Coronavirus in Prison: The Cruel Reality
As Numbers Rise, Some Prison Systems Admit Defeat, Others Try to Ignore Death Toll
by Christopher Zoukis, MBA

As nations across the world battle the coronavirus plague, American prisons continue to fail at managing this pandemic, not unlike many communities across the United States. For what appears to be primarily economic and political reasons, different communities, governmental agencies, and even news reporting agencies are handling the crisis in different ways.

While tracking the number of infections and deaths is an important indicator of coronavirus’ impact, this fails to view the toll on individuals. Numbers can't explain the impact this pandemic has had on the personal psyche of prisoners, their families, or their communities. What makes this even worse is prison officials' lackluster response.

It would be comforting to think that prison administrators and city governments would care more about the human cost of this crisis than the economic or political cost, but this has largely proven to be a false hope.

Lives continue to be lost as prison officials downplay coronavirus’ impact inside their institutions. They treat guards humanely while dealing with prisoners as untrustworthy animals. All the while, political pundits and tough-on-crime groups call foul when governors, judges, and prison systems release even limited numbers of inmates.

The only way to protect human beings from coronavirus is to socially distance, wear masks, wash hands, and proactively keep distance from others. In prison systems these possibilities are, for all practical purposes, impossible. Prisoners are at the mercy of their jailers, and jailers, predictably, are failing miserably to protect them.

The State of Coronavirus
As of July 22, 2020, the Centers for Disease Control and Prevention (CDC) reported more than 3.8 million cases of coronavirus and 140,630 deaths in the United States. California had the highest number of cases, with 329,162.

According to the CDC, the following 10 U.S. jurisdictions had the highest cumulative total number of confirmed and probable coronavirus cases:

- California, Florida, Texas, New York City, New York, New Jersey, Illinois, Arizona, Georgia and Massachusetts

The CDC reports the following U.S. jurisdictions had the 10 highest cumulative death totals based on COVID-19:

- New York City, New Jersey, New York, Massachusetts, Illinois, California, Pennsylvania, Michigan, Connecticut and Florida

New York City had the highest death total attributed to COVID-19: 23,336 deaths (18,720 confirmed and 4,616 probable).

Globally, there had been more than 13 million confirmed cases of coronavirus, according to the Johns Hopkins Coronavirus Resource Center. The United States leads the world in confirmed cases and deaths. Brazil, India, Russia, Peru, Chile, Mexico, and South Africa followed the U.S. in the number of confirmed cases.

COVID News Reporting: Guided by Politics?

Media coverage of coronavirus has been highly problematic. Science should never take a back seat to political rhetoric, but this is precisely what is occurring in newsrooms across the country. A recent survey of Fox News and CNN coverage shows drastically differing news reporting focuses.

While CNN’s top stories revolve around coronavirus and the Trump administration’s poor handling of the crisis, Fox News focuses on the demonstrations following the death of George Floyd, preferring to highlight racial violence and rioting, interspersed with attacks on Democratic Party officials.

Media coverage impacts the way prison officials make decisions on dealing with the
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Coronavirus in Prison (cont.)

pandemic. If they are receiving their news from liberal-leaning news organizations they would view the epidemic as a crisis in full force. If they're watching right-leaning news, they may believe that the worst is behind us. This can result in a direct impact on how prison systems respond to the crisis.

A recent Pew Research Center Election News Pathways Project poll puts this in sharp focus. According to the poll, 66 percent of MSNBC viewers and 52 percent of CNN viewers believed coronavirus came from nature. In comparison, only 37 percent of Fox News viewers believed this, while most believed it was created by the Chinese government, possibly as a weapon.

The same poll reported that 80 percent of Fox News viewers believed the media exaggerates the coronavirus threat, while only 54 percent of CNN viewers and 35 percent of MSNBC viewers viewed the threat as exaggerated.

When considering how to address the threat of coronavirus, the poll asked study participants if they thought it would take less than a year to develop a vaccine. The results were unsurprising considering the rise of the politicized news media: 78 percent of MSBNC viewers agreed, while only 51 percent of Fox News viewers did. Experts said it will take closer to 18 months to develop a vaccine.

Shortly after this poll was released, Dr. Anthony Fauci, director of the National Institute of Allergy and Infectious Diseases at the National Institutes of Health, became the target of a political smear campaign because he made public statements about the dangers of coronavirus and advised Americans to take less than a year to develop a vaccine. The poll asked participants if they thought it would take less than a year to develop a vaccine. The results were unsurprising considering the rise of the politicized news media. The MSBNC viewers agreed, while only 51 percent of Fox News viewers did. Experts said it will take closer to 18 months to develop a vaccine.

Besides news reporting, the same is seen with how communities are responding to the pandemic.

On July 13, California Governor Gavin Newsom expanded business restrictions to stop community spread. Effective that day, all counties were ordered to close indoor operations of dine-in restaurants, wineries and tasting rooms, movie theaters, family entertainment centers, zoos, museums, and card rooms. Brew pubs and breweries were banned from any operations unless they also offered sit-down, outdoor dine-in meals.

This starkly contrasts with the approach Florida has taken. Amid the coronavirus explosion, the state was further opening for business. On July 11, Disney World in Orlando officially reopened, with Magic Kingdom and Animal Kingdom first. Following the installation of 4,000 hand-sanitizer stations and issuing thermal temperature units, the park claimed it was safe to attend. This opening came before the July 12 announcement that Florida experienced over 15,000 new infections, setting a daily record for any state.

It should be highlighted that as the coronavirus pandemic increased in intensity, Florida was one of the states that elected to remain open through spring break, a move widely seen as a business decision. This is yet another example of a local government placing a higher value on its jurisdiction's economy over the safety of the citizenry.

Even amongst a steadily climbing death toll, some cities continue to fight against protective measures, instead viewing the pandemic as an issue of personal freedom or an unsubstantiated impediment to the economy.

“As you go about your day today, KNOW there is NO LAW that Orders you to Wear a Mask,” Nevada City, California Mayor Reinette Senuw wrote on social media in response to Newsom’s recent order that all state residents must wear masks when in public. “Our Governor does NOT have that unilateral power to make such orders.”

As the opposition grows to business closures and other coronavirus protection
plans, various organizations have mounted legal challenges to stay-at-home orders and directives to wear masks in public. At the same time, the European Union, Canada and dozens of other countries have banned U.S. visitors from entry.

**Coronavirus in Prison (cont.)**

While most prison systems have implemented new policies to protect prisoners, the number of coronavirus infections and deaths has continued to rise. “The inability to quarantine or practice social distancing, together with overcrowding, imperils the lives of many people incarcerated in jails and prisons,” explained the Equal Justice Initiative. “Nationwide, the known infection rate for COVID-19 in jails and prisons is about 2½ times higher than in the general population.”

“By June 6, 2020, there had been 42,107 cases of COVID-19 and 510 deaths amongst 1,295,285 prisoners with a case rate of 3,251 per 100,000 prisoners,” explained a July 8 report from the *Journal of the American Medical Association* (JAMA). The authors include researchers from Johns Hopkins University and the University of California, Los Angeles. “The COVID-19 case rate for prisoners was 5.5 times higher than the U.S. population case rate of 587 per 100,000,” the report continues. “COVID-19 case rates have been substantially higher and escalating much more rapidly in prisons than in the U.S. population.” (For more on the JAMA study, see page 38.)

As of mid-July, seven of the 10 most significant outbreaks in the United States have occurred in jails and prisons. In one harrowing example, almost 70 percent of prisoners at the Federal Correctional Institution in Lompoc, California, had tested positive for the virus. In Ohio, the Marion Correctional Institution recently reported 2,439 cases, while the Pickaway Correctional Institution reported 1,791 inmate positives.

The Michigan Department of Corrections has also had widescale devastation. Almost 60 percent of prisoners at the Lakeland Correctional Facility tested positive for coronavirus (758 positive cases and 14 deaths).

Private prisons haven't fared any better, and often worse. The CoreCivic-operated Trousdale Turner Correctional Center in Tennessee reported 1,384 out of 2,444 inmates tested positive for coronavirus. [CoreCivic is the rebranded name for Corrections Corporation of America, or CCA.]

**Federal Bureau of Prisons (BOP)**

On April 22, 2020, the BOP reported that 566 prisoners and 342 staff members had tested positive for coronavirus, with 24 prisoner fatalities. By May 16, 2020, the BOP reported 2,285 federal prisoners and 283 staff members had tested positive for coronavirus, with 56 federal prisoner fatalities. And on July 14, 2020, the BOP reported 3,366 prisoners and 257 staff had tested positive for coronavirus, with 95 prisoner deaths and one staff death.

These are not cumulative totals. As of July 14, the BOP reported an additional 5,181 inmates, and 629 staff members had recovered from the virus. Also potentially
missing from these numbers are inmates sent to either outside hospitals or private prisons.

“Not all tests are conducted by and/or reported to BOP,” explains the Bureau. “The inmate totals listed do not include inmates participating in the Federal Location Monitoring program, inmates supervised under the [United States Probation Office], or being held in privately managed prisons.”

As of July 14, these 10 federal prisons had the highest number of inmate positives: FCI Seagoville (TX), FCI Butner Low (NC), FCI Beaumont (TX), FCI Elkton (OH), FMC Carswell (TX), FCI Jesup (GA), FCI Fairton (NJ), FCI Coleman Medium (FL), FCI Miami (FL), and FCI Victorville Medium 1 (CA).

The numbers of infections are likely drastically higher due to insignificant testing and the prevalence of pending test results. For example, while FCI Victorville Medium 2 (CA) has reported 37 inmate positives, an additional 503 tests remain pending. Likewise, while FMC Carswell (TX) had reported 142 inmate positives, an additional 489 tests remained pending.

The most alarming example was FCI Victorville Medium 2 (CA), where 37 inmates had tested positive, but 503 tests remained pending. An additional eight federal prisons and four halfway houses had more tests pending than completed.

Deaths had been reported in 20 federal prisons and five halfway houses, and infections at 94 federal facilities and 46 halfway houses. The top five federal prisons in terms of total COVID-19 deaths were:
- FCI Butner Low (NC): 16
- FMC Fort Worth (TX): 12
- FCI Terminal Island (CA): 10
- FCI Butner Medium 1 (NC): 9
- FCI Elkton (OH): 9

Overview of State Prison Systems

The Marshall Project, a nonpartisan, nonprofit news organization that focuses on criminal justice matters, has tracked the state of coronavirus in American prisons. It reports that as of July 7, at least 57,019 prisoners had tested positive for the virus, with 34,245 prisoners recovering. The Marshall Project’s data set ranks each prison system by the number of coronavirus contractions and resulting deaths.

Eleven prison systems had reported over 1,000 prisoner positives: Texas (9,592), federal BOP (7,639), California (5,372), Ohio (5,055), Michigan (4,020), Tennessee (3,184), Arkansas (2,981), New Jersey (2,869), Florida (2,514), Virginia (1,516) and Connecticut (1,346).

Another nine prison systems reported between 500 and 1,000 prisoner coronavirus positives: Georgia (944), Kansas (910), North Carolina (887), Indiana (726), Louisiana (641), Colorado (631), Maryland (620), New York (541), and Kentucky (528).

Fourteen prison systems reported between 100 and 499 positives: Arizona (481), New Mexico (461), Massachusetts (391), South Carolina (346), Minnesota (341), Illinois (337), Pennsylvania (285), Wisconsin (283), Delaware (261), Washington (255), Missouri (193), Oregon (183), West Virginia (133), and Idaho (131).

Fifteen prison systems reported less than 100 positives: Alabama (97), Iowa (96), Mississippi (80), Vermont (47), Utah (30), Rhode Island (18), Nevada (16), Oklahoma (9), Nebraska (8), North Dakota (7), South Dakota (4), Maine (4), Montana (3), Alaska (2), and New Hampshire (1).
Wyoming and Hawaii were the last to report their prison systems had inmates who tested positive for the virus.

The Marshall Project also reported that at least 651 prisoners had died from COVID-19. The following is a list of states and entities that had experienced 10 or more prisoner deaths:

- Federal BOP: 98
- Texas: 88
- Ohio: 86
- Michigan: 68
- New Jersey: 46
- California: 29
- Florida: 26
- Georgia: 23
- Indiana: 20
- New York: 16
- Louisiana: 16
- Arkansas: 14
- Illinois: 13
- Arizona: 13
- Virginia: 11
- Pennsylvania: 10
- Alabama: 10

An additional 17 state prison systems had reported COVID-19 deaths:

- Maryland: 8
- Massachusetts: 8
- Connecticut: 7
- Delaware: 7
- North Carolina: 5
- South Carolina: 5
- Kansas: 4
- Tennessee: 4
- Colorado: 3
- New Mexico: 3
- Kentucky: 2
- Minnesota: 2
- Washington: 2
- Iowa: 1
- Mississippi: 1
- Missouri: 1
- Oregon: 1

The remaining 17 state prison systems have reported no prisoner COVID-19 deaths.

Discrepancies in Coronavirus Data by Prison Officials

One aspect that must be highlighted concerns the underlying data sets. As with many other areas of American corrections, journalists, prisoners, and the public are at the whims of prison officials to report coronavirus data accurately. Sadly, this is not always the case.

Metropolitan Detention Center Brooklyn (NY) provides a particularly nefarious example of the BOP failing to report or test for COVID-19, along with harrowing accounts of retaliation for inmates seeking help. In conjunction with a class action lawsuit filed against the facility, Dr. Homer Venters, the former medical director for New York City jails, sought entry to evaluate its response to coronavirus.

In response to the request, the U.S. Attorney’s Office for the Eastern District of New York argued that it would be unduly burdensome for a single medical expert to tour the facility. It proposed guidelines for the visit, including that Venters and prisoners’ counsel not be permitted to “talk to any inmates during the inspection.” Alternatively, the government argued that if the court permitted the medical expert or plaintiffs’ counsel to speak to any inmates, the BOP should be permitted to listen in on all communications. Finally, they suggested that any proposed facility examination be limited to the Special Housing Unit (SHU), where inmates are exclusively held in isolation.

Judge Rachel Kovner issued a ruling that permitted Venters to enter the facility, speak with inmates, and gain access to more than just the SHU. But upon arriving at the facility on April 23, he was met by U.S. Attorney Richard Donoghue himself, not a line-and-file assistant U.S. attorney. Donoghue advised Venters and counsel they could not speak with any inmates. Following an emergency call to Magistrate Judge Roanne Mann, that was overturned.

The visit was alarming. According to The Intercept, MDC Brooklyn “is destroying medical records as part of a deliberate effort to obscure the number of incarcerated people infected with the coronavirus and to avoid providing them adequate care.”

The practice highlighted by The Intercept article and the subsequently filed expert medical report was striking. Dr. Venters reviewed electronic sick-call requests filed by inmates. Between March 13 and April 13, 1,477 requests were filed describing coronavirus symptoms. Thirty-seven of those requests stated that it was not the first time care had been sought. Over this period, only 10 inmates were tested for coronavirus.
The facility has reported 252 completed tests, 35 pending tests, and 12 inmate positives. In mid-July, BOP data indicated that five inmates and two staff were then positive, and 40 staff and eight inmates had recovered.

Due to the facility’s lockdown, it is typical for prisoners not to regularly gain access to the computers in the day room to file medical requests. As such, they fill out paper sick-call forms and hand them to the guards. Upon receipt by medical staff and the scheduling of any appointment, prison staff shred the medical requests, making it impossible to track or account for these inmate requests. This practice came to light in a recent sworn deposition by MDC Brooklyn Health Services Administrator Stacy Vasquez.

“This practice, described by Ms. Vasquez, appears to be the intentional destruction of medical records,” wrote Venters in his report. “During a viral pandemic, such as the COVID-19 outbreak, this is a very alarming practice.”

What makes this worse is the retaliation experienced by women at MDC Brooklyn. The Intercept reports that on April 17, multiple female prisoners called the Federal Defenders of New York to complain about coronavirus practices following a lieutenant, who had supervised the housing unit, testing positive for the virus. In retaliation, an assistant warden held a town hall meeting where she advised the women they would not be permitted to get off their bunks for four days as punishment. One of the women, Derrilyn Needham, asked to be tested for coronavirus. Associate Warden Flowers simply replied, “No.”

The same hiding-the-ball principles have played out in local politics. In Santa Barbara, California, county officials petitioned the state’s Health and Human Services Agency to exclude prisoner infection and death data in county figures. The issue was that if figures from Federal Correctional Complex Lompoc were included, the county could not reopen certain businesses due to failing to meet Gov. Newsom’s requirement that there be no deaths within a two-week period.

