprehended. With only Groves remaining at large at the time of publication, Antoine Massey, 32, was captured in New Orleans on June 27 following an anonymous tip. Massey, who faced charges of rape, kidnapping, and domestic violence, had gone viral after posting videos on social media in which he claimed he was innocent and had been "let out" of jail. In one video, Massey appealed to rapper Lil Wayne, Pres. Donald Trump (R), and a list of other "people that have been through the system that we know is corrupt."

Long before the escape, the New Orleans jail had been plagued by overcrowding, understaffing, security concerns, and crumbling infrastructure. Roughly one-third of the jail's cameras were reportedly broken, and the jail had been holding around 1,400 detainees, a number well beyond the 1,250 that a city ordinance mandates. As *PLN* reported, these conditions led to a class-action lawsuit that resulted in a 2013 consent decree and the construction of a new jail facility; that decree was largely ignored for more than a decade [See: *PLN*, June 2024, p. 51]. Two of the 10 escapees had been held in the jail for at least two years, symptomatic of lengthy stays that contribute to overcrowding.

Sources: *USA Today*, *New York Times*, *Nola.com*

Sixth Guard Sentenced in West Virginia Killing of Pretrial Detainee

A former West Virginia guard who failed to intervene while fellow guards beat to death pretrial detainee Quantez Burks, 37, was sentenced on June 9, 2025, for her role in the 2022 assault.

Ashley Toney, 25, got six and a half years in prison and an additional three years of supervised release from the federal court for the Southern District of West Virginia. As *PLN* reported, five other guards who participated in the attack have also been charged. [See: *PLN*, Mar. 2025, p.39.] One former lieutenant, Chad Lester, 35, was sentenced in May 2025 to 17 years in prison after being convicted of three counts of obstruction of justice.

According to the federal Department of Justice, Toney and other guards at Southern Regional Jail in the town of Beaver brought Burks into an interview room, handcuffed him, and closed the door while multiple fellow guards beat Burks. He died on March 1, 2022.

Toney pleaded guilty on August 8, 2024 to deprivation of rights under color of law resulting in physical injury. "The defendant's inaction led to the death of a 37-year-old man, and afterwards she attempted to shield herself and fellow officers from being held accountable for his death," Acting U.S. Attorney Lisa G. Johnston said in the release.

Additional source: *MetroNews*

D.C. District Court Dismisses Class Action Against BOP Over Earned Sentence Credits

On June 9, 2025, the federal court for the District of Columbia dismissed a class action lawsuit that challenged the way the federal Bureau of Prisons (BOP) treated sentence credits earned by prisoners toward early release under the First Step Act (FSA), P.L. 115-391. Plaintiff prisoners claimed that the credits are mandatory, but BOP prevailed in its view that they are "optional."

Signed into law in 2018 during the first Trump administration, the FSA was designed as a sweeping, bipartisan bill to "promote rehabilitation, lower recidivism, and reduce excessive sentences in the federal prison system," according to The Sentencing Project. Among other provisions, the law created a system of earned time credits that allowed prisoners to cut time off of their sentences by participating in certain programs. As *PLN* reported, the FSA also gave the BOP a little over two years to implement this system as well as allow some low- and medium-risk offenders to be placed in halfway houses or other forms of pre-release custody. [See: *PLN*, May 2025, p. 52.] The BOP, however, failed to adhere to this timeline—and, instead of viewing the credits as compulsory, interpreted them as optional.

In response, in partnership with Jenner and Block LLP attorneys, the American Civil Liberties Union (ACLU) filed the class action on December 24, 2024, on behalf of prisoners who had been told they were eligible for early release, only to be later denied a spot at a halfway house or home detention program. The lawsuit included two named plaintiffs, but thousands of federal prisoners found themselves in a similar predicament. In fact, frustrations over the delayed release dates led prisoners to stage a hunger strike in September 2024 at the Federal Prison Camp in Montgomery, Alabama. [See: *PLN*, Jan. 2025, p. 35.] ACLU Senior Counsel Arthur Spitzer said in a 2024 statement that there was "no excuse" for the BOP "to pretend not to understand Congress's clear command that people who have earned the right to early release must be released."

In dismissing the lawsuit, the Court agreed with the BOP's regulatory interpretation of the FSA, affirming its assessment that the law does not mandate *when* the agency must transfer a prisoner to prerelease custody. The difference hinged on the word "shall" in the FSA, which the BOP changed to "may" when promulgating its rule to implement the provision. *See:* 28 C.F.R. § 523.44(a)(1). Plaintiffs claimed that the BOP impermissibly changed the law. But the district court said no, the BOP was just making clear what the law intended—and the law must have intended to leave the agency flexibility in when a prisoner is released to a halfway house, since space availability there is limited by budgetary constraints not entirely within the BOP's control. Nevertheless, the Court's decision marks a significant setback for efforts to promote rehabilitation in the federal prison system. *See: Crowe v. Bur. of Prisons*, USDC (D.D.C.), Case No. 1:24-cv-03582.

Additional source: *The New York Times*

Gag Order on Tennessee Attorney for Criticizing CoreCivic Lifted by Judge

Nashville-area attorney Daniel Horwitz will no longer be barred from publicly criticizing a private prison after the U.S. District Court for the Middle District of Tennessee amended its rules in May 2025.

The development comes three years after a judge issued a gag order against Horwitz for commenting publicly on a wrongful death lawsuit he pursued against the private prison company CoreCivic. Among other social media posts, Horwitz had written on X that "massively deficient and constitutionally non-compliant staffing" in CoreCivic facilities "is just business as fucking usual."

CoreCivic successfully made the case to a federal magistrate judge that the statements were prejudicial. The gag order required Horwitz, a civil rights attorney who had filed numerous lawsuits against CoreCivic, to delete past posts criticizing CoreCivic and to refrain from making public statements about the company.

As *PLN* reported, Horwitz, represented by Institute for Justice, sued in federal court to challenge the gag order. [See: *PLN*, Dec. 2024, p.56.] But while the case was still pending, the U.S. District Court for the Middle District of Tennessee voluntarily changed its rules in May 2025—scrapping the policy Horwitz challenged and ending his gag order.

"I'm thrilled that my First Amendment rights have been vindicated, but more importantly, I'm thrilled that I can resume informing the public about civil rights abuses across Middle Tennessee," Horwitz said in an Institute for Justice press release.

Sources: *Reason*, *The Tennessean*

Nearly $60,000 Awarded to Mother Of Dead Missouri Prisoner In Suit For His DOC Records

by Anthony W. Accurso

On April 23, 2024, the mother of a deceased Missouri prisoner prevailed on appeal against the state Department of Corrections (DOC), which a lower court had found knowingly violated the Missouri Sunshine Law when it denied her records about her son and his suicide, awarding her $59,508.99 in damages and legal fees.

Jahi Hynes, 27, was eight years into a 13-year term for burglary when he fatally hanged himself at Southeast Correctional Center (SECC) in Charleston on April 4, 2021. But it was a cascade of failures by staffers with DOC and its contracted medical provider, Corizon Health—now YesCare—that were ultimately blamed in the wrongful death suit filed by the dead prisoner's mother.

Before she could file that complaint, however, Willa Hynes first had to battle DOC for more information than the phone call she received the day her son died, when a staffer told her that he had "hurt himself" and died, and that "the DOC could release no further information regarding the circumstances of his death."

After months of fruitless email exchanges, Hynes retained counsel and filed a request pursuant to the state's Sunshine Law for all records relating to her son, including surveillance camera footage covering his cell, and the investigation into his death. The DOC refused to release anything but an uncertified autopsy report, claiming that the remaining records fell under an exemption for those related to employee personnel records and institutional security.

Hynes then filed suit to compel production, and the DOC released an additional 173 pages of documents. But it continued to claim exemptions for nearly 1,000 more relevant offender records in its possession. The trial court then granted Hynes' motion for summary judgment, finding that the DOC was required to produce the records. The DOC turned to the state Court of Appeals, Western District Division Three, but it dismissed the appeal since the trial court's order was not a final one.

The case then proceeded to a bench trial to determine whether the violation was knowing and purposeful. The trial court found that the DOC had knowingly "forestall[ed] production of public records until the [Plaintiff] sue[d]" for the purpose of "hinder[ing] Hynes from pursuing a potential civil claim against the DOC relating to her son's death." Hynes was awarded $5,000 for the Sunshine Law violation plus $55,508.99 in attorney's fees and costs. The DOC was also ordered to produce the records in 30 days, but it appealed again, and the trial court granted a provisional protective order forestalling release of the records pending appeal.

Court of Appeals Finds for Prisoner's Mom

Back at the Court of Appeals, though, the lower court's ruling was largely upheld. The DOC relied on case law that acknowledged its right to withhold records based on its claimed exemptions. But the Court said that was the wrong legal tactic. The trial court had not ruled on the validity of those exemptions but instead found that the DOC failed to argue them. The appellate court agreed that once Hynes challenged the withholding, the burden shifted to the DOC to argue its reasoning and create a material fact issue for a trial to resolve. But "the DOC failed to establish—before the trial court and on appeal—that a genuine issue of material fact existed as to whether the records Hynes requested related to institutional security and thus were closed," the Court declared. Therefore summary judgment for Hynes was appropriate.

The Court also rejected the DOC's claim that its violation of the Sunshine

Law, R.S.Mo. ch. 610.010 et seq., was not "knowing" and "purposeful." The Court said that the former requires only "proof that the public entity knew that its failure to produce the report violated the Sunshine Law," which the DOC acknowledged when it claimed its exemptions. As to the latter point, the Court noted that the DOC engaged in stonewalling that "forc[ed] Hynes to file this lawsuit, and then waited until the day after Hynes filed her motion for summary judgment in December to produce 173 pages of the records she had requested." That, the Court continued, aligned the DOC's violation with the holding in *Buckner v. Burnett*, 908 S.W.2d 908 (Mo. App. W.D. 1995), that "intentionally forestalling production of public records until the requester sues would be a purposeful violation of Chapter 610 and would be subject to a fine and reasonable attorney fees."

The Court also granted a cross-appeal from Hynes to the lower court's protective order, finding no basis for it in the Sunshine Law because that mandates release of open records without restriction. Hynes was represented by attorneys Linda C. Powers, Steven L. Groves and Stephanie A. Black of Groves Powers LLC in St. Louis. *See: Hynes v. Mo. Dep't of Corr.*, 689 S.W.3d 516 (Mo. Ct. App. 2024).

Once in possession of the records, and three years to the day after her son died, Hynes' attorneys filed a wrongful death suit against the DOC, Corizon Health and numerous employees. The complaint recalled damning details from the video that DOC fought to quash: How Jahi Hynes was stripped to his boxers according to suicide prevention policy but then provided a pair of sweatpants—through a meal tray slot that was supposed to be locked—by a fellow prisoner mopping the hallway; and how two other prisoners "cadillaced" a tee shirt and the bedsheet he used to kill himself by tying strings between their cells and moving the items along it. All this, the complaint notes, went down while guards were supposed to be monitoring the video feed and making cell checks every 30 minutes. The case remains pending, and *PLN* will update developments as they are available. *See: Hynes v. Mo. Dep't of Corr.*, Mo. Cir. (Mississippi Cty.), Case No. 24MI-CV00185.

Additional Source: *Missouri Independent*

New York City Loses Bid to Withhold Jail Records

by Douglas Ankney

On June 26, 2024, New York City's constructive denial of records from its Department of Correction (DOC) was vacated by a state court. Calling that a violation of the state Freedom of Information Law (FOIL), the Supreme Court of New York for New York County ordered the DOC to produce the requested materials. Because petitioner was an attorney, it also held that the DOC was liable for attorney's fees.

On July 12, 2023, petitioner Cyrus Joubin, from his eponymous law office, requested DOC's rules, procedures and policies in effect on October 10, 2017, regarding guards' responsibilities "to protect inmates from assaults by other inmates" and "to supervise and monitor DOC housing units to prevent violence by inmates against other inmates." The request further sought policies for conducting investigations into such assaults and violence, as well as investigations into trip-and-fall accidents. It was further refined to include both the Brooklyn Detention Center (BDC) and the Rikers Island jail complex. Identities of guards and other employees on duty that day and their duty rosters were also requested.

When the DOC Records Access Officer (RAO) denied the requests, Joubin then turned to the Records Access Appeals Office (RAAO). But he received no decision on his administrative appeal within the applicable time limit. Joubin then petitioned for review.

The state supreme court began by observing that DOC had 10 business days to respond to Joubin's administrative appeal under the law, and since he received no response, his FOIL requests were deemed constructively denied.

Turning then to the requests themselves, the court disagreed with the RAO that the requested records were not "reasonably described." To the contrary, the requests did "not require the DOC to produce each and every policy document governing all of the training, duties, obligations, and conduct of the officers and employees"; rather the request was "limited to policy documents that particularly address the manner in which DOC officers and employees are obligated to prevent, respond to, and investigate inmate-on-inmate violence, and to investigate slip-and-fall accidents."

In support of this determination, the court pointed to *Matter of Partnership for the Homeless v. New York City Dep't of Educ.*, 2019 NY Misc. LEXIS 5813 (N.Y. Sup. N.Y. Cty.), which refused to affirm denial of a FOIL request by officials who "offered no evidence to establish that the descriptions provided are insufficient for purposes of extracting or retrieving the requested document from the virtual files."

The RAO had also acquiesced to the DOC's objection to producing records of policies not "currently in effect," but the court found that was error, too. The court agreed with the RAO's determination that requests for the identities of employees were interrogatories and not requests for specific records; denial was appropriate because FOIL does not "require any entity to prepare any record not possessed or maintained by such entity." But the duty rosters were not properly withheld, the court said, brushing aside the DOC's objections to releasing sensitive personnel information because that could be redacted from copies provided to Joubin.

Joubin was also deemed eligible to recover attorney's fees because he was an attorney representing himself. He was therefore directed to submit an affidavit setting forth the specifics of the time he expended in prosecuting the proceeding. *See: Matter of Law Off. of Cyrus Joubin v. N.Y.C. Dep't of Corr.*, 2024 NY Slip Op 32165(U) (Sup. Ct.).

Eleventh Circuit Announces New Deliberate Indifference Framework in Dismissing Georgia Prisoner's Claim for Skipped Anti-Seizure Meds

by Douglas Ankney

On December 23, 2024, a panel of the U.S. Court of Appeals for the Eleventh Circuit, affirmed the grant of qualified immunity (QI) to defendant officials with the Georgia Department of Corrections (DOC) in the claim of a now-dead Georgia prisoner who suffered epileptic seizures and injury after his medication was withheld at Walker State Prison.

The panel's decision followed a rehearing of Plaintiff's earlier appeal in the case by the full Eleventh Circuit sitting *en banc* on July 10, 2024. Though the ruling marked the beginning of the end for the Estate of the prisoner, David Henegar, the Court's decision is nonetheless important for other prisoners in the Eleventh Circuit in that it announced a new framework for demonstrating the subjective component of a deliberate indifference claim.

Henegar, then 39, was diagnosed with epilepsy and then denied prescribed anti-seizure medication over four consecutive days in August 2016, leaving him to suffer two seizures and permanent brain damage. He filed suit against DOC officials, but the federal court for the Northern District of Georgia granted Defendants QI and dismissed his claim, a decision affirmed by a panel of the Eleventh Circuit in 2023—only to be withdrawn later that same year for rehearing *en banc*, as *PLN* reported. [See: *PLN*, Apr. 26, 2024, online.]

By that point Henegar's sister, Betty Wade, had replaced him as Plaintiff, after he was fatally strangled at another lockup in 2021. Her claim came down to what *mens rea*—state of mind—she was required to show for Defendants to be found deliberately indifferent to her brother's serious medical need. In its withdrawn opinion, the Court's panel admitted that "our case law" in this respect "has been hopelessly confused, resulting in what we'll charitably call a 'mess.'" That's because Eleventh Circuit panels had repeatedly flip-flopped over the previous 30 years between two competing formulations of the *mens rea* requirement: "more than mere negligence" versus "more than gross negligence." The panel cited 10 decisions from 1995 through 2020 reflecting the former standard and 15 more decisions from roughly the same period that reflected the latter.

The panel agreed with that larger group, holding that "more than gross negligence" was required. In support of its choice, the panel noted that this was the standard enunciated in *Cottrell v. Caldwell*, 85 F.3d 1480 (11th Cir. 1996) and expressly affirmed in *Townsend v. Jefferson Cnty.*, 601 F.3d 1152 (11th Cir. 2010). But, as the panel also acknowledged, the *Townsend* holding was then rejected in *Melton v. Abston*, 841 F.3d 1207 (11th Cir. 2016), which adopted the "more than mere negligence' standard of *McElligott v. Foley*, 182 F.3d 1248 (11th Cir. 1999). The panel hearing Wade and Henegar's claim, however concluded that *Townsend* prevailed under the "prior panel-precedent rule," since the *Melton* panel had impermissibly disagreed with the *Townsend* panel's decision.

In sum, the panel held that "[t]o make out the subjective component of an Eighth Amendment deliberate indifference claim, a plaintiff must establish that the defendant (1) had subjective knowledge of the risk of serious harm, (2) disregarded that risk, and (3) acted with more than gross negligence." Concluding that Wade failed to make the required showing, the panel then affirmed the district court's dismissal. However, to address the intra-circuit split, a majority of Eleventh Circuit judges voted to vacate the ruling and rehear the case *en banc*.

Analysis and Conclusion of the Eleventh Circuit En Banc

When the full Court issued its ruling in July 2024, it explained that the parties had been instructed "not [to] concern themselves with the application of the 'prior panel precedent rule'"; instead, they were directed to address the following question of law: "What is the standard for establishing liability on an Eighth Amendment deliberate-indifference claim?" The *en banc* Court's opinion then answered that question.

The "Cruel and Unusual Punishment" Clause of the Eighth Amendment "should be understood to prohibit government officials from exhibiting 'deliberate indif-

ference to [the] serious medical needs of prisoners,'" the Court began, citing *Estelle v. Gamble*, 429 U.S. 97 (1976). But an Eighth Amendment violation may be found "only when two requirements are met," the Court continued, quoting *Farmer v. Brennan*, 511 U.S. 825 (1994); as that same ruling described them, the two elements are (1) a deprivation of rights that "must be, objectively, sufficiently serious," committed (2) by a prison official with "a sufficiently culpable state of mind"—what the Supreme Court of the U.S. (SCOTUS) called "deliberate indifference."

In the instant case, the parties agreed, and the Court concurred, that Henegar's unmedicated epilepsy satisfied the first requirement. So it was the second requirement that needed to be assessed. Quoting *Wilson v. Seiter*, 501 U.S. 294 (1991), the Court said "only the unnecessary and wanton infliction of pain implicates the Eighth Amendment." So the question came down to "whether prison officials, acting with deliberate indifference, exposed a prisoner to a sufficiently substantial risk of serious damage to his future health." But what is "deliberate indifference?" Returning to *Farmer*, the Court said that it "describes a state of mind more blameworthy than negligence" but "something less than acts or omissions for the very purpose of causing harm or with knowledge that harm will result."

Because lower courts had correctly "equated deliberate indifference with recklessness," SCOTUS in *Farmer* clarified that a defendant's state of mind must reflect criminal recklessness, as opposed to civil recklessness—that is, he must have disregarded a risk of which he was subjectively aware, rather than one which he simply should have known. "The Eighth Amendment does not outlaw cruel and unusual 'conditions,'" the *Farmer* court explained, but "cruel and unusual 'punishments.'" Therefore, the "failure to alleviate a significant risk" that "should have [been] perceived but [was] not, while no cause for commendation, cannot … be condemned as the infliction of punishment."

The *Farmer* court also added a qualifier: even a "prison official who actually knew of a substantial risk to inmate health or safety may be found free of liability if [he] responded reasonably to the risk, even if the harm ultimately was not averted."

With those principles in mind, the *en banc* Eleventh Circuit "scrapped" both the "more than mere negligence" and "more than gross negligence" formulations. In their place, the Court announced a new framework based on *Farmer's* criminal-recklessness benchmark. The answer to the question of "[w]hat is the standard for establishing liability on an Eighth Amendment deliberate indifference claim" is:

"First, of course, the plaintiff must demonstrate, as a threshold matter, that he suffered a deprivation that was objectively, sufficiently serious.

"Second, the plaintiff must demonstrate that the defendant acted with subjective recklessness as used in criminal law, and to do so he must show that the defendant was actually, subjectively aware that his own conduct caused a substantial risk of serious harm to the plaintiff—with the caveat, again, that even if the defendant actually knew of a substantial risk to inmate health or safety, he cannot be found liable under the Cruel and Unusual Punishments Clause if he responded reasonably to the risk."

The Court also clarified the "risk" to inmate health and safety of which the defendant must be aware. The Court rejected Plaintiff's contention that it was sufficient if the defendant knew that the prisoner faced a substantial risk of serious harm, whatever its cause or origin. The Court reasoned that the *Farmer* decision was focused "on the risks that the prison officials created by placing the inmate in a particular prison's general population." Which means, the Court continued, that it is the prison official's subjective awareness that his own conduct is causing the substantial risk of serious harm which violates the Eighth Amendment's prohibition on "inflicting" cruel and unusual punishment. Therefore, the Court held that a plaintiff making a deliberate-indifference claim "must show that the defendant official was subjectively aware that his own conduct—again, his own actions or inactions—put the plaintiff at substantial risk of serious harm." *See: Wade v. McDade,* 106 F.4th 1251 (11th Cir. 2024).

Under that standard, a panel of the Court quickly affirmed dismissal of claims on remand in December 2024 against all defendants—none of whom thought his or her own conduct put the prisoner at risk, of course. Left unexplained was the new standard's apparent contradiction of the reasoning relied on by SCOTUS in *Farmer*—that deliberate indifference DOES NOT require a showing that the defendant intended to cause harm or knew that harm would result from his actions or inactions. Wade was represented by attorneys from Mitchell, Shapiro, Greenamyre & Funt LLP in Atlanta and Loevy & Loevy in Chicago. *See: Wade v. McDade,* 2024 U.S. App. LEXIS 32496 (11th Cir.).

Ninth Circuit Affirms Dismissal of Arizona Challenge to Private Prisons

In 2020, the Arizona chapter of the National Association for the Advancement of Colored People (NAACP) and two state prisoners filed a federal class-action suit, challenging the state's use of privately-operated prisons on a variety of constitutional grounds. The district court dismissed the case for failure to state a claim in January 2022. Plaintiffs appealed, but a panel of the U.S. Court of Appeals for the Ninth Circuit affirmed the decision on May 21, 2024, rejecting each of the Plaintiffs' claims.

After first determining that the NAACP had organizational standing to sue, the appellate court summarized the arguments raised in the complaint: "That private prisons are inferior to state-run prisons because they are motivated by profit, leading them to cut costs and resulting in diminished safety and security as well as reduced programing and services." The profit motive also provided a financial incentive "to keep prisoners incarcerated longer … by manipulating disciplinary proceedings."

Around 20% of Arizona state prisoners are held in privatized facilities, but the appellate Court found that the Plaintiffs had not "plausibly alleged" that incarceration in private prisons violates their due process rights. Serving time in for-profit facilities did not constitute an "atypical and significant hardship" in relation to the ordinary incidents of prison life, as required by *Sandin v. Conner*, 515 U.S. 472 (1995). Unsupported allegations that private prisons have fewer programs, more lockdowns and higher rates of violence were insufficient to support a due process claim. Nor were claims that private prison guards had a "financial bias" when charging prisoners with disciplinary offenses to keep them in prison longer and generate more profit for their employer. Such allegations were "vague and implausible," the Court declared.