“The individuals in Lompoc prison are not out in the community, so it’s really a whole separate population,” explained county spokesperson Suzanne Grimessey. “Inmates of state and federal prisons generally do not return to those counties in which they are incarcerated.”

The flaw in this logic is evident. What about all of the prison staff who do live in the local community? And this is to say nothing about dangerously passing the buck to other counties.

“It’s a fiction,” explained Justice Collaborative Senior Justice Advisor Kate Chatfield. “The virus doesn’t stay within the walls of the prison, as we know.”

“There’s a great risk of seeding infections into the community,” agreed Peter Eliasberg, chief counsel for the ACLU of Southern California.

Grading the States

In June 2020, the ACLU and the Prison Policy Initiative issued a report, Failing Grades: States’ Response to COVID-19 in Jails & Prisons, in which the organizations evaluated each prison systems’ response to the pandemic. The report scored each state based on criteria that included these factors:

• Whether the prison system provided testing and personal protective equipment

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• Whether the state’s county jails and prisons reduced their populations.
• Whether the state’s governor issued an executive order – or the state’s prison system issued a directive – accelerating the release of medically vulnerable detainees and prisoners.
• Whether the state’s prison system regularly published data on coronavirus infections and deaths.

The results were unsurprising. The analysis found that states received scores ranging from F to a high of D-. Nine states led the pack with scores of D-: Tennessee, Michigan, Kentucky, Vermont, West Virginia, Colorado, Minnesota, Oregon and Maine.

The analysis found the five lowest-scoring states to be Wyoming, Florida, Arizona, Texas, and Hawaii. The federal BOP was not included in the rankings. Illinois was also not included due to “some of the relevant data [being] the subject of pending litigation.”

The report highlights that the traditional school letter grading scale had to be modified because “every state scored so poorly.” According to the report authors, this was done “to create some meaningful differentiation in the scores, and better identify the states that, despite falling far short of these minimum standards, did make some notable strides.”

Lack of Coronavirus Testing and Medical Attention

Unlike in the outside world, prisoners are at the whims of prison officials to test for coronavirus. One tactic prison officials have seemingly employed is simply not testing inmates. As the logic goes, if prisoners are not tested for the virus, there will be fewer positives. This is both shortsighted and dangerous.

For example, Texas state prisons house over 130,000 prisoners. As of mid-April, the TDCJ had only reported testing 2,300 inmates, of whom 74 percent were positive. Testing finally ramped up the following month, which invariably led to a spike in reported cases. By mid-June, more than 100,000 prisoners had been tested for coronavirus and in mid-July, TDCJ acknowledged that more than 12,000 had been infected as well as 2,100 prison employees. At least 94 prisoners and 10 employees had died.

The BOP has engaged in the same type of protocol, even while claiming that they are aggressively testing “to mitigate the transmission of COVID-19 into the federal prison environment.”

Data provided by the BOP on July 16 stated that 29,896 prisoners had been tested for coronavirus. Of these, 8,717 had tested positive, with 3,655 additional tests pending. Assuming that none of the pending testing results are positive, this equates to a staggeringly high infection rate of around 30 percent. It should be highlighted that the BOP claimed to house as of that date about 140,000 prisoners (including those directly incarcerated and those under other forms of supervision, such as halfway houses). Less than 7,000 had been placed on home confinement.

“People were just not being tested. I don’t know of anyone who was tested where I was,” said Lily Wright, a former medium-security federal prisoner released in late May. “Even if you asked to be tested, they wouldn’t.”

A review of official data indicates that 56 total prisoners have been tested at her facility, while 46 of those tests remain pending. BOP data does not indicate when the tests took place.

Lily, whose name has been disguised to protect her from retaliation, explained that inmates at her facility had their temperatures checked around three times per week. The BOP has claimed on its website that it conducts temperature checks “at least once a day” or, on other occasions, “at least twice a day.”

“Due to us being locked down because of COVID-19, if someone needed medical assistance, they would need to push the duress button in their cell,” Lily explained. “This would result in a buzzer going off. After a few minutes to 45 or so minutes, the unit officer would respond. You would then have to argue with them for why you really needed medical help. Then you would have to repeat the process with a lieutenant. And, finally, again with the medical staff member the lieutenant would theoretically call. If you managed to convince all three prison officials you actually needed medical care, then you could get help. Pathetic.”

This type of emergency medical treatment in prisons is typical, as this author saw first-hand while incarcerated some years ago at Federal Correctional Institution Petersburg Medium in Virginia. One night, the duress alarm was activated. Staff responded in around 30 minutes. Then a lieutenant had to be called. By around the 50-minute mark, additional guards were called to bring a stretcher. The prisoner was then taken to medical.

Around three hours later, the prisoner was brought back to the housing unit. A guard escorted him because he could no longer walk on his own. After pulling the
elderly man up a flight of stairs, he was placed back in his cell. Fifteen minutes later, the duress alarm again sounded. The same process followed, with the prisoner being taken out on a stretcher again. He had suffered a stroke and died.

Unlike when we are under regular operations, inmates can’t just go to medical,” explained Lily. “In the COVID-19 era, you either have to press the duress button or fill out a sick call slip. At best, you might see a physician’s assistant once a week after filling out a sick call. At worst, medical staff will argue with you about how you really don’t have a serious medical need.”

**Lack of Personal Protective Equipment and Soap**

Unlike in the free world, inmates depend upon prison officials to provide virtually everything. This is doubly the case when prisoners are locked down.

On June 2, 2020, BOP Director Michael D. Carvajal and BOP Medical Director Dr. Jeffrey Allen testified before the Senate Judiciary Committee. They issued a written statement to the Committee addressing actions the BOP was taking to protect inmates and staff.

“In all of our guidance, one simple preventative measure we have stressed is practicing good hygiene, as basic hygiene practices can be very effective in reducing the spread of germs,” explains their written statement to the Committee. “In addition, despite random reports of shortages, all institutions have ample cleaning products, disinfectant, and soap available.”

While it may be true that BOP institutions have such supplies, prisoners dispute they receive them in sufficient quantities. “We were issued three of those motel-sized bars of soap each week,” said Lily. “While we could purchase limited commissary items while under virtually 24-hour a day lockdown, commissary was often out of products such as soaps. Naturally, exchanges were not permitted. So, if you ordered enough soap for yourself and commissary was out, you’d have to wait for the next three mini bars of soap.”

“It should also be noted there was a corresponding reduction in the money inmates could spend at the commissary,” Lily said. “While national policy is that inmates may spend $360 per month, we had been reduced down to $25 per week due to all of the K2 overdoses. This amount was raised to $50 per week before the lockdown, but staff unexpectedly reduced it back down to $25 when we were locked down.”

The directors’ statements also addressed the matter of personal protective equipment.

“Within 24 hours of [the CDC’s change in the recommendation to wear masks], we had provided face coverings to most of our staff and inmates,” explained the directors. “Within 72 hours, all of our inmates and staff were provided face coverings.”

Lily agreed with this statement, but with a caveat. “While the staff was provided with KN95 masks, we were initially issued two paper masks with elastic ear straps,” Lily stated with outrage.”Then they switched these to khaki cloth masks and we were told to wash them by hand in our cells with our small issued bars of soap. About three weeks later, we were issued another set of cloth masks. All of these masks were ill-fitting and did not work well. You could hardly breathe through the khaki ones.”

Even with these grim conditions, fed-
Coronavirus in Prison (cont.)

eral prisoners are faring better than many held at state and local facilities.

In Alabama, the Madison County Jail has refused to issue masks to inmates. Citing safety concerns, Sheriff’s Office spokesman Brent Patterson explained that prisoners could harm themselves or others with masks that have metal nose pieces. Other masks couldn’t be used because inmates could tie them together to make ropes.

In Birmingham, Alabama, prisoners were provided masks at the Jefferson County Jail when attending court and medical appointments, but evidently not at other times. “If we give every inmate in that facility a mask, they’re not gonna wear them,” asserted Sergeant Joni Money. “They’re gonna be on the floor. They’re not gonna be used.”

Prisoners released during the pandemic explained that they would have worn masks if they knew they were allowed, or even available.

The Personal Impact of Coronavirus in Corrections

While the data can tell an important part of the story, it can’t capture coronavirus’ personal impact in prison. With most American prisoners currently held under lockdown, their access to communications, information and their families has been severely restricted.

“While on lockdown, we could initially come out in small groups,” explained Lily. “For example, one group could come out for around 45 minutes to shower, use the phone, and email with our families.”

But as the situation developed, prison staff would implement new policies without warning or explanation. “Staff would often institute a new protocol, but then the notice would come out the following day,” Lily continued. “They would issue these post-dated memos as the basis for their already occurring procedures.”

Another concern that has not been well-documented is the psychological effect of a pandemic on prisoners. “Staff initially told us there were no coronavirus positives in the federal prison system or at our facility,” Lily shared. “Once infection rates skyrocketed, and federal prisoners at other facilities started dying, they just stopped telling us anything.”

While the BOP has touted offering free phone calls to inmates, this is also only part of the story. Before the pandemic, federal inmates could make 15-minute phone calls (up to 300 minutes per month) if they had the funds to pay for the calls. When the pandemic hit, prison officials made the calls free but limited them to five minutes. Eventually, federal prison officials raised the permissible phone call time to 10 minutes.

“In prison, we are cut off from the outside world,” Lily said. “We are separated from our families and the social anchor points people rely on. And when the BOP stopped telling us anything about the risk or danger we were in, it resulted in a general sense of helplessness, agitation, and fear. Prison officials created an environment where safety was reduced and mental health issues were exasperated.”

Lily was fortunate to be released from prison custody. But her release was anything but rational. Now residing at a halfway house in the Northwest, she recounted being placed in isolation 14 days before her release.

“While I can understand protecting the public, they moved me to a new cell in my housing unit for isolation,” she explained. “Mind you, I was still in the same housing unit with general population inmates. We just weren’t permitted to speak with others. The prison also viewed it as a coronavirus risk for releasing inmates to use the computers to email family. And, of course, there was no visitation for anyone.”

With two weeks until her release, Lily was released from prison after serving over a decade, Lily was locked down for over 23 hours a day, not permitted to receive visits or email with her family, and could only make 10-minute calls to prepare for her return to society.

A Culture of Reckless Disregard for Human Rights

As the coronavirus plague has engulfed the world, there have been examples of government acting in the best interests of its people. For instance, Newsom put teeth into social distancing measures. Sadly, there are far more examples of government officials performing badly.

As it concerns American prisons, the calculus is a bit different because prisoners are beholden to their captors. If prison officials refuse to test, accurately report tests, or provide soap and masks, prisoners can’t do much about it. In many cases, their communication restrictions are so pronounced that they can’t even try to get help from outside sources.

But this issue is more pervasive than that experienced by those subjected to incarceration. The carceral tentacles extend outwards to federal post-incarceration supervised release and state parole. Even after release, former prisoners are often at the mercy of criminal justice systems, and rarely have much choice when it comes to matters of policy and freedoms.

Sharper Future, a division of Pacific Forensic Psychology Associates, Inc., is a privately held company that provides services to state and federal criminal justice agencies across California. The company conducts drug testing, drug therapy, sex offender therapy, and polygraphs for those on federal and state probation, federal supervised release, and state parole.

In a rather obtuse example of poorly considered and dangerous policies, the company contacted treatment participants to announce that their Sacramento and Woodland, California, offices were reopening on July 1. The ongoing telephonic counseling would cease, and in-person drug testing and group therapy would commence. Of course, program participants had no choice in the matter, and would be subject to parole, probation, and supervised release revocation if they declined. This was one day after Governor Newsom ordered a swath of businesses to close due to the alarming spread of coronavirus.

When questioned about this recent order during a group call and asked if it was safe to host people in group therapy, a company official questioned with skepticism that Newsom would increase restrictions to control the spread of the coronavirus –

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August 2020 Prison Legal News
even though the facts had been prominently reported in the Sacramento Bee and other news outlets.

The company official also called numerous individuals on federal supervised release to schedule post-incarceration polygraph tests for late July. When questioned during the same call, he advised that the private, Sharper Future contract polygrapher had been trained by a federal agency to conduct polygraphs during the pandemic. When pressed about which agency, he declined to comment. And when concerns over Sharper Future staff, the contract polygrapher, and participants were raised, the mantra of having protocols in place was repeated.

Four days later, participants for this treatment group were again on the phone for therapy. The group therapy facilitator advised that she had not heard about in-person treatment restarting. She also acknowledged the safety concerns over requiring federal supervised releasees to participate in close-quarters polygraph testing.

This highlights the single most significant problem with addressing coronavirus in criminal justice atmospheres: self-interest. Prison officials naturally want to cut costs and report an insignificant coronavirus impact on their prison systems. Private companies such as Sharper Future want to reopen and fully avail themselves of massive state and federal government contracts. Contract polygraphers want to charge for sessions, even at the risk of becoming disease super-spreaders. Meanwhile, prisoners and those under post-incarceration supervision just want to be safe and live their lives as best they can.

It’s past time for the true state of coronavirus to be acknowledged, accepted, and acted upon. Governmental agencies and contractors should not be permitted to hide the ball, misreport infection rates, refuse to test or provide sanitization and protective equipment to inmates, or enact one-sided policies designed with only their self-interests in mind.

It’s time for political rhetoric, party affiliation, and social status to stop dominating decision-making. The only right answer is to adhere to the guidance provided by infectious disease experts. If this means restricting public activities, then that must be done. When the CDC tacitly acknowledged in their language that prisons can’t safely house inmates, massive numbers of lower risk inmates needed to be released to permit social distancing amongst higher risk inmates.

Growth and progress are not always easy. They can be challenging. Following the right path is also not necessarily easy, but the moral imperative to do so mandates as much. If we, as a nation, continue to treat those in prison as less than human, and permit them to die due to being out of sight and out of mind, we aren’t just condemning...
Managing Director of the Zoukis Consulting Group, a federal prison consultancy specializing in federal prison matters. He is a student at the University of California, Davis School of Law. He can be found online at www.prisonerresource.com and contacted at Media@PrisonerResource.com.


Additional Sources: Interview with Lily Wright; confidential interviews with Sharper Future program participants.

Survey of 8,000 Prisoners’ Political Views Finds Surprising Results

by David M. Reutter

What a politician believes about the impact of restoring the vote to a convicted felon often depends on which side of the aisle they stand on. A common belief amongst politicians is that felons are liberals who would vote Democratic. A survey of 8,266 prisoners by Slate and The Marshall Project found that convicts’ political views cannot be so easily pigeonholed.

They reported that:

• A plurality of white respondents back President Trump, undercutting claims that people in prison would overwhelmingly vote for Democrats.

• Long stretches in prison appear to be more politicizing: The more time respondents spend in prison, the more motivated they are to vote and to discuss politics.

• Perspectives change inside prison. Republicans behind bars back policies like legalizing marijuana that are less popular with GOP voters on the outside; Democrats inside prison are less enthusiastic about assault weapons bans than Democrats at large.

• Political views diverged by race. Black respondents are the only group pointing to reducing racial bias in criminal justice as a top concern; almost every other group picked reducing the prison population as a key priority.

The survey was inserted into The Marshall Project’s print publication, News Inside. It is distributed to more than 500 prisons and jails in the United States. The respondents racially identified themselves as: White 41%, Black 20%, Latino 14%, Native American 17%, Asian or other races 19%, and 8% did not provide information. Because respondents could choose more than one race, the total percentage exceeds 100%. Among the respondents, 57% said they had never cast a vote.

Since the respondents were self-selecting, they are likely to be politically engaged and following the news. The survey takers, therefore, warned that the results have limitations. The responses were gleaned for “trends across race, gender, party affiliation, and other demographic categories to ensure our reported results were meaningful,” Slate wrote. “We also surfaced as many individual voices and opinions as possible.”

The survey was distributed in March 2020. Of white respondents, 36% identified as Republicans, 30% Independent, and 18% Democrats. Only 11% of Black respondents identified as Republicans, while 29% identified as Independent and 45% as Democrats.

Their candidate choice contrasted with conventional wisdom. “For people of color, no single candidate prevailed, but 20 percent of black respondents chose Biden as their top choice, with Sanders coming in at second with 16 percent,” Slate wrote. “Forty five percent of white respondents said they’d support Trump for president … About 30 percent of white respondents chose a Democratic candidate, while 25 percent said they would not vote or did not know which candidate to back.”

Prisoners have little faith in politicians, with 80% saying they don’t act in their interests. “I grew up being told in history class and school that politicians could be trusted to do what is best for the working class and poor, and overall for the country, only to get older and realize the corruption in both major political parties,” said Michigan prisoner Allen Martin, who is White.

Issues of race are huge for Blacks prisoners. “Two out of 3 black respondents said that their race informs their political beliefs, and black people, more than any other group say prison has increased their motivation to vote,” Slate reported. “By contrast, almost half of white respondents said race does not matter at all when it comes to politics.”

“Being a black man from the inner city, I see first-hand that the politics are not structured to help me,” said Kansas prisoner David Young. “When laws are passed to take funds away from education and put into prisons. When I can look at a flawed system that targets young black males instead of helping them.”

The survey also found that 75% of Republican prisoners supported a minimum wage hike and 76% supported marijuana legalization, which contrasts with the 43% and 55% support, respectively, for Republicans at large. Another contrast with their identified party is that 44% of Democratic prisoners supported tighter border security while only 30% opposed such tightening; 92% supported a minimum wage hike; and 84% supported marijuana legalization.

Prisoners of both parties have differing views on an assault weapons ban than their identified party. Support for such a ban is favored by 88% of at-large Democrats but Democratic prisoners support it by only 52%.
The survey found only 30% of Republican prisoners support a ban, but Republicans on the outside overwhelmingly support one.

Many respondents said prison had changed their view of politics. Before prison, John Adkins, 43, said he never paid attention to politics, focusing instead on gang violence in southwest Detroit. In prison, he watched the news and grew tired of “the demonization of straight, white, Christian men on CNN and MSNBC and just about all mainstream media,” he wrote.

Adkins started watching conservative shows, and the host’s views against abortion and gay marriage won him over. “I am so tired of the double-standard of the left in the country,” he wrote. “Their rhetoric is what is divisive in this country, not Donald J. Trump’s!”

For Kansas, prisoner Christopher Shelton-Jenkins, 27, his cellmate, who he considered “very intelligent” and respected, “broke some things down to me . . . That’s when I realized I had wrong and ignorant impressions.”

“I remember he talked about the Democrat and Republican stances on the wall on the border - that Democrats wanted to be all open arms, which was nice, but the Republicans thought it was just not practical in terms of managing our economy and social systems,” wrote Shelton-Jenkins, whose mother is White and father is Black. He loosely associated with Democrats before prison, “only because my mom labeled all Republicans racists who want to keep the rich and the poor poor.”

Six years in prison changed that view. “A lot of incarcerated, poor, and black people identify as Democrat because we’re told that Republicans want to keep us poor and incarcerated,” wrote Shelton-Jenkins. “But now I believe the opposite: that Democrats want to keep us spoon-fed by the government and Republicans want to wean us off.”

Arkansas prisoner William Robinson, 39, a Black man, pointed to the contrasts with the punitive crime bill President Bill Clinton signed in 1994 with the Republican push for the First Step Act and Trump’s expansion of the Second Chance Pell Grant program, an Obama-era initiative. He also pointed to the commutation of Alice Johnson’s life sentence for a nonviolent drug crime.

“These things matter . . . Politicians talk about criminal justice reform. President Trump got it done,” Robinson wrote. “I really can’t tell you anything that the Democrats have done in recent years, as far as criminal justice reform is concerned, that has had an impact comparable to President Trump passing these new laws.”

Kansas prisoner Derek Bedford, 46, also had an epiphany on politics while doing time. “I was thinking that Obama was gonna do some positive things for the country, and he turned out to be a puppet for big business and for the rich,” he said. “I don’t see Donald Trump as being anyone’s puppet. From what I’ve been seeing and hearing, he’s given businesses some tax cuts for bringing back jobs, so that’s helping small people in this country.”

The survey makes clear that conventional wisdom needs to be readjusted when it comes to convicts and ex-cons’ political views. Thousands of prisoners said “incarceration has transformed their worldviews and political allegiances,” Slate reported. A follow-up will be conducted with the respondents as the 2020 political season heats up.

Sources: slate.com, The Marshall Project

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Criminal Legal News, PO. Box 1151, Lake Worth Beach, FL 33460; (561) 360-2523. www.criminallegalnews.org
As summer wears on, the pandemic continues to take its toll behind bars. Our cover story reports the latest developments on COVID-19 in prisons and jails. Thanks to all the prisoner readers who are sending us reports and updates about coronavirus in their facilities. We are especially interested in learning about serious illnesses and deaths as those are numbers likely to be concealed or underplayed by the government.

It appears likely that COVID-19 will be with us, in prison and out, for the foreseeable future and the political class in this country has deemed prisoners, especially convicted ones, to be expendable. To date, very little in the way of prison releases or other measures to ensure safety are happening. We are monitoring all the litigation and political and news developments around the country and will continue reporting on them in PLN. Dr. Michael Cohen continues providing us with the latest medical information related to COVID-19 in detention facilities and discussing treatment and prevention options.

We will be covering COVID-19 in PLN as long as it remains a prison health and litigation issue. We are also aware that all the other issues around detention facilities, such as excessive force, censorship, slave labor and more have not gone away or improved, so we will continue to report on those as well. The news cycle is very much dominated by coronavirus and our news coverage is reflecting that.

COVID-19 has had serious impacts on everyone outside of prison as well. HRDC is no exception. Most of our staff are working remotely but we still have a few people in our office to process subscriptions, ship book orders, answer the phones and respond to emails. We are still getting everything done in a timely manner, we are just having to work harder to do so. Thanks to all of our readers and supporters who have inquired about the health and wellbeing of our staff.

By now everyone who was an active PLN subscriber for the July issue should have received a free sample copy of Criminal Legal News (CLN). CLN is the companion publication to PLN and reports on policing, sentencing, criminal law and procedure, and surveillance issues. We launched CLN in 2017 to expand our coverage and reporting on the American police state and especially to give prisoners more information on criminal law and procedure to be able to better challenge their convictions and sentences. If criminal law and policing issues are of interest, you should subscribe to CLN, CLN and PLN mail at two-week intervals with CLN going to press the 15th of each month and PLN going to press around the 1st.

We have added many new subscribers, thanks to our $1 COVID-19 introductory subscription offer. That offer is only available to prisoners who have never been PLN subscribers before and does not apply to renewals. I hope that once the six-issue trial subscription expires our new subscribers will continue their subscriptions at the regular rate.

PLN is the only publication reporting on legal news and developments affecting prisoners, and giving them information they can actually use. Please encourage others to subscribe as well. The more subscribers we have, the lower our per-issue costs, and the lower we can keep our subscription rates in a world of rising postage, printing and staffing costs.

As this issue goes to press we have just sued the Indiana DOC over its censorship of PLN. The Human Rights Defense Center remains the only publisher that consistently steps up to the plate to challenge the censorship of books and magazines. We currently have litigation pending against prison systems in Arizona, Michigan, Illinois and Indiana. We are also suing jails over their censorship practices in Virginia, Arkansas, Maryland and California. Several more lawsuits are in the process of being filed. We will report on this in PLN as the cases proceed. Despite COVID-19, our stellar litigation team is continuing to fight for free speech rights around the country.

To keep fighting these struggles, we need your help. If you can afford to donate, please do. Your donations to HRDC go farther and do more than with any other criminal justice non-profit out there. Each month you can read and see tangible results in your hands: magazines, litigation filed and won, books published and distributed. HRDC has hard metrics that show our accomplishments. Enjoy this issue of PLN and please donate to support our work.

“Collateral Consequences” of Convictions Hinder Chances of Post-Prison Success

by Dale Chappell

Every week, more than 10,000 people leave prison and 200,000 are released from jail across the country, after being convicted. And the rules and regulations preventing them from jobs, housing, and education — often called “collateral consequences” of being convicted of a crime — can last many years and even a lifetime. Those numbers add up quickly, meaning that millions of adults in this country are barred from even basic rights because of their conviction or arrest.

At least 77 million American adults have criminal records. That’s almost one out of three adults over the age of 18 in the entire nation (and doesn’t even include those with juvenile records). The Council of State Governments tracks collateral consequences of a conviction in detail and said a conviction makes it impossible to obtain a license to work as a plumber, barber, manicurist, interior designer, or bans altogether the ability to get an occupational license, which about one in four Americans rely on to do a multitude of jobs. A conviction can cause someone with a license to lose all of this.

“One thing I’ve learned while researching criminal justice reform and teaching college classes in prisons is that the reason the transition to life outside the corrections system is so hard is that there are more than 44,000 indirect consequences of a criminal conviction,” wrote researcher Cynthia A. Golembeski in an article posted at The Conversation. She said the reasons for imposing bans on those with convictions are often broad, vague and subjective — without any evidence to support that they do any good for anyone. And these are more than 1,000 federal laws with collateral consequences for
working as an electrician.licenses to work, from driving a truck to U.S. workers need mandatory occupational licensing and certification. That is important, she said, because 1 in 4 Golembeski said, and over 13,000 relate to occupational licensing and certification. sequences involved employment restrictions, even without a conviction. North Carolina, Maine, and California, being arrested in the last five years is con sidered “criminal activity” and can bar access to housing, even without a conviction. Landing a job also can be a problem. At least 19,000 of the 44,000 collateral consequences involved employment restrictions, Golembeski said, and over 13,000 relate to occupational licensing and certification. That is important, she said, because 1 in 4 U.S. workers need mandatory occupational licenses to work, from driving a truck to working as an electrician. Going back to school to get a better job may be impossible. Certain convictions could deny admission to college or financial aid, during incarceration and afterward. Government benefits may be denied as well. In the mid-1990s, Congress and President Bill Clinton approved states denying benefits under the Supplemental Nutrition Assistance Program (“SNAP”) to anyone with a drug-related conviction. This includes mother with babies and small children who rely on government assistance to get basic food items like milk and baby formula. Those restrictions remain in place, even after the so-called “war on drugs” has proven to be a complete failure. South Carolina, for example, has a lifetime ban on SNAP benefits for anyone with a felony drug conviction. Michigan and four other states permanently reject SNAP benefits for anyone with two or more felony drug convictions. Pennsylvania Governor Tom Wolf, the author reports, “recently signed a bill banning those with felony drug convictions and some convicted as sex offenders from receiving public benefits for 10 years.” These often-arbitrary restrictions have disproportionately affected minorities and those with low incomes, just like incarceration itself does, Golembeski said. And veterans who served their country may lose their insurance, health care and pensions after a conviction. In most states, those with convictions can’t vote. It’s estimated that 6 million Americans couldn’t vote in the 2016 election. That’s like excluding entire states from the election. Golembeski said she sees changes coming. Community efforts have been made to prevent housing discrimination against those with criminal records in 11 cities: New York and three other cities support reunification of those with conviction with family in public housing. And the Department of Housing and Urban Development has indicated that rejecting housing to those with convictions may violate the Fair Housing Act. In 2019, a U.S. Commission on Civil Rights report called for an end to all “pu nitive mandatory consequences that do not serve public safety, bear no rational relationship to the offense committed, and impede people convicted of crimes from safely reentering and becoming contributing members of society.”

Source: theconversation.com

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Prison Legal News August 2020
How to Fail at Running a Prison During a Pandemic

A firsthand account from FCI Seagoville in Texas, one of the epicenters of the COVID-19 pandemic

by Anthony W. Accurso

[Editor's note: As of July 22, the Bureau of Prisons website reported 1,220 prisoners had tested positive for coronavirus at Seagoville, the highest number at any BOP prison. Ten staff had tested positive.]

As I write this, I am incarcerated at a federal Bureau of Prisons (BOP) facility near Dallas, Texas known as FCI Seagoville. As of early July, my institution is making headlines as the federal prison with the largest uncontrolled infection rate of the novel coronavirus in the United States.

While the BOP has ostensibly been preparing for this moment and disseminating guidelines for how to manage the pandemic at each facility, this institution has managed to fail spectacularly at preventing the virus from breaching the prison walls, and containing it once it did. In retrospect, the measures taken by the prison’s administration were flawed from the beginning and marred by noncompliance by correctional officers (COs).

The entire BOP system has been on some form of modified operation (aka “lockdown”) since April 1, 2020. This lockdown was supposed to reduce the possibility of introducing the virus into facilities by eliminating contact visits by friends and family of prisoners, and by eliminating all non-essential contractor visits. Further, each housing unit was supposed to be kept as separate as possible so that if the virus did get into the inmate population, it would not spread throughout the entire population.

FCI Seagoville started out well, largely due to an accident of timing. Due to necessary repairs to the visitation room, we had been prevented from getting any visits from friends and family for a few weeks prior to the lockdown. As we heard about other facilities starting to experience early outbreaks, we felt lucky that we did not experience an early infection from this vector.

Maybe things went too well. As weeks, and indeed nearly three months, passed without an infection among the general population of prisoners, staff grew complacent. Many COs were working their shifts in the housing units without wearing their masks at all, or not using them to cover their mouth and nose. Rumors began spreading about the lax measures used to protect the prisoner population from staff introduction of the virus, including that the daily screenings for staff prior to beginning their shift no longer included temperature checks. Reporting from FCI Oakdale, another facility that had a severe and widespread infection in the prisoner population, showed that staff were induced to lie during their screenings so they could work their shifts and not get fired for using too much “sick time.”

All the while, at FCI Seagoville prisoners were still working to provide essential services in the institution. Inmates from various units would leave their buildings and go to work, together, in places like food service and maintenance. True, most work details had ceased, but these work details were viewed as “essential,” and thus would continue regardless of the danger of intermixing between buildings and being more exposed to staff. We were also leaving our buildings together to pick up our food and go to health services for medications and sick call. It turns out this is what likely doomed us.

At the end of June, prisoners were sent back from their work details ahead of schedule. On Thursday the 25th, we were notified that at least three prisoners had tested positive in the same building. The institution went into a real lockdown, and the work details that were labeled “essential” before now ceased. We went from getting our laundry done twice per week to once per week, which results in having to frequently wear dirty clothing since we’re only allowed so many changes of clothes, and several of our housing units are not air-conditioned. We are not allowed to exchange our torn or worn-out clothing anymore.

Our commissary limit went from $50 per week to $25, making it more difficult to supplement the food we were getting (or the lack thereof) with the mildly healthier options we used to be able to buy. We went from two hot meals per day made by prisoners, to one hot meal per day made by staff. The quality and consistency dropped off noticeably. We get honeybuns and Pop-Tarts for breakfast, and a sack dinner, which usually includes some kind of bologna sandwich, chips, and a peanut butter and jelly thing.

Days later, we learned that it was not just the one building that had active infections. While the original building had quickly ballooned to over 30 active cases, prisoners in other buildings were turning up positive, too. The staff started doing twice-daily temperature checks and asking us if we had any symptoms. Prisoners were removed from the units and taken to temporary housing areas if they displayed any symptoms or “failed” the temperature checks. It was distressing that they seemed to just disappear. Little to no communication was forthcoming from the administration other than we’d have to make “sacrifices” as staff were now having to do the jobs inmates used to.

Thankfully, my housing unit was largely spared. One prisoner tested positive two days into the lockdown, and only a few more developed symptoms. Rumors were that rapid-test results came back negative for the few prisoners who had symptoms. We heard rumors that wide-spread testing was occurring, and we saw mass movements of prisoners through our windows as other housing units were juggled around.

We finally got mass-tested on Tuesday, July 7th, and we were told it would take three to seven days to get the results. The following Friday, a dozen prisoners were called to the office and told to pack their property because they were being moved. Nobody was told why, though we all suspected that they came back positive despite being asymptomatic. Our friends and families were telling us that confirmed cases for our prison, as reported on the BOP’s website, were escalating alarmingly every day. Some days we added 30 confirmed cases, some days it was closer to one hundred. We were told that we could expect to be moved around soon based on our test results.

Saturday, July 8th came with an announcement. About half the results came back by mid-afternoon, and everyone in the housing unit was told to pack up. They could leave some property in the locker in their cells, but we should pack everything we’d need to live off of for two weeks into our laundry bags.

By the evening, our building had been separated into two populations with a metal
door separating each side of the unit. One side was clearly for prisoners who had tested positive. Some of the dozen guys that had been moved the day before returned to that side, as well as other men who had symptoms prior to being moved (but after being tested). The rest of us were “pending” our test results, and were going to be moved to temporary housing until we were confirmed negative or positive.