Eighth, Thirteenth and Fourteenth Amenment Claims

The Plaintiffs' claims under the Thirteenth Amendment also failed, the Court continued, because being held in a private prison "does not remotely approximate chattel slavery"—and even if it did, the Thirteenth Amendment expressly allows slavery and involuntary servitude as punishment for people convicted of crimes. Moreover, the Ninth Circuit noted, private prisons do not own, buy or sell the prisoners they house.

In addition, the Court found, the Eighth Amendment does not prohibit imprisonment in for-profit facilities. The Plaintiffs argued that private prisons "commodify prisoners," which is degrading, dehumanizing and violates their "human dignity." But the appellate Court held that "inchoate allegations of an intangible offense to dignity—at least as asserted here—cannot support an Eighth Amendment claim." Nor did the lawsuit credibly allege that conditions in private prisons constituted "a dramatic departure from accepted standards for conditions of confinement" that presented a "serious threat to prisoners' physical well-being."

The Court of Appeals further found that incarceration in private prisons did not violate due process protections under the Fourteenth Amendment. Citing *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022)—the Supreme Court of the U.S. (SCOTUS) decision that invalidated a woman's right to an abortion—the Ninth Circuit wrote that the due process clause protects fundamental rights that are "deeply rooted in [our] history and tradition"—something the Court found was not true about the claimed right not to be held in a for-profit prison. The equal protection clause was not applicable either, since prisoners held in private prisons did not constitute a suspect class for discrimination purposes.

"Efficiency" Called Rational Goal

Lastly, the Ninth Circuit held that there was a rational basis for Arizona's use of private prisons: the state's goal of efficiency. State law, A.R.S. § 41-1609.02(8), requires that privately operated lockups must "provide at least the same quality of services as [those provided by] this state at a lower cost … [or] at essentially the same cost." The appellate court noted that the state has a "legitimate interest in increasing the efficiency of its operations, and privatization is a rational attempt to achieve this goal."

Circuit Judge Jacqueline Nguyen issued a separate opinion concurring in the judgment but also noting that the ruling was "limited only to the deficiencies in this particular case," so "[o]ther inmates in private prisons may be able to allege viable constitutional claims, and we do not prejudge them." Circuit Judge Daniel P. Collins dissented from the majority, arguing that the Court lacked jurisdiction to hear the case because the NAACP chapter should not have been granted organizational standing and the two prisoner plaintiffs had since been released, mooting their claims.

Essentially, the Plaintiffs raised numerous claims in their complaint but failed to support them with sufficient evidence, the Court said. Had they presented evidence about higher rates of violence, prisoner deaths, overdoses, weapons and other contraband, and prisoners serving a higher percentage of their sentences at private prisons in Arizona in comparison to state-run facilities, the outcome of the case may have been different.

The Court of Appeals wrote that the "plaintiffs' arguments are better directed to Arizona's representatives and the citizens who elect them—not the courts." The Ninth

Circuit in September 2022 also voided part of a California law that would have banned federal private prisons there, as *PLN* reported. [See: *PLN*, Apr.2023, p.46].

The Plaintiffs in the Arizona case were represented by attorneys John R. Dacey and Robert E. Craig III with Abolish Private Prisons in Phoenix; former Arizona Supreme Court Chief Justice Thomas A. Zlaket; and Fredrikson & Byron PA in Bismark, North Dakota. *See: Nielsen v. Thornell*, 101 F.4th 1164 (9th Cir. 2024), rehearing and rehearing *en banc* denied. An amended ruling entered on July 8, 2024, did not change the case outcome.

Wiccan Nevada Prisoner Wins 18-Year Fight for Religious Items

by Douglas Ankney

On November 13, 2024, Nevada prisoner Anthony Thomas Chernetsky finally secured what he had fought over 18 years to get from the state Department of Corrections (DOC): Permission to use natural anointing oils and build a sweatlodge to practice his Wiccan faith.

In May 2006, Chernetsky sued the state and several DOC officials under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc, alleging that DOC's AR [Administrative Regulation] 810 violated his rights to practice his faith—which required natural anointing oils, and which AR 810's categorical ban on those oils substantially burdened.

In its long and convoluted history, the case went twice before the U.S. Court of Appeals for the Ninth Circuit. Chernetsky prevailed, at least in part, both times. On remand to the federal court for the District of Nevada, Defendants' motion for summary judgment was granted, while a cross-motion for summary judgment filed by Chernetsky was denied. He appealed again.

Returning to the appellate Court a third time, Defendants claimed that DOC had removed its ban on anointing oils, thereby mooting Chernetsky's claim. But the Ninth Circuit found this argument "without merit." The revised AR 810 made only synthetic oils available, while still denying the natural oils that Chernetsky claimed his faith required. The Court drew a parallel to *Johnson v. Baker*, 23 F.4th 1209 (9th Cir. 2022), which held that whether the prisoner plaintiff "has access to unscented oil is immaterial when his faith requires scented oil." Because AR 810 "continues to ban natural anointing oils," the Court continued, "Chernetsky's RLUIPA claim is not moot."

Under the RLUIPA, the Court said, the government is prohibited from imposing "a substantial burden on the religious exercise of a person residing in or confined to an institution" absent a showing that doing so (1) furthers "a compelling government interest" and (2) "is the least restrictive means." To state an RLUIPA claim, therefore, a prisoner "must show that: (1) he [or she] takes part in a religious exercise, and (2) the State's actions have substantially burdened that exercise," as held in *Walker v. Beard*, 789 F.3d 1125 (9th Cir. 2015). Once those elements are satisfied, the burden shifts to the government to prove that "its actions were the least restrictive means of furthering a compelling interest."

It was uncontested that AR 810 substantially burdened Chernetsky's religious exercise. But the DOC claimed that its compelling interest in doing so was the fear that "natural oils may be weaponized when used in proximity to open fire." Yet no evidence was produced demonstrating the flammability of natural oils nor the potential for weaponizing extrememly small quantities of them.

The Court also rejected the government's alternative argument that inspecting "every bottle of oil Chernetsky obtains" imposed an undue administrative burden. As the Court explained, "[t]he State 'provides no reason why it could not arrange for a pre-approved outside vendor to supply the requested oils and allow the prison chaplain to retain control of and dispense the oil as needed during religious ceremonies."

Because the government failed to carry its burden, the Court said, Chernetsky could prevail "merely by pointing out that there is an absence of evidence to support the State's case," as in *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978 (9th Cir. 2007). But the Court was also mindful that the parties were "now in the eighteenth year of this litigation," and their efforts to negotiate a resolution "have been unsuccessful." In the Ninth Circuit's decision on March 26, 2024, the district court's order was therefore reversed and the case remanded for entry of a judgment "in favor of Chernetsky." For his successful appeal, the prisoner was also awarded attorney's fees on June 26, 2024. *See: Chernetsky v. Nevada*, 2024 U.S. App. LEXIS 6983 (9th Cir. 2024); and 2024 U.S. App. LEXIS 15566 (9th Cir. 2024).

Costs of $1,597.75 were taxed to Defendants by the district court on November 11, 2024. Meanwhile, they asked for clarification of the judgment, and Chernetsky asked to hold them in contempt for not building or allowing him to build the sweatlodge. In its order two days later, the district court granted Defendants' request, clarifying that the injunction against AR 810 applied only to Chernetsky. It also denied his contempt motion, noting that the Ninth Circuit did not order the DOC to build a Wiccan sweat lodge but ordered that Chernetsky be allowed to build one for himself, for which the district court set a deadline of December 6, 2024. *See: Chernetsky v. Nevada*, USDC (D. Nev.), Case No. 3:06-cv-00252.

According to a letter Chernetsky sent to *PLN*, he offered to settle this case in 2012—asking simply that the prison's religious practices return to their November 2004 baseline and that his filing fee be returned. The Defendants declined. So for 12 more years, Nevada paid attorneys to keep fighting Chernetsky over a few drops of oils in his religious practice. He and the DOC notified the Ninth Circuit on October 21, 2024, that they reached an undocketed settlement of his attorney's fees; though he proceeded through much of the case *pro se,* Chernetsky estimated that he spent at least $5,000 to secure his victory. Beyond attorney's fees, though, damages are not recoverable under the RLUIPA, as held in *Sossamon v. Texas*, 563 U.S. 277 (2011).

California Prison Plagued by Toxic Water and Chronic Illness

For decades, prisoners at Mule Creek State Prison outside of Sacramento, California have raised the alarm about the drinking water. Based on interviews with over 100 prisoners, ex-prisoners, family members, and prison staff, reporting from *The Appeal* and Type Investigations found that there have been serious issues with Mule Creek's tap water for at least 20 years. According to these sources, the water tastes "like chemicals or metal," smells "foul" and "fishlike," and appears "dirty brown" or "foggy." Many prisoners have reported illnesses while locked up at Mule Creek, including forms of cancer and kidney and liver problems that are linked to exposure to environmental pollutants. Contractors have gotten sick while on the job. And guards typically bring bottled water to work.

The source of Mule Creek's contaminated water dates back to its construction in 1985, when 1,700 housing units were built alongside on-site facilities for coffee roasting, meat packing, welding, and dry cleaning, among others. These industries produce toxic chemicals, and prisoners say the runoff was dumped down the drain for years without being treated. And as Mule Creek grew, the problem only got worse. A series of reports and environmental lawsuits led to a 2023 consent decree in which the state Department of Corrections and Rehabilitation agreed to improve Mule Creek's drainage and waste disposal systems. But the repairs were limited to outflows that leaked into the nearby creek, and not the lines that carry sanitary and drinking water, which are at-risk of cross-contamination for being too close to sewer lines in some places. One staff plumber described the system as if "they took a bunch of spaghetti, just threw it in a hole, and tied the ends in."

Mule Creek prisoners cannot buy bottled water at the commissary, and the prison has repeatedly dismissed concerns about water quality and its link to chronic illness. In California and across the United States, many prisons and jails suffer from water quality issues. Nearly 1 million prisoners, for example, are caged in facilities that draw water from sources contaminated with toxic PFAS, a broad category of "forever chemicals" that have been tied to cancer, thyroid issues, decreased immunity, and a host of other health problems. "If you want to live," Mule Creek prisoner Mike Cahill, 84, who had a cancerous tumor on his kidney removed in 2022, told *The Appeal*, "don't drink the water."

Sources: *The Appeal*, Type Investigations, *The Guardian*

Former Prisoner Informant Appointed Deputy Director of BOP

On June 5, 2025, Pres. Donald J. Trump (R) tapped Tennessee businessman Joshua J. Smith, 50, to serve as Deputy Director of the federal Bureau of Prisons (BOP). Smith, whom Trump pardoned in his first term, is the first former prisoner hired to hold any position at the prison agency. He will serve under BOP Director William Marshall, the former chief of the West Virginia Department of Corrections (DOC), who was appointed in April 2025, as *PLN* reported. [See: *PLN*, May 2025, p.54.]

Smith's criminal case stemmed from his 1996 arrest in Nashville on charges that eventually included 22 people accused of conspiring to import marijuana & cocaine from Texas. Smith pleaded guilty in April 1998. That August, after five of his co-conspirators also pleaded guilty, the government moved to depart from sentencing guidelines for Smith, citing his "substantial assistance." He was then fined $12,500 and sentenced to five years in boot camp at the Federal Correctional Institution (FCI) in Manchester, Kentucky. *See: United States v. Smith*, USDC (M.D. Tenn.), Case No. 3:96-cr-00152.

When co-conspirator Curtis Barnes lost an appeal to his 114-month sentence on March 16, 2000, the U.S. Court of Appeals for the Sixth Circuit noted that Smith was a leader of the conspiracy—the likely reason he got five years even after testifying against Barnes, whose sentence was almost twice as long. "Joshua Smith testified that defendant [Barnes] personally sold a firearm to him when he knew that Smith was going to trade it for drugs," the Court recalled. *See: United States v. Barnes*, 2000 U.S. App. LEXIS 4455 (6th Cir.).

From Prisoner to Millionaire

Smith has said that fellow prisoners at FCI-Manchester were the first educated people he ever knew, and he apprenticed himself to them. When he was released in 2003, his wife lost her government-subsidized housing because he was an ex-felon, he said, adding that he "begged" for the first job he got, making just $6 an hour.

Within five years he founded Master Dry in Knoxville in 2008, offering residential basement waterproofing. The source of his startup funds was unclear; Smith has said that he grew up with a poor single mom in government-subsidized housing. He eventually expanded the business to foundation services and created an umbrella corporation called Master Service Companies sometime before 2017. When he sold the firm in 2019, the price was not disclosed; however, it provided at least $8 million that he used to seed the nonprofit he founded.

Called the Fourth Purpose Foundation, that organization claims to make grants to other nonprofit groups that provide training for prison and jail guards, as well as resources for prisoners and "community-based resources" for criminal justice. Descriptions of the training and resources were not available. A slickly produced video posted to *fourthpurpose.org* declares that guards are "agents of transformation" for prisoners, though what that means wasn't explained. It was produced by Prison Life Media, which the Fourth Purpose website says it founded "to change how the public sees [corrections]." Another video lauds the "prisonuity" of those held in a Tennessee lockup who craft photo-worthy plates of food from prison chow. No shots of the original meal tray as it was served were included. A website blog also lauds a "transformation" in the DOCs in Missouri and Florida, where Smith has been invited to speak.

The Foundation has extensive real estate investments, as well. Fourth Purpose bought a Knoxville property in 2020 for $500,000 to create a halfway house, with the City kicking in another $480,000. Called Dogan Gaither Flats, it opened in 2022. In a May 2023 bio, the Knoxville Rotary Club said that Smith also has made regular mission trips with Christian groups to Nicaraguan prisons.

Partnerships

Partnerships appear to be key to Smith's success. Fourth Purpose was launched through East Tennessee Foundation, a much larger and older nonprofit. The halfway house project returns 8% annually, or about $40,000 each to Fourth Purpose and Knoxville, based on their reported investments. It is run by Men of Valor, an evangelical Christian group with a shout-out on the website of private prison giant CoreCivic. Men of Valor has a 12-year lease on the property, with a purchase option; Executive Director Raul Lopez is a Cuban immigrant who also runs Latinos for Tennessee, which focuses on recruiting people of Hispanic ancestry in GOP voter drives.

The halfway house property was part of $6 million in purchases made by the Foundation in historically Black areas of Knoxville that enjoy preferred tax treatment as Qualified Opportunity Zones. A property bought on Gay St. for $950,000 in 2020 was sold in May 2022 for $2.4 million, even though it was still a parking lot. Another property on E. Magnolia Ave. is being used as an art nonprofit. Like the other properties, it is located near a planned new ballpark for the Knoxville Smokies, a Chicago Cubs A-league farm team.

The Knoxville home that Smith purchased for $2.1 million in 2021 was listed for sale in October 2024 for $8.9 million. Its features include a "shooting range with moving target system," which he would not have been able to use before his felony was pardoned. The listing noted that the range "can be converted to [a] bowling lane."

In addition to Smith and his wife, the former Tracy Lynn Hyams, Fourth Purpose board members include Cyntoia Brown—whose life sentence for murdering her alleged pimp was commuted by Tennessee Gov. Bill Haslam (R) in 2019—and Brett Tolman, a former U.S. Attorney for Utah who took a $22,500 fee during Trump's first term to hustle clemency for then-imprisoned Silk Road founder Ross Ulbricht. Trump pardoned Ulbricht shortly after returning to the White House in January 2025.

He earlier pardoned Smith, on the last day of his first term in 2021. In February 2024, Smith appeared on a panel of self-described conservatives in Texas discussing criminal justice reform, along with Tolman and Tarrant County Sheriff Bill Weybourne. Described as a "criminal justice advocate" in one local news story about his pardon, Smith struck a humble note during a 2017 interview, declaring: "I am getting to live a life everyday that I don't deserve."

Additional sources: *ClarksvilleNow, InsideOfKnoxville, KMTV, Knoxville News-Sentinel, LoopNET, NBC News, Nashville Tennessean, New York Times, Prison Life Media, WATE, WBIR, Redfin, RightOnCrime, Zillow*

$22.5 Million Verdict Arrives Too Late for Wrongfully Convicted Illinois Prisoner

by David M. Reutter

On August 8, 2024, the federal court for the Northern District of Illinois entered judgment for the estate of a former state prisoner after a jury awarded $22.5 million in damages for 22 years he spent wrongfully imprisoned for a crime he didn't commit.

The verdict arrived too late for the prisoner, William Amor, who died in January 2024 before the case went to trial. During those proceedings, the Court heard that Amor was convicted of events that occurred on September 10, 1995, at his home in Naperville. At the time he was 39 and living in a condominium with his 18-year-old wife, Tina, and her disabled mother, Marianne Miceli, who owned the condo. That evening, Amor and Tina went to a drive-in movie. Less than 20 minutes after they left, Miceli called 911 to report a fire and said that she had no means of escape. She subsequently died from smoke inhalation.

The resulting investigation quickly pointed towards money as a motive for arson, after close family friend Marilyn Glisson told detectives that she overheard Amor and Tina talking about a life insurance policy that needed to remain in place. She further stated that Amor was manipulative, used others for money, and that he controlled Tina. Amor then became suspected of setting the fire, though its origin was initially declared undetermined. He was arrested on an outstanding DeKalb County warrant on September 15, 1995.

Upon his release 18 days later, his wife served him with divorce papers, and Naperville police detectives whisked him away for a marathon 15-hour interrogation. Amor alleged that during the interrogation detectives fed him details of the crime and physically threatened him if he did not tell them what happened. Amor subsequently wrote a written statement, confessing that he spilled vodka on a newspaper and knocked a lit cigarette on top of it before he and Tina left—even though he knew that a fire was likely to result. Many of those statements were repeated in a taped statement given to the prosecutor.

The cause of the fire was changed to arson. Amor was charged with aggravated arson and first-degree murder. A jury convicted him on all charges in 1997, and the trial court sentenced him to 45 years in prison for the murder, plus another 20 years for the arson.

When the Illinois Innocence Project (IIP) took up the case in 2012, it found that "junk science" had plagued arson investigations for many years. Among the facts that rigorous new science had demonstrated was that dropping a lit cigarette on a stack of vodka-soaked newspapers would not start a fire. Based upon that, Amor's conviction was vacated on April 6, 2017, by an Illinois circuit court that found his confession was "scientifically impossible."

The state retried Amor, but he was acquitted on all charges at a February 2018 trial. He applied for a Certificate of

Innocence, which would pave the way for reparations. But a state court denied his petition because he had confessed, thereby bringing about his own conviction "voluntarily." Represented then by attorneys from the IIP and the Exoneration Project at the University of Chicago Law School, as well as the Chicago office of Cozin O'Conner, Amor filed a civil rights complaint seeking redress for the 22 years spent imprisoned after his wrongful conviction from Naperville and three of its former detectives: Michael Cross, Robert Guerrieri, and Brian Cunningham.

After Amor's death, the trustee of his estate, Jeanne Olson, was substituted as Plaintiff. The case proceeded to a hearing on January 30, 2024, on Defendants' motion for summary judgment, which was granted as to claims that they fabricated evidence and engaged in malicious prosecution. However, the motion was denied as to Amor's eight other claims, including coercing his confession, engaging in civil conspiracy to violate his civil rights and failing to intervene to prevent the violation, plus a claim against the City for supervisory liability. *See: Olson v. Cross*, 714 F. Supp. 3d 1034 (N.D. Ill. 2024).

The case then proceeded to trial, at the conclusion of which the jury made its award, which included fees and costs for Olson's attorneys: Jon Loevy, Locke Bowman, Tara Thompson, and Alyssa Marinez of the civil rights firm Loevy & Loevy in Chicago.

"The biggest regret in all of this is that [Amor] didn't get to live to see justice," Loevy said. "You know, this trial really proved what happened to him. It really proved that his rights had been violated in a way that he didn't ever fully understand. So, I do regret that he didn't get to watch the final chapter." *See: Olson v. Cross*, USDC (N.D. Ill.), Case No. 1:18-cv-02523.

Additional source: *Chicago Tribune*

Washington Jail Settles DOJ Allegations of ADA Noncompliance in Failure to Treat Opioid Use Disorder

by Douglas Ankney

Sheriff Ryan Sperling of Washington's Mason County signed an agreement on September 19, 2024, settling allegations by the federal Department of Justice (DOJ) that the county jail was not complying with Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. ch. 126 § 12101 et seq., in providing treatment for opioid use disorder (OUD) to those incarcerated there.

Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." However, the term "individual with a disability" specifically excludes anyone "currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use." Except that "a public entity shall not deny health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services."

The Settlement Agreement specified that "[m]ethadone, naltrexone, and buprenorphine are medications approved by the U.S. Food and Drug Administration (FDA) to treat OUD." Treatments are individually "tailored" and "can be indefinite." Taking a patient off OUD medication "should be part of an individualized treatment plan collaboratively developed and agreed upon by the patient and their medical provider."

The agreement further explained that DOJ investigated and substantiated allegations that the Jail was discontinuing detainees' OUD medication for "non-medical reasons." Discontinuing the methadone treatment of detainees booked into the Jail forced some to go through methadone withdrawal before they were permitted to convert to buprenorphine or naltrexone.

While the Jail expressly denied it violated any provision of the ADA or any other law, the agreement that it entered required ensuring that all individuals in custody receive medical evaluations including for OUD; that the Jail would not change or discontinue an individual's current use of a particular OUD medication unless a qualified medical provider determined the current treatment was no longer medically appropriate; and that the Jail would offer OUD medical treatment to all individuals in its custody with any FDA-approved OUD medication, including those who were not prescribed OUD medication prior to their incarceration.

The agreement required the Jail to train its employees in ADA policies as well as the settlement provisions within 45 days. All future employees must be trained within the first 30 days of employment. Additionally, the Jail was required to keep a log of any discontinued OUD medication and provide copies of the log every 180 days to the DOJ. Further, the Jail was required to report to the DOJ all complaints regarding its OUD medication within 14 days of the complaint. The Settlement Agreement was effective for one year.

The problems were brought to the DOJ's attention by a prisoner who complained that he was unable to continue his OUD medication—which had been prescribed at another lockup—when he was booked into the Jail.

"Substance use disorder is a disabling condition under the [ADA]," said then-U.S. Attorney Tessa M. Gorman. "Public service providers such as jails and prisons must treat it as such—providing the medical care and prescriptions needed to treat the disorder." *See: Settlement Agreement Between the United States and Mason Cty. Jail*, USAO #2023v00959; DJ#204-82-338.

$42,000 Paid to Wisconsin Prisoner Allowed to Harm Himself While Under Observation

by Anthony W. Accurso

On November 19, 2024, the State of Wisconsin paid $42,000 to settle a trio of lawsuits filed by a state prisoner making claims of excessive force and deliberate indifference to his medical needs.

Waupun Correctional Institution prisoner Kurtis D. Jones engaged in an "inappropriate relationship" with an unspecified staffer in the Psychological Services Unit (PSU), but the relationship "ended badly," he wrote in a letter to *PLN*.

According to his complaints, he got possession of a toothpaste tube cap in March 2022 and used it to cut at his arm on his artery. When guards found him, they doused him with O.C. spray to force him to let a nurse treat his wound, after which they refused to let him shower it off before strapping him onto a restraint table, he said. He was then left tied down for the next 40 hours. As Jones explained regarding the PSU staffer's involvement in his ordeal, "Hell hath no fury like a woman scorned."

When finally removed from the table, Jones was placed under direct observation for threats of self-harm. However, in February 2023, he was allegedly allowed access to razors and—no surprise—used them to cut himself, slicing into two arteries and sending him to the hospital. Worse, as recalled in the complaints he later filed, this occurred with the knowledge of staff, who were supposed to continuously observe him. Instead, he said, they shrugged off his self-mutilation and walked away, later "cover[ing] up evidence" that they saw the razors and the blood on his body from the cuts he made with them.

After exhausting his administrative remedies, Jones filed suit—three suits between April 2023 and January 2024—accusing DOC staffers of using excessive force when they pepper-sprayed him and left him restrained to a table for over a day and a half, as well as displaying deliberate indifference to his serious risk of self-harm by ignoring the razors they saw in his hand when he was supposed to be under close observation, all in violation of his Eighth Amendment protection from cruel and unusual punishment.

The federal court for the Eastern District of Wisconsin consolidated all three cases into a single mediation between Jones and the DOC in October 2024, when Jones also picked up representation from attorney Lonnie D. Story of Daytona Beach, Florida. The parties then proceeded to reach their settlement agreement, which included costs and fees for Story. *See: Jones v. Kijek*, USDC (E.D. Wisc.), Case No. 2:23-cv-00651; *Jones v. Krueger*, USDC (E.D. Wisc.), Case No. 2:23-cv-01153; and *Jones v. Marwitz*, USDC (E.D. Wisc.), Case No. 2:23-cv-00055.

Located just outside of Green Bay, Waupun had 11 staffers who were fired or resigned in the wake of a federal probe sparked by a spate of seven prisoner deaths in just two years, as *PLN* reported. [See: *PLN*, Apr. 2025, p.33.] Now-retired Warden Randall Hepp was charged with felony misconduct in office, but he took a deal in April 2025 to plead guilty to a misdemeanor charge of violating state and county institution laws, avoiding any cell time and paying a $500 fine. As *PLN* also reported, a similar sentence was handed down in September 2024 to former guard Sarah Ann Margaret Ransbottom, 36, except her fine was just $250. She was one of eight former prison staffers charged in addition to Hepp; cases against the others remain pending. [See: *PLN*, June 2025, p.40.]

Additional source: *Milwaukee Journal-Sentinel*

First Circuit Revives Rhode Island Prisoner's Excessive Force Claim Against Guard

by David M. Reutter

On September 23, 2024, the U.S. Court of Appeals for the First Circuit reversed a grant of summary judgment to a Rhode Island Department of Corrections (DOC) guard who pepper-sprayed a restrained prisoner and then delayed decontamination for nearly a half-hour. The Court's ruling revived both federal and state-law claims based on the alleged excessive use of force against the prisoner, Joseph Segrain.

His federal civil rights complaint recalled events that ocurred on June 28, 2018, at Rhode Island's Adult Correctional Instituition (ACI). Segrain, who was housed in ACI's Disciplinary Confinement Unit, was escorted to an area know as the "flats" for shower and recreation time. There a guard issued Segrain shower supplies that included a brush, mirror, and razor.

About five minutes after Segrain arrived at the flats, guard Ronald Meleo informed him that he would have only 15 minutes out-of-cell time. A debate ensued as to whether Segrain was entitled to more time and whether he could file a grievance. Based on Segrain's alleged failure to leave the flats, Meleo called for assistance.

Five other guards, including Walter Duffy and James Glendinning, responded to the call. At Duffy's direction, Glendinning handcuffed Segrain, who complied without incident. When handcuffed, Segrain was still holding the mirror and razor. Normally, the issuing guard collects shower supplies before a prisoner is handcuffed and escorted from the flats to his cell. But no one asked Segrain to return his issued supplies, nor was he afforded an opportunity to do so.

Surveillance video further showed that Segrain made no attempt to hide the mirror and razor, as both were plainly in his hand. As the six guards escorted Segrain from the flats, Glendinning noticed the mirror

and swatted it out of Segrain's hand. A few minutes later, he noticed the razor. According to Segrain, Glendinning instructed him to drop the razor; then, before the prisoner could react, Glendinning applied a leg sweep that caused Segrain to fall to the floor. The video showed that as he fell, Segrain dropped the razor.

Shortly after Segrain hit the floor, Duffy hit him with a burst of pepper spray. Glendinning then reached down and tossed the razor out of Segrain's reach. "Yet, after Glendinning picked up the razor, Duffy sprayed a second burst of pepper spray into Segrain's face," noted the First Circuit. The handcuffed Segrain was then placed in a holding cell and forced to wait "25 minutes or longer . . . after (he) got sprayed" before he was taken to a shower for decontamination.

With assistance of counsel, Segrain filed his complaint in the U.S. District Court for the District of Rhode Island, making federal constitutional and state law claims of excessive use of force based upon Glendinning's leg sweep and Duffy's use of pepper spray. When the district court granted the Defendants' motion for summary judgment, Segrain appealed.

The First Circuit first found that Glendinning was entitled to qualified immunity (QI) on the Eighth Amendment claim relating to the leg sweep. Case law from the Sixth Circuit that Segrain offered was insufficient, the Court found, to show that the law was clearly established at the time that a leg sweep might constitute an unconstitutional excessive use of force. Therefore, it didn't need to decide that question on appeal, since the absence of clear notice was sufficient to grant the guard QI.

However, the Court found that a reasonable jury could find Duffy's use of pepper spray amounted to an unconstitutional use of force. The First Circuit said that "excessive use of tear gas by prison officials can amount to an Eighth Amendment violation," citing *Torres-Viera v. Laboy-Alvarado*, 311 F.3d 105 (1st Cir. 2002). Here the evidence was clear that Segrain did not pose a serious threat to himself or others, since he dropped the razor as he fell and Glendinning then moved it from Segrain's reach. Additionally, "Segrain did not intentionally retain the razor after leaving the shower area or intend to use it for any nefarious purpose," the Court wrote.

Those factors, when combined with the delay in decontamination, could support a jury finding that Duffy's use of pepper spray failed the five-factor test for a permissible use of force laid out in *Whitley v. Albers*, 475 U.S. 312 (1986). The first three factors, regarding the extent of the perceived threat, the need for a forceful response and its proportionality to the threat, were undermined when Segrain was restrained and disarmed. The facts also cut against the last two factors, regarding the extent of the prisoner's injuries and efforts made to temper their severity, so a jury could find that force was used "maliciously and sadistically for the very purpose of causing harm."

Duffy was also not entitled to QI because the law was clearly established that his actions could constitute excessive use of force. But QI was appropriate for the Defendants on Segrain's claim regarding the delay in decontamination because the Court found no "robust consensus" on the issue. The district court's order was thus affirmed in part and reversed in part and the case remanded. Before the Court, Segrain was represented by attorney Jared A. Goldstein of the Prisoners' Civil Rights Litigation Clinic at Roger Williams University School of Law. *See: Segrain v. Duffy*, 118 F.4th 45 (1st Cir. 2024).

Ohio Supreme Court Says Sheriff Must Get and Disclose Records of Private Contractors

by Douglas Ankney

Under a limited writ of mandamus issued by the Supreme Court of Ohio on October 17, 2024, the Columbiana County Sheriff's Office (CCSO) must obtain records from the private contractor operating the county jail and disclose them pursuant to a public records request. Sheriff Brian McLaughlin had argued that the records were in the custody of Correctional Solutions Group (CSG), which as a private firm is not subject to such a request. But the high Court called foul on that feint and ordered him to get the records and disclose them to the requester, now-state prisoner Terry Brown, or else certify within 21 days that no responsive records exist.

In August 2023, Brown submitted two public records requests to the CCSO, in care of Sheriff McLaughlin. His first request listed 10 items seeking "[e]mployees' names and positions held while working at the Columbiana County Jail during the time period of January 1, 2017, through July 1, 2018." Brown's second request listed another 15 items pertaining to current "[p]olicy information on Inmate Intake/Booking and Retention of records," to include the "booking of inmates showing signs of intoxication, impairment, injury, or psychological problems." In both requests, Brown also sought "related records-retention policies."

CCSO administrative assistant Scherry Wilson sent Brown a letter on September 13, 2013, in which she sent two records in response to Brown's first request: an employee-information sheet for Sgt. Dep. Sheriff Hartley Malone and a description of his position. In response to both of Brown's requests, Wilson sent letters asserting that the CCSO had already provided the related records-retention schedules and that the CCSO did not have any further responsive records because those records were created, kept, and maintained by CSG; those, according to Wilson, the CCSO could not access.

On September 25, 2023, Brown filed his complaint. The CCSO filed an answer, arguing Brown's mandamus claim was moot because the CCSO had provided all responsive pleadings within its possession and that Brown should request the other records from CSG. The CCSO moved for judgment on the pleadings, but the Court denied that motion on December 27, 2023, and granted an alternative writ, scheduling the submission of evidence and briefs.

Analysis and Conclusion in the Ohio Supreme Court

The Court observed that "[m]andamus is an appropriate remedy to compel compliance with R.C. 149.43, Ohio's Public Records Act," citing *State ex rel. Physicians Comm. for Responsible Med. v. Bd. of Trs. of Ohio State Univ.*, 2006-Ohio-903. To obtain the writ, the Court continued, "the requester must prove by clear and convincing evidence a clear legal right to the record and a corresponding clear legal duty on the part of the respondent to provide it," quoting *State ex rel. Griffin v. Sehlmeyer*, 179 N.E.3d 60 (Ohio 2021). Importantly, it is the public office that has the duty to obtain and disclose the requested records—even if the records are in the possession of a private entity, as held in *Armatas v. Plain Twp. Bd. of Trs.*, 170 N.E.3d 19 (Ohio 2021).

A quasi-agency test announced in *State ex rel. Mazzaro v. Ferguson*, 550 N.E.2d 464 (Ohio 1990), provided the framework for determining whether the records held by a private entity under contract with a public office are public records: "(1) [the] private entity prepares [the] records in order to carry out a public office's responsibilities, (2) the public office is able to monitor the private entity's performance, and (3) the public office has access to the records for this purpose." More recently, in *Armatas*, the Court recognized that "when a requester has adequately proved the first prong of the quasi-agency test, the requester has met his burden: proof of a delegated public duty establishes that the documents relating to the delegated functions are public records."

R.C. 9.06(A)(1) permits counties to contract with private jail administrators to operate their jails. But R.C. 9.06(B)(9) requires those contracts to provide for a contact monitor, described as "a county employee who has complete access to the jail and all records of the facilities except for the private jail administrators' financial records."

With this in mind, the Court explained that "private jail administrators—not the sheriff's office—have operated the Columbiana County Jail" since January 2014, at least. Community Educations Centers, Inc./GEO Group, Inc. operated the jail between January 2014 and sometime in 2019, when CSG took over, and Malone has been the contract monitor "at all times relevant to this action." In short, the CCSO "delegated the administration of the jail and care of the inmates to the private jail administrators for the durations of their respective contracts."

Citing CCSO's contract with CSG, the Court noted that "records relating to the facility and inmates are to be kept in the same manner required for county records." Moreover, CCSO "concede[d] that the records in the possession of [CSG] are public records."

"To the extent that records responsive to Brown's request exist, all those records would have been created to carry out the delegated public responsibilities," the Court declared.

Therefore the CCSO had "a clear legal duty to obtain existing responsive records and disclose them to Brown," the Court ruled. But because it was uncertain if any responsive records existed or which entity might have them, the Court issued the limited writ. The Court also deferred determination of any statutory damages to which Brown may be entitled until after the CCSO complied with the limited writ. *See: State ex rel. Brown v. Columbiana Cty. Jail*, 2024-Ohio-4969.

Ongoing Detainee Deaths Push Rikers Island into Federal Court Receivership

by Anthony W. Accurso

When 27-year-old Dashawn Jenkins died in New York City's Rikers Island jail complex on April 1, 2025, it was the fifth detainee death of the year and at least the 38th since Mayor Eric Adams (D) took office in January 2022. The persistently rising death toll was a major reason that the federal court for the Southern District of New York cited in deciding to appoint a "remediation manager" to take over control and operation of the troubled lockup.

The actual number of deaths may be higher; a July 2023 report by *City & State* counted at least 120 deaths among those incarcerated at the jail between 2014 and 2022, though the City Department of Correction (DOC) reported just 68 during the same period.

Two more detainee deaths in 2024 were blamed on staff failures to follow policy, according to a report released on December 30, 2024, by the City's Board of Corrections (BOC), which provides oversight to DOC.

One of those who died, Charizma Jones, 23, was admitted to the lockup in September 2023 and rapidly exhibited a "radical and unusual change in her behavior, which included hallucinating," the report recalled. From September 16, 2023, through April 16, 2024, she was assigned "various housing designations" including protective custody, general population housing, mental observation housing, and Program for Accelerating Clinical Effectiveness (PACE) housing. There she "managed to incur seven disciplinary infractions" including an assault on a guard.

On April 28, 2024, Jones called 311 from her housing area to report that "she could not eat, experienced throat swelling, and had hives and welts all over her body," the report continued. She was admitted to medical isolation, where staff noted a skin rash. She was also given Tylenol and a Benadryl shot before she was discharged on May 3, 2024, with prescriptions for prednisone, other antibiotics, and Tylenol.

The next day, however, she requested to be transferred to a hospital because her "skin [wa]s turning orange and getting dark and peeling," and jail medical staff was unable to perform an EKG because of that. After attempting to get medical attention, she collapsed in her cell. But staff was "unavailable" to transport her to the clinic until several other detainees "caused a disturbance" which necessitated staff response.

Once transported to the clinic, guards placed her in "medlock" and refused to allow clinic staff to assess her vitals. Between 11:50 p.m. on May 4 and 7:19 a.m. on May 6, 2024, guards refused to allow clinic staff

into Jones' cell six times. When clinic staff finally gained access, they found that she was exhibiting "a sore throat, high fever, rash, chills, and elevated liver function tests of 1,000 (a sign of inflamed or damaged cells in the liver)." EMS was summoned, and she was transported to Elmhurst Hospital Center. Two hospitals later, Jones was placed in a ventilator on July 4, 2024. She died of "multi-organ failure" 10 days later.

The death of fellow detainee Anthony Jordan, 63, was no less disturbing. He contacted the jail clinic at 8:31 a.m. on August 19, 2024, complaining of "severe left arm pain from his left shoulder down to his left arm." Seven hours later, when he collapsed, he was taken to the clinic, where medical staff recorded examining Jordan "after receiving the complaint," adding that he was "prescribed medication to alleviate the pain."

But at 3:26 a.m. on August 20, 2024, he "sat on the edge of his bed, rocking back and forth, appearing to be in pain," the report continued. When he fell out of bed about 30 minutes later, he was taken to the clinic in a wheelchair, given supplemental oxygen, and placed under cardiac and blood glucose monitoring while awaiting EMS. When obtained for transport at 5:30 a.m., Jordan was reportedly in stable condition. But he went into cardiac arrest while in transport, and he was pronounced dead at 6:19 a.m. upon arrival at Mount Sinai Queen's Hospital.

The BOC noted several failures in both cases, including DOC staff refusing to allow clinic staff to assess Jones while she was "on medlock." On top of that, the camera in her cell was not functional, and guards failed to properly check in Jordan's housing unit every 30 minutes, as required by policy. *See: Second Report and Recommendations on 2024 Deaths in New York City Department of Correction Custody,* NYC BOC (Dec. 2024).

The failures are symptoms of much larger problems that sparked a federal lawsuit, which produced a consent decree a decade ago. Finding that conditions in the jail had grown "demonstrably worse" since then, U.S. District Judge Laura Taylor Swain placed the entire jail complex in a form of court receivership on May 13, 2025.

The City has "placed incarcerated people in 'unconstitutional danger,'" the judge declared. "Worse still, the unsafe and dangerous conditions in the jails, which are characterized by unprecedented rates of use of force and violence, have become normalized despite the fact that they are clearly abnormal and unacceptable," the judge wrote. The case remains pending, and *PLN* will update developments in the next issue. *See: Nunez v. N.Y.C. Dep't of Corr.*, USDC (S.D.N.Y.), Case No. 11-cv-05845.

Additional sources: *AP News, The City, City & State,* VERA Institute of Justice

Trump's "Border Czar" Was on GEO Group Payroll

Before Pres. Donald J. Trump (R) took office, his "border czar" Tom Homan worked as a consultant for GEO Group, Inc., one of the largest operators of immigrant detention facilities in the country.

The revelation, as the *Washington Post* reported, raises questions about the influence that private sector companies could wield as the administration rolls out its crackdown on immigration. According to the report, Homan received more than $5,000—although his pay could have been much higher—for work conducted in connection with GEO Care, a division of the company that monitors releases and offers rehabilitation services for prisoners.

On the campaign trail, Trump vowed to deport up to 20 million people from the country—nearly double the estimated population of 11 million undocumented immigrants in the United States. Since his inauguration, Trump has expressed dissatisfaction with the rate of arrests and deportations conducted by federal immigration authorities.

In an effort to ramp up deportations, the administration set an aggressive new goal in May 2025 of 3,000 Immigration and Customs Enforcement (ICE) arrests per day. To keep up that pace of detentions, federal authorities have turned to already overcrowded federal prisons and local jails to imprison people targeted by immigration raids—and to GEO Group.

GEO Group's stock value rose dramatically after the inauguration. Since then, the company has earned numerous contracts with ICE, including a $47 million contract to expand a Georgia facility—which will make it the largest detention facility in the country.

Meanwhile, the company continues to fight a legal battle over its policy of paying detainees only $1 per day to perform jobs including laundry, scrubbing toilets, and washing dishes at a facility in Washington, where the legal minimum wage was $11 per hour when the state filed suit over the practice in 2017. A jury in federal court sided with the state against GEO Group in 2021, resulting in awards that eventually topped $37 million, as *PLN* reported. [See: *PLN*, Apr. 2022, p.30.] The company appealed the ruling earlier this year.

Sources: *Washington Post*, *ProPublica, The Guardian*

First Circuit Affirms Denial of Qualified Immunity to Maine Guards who Ogled Prisoner During Childbirth

by David M. Reutter

On September 3, 2024, the U.S. Court of Appeals for the First Circuit affirmed denial of qualified immunity (QI) for a pair of Maine jailers whom a prisoner accused of violating her civil rights by helping themselves to a good look at her naked body during a stay at a local hospital to deliver a baby.

Jaden Brown was pregnant when she began serving a 15-month sentence at the Cumberland County Jail (CCJ) in July 2018. On February 10, 2019, Brown went into labor and was transported at around 11 a.m. to the Maine Medical Center (MMC). There she gave birth to a baby girl at around 1 a.m. the next morning.

CCJ policy provided that jail guards are not allowed in "the delivery room when (a prisoner) is giving birth." That policy was consistent with Me. Rev. Stat. Ann. tit. 30-A, § 1582(4), which provides that "[w]hen a prisoner … is admitted to a medical facility … for labor or childbirth, a corrections officer may not be present in the room during labor or childbirth unless specifically requested by medical personnel."

No such request was made while Brown was at MMC. But Brown had invited another guard who was also a woman, Angel Dufour, to remain with her in the hospital room. At shift change at around 10:45 p.m., Dufour was replaced by guards Sam Dickey and Carrie Brady. Dufour reminded Dickey of CCJ's policy concerning his presence in the room, and Dickey responded, "OK." Supervisor Daniel Haskell was also present in the room from shift change until about 11:30 p.m.

In her civil complaint, Brown alleged that Haskell was again present in the room at around 7:30 p.m. during a cervical exam that required Brown to spread her legs as medical personnel inserted gloved fingers into her vagina. Dickey was present during later cervical exams, as well as when Brown's stomach and breasts were exposed to monitor the baby's heartbeat. Dickey was also present in the room during childbirth.

Brown alleged Fourth, Eighth, and Fourteenth Amendment violations against Haskell and Dickey. They moved for summary judgment, claiming qualified immunity (QI). The U.S. District Court for the District of Maine dismissed Brown's Eighth and Fourteenth Amendment claims, but it also denied the jailers QI. Haskell and Dickey filed an interlocutory appeal.

They claimed that the record contained no evidence that they "made any observation of Brown's naked body—let alone that they made more than inadvertent, occasional, casual, and/or restricted observations of her naked body," which were insufficient to constitute an illegal search under the Fourth Amendment, according to *Cookish v. Powell*, 945 F.2d 441 (1st Cir. 1991).

But the First Circuit said that a *Cookish* Fourth Amendment violation can occur whenever a guard of the opposite sex views a prisoner's naked body during "personal activities, such as undressing, showering, and using the toilet." Moreover, Haskell and Dickey relied solely "on the direct evidence of their own self-serving statements that they did not see Brown's naked body," which she disputed. According to her, Dickey was a few feet from her bed during the duration of delivery and "could see, hear, and smell everything that was happening." In fact, Dickey's notes stated, "Delivery happening!" and "Pushing …" and "Baby girl born!" Likewise, Haskell was in the room during the cervical examination that required Brown to be exposed.

The problem for the guards' appeal, the First Circuit said, was that it lacked jurisdiction over a QI claim predicated on an assertion that what the plaintiff says is "untrue, unproven, warrant[s] a different spin, tell[s] only a small part of the story, [or] is presented out of context." Because circumstantial evidence could lead a reasonable factfinder to conclude that Haskell and Dickey viewed Brown's naked body, their appeal to denial of QI was dismissed, and the district court's judgment was otherwise affirmed. Before the Court, Brown was represented by attorneys with the Roderick and Solange MacArthur Justice Center in Washington, D.C., and the Institute for Justice in Seattle. *See: Brown v. Dickey*, 117 F.4th 1 (1st Cir. 2024).

Colorado Passes New Law to Expand Prisoner Visitation Rights

In early May 2025, the Colorado Legislature approved a bill that would increase visitation rights for incarcerated people. Signed into law by Democratic Gov. Jared Polis, the bill, HB25-1013, ends a policy in the state in which "inmate social visiting" can be canceled or withheld by the head of a facility as a form of punishment. While the bill still allows the DOC to shape the rules around visitations, it created a process to file a grievance if prisoners are denied visitation under the requirements of the bill. "Regular visits, phone calls, and moments of connection empower families to support their loved ones' journey toward rehabilitation," said state Senate President James Coleman (D), the bill's sponsor.

HB25-1013, being limited to banning restricting visitations as punishment, would likely not have an impact on the situation at an institution like the jail in Boulder County, where in-person visits have been curtailed since the COVID-19 pandemic, as reported elsewhere in this issue. [See: *PLN*, July 2025, p.44.]

Additional source: *Colorado Newsline*

Massachusetts High Schooler Detained by ICE Caught in "Collateral Arrest"

A Massachusetts high school student, Marcelo Gomes da Silva, was arrested and detained by Immigration and Customs Enforcement (ICE) while driving to volleyball practice in June 2025. The teenager, who was released on bond after six days amid community outcry, described harrowing conditions at the detention facility.

Gomes da Silva's lawyer, Robin Nice, said the 18-year-old was held in a room with more than 20 other men, many of whom were twice his age. Nice said Gomes da Silva was not given privacy to use the bathroom and was not permitted to shower in the six days he was held in detention. The teenager called the experience "humiliating" and said he did not immediately understand why he had been arrested.

Immigration authorities pulled Gomes da Silva over because he was driving his father's car, and they intended to arrest his father. Instead, Gomes da Silva, who immigrated to the United States from Brazil at age seven, was ensnared in an operation never intended to target him. "While ICE officers never intended to apprehend Gomes da Silva, he was found to be in the United States illegally and subject to removal proceedings, so officers made the arrest," said U.S. Department of Homeland Security spokesperson Tricia McLaughlin in a statement.

The mistaken arrest, which came as Pres. Donald J. Trump (R) seeks to ramp up deportation efforts, shows how people who would not typically be a priority for immigration authorities end up netted amid sloppy enforcement operations.

Source: *Associated Press*

DHS Removed Sanctuary Cities List After Complaint from Sheriff's Association

On June 1, 2025, the federal Department of Homeland Security (DHS) removed a list of sanctuary cities it had highlighted on its website, after the National Sheriffs' Association complained that its publication could jeopardize local law enforcement agencies' relationship with federal agencies.