Dozens of prisoners were moved in waves out of the building, but a strange thing happened. A few came back. It turns out that the building used to house prisoners whose tests were pending was still not air-conditioned, and several of these prisoners had underlying health conditions that required air-conditioning (such as COPD, asthma, or other temperature sensitive conditions). They were sent back to stay with those of us who had been told we were negative. They quit moving prisoners after that, and about 80 men remained.

Over the next few days, more prisoners in our area (of mixed “pending” and negatives) came down with symptoms. One prisoner reported these symptoms to staff on Saturday night and again on Sunday yet was told that he would not be moved. Staff failed to perform temperature checks on Sunday, nor did they ask if anyone had symptoms. Other prisoners reported to staff that they had symptoms, and nothing was done. Finally, one prisoner’s symptoms got so bad that he required medical intervention and he was moved out of the unit. We thought we were pending, but now it seemed they no longer cared whether we were infected, or whether the virus was spreading among the pending and soon-to-be-formerly-negative populations housed together.

All the while we learned that we had over 800 confirmed infections out of a general population of just less than 1,550. The infection was clearly not under control, and staff had seemed to give up trying to control it. Fear, desperation, and resignation prevailed among us. We used to joke about how this prison was more of a nursing home because of the number of prisoners who were elderly or had chronic conditions. Now it seemed like that comparison was going to be more apt than we thought now that we knew what the coronavirus had done to nursing homes in the real world.

Sometime after the outbreak in the prison, the staff posted a document on the electronic bulletin board. It was from the CDC titled, “CDC Guidance on Management of COVID-19 in Correctional and Detention Facilities.” We don’t know why staff put this document there, as the guidance was mostly about things we could not control. But as it was dated March 30, 2020, we got to learn what the CDC was telling prisoners to do about the virus. We also learned that nearly nothing from that document was actually implemented at our facility, or at least not until it was too late.

All throughout this process, much could have been done to mitigate the risks to the prisoner population and, by extension, the nearby communities. The warden could have used her power under the CARES Act to send prisoners to home confinement. But early on, someone decided on a list of qualifications that almost no prisoner could pass and thus nobody was released.

A great many of the men who were elderly or had chronic conditions as identified by the CDC were sex offenders, and the warden certainly didn’t want to be on the hook if someone from this group was placed on home detention and then reoffended. A great many of us with underlying conditions (as identified by the CDC) sent compassionate release requests, first to the warden (as required by law) and then to the courts.

Yet the courts seemed just as reluctant to release inmates. Our chronic conditions were questioned by the courts, largely because the BOP had failed to accurately document and treat our conditions or because the courts listened to the Department of Justice, which claimed that the BOP was managing the pandemic well. Many requests were denied for petty reasons. Sometimes the warden’s denial was presented but not the initial request to the warden for release.

Many steps could have been taken to reduce the population. Many more steps could have been taken to reduce the risk to the vulnerable prisoners whose sentences have been transformed into death sentences. But society has decided that punishment is more important than anything else. We are trapped here, our fates unknown. The only thing we know for sure is that we must continue to be punished.

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Post Conviction Relief for Virginia Only
New Initiatives from Philadelphia, Koch Industries, Work to Get Ex-Offenders Jobs
by Anthony W. Accurso

On January 14, 2020, Koch Industries, through the Charles Koch Institute, announced a partnership with the Society for Human Resources Management (SHRM) to develop the Getting Talent Back to Work Initiative, a program that educates businesses on the benefits of hiring ex-offenders.

“We have to figure out how we keep folks successful and from recidivating and going back to prison, or even jail, and part of that is (getting) a job,” said Jenny Kim, general counsel for Koch Industries. “That is what the Getting Talent Back to Work initiative is about.”

With nearly 7 million jobs open at the time, the U.S. labor force simply didn’t have enough workers, she added. Though unemployment has since shot up as a consequence of the COVID-19 pandemic, data from the federal Bureau of Labor Statistics shows a two-decade plunge continues in what’s called the “labor force participation rate” – the share of eligible people either working or looking for work.

About 61.5 percent of Americans who could work were in the labor force in June 2020, a decline of 1.5 percent from the level a year earlier and 5.6 percent below the level 20 years ago. Closing that gap could add nearly 15 million people to the pool of available workers when the economy eventually recovers.

“We have to figure out a way to close the gap,” Kim said. “We also need to be more diverse and inclusive and we have to think about populations of the talent management pipeline.”

The initiative offers business some guidelines for hiring ex-offenders and pairs them with other firms that have completed the process and have experience hiring ex-offenders.

Prior to the pandemic, unemployment stood at about 3.5 percent, a historic low. But for about 5 million Americans who were formerly incarcerated, the rate was 27 percent, according to a 2018 study by the Prison Policy Initiative. With nearly a third of American adults carrying a criminal record, SHRM and the Charles Koch Institute are betting that educating potential employers will help solve two problems at once when the economy improves: Businesses can fill open positions and people who want to work can get jobs, despite a criminal record.

Kim points out that hiring ex-offenders makes good business sense and helps make communities safe. Failure to involve those with criminal records into the workforce poses a cost to the economy estimated at $87 billion annually, she said.

While the Charles Koch Institute and SHRM are focusing on education, the city of Philadelphia in Pennsylvania is paying businesses to hire recently released prisoners. Begun in July 2017, the city’s Fair Chance Hiring Initiative (FCHI) targets small- and medium-size businesses that are more likely to consider hiring offenders who have been released in the last five years.

To date, 60 participating businesses have hired about 110 people. The program reimburses businesses $5 per hour for each position, up to 40 hours per week, with a maximum of $1,000 annually. Workers are recruited and screened through Philadelphia-based worker retraining nonprofit OIC of America, the state employment agency, PA CareerLink, and the Office of Reintegration Service of Philadelphia Mayor Jim Kennedy (D).

Though Koch Industries co-founder Charles Koch is a longtime supporter of conservative political causes, a 2016 report by The Marshall Project noted that Charles and his brother, David (now deceased), gave support to measures to reform the criminal justice system and end mass incarceration, citing the benefits of doing so to employers and the economy. Through programs like the Getting Talent Back to Work Initiative, it’s hoped that employers can successfully reintegrate ex-offenders back into the workforce with proper education and incentives.

Sources: penncapital-star.com, shrm.org, businessinsider.com, bls.gov, prisonpolicy.org, themarshallproject.org

Medical Director of California Prison System Removed After Dubious Transfers Spike COVID-19 Counts
by Derek Gilna

Although California is in the middle of a pandemic with the governor ordering the lock-down of the state’s economy and encouraged people to “stay home save lives,” California prison medical director Dr. R. Steven Tharratt decided to transfer over 100 COVID 19-positive prisoners from one prison to others, thereby triggering a new outbreak.

As a result, Tharratt was relieved of his duties by Governor Gavin Newsom on July 6.

Tharratt approved a transfer in May of 121 prisoners from the California Institution for Men in Chino, where more than 900 prisoners were infected, to multiple institutions, including San Quentin, where more than one-third had tested positive, and three died during the July Fourth weekend. California state prisons have been under the supervision of a federal court-appointed receiver for more than a decade, and the same receiver who had appointed Tharratt in 2010 was the one who replaced him.

Newsom was unhappy with the unusual prisoner movement. “They should not have been transferred,” he said. California Correctional Health Care Services agreed, stating that “mass movement of high-risk inmates between institutions without outbreaks is ill-advised and potentially dangerous (and) carries significant risk of spreading transmission of the disease between institutions.”

That opinion was echoed by infectious disease specialist Dr. Peter Chin-Hong: “As the inmates start to get sicker and require hospitalization, not only are Bay Area hospitals going to feel it, hospitals across the
state are going to feel it,” he said, comparing the spread of the disease to a “California wildfire.”

U.S. District Court Judge Jon Tigar, who is hearing a lawsuit on conditions in California prisons, was critical of prison conditions that facilitated the rise in infections. “San Quentin provides a signal example of what can happen when an outbreak overwhelms an institution,” the judge said. “The number of inmate infections is undoubtedly even higher, because hundreds of inmates have refused to be tested.”

Newsom said he hoped that San Quentin, the state’s oldest prison, would be able to cut its prisoner count from 4,000 to 3,000, partly to relieve overcrowding. That in fact may prove to be the only long-term solution to a problem that continues to confound both state and federal authorities.

Source: latimes.com

Judge Awards $273,246 Payment to New York Prisoner Beaten by Guard

by David M. Reutter

On January 16, 2020, a New York federal magistrate judge awarded $273,246.88 to a Sing Sing Correctional Facility prisoner who alleged a guard brutally beat him and lied about the incident.

The civil rights action was brought on May 3, 2017, by prisoner Morgan Greenburger. His complaint alleged that he was placed on “special watch” on May 11, 2016, after he told guards that he had eaten a toothbrush. Special watch requires guards to have constant supervision of prisoners to prevent them from injuring themselves.

Greenburger alleged that while under such supervision, he requested a urine bottle from guard Phillip R. Roundtree. Wait “a few minutes,” Roundtree told him. “Greenburg waited, again asked for the urine bottle, waited another fifteen minutes, and asked a third time, informing Roundtree that it was becoming an emergency,” according to court records.

Roundtree responded by screaming at Greenburger and threatening to beat him if he asked again. Greenburger said he was trying to avoid conflict but that he needed to use the bottle. After asking, “you sure you want it?” Roundtree opened the cell door and placed the urine bottle inside near the door.

“As Greenburger reached for the bottle, Roundtree beat Greenburger on the ‘head, back, shoulders, and left arm’ with enough force that the baton splintered.”

After a two-hour delay, Greenburger was taken to a hospital where he received five staples to close his head wound. Roundtree contended in a disciplinary action that Greenburger initiated the assault and refused a direct order. That resulted in Greenburger being placed in a Special Housing Unit for 50 days.

Greenburger received notice on October 2, 2016, that the disciplinary charges were reversed, and Roundtree was terminated as a result of his actions against him.

Greenburger filed his civil rights action on May 3, 2017, and the district court entered a default judgment on December 12, 2018, after Roundtree failed to respond to several orders from the court directing him to do so.

The matter was referred to Magistrate Judge Sarah L. Cave for an inquest into damages.

After reviewing the matter, she awarded Greenburger $118,000 in compensatory damages, $85,000 in punitive damages, $67,420 in attorney fees, and $2,826.88 in additional costs. Greenburger was represented by Jonathan Moore and Luna Droubi of Beldock Levine & Hoffman. See: Greenburger v. Roundtree, USDC (S.D.N.Y.) Case No. 17-cv-03295.
We're now nearly six months into the COVID-19 pandemic and geographically the coronavirus epicenter has shifted from its origins in the United States to New York and New Jersey, where case rates have now fallen dramatically. During the past few months, coronavirus has swept across the country but particularly hammered (on a per capita basis) states such as Alabama, Arizona, Texas, South Carolina, Louisiana and Mississippi.

With the possible exception of Brazil, no country has handled the pandemic worse than the United States. In early July, Arizona, Florida and South Carolina had the world's worst per capita infection rates. The Middle Eastern country of Bahrain was fourth. Overall, nine of the world's top dozen hot spots were U.S. states.

No one knows where the pandemic will head next — as I write, California is being pummeled with new cases — but there's been one constant from the moment the pandemic hit the country: prisons and jails hosted the worst outbreaks. When I wrote this column last month, statistics compiled by The Marshall Project showed that at least 43,967 people in prison had tested positive and 651 have died. And, as you'll see elsewhere in this issue, there are dozens of hot spots.

As I write today, 64,119 prisoners have been one constant from the moment the pandemic hit the country: prisons and jails hosted the worst outbreaks. When I wrote this column last month, statistics compiled by The Marshall Project showed that at least 43,967 people in prison had tested positive and 651 have died. And, as you'll see elsewhere in this issue, there are reasons to believe that the true numbers are far higher.

Another constant has been the lack of any reasonable political or humanitarian response to deal with the pandemic in prisons on the part of federal and state governments, nor by private prison companies that profit off mass incarceration. There's been little follow through on an order by Attorney General William Barr that the Bureau of Prisons (BOP) speed up early releases to slow the spread of the virus. There have been multiple horror stories about elderly prisoners being refused early release, or people in jails for minor offenses being unable to get out because they didn't have the money to post bail. Social distancing guidelines are still routinely ignored.

San Quentin in California remained COVID-free until June, when the state's Department of Corrections and Rehabilitation transferred infected prisoners there from another prison. Very swiftly about one-third of the 3,700 prisoners at San Quentin were themselves infected.

On July 10, Aaron Littman, deputy director of the “UCLA COVID-19 Behind Bars Data Project,” tweeted a quote from an anonymous physician at San Quentin. It read: “I have to tell you how much I worry. I worry that the victims will be blamed when we look back and talk about San Quentin. Our patients worked so hard to clean their cells and the surfaces of these ancient buildings. They cleaned them like they had a chance. They never did. This isn't their fault. None of the ... guidelines prepared us for this. I just don't want any of them blamed. It's not their fault.”

We've asked prisoners and their supporters to let us know what's going on at their facilities, and are publishing excerpts each month. Letters below have been lightly edited for length, clarity and, in some cases, details have been omitted, at the writers' requests, to protect against potential retaliation.

California

A prisoner at the maximum-security California State Prison, Sacramento writes:

I am faced with many illnesses in the face of COVID-19, including asthma and scoliosis, and am being housed in solitary. I have been and still am asking for adequate disinfectant cleaning supplies. And I keep getting told no, they won't give us gloves, scrub pads, and new masks. They won't even clean let alone deep clean the cells and cages before putting us in them. I've filed an emergency grievance on this matter and was told that my grievance was not an emergency. But I am living in these foul conditions and I am an African American; shouldn't this be an emergency if I'm more likely to catch it over a white person? Can you please help me out with this because I'm lost.

Massachusetts

A federal prisoner in Devens writes:

I got tested yet again to see if I still had the virus. This is because I still have symptoms that are much worse than when I actually was sick. I get a heaviness in my chest and it's hard to breathe. It's scary. I get this often and I have asked for help but they ignore me. One so-called nurse said sick call was for “emergencies only” and refused to see a group of us. We got into a heated discussion (to say the least) and she left in a rush all mad. I had it 2 nights ago and I was very close to asking staff to call an emergency. It would take me being on my deathbed to say it’s an emergency. But I'm still testing negative, they said. They won't actually TREAT our symptoms. They just keep telling us they will go away one day. I sat on the floor of the SHU crying because my head hurt so bad after they refused to give me anything for my headache since I was in the SHU — which is where they put me when I tested positive! They threw us in disciplinary seg and ignored us, except when they needed their stats: blood pressure, temps, etc. But they wouldn't listen to our complaints. One nurse walked away and simply said “I can’t” when I asked her for Tylenol or a cup so I could at least get some water from the sink.

New York

A prisoner at the medium-security Gowanda Correctional Facility writes:

I have asthma real bad, and with the virus going around and over half the officers not wearing masks and one officer always standing at the end of our chow line...
breathing on us and our food, I am worried about catching the virus. With my health issues, I know that I have a good chance of dying. I have kids at home who I am trying to get back to. I am here on a probation violation for not calling in, but I have heard that they are letting people go with health issues with ankle monitors. I don’t really want to die here. Don’t mention my name here because I heard of inmates getting hurt and sent to the box.

New York

A prisoner at Downstate Correctional Facility, a state maximum-security prison in Fishkill, writes:

As of right now, I have less than a year left before my sentence is complete. Here at the Downstate, there’s no such thing as social distance. Nobody, and I do mean nobody, is 6 feet away from anybody at any time! It’s scary because none of us were ever tested for the coronavirus and any of us can have it at this point.

I wasn’t sentenced to get sick and die in prison. Nobody here has a death sentence! Every day the officials are changing the rules of the facility and still no social distance is being followed or ordered. This is cruel and usual punishment!

Ohio

A state prisoner at Ross Correctional Facility, a prison in Chillicothe, writes.

In wake of this Global Covid-19 pandemic, I’m writing this letter in concern of not only the preservation of my life and health but also the lives and health of the individuals who live and work in this facility, including inmates, correctional officers, Aramark food service workers and medical personnel, as well as their families they go home to every day at the end of their shifts.

This facility holds approximately 2,000 to 2,500 inmates. It includes a community Chow Hall, rec yard, day room and showers that we all share on a daily basis. That makes it impossible to practice certain measures such as social and physical distancing that’s held to be necessary to eliminate or slow the spread of COVID-19.

This facility is not conducting any kind of testing amongst us to detect an infection in order to isolate any infected inmates from the non-infected population. Therefore, everyday essential activity is a risk to exposure just by simply eating meals or taking a shower. The risk further includes the officers and workers who come into this facility every day who are not being tested, either.