The president of the association, Kieran Donahue, described DHS's publication as "a list of alleged noncompliant sheriffs in a manner that lacks transparency and accountability." DHS had previously published a list of sanctuary cities on its website after Trump claimed the lack of cooperation between state and federal law enforcement on immigration policy amounted to a "lawless insurrection."

Democratic officials in cities including Chicago, Boston, Denver, and New York appeared in March 2025 before congress, where they argued that so-called "sanctuary policies"—which typically bar local law enforcement from assisting with federal immigration enforcement—make communities safer. They noted that law enforcement agencies in their jurisdictions do not interfere with federal enforcement.

Trump has since ramped up his efforts to crack down on blue cities whose immigration policies depart from his own. After a series of Immigration and Customs Enforcement (ICE) raids in Los Angeles spurred protests there in June 2025, Trump ordered U.S. Marines and national guardsmen to police the city.

Sources: *The Guardian*, *Walla Walla Union-Bulletin*

Lawsuits Filed After Fatal Assault on Elderly Prisoner at Kentucky Jail

John Daulton, 61, survived less than a day after he was booked into Kentucky's Kenton County Detention Center on May 13, 2023. Arrested for a probation violation, he didn't cooperate during the intake process and was placed in a segregation cell. After becoming agitated he was put on suicide watch, though he denied being suicidal.

The next day another prisoner, Johnathan Maskiell, 32, who also was on suicide watch, was put in the same cell with Daulton. Maskiell "brutally assaulted" his elderly cellmate, then stomped on his head several times. Daulton suffered brain damage; he lapsed into a coma and died a week later at the University of Cincinnati Medical Center.

Maskiell was subsequently charged with murder and with being a persistent felony offender; he pleaded guilty but mentally ill and was sentenced to 25 years.

Daulton's daughter, Tonya Jones, on behalf of his estate, filed suit in federal court for the Eastern District of Kentucky in December 2023 against Kenton County and deputy jailers Jared Capps and Kristin Wheher, who made the decision to cell the men together. The complaint further alleged the facility's policy required jail staff to check on Daulton's cell every 10 minutes, but they failed to do so 22 times prior to his death. The Defendants were accused of failing to protect Daulton from Maskiell, who was known to have "violent tendencies," in violation of Daulton's civil rights under 42 U.S.C. § 1983.

On April 19, 2024, the district court granted in part and denied in part the Defendants' motion to dismiss. It first determined that Daulton, who was jailed on an unadjudicated probation violation, was considered a pretrial detainee rather than a convicted prisoner. That distinction was important, since less-stringent Fourteenth Amendment standards applied. In the Sixth Circuit, that meant Jones had only to prove that her father was intentionally subjected to an objectively unreasonable risk of harm, without also having to prove that the Defendants were subjectively aware of the risk and ignored it.

The district court applied that standard and found that the complaint stated a valid deliberate indifference claim against the jail deputies but not against the county jailer, who was not involved in Daulton's placement on suicide watch. The claim against Kenton County was allowed to proceed, as the complaint "sufficiently articulate[d] numerous specific policies and practices that plausibly alleged deliberate indifference to the rights of pretrial detainees" by county officials, under *Monell v. Dep't of Soc. Svcs.*, 436 U.S. 658 (1978).

A state law wrongful death claim against the defendants in their official capacities was dismissed due to sovereign immunity. An identical claim was allowed to proceed against them in their individual capacities, however, as they had not met "their initial burden under Kentucky's qualified immunity [QI] analysis." The Defendants' request for the district court to construe their motion to dismiss as one for summary judgment was denied. *See: Jones v. Kenton Cty.*,2024 U.S. Dist. LEXIS 71769 (E.D. Ky.).

Defendants then filed for summary judgment, and the motion was largely granted on June 4, 2025. Capps, the district court said, was entitled to QI because he was performing a discretionary function, rather than a ministerial one over which he had no control. As proof, the district court noted that he had "some discretion" as to cell placements. And if he didn't, that would undercut Jones' argument that the jailer made an intentional decision to cell Daulton and Maskiell together. Either way, her deliberate indifference claim against Capps failed.

Her claim against Wheher also failed. "[E]ven absent [QI]," the district court decided, "Jones cannot prove that Maskiell's actions were a reasonably foreseeable consequence of her omissions on the inmate intake assessment form." That left only Jones' *Monell* claim against the county to proceed. Jones is represented by attorneys Deanna L. Dennison of Dennison & Associates in Covington and Paul J. Hill of his eponymous firm in Union Hill. *See: Jones v. Kenton Cty.*, 2025 U.S. Dist. LEXIS 105641 (E.D. Ky.).

While the suit against the county defendants was pending, new information came out concerning Maskiell: He had been released from an Ohio prison and sent to a halfway house, where he had a psychotic episode that included "hallucinations and multiple breaks from reality." Maskiell was then taken to the U.C. Medical Center on May 12, 2023, where a nurse recorded that he had a history of schizophrenia and a social worker wrote he was clearly psychotic and said he wanted to "kill everybody." A doctor, however, "disregarded the intake records and notes," deciding that Maskiell was pretending and discharging him with only one dose of antipsychotic medication. Two days later, he ended up in the Kenton County Jail, where he murdered Daulton.

Daulton's estate filed a separate lawsuit against the U.C. Medical Center on November 21, 2024. The complaint alleged violations of the federal Emergency Medical Treatment and Active Labor Act because the hospital failed to provide emergency treatment to Maskiell when he presented with a clearly serious psychiatric condition. U.C. Medical Center staff did not stabilize him and discharged him despite symptoms of psychosis, hallucinations and homicidal ideations, and that failure to follow psychiatric standards of care contributed to Maskiell's subsequent fatal assault on Daulton, the complaint argued. Jones is represented in that suit by Hill and fellow attorney David M. Blank of Covington. *PLN* will update developments in both suits as they unfold. *See: Jones v. Univ. of Cincinnati Med. Ctr., LLC*, USDC (S.D. Ohio), Case no. 1:24-cv-00670.

Additional source: *Cincinnati Enquirer*

Tennessee Board of Parole Spanked for Failing to Make Recommendation to Governor on Prisoner's Clemency Application

In Tennessee, a state law—T.C.A. § 40-27-101—allows prisoners to apply for clemency in the form of commutation of their sentence or a pardon. When the Board of Parole receives an application, it is supposed to make a recommendation to the governor as to whether clemency should be granted or denied. The final decision belongs solely to the governor under Article III, Sec. 6 of Tennessee's constitution. In practice, however, this hasn't always been the case.

Tennessee prisoner William Lanier, convicted of first-degree murder and sentenced to life in prison, applied for clemency in June 2022. He sought commutation to reduce his sentence to 15 to 25 years with lifetime parole supervision. The Board denied his application more than a year later, after deciding that his case did "not merit a hearing." Importantly, no recommendation was made to the governor.

Lanier then filed a petition for a writ of certiorari in Davidson County Chancery Court, arguing that his clemency application met the applicable criteria for commutation and that the Board "summarily denied" it without making a nonbinding recommendation to the governor, in violation of state law. The Board moved to dismiss Lanier's petition, but the motion was denied, and the court ordered the administrative record to be filed. In a ruling on the merits on January 8, 2025, the court held that the Board had "acted illegally or exceeded its jurisdiction." It granted Lanier's petition and remanded the case to the Board.

While the governor is the only official who can grant clemency, the court said that the Board has the duty, "upon the request of the governor, to consider and to make nonbinding recommendations concerning all requests for exonerations, pardons, reprieves or commutations," under T.C.A. § 40-28-104(a)(I0). The Board then considers numerous factors when making a recommendation, including the "nature of the crime and its severity," the prisoner's institutional record and criminal history, input from the trial judge and prosecutor, and the views "of the community, victims of the crime or their families, institutional staff, Probation/Parole officers, or other interested parties," as laid out in Tenn. Comp.R. & Regs. 1100-01-01-.16.

The issue raised by Lanier involved interpretation of state law and administrative rules, and although courts give "consideration and respect" to an agency's interpretation of the statutes controlling its operation, "courts are not bound by the agency's statutory interpretation," the chancery court declared. Further, laws take precedence over administrative rules.

The chancery court first found that consideration and denial of Lanier's clemency application was a judicial or quasi-judicial function, thus a petition for writ of certiorari was the proper vehicle to challenge the Board's decision.

Per its own administrative rules, the Board then argued that it was required to provide a nonbinding recommendation to the governor "only when it grants the applicant a hearing." However, the court noted, T.C.A. § 40-28-104(a)(l 0),requires the Board to make such recommendations "concerning all requests," not just those of prisoners granted a hearing.

While an application that does not meet the governor's criteria can be rejected—e.g., it isn't signed or notarized or is incomplete, or the applicant has recently "been in 'close' or 'maximum' custody, or had a 'Class A disciplinary action'"—all other clemency applications trigger the Board's duty to make a nonbinding recommendation.

"The Board is to apply the criteria and guidelines supplied by the Governor, not to determine whether or not to make a nonbinding recommendation, but to determine whether its nonbinding recommendation should be favorable or unfavorable," the court wrote. To the extent that its rules conflicted with this statutory obligation, moreover, the "express provisions of the statute" controlled.

As the Board had not made a recommendation with respect to Lanier's application, the chancery court found that the Board had acted illegally and exceeded its jurisdiction. Therefore, his application was remanded, and the Board was ordered to make a nonbinding recommendation to the governor within 60 days. Lanier filed his petition *pro se*, and Nashville attorney David L. Raybin represented him at the hearing on the merits of the case. *See: Lanier v. Tenn. Board of Parole*, Tenn. Chancery 20th Jud. Dist. (Davidson Cty.), Case No. 23-1274-1.

New Hampshire Rolls Back Bail Reform

When New Hampshire Gov. Kelly Ayotte (R) signed HB 592 into law on March 25, 2025, she also goosed the state's incarceration rate by giving back pretrial detention power to state judges and reducing the leniency and flexibility that had been provided to those arrested for suspected crimes by an overhaul of the state's bail laws in 2018.

Ayotte framed the bill reforming bail reform as a necessary public safety measure, eliminating "a revolving door that is putting our law enforcement in danger, that is putting average citizens… in danger." But was that really true?

State lawmakers adopted the 2018 reforms to reduce the number of people held in jail to await trial simply because they were too poor to afford bail. Such wealth-based incarceration has the pernicious effect of piling on punishments for poverty, since loss of freedom often results in lost employment and then lost housing—even lost custody of children.

But opponents of the 2018 measure claimed it led to the release of those who then re-offended. The state chapter of the American Civil Liberties Union (ACLU) called foul on that, noting that the law allowed police and prosecutors to make a case for jailing pretrial detainees—something that they failed to do in any of the cases of re-offense offered as justification for changing the law.

Data from the state Department of Public Safety also showed that crime had fallen in the years since bail reform was enacted, including a 40% drop in violent crime—from 2,625 to 1,568—between 2017 and 2024. Nevertheless, the reform passed the state Senate with only a single abstention and zero "no" votes, making Democrats complicit in the Republican-led effort.

In a nutshell, the new law lowered the standard for post-arraignment detention from "clear and convincing evidence" that a person would re-offend to "probable cause." The law also tightened bail rules and lowered standards for bail revocation.

Ayotte advertised support for the measure from mayors around the state, plus sheriffs in all 10 of its counties. The new law scrapped provisions of a 2022 compromise bill that established a system under which magistrates—attorneys specially trained by the judiciary—could grant bail when judges weren't available. Now every criminal defendant must appear for arraignment before a judge—though the state was given 50% more time for that, expanding the window from 24 to 36 hours.

Source: *New Hampshire Bulletin*

Arkansas Ex-Police Chief Known as "Devil in the Ozarks" Re-Captured After Prison Escape

A former Arkansas police chief who was convicted of rape and murder was re-captured on June 6, 2025, two weeks after escaping prison. The state Department of Corrections said Grant Hardin escaped dressed as a prison guard in "makeshift" clothing. According to an affidavit, he "impersonated a corrections officer in dress and manner, causing a corrections officer operating a secure gate to open the gate." Authorities released a photo that appeared to show Hardin dressed in black and pushing a cart with wooden pallets on it.

Hardin's escape triggered a multi-agency manhunt, with state police, border patrol agents and the FBI getting involved. The incident drew widespread attention, in part because Hardin had gained notoriety as the subject of a 2023 HBO Max documentary titled *Devil in the Ozarks*. The former Police Chief of Gateway City began his career in law enforcement as a cop in 1990; he worked for numerous police departments in Arkansas, jumping from one position to another before landing a job as a guard in Fayetteville, where he admitted to murdering Gateway city water employee James Appleton in 2017.

After submitting a guilty plea, officials obtained and analyzed genetic samples from Hardin, which linked him to the unsolved 1997 rape in Benton County of a woman named Amy Harrison. Authorities said Harrison had been confronted by a man who threatened her with a gun while she was arriving for work alone at an elementary school. The unknown attacker allegedly sexually assaulted her in the school bathroom. In February 2019, after the genetic sample yielded a match with material collected at the scene of the rape, Hardin pleaded guilty to the assault.

When Hardin escaped from prison six years later, in May of this year, officials sent bloodhounds, aerial drones and helicopters in search of him. He was found two weeks later near an Izard County creek after tracking dogs picked up his scent, officials said.

Sources: BBC, NBC, *The Guardian*

Preliminary Injunction Issued Against Milwaukee Jail's Mail Policy in HRDC Suit

Like many local lockups, Wisconsin's Milwaukee County Jail (MCJ) imposes restrictions on the number and types of books and periodicals that prisoners and detainees can receive. As of July 2024, MCJ's mail policy required periodicals to be "mailed directly from the authorized publishers or approved vendors." Books had to be mailed from an approved publisher, too, though there was only one on the approved list: Penguin Random House.

The Human Rights Defense Center (HRDC), publisher of *PLN* and *Criminal Legal News*, distributes dozens of books—most of which it does not publish itself—to correctional facilities nationwide, including federal and state prisons in Wisconsin. Between May 2022 and April 2024, HRDC sent books, magazines, brochures and letters to numerous people incarcerated at MCJ. In total, 58 of those mailings were rejected and returned. No notice of the censorship was provided by jail officials, nor any opportunity to appeal the rejections.

HRDC filed suit in federal court for the Eastern District of Wisconsin and moved for a preliminary injunction (PI). Raising claims under the First and Fourteenth Amendments, the nonprofit argued that the jail's mail policy frustrated its mission "by unconstitutionally prohibiting delivery of its publications to prisoners." Jail officials then revised the policy to let prisoners receive periodicals and books sent "directly from the publisher" and to provide notice within 14 days to the recipient and publisher when a publication is rejected. The defendants argued that this policy change mooted HRDC's claims, but the district court granted HRDC's PI motion on January 27, 2025.

The district court noted that a preliminary injunction "is an extraordinary and drastic remedy" that requires weighing four factors: whether the plaintiff has a reasonable likelihood of success on the merits of his case; whether there is no other adequate remedy at law; whether irreparable harm will result absent the injunction; and whether granting the injunction is in the public interest.

Regarding the first factor, the district court said that HRDC need only establish "that its chances of prevailing are better than negligible," citing *Brunswick Corp. v. Jones*, 784 F.2d 271 (7th Cir. 1986). While "publisher only" rules like MCJ's have been found constitutional, the district court said the jail's revised mail policy was more restrictive because it allows detainees and prisoners to receive publications only "directly from a bona fide publisher" and not from commercial distributors such as HRDC.

HRDC argued that the jail's "prohibition of books from commercial sources is an inappropriate attempt to expand a 'publishers only' rule," the district court recalled, agreeing that the revised policy "restricting materials from all commercial sources is overbroad." The district court also considered the factors allowing a First Amendment violation established in *Turner v. Safley*, 482 U.S. 78 (1987), finding that there was an "obvious alternative" the jail could adopt: "to follow the Wisconsin [Department of Corrections'] regulation that allows inmates to receive publications directly from the publisher or other recognized commercial sources."

Finding that HRDC was likely to prevail on the merits of both its First Amendment and Fourteenth Amendment due-process claims, the district court also found that HRDC had no adequate remedy at law and faced irreparable harm because "the loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury," per *ACLU v. Alvarez*, 679 F.3d 583 (7th Cir. 2012).

Turning to the balance of harms, the district court rejected the MCJ's arguments related to security, administrative and financial burdens, concluding that "allowing inmates to receive publications directly from the publisher or other recognized commercial sources" would not "greatly increase the burden on the jail."

HRDC's preliminary injunction motion was therefore granted, and MCJ was ordered to modify its mail policy to allow prisoners to receive publications not only from publishers but also from "recognized commercial sources," which must be notified of and allowed to appeal any mail rejections. The district court further waived the bond requirement under Fed.R.Civ.P. 65(c). The case remains pending, and *PLN* will report future developments. HRDC was represented by its Litigation Director, attorney Jonathan Picard, as well as attorneys Theresa M. Correa McMichen and Brian C. Spahn with Godfrey & Khan in Milwaukee. *See: Hum. Rights Def. Ctr. v. Milwaukee Cty.*, 2025 U.S. Dist. LEXIS 13631 (E.D. Wis.).

The month following this ruling, the U.S. Court of Appeals for the Eighth Circuit heard an appeal in another censorship case at Arkansas' Baxter County Jail, where a federal district court had determined that HRDC was unconstitutionally hindered in its efforts to communicate with and educate detainees at the county lockup. The appellate Court agreed that the jail's "post-card only" policy created a "de facto ban" on the nonprofit's publications, affirming a $259,350 award for legal fees and costs, as reported elsewhere in this issue. [See: *PLN*, July 2025, p.48.]

Hyundai Parts Supplier Stops Using Prison Slave Labor in Alabama

According to a *New York Times* report on December 18, 2024, Ju-Young Manufacturing America, Inc., a company that makes car parts for Hyundai, announced it was ending its arrangement with the Alabama Department of Corrections (DOC) to use prisoner labor.

Like many states in the Deep South, Alabama has a lengthy history of using prisoners as cheap workers—both within the DOC and for private businesses to contract for their labor. The state established a convict leasing system during the antebellum era, when laws known as Black Codes funneled freed slaves into prisons to be used for agricultural and mining labor. "These workers endured brutal conditions," the *Birmingham Free Press* reported, "and many died while performing hazardous jobs."

Convict leasing in Alabama ended in 1928, but prisoners are still contracted to for-profit businesses. Such arrangements have resulted in protests in DOC facilities—including a 2022 statewide strike with demands for fair pay and improved working conditions. There has also been widespread criticism of exploitive prison labor by those on the outside, which prompted Ju-Young to discontinue its contract with the state's prison system.

Although Alabama's constitution was amended in 2022 to remove a provision that allowed slavery and involuntary servitude as a punishment for crime—language still present in the 13th Amendment of the U.S. Constitution—that had little effect on the state's exploitive use of prison labor. Prisoners are used by hundreds of private businesses and government agencies, resulting in $450 million in savings over a five-year period according to a 2024 news article.

As *PLN* reported, a lawsuit filed by prisoners in December 2023 challenged the DOC's labor practices, arguing that state officials had "engaged in an unlawful scheme to coerce prisoners in [DOC] custody, especially Black inmates, to work for little or no pay." According to that complaint, "the main way [that] Plaintiffs allege [the defendants] have coerced inmates into performing labor is by conspiring with Alabama's Board of Pardons and Parole to shut down the availability of parole in Alabama." [See: *PLN*, Mar. 2024, p.32].

The complaint listed various companies that have used prison labor in Alabama as a "modern-day form of slavery," including Koch Foods; Hwaseung Automotive USA LLC; Southeast Restaurant Group-Wen LLC; Pell City Kentucky Fried Chicken, Inc.; Masonite Corp.; Cast Products, Inc.; Southeastern Meats, Inc.; Paramount Services, Inc.; and Barna Budweiser of Montgomery, Inc.

Prisoners employed through the DOC's work release program are paid "prevailing wages" for their labor—typically minimum wage—but the prison system deducts 40% of their pay for the cost of their incarceration, plus a $5.00 daily transportation fee. When employed at government agencies through the DOC's work center program, performing janitorial, sanitation, highway maintenance and other tasks, prisoners are paid just $2.00 a day—the same wage set in 1927. Black prisoners are disproportionately assigned to work center programs instead of higher-paying work release jobs, the suit contended.

The district court dismissed the case on March 20, 2025, without prejudice; Plaintiffs then filed an amended class-action complaint on May 9, 2025, and the case remains pending. See: *Council v. Ivey*, USDC (M.D. Ala.), Case No. 2:23-cv-00712.

Public pressure and criticism apparently influenced Ju-Young's decision to abandon its use of cheap prison labor. But the company left open the door to resume once the outcry subsides—though Hyundai's "supplier code" forbids subcontractors from using "forced labor."

For a handful of Alabama prisoners in work release centers—about 350, out of a total prison population of 20,469—there is often no work to be had; the unemployment rate there hit 26% in January 2024, almost ten times the state's 2.9% average—yet only 106 prisoners had been paroled in the prior year, as *PLN* reported. [See: *PLN*, July 2024, p.54.]

Sources: *Birmingham Free Press, New York Times*

First of 10 Guards Charged with Killing of New York Prisoner Pleads Guilty

Former New York Department of Corrections and Community Services (DOCCS) guard Joshua Bartlett pleaded guilty on May 30, 2025, to helping cover up the March 1 killing of prisoner Messiah Nantwi at Mid-State Correctional Facility by fellow guards who beat the man to death.

Prosecutors said guards beat Nantwi while he was handcuffed and continued to beat him while he was recovering from the assault in the prison infirmary. "As a result of the numerous beatings by defendants and their fellow correctional officers, incarcerated individual Messiah Nantwi died due to massive head trauma and numerous other injuries to his body," the indictment said. The officers "demonstrated depraved indifference" to his life, according to the indictment.

As reported by the *New York Times*, other prisoners said Nantwi had been beaten so severely he was unrecognizable. "Mr. Nantwi's death is a tragedy and we extend our deepest condolences to his family and loved ones," said New York Gov. Kathy Hochul (D), who directed the head of DOCCS to fire guards allegedly involved with the beating.

Bartlett, who was the first of 10 guards charged in connection with the fatal beating to plead guilty, admitted to two felonies: hindering prosecution and falsifying records. The former guard was accused of filing a false use of force report in an effort to help fellow guards cover up Nantwi's murder.

As *PLN* reported, Nantwi was the second prisoner to be beaten to death at a DOCCS facility in the last six months; six guards were charged with the December 9, 2024 beating of prisoner Robert Brooks, who died the next day. [See: *PLN*, Feb. 2025, p. 59].

Sources: *Albany Times-Union, New York Times*

Third Circuit Rejects U.S. Sentencing Commission Amended Compassionate Release Policy

by Douglas Ankney

In a ruling on November 11, 2024, the U.S. Court of Appeals for the Third Circuit rejected the amended compassionate release policy published by the U.S. Sentencing Commission (USSC) and declared that a Pennsylvania prisoner was not eligible for early release based on Congress's nonretroactive statutory amendments that decrease penalties for crimes.

In 2003, then 22-year-old Daniel Rutherford committed two armed robberies in Philadelphia, leading to his conviction for numerous felonies, including two counts of using a firearm during the commission of a crime of violence, in violation of 18 U.S.C. § 924(c)(1). At the time of his sentencing, the penalty for the first violation of § 924(c) was a mandatory term of seven years in prison, and each subsequent violation carried an enhanced mandatory term of 25 years to run consecutively. As a result, Rutherford received a 32-year sentence for the two §924(c) violations alone. The district court imposed a term of 125 months on the remaining convictions to run consecutively, bumping his total sentence to roughly 42.5 years.

But in 2018, Congress amended § 924(c) when it passed the First Step Act (FSA), Public L. No. 115-391, 132 Stat. 5194 (2018). Prior to that amendment, defendants like Rutherford faced the 25-year mandatory minimum even when convicted of a subsequent § 924(c) violation at the same time as the first offense—commonly referred to as the "stacking requirement." The amendment eliminated this stacking requirement by imposing a consecutive 25-year term only when defendants had a previous § 924(c) conviction at the time they were sentenced for the current violation. Consequently, if Rutherford were sentenced under § 924(c) today, he would face no more than two consecutive terms of seven years for each violation, or 14 years—*18 years less* than the 32 years he received.

In a motion for sentence reduction that Rutherford filed *pro se* in the federal court for the Eastern District of Pennsylvania, he argued that the amendment to § 924(c) provided grounds for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). While his motion was before the district court, the Third Circuit decided *United States v. Andrews*, 12 F.4th 255 (3d Cir. 2021), prohibiting the change to § 924(c) from being considered when determining eligibility for compassionate release. The district court thus denied Rutherford's motion. He filed an appeal.

While it was pending before the Third Circuit, the USSC issued its April 2023 Policy Statement, amending U.S. Sentencing Guidelines (USSG) § 1B1.13(b) to allow district courts in limited circumstances to consider the amendment to § 924(c) when determining eligibility for compassionate release. The Court then instructed the parties to discuss submit briefings answering "to what extent, if any" the 2023 amendment abrogated the holding in *Andrews*.

Analysis and Conclusion in the Third Circuit

The Court observed that the USSC is an independent agency of the federal judicial branch created by the Sentencing Reform Act of 1984. Its "fundamental purpose" is "to establish sentencing policies and practices for the Federal criminal justice system," as laid out in 28 U.S.C. § 991(b)(1).

The definition of "extraordinary and compelling reasons" found in the compassionate release statute under consideration in this case, 18 U.S.C. § 3582(c)(1)(A)(i), is an example of the USSC's work. It was adopted in 2007, when only the federal Bureau of Prisons (BOP) was authorized to file a compassionate release motion on behalf of a prisoner. FSA opened the door 11 years later for prisoners to file compassionate-release motions themselves. Yet because the 2007 USSC Policy Statement was understood to apply only to motions filed by the BOP, it was considered inapplicable to prisoners' motions in nearly every U.S. Circuit.

An updated Policy Statement following enactment of the FSA attempted to resolve this, but it took the USSC three more years—2019 to 2022—before it had enough members to establish a quorum and vote on the 2023 Policy Statement, as *PLN* reported. [See: *PLN*, Mar. 2024, p.11.] Meanwhile, throughout most of the COVID-19 pandemic, it was "left to the courts to determine which circumstances qualified as extraordinary and compelling reasons for prisoner-initiated compassionate-release motions, and there was not uniform agreement," as the Third Circuit recalled.

The 2023 Policy Statement said that courts could sometimes use a non-retroactive change in the law—like the amendment to § 924(c)—to make a compassionate release decision. Except that courts have taken a strict view of legislative intent in these instances, and they are loathe to make retroactive that which Congress did not. Had the Third Circuit done so, it could have overturned *Andrews*. Instead, it decided that the USSC had overstepped its authority.

The "amended Policy Statement conflicts with *Andrews*, and *Andrews* controls," the appellate Court declared. "Therefore, the [FSA's] change to § 924(c) cannot be considered in the analysis of whether extraordinary and compelling circumstances make a prisoner eligible for compassionate release."

With that, Rutherford's appeal was denied and the judgment of the district court affirmed. Before the Court he was represented by appointed counsel from attorneys Justin Berg, Geoffrey Block and Alex Treiger of Kellogg Hansen Todd Figel & Frederick in Washington, D.C. *See: United States v. Rutherford*, 120 F.4th 360 (3d Cir. 2024).

Former Death Row Prisoner Whose Case Changed the Law Dies in Texas

A prisoner at the center of the 2007 decision by the Supreme Court of the U.S. (SCOTUS) to raise the bar for executing people who are mentally ill died in June 2025. Scott Panetti, 67, who was sentenced to death in Texas for killing the parents of his second wife in 1992, suffered schizophrenia and had experienced psychotic episodes throughout his life, starting at age 20.

During his murder trial in 1995, Panetti wore a cowboy outfit, rambled about subjects like bull riding and told the courtroom his father resembled Colonel Sanders. Observers described the scene as disturbing and bizarre; a standby counsel called the episode a "judicial farce." In the landmark decision reached his case, *Panetti v. Quarterman*, 551 U.S. 930 (2007), SCOTUS raised the bar for the death penalty to prohibit executions of people who lack a "rational understanding" of their sentence. Whether or not Panetti met the criteria was the subject of a court fight that lasted years.

Texas prosecutors, who argued in support of executing Panetti, claimed that he faked his symptoms. On the same day that he was scheduled to be put to death in 2014, the U.S. Court of Appeals for the Fifth Circuit in New Orleans stayed his execution; a federal judge in 2022 ruled that he should not be executed, writing that there was "questionable retributive value of executing an individual so wracked by mental illness that he cannot comprehend the 'meaning and purpose of the punishment,' as well as society's intuition that such an execution 'simply offends humanity.'"

Panetti died of hypoxic respiratory failure in a Texas prison hospital.

Source: *The New York Times*

A Colorado Jail Has Banned In-Person Visits Since the Pandemic

For more than four years, beginning during the COVID-19 pandemic, the Boulder County Jail in Boulder, Colorado has remained closed to in-person visitations. Although prisons have returned to allowing visitors, many jails have yet to re-instate in-person access. At Boulder County Jail, 85% of the jail's population is awaiting a sentence and the average time being locked up there is 22 days, although that number is skewed by some who are only caged for one night.

Video visitation is available at the jail, but detainees and their friends and families have found it to be a poor replacement for in-person visits. For one, the calls can be expensive. What's more, the quality is often low, with users reporting calls frequently being dropped. As Wanda Bertram, of the Prison Policy Initiative, told *The Boulder Weekly*, lacking a consistent means to interact with individuals on the outside can take its toll on mental health. "You can't get a very clear picture if you're on a video call of the shape that your loved one is in," Bertram said. "That makes it very different from seeing this person face-to-face."

A study on jail visitation policies conducted by the Prison Policy Initiative in 2015, the most recent year for which data is available, found that 74% of jails that implemented video calls also banned in-person visits. Private telecom companies such as Securus Technologies and ViaPath (formerly Global Tel*Link) have been accused of colluding with county governments to make their platforms the only option. "The theory behind these contracts seems to be if you stop kids from visiting their parents in person," civil rights lawyer Alec Karakatsanis told NBC, "these desperate families will be forced to spend more money on phone and video calls."

Sources: *The Boulder Weekly*, Prison Policy Initiative, NBC

$250,000 Verdict for South Carolina Prisoner Pepper-Sprayed in Face Without Cause by Guard

by David M. Reutter

On January 30, 2025, a jury in South Carolina's Richland County Court of Common Pleas, Fifth Judicial Circuit, awarded $250,000 to a state prisoner who accused the state Department of Corrections (DOC) of gross negligence in failing to rein in a guard who assaulted him.

Prisoner Daniel Tyler Huneycutt's allegations involved an incident that occurred at the Tyger River Correctional Institute (TRCI) on May 14, 2019. Huneycutt, who was transferred to TRCI the week before, went to the kiosk to send a job assignment request to his case manager. But there was a formal count then underway. Cpl. Vasily Chernyak, Jr. came into the dorm and ordered him return to his cell, informing Huneycutt that he must remain there during count.

Huneycutt apologized, stating that he was unaware of the requirement. But as he was returning to his cell, "Chernyak blocked his way," the prisoner's complaint recalled. The guard then "put his chemical munition canister one to two inches from [Huneycutt's] face," spraying its contents "directly [into Huneycutt's] left eye." Another guard, Sgt. McMorris, ordered Chernyak to stop, but the guard sprayed Huneycutt at least two additional times.

While Huneycutt was obtaining medical treatment, Chernyak taunted him about how "good" he got him with the chemical munitions. Chernyak then filed a false report about the incident, claiming that he was justifiably provoked when Huneycutt failed to comply with an order. According to McMorris, though, Chernyak lied, and when DOC investigators finished their incident review, Chernyak was fired and criminally charged. That case was later dismissed though, and no details were available.

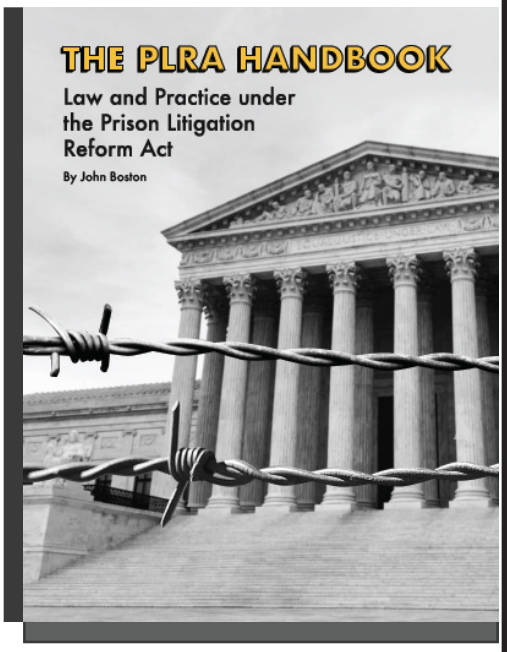
Huneycutt filed his suit against DOC for gross negligence on February 18, 2021. Despite its own investigation that resulted in Chernyak's firing, DOC denied that he used excessive force—though it made a $35,000 settlement offer in September 2024, which was rejected. The case proceeded to the January 2025 trial, where a jury found DOC liable for four distinct instances of gross negligence and awarded Huneycutt, now 32, actual damages of $250,000. *See: Huneycutt v. S. Car. Dep't. Corr.*, S.C. Common Please, 5th Jud. Cir. (Richland Cty.), Case No. 2020-CP-40.

Huneycutt also filed a civil rights action in federal court for the District of South Carolina, alleging that Chernyak used unconstitutional excessive force upon him. He further claimed that two Defendants, Associate Warden Wantonta Golden and DOC Director Bryan Stirling, denied him access to the courts and conspired to violate his constitutional rights. On June 11, 2024, the district court dismissed the claims against Golden and Stirling based on the failure to state a claim, remanding Huneycutt's motion for default judgment against Chernyak to a magistrate judge. *See: Huneycutt v. Chernyak*, 2024 U.S. Dist. LEXIS 103662 (D.S.C.).

Chernyak narrowly avoided going to trial in December 2024, when he obtained a continuance for an ultimately successful effort to find counsel. The case was dismissed on February 19, 2025, in anticipation of a settlement. No agreement was docketed, however, so details were not available, nor was it clear whether DOC was indemnifying its former guard. Huneycutt was represented in both of his suits by attorneys Joseph L. Leventis of Sharpe and Leventis LLC in Columbia and Patrick J. McLaughlin of Wukela Law Firm in Florence. *See: Huneycutt v Chernyak*, USDC (D.S.C.), Case No. 0:22-cv-01532.

Additional source: *The State*

THE PLRA HANDBOOK



Law and Practice under the Prison Litigation Reform

By John Boston

Edited by Richard Resch

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

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Wisconsin Robbery Suspect Frames Immigrant Detainee with Forged Letters Threatening to Kill Trump

Demetric D. Scott, 52, is facing criminal charges in Milwaukee, Wisconsin after forging letters threatening Pres. Donald J. Trump (R) under the name of an undocumented immigrant. Scott, in sending a letter to the Department of Homeland Security, attempted to frame Ramon Morales Reyes, a Mexican-born dishwasher set to testify against Scott in an armed robbery and aggravated battery case in July 2025.

Before the forgery was revealed, Reyes, 54, was arrested on May 21, 2025, after dropping off his child at school. DHS Secretary Kristi Noem announced Reyes's arrest in a statement, saying that he intended to assassinate Trump and "promised to self-deport" after the act. The statement included an image of a letter handwritten in English along with Reyes's photo. Reyes's attorneys, however, soon pointed out that their client could not have written the letter as he cannot fluently read or write in English.

In a criminal complaint charging Scott with felony witness intimidation, identity theft, and two counts of bail jumping, detectives claim that they listened to calls he made from jail in which he confessed to the plot. "And the judge will agree 'cause if he gets picked up by ICE, there won't be a Jury Trial so they will probably dismiss it that day," Scott said. Despite these charges, the statement incriminating Reyes, as of this writing, is still online on the DHS website.

Meanwhile, although he is no longer accused of threatening Trump's life, Reyes has been held in custody since his arrest. On June 10, 2025, an immigration judge ruled that Reyes, who had an arrest record stemming from a 1996 disorderly conduct charge, "is not currently a danger to the community" and that he could be released on a $7,500 bond.

Sources: *ABC News*, *The New York Times*, Wisconsin Public Radio

Eighth Circuit Affirms Judgment for HRDC in Arkansas Jail Censorship Suit

by David Reutter

On February 24, 2025, the U.S. Court of Appeals for the Eighth Circuit affirmed judgment that the "postcard-only" policy for periodicals and books at Arkansas' Baxter County Jail and Detention Center constituted a de facto blanket ban on publications in violation of the First Amendment rights of the Human Rights Defense Center (HRDC), publisher of *PLN* and *Criminal Legal News*. The Court further affirmed an award of $259,350 in attorney fees and costs to HRDC.

HRDC sued Baxter County in 2017 to enjoin the jail's policy prohibiting all detainee mail except for legal mail and postcards. After a three-day trial in April 2019, the federal court for the Western District of Arkansas found the policy was reasonably related to legitimate penological interests and did not violate HRDC's First Amendment rights. HRDC appealed.

The Eighth Circuit reversed and remanded the case, citing the second of four factors that must be considered when balancing prison and jail censorship with the First Amendment rights of those incarcerated and those who would communicate with them. As outlined in *Turner v. Safely*, 482 U.S. 78 (1987), courts must consider whether a restriction has a valid, rational connection to a legitimate penological purpose, whether there are alternative means for the incarcerated to exercise their rights, whether accommodating them would have negative "ripple effects" and whether there are any "ready alternatives" to the censored material. The district court was ordered to more broadly assess whether HRDC proved its assertion that the postcard-only policy resulted in a 'de facto total ban' on the ability of Jail detainees to access HRDC's materials. *See: Human Rights Def. Ctr. v. Baxter Cty. Ark.*, 999 F.3d 1160 (8th Cir. 2021); and 2021 U.S. App. Lexis 20866 (8th Cir.).

As *PLN* reported, the district court held an evidentiary hearing on remand and found the postcard-only policy created a de facto ban on any HRDC publication; it also found that permitting HRDC to directly send its publications to detainees would have a de minimus impact on Jail operations. The court concluded that the policy was therefore not reasonably related to legitimate penological interests. HRDC was awarded $1 in nominal damages, plus a permanent injunction of the postcard-only policy as applied to publications mailed directly from publishers, along with $259,350 in attorney fees and costs. Baxter County appealed.

The Eighth Circuit agreed with Baxter County that the postcard-only policy

was legitimately related to its penological interest to reduce contraband and the time it takes to screen mail. However, the Court rejected the County's argument that it was error to determine that a publisher could not donate its materials to the Jail.

In support of that argument, Baxter County primarily relied on testimony at the post-remand evidentiary hearing, when Sheriff John Montgomery said that HRDC could donate its materials to the Jail. The district court found that lacked creditability because at the 2019 bench trial, the sheriff testified that no publisher could send books into the Jail and that no magazines were allowed, either—though publishers were free to cut and paste their content onto postcards, he helpfully pointed out.

The Eighth Circuit agreed with the district court's conclusion that the Jail's policy created a de facto ban on HRDC's publications. "Publications like books and magazines cannot practically be communicated through postcards, phone calls, or in-person visits from HRDC," the appellate Court wrote, "so these are not available alternatives."

Jail officials testified that the inspection of publications consisted of shaking them around or flipping a few pages. One official testified to not even screening a local newspaper. Therefore allowing publishers such as HRDC to directly send publications to detainees at the Jail while continuing postcards for nonlegal mail from other individuals would have a de minimus impact on Jail operations, the Court concluded.

Its holding, the Eighth Circuit noted, turned on the facts of the case. As it has held in two other cases, a different result may have occurred if "HRDC had an alternative means of communication (such as kiosks or tablets) or its proposed accommodation would impose more than a de minimus cost on the Jail." Finally, the Court found no error or abuse of discretion in the award of attorney fees and costs to HRDC.

HRDC was represented by Litigation Director Jonathan Picard, along with attorneys Paul J. James of James & Carter PLC in Little Rock, as well as Davis & Wright attorneys Cesar Kalinowski in Seattle and Theodore R. Snyder in New York City. Amicus briefs were filed by the Clark-Fox Family Foundation; The Marshall Project; Prison Journalism Project; Arch City Defenders; Missourians to Abolish the Death Penalty; Mark Sableman and Anthony F. Blum of St. Louis. See: *Hum. Rights Def. Ctr. v. Baxter Cty.*, 129 F.4th 498 (8th Cir. 2025).

Requests for rehearing and for rehearing before the full Eighth Circuit *en banc* were denied on April 17, 2025. *See: Hum. Rights Def. Ctr. v. Baxter Cty.*, 2025 U.S. App. LEXIS 9231 (8th Cir.).

In a similar suit over censorship of materials detainees may receive at the Milwaukee County Jail, HRDC won an injunction against a policy that required publications to be "sent directly from the publisher." That January 2025 ruling is reported elsewhere in this issue. [See: *PLN*, July 2025, p.41.]

Florida Sheriff Charged in Connection with Massive $21 Million Gambling Ring

A central Florida sheriff was arrested and charged in June 2025 in connection with a money laundering and illegal gambling operation that allegedly generated more than $20 million in profits. According to the office of Florida Attorney General James Uthmeier (R), the case revolves around an alleged money laundering operation involving an unauthorized gambling house known as both Fusion Social Club and The Eclipse, which former Sheriff Marcos Lopez helped operate. By executive order, Gov. Ron DeSantis (R) appointed Florida Highway Patrol's central regional chief, Christopher Blackmon, to replace Lopez.

Long before his arrest in connection with alleged money laundering and illegal gambling, Lopez was dogged by controversy. The sheriff, who touted his law-and-order approach to policing, had been previously accused of receiving a nude photo of a coworker, overseeing officers who used excessive force in policing nonviolent crime, such as shoplifting, and lying about inappropriate social media posts showing a photograph of the corpse of a minor.

Officials accused Lopez of using his position of authority to hide his actions; typically, the county sheriff could have used his power to shut down an illegal gambling operation. The investigation into Lopez's alleged indiscretions was a joint effort of the Florida Department of Law Enforcement and U.S. Homeland Security Investigations (HSI) in Tampa.

A judge ruled on June 6, 2025, that Lopez must post a $1 million bond to be released—and must prove that his bond money had not been earned in connection with his alleged crimes. Lopez paid the bond on June 27, during the same week his wife, Robin Lynn Severence Lopez, was arrested in connection with the case.

Sources: *The Orlando Sentinel, Spectrum News*

If You Write to *Prison Legal News*

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

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

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

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

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

Former New Jersey Jailers Plead Guilty to Beating Detainee for Tossing Urine

Three former jail guards from Passaic County, New Jersey could face years in prison after they pleaded guilty on May 21, 2025, to assaulting a detainee and lying about it. The guards, Jose Gonzalez, Donald Vinales, and Lorenzo Bowden, admitted to taking a detainee—whose identity has not been released—to an area of the facility, known within the jail as a "blind spot" given its lack of cameras, where they hit him repeatedly while he was handcuffed.

The U.S. Department of Justice (DOJ) said that after beating the detainee, the guards privately agreed to deny the assault had occurred when facing a grand jury subpoena. The agency says the attack happened in January 2021, a day after the detainee squirted a liquid mixture containing urine on a guard stationed at the jail.

According to a DOJ press release, the guards did not submit documentation of their use of force, which would be required following such an incident. "The vast majority of law enforcement officers understand the trust placed in them by our community when they wear the badge," said former U.S. Attorney Philip Sellinger in a statement. "But when law enforcement officers abuse the trust the community places in them—when they violate the constitutional rights of the people of New Jersey, including prisoners, they will be held accountable."

A day after the beating, the victim was taken to the hospital, which "documented injuries from the assault," according to the U.S. Attorney's Office for the District of New Jersey.

The three guards were convicted of deprivation of rights under color of law and conspiracy to obstruct justice, for which they could each face a maximum of 30 years in prison and fines up to $250,000. They are scheduled to be sentenced in fall 2025.

Additional source: *NorthJersey.com*

South Carolina Prisoners Granted Class-Action Status in Suit Over Low Wages in Prison Industries Jobs

by Douglas Ankney

On September 18, 2024, four men, all current or former prisoners incarcerated within the custody of the South Carolina Department of Corrections (DOC), sued the agency and Director Bryan P. Stirling in the Court of Common Pleas for the Seventh Judicial Circuit in Spartanburg, alleging eight causes of action related to the DOC's failure to pay the "prevailing wage" for work they performed for private industries while they were employed under the DOC's Industries program.

That program is certified under the federal Prison Industry Enhancement Certification Program (PIECP). According to the National Correctional Industries Association, PIECP "exempts certified federal, state, local, and tribal departments of corrections from normal restrictions on the sale of offender-made goods in interstate commerce." By lifting restrictions, it permits them "to sell offender-made goods to the Federal Government in amounts exceeding the $10,000 maximum normally imposed on such transactions."

The four prisoners, Damon Jones, Jason Turmon, Ronnie McCoy, and Kevin Casey, alleged in their complaint that they were unlawfully paid just $7.25 an hour, which has been South Carolina's minimum wage for three decades, instead of the federally required "prevailing wage." As the complaint recalled, PIECP programs are supposed to place prisoners "in realistic work environments, pay them prevailing wages, give them a chance to develop marketable skills that will increase their potential for rehabilitation and meaningful employment on release."

Citing South Carolina Code § 24-3-430, the complaint alleges that "inmates must receive the 'prevailing wage' for their salaries while employed in the private sector." Apparently, the courts of South Carolina concur with this assessment. In March 2021, the Supreme Court of South Carolina, in its opinion in *Torrence v. S.C. Dep't of Corr.*, agreed with the determination of the South Carolina Court of Appeals that a prisoner employed under a PIECP program "was to be paid the prevailing wage, not minimum wage, as an inmate employed by Defendants." *See: Torrence v. S.C. Dep't of Corr.*, 433 S.C. 224 (2021).

And in a seemingly bizarre twist, it appears even the Defendants agree. Plaintiff Casey previously accepted compensation of $15,500 from the Defendants after the *Torrence* ruling, due to their failure to pay the prevailing wage for the years that he was employed in the program. Yet, according to the complaint, since Casey returned to work in the PIECP program, he has again been paid only $7.25 an hour.

The U.S. Department of Labor defines "prevailing wage" as "the average wage paid to similarly employed workers in a specific occupation in the area of intended employment." The Plaintiffs were all employed as

either woodworkers, for which the prevailing wage is $16.36 an hour, or as inspectors, for which the prevailing wage is $20.53 an hour—many times the minimum wage.

Of course, deductions are taken from the $7.25 hourly wages of the prisoners participating in PIECP jobs, too. In addition to Social Security contributions, the DOC can deduct fees for room and board, victim compensation, child support, and taxes. After deductions, prisoners "might end up getting $1.25 an hour for the work they're doing," said their attorney, Tom Winslow.

The complaint alleges that the Defendants' conduct has cost the Plaintiffs over $50,000 each in salary. The suit seeks, among other things, actual and compensatory damages with compound interest on the back payments due the Plaintiffs; nominal, incidental, consequential, and punitive damages; treble (three times the amount) of damages awarded by the trier of fact; and costs, interests, and attorney's fees.