There are hundreds of individuals who come [here] every day to work who may not show symptoms but may still have the virus and can transmit the virus into this facility. Of these hundreds, all it takes is for one person to have the virus and that one case will surely spread amongst this prison population, including inmates and staff, like wildfire. It would surely be the same reoccurring episode that transpired in other prison populations across Ohio where thousands of inmates and prison staff caught the virus. Inmates, prison staff and nurses have lost their lives.

The medical team and resources here are not equipped to deal with a worst-case scenario in this facility. Presently, we don’t even have alcohol-based sanitizer, bleach or chemicals that can kill this virus. We surely don’t have enough ventilators and PPE. Unfortunately, neither do we have a compassionate medical team willing to put themselves in jeopardy by dealing with contagious and sick inmates. Since I’ve been here, I’ve encountered nurses who wouldn’t even give me a Band-Aid when I needed stitches, who allowed my broken nose to heal without care and who even sent me to the hole for being persistent about medical attention. My wounds healed in segregation and it’s a risk to exposure just by simply eating meals or taking a shower. The risk further includes the officers and workers who come into this facility every day who are not being tested, either.

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end in sight. Many here are sick including me. I may be one of the more fortunate ones since I feel fairly strong and should be able to survive this, but honestly, I feel as though I was either in a car accident or beaten by a baseball bat.

Virginia
A prisoner at the Rappahannock Shenandoah Warren Regional Jail in Front Royal writes:

I’m in here on a misdemeanor probation violation. As of right now, this facility has 62 inmates and four officers who have tested positive for COVID-19 virus. Just recently we were given masks to wear and as of right now we are on 24-hour lockdown with no opportunity to move around or exercise. Today makes five days I have been in my cell for 24 hours. I have not taken a shower going on three days now. I cannot reach my family to tell them what is going on.

Virginia
A female trusty at Rappahannock Shenandoah Warren Regional Jail writes:
The COVID 19 disease/virus has finally found its way into our facility. My reason for writing is my concern for not only myself, but for the population as a whole here at RSW because of the disregard for the welfare of the offenders who are left here.

I do commend RSW for their part in reducing the population at the beginning of the pandemic. However, since then, the idea of social distancing has become basically nonexistent. RSW has resorted to the approach completely opposite of social distancing; shutting down pods and filling up empty beds making social distancing nonexistent. Instead of utilizing space, offenders are packed together with the daily concern being lockdown and lock-down procedures. Let’s make sure all of the offenders are complying with the lockdown procedure, off our bunks and out of cells, grouped in masses in a day room or small rec yard.

The next part of the journey will take us to the females who are a part of the offender trusty program. Our job is laundry for the facility. Unlike the male trustys who have their own living unit, we are housed with the general population. Being responsible for the facility laundry over the past several weeks, we have done the laundry for those infected with COVID-19. After finding this out, we all requested tests and were basically told by medical if we were not exhibiting symptoms, there could be no test.

The RSW website has our family and friends under the impression that we are all being tested, that we are cleaning around the clock, and we have been issued masks and gloves. Cleaning could be done if we were supplied with ample supplies. In late-May we were brought 4 cleaning rags to clean 4 phones, 3 showers, 7 tables, 3 toilets, and 3 sinks.

Utah State Auditor Finds Grave Deficiencies in Prisoner Placement Program
by Michael Fortino, Ph.D.

A January 23, 2020 report from the Office of the State Auditor reveals poor oversight by the Utah Department of Corrections (UDC) of its Inmate Placement Program (IPP), which places state prisoners in local jails rather than one of two state prisons. The audit found deficiencies that included a series of unethical “quid pro quo” exchanges and improper relationships between staff and prisoners.

The audit resulted in six major categorical findings, according to the state auditor. Those findings included allegations suggesting:
1. UDC failed to adequately learn from inappropriate activities that occurred at the Daggett County Jail.
2. UDC’s monitoring of contract jails is wholly inadequate.
3. IPP does not adequately track and resolve concerns identified at contract jails.
4. UDC operated without jail standards.
5. “UDC cannot adequately judge how effective IPP is at accomplishing its mission” and
6. “UDC Internal Audit Bureau does not prioritize IPP’s significant risk factors.”

State Auditor JohnDougall commented: UDC has not “adequately learned from [previous issues] and improved its oversight of IPP, and IPP did not adequately improve its monitoring of contracted facilities.”

The most troubling problems were discovered at the now-closed Daggett County Jail. According to The Salt Lake City Tribune, “Corrections did not detect problems such as guards torturing inmates until they were so apparent that the department removed all 80 inmates it housed there.”

Additional concerns were found across the board in several of Utah’s contracted jails, which house 20 percent of the state’s prisoners.

The most serious incidents were identified as having taken place at Daggett. The original investigative findings were presented to IPP’s director and also to IPP staff.

However, according to the Tribune, “even after discovering what went on at Daggett County, the [UDC] failed to employ monitoring methods that would increase the likelihood of detecting and preventing similar inappropriate activities at other county jails.” Then-Daggett County Sheriff JerryJorgensen, responsible for oversight at the time of the noted infractions, eventually pleaded guilty to related crimes, as did four of his deputies.

The audit said there existed an environment pervasive with inappropriate relationships between prisoners and staff, and cited a multitude of non-sanctioned exchanges for favors.

Allegations of such behavior at Daggett County Jail included prisoners working on personal projects for the benefit of jail employees, such as washing and repairing staff vehicles; undertaking woodworking and refinishing projects on staff personal furniture; installing a pickup truck liner for a staff member, and exchanging favors for access to a staff member’s personal cellphone.

More serious incidents of inappropriate behavior included a guard tasering five prisoners with other staff members present. The guard administrating the tasering was a superior on staff at the time of the incident. There existed evidence to support that a staff member stole a Taser belonging to another enforcement agency, and that a staff member actually gave a Taser to a prisoner to scare another employee at the facility. Staff members, it was reported, even tasered each other in the control rooms. Prisoners...
were pressured not to disclose the incidents.

Finally, the audit uncovered a multitude of staff violations that included employees sleeping on duty, missing mandatory counts, skipping security checks, watching television and playing video games while on duty, and bringing personal dogs to work, then feeding them with county-purchased dog food. The report confirmed that an employee’s dog bit a prisoner, and that there existed a myriad other near-criminal negligence.

At Beaver County Jail, a prisoner escaped in 2007 by scaling a pole in a recreation yard and gaining access to a roof. IPP recommended that razor wire be strategically placed in the area accessed by the prisoner, and that an officer be posted to provide direct observation of the yard while prisoners were present. Yet in July 2014 another prisoner scaled the same pole although he was, this time, impeded by the razor wire.

In November 2018, the report confirmed that another prisoner scaled this same pole and made his escape. Both escapees were recaptured on the same day of their escape attempts, but the incidents appear to indicate that IPP’s suggestions for improved security were either not implemented or not properly monitored.

In a lengthy response to the audit, Mike Haddon, executive director of UDC, detailed recommendations for addressing the problems with IPP and its contracted facilities. He claimed that changes were already underway even before the audit was conducted and that new standards for monitoring by IPP would be implemented.

The director of IPP, according to Haddon, had previously been slated for dismissal; his firing was not in response to the audit.

He concluded by affirming that the recommendations within the audit will result in better management, and adding, “It is the hope of this Department that the findings contained within the Audit do not create a perception that jails in Utah are not operating effectively and safely.”

Sources: KJAZZ.com, Sltrib.com, auditor.utah.gov, Office of The State Auditor

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On January 24, 2020, the United States Department of Justice (DOJ) filed a complaint in California federal court challenging the application to the federal government of a new state law — Assembly Bill 32 (A.B. 32) — which phases out all privately-operated prisons and jails inside state borders, including federal detention facilities.

Signed by Gov. Gavin Newsom in October 2019, A.B. 32 bars any entity with a prison, jail or detention facility in the state from signing or extending a contract for its operation with a private firm after January 1, 2020. It also prohibits the California Department of Correction and Rehabilitation (CDCR) from entering into any new contract to house prisoners outside of the state in privately operated detention facilities. However, the law allows exemptions necessary to comply with a court-ordered population cap.

According to the DOJ complaint, five of eight exceptions provided for in A.B. 32 apply only to California’s contracts and not to those entered into by the U.S. government. They cover facilities that:

• provide services to a juvenile pursuant to a state juvenile court order;
• provide mental health evaluation or treatment to a person under a state court commitment order;
• are state-licensed residential care facilities;
• are used for medical quarantine or isolation;
• are used to temporarily detain a person arrested by a merchant, private security guard or other person pursuant to state law.

The three exceptions that might apply to federal facilities, including approximately 1,100 of its 5,000 prisoners in California.

Next came the Bureau of Prisons (BOP), which houses 25,000 of its 175,000 prisoners in private prisons, including 2,200 of 16,000 prisoners held in California, and also privately contracts for operation of 10 Residential Reentry Centers that house, supervise and provide reentry programming to about 900 prisoners.

Finally, there is Immigration and Customs Enforcement (ICE), which does not construct or operate its own facilities, due to significant fluctuations in the number of detainees it houses. However, the agency said it housed an average population of 50,000 detainees in fiscal year 2019.

As for USMS prisoners, the federal government argued that relocating them to neighboring states posed a hardship because those facilities would become overcrowded and defense consultations and court appearances would require frequent transportation to and from California.

As for the BOP, the U.S. maintained that the application of A.B. 32 would severely diminish its ability to provide reentry services and community placement that the agency is required to expand under the First Step Act.

The federal authorities alleged that applying A.B. 32 would severely hamper ICE operations because it contracts for 5,000 bunks in four private detention facilities in California, and it has contracted with Florida-based GEO Group to house an additional 2,150 detainees in the state starting in August 2020.

A lawsuit filed on December 27, 2019, by GEO Group to stop the state from applying the new law claims it will affect 10 privately managed immigrant detention facilities with 10,925 beds — from which detainees will need to be relocated at the cost of “significant taxpayer dollars,” the DOJ suit adds, citing changes the law requires in transportation of prisoners that would overwhelm the current transportation system, create security risks, and isolate prisoners or detainees from their families. GEO says A.B. 32 would cost it $4 billion in lost revenue.

“As a service provider to the government, our only mission is to deliver top-rated services to those entrusted to our care as they go through immigration proceedings,” a GEO Group spokesperson insisted, adding that the company takes no role in passing immigration laws nor does it take a position on immigration policy.

DOJ’s suit alleges that the law is “a direct assault on the supremacy of federal law” and adds that “A.B. 32 has both the purpose and effect of hampering the Federal Government’s ability to house individuals in its custody.”

DOJ’s argument rests on the “Supremacy Clause” in Article V of the U.S. Constitution, which maintains that federal laws “shall be the supreme Law of the Land.” Congress has provided that federal prisoners may be placed in “any available penal or correctional facility”. . . without regard to what entity operates the prison.

18 U.S.C § 4013(c). USMS is authorized to contract for “support from private detention entities.” Likewise, the Department of Homeland Security is authorized to house ICE detainees in facilities it leases or builds.

“We’ve all seen the horrific humanitarian crisis playing out along our border,” said Assemblyman Rob Bonita of Oakland, who authored A.B. 32. “No human being deserves to be held in the well-documented cruel conditions in these for-profit, private facilities. For that reason, A.B. 32 was expanded to cover civil detention facilities as well as prisons.”

DOJ also claims the state law is a violation of intergovernmental immunity because of exemptions that apply only to California. It has requested declaratory and injunctive relief. See: United States v. Newsom, USDC (S.D. Cal.), Case No. 3:20-cv-00154-MMA-AHG.

On the same day the California suit was filed, DOJ also sued New Jersey and King County, Washington – which includes Seattle – for allegedly making it harder for ICE to arrest and deport people.

The suit in New Jersey challenges a directive from the state’s attorney general – New Jersey Attorney General Law Enforcement Directive 2018–6 – which bars state law enforcement agencies from

Justice Department and GEO Group Challenge California’s Ban on Private Prison and Detention Facilities

by Matt Clarke
ne of the three legal challenges mark the most robust pushback yet from federal authorities against so-called “sanctuary city” laws designed to protect immigrants from arrest and detention by ICE.

Donald Mann, president of Negative Population Growth, a controversial conservative nonprofit that promotes the idea that the U.S. is already overpopulated, said that “letting such an insane policy exist in hundreds of jurisdictions throughout our nation—and potentially spread to more—will only lead to America’s population increasing to unsustainable levels.” NPG believes a sustainable U.S. population is about half current levels, and the organization advocates for strict limits on immigration to help achieve that result.


David Reutter contributed reporting to this story.

### Nevada Court Rules Prison Officials Withheld Evidence from Prisoner

**by David M. Reutter**

A Nevada federal district court found on February 7, 2020 that prison officials were liable for failing to provide evidence to a prisoner during disciplinary proceedings. The Court’s grant of summary judgment to Nevada prisoner John Melnik ordered a trial to determine damages.

After the defendants conceded this point. The court found there were no issues of fact in dispute, which opened the door for it to resolve the question as a matter of law. Having found Melnik’s due process right was denied, the court found, qualified immunity did not apply because that right was clearly established at the time of the events at issue. It granted summary judgment to Melnik and ordered a trial to determine the amount of damages due for the violation of his rights. See: Melnik v. Dzurenda, 2020 U.S. Dist. LEXIS 21998.

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U.S. District Court Says Rhode Island Department of Corrections Violated “Morris Rules”

by Douglas Ankney

On January 28, 2020, the U.S. District Court for Rhode Island found the state’s Department of Corrections (DOC) in violation of a 38-year-old consent order limiting stays in solitary confinement to 30 days for a single offense with a unilateral decision to change the limit to 31 days that was made in 2005.

Judge John J. McConnell, Jr. also found the DOC had violated another provision of the consent decree by hearing appeals of solitary confinement decisions with a one-man panel instead of the three-member panel required under the terms of that 1972 order, known as the “Morris Rules” after the Morris v. Travisono case from which it stemmed.

The state chapter of the American Civil Liberties Union (ACLU) filed the motion to challenge the DOC’s amended rules on behalf of prisoner Richard Lee Paiva. The 47-year-old, who is serving a life sentence for the 2009 stabbing death of his mother, Rita, had been held in disciplinary segregation for 60 days following an offense in 2014.

“We think that long terms in isolation are bad for everyone,” said Lynette J. Labinger, who teamed with Sonja L. Deyoe to argue Paiva’s case.

They presented Judge McConnell with an internal memorandum dated January 3, 2020, from a state prison deputy warden, Jeffrey Aceto, sentencing a prisoner to 573 days in solitary.

“From my perspective and the ACLU’s perspective, if there’s one person in protracted segregation, it’s one too many,” Labinger said.

DOC spokesman J.R. Ventura defended the prison system’s changes, calling the Morris Rules “obsolete and outdated. But Judge McConnell said DOC is not free to change them without first consulting his court. The judge refused to find DOC in contempt of the court, though, despite the fact that this is not the first time the prison system has attempted to unilaterally change the Morris Rules. After a 1973 riot, DOC also was slapped by a federal judge for suspending them.

In addition to a 30-day cap on solitary confinement and the right to appeal it to a three-member panel, the Morris Rules also require DOC guards to provide a prisoner with a written charge that is then also investigated by a superior officer. Deyoe credited Paiva for his persistence in pursuing the case, saying that the prisoner was “concerned with people being held in segregation more than anything.”

“He’s been there,” Deyoe said, “and he has really grave concerns about how this affects people.”

In a June 2020 report titled “Solitary Confinement Is Never the Answer,” the nonprofit Unlock the Box presented research conducted by Solitary Watch, another nonprofit, to argue that prisons across the country have responded to the COVID-19 pandemic with “an explosion in the use of solitary confinement.”

At the time of the report’s publication, about 300,000 American prisoners were being held in segregation, an increase of 500 percent since the pandemic began in March 2020.

Research published in March 2020 by Cornell University professor Christopher Wildeman, co-authored by Lars Andersen, a fellow researcher for Rockwool Foundation Research Unit in Denmark, found that even a short stay in solitary confinement “substantially increases the risk of committing more crimes after getting released from prison, and may decrease the probability of employment.”

Though the depressive effect on employment chances was not strong, the increase in recidivism adds 15% to a risk that is already 50% to 60% – a finding Wildeman called “pretty massive.” See: Paiva v. R.I. Department of Corrections, 2020 U.S. Dist. LEXIS 13777.

Injunction Orders Protection for Prisoner Witnesses in California Disability Lawsuit

by David M. Reutter

A California federal district court granted a temporary restraining order that requires the defendants to take steps to end the retaliation against two class members housed at the R.J. Donovan Correctional Facility (RJD) near San Diego.

The court’s July 2, 2020, order found that the plaintiffs had shown a likelihood of success on the merits in their claim that the defendants and their employees had violated the court’s March 17, 2020, order and the Americans with Disabilities Act by retaliating against the two class members (witnesses). The March order specifically ordered the defendants not to take retaliatory action against any of the prisoner witnesses in the suit.

In its July order, the court found that the plaintiffs had demonstrated they were “likely to show at Defendants and their employees have retaliated against the Witnesses for participating in this lawsuit and for supporting the Motion to Stop Defendants from Assaulting, Abusing, and Retaliating Against Incarcerated People with Disabilities” at RJD and statewide.

The plaintiffs were likely to prove that the defendants had “been unable or unwilling to address the safety concerns of the Witnesses in their current housing placements at RJD,” wrote the court. “In light of the death of a previous witness who submitted a declaration in support of the RJD Motion who was housed in the same unit as the Witnesses are currently, as well as the June 17, 2020, assault on one of the two Witnesses and incidents of retaliation described” by other prisoners, the court found the Witnesses’ lives would “remain in danger and their future participation as Witnesses will be jeopardized.”

To protect them, the court ordered the defendants to develop a plan to transfer the Witnesses to another prison or place them in community placement. The transfers could not be to “administrative segregation or punitive housing” or “a higher security level than their current housing,” and had to
Lockdowns Follow “Coordinated” Gang Fights at Oklahoma Prisons

by David M. Reutter

After what officials are calling coordinated fights, six Oklahoma prisons were placed on lockdown status for over a week. One prisoner died and 36 prisoners and several staff were injured in the melees.

The lockdowns began on September 15, 2019, after fights between gangs at prisons in Hominy, Sayre, Fort Supply, Lawton, and Stringtown occurred within 24 hours of altercations at Northeast Oklahoma Correctional Center in Vinita.

“It has to be a coordinated effort,” said Bobby Cleveland, director of the Oklahoma Corrections Professionals. “They even had fights at the minimum-security prison.” He noted that prisoners use contraband cellphones to coordinate illegal efforts.

Following the lockdowns, guards conducted shakedowns of the prisons and confiscated homemade weapons. “A lot of shanks . . . broken broom handles, broken faucets, faucet heads that have a cord attached to them,” said Matt Elliott, spokesman for the Oklahoma Department of Corrections (OCDC). “The types of weapons inmates typically use and fight with.”

Prisoner Chad Burns, 27, was killed in a fight at the Dick Conner Correctional Center in Hominy. He was serving a 15-year sentence for 2016 convictions on charges of weapons, assault and battery, robbery, and burglary. Of the 36 injured prisoners, 12 were hospitalized with “non-life threatening injuries.” No prison staff were hospitalized.

Prison officials began lifting the lockdowns on September 24, 2019. The process was graduated with controlled movement in the initial stages before normal operations were resumed.

Sources: nydailynews.com, Associated Press, usnews.com, KFOR.com

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**Texas Execs Sentenced for Providing Bad Food to BOP**

*by Ed Lyon*

Nearly every resident of a prison will quickly tell anyone who asks that what passes for food there leaves a lot to be desired. It is a good bet that the moniker "mystery meat" originated in a prison chow hall somewhere.

In the early 2000s, the Texas Legislature actually passed a general session law requiring the state prison system to purchase the "best quality" foods available. Presumably there is a similar federal statute applicable to the federal Bureau of Prisons (BOP), the only prison system in the United States that is larger than the Texas Department of Criminal Justice (TDCJ).

According to a March 2, 2020, report by BOP’s Office of the Inspector General (OIG), the BOP does not have any quality assurance plan to ensure the foods offered to its prisoners meet industry or legal standards.

To illustrate just how serious the feds have seemingly become concerning the safety of the foods it serves prisoners, a plethora of criminal prosecutions against vendors of substandard food products began in 2014.

In February 2020, two executives of West Texas Provisions, Inc., in Amarillo, Texas, were sentenced to 46- and 42-month terms in the BOP. The two had conspired to sell over “775,000 pounds of uninspected, adulterated meat — including whole cow hearts labeled as ‘ground beef’ — to 32 federal prisons in 18 states,” govexec.com reports.

TDCJ regularly serves “beef” under the moniker of “Italian Beef.” One prisoner characterized his sole attempt to eat “Italian Beef” as akin to trying to chew on one of those “old Wham–O brand Superballs.”

Apparently the TDCJ does not have any kind of quality assurance plan to ensure the foods offered to its prisoners meet industry or legal standards. TDCJ currently consists of 110 prison units housing 142,000 prisoners, with two of its units scheduled to be shuttered during summer 2020.

What is more surprising is in the most carceral, litigious country on the planet, the federal BOP does not have a quality assurance plan for incoming foods. Historical data for 2019 shows BOP prepared 479,000 daily meals. With its current population of 180,000 prisoners, that equates to 540,000 meals daily. There is a risk of food-related illnesses from contaminated meats, adulterated spices or bad supplies.

In the TDCJ system, all food supplies are delivered to a central location, then distributed to its 110 units. BOP’s 122 units are more autonomous, receiving food supplies directly from approved vendors.

One of the many shortcomings the OIG pointed out in its report was the absence of a reporting system whereby one unit could communicate problems with a vendor to the rest of the units in the BOP.

In response, BOP announced its thanks to the OIG for pointing out these problems and stated it is reviewing the report. [1]

Sources: [govexec.com](http://www.govexec.com), [reuters.com](http://www.reuters.com), [Texas Standard News](http://www.texasstandardnews.com), personal interviews

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**California Scrambled to Staff Wildfire Crews After Firefighting Prisoners Locked Down Due to COVID-19**

*by Dale Chappell*

With nearly one in four of the state’s frontline firefighters being state prisoners during peak wildfire season, California has been scrambling to find enough qualified firefighters to staff its fire crews for the upcoming season. This is because the state has locked down its prisoners, including all firefighting prisoners, amid the coronavirus pandemic that has ravaged its prisons.

As of early July 2020, 12 of California’s 43 prison fire camps were on lockdown due to the massive COVID-19 outbreak, including the training facility in Northern California in Lassen County. This means that only 30 of the 77 prisoner-staffed wildfire crews were available to battle these devastating blazes.

For decades, prisoner wildland firefighters have fought on the front lines as “hand crews,” using chainsaws and hand tools to cut fire lines around properties. It’s a critically important and dangerous job. Each crew has 17 prisoners trained in firefighting, led by a Cal Fire captain. There are about 2,200 prisoners certified as firefighters to work alongside Cal Fire’s 6,500 year-round employees, which swells to 9,000 during peak fire season.

But on June 23, 2020, the California Department of Corrections and Rehabilitation (“CDCR”) locked down all its prisons, keeping the firefighting prisoners from training for the upcoming wildfire season. While only one prisoner tested positive for COVID-19, that was enough, even though that test was confirmed to be a “false positive” just three days later, according to Aaron Francis, a CDRC spokesman.

Beyond the COVID-19 issue, the number of prisoner-firefighters has been dwindling over the last few years. Only those prisoners with less serious felony offenses are allowed to be firefighters, and the state had been diverting them to county jails or outright release. Now with COVID-19 increasing the release of around 10,000 low-level prisoners since March, there aren’t many qualified prisoners to staff the wildland fire crews. “This is a result of natural attrition, expedited releases, and sentencing reform changes that took place prior to the COVID-19 pandemic,” Francis wrote in an email.

Mike Hampton, a retired correctional officer who has worked at the fire camps and served as the camp employees’ union president, said that “You can’t replace them with high-risk inmates.” He was talking about using other prisoners to fill the boots of the low-level firefighting prisoners. “That defeats the purpose of the program,” he said. “The whole purpose of the program is to fight fires and save the state money.”

And, indeed, the prisoners save the state a lot of money. A specially trained firefighting prisoner earns just $2.00 to $5.00 per day, plus only $1.00 an hour while fighting a fire. David Teeter, chairman of the...
Lassen County Board of Supervisors, cited the bigger picture. “I think it’s one of the best programs CDCR’s got going in some ways,” he said. “One of my ambitions and beliefs is you make people better — not by giving them things, but by giving them purpose.”

Meanwhile, Cal Fire has been trying to come up with ways to staff its wildfire crews without the firefighting prisoners this year. They have expanded the use of seasonal firefighters, created new crews, and worked with multiple agencies to obtain more aircraft and bulldozers. Cal Fire firefighters also have been approved to work on the teams that prisoners used to man, according to Amy Head, a Cal Fire battalion chief. The National Guard is also being sought for manpower to replace the prisoners on those crews.

Colorado Parole Board Cannot Confine Parolee Beyond Statutory Max

by Anthony W. Accurso

On January 13, 2020, the Supreme Court of the State of Colorado granted the habeas corpus petition of a parolee who had been re-confined for the remainder of his prison term after the Court found the applicable parole statute limited his confinement to 90 days.

In February 2018, Jimmie Graham’s parole officer alleged he violated three conditions of his parole: changing his residence without permission, failing to report to the parole office, and committing a new felony — escape. The escape case was quickly dismissed, and Graham pleaded not guilty to the two remaining violations.

The Parole Board found him guilty, and, noting that he had been revoked from parole eight times previously, sentenced him to confinement for the remainder of his prison term. They cited § 17-2-103(11)(b), C.R.S., which allows for various tiers of re-confinement for parole violations, and § 17-2-103 (11)(f)(II), which makes tampering ‘with a parolee’s GPS monitoring device punishable as a violation under § 11(b).

Graham filed a habeas petition with his district court (which was denied), and then appealed to the Colorado Supreme Court. The Court found that paragraph (b) contained multiple subsections at the time he was on parole. Sections I, II, and VI allowed for re-confinement for the remainder of the parolee’s sentence under various circumstances of violation, including commission of a new crime.

However, §§ III and III.5 only allowed revocation for 30 and 90 days, respectively, if the parolee met certain criteria. Because it was undisputed by the State that Graham met the criteria outlined in III.5, the Court found the Parole Board exceeded its statutory authorization by re-confining him for the rest of his prison term. Citing Thiret v. Kautzy, 792 P.2d 801 (Colo. 1990); the Court reiterated that the DOC and the Parole Board lacked the “discretion to override the legislative determination mandating parole.”

In its opinion, the Court restated language from Stilley v. Tinsley, 385 P.2d 677 (Colo. 1963) by saying, “While a parole violator’s record may be unsavory and his conduct not such as to appeal favorably to the conscience of the court, he is nevertheless entitled to be dealt with in conformity with constitutional and statutory guarantees.”

Accordingly, the Supreme Court of the State of Colorado held that the Parole Board had acted outside its statutory authority when sentencing Jimmie Graham to more than 90 days re-confinement for his violation. The Court ordered the district court to grant his writ, make the writ permanent, and to order the DOC to immediately release Graham on parole. See: Graham v. Ex. Director of Colorado DOC, 455 P. 3d 776, (2020 CO 1).

Sources: sacbee.com, zerohedge.com


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Coronavirus Will Not Be Controlled in Country Until It Is Controlled in Prisons and Jails

by Michael D. Cohen, M.D.

There is growing concern that communities that host jails and prisons will never be able to control the coronavirus unless the epidemic in correctional institutions is well controlled.

If staff continue to get infected and introduce the virus back into the community, there will still be outbreaks that can spread widely if not well controlled. Such concerns should lead first to fewer arrests, bookings and jailings for minor crimes, as well as to greater efforts to identify cases and control the spread in jails and prisons.

An editorial in the July American Journal of Public Health summed up the reasons that prisons are high-risk institutions (i.e. overcrowding and unsanitary living conditions) and a potential source of re-infection for local communities and beyond.

And an important report from Illinois was discussed in an opinion article in The New York Times on July 6. It examined the impact of people booked into Cook County jail on the spread of coronavirus in Chicago and on Illinois as a whole. That jail was the site of one of the larger outbreaks of COVID-19 in the country. As reported, “The cycle of arrests, jailings and releases was the most significant predictor of the spread of coronavirus in Chicago and the rest of Illinois. Roughly one-sixth of all cases in the city and state were linked to people who were jailed and released from this single jail, according to data through April 19.”

Diagnostic Tests

On July 7, 2020 the Federal Centers for Disease Control and Prevention (CDC) issued new guidance for coronavirus testing in correctional facilities. In the older April guidance, CDC recommended only testing people with symptoms of COVID-19. When diagnostic tests were not readily available, the CDC found it reasonable to limit testing in the community and institutions to only the patients with greatest need, such as hospitalized patients, people with symptoms, healthcare workers and people living or working in nursing homes.

With more widespread availability of diagnostic tests, it is now practical to test asymptomatic people, too. The new CDC guidance discusses testing people exposed to an infected person more often during their quarantine. The new guidance also provides information about testing asymptomatic people who have no known exposure to a case. This would apply in communities with ongoing transmission of COVID-19. The guidance also discusses testing all current residents in a facility and all new admissions before housing them in the general population. These are major changes. Screening all new admissions with a diagnostic test is a much better approach to preventing the virus from entering a facility. Staff need to be screened with diagnostic tests, too.

Widespread testing of symptomatic and asymptomatic people is necessary to control the coronavirus pandemic. Testing is necessary for control, but not sufficient. It must be coupled with isolation of cases, and identification, testing, and quarantine of close contacts for 14 days.

Testing is the cornerstone of control and prevention. Request tests. Accept tests when offered or recommended.

You can know what test you are getting by what specimen is collected.

• A Q-tip up the nose or spit in a cup are used to diagnose COVID-19 by looking for coronavirus in nasal and oral fluids.

• Blood drawn from a vein is used to determine if the person was previously infected with coronavirus by looking for antibodies produced by the body in response when the person was infected.

• A sensor held in front of the forehead only measures the body temperature to see if the person has fever. That is not a test for coronavirus.

Testing is still constrained by shortages of the chemicals the labs need to run the tests. “Batch testing” is a new approach that responds to these chemical shortages. The idea is to mix the specimens together for five or more patients. Instead of running five separate tests, they run one mixed test. If the mixed test is negative, all five were negative and only one test was done instead of five. If the mixed test is positive then all five patients’ tests must be run separately to determine who among them were positive. This strategy to increase testing without increasing the number of tests will only work when most of the mixed tests are negative. This will only occur when the virus is not widespread in the community.

Infection

There was discussion in the news in July about whether the coronavirus is spread “airborne” like the measles virus. Previous discussions focused on infectious droplets of mucus and viruses expelled by sneezing, coughing, yelling or singing. These eventually settle out of the air onto surfaces. “Airborne” refers to single virus particles or very, very small droplets that do not settle out of the air onto surfaces. In that case, an infected person speaking in a normal tone of voice in a poorly ventilated room would emit a cloud of infectious particles.

When that occurs, people who are closer together and spend more time face-to-face are at substantially increased risk of infection. Stay far apart. Spend as little time as possible in closed indoor spaces. Wear cloth or surgical masks when other people are nearby to prevent putting infectious droplets into the air.
Introduction to the Immune System

The immune system helps the body prevent or overcome infections. I want to provide a brief description of the immune system so readers can better understand news stories about it as it is discussed in so many current news stories.

The immune system has three interconnected parts: organs, cells and special proteins that cause inflammation. The immune system organs, like the spleen in the abdomen and lymph nodes scattered all over the body, are lined with immune cells that engulf and remove germs or cells that have antibodies or complement attached to them.

The immune system cells include many different types of white blood cells that circulate in the blood and also live in the tissues like the gut, liver and lungs. They do many different things. Some cells eat bacteria (neutrophils, for example). Some cells make antibodies (B-lymphocytes or B-cells). Some cells attach specific viruses (activated T-lymphocytes or T-cells).

The special proteins that are part of the immune system work with the other parts to destroy germs. Antibodies are proteins that attach to specific germs and make them more vulnerable to destruction by immune cells in the immune organs. Complement proteins attach to germs and also make them more vulnerable to destruction. Proteins that cause inflammation are released by cells in the tissues where the germs are causing injury. Inflammation brings immune system resources to the area where the infection is located. This can involve swelling, increased blood flow, and gathering of white blood cells at the site of infection. But too much inflammation can also be harmful.

The body learns to make antibodies against a specific germ when it is exposed to the germ. It takes some time for the B-cells to “learn” to make antibodies to a new virus. But once there are cells that can make antibodies to a virus, for example, a group of those cells is kept in reserve to activate and make more antibodies quickly if the virus comes back again. This is called “immune memory.” After an infection is over and the specific antibodies to that virus are no longer found in the blood, the immune memory is there to quickly increase production if the virus returns.