Curiously, neither the private industry where the Plaintiffs report to work—carpet manufacturing giant Shaw Industries Group, Inc.—nor the DOC will claim the Plaintiffs as employees. Shaw spokesperson Sara Martin referred questions to the DOC, saying in an email that "inmates are employed by the [DOC]" through PIECP. But DOC spokesperson Chrysti Shain responded that prisoners were not employees of the DOC; rather, she said, "They are employed by the companies."

Plaintiffs filed a motion for class action status, while Defendants moved to dismiss. The latter motion was denied, and a class was certified in December 2024. *PLN* will monitor and report case developments as they unfold. In addition to Winslow, Plaintiffs are represented by fellow attorney Allie A. Brown at Winslow Law in Columbia. *See: Jones v. S.C. Dep't of Corr.*, S.C. Comm. Pleas (Spartanburg Cty.), Case No. 2024-CP-4203780.

Additional source: *Charleston Post & Courier*

$550,000 Settlement After Juvenile's Suicide at Charlotte Jail

by David M. Reutter

On January 2, 2025, a settlement was signed by the Plaintiff in a lawsuit over the suicide of a juvenile pretrial detainee held at the lockup in North Carolina's Mecklenburg County. Under the terms of the agreement, the County agreed to pay $550,000 to the administrator of the Estate of the dead teen, "D.W." In addition to the cash payout, Sheriff Garry L. McFadden promised to make substantive policy changes to protect detainees.

Though he was just 17, D.W. had endured a traumatic life before arriving at the County Detention Center (CDC). By age three, he had been sexually abused. By age six, he had been assaulted with a gun. When he was 11, D.W. was the victim of more abuse and assault. He also suffered a serious head injury as a child, and his father was imprisoned by the time D.W. was arrested. As a result of these events, D.W. had noted anger issues; he was a restless, impulsive risk-taker, and a substance abuser, too.

On November 5, 2020, D.W. was booked into the Rockingham CDC and transferred to the Alexander Regional Juvenile Detention Center in Alexander County. There, employees of the state Department Public Safety (DPS) placed him on "suicide alert." But he was taken off that status and not put back on, nor seen by a psychiatrist—even when he learned that he was being charged with first-degree murder, at which point he began to exhibit "more than one indicator associated with suicidal ideation," according to the complaint later filed on his behalf.

D.W. was transferred on November 20, 2020, to the Mecklenburg CDC's Jail North. A mental health assessment was not conducted upon intake, so he was not placed on suicide watch. But the next day he was placed on suicide alert, which required guards to look into his cell every 10 minutes. Yet he was also left there with bed sheets and sharp objects, despite specific instructions to the contrary from Alexander staff. Unsurprisingly, at around 1:56 pm on November 21, 2020, D.W. was found hanging from a bed sheet in his cell. Efforts to revive him failed, and he was pronounced dead.

With the aid of Charlotte attorney Michael L. Littlejohn, Adriana E. Blackwell, D.W.'s mother and Administrator of his Estate, filed suit in federal court for the Western District of North Carolina in April 2022. Proceeding under 42 U.S.C. § 1983, she accused Defendant staffers at the Mecklenburg CDC of failing to make cell checks as often as required by policy and falsifying their records to show compliance, in violation of D.W.'s rights under the Fourteenth Amendment and the Americans with Disabilities Act, 42 U.S.C. ch.126 § 12101 et seq. Plaintiff also sought to extend liability to McFadden and the County for failing to rein in the error, under *Monell v. Dep't of Soc. Svcs.*, 436 U.S. 658 (1978), as well as lodging state-law claims for the teen's wrongful death.

Defendants moved to dismiss the complaint, which a magistrate recommended largely denying on June 15, 2023, a recommendation that the district court then adopted on July 24, 2023. *See: Blackwell v. McFadden*, 2023 U.S. Dist. LEXIS 128458 (W.D.N.C.); and 2023 U.S. Dist. LEXIS 127227 (W.D.N.C.). The parties then proceeded to reach their settlement agreement. Under its terms, in addition to the payout, McFadden's office agreed to a policy change allowing pod supervisors to place potentially suicidal detainees on close observation prior to assessment by a medical official. Other terms included a requirement that guards irregularly monitor potentially suicidal detainees at least every 15 minutes, as well as receiving training to identify and supervise suicidal detainees. Qualified medical personnel must also be on-hand to assess suicidal detainees and place them "on a level of suicide precautions consistent with their level of risk." The jail must further ensure adequate staffing in suicidal housing pods and require supervisory in-person checks during rounds. The settlement also included legal fees and costs. *See: Blackwell v. McFadden*, USDC, (W.D.N.C.), Case No. 3:22-cv-00167.

Guards Used "Blast Grenades" to Break Up Mob Attack in California Prison

On June 6, 2025, Julian Mendez, 46, a prisoner on death row at the Kern Valley State Prison in Riverside County, California, was killed by inmate Mario Renteria, 36, using a makeshift weapon, *KGET* in Bakersfield reported. During the attack, according to the state Department of Corrections and Rehabilitation (CDCR), guards ordered the men to "get down," but the two prisoners ignored this command; the guards then used "chemical agents" in an attempt to break up the fight. Around this time, around 30 other prisoners rushed in and began striking Renteria. Guards, having lost control of the situation, launched "blast grenades" to disperse the crowd.

Following the incident, the CDCR implemented a modified program to investigate a rise in violence and overdoses at certain facilities including Kern Valley. Medical and legal services remained in place during the program, but access to phones, tablet communications, and in-person visitations were suspended. As of this writing, on June 26, the state lifted the restrictions in nine prisons but kept them in place in Kern Valley and 11 others.

Additional source: *KTLA*

Seventh Circuit Revives Former Illinois Prisoner's Claim for Delayed Hepatitis-C Treatment

by David M. Reutter

On January 14, 2025, the U.S. Court of Appeals for the Seventh Circuit held that a former Illinois prisoner's deliberate indifference claim against a healthcare provider contracted by the state Department of Corrections (DOC) could proceed to trial, though dismissal of an identical claim against four other staffers was upheld. The lower court had determined that prisoner Clarence Lewis impermissibly split his claims against Wexford Health Sources' Dr. Dina Paul between his suit and another filed with other plaintiffs also challenging treatment for their Hepatitis-C. But the appellate Court said that Dr. Paul waited too long to raise the objection, thereby waiving the defense. The Court further held that failure to recruit counsel for Lewis' claims against the other Wexford staffers was not shown to be error.

Lewis sued the five providers, alleging that they were deliberately indifferent to his serious medical needs while he was imprisoned at Hill Correctional Center from 2013 to 2018. Lewis accused Dr. Kul B. Sood, Nurse Lara Vollmer and Dr. Catalino Bautista of misdiagnosing him and mistreating him for diabetes and COPD when what he really suffered was a bowel disorder. Lewis further alleged that Bautista delayed the colonoscopy procedure which discovered it and that Vollmer then failed to provide effective treatment. Administrator Lois Lindorff also denied his grievance over the matter.

He further accused Dr. Paul of refusing to provide Hepatitis-C treatment because it was too costly—a claim also made in the class-action to which he was a party, for which the same U.S. District Court for the Central District of Illinois granted injunctive relief on February 4, 2019. *See: Orr v. Elyea*, 2019 U.S. Dist. LEXIS 230251 (C.D. Ill.).

After discovery, the district court granted the Defendants' motion to dismiss Lewis' suit. He appealed, arguing first that the district court erred by failing to recruit *pro bono* counsel to assist him. The Seventh Circuit reviewed the denial of his motion to recruit counsel under the abuse of discretion standard. To establish prejudicial error, therefore, the Court said that Lewis must show "a reasonable likelihood that the presence of counsel would have made a difference in the outcome of the litigation," pointing to *Pruitt v. Note*, 503 F.3d 647 (7th Cir. 2007).

But Lewis really did suffer from diabetes and COPD, the Court noted, according to the record. Additionally, he admitted that the medication which Vollmer provided alleviated his irritable bowel syndrome symptoms. Moreover, Lewis failed to challenge the district court's determination that the Defendants were not deliberately indifferent to his serious medical needs. An attorney, therefore, would not have made a difference in the claims against Sood, Batista, Vollmer and Lindorff, the Court declared.

Lewis was also diagnosed with Hepatitis-C in 2013. Dr. Paul stated that she would check Lewis every six months to see if the disease was affecting his liver. When Lewis asked why he was not being treated with medication, Dr. Paul responded that it was too costly, and he did not meet the guidelines for treatment. "That's how it goes when you are in prison," Dr. Paul allegedly stated. Lewis complained that Dr. Paul would rather save a dollar rather than a life, to which she allegedly replied, "That's how it is." But the district court dismissed the prisoner's claims against the doctor, calling them duplicative of those raised in the class action to which he was a party—thereby running afoul of the prohibition against claim-splitting most recently described in *Brown v. City of Chicago*, 771 F.3d 413 (7th Cir. 2014).

On appeal, Lewis argued that the district court's application of the claim-splitting doctrine was erroneous because Dr. Paul failed to object to it sooner. She even conceded the error. As the Seventh Circuit noted, Dr. Paul waited 16 months to raise the defense, and by "waiting so long" had "acquiesced in Lewis' assertion of the claims in this case." The district court's judgment was thus reversed as to Dr. Paul but affirmed as to the other four Defendants. On remand, the district court was cautioned to reconsider Lewis' request for counsel on the Hepatitis-C claim. See: *Lewis v. Sood*, 126 F.4th 525 (7th Cir. 2025).

The Dangerous Practice of Late-Night Jail Releases

by Anthony W. Accurso

Researchers from the Harvard Kennedy School have released data on jails which have the practice of releasing prisoners, usually approved for bond, between the hours of 11 p.m. and 5 a.m., revealing that this practice significantly increases the chances that a person will be harmed or placed in circumstances which will return them to jail.

The researchers started with some statistics about why this is important, and why it affects so many people. Some "514,000 people, greater than the population of major cities like Atlanta and Miami—are being held in our nation's local jails," and "[o]ver 10 million people are admitted to local jails every year." And "[a]lthough the average stay in detention is about 26 days, or roughly 3 ½ weeks, most people are released on the day of arraignment or within one week."

The study found that, "[f]or a significant minority, release occurs in the middle of the night." This is because, of the 141 jails in the 200 largest cities in the U.S. by population, "131 release during the late night and only 10 do not." Worryingly, almost no jails track and report what happens to people after they are released back into the community.

"Pima County, Arizona is currently the only county in the country that includes in their official counts jail-related deaths that occur within one month of release," noted the researchers. "After officials there adopted this new definition, the county's number of jail-related deaths more than doubled—from 14 in 2022/2023 to 32."

What happens to these people during the hour of the wolf? Here are some examples listed in the study: Two women lost their lives along the side of a dark freeway in rural Texas after being hit by a car; one year after going missing, Mitrice Richardson's mummified remains were found in a Malibu Canyon creek bed; Jessica St. Louis's lifeless body was discovered in front of the East Dublin BART station just before train service began; Gregory Grigorieff's dead body was found after being exposed to temperatures that had fallen as low as 20 degrees and to snow almost one foot deep.

"Women leaving jail at night regularly were targeted for sex in exchange for rides," according to Amika Mota, Executive Director of Sister Warriors Freedom Coalition and Sister Warriors Action Fund. "Assaults were a regular occurrence. And people were out there in the dark pushing drugs because they knew you were in a vulnerable state, making it all the more likely you'd end up right back in jail before too long."

To complicate matters, "jails often release people without the resources needed for safe passage, including some of the resources that people were required to submit at admission—warm clothes, money, ID, phones, etc."

On intake, a prisoner is required to surrender these items, and they are not always returned upon release. Or they were arrested without them. Or, if a phone is returned, it is likely dead.

Not all jails are blind to this issue, and some provide resources upon release. Some jails provide one or more of the following: a bus pass, taxi service, medication, voluntarily delayed release (to an appropriate time of day), donated clothing, a phone call, phone charging, housing/shelter, hygiene kit, and referrals to community agencies.

However, while almost 20% of jails allow a phone call, and almost 10% provide a bus pass, the other considerations are rare.

Finally, "for people who have class-based disadvantages and/or who are beset with often-untreated mental illnesses, substance use issues, and/or housing instability—who are disproportionately represented among those detained pretrial—late-night discharges significantly increase the risk of being harmed or of causing harm."

As for solutions, the study makes no prescriptions, though the researchers do point to where these could be found: "[G]iven that ten jails have eliminated this practice, it is clear that a different policy framework is possible."

Source: Harvard Kennedy School

Sixth Circuit: Michigan Tolling Statute Applies to PLRA Administrative Exhaustion Requirement

by David M. Reutter

On January 29, 2025, the U.S. Court of Appeals for the Sixth Circuit held that Michigan's "tolling provision" does not affect the administrative remedy exhaustion requirement in the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e. Instead, the provision only pauses Michigan's statute of limitations.

Michigan prisoner Lamont Heard, who is serving a life sentence, alleged in a civil rights lawsuit that prison officials retaliated against his litigation activities by transferring him to different housing in "the Burns unit." The U.S. District Court for the Eastern District of Michigan dismissed the complaint for failure to exhaust administrative remedies, and Heard appealed.

The Sixth Circuit found that the case hinged on the procedural timeline. Heard stated that he was transferred to the Burns unit on January 10, 2017, and that he filed a grievance the next day. Months later, the grievance was returned with instructions to file it with the local grievance coordinator, which Heard did. He never received a response.

Heard had filed a separate civil rights complaint on December 4, 2017, concerning a different prison transfer. On March 2, 2018, Heard moved to amend that complaint to add the Burns unit claim. The district court then dismissed the claim for failure to exhaust. In the wake of the dismissal, Heard administratively exhausted the Burns unit claim. He then filed a civil rights complaint on January 19, 2021, alleging the Burns unit retaliation claim.

In all, Heard filed his action four years and nine days after his claim accrued on January 10, 2017. But Michigan's three-year personal injury action statute of limitations applied to Heard's First Amendment claim. Thus, Heard's claim was deemed untimely. Heard, however, argued that Michigan's "tolling provision" statute pauses the statute of limitations while a case is pending in court. See: Mich. Comp. Laws §600.5856. Under that statute, the 16 months from when Heard added the Burns unit claim on to his pending lawsuit up until the time the district court dismissed the claim would be added back to the clock.

The parties disputed whether the tolling provision statute applied. The State argued that the tolling provision was "inconsistent with" the PLRA. To answer that question, the Sixth Circuit began by looking to the history of federal courts "borrowing" state statute of limitations.

The Court noted that 42 U.S.C. § 1983, the statute that allows individuals to sue state officials for violations of their constitutional rights, does not have a statute of limitations. Congress instructed federal courts in 42 U.S.C. § 1988 to borrow from the "common law, as modified and changed by the constitution and statutes of the State," so long as the state's law "is not inconsistent with the Constitution and laws of the United States." Thus, state tolling statutes are used for § 1983 actions. *See: Wilson v. Garcia*, 471 U.S. 261 (1985).

But § 1988 "only codified a long-standing practice." As far back as 1830, federal courts borrowed state statutes of limitations. The question, therefore, was whether Michigan's tolling provision was inconsistent with federal law—specifically, the PLRA.

The PLRA provides: "No action shall be brought…by a prisoner…until such administrative remedies as are available are exhausted." The Sixth Circuit found that the PLRA says nothing about tolling, and it concluded that Michigan's tolling provision does not affect the exhaustion requirement. Rather it said that federal courts routinely create their own tolling rules for prisoner suits subject to the PLRA. For instance, "The Sixth Circuit already tolls for the time a prisoner spends exhausting his claim." *See: Brown v. Morgan*, 209 F.3d 595 (6th Cir. 2000).

The Sixth Circuit found no conflict between the purposes of the PLRA and Michigan's tolling provision. The purpose behind the PLRA exhaustion requirement is to allow prison officials to address an issue, reduce litigation by resolving claims in-house, and improve litigation by creating an administrative record. The tolling provision does not defeat those purposes. How long a prisoner has to bring a claim rests with the states.

The district court's order of dismissal was therefore reversed and the case remanded. Before the Court, Heard was represented by attorney James Y. Xi of Clement & Murphy PLLC in Alexandria, Virginia. *See: Heard v. Strange*, 127 F.4th 630 (6th Cir. 2025).

$1.6 Million Class-Action Settlement for Virginia Prisoners Subjected to Delayed Release

In an amended agreement filed in the federal court for the Eastern District of Virginia on January 28, 2025, state Department of Corrections (DOC) Director Chadwick Dotson and his predecessor, Harold Clarke, promised to pay a total of $1,599,694 to settle a class-action suit filed by 53 state prisoners who were detained past their release dates.

The mass over-detentions resulted from an advisory opinion issued by state Attorney General Jason Miyares (R) regarding exclusions for certain violent crimes from sentence credits adopted by state lawmakers in 2020. Just as those credits were set to take effect in July 2022, Miyares determined that the exclusions should extend to related "inchoate" offenses—putting those convicted of attempted murder or conspiracy to commit murder on the same footing as those actually convicted of murder. As a result, Clarke estimated, some 8,000 prisoners faced delayed release from prison—including 560 already told they were going home that month, as *PLN* reported. [*See: PLN*, Jan. 2023, p.50.]

In July 2023, the state Supreme Court shot down Miyares' overly expansive interpretation of the law's exclusions when it granted a writ of habeas corpus to over-detained prisoner Steven Prease. By then, the DOC had subjected at least 53 prisoners to over-detention based on Miyares' bad advice. But the high Court granted immunity to him, as well as to Clarke and Dotson for relying on his work. And a habeas petition provides for no recovery of damages. Yet the DOC dragged its feet for months longer before finally releasing all the prisoners in November 2023. One of them, Leslie Puryear, then filed suit on behalf of the group, as *PLN* reported. [See: *PLN*, Nov. 2024, p.14.]

The parties proceeded to reach their settlement agreement. Under its terms, $1,139,564 was set aside to pay eligible prisoners $118 for each day of over-detention that they were forced to endure—a total of 9,646 days for all 53 Plaintiffs, calculated from the date they were actually released back to July 1, 2022, which was the date that they were supposed to be freed had the expanded sentence credits not been improperly withheld from them. Any single payment that was calculated to total less than $1,000 was bumped up to that minimum amount.

The settlement also included $40,000 as a service payment to Puryear, subject to the district court's approval. Another $20,000 was set aside for expenses of the claims administrator. A total of $400,000 was awarded to class counsel, attorneys Michael Allen, Ellora T. Israni, Emahunn R.A. Campbell and Rebecca J. Livengood of Relman Colfax PLLC in Washington, D.C. The Court granted preliminary approval to the agreement on January 29, 2025, and final approval on May 19, 2025. *See: Puryear v. Dotson*, USDC (E.D. Va.), Case No. 3:24-cv-00479.

Puryear, who served 11 years in prison for armed robbery, was held another 16 months by DOC after his scheduled July 2022 release because Miyares said—wrongly—that his attempted murder conviction was just as disqualifying for sentence credits as a murder conviction was. "I knew, waking up every day, I shouldn't be here," Puryear recalled of his extra time in prison, which caused him to miss his son's high school graduation and a grandson's birth. Livengood, one of the class attorneys, called the money that he and other Plaintiffs would receive "a meaningful remedy for a widespread harm."

Virginia limits governors to two non-consecutive terms, but not the attorney general. Despite the big bill that the DOC had to pay for his shoddy advice to Dotson and Clarke, Miyares was unopposed in the June 2025 GOP primary for renomination to run again in the November 2025 election.

Additional source: *Washington Post*

Trans BOP Prisoners Win Restraining Order Preventing Transfer to Men's Prison, Discontinuation of Hormone Therapy Medication

by David M. Reutter

On February 4, 2025, the U.S. District Court for the District of Columbia granted three "male-to-female transgender women" imprisoned by the federal Bureau of Prisons (BOP) a temporary restraining order (TRO). The order prevented BOP from transferring the prisoners to a men's prison and from discontinuing administration of their prescribed hormone therapy medication. The district court subsequently allowed nine other trans BOP prisoners to join the suit, extending the TRO to protect them until August 2025.

On January 20, 2025, Pres. Donald Trump (R) signed an Executive Order that required government officials to "ensure that males are not detained in women's prisons or housed in women's detention centers." The order further required the BOP to revise its policies to "ensure that no Federal funds are expended for any medical procedure, treatment, or drug for the purpose of conforming an inmate's appearance to that of the opposite sex." As *PLN* reported, a trans BOP prisoner identified as "Maria Moe" then succeeded in winning a TRO from the federal court for the District of Massachusetts on January 26, 2025, preventing her transfer to a men's lockup. [See: *PLN*, Mar. 2025, p.43.]

The three prisoners who filed their complaint in the D.C. district court a little over a week later also asked for a TRO, fearing that they would be transferred to a men's prison and that their hormone therapy medication would be discontinued. The district court then found that the prisoners fit within the "dead end" exception to the administrative remedy exhaustion requirement of the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e, as outlined in *Ross v. Blake*, 578 U.S. 632 (2016). Since the BOP has no discretion to act contrary to the Executive Order, the district court said, there is "nothing to exhaust."

Having found that it had jurisdiction over the matter, the district court considered the merits of the TRO motion. The prisoners' complaint noted that they suffer from gender dysphoria, "a condition marked by significant distress and a host of physiological and psychological symptoms when a person lives in a manner conforming to their biological sex," the district court noted. They were treated for several years before and including their time in BOP custody with prescribed hormone therapy.

The prisoners lodged Eighth Amendment claims for failure to protect and deliberate indifference to their serious medical needs, which first required a showing that they faced an "objectively intolerable risk of harm." The threatened transfer met that standard, the district court decided, based upon "various gov-

ernment reports and regulations" that recognize "transgender persons are at a significantly elevated risk of physical and sexual violence relative to other inmates when housed in a facility corresponding their biological sex." In particular, with respect to the threatened discontinuation of their medication, the prisoners filed "an affidavit from a physician explaining the numerous and severe symptoms that may arise from a failure to treat gender dysphoria," the district court noted.

In addition, the prisoners needed to show that Defendants were "subjectively aware" that they were placing Plaintiffs in harm's way. The BOP did not dispute that it was subjectively aware that transferring the three prisoners "to a male prison would substantially increase the likelihood of them experiencing [a] parade of harms."

The district court, therefore, found the prisoners demonstrated a likelihood of success on the merits and that the other TRO factors favored their claim, too. The TRO was thus granted, and the BOP was prohibited from enforcing the relevant provisions of the Executive Order. The expanded roster of Plaintiffs was then granted an extension of the TRO protections through August 23, 2025, by an injunction granted on May 15, 2025. *PLN* will continue to update developments as they unfold.

Plaintiffs are represented by attorneys from Rosen Bien Glavan & Grunfeld LLP in San Francisco, Brown Goldstein & Levy LLP in Baltimore, GLBTQ Legal Advocates & Defenders in Boston, and the National Center for Lesbian Rights in Sacramento. *See: Doe v. McHenry*, 763 F. Supp. 3d 81 (D.D.C. 2025); and *Doe v. Bondi*, 2025 U.S. Dist. LEXIS 108959 (D.D.C.).

Solving the Carceral Understaffing Crisis: What Works, What Doesn't, and Why

Most prison systems and jails are understaffed, with serious consequences for both the keepers and the kept. In facilities with too few guards, staff members typically have to work longer hours or multiple shifts in higher-stress, more dangerous environments. But at least they get to return home at the end of their shifts. Prisoners who live in such conditions bear the brunt of staffing shortages, which include lockdowns and having to forgo recreation, religious, educational, and other programs—even visitation and medical appointments.