Following exposure to a new virus, the body also learns to activate T-cells against that particular virus. Some of those T-cells are also kept in reserve to react and multiply if the virus comes back again.

Candidate Coronavirus Vaccines and the Immune System

Vaccines try to mimic infection to stimulate the immune system to make a specific response to a particular germ. Vaccines use whole viruses or parts of viruses to stimulate specific antibody and T-cell responses to a particular virus. A successful vaccine is safe and produces an immune response that prevents infection by that virus.

For some viruses, the T-cells activated against that virus are the most effective part of the immune response. We don’t know yet if that is true for the coronavirus. We probably need a vaccine that will help the body make specific antibodies and T-cells activated against the coronavirus. A candidate vaccine produced by the team at Oxford University in the UK has been found to make both specific antibodies and activated T-cells against the coronavirus.

When a virus infects through the nose and lungs, like the coronavirus, it would be good to have some resistance right there on the tissues lining the nose and lungs. Some of the antibodies the body makes are spread onto surface tissues in the nose, sinuses, lungs, gut, bladder and elsewhere (called secretory IgA). Vaccines sprayed up the nose are particularly good for making that type of antibody. There is a seasonal flu vaccine that is sprayed up the nose and works very well. It may turn out that an oral or nasal vaccine for coronavirus will be easier to administer to masses of people and highly effective at stopping infection. Some drug companies are attempting to produce a nasal coronavirus vaccine.

Some candidate vaccines have been shown to be safe and to make an immune response in patients. But not every immune response is capable of preventing infection. No candidate vaccine has yet been shown to prevent coronavirus infection and COVID-19 disease.

Seasonal flu vaccine

There is another epidemic viral disease that we already have a vaccine for: influenza or “the flu.” Public health and medical professional societies recommend the flu vaccine for all children and adults, including all residents and staff in correctional facilities.

The flu virus changes all the time, and there are new types of flu every year. Immunity to old types does not protect you from the new ones. Public Health monitors types around the world to identify new ones that are emerging. The seasonal flu vaccine is redesigned every year to try to
provide immunity for the new types that are expected to be in circulation during the next flu season.

Public health and professional medical organizations recommend that everyone get the current seasonal flu vaccine every year. Flu outbreaks can easily occur in residential institutions such as prisons and jails. For this reason, prisoners and staff are at higher risk for exposure to flu and will benefit more from getting the flu vaccine. Similar to COVID-19, people with various chronic illnesses or disabilities are at greater risk for severe cases of flu. They benefit the most from the seasonal flu vaccine that protects them from severe illness and death. Michael Cohen was the Medical Director for the New York state juvenile justice system for 20 years and previously provided medical care for incarcerated adults at the New York City Rikers Island jail and at Greene CF in Coxsackie, N.Y. For 10 years, he participated in a support group for people with diabetes at Great Meadow CF in Comstock, N.Y. With the group, he co-authored the Prisoner Diabetes Handbook published by Southern Poverty Law Center and distributed by Prison Legal News. Heal the sick. Raise the fallen. Free the prisoners.

Prisoner Law Consultant in Michigan
Pleads Guilty to Defrauding BOP

by David M. Reutter

A guilty plea to conspiracy and wire fraud charges was entered in a Michigan federal district court on December 4, 2019, by Tony Tuan Pham, also known as Anh Nguyen, in his role of coaching prospective and current federal prisoners on how to qualify for the Residential Drug Abuse Program, a 500-hour residential substance abuse program, and receive a shortened sentence.

Pham, 50, a “Managing Partner” at Michigan-based RDAP Law Consultants, and those he supervised contacted federal criminal defendants and prisoners through unsolicited emails and telephone calls to assist them, for a fee, to qualify for the RDAP. Despite knowing many of the clients did not abuse drugs or alcohol and were ineligible for the program, Pham coached them on how to feign or exaggerate a drug or alcohol disorder to gain entry to the program, which allows prisoners to qualify for up to 12 months early release.

The scheme earned RDAP Law Consultants $2,628,137 in client fees from September 2102 through January 2019. When the scheme began, Pham was living in a residential reentry center.

Pham was originally supposed to be sentenced in March 2020, but that was suspended until at least August.

Source: justice.gov

Interview: Jessica Sandoval of Unlock the Box on Solitary Confinement

by Ken Silverstein

Unlock the Box supports education and advocacy efforts on the national, state, and local levels to advance the goal of ending solitary confinement in the United States. The group defines solitary confinement for adults as “confinement for more than 20 hours per day, alone or with a cellmate, without meaningful human contact.” Jessica Sandoval, the group’s national campaign strategist, has 25 years of experience reforming the youth and adult justice systems. She develops and administers strategies and tools to support state campaigns aligned with the mission of the “stop solitary” movement. This interview has been lightly edited for length and clarity.

How widespread is the use of solitary in U.S. prisons? Is it used strictly to punish violent offenders or more casually? If the latter, what other reasons are prisoners put in solitary?

From self-reported Department of Corrections data compiled by Yale’s Arthur Lima Center for Public Interest Law we know that solitary is widespread and the estimates are conservative: 60,000-80,000 prisoners are held. This number only includes the 43 states that reported. Florida and a dozen other states didn’t participate, and this number doesn’t include youth facilities, or jails. So, we believe the number to be much closer to 80,000-100,000-plus. Solitary isn’t exclusively reserved for punishing violence in prisons, it’s used as a safety and management tool. People are routinely sent to solitary for disobeying an order. A 2018 report by the Vera Institute of Justice said most individuals in solitary confinement are there for low-level, nonviolent offenses, such as disobeying a correction officer or rule violations, like having too many stamps or envelopes in their cell.

Does solitary constitute torture? How long can prisoners be put in for? Are there limits?

The UN’s Nelson Mandela Rules states that anything over 15 days in isolation is torture. This practice allows for long stays, because there aren’t usually clear review processes for being able to return to the general population. Long stays in isolation can have devastating effects on incarcerated individuals’ mental and physical health. In Oregon, people who were incarcerated typically spent between 60 and 150 days (approximately two to five months) in the Intensive Management Unit—a form of administrative segregation—before their first review, according to the Vera Institute report.

Is there much oversight of the use of solitary or ability for the public and advocates to obtain information about its use?

Unfortunately, because of the opaque nature of corrections, it has been difficult to collect data from these systems that aren’t self-reported. Corrections uses very
technocratic language that is used to obscure the number of people in solitary and length of stay. Terms like key-lock, special management units, room confinement, administrative and disciplinary segregation are just some of the euphemisms used to describe conditions that amount to solitary confinement. We are troubled by the lack of data coming from corrections. Right now, nobody is getting information.

Your new report says COVID-19 has led to “an explosion in the use of solitary confinement in U.S. prisons, jails, and detention centers.” Why? And how big of an increase?

We have seen a 500% increase in the use of solitary since the arrival of COVID-19. BOP has had two lock-downs in just a couple of months after not having one for 25 years prior. Corrections has been using solitary as a response to the pandemic. It is counter to what the medical experts and public health community have cited as best practices. In fact, using solitary as the primary means to containing the virus puts these populations and the staff that interact with them at greater risk of contracting it. Medical experts have advocated for the decarceration of people and medical isolation as some of the best ways to manage the virus. Medical isolation provides medical care to those who are infected, in isolation, but with all of their personal items, tablets, books, access to outdoors, commissary, phone calls, mail; it looks like general population, not solitary confinement. We are concerned these lines are blurred between what is a punitive practice like solitary confinement and what is medical isolation. It’s imperative that corrections staff get this right. This isn’t a public health strategy, it’s torture.

Is there any evidence that the use of solitary is preventing the spread of COVID-19?

According to the medical community, the answer is no. In fact, it’s likely exacerbating it. People who do become infected are likely to not inform health care staff they’re feeling sick out of fear that the punishment of solitary will be worse than the illness itself. The reluctance to report symptoms provides time for the virus to spread before it’s identified by medical staff.

How are prisoners responding to the increased use of solitary?

I have received emails recently from family members reporting how terrible things are right now for people. The lockdowns are brutal and for many are 24/7. People are scared and asking for help. Contraband phones are being used to communicate to anyone on the outside that will listen, even though they know that they will be sent to solitary if caught.

$5,400 Payout by Montana DOC Over Ex-Prisoner’s Claim of Religious, Gender Discrimination

by David M. Reutter

The Montana Department of Corrections (MDOC) agreed to pay $5,400 to resolve a former prisoner’s claim that alleged religious discrimination and failed equal opportunities for women.

The November 7, 2019 Conciliation Agreement provided complaints brought by prisoner May Simmons, who was held at the Montana Women’s Prison (MWP). Simmons filed a complaint with the Montana Department of Labor and Industry, Human Rights Bureau on August 20, 2018.

The complaint contained three claims: failure to provide Simmons with a Jehovah’s Witness denomination were to be “permitted to use the chapel for the exercise of their religion to the same extent and pursuant to the same rules as all other religious denominations within the prison.” Under the agreement, MWP Warden Jennie Jensen and MWP Community Relations Manager Annamarie Siegfried-Derrick were required to participate in at least two hours of training in the “Montana Human Rights Act and the Governmental Code of Fair Practices (GCFP) with an emphasis on religion and analysis of the GCFP.”

The Conciliation Agreement provided for Simmons to receive $1,000 and her attorney, Eric Holm, received $4,400 in attorney fees. It also required MDOC to provide Simmons, who suffers from carpal tunnel syndrome, with a typewriter and two ribbons for use in her cell until her release (which occurred on December 15, 2019). Additionally, prisoners of the Jehovah's Witness denomination were to be “permitted to use the chapel for the exercise of their religion to the same extent and pursuant to the same rules as all other religious denominations within the prison.”

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Prison Legal News 33 August 2020
Seventh Circuit: Transfer of Indiana Prisoner Based on Substance of Grievances Not Retaliatory

by David M. Reutter

That motivation, however, was not the determinative of the causation factor to determine if a constitutional violation occurred. “[A] transfer initiated to punish a prisoner for engaging in protected activity would satisfy the causation element of retaliation, but a transfer initiated as a rationale, justifiable response to the substance of the prisoner’s complaint would not,” wrote the Seventh Circuit.

It found the transfer was not motivated by the fact that Holleman engaged in protected activity, but that it was done based on the substance of his complaints. This alone was enough to doom the claim. The court said it owed deference to prison officials on how to resolve a prisoner’s grievance.

Captain at Jail Where Epstein Died Offered New Position of Authority; Warden Remains on Desk Duty

by Kevin Bliss

In March 2020, the Bureau of Prisons (BOP) announced it would transfer guard Jermaine Darden to Federal Correctional Institution (FCI) Fort Dix, where he will serve as the emergency preparedness officer for the low-security federal prison in Burlington County, New Jersey.

Darden, 48, was a jail captain at the BOP’s Metropolitan Correctional Center (MCC) in New York City when billionaire Jeffrey Epstein reportedly committed suicide in his cell on August 10, 2019, after a high-profile arrest for sex trafficking involving underage girls.

Kerri Kulec, a spokesperson for the U.S. Department of Justice (DOJ), said MCC guards Tova Noel and Michael Thomas — who worked under Darden — were placed on administrative leave following Epstein’s suicide, during which they were allegedly asleep on the job and later falsified records to cover up the fact.

Three days after Epstein’s death, U.S. Attorney General William Barr announced that the BOP would transfer MCC Warden Lamine N’Diaye to a leadership position at FCI Fort Dix. But in January 2020, citing “serious questions that must be answered,” Barr stopped the transfer while the FBI and DOJ’s inspector general continued to investigate Epstein’s suicide.

In a November 2019 interview, Barr admitted that the investigation revealed a series of mistakes that had made Epstein’s suicide possible, calling it “a perfect storm of screw ups.” He said he was appalled at the “failure to adequately secure this prisoner” and cited several “irregularities at this facility.”

But in an interview immediately after Epstein’s death, Serene Gregg, president of the MCC worker’s union, said she had been voicing concerns to BOP over short-staffing just days earlier. “You have people working who are extremely exhausted and others who are not trained to do the work,” Gregg said. “They have been playing a dangerous game for a long time. And it’s not just at MCC, it’s going on across the country.”

N’Diaye remained assigned to a desk job at BOP’s Northeast Regional Office in Philadelphia. Barr initially transferred Warden Jame Petrucci from FCI Otisville in New York to replace N’Diaye at MCC.
prison in Danbury, Connecticut, M. Licon-Vitale, replaced Petrucci as acting warden.

Immediately following Epstein’s suicide, Barr also transferred BOP Director Hugh Hurwitz to serve as assistant director of Reentry Services for the prison system. Appointed as his temporary replacement was Kathleen Hawk Sawyer, BOP’s first female director, who had previously served in the role from 1992 until her 2003 retirement.

In February 2020, Barr appointed a new permanent director of BOP, Michael Carvajal, a 30-year veteran of the prison system who had been assistant director of its Correctional Programs division. He takes over management of BOP’s 122 prisons, with nearly 37,000 employees and 170,000 prisoners.

Epstein, 66, was arrested on July 6, 2019 for allegations of sexual trafficking with a number of women, some as young as 14 at the time of the incident. Senator Ben Sasse, Republican chairman of the Senate Judiciary Oversight Committee, called for voiding Epstein’s plea deal in a 2008 federal sex-trafficking case in Florida. That had resulted in just 13 months’ incarceration at the Palm Beach County Jail, with daily furloughs on which Epstein was driven to work by a sheriff’s deputy who then sat waiting outside the billionaire’s office, leaving him unsupervised inside every day.

“This crooked deal cannot stand,” Sasse said, adding that it should be voided to “ensure that some measure of justice is finally delivered to Epstein’s victims who have been let down time and again by their government.”

Epstein had been placed on suicide watch at MCC but was later taken off. An investigation revealed that on the night he was successfully able to take his own life, the two guards on duty falsified documents to show that they performed regular 30-minute checks when in fact they were sleeping during their shift and shopping online. Epstein had been dead two hours before guards finally found him.

On July 2, 2020, federal authorities arrested British heiress and socialite Ghislaine Maxwell, the former girlfriend of Epstein who is accused of helping him recruit underage girls and lying about it under oath in court. The 58-year-old is being held by the UK government, pensioners from Maxwell’s companies ended up receiving only 50 cents of every dollar due.

Maxwell is the youngest child of Robert Maxwell, a Czech immigrant to the UK who built a tabloid empire on which he floated a lavish lifestyle until he was found floating dead in the ocean near his yacht in 1991. His business collapsed in 1992 upon the revelation that he had defrauded the company’s pension fund. Even after intervention by the UK government, pensioners from Maxwell’s companies ended up receiving only 50 cents of every dollar due.

Sources: usatoday.com, nydailynews.com, wfmj.com, wpbf.com, washingtontimes.com, Reuters, govexec.com

$110,000 Settlement Reached in Ohio Prisoner’s Excessive Force Suit

by David M. Reutter

A n Ohio prisoner received a $110,518.94 settlement in a civil rights action that alleged guards used excessive force on him. The settlement, finalized on February 13, 2020, further provided for reversal of misconduct reports related to the incident.

While at Southern Correctional Facility on January 21, 2018, prisoner Richard Barrow was attacked by another prisoner in his cell when his cell was opened for lunch time. He was subsequently placed in handcuffs behind his back and escorted out the cell block. As that was being done, a guard yelled, “Put him in the hucklebuck,” a term meaning to assault someone.

Guards Toby Bolton, Tony Barrett, Evan Smith and Adam Smith began to assault Barrow, causing a gash in his lip. He was dragged to the medical unit with his head slamming on door jams, Barrow alleged.

Once at medical, he was kicked and stomped until a nurse arrived, resulting in a broken rib and cuts to his eye and lip.

After exhausting his administrative remedies, Barrow on June 20, 2018, filed a civil rights complaint in federal court. Represented by the law firm of Friedman and Gilbert, the matter resulted in a preliminary settlement on September 26, 2019. The $110,518.94 settlement was inclusive of attorney fees. The agreement also provided for reversal of the guilty findings by the Rule Infraction Board for misconduct tickets Barrow received for the incident.

The guards were indemnified by the Ohio Department of Rehabilitation and Correction, which said it would pay the settlement because the defendants “did not act manifestly outside the scope of their employment, did not act in bad faith, and did not act in wanton or reckless disregard to Plaintiff, Richard Barrow.”