The non-profit Prison Policy Initiative (PPI) examined this issue in a December 9, 2024 report, *Why Jails and Prisons Can't Recruit Their Way Out of the Understaffing Crisis*. That found detention officials universally agree that lack of adequate staff is a significant problem. Between 2020 and 2023, the number of workers in state prisons nationwide fell 11% while the workforce in local jails dropped by 7%. In total, there was a loss of 64,455 detention employees during that three-year period—which coincided with the COVID-19 pandemic, though understaffing plagued the criminal justice system long before then.

Prisons and jails have concentrated on recruitment efforts such as wage increases, which have mostly been unsuccessful or insufficient. Detention staff already earn high wages in comparison to other blue-collar professions. With a GED or high school diploma as the only educational requirement in many states, guards received median annual wages of $53,300 in 2023, according to the federal Bureau of Labor Statistics. That amount had increased by 12.5% since 2020 as recruitment efforts ramped up, not including overtime pay (which can be considerable). On average, prison and jail employees earn more than roofers, loggers, and construction workers, even though those professions have much higher rates of job-related fatality.

As with wage increases, recruitment methods such as hiring bonuses and perks like staff wellness programs haven't worked. For example, Atlanta's Fulton County Jail, "which has a lot of problems—including that it hasn't had enough staff for many years—deployed hiring bonuses and the highest salaries of any sheriff's department in the state but still struggles to fill positions," PPI reported. Similar efforts have failed to relieve understaffing in state prison systems.

Some detention agencies have lowered the minimum age and increased maximum age requirements for hiring guards, without much success. Building new prisons and jails to create safer and more attractive work environments hasn't solved the problem either; once constructed, they still must be staffed. PPI cited Denver, Colorado, which "spent millions to renovate a jail and improve working conditions and still can't fully staff it." Florida and West Virginia have even mobilized the National Guard to help oversee their understaffed prisons.

Although not mentioned in the PPI report, the influence of unions that represent prison and jail guards is a contributing reason why detention officials narrow-mindedly focus on recruitment to address staff shortages. Unions have a financial incentive to maximize their membership, and hiring more guards accomplishes that goal.

So what would work to solve understaffing? PPI makes the compelling argument that decarceration—reducing prison and jail populations—is the only workable, long-term solution. When there are fewer prisoners, fewer facilities are needed to house them and fewer employees are needed to run those facilities.

"Many of the issues for which 'understaffing' is blamed are fundamental to mass incarceration, and are best addressed through decarceration—not a jobs program for corrections officers or further investments in surveillance and imprisonment," PPI concluded.

Decarceration includes strategies like ending cash bail to decrease the number of people held in jails, increasing parole rates and other forms of early release, and reducing arrests—such as by decriminalizing certain types of low-level crimes. However, these measures are also highly unpopular among tough-on-crime politicians and entrenched detention officials. That makes them unlikely to be implemented anytime soon, leaving the carceral understaffing problem perpetually unresolved.

Source: Prison Policy Initiative

Nearly $2.6 Million Paid to Former Minnesota Jail Detainee for Injuries from Delayed Withdrawal Treatment

by David M. Reutter

On February 12, 2025, attorneys for a former detainee jailed by Minnesota's Anoka County stipulated to dismissal of his claims for injuries suffered when he was denied withdrawal treatment while incarcerated. In exchange, the County agreed to pay $2.585 million to the injured jail survivor, Deytona Green, on its behalf, as well as for its former medical care contractor, MEnD Correctional Care PLLC.

While Green suffered severe injuries, he is one of the few pretrial detainees to survive and sue jail officials for the failure to provide drug withdrawal treatment. Green, then 25, was booked into the Anoka County Jail (ACJ) on drug charges on February 5, 2022. He informed jailers that he had a valid prescription for Suboxone to treat his opioid addiction. He also admitted to shooting up heroin earlier that day.

But ACJ officials confiscated the prescribed medication that was on Green's person at the time of his arrest and placed it in a locked box in property storage. Green's mother and his probation officer both called ACJ, offering to bring more of his prescribed medication to the jail to ensure he suffered no disruption in treatment. But they were denied.

Meanwhile Green never received any Suboxone at the jail and quickly began experiencing opioid withdrawal symptoms. On February 7, 2022, he started reporting vomiting to ACJ medical officials. Two days later, he told them that he was also experiencing uncontrollable diarrhea. Guards observed the symptoms, but they took no action.

Beginning on February 10, 2022, Green gave away all his meals because he could not eat. Surveillance video the next day captured him swaying on his feet before fainting. Still guards took no action, and Green's health continued to deteriorate. Finally, on February 12, 2022, Green collapsed. He was found unresponsive, "lying face down in his vomit-covered cell," according to the complaint later filed on his behalf.

Taken then to a hospital, Green was placed in a critical care unit. A CT scan revealed skull fractures and a brain bleed.

He was also diagnosed with acute kidney failure. ACJ obtained a judicial order to furlough Green from custody—a maneuver that officials in many jails have used to avoid the cost of medical care for those they have incarcerated. That cost would prove to be substantial for Green, who endured cranial surgery to remove a blood clot to alleviate bleeding. After another three weeks of intensive treatment, he was released from the hospital.

Green continued to suffer headaches and loss of memory in April 2024, when a civil rights complaint was filed for him in federal court for the District of Minnesota by attorneys from Robins Kaplan LLP in Minneapolis. The suit made claims under 42 U.S.C. § 1983 for Defendants' "galling" and deliberate indifference to his serious medical need, in violation of his Eighth and Fourteenth Amendment rights.

The parties then proceeded to reach their settlement agreement, under which the County's payment was only partially offset with a $35,000 recovery from MEnD that was paid by Platte River Insurance Co. The agreement also included fees and costs for Plaintiff's attorneys. *See: Green v. Anoka Cty.*, USDC (D. Minn.), Case No. 0:24-cv-01250.

ACJ cancelled its contract with MEnD in 2022. The firm canceled the rest of its jail contracts when it filed for bankruptcy protection in December of that same year, as *PLN* reported [See: *PLN*, Apr. 2025, p.43.] Robert Bennett, one of Green's attorneys, said that the case "serves as a stark reminder of the need for reform in correctional healthcare systems."

"This is not just a failure of one facility but a reflection of a much larger systematic issue within the correctional system," he added. "We must demand accountability and ensure no one, regardless of their status, is subjected to this kind of inhumane neglect."

Additional source: *Minneapolis Star Tribune*

Ohio Sued by Non-Profit Law Firm for Opening Prisoner Legal Mail

On May 6, 2025, the Ohio Justice and Policy Center, a non-profit law firm, filed a lawsuit against the state Department of Rehabilitation and Corrections (DRC) over the practice of intercepting mail between prisoners and their attorneys. The practice, which is called the "Legal Mail Policy Variance," was intended to intercept drugs and other contraband from being brought into facilities. It requires prison staff to make a photocopy of legal mail in front of the prisoner and—after handing them the copy or delivering it to their tablets—shred the original. This policy was introduced to four of the 28 DRC prisons across Ohio in 2024: the Southern Ohio, Marion, Lebanon, and Ross correctional institutions.

The Ohio Justice and Policy Center contends that it often receives mail from prisoners which includes allegations against specific guards, and that opening and reading this mail could result in retaliation. "[This policy] opens the door for private correspondence to be viewed with total disregard for our client's civil rights and First Amendment rights," said Gabe Davis, the firm's chief executive officer. "We are suing the department because this has to stop now." According to state data, of the known sources for how drugs enter prisons in Ohio, legal mail only accounts for 1.3% of all seizures.

Sources: *Columbus Dispatch, NBC4/WCMH*

Alabama's Oldest Prisoner Dies in Hospital

Floyd Lee Coleman, 106, passed away on May 19, 2025, at a hospital near the William Donaldson Correctional Facility, where he was a prisoner in Bessemer, Alabama. Coleman, who had spent more than forty-five years locked up, was the state's oldest prisoner—and likely among the oldest in the country.

In 1978, Coleman was arrested for the rape and murder of Quintina Steele, a 7-year-old girl. Although Coleman was originally sentenced to death by electric chair, that sentence was overturned after the Supreme Court of the U.S. decided *Beck v. Alabama*, 447 U.S. 625 (1980), which held that the death sentence cannot be imposed if the jury was not permitted to consider a lesser offence for a verdict. Coleman pleaded guilty before he could be retried, and he received a life sentence without parole in 1984.

The U.S. prison population has been "graying" for at least the last three decades, with the percentage of prisoners who are 55 or older growing from 3% to 15% during that time. One in six prisoners—nearly 200,000 people—is serving a life sentence, and 56,245 prisoners are serving life without parole. While prisons are unhealthy at any age, incarceration is particularly dangerous for older adults; in addition, prisoners who are 65 and older are the least likely group to be re-arrested after being released.

Sources: *WVTM*, Prison Policy Initiative, The Sentencing Project

Percentage Of Prisoners Serving Life Without Parole Is Up Despite Overall Decrease in Prison Population

by Anthony W. Accurso

A new report by The Sentencing Project (TSP) shows that the percentage of prisoners serving terms of life without parole—or "death by incarceration"—nationwide has increased, even as overall prison populations decreased. It is TSP's sixth national census of people serving life sentences, which includes 'life with the possibility of parole'; 'life without the possibility of parole'; and 'virtual life sentences,' defined as those of 50 years or longer.

Researchers found that, since 2003, the percentage of prisoners serving a "death by incarceration" sentence increased 68%. This population was down 4% since 2020, but that's relative to a shrinking of the total prison population by 13%. About one in six prisoners is serving such a sentence, totaling almost 200,000 prisoners across the United States.

Compared to the rest of the world, the U.S. has only about 4% of the total population, yet it "holds an estimated 40% of the world's life-sentenced population," TSP found, "including 83% of persons serving LWOP."

Nearly half of those serving life sentences are Black, far greater than that group's 14% share of the U.S. population. Among women in prison, one in eleven is serving life, with those aged 55 or older accounting for two-thirds of the life sentences. Among all prisoners, nearly 70,000 were under age 25 when their crimes were committed, and about a third of those have no possibility for parole.

Relying on a body of existing evidence, the study's authors remarked that "[e]xtensive research has demonstrated that life sentences fail to achieve the primary objectives of imprisonment, which include deterrence, incapacitation, retribution, and rehabilitation." However, the U.S. justice system has long ignored evidence-based practices in favor of retributive sentencing. The report notes that "in the past 40 years… [l]awmakers have expanded the use of life sentences, applying them to a wider range of offenses, and increased the mandatory time people must serve before becoming eligible for parole." Meanwhile "[o]pportunities for early release based on good behavior have diminished, and wait times for parole review have lengthened substantially," the report added.

With "little consideration for reform or second chances," the report concludes, any attempt to strike a balance between punishment and rehabilitation has shifted focus and is now clearly "centered on punishment." *See: A Matter of Life: The Scope and Impact of Life and Long-Term Imprisonment in the United States*, TSP (Jan. 2025).

Kentucky Supreme Court Voids Prisoner's $10,972 Jail Fee

by David Reutter

Striking a rare blow for fairness, the Supreme Court of Kentucky issued a ruling on February 25, 2025, reversing the imposition of $10,972 in jail fees upon Dillian Ford at his criminal sentencing in Carlisle County Circuit Court. Because there was no evidence in the record that the fees were based upon more than an unofficial agreement between Carlisle County and neighboring McCraken County, where Ford was held, the high Court found error in the lack of an officially adopted policy, as required by state law.

Ford was sentenced on November 17, 2022, to a total of 15 years on his underlying charges and fined $10,972 in jail fees for the 422 days he was held in custody prior to sentencing. During the plea colloquy, Ford stipulated that Carlisle County paid McCracken County $26 per day to imprison him.

On appeal, Ford did not question the agreement between the counties. However, he argued that imposition of the fee was error because there was no evidence that either county had a jail reimbursement policy approved by the county's governing body.

In *Capstraw v. Commonwealth*, 641 S.W.3d 148 (Ky. 2022), the Court had held that a trial court may not impose jail fees at sentencing without "some evidence presented that a jail fee reimbursement policy has been adopted by the county jailer with approval of the county's governing body, in accordance with KRS 441.265(2)(a)." The *Capstraw* court thus also vacated the imposition of jail fees based on the unofficial fee reimbursement policy.

Turning to the merits of Ford's appeal, the Court found that his stipulation to the inter-county agreement was not a bar to relief. What mattered, the Court said, was that "(a)n agreement between counties concerning reimbursement for prisoners is not the same as a jail reimbursement policy promulgated by the county jailor with the approval of the county's governing body." The Court stated that its *Capstraw* holding "literally meant" that such a promulgation must be demonstrated on the record. When the Commonwealth fails to demonstrate that such a policy exists "with the concomitant approval," then the state also fails to meet its "evidentiary burden for jail fees … and they cannot be imposed."

Therefore, imposition of jail fees against Ford was vacated. Before the Court, Ford was represented by Assistant Public Advocates Aaron R. Baker and Kathleen Kallaher Schmidt from the Department of Public Advocacy. *See: Ford v. Commonwealth*, 709 S.W.3d 203 (Ky. 2025).

$95,000 in Settlements for Illinois Prisoners Retaliated Against for Class Participation in Prison Education Programs

by David M. Reutter

On October 4, 2024, the Illinois Department of Corrections (DOC) settled the second of two lawsuits brought by prisoners involved in educational programs who claimed that they were subjected to retaliation after classroom debates over political and social issues piqued reactionary prison officials.

Centralia Correctional Center prisoner Anthony McNeal was assigned as a peer educator in the Citizens Civics Education program, which was authorized by state lawmakers with the Re-Entering Citizens Civics Education Act, 730 ILCS 200/1; the primary goal of the law is to teach soon-to-be released prisoners about their voting eligibility and how voting is vital to successful re-entry.

On March 1, 2023, McNeal was performing his assignment, carrying out a lesson plan that discussed poll taxes, literacy tests, and other racist laws from the Jim Crow era. In response to another prisoner's inquiry, McNeal informed the class how many southern states had used literacy tests and poll taxes to suppress the Black vote.

Nathan Tucker, a prison official assigned to monitor the class, cut McNeal off and instructed him not to discuss racism in class. Tucker further insisted that McNeal present literary tests as having a legitimate nondiscriminatory purpose of ensuring that voters "knew what they were voting for." McNeal responded that the intent of the laws was part of the curriculum and part of what the Act required be taught.

At the end of class, Tucker demanded McNeal's notes. When McNeal refused to surrender them, he was issued a disciplinary ticket for disobeying an order, permanently removed as a peer educator, and prevented from obtaining another extra pay job.

Represented by attorneys Alan S. Mills and Nicole Schult of Uptown People's Law Center in Chicago, McNeal filed suit in the federal court for the Southern District of Illinois in February 2024. Proceeding under 42 U.S.C. § 1983, he accused DOC officials of violating his rights under the First and Fourteenth Amendments and Title VI of the Civil Rights Act of 1964. In the settlement that was reached, DOC agreed to pay McNeal $5,000 and reinstate him as a peer educator. *See: McNeal v. Tucker*, USDC (S D. Ill.) Case No. 3:24-cv-00619.

Earlier, a lawsuit was filed by Stateville Correctional Center prisoners Lester Dobbey, Joseph Dole, Raul Dorado, Bernard McKinley, and Eugene Ross. They were involved in a debate class where a public debate was held on March 21, 2018, with journalists, legislators, DOC officials, and members of the Illinois Prisoner Review Board, with other members of the public in attendance to observe.

The prisoners, all veteran prisoners who were serving lengthy sentences for offenses committed while teenagers or young men, decided to focus on how Illinois might implement a parole system. After the debate, legislators responded by stating that they took the prisoners' view seriously and were giving genuine consideration to the policy proposals that were discussed.

Prison officials, however, were not pleased. On April 3, 2018, DOC Assistant Director Gladyse Taylor told the five prisoners that they were interfering with DOC's ability to pursue its own legislative agenda, which should be more focused on appropriations for the prison system rather than parole. Taylor questioned the decision to house the prisoners at Stateville and suggested that they should be moved to prisons in southern Illinois. The debate class was cancelled, along with a live debate on the parole subject scheduled for April 26, 2018.

The prisoners were then subjected to various retaliatory actions by guards, they said, before eventually filing a civil rights complaint in the federal court for the Northern District of Illinois in May 2019. Claims against Taylor for failing to intervene in the alleged constitutional violation were dismissed on October 8, 2019. *See: Dobbey v. Jeffreys*, 417 F. Supp. 3d 1103 (N.D. Ill.).

After a lengthy delay caused by the COVID-19 pandemic, DOC agreed to a settlement on March 21, 2024, paying at total of $90,000—including $10,000 to each of the five prisoner plaintiffs, plus fees of $30,000 to their attorneys from the People's Law Office in Chicago and $10,000 to attorney Joshua G. Herman, also in Chicago. *See: Dobbey v. Jeffreys*, USDC (N.D. Ill.) Case No. 1:19-cv-03272.

Nearly $70,000 Awarded for Illinois Prisoner's Excessive Force Claim

by David M. Reutter

On October 24, 2024, the U.S. District Court for the Central District of Illinois entered judgment awarding $69,384.73 to a state prisoner in his civil rights action alleging a Department of Corrections (DOC) food service director subjected him to excessive force over a grievance filed against him. The judgment included damages awarded by a trial jury and an additional award for attorney fees and costs.

Prisoner Jeremiah Fallon, then 35, filed a grievance on September 19, 2019, alleging that food service supervisors at Pontiac Correctional Center (PCC) fed prisoners cereal that they knew was contaminated by mice droppings. The next day, Food Service Director Dean Wessels confronted Fallon in the prison's kitchen, where he "got in (his) face, and screamed and cursed at him," Fallon's civil rights complaint recalled. After Fallon admitted filing the grievance, Wessels told Fallon that he was fired and demanded he leave the kitchen immediately.

Fallon walked into the adjoining hallway. But the gate was locked, so he remained there. Wessels saw him, screamed at him, and demanded to know why he had not left. Surveillance video captured what happened next as Wessels violently slammed Fallon into the locked gates, "causing extreme pain and injury to (Fallon's) head and left eye." But the staffer made no attempt to obtain medical treatment for the prisoner.

On the Sunday following Wessels' attack, after receiving calls about it from Fallon's family, PCC Warden Teri Kennedy visited Fallon's cell and apologized, the prisoner said. Kennedy also told Fallon that he should "leave it alone," promising if he did that he would get a new job. The next day, he received a new job assignment in the prison gym.

Nevertheless, the prisoner reported the abuse and was interviewed on October 1, 2019, by Lt. J. Anglin from DOC's Internal Affairs Office. Shown the video, Fallon was asked what he and Wessels were doing at various points during playback. Yet Anglin did not offer to obtain medical treatment for Fallon, who still had blood in his eye and a knot on his head, he said. Anglin convened a subsequent meeting at which he also told Fallon to let the matter go, warning that it was not in his best interest to pursue it.

Not taking that advice, Fallon secured representation from Northbrook attorney Jordan E. Marsh, who filed a federal civil rights action on his behalf on February 22, 2021, alleging Eighth Amendment violations for Wessels' use of excessive force and for Wessels and Anglin's failure to provide medical care for the injuries he incurred from Wessels' attack. The case proceeded to a jury trial.

The jury returned its verdict on May 30, 2024, finding Wessels guilty of using excessive force and awarding Fallon $10,000 in compensatory damages and $20,000 in punitive damages. The jury found in favor of Wessels and Anglin on the failure-to-treat claim. In its October 2024 amended judgment, the district court awarded $35,791.95 in attorney fees and $3,593.08 in costs to Fallon's counsel. *See: Fallon v. Wessels*, USDC (C.D. Ill.), Case No. 1:21-cv-01066.

Prisoners everywhere complain of poor food, and not without cause, when prison systems pay as little as $1 per meal. But lawsuits rarely get anywhere—except at PCC, where the U.S. Court of Appeals for the Seventh Circuit agreed with another prisoner that multiple reports of "mice droppings, mice, and cockroaches literally in and on the food" could lead a jury to "conclude that the risk of harm … is both substantial and obvious." [See: *PLN*, May 2024, p.1.] Before eventually reaching a settlement, the plaintiff in that suit, Mark Byrd, successfully forced DOC to cough up Fallon's grievance, along with video of the assault by Wessels that it provoked, on February 7, 2020. Marsh represented the prisoner in that case, too. *See: Byrd v. Hobart,* 2020 U.S. Dist. LEXIS 265819 (C.D. Ill.).

News in Brief

Alabama: Elmore County Jail guard Lita Williams, 57, was arrested and charged with first-degree promoting prison contraband on May 21, 2025, the *Wetumpka Herald* reported. Her arrest followed discovery of a cellphone in a jail cell during a routine search two weeks prior. Data from the phone showed that Williams was in communication with detainee Kendall Henderson, 46, who was being held on charges including cruelty to animals and arson. Sheriff Bill Franklin stated that Williams admitted to sneaking the phone because she had a "friendship" with Henderson. Williams bonded out shortly after her arrest. Henderson remained incarcerated.

California: Dijon Barber, 32, a state prisoner serving four years for first-degree robbery and elder theft, was re-apprehended in Las Vegas on April 26, 2025, two weeks after he walked away from a Los Angeles community re-entry program on April 12, 2025. According to *KTLA* in Los Angeles, state Department of Corrections and Rehabilitation (CDCR) officials did not disclose the exact location of the program nor how Barber managed to escape. His was the ninth escape from a re-entry program facility for CDCR prisoners this year. From 1977 to June 2025, the agency claimed a 99 percent apprehension rate for prisoners who "leave without permission."

Costa Rica: In a bizarre moment, Costa Rican prison guards at the Pococi Penitentiary intercepted a cat strapped with drugs as it attempted to enter the prison on May 6, 2025. *BBC News* reported that the black-and-white cat was caught jumping the perimeter fence at night, carrying over 230 grams of marijuana and 67 grams of crack cocaine taped to its body. The Ministry of Justice released video footage showing guards apprehending the animal and carefully removing the illegal packages. The cat has since been handed over to animal health authorities.

Florida: A former federal Bureau of Prisons (BOP) guard at the Federal Cor-

rectional Institution (FCI) in Miami was sentenced to four months in prison for wire fraud schemes on May 22, 2025. Angelo Stephen, 33, was also ordered to pay over $75,000 in restitution, according to the *Miami Herald*. He pleaded guilty in March 2025 to orchestrating fraudulent applications for COVID-19 relief funds. In one filed in August 2020, he falsely claimed to own a business, securing $20,000 in Economic Injury Disaster Loan funds. In 2021, he submitted two fraudulent Paycheck Protection Program loan applications, along with falsified tax documents, netting an additional $41,666. Beyond pandemic fraud, Stephen also engaged in unauthorized access to personal financial accounts of two victims, orchestrating a $20,000 wire transfer from one victim's Wells Fargo account in 2023 and cashing a fraudulent $8,500 check from another victim's Guardians Credit Union account.

Georgia: Dekalb County Jail guard Tony Alzadia Randle, 22, was arrested and fired on April 16, 2025, for attempting to smuggle undisclosed contraband into the lockup, according to *WSBB* in Doraville. Randle, who had been employed at the jail for just seven months, was hit with multiple charges for violating his oath and crossing guard lines with prohibited items, including weapons, intoxicants, or drugs. He was later released on $5,000 bond.

Georgia: For allegedly allowing two prisoners to be assaulted by other prisoners on April 1, 2025, Johnson State Prison guard Baronique Burton was charged with violating her oath of office and unlawful acts of violence in a penal institution. *WMAZ* in Macon reported that an arrest warrant was issued by a superior court judge on April 3, 2025, following testimony from a state DOC investigator that Burton, 26, "willfully and intentionally violated the terms of her oath by being party to the crime … by allowing Inmates … to be assaulted." While she was not accused of direct participation in the beat-down, the "party to a crime" statute allows charges for those "concerned in the commission of a crime." Burton was arrested and booked into Johnson County Jail. She had been on the job for only nine months.