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According to a secret report by the Investigation & Intelligence Division of the Alabama Department of Corrections (DOC), guards beat and hog-tied a prisoner who was seeking medical attention for what turned out to be fatal injuries he received when he was beaten by another prisoner. The guards delayed taking the prisoner to a prison medical facility and told a nurse he was on drugs. She refused to treat him, further delaying his medical care.

DOC prisoners found Billy Smith on November 13, 2017, dazed and injured on a bathroom floor at the Elmore Correctional Facility after another prisoner, Bryan Blount, allegedly punched him in the head and knocked him out. An “ambulance unit” of prisoners took the bloodied Smith to the shift commander’s office. He was placed on a gurney and parked in a grassy area outside the office where it was cold and raining. Then he was ignored.

According to the report, which was revealed on February 18, 2020 by BuzzFeed News and Injustice Watch, Lt. Kenny Waver threatened to spray Smith with a chemical agent because he refused to sit down when he first arrived. Smith continued to complain that he was cold and his head hurt, but the guards thought he was intoxicated and continued to ignore him. Waver and Sgt. Jonathan Richardson had ordered Smith to stay out of the office because they did not want him to track blood inside, but he came in anyway. That is when a guard and other prisoners reportedly witnessed guard Jeremy Singleton hit him hard in the face, head and ribs multiple times and sweep his feet from under him, causing him to fall on his side.

Some prisoners said other guards hit Smith as well. At some point, Singleton punched him in the face again and hog-tied him with the help of other guards, cutting his hands behind his back, shackling his feet, and connecting the cuffs and shackles.

Smith was strapped to the gurney, rolled out of sight of cameras, and left at least another hour while his calls for help went unheeded. He also started vomiting, a potential sign of brain trauma.

Eventually, Waver ordered Singleton and guard Ell White to transport Smith to a medical facility at nearby Staton Correctional Facility.

At Staton, Smith began to lose consciousness and White poured a cooler of ice and water over him and hit him on the head to wake him up. Nurse Tara Parker found Smith bloody, rolling and thrashing on the floor. The guards told her Smith was “wiggling out on drugs,” so she refused to treat him due to his erratic behavior. Later, nurses found water in Smith’s lungs.

Singleton and White took Smith back to Elmore using a wheelchair to roll him to a van about an hour after they had arrived at Staton. Prisoners who removed Smith from the van discovered him wedged between two benches with his shirt over his head, his pants around his ankles, his boxers down to his thighs and a trash bag full of ice between his chest and one of the benches.

Smith was shaking uncontrollably and making a strange snoring noise as he was rolled back to the shift office. Waver ordered him returned to Staton.

According to Parker, Smith arrived at Staton with several marks that he did not previously have. She evaluated his condition and administered a medication to treat drug overdoses, which had no effect. Later, Smith was transported to a hospital where he underwent emergency brain surgery for a fractured skull and swollen brain that was shifted to the right. He died 26 days later, on December 9, 2017, without regaining consciousness.

The internal investigation began while Smith was alive. Investigators saw “several cuts on the top of his head, abrasions and bruising on both legs, hips, shoulders,” but no “defensive marks or bruising on his arms nor did he have cuts to his knuckles and hand that would indicate hitting any object with his fists.”

Prison staff who were asked about how Smith was injured “responded with apparent defensiveness, deception, and a lack of cooperation” according to report. The time card of Assistant Warden Gwendolyn Bar- bers, whom prisoners saw leaving the shift office during the incident, was altered to show he had left the prison before it happened. Video recording contradicted what guards said had happened. The original shift log disappeared and a substituted copy was missing notes on the incident and the required supervisor’s signature.

An autopsy concluded that Smith died of blunt-force trauma. An Alabama Department of Forensic Sciences medical examiner concluded that Blount caused the fatal injuries.

In July 2019, a grand jury returned indictments for manslaughter against both Blount and Singleton, who had been promoted to sergeant after the incident. Then Singleton resigned.

Smith’s estate filed a federal civil rights lawsuit against DOC employees. At a minimum, DOC staff seem to have tortured a dying prisoner while delaying and denying his medical treatment—possibly causing the fatal outcome. Instead of disciplining the primary staff culprit, they promoted him.

Sadly, this is hardly the only instance of fatal prisoner abuse in the DOC. Steven Davis died in October 2019, after he was beaten by guards at the DOC’s Donaldson Correctional Facility in Bessemer. One of the guards who beat him no longer works for the DOC. The case is being presented to a grand jury.

On December 5, 2019, Michael Smith died after he was beaten by DOC guards, but few details are available. One of the guards resigned in January 2020. Another “remains on mandatory leave while the ADOC pursues appropriate corrective action,” according to the Department.

Clearly, the DOC has a problem with staff violence in its prisons. As the bodies pile higher, one must wonder what the DOC intends to do about the problem. That is, anything other than forging time cards and shift logs and lying to investigators.

Sources: montgomeryadvertiser.com, buzzfeednews.com, Injustice Watch
Introducing the latest in the Citebook Series from Prison Legal News Publishing

The Habeas Citebook: Prosecutorial Misconduct

By Alissa Hull
Edited by Richard Resch

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

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

—Brandon Sample, Esq., Federal criminal defense lawyer, author, and criminal justice reform activist

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Commitment to New Jersey’s “Special Treatment Unit” a Potential Death Sentence

by Kevin W. Bliss

Sex offenders who had completed their criminal sentences in the state of New Jersey were being civilly committed to a facility that had a higher death rate due to COVID-19 than any prison in the United States as of early June.

The Sexually Violent Predator Act of 1999 allowed courts in New Jersey to commit sex offenders who “are likely to engage in repeat acts of predatory sexual offenses” to the Special Treatment Unit (STU) in Avenal, New Jersey. The state’s attorney general petitioned the court just prior to a sex offender’s release from prison and he or she is remanded to the facility for “treatment” until deemed mentally fit for release. Some remain there the rest of their lives.

“We call it the ‘Pine Box Release Program,’” former resident Russell (who requested his last name not be used) told The Appeal and Type Investigations, “because the only way you were leaving it was in a box, dead.”

STU houses 441 “residents” and is located on the grounds of the East Jersey State Prison, run by the Department of Corrections. Involuntarily institutionalized because psychiatric experts have determined they are a threat to themselves or others, residents go through comprehensive treatment programs focusing on cognitive behavioral therapy. Those committed there said they are treated like prisoners.

Experts believe this system lacks scientific basis for positive results. They said it is counterproductive, unjust and violates civil liberties.

“Contemporary civil commitment measures grew out of interwoven panics concerning ‘stranger danger,’ satanic ritual abuse, and violent crime,” said historian and author Paul Renfro. But, he said it does little to address sexual violence, and that recidivism for those crimes are lower than most others.

The U.S. Supreme Court ruled the practice legal, and it is now used in 20 states, as well as the federal government. There are about 5,400 people being held in such institutions nationwide. “Once you’re there, nobody wants to take a chance and release someone who’s been civilly committed,” stated Russell.

Several of these institutions have civil lawsuits filed against them, claiming conditions are punitive and that the participants are not provided meaningful mental health care for the opportunity for release. Some people sent to STU committed crimes more than 30 years ago.

With the coronavirus pandemic, conditions at STU were even worse. The facility had recorded eight deaths due to COVID-19 with two more whose cause has not yet been determined. There had been 55 confirmed cases as of June, marking the death rate at around 14.5 percent, higher than any prison in the United States. The death count at the facility at the time exceeded every prison combined in California.

People entering STU were already of a higher age group than those in jails or prisons because of the time they had subsequently served due to their convictions. When the virus first broke out, residents were prohibited from wearing masks, and hand sanitizer was considered contraband due to the alcohol content. Conditions made commitment there potentially fatal.

Group treatment had been postponed indefinitely and all furloughs canceled, so that even the pretense of improving one’s condition for possible release had been extinguished. Public defender Mike Mangels said people at SRU were afraid for their lives. “They have to watch as some of the people they have known for 10 years or more, in some cases, are carted out, never to be seen again,” he said.

Sources: theappeal.org, typeinvestigations.org

New Study Documents Startling Spread of COVID-19 in American Prisons and Jails

by Sharon Dolovich and Brendan Saloner

Most Americans across states with spiking infection rates are choosing to recommit to social distancing to keep themselves safe. But one group of Americans does not have the luxury to make that choice: people in prison.

In the United States, the incarcerated typically live in overcrowded facilities, with poor ventilation and insufficient access to masks and soap. They are disproportionately likely to have medical conditions that put them at high risk if they get the virus. And every day, staff and trustees move through the prison, spreading the risk of infection to every housing unit.

Since the start of the pandemic, prisoners’ advocates, along with incarcerated people and their families and communities, have been warning that, once COVID-19 gets into a prison, it is likely to spread quickly.

Now we have the data that proves them right. In a study published on July 8 in the Journal of the American Medical Association, our research team analyzed data collected by the UCLA Law Covid-19 Behind Bars Data Project from every state’s Department of Corrections and the federal Bureau of Prisons. We found that between March 31 and June 6, coronavirus case rates grew by an average of 8.3% per day. By comparison, the overall U.S. rate grew by 3.4% during that period. As of June 8, there were 5.5 times more cases per capita of coronavirus in prisons than in the general U.S. population.

The findings on fatalities are just as disturbing. Deaths of prisoners attributable to coronavirus were 34% higher than those of the U.S. population, despite the fact that people over age 65—who account for 81% of the coronavirus deaths in the U.S.—make up a much smaller share of the prison population. We estimate that, if prisons had the same age and sex distribution as the country, mortality in prisons would be three times higher than the overall U.S. rate.

If anything, our findings underestimate the true scale of the spread and impact of the virus inside prisons, for one simple reason: Many prisons have conducted few, if any, tests. National testing data also is not comprehensive. But there are now numerous prisons where mass testing has taken place. The U.S. Supreme Court ruled the practice legal, and it is now used in 20 states, as well as the federal government. There are about 5,400 people being held in such institutions nationwide. “Once you’re there, nobody wants to take a chance and release someone who’s been civilly committed,” stated Russell.

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Sources: theappeal.org, typeinvestigations.org
UCLAW Project started small. But as data emerged as key to advocacy efforts, it grew exponentially. It now tracks a wide range of metrics, including testing, infection rates and COVID deaths in every prison system in the country, as well as those jails that report this data; viral spread and impact in youth facilities and immigration detention; and COVID-driven releases from jails and prisons.

On this last measure, as of July 23 our data shows that at least 34,756 had been released from U.S. prisons as a response to the coronavirus, as well as 62,256 from jail. Tracking releases has proved challenging, since corrections agencies do not publicize this information. These numbers are therefore almost certainly undercounts.

In addition to these more quantitative measures, the UCLAW Project also maintains an ever-expanding database of legal filings and court orders related to COVID in jails and prisons, along with a compilation of grassroots organizing campaigns, official responses of all kinds to demands for releases, fundraisers and additional resources developed by others.

The goals of the Project, directed by Sharon Dolovich, are twofold. First, the aim is to learn as much as possible about what is actually happening on the ground, both for public education purposes and for use in advocacy. Every day, a wide range of users—journalists, academics, advocates, activists, government officials, oversight officials, and family members of incarcerated loved ones—consult the data the UCLAW team are tracking.

Second, and as a longer-term matter, the aim is to create a comprehensive trove of materials relating to the intersection of the coronavirus and incarceration. The events of this pandemic will be the object of study for decades to come, by historians, policy analysts, public health specialists, journalists and others. This Project seeks to preserve all available resources that will be relevant to creating the fullest possible picture of what happened during the pandemic to the more than 2 million people in U.S. prisons, jails, and detention centers. There should be no hiding from the catastrophe created when 21st century American incarceration met COVID-19.

About the authors: Sharon Dolovich is a professor at UCLA School of Law and director of the UCLA Law Covid-19 Behind Bars Data Project. Brendan Saloner is an associate professor at Johns Hopkins Bloomberg School of Public Health.

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Families Accuse Arkansas Prison of Poor Communication on COVID-19 Prisoners  
by Kevin Bliss

Arkansas’ Cummins Unit prison facility had 11 confirmed deaths due to coronavirus as of June 9, 2020. Families were concerned over a lack of communication and delayed notification from the Arkansas Department of Corrections (ADOC), often not knowing their loved ones lives were in danger until it was too late.

As of June 14, Cummins had 963 positive cases of coronavirus out of the 1,900 prisoners housed there, with 65 positive staff cases. Prisoners Derick Coley, Morris Davis and Jim Wilson all contracted the virus and died suddenly and with little contact from the prison.

For-profit provider Wellpath is in charge of health care at the prison. According to NPR affiliate KUAR, at the time of Coley’s death “it appears that the most trained medical staff in the building that night were licensed practical nurses.”

The Northwest Arkansas Democrat Gazette reports that Coley was serving a 20-year sentence for a “terroristic act in relation to a shooting.” His girlfriend, Cece Tate, stated that Coley, 29, had stayed in contact with her and their daughter using a contraband cell phone.

Tate tested positive in April and all calls ceased. Tate and Coley’s sister, Tytiuna Harris, made several calls to the prison only to be rebuffed. Harris said she was not told of Coley’s medical condition. Tate was told after repeated calls for updates on his condition that Coley was feeling better, persuading her not to call back. On May 3 at 1:37 a.m. Tate received a call from the chaplain saying Coley had died. The coroner’s report said Coley died after a “medical incident” occurring during transfer from his barracks.

Morris Davis, 70, was serving 10 years for manslaughter. His brother, Montey Davis, said he didn’t know Davis was sick until a hospital representative called, asking if medical staff could “unplug” him from the ventilator. “It’s just a mystery to me how all that happened, and why they didn’t call me as soon as he was checked in,” stated Montey of his brother, who died May 8.

Jim Wilson, 60, was serving a life sentence for rape. His sister, Martha Binion, said she was unaware anything was wrong until she received a call from one of his cell mates, saying that Wilson had been hospitalized for COVID-19 a week previously. That same day, she received a call from the ADOC to say that her brother had been in intensive care for two days. “I said, ‘Why did y’all not call me when he first went to the hospital?’ I don’t understand,” commented Binion.

Wilson had underlying medical conditions. He suffered from diabetes, high blood pressure and needed a new kidney. Binion was not notified until four hours after his May 26 death.

ADOC spokeswoman Cindy Murphy said any prisoners’ loved ones can receive updates on their medical conditions by contacting the medical administrator’s office at the prison — but only if the prisoner has signed an authorization for that individual. Automatic notification is made to the prisoner’s emergency contacts as soon as he or she is hospitalized. She said that contact information is often outdated. She refused to comment on conversations between prisons and any specific prisoners or their loved ones.

Sources: arkansasonline.com, NPR

Coronavirus Shuts Down Ramen Soup Plant; Prisoners in Michigan Limited on Purchase Amounts  
by Dale Chappell

In any Michigan prison right now, trading a package of ramen soup for just about anything else might be a deal nobody will make. That’s because the COVID-19 pandemic caused by the novel coronavirus shut down a plant that produces the beloved prison staple in early June 2020, making the supply much less than the demand.

In a memo from the state Department of Corrections (DOC), Michigan prisoners were told that “until the supplier has made a full recovery in production, there may be times when specific ramen products are out of stock.”

DOC spokesman Chris Gautz confirmed on June 14, 2020, that the ramen noodle plant was indeed shut down and that prisoners were now limited to purchasing only half the amount of ramen soup they could before — 15 packages every two weeks, instead of the usual 30.

In early April 2020, reports surfaced that American sales of ramen had spiked 578 percent at the beginning of widespread lockdowns to combat COVID-19. No shortages have been reported other than the one plaguing DOC. In May 2020 a ramen factory in suburban Richmond, Virginia, reported seven positive tests for the disease among its 420 workers, but Maruchan Virginia Inc., a subsidiary of Toyo Suisan Kaisha Ltd. of Tokyo, said the Virginia factory remained open and running.

Prisoners rely on ramen soup to supplement the food that they get from the dining hall. From January to May 2020, Michigan prisoners bought 2.5 million packages, Gautz said, and ramen products were five of the top 10 items purchased in prison commissaries, which are operated under contract with Missouri-based Keefe Group.

Ramen soup is often the key ingredient...
in dishes made by prisoners. They might add packaged meats, such as turkey or beef “logs,” some cheese, and maybe some vegetables if they can get them. Many prisons are getting rid of microwaves as unnecessary luxuries, but if one is available, all the better for cooking ramen meals, said Leon El-Alamin. He served several years in a state prison on drug