Georgia: *WTOC* in Savannah reported that DOC guard Kristen Leslee Pearson, 24, was arrested at Smith State Prison on March 26, 2025, and charged with sexual assault by a corrections employee and violation of her oath of office, for an alleged incident with an unnamed prisoner. It was also unclear what their relationship was, or even the nature of their sexual interaction. She was fired the following day. Awaiting trial on similar charges was her fellow guard Courtney Monae Tillman, 29. She was also fired and arrested for sexual assault and violation of her oath of office in November 2024, after she was accused of getting intimate with a prisoner in May 2023 and subsequently lying about it. A third guard, Martha Martin resigned under investigation for unspecified misconduct on the same day that Tillman was fired. Martin has not been arrested but has worked at four different prisons since 2013, resigning from one and transferring from three.

Georgia: *WMAZ* in Macon reported on May 14, 2025, that DOC guard Erica Blash had been charged with multiple crimes at Dodge State Prison. One arrest warrant was issued for providing unauthorized food to a prisoner, after she allegedly smuggled unspecified food items to an unnamed prisoner repeatedly between February 9 and April 28, 2025. Another warrant

charged her with simple battery for punching another prisoner on May 3, 2025, when she also allegedly slapped a third prisoner on the back of the neck and head. The warrants allowed that the physical contact may have been "playful or nonplayful." An additional charge of violating her oath of office was also added.

Indiana: The U.S. Attorney's Office (USAO) for the Southern District of Indiana reported that Henry County Jail guard Curtis Doughty, 28, received two years' probation on May 13, 2025, when he was sentenced for depriving a detainee of his civil rights under color of law. During a February 2024 cell search, Doughty shot and injured him in the spine with a pepper ball gun at point-blank range, even though he was not resisting. The guard then taunted other prisoners about inhaling the gas from the pepper balls shot during the incident. Appalled fellow members of the Sheriff's Emergency Response Team reported him for violating policy and training, which emphasized use of force only against active resistance, they said. Doughty then pleaded guilty in federal court in October 2024, as *PLN* reported. [See: *PLN*, Jan. 2025, p.34.]

Italy: In his will, the late Pope Francis left around $230,000 to prisoners, according to *National Catholic Reporter*. Francis made a last visit to Rome's infamous Regina Coeli Prison on April 17, 2025, four days before his death. Throughout his papacy, he advocated for reforms such as sentence reductions in the Italian penal system. Opening the Holy Door Ministry at the Rebibbia prison, he initiated a pastoral movement with about 50 volunteers regularly visiting prisoners.

Kentucky: Louisville Metro Detention Center (LMDC) guard Chase Branson, 35, was charged with assault and official misconduct after an appalling use of excessive force while booking Joseph Cortina on May 21, 2025. *WDRB* in Louisville reported that Cortina was handcuffed and not resisting when Branson allegedly shoved him into a metal door and then tased him while he was face down on the floor, restrained by other officers. Body camera footage captured Branson verbally threatening Cortina, "I am going to tase you," adding: "Because I can." An internal investigation found the guard's actions "unnecessary and excessive," leading to the charges and a 15-day suspension. Branson was not detained but was on unpaid leave to await arraignment in July 2025. The jail tallied 15 detainee deaths between 2021 and 2023, along with numerous instances of guard misconduct, as *PLN* reported. [See: *PLN*, Apr. 2024, p.14.] Cortina has filed suit in state court against Branson and LMDC Chief Jerry Collins, alleging a pattern of excessive force at the jail. *See: Cortina v. Collins*, Kent. Cir. (Jefferson Cty.), Case No. 25-CI-003584.

Louisiana: Jailers in three Louisiana parishes were arrested for smuggling in less than a month, beginning on April 17, 2025, when Bossier Parish Jail guard Colton Davis, 19, was charged for two counts of malfeasance in office and two counts of introducing contraband, according to *KSLA* in Shreveport. That same day Sheriff Julian Whittington fired the guard, who had worked at the jail since October 2023. Then on May 18, 2025, Assumption Parish Detention Center guard Ali Gant, 27, was fired and arrested on malfeasance and contraband charges after security footage caught him bringing a bag into the jail that had been sprayed with K2 synthetic cannabinoids, *WBRZ* in Baton

Rouge said. He had worked at the lockup just since November 2024. Earlier, on May 14, 2025, Calcasieu Correctional Center guard Dalronique Q. Ross, 20, was fired and arrested for conspiracy and contraband introduction, after allegedly conspiring to distribute more paper sprayed with synthetic cannabinoids to detainees at the jail, *KPLC* in Lake Charles reported. Her bond was set at $50,000.

Louisiana: On April 23, 2025, Judge Alvin Sharp of the 4th Judicial District in Ouachita Parish vacated the 1998 first-degree murder conviction and death sentence of state prisoner Jimmie Chris Duncan. *ProPublica* reported that the ruling followed a September 2024 appeals hearing where new expert testimony declared that analysis of bite marks on the child victim, presented by forensic dentist Michael West and pathologist Dr. Steven Hayne, was "no longer valid" because it was "not scientifically defensible." Sharp noted that the autopsy performed by Hayne, whose qualifications were "lacking," was "sloppy in practice" and "inadequate overall." Crucially, an expert medical witness testified that the child's death was likely not a murder at all but an accidental drowning, contradicting the original finding by investigators. The ruling also cited ineffective counsel by Duncan's trial attorney, Louis Scott, who failed to investigate available evidence and develop a coherent defense. Yet Duncan's freedom remains uncertain; District Attorney Steve Tew can appeal, retry, or release him.

Michigan: According to *Michigan Advance Local Media*, former state DOC guard Joshua Michael Evans, 49, received a 90-day jail sentence and two years' probation on May 29, 2025, for smuggling drugs into Parnall Correctional Facility. Evans pleaded guilty on April 1, 2025, to one felony count of delivery of a controlled substance, in a deal that also dismissed an additional contraband charge. Tipped-off investigators found Evans in the prison visiting room with 151 Suboxone strips on July 11, 2024. Prosecutors alleged that he was muling the Schedule 3 narcotic to an unnamed prisoner. As of early June 2025, Evans was still employed by DOC, though on unpaid suspension from duties.

Minnesota: For a brutal assault on a Hennepin County Jail guard, Gregory Jorge Garcia, 24, was sentenced to 15 years in prison on April 21, 2025, *KMSP* in Minneapolis reported. The sentencing followed his conviction on four counts of assault in March 2025. As his handcuffs were being removed after an escort to his cell in November 2023, Garcia suddenly and viciously attacked the guard, Matthew Durette, who sustained severe injuries, including a traumatic brain injury. The guard returned to work just days before Garcia was sent to prison.

Mississippi: *WTOK* in Meridian reported that Marion County Regional Correctional Facility guard Marcy Parker, 34, was arrested on May 22, 2025, for allegedly smuggling contraband into the jail. County Sheriff's Office Maj. Zack Guidroz said that Parker was freed after posting a $25,000 bond. An investigation began after a prisoner was discovered with an illegal cellphone, and evidence was uncovered of additional contraband being introduced into the lockup. Parker was fired and charged with one count of introduction of contraband and one count of conspiracy.

Missouri: Steven M. Reminger, 53, a former electronics technician at the state DOC's Eastern Reception Diagnostic and Correctional Center, pleaded guilty in federal court to smuggling contraband into the Bonne Terre prison. According to *KTTN* in Trenton, Reminger admitted to trafficking a veritable pharmacy of narcotics—including fentanyl, methamphetamine, heroin, K2, THC edibles, marijuana, knives, and cellphones—for prisoner Belvin Williams. He is serving a 120-year sentence for dragging a St. Louis man from his car in 2013 and shooting him in the leg. The smuggling scheme unraveled after several prisoner overdoses prompted a tip to prison officials. As the investigation proceeded, they reached out to U.S. Postal Service inspectors, who discovered that Reminger used a false name to keep a P.O. box, where they intercepted a package containing the contraband and $4,000 in cash. Reminger claimed not to know what the package contained but admitted receiving similar deliveries for bribes up to $50,000. He faces up to 20 years in prison for each of his two charges at his July 2025 sentencing.

Montana: Former state DOC guard Andre Hunter was accused of two counts of raping a prisoner at Montana Women's Prison, as well as one count of releasing articles to a prisoner, and another count of official misconduct, according to *KTVQ* in Billings. Hunter pleaded not guilty to the felony charges in Yellowstone County District Court on May 6, 2025, and was released on his own recognizance. The charges stem from a February 2025 interview that DOC investigators conducted with prisoner "Jane Doe," who alleged that she had a romantic relationship with Hunter beginning in late January 2025. She also claimed that Hunter provided contraband, like a pen and candy, and twice had sex with her: once, she said, he digitally penetrated her through her cell's food port on February 11, 2025; he then allegedly coerced her to have intercourse with him in an unmonitored control hub on February 18, 2025. Video evidence corroborated Hunter's presence in the hub, where semen consistent with his was found. He denied all allegations.

Nevada: According to *Las Vegas Optic*, San Miguel County Detention Center guard John B. Hartwick, 21, faces four felony charges, including aggravated assault with a deadly weapon, for a shooting incident in Las Vegas on April 18, 2025. Police alleged that Hartwick fired a .45-caliber handgun at a home after a dispute over cigarette payment. Cops responding to the shooting scene found Hartwick parked nearby, with another unnamed man and two teens. After obtaining a search warrant, they found two handguns and high-capacity magazines in the vehicle. The other man then claimed responsibility for the shooting, but investigators later determined that was a lie to protect the guard from losing his job; in fact, one of the teens admitted, it was Hartwick who fired the gun, which the teen had taken from his mom, who is a retired cop. She was not implicated in the incident. Hartwick was released to house arrest on an unsecured $5,000 bond to await a preliminary hearing on June 18, 2025.

New Mexico: State Police arrested former Western New Mexico Correctional Facility guard Elijah Williams, 21, on May 15, 2025, following an investigation into multiple allegations of sexual assault on prisoners. *KOAT* in Albuquerque reported that the probe began in April 2025 and uncovered credible evidence; however, state Corrections Department (NMCD) officials did not elaborate on what that was. Williams was being held at the Cibola County Detention Center on four counts of criminal sexual contact and one count of battery. NMCD Secretary Alisha Tafoya Lucero confirmed his immediate termination for violating NMCD's "zero tolerance policy" for guard misconduct.

New York: Former Warren County Jail

guard Stephen A. Frank, 48, was given up to 25 years in prison when sentenced on May 2, 2025, for repeatedly assaulting his former wife. According to *WNYT* in Albany, Frank was convicted on three counts of aggravated criminal contempt, four counts of criminal contempt, and two counts of assault after a week-long jury trial. Witnesses testified to multiple violations of protection orders that the victim obtained and severe injuries inflicted to her face, arms, chest, neck and even her lungs. Saratoga County District Attorney Karen Heggen noted the violence often occurred in front of the couple's two children, causing both physical and emotional harm.

New York: Former Eastern Correctional Facility guard Jorge Torres, 28, pleaded guilty on May 13, 2025, to promoting prison contraband in the first degree, according to *WRGB* in Schenectady. Torres admitted to smuggling cellphones and other contraband into the Napanoch prison on several occasions, taking bribes each time up to $1,500. The State Office of Special Investigations recovered approximately 30 cellphones from prisoners at the lockup during its inquiry. Under state law, cellphones are deemed "dangerous contraband."Torres was scheduled for sentencing in Ulster County Court on July 14, 2025.

New York: Erie County District Attorney Michael J. Keane announced that former Erie County Correctional Facility guard Matthew J. Morano, 29, was arraigned on May 20, 2025, on charges of official misconduct, promoting prison contraband in the second degree, and conspiracy in the sixth degree. He has since resigned from the Erie County Sheriff's Office. Morano was accused of smuggling the loot to prisoner Luis Bonilla. Co-defendant Ashley Bonilla, 34, the prisoner's wife, was also arraigned on the same day on similar contraband and conspiracy charges. Her husband was arraigned on May 6, 2025.

Ohio: *Allied News* reported that Mercer County Jail guard Josue Antonio Rolon, 32, was free on bond after he was arraigned on contraband smuggling charges on June 3, 2025. Tipped-off investigators found 50 medical strips in his work locker on November 28, 2024, and they suspected Rolon of muling them for an unnamed detainee, after a lab test confirmed that the strips contained Suboxone. Rolon denied knowing anything about the contraband. But he also denied seeing or letting anyone tamper with his locker.

Ohio: Lorain County Jail guard Christopher Jackson was fired on April 21, 2025, for displaying "reckless judgment" in a December 2024 incident, according to *WKYC* in Cleveland. Jail surveillance video captured an unnamed detainee throwing a cup of feces at Jackson, who then entered the cell and shoved him, appearing also to throw punches. During the fracas, the detainee then managed to escape, forcing Jackson to give chase. Sheriff Jack Hall stated that Jackson violated policy by not awaiting backup or securing the unit, thus allowing the escape. The detainee was charged with assault. Jackson's case was referred to prosecutors for potential dereliction of duty charges after an investigation by a new corrections inspector general, who began his duties in January 2025. Jackson, a 17-year veteran at the jail, has appealed his firing.

Ohio: Mansfield Correctional Institution guard Crystal Kinser, 36, was handed felony charges for smuggling drugs into the lockup after she was caught with 458 Suboxone doses on May 13, 2025. The *Mansfield News Journal* reported that some of the contraband fell from her pants pockets, and more was found concealed in food containers. Kinser admitted bringing the containers for an unnamed prisoner, but she claimed not to know anything about the contents. The Suboxone that fell from her clothing she didn't try to disclaim. Prisoners staged a recent hunger strike to protest pervasive smuggling of K2/Spice into the prison. Kinser was freed on $10,000 bond to await an arraignment scheduled for November 2025.

Pennsylvania: Former Mercer County Jail guard Charles Arn, 55, was sentenced on May 16, 2025, after pleading guilty to manufacture, delivery or possession with intent to manufacture or deliver contraband. According to *WKBN* Youngstown, Ohio, Arn received 90 days to one year of confinement and two years of probation. As *PLN* reported, he was arrested in October 2024 and accused of supplying prisoners with chewing tobacco, vape pens, and fentanyl, in exchange for bribes collected via Cash App. Arn admitted to investigators that he was selling candy to prisoners and detainees. But a detainee ratted out the guard for smuggling chewing tobacco and fentanyl, too. How did he know? His girlfriend facilitated payment of bribes in August 2024 from detainees to Arn. [See: *PLN*, Dec. 2024, p.62.]

Pennsylvania: For allegedly falsifying timecards to collect nearly $7,000 in unearned overtime pay between March 2024 and March 2025, Blair County Prison guard Franklin Deshong, 35, was arraigned on 58 felony charges on June 6, 2025, the *Altoona Mirror* reported. Officials at the jail alerted

police after discovering 29 unverified shifts on Deshong's timecards. Surveillance video showed that he was not present during many of these disputed shifts. Deshong reportedly admitted to falsifying 209 hours. He was released on $75,000 unsecured bail.

Pennsylvania: The *Pottsville Republican Herald* reported that state DOC guard Jocelyn Ebert, 23, was arraigned on April 28, 2025, on charges of felony institutional sexual assault and misdemeanor obstruction for alleged sexual encounters that she had with a prisoner at the State Correctional Institution in Frackville. A police investigation, including interviews and video footage, revealed that she engaged in multiple sexual acts over several months with the prisoner, inside his cell block closet and even through his cell door wicket. In one instance Ebert and the prisoner were seen together entering the closet; when they left, she licked something off her hand. The prisoner stated that Ebert would instruct other prisoners to lock down, clearing the way for their liaisons. Ebert was released on $25,000 unsecured bail.

Pennsylvania: The USAO for the Eastern District of Pennsylvania announced on May 1, 2025, that Michael Jefferson, 42, a BOP guard at the Federal Detention Center (FDC) in Philadelphia, was charged with aggravated sexual abuse and deprivation of rights for the alleged sexual assault of an unnamed a prisoner in July 2024. The indictment states that Jefferson pinned the victim to the ground as he assaulted her, causing her additional injury. He was suspended from the BOP. If convicted, he faces a potential life sentence.

Pennsylvania: The same office announced on April 10, 2025, that Philadelphia Department of Prisons guard Ivory S. Cousins, 35, was convicted on three counts of depriving a prisoner of his constitutional rights and one count of filing a false report at Curran-Fromhold Correctional Facility. Cousins ignored the medical needs of an unnamed prisoner and pepper-sprayed him without justification before she then helped another prisoner steal his belongings in August 2019. She faces a maximum of 41 years in prison at her July 2025 sentencing.

South Carolina: On May 23, 2025, former BOP guard Angela Crosland, 51, received a 136-month prison sentence for bribery, money laundering, and drug distribution. She was convicted at trial in January 2025 of taking nearly $57,000 via Cash App transfers from prisoners' families to smuggle methamphetamine, Suboxone, K-2 and marijuana into FCI-Williamsburg; she was also found guilty of filing false tax returns, as *PLN* reported. [See: *PLN*, Mar. 2025, p.62.] She was also ordered to serve three years of supervised release and pay the IRS $19,000 in restitution for failing to claim the ill-gotten gains on her income taxes, *WLTX* in Columbia reported.

Tennessee: The USAO for the Western District of Tennessee announced that former BOP guard Bryan Miller, 32, received a 12-month, one-day federal prison sentence plus two years of supervised release on April 23, 2025. Miller pleaded guilty in January 2024 to taking $195,000 in bribes for smuggling narcotics to prisoners in FCI- Memphis over a four-month stretch beginning in December 2022.

Tennessee: According to *WVLT* in Knoxville, former Monroe County Jail guard Cody Harrill, 34, was indicted on May 7, 2025, for official misconduct and introduction of contraband. A Tennessee Bureau of Investigation probe launched in December 2022 found that she smuggled unspecified contraband into the jail and helped others to do the same. Harrill surrendered himself and was released on her own recognizance. She has a documented history of policy violations and insubordination, her personnel file revealed, including faking illness, improperly bonding out an ineligible detainee, unprofessional conduct, and allowing detainees unsupervised access to restricted areas. In a written response to one of her write-ups for insubordination, Harrill responded: "None of the higher ups care how this jail is run so why should I? Nobody gets in trouble for serious stuff. It gets overlooked."

Texas: *KVII* in Amarillo reported that former state Department of Criminal Justice (TDCJ) guard Jonatan Mojica was sentenced to 12 years in prison on April 14, 2025, after pleading guilty to engaging in organized criminal activity, bribery, and drug possession. Mojica was caught in July 2021 attempting to smuggle over 200 grams of methamphetamine into the Clements Unit in Brazoria County. A search of his vehicle then found multiple cell phones matching those confiscated from prisoners in recent shakedowns. Investigators then found that he took thousands of dollars in bribes for prior deliveries to prisoners of both phones and drugs.

Texas: The Hays County Sheriff's Office (HCSO) in San Marcos lost two county jail guards to misconduct, beginning on May 6, 2025, when guard George Jearld Snell, 35, was fired and arrested on two counts of aggravated sexual assault of a child and two counts of indecency with a child. Sheriff Anthony Hipolito called the alleged crimes "sickening" and "a betrayal of everything this badge stands for," *KXAN* in Austin reported. The three-year veteran guard was being held on a $2 million bond. Two weeks earlier, fellow guard John Duran, 45, was arrested on charges of official oppression and tampering with a governmental record after an unnamed detainee accused him of sexual misconduct—including using surveillance cameras to watch her in the shower. Also a three-year veteran guard, Duran was put on administrative

leave and jailed on a $20,000 bond, according to the *Austin American-Statesman*. He was additionally accused of lying on his employment application, in which he did not report that he was previously investigated for contraband trading and other violations while working for TDCJ.

Texas: Bexar County Detention Center guard Clemente Lopez, Jr., 20, was arrested and charged with engaging in organized criminal activity on May 14, 2025, *KSAT* in San Antonio reported. Details were not available for this arrest, but Lopez, Jr. had just been arrested 12 days earlier for allegedly opening the cell of detainee Francisco Bazan, 46, on April 28, 2025, to four fellow detainees. Rudy Bueno, Gilbert Suarez, Rodrigo Martinez III, and Gabriel Benjamin Garcia then proceeded to beat Bazan to death, reportedly over a $40 debt. Lopez had resigned from the County Sheriff's Office and was out on a $500,000 bond when he was picked up on the new charge. He posted bail again and was released the following day. Sheriff Javier Salazar said, "I wanted to look [Lopez] in the eye and tell him exactly how disgusted I was with the behavior, and I did so."

Texas: Former Jefferson County Jail guard Sgt. Clayton Friddle, 33, was arrested on April 24, 2025, and charged with official oppression as a public servant, *KFDM* in Beaumont reported. A routine review of jail surveillance video revealed his involvement in multiple instances when detainees were mistreated with pepper spray. He was suspended, fired and booked into the Jefferson County Jail. He was then released on a $2,000 bond.

Texas: Former Evins State Juvenile Correctional Facility guard Yuliana Mares, 40, was jailed on April 22, 2025, after she was accused of sexual contact with an unnamed 16-year-old detainee in February 2025. According to *AIM Media Texas*, Mares allegedly touched the teen's genitals. She was charged with indecency with a child by sexual contact and violation of civil rights of a person in custody, for which she faces up to life and 20 years in prison, respectively, plus $10,000 in fines. Hidalgo County Jail records showed that Mares was being held there on both charges with a combined bond of $45,000.

Virginia: On April 29, 2025, former state DOC guard Ashley M. Heckel, 36, received a five-year suspended prison sentence for delivering Suboxone to prisoners at the now-shuttered Augusta Correctional Center between May 2022 and late 2023. According to the *Staunton News Leader*, Heckel pleaded guilty to the felony in June 2024, admitting that she was approached by prisoners about working the contraband scheme after revealing she had financial problems. Co-conspirator and former prisoner Jayquon Norman received a nine-month prison term for his part in the scheme five days earlier.

Virginia: Another former DOC guard, Raekwon Robins, 29, was arrested April 11, 2025, after allegedly attempting to smuggle over $150,000 worth of drugs into Pocahontas State Correctional Center. Robins reportedly confessed, according to *WRIC* in Richmond, and a search of his residence yielded narcotics, a handgun, and $1,000 cash. He faces three counts of possession with intent to distribute and two counts of conspiring/delivering controlled substances to a prisoner.

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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. **2021**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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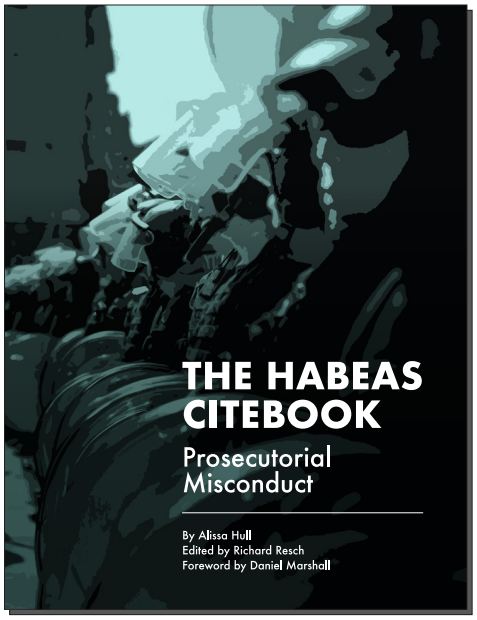

The Habeas Citebook: Prosecutorial Misconduct

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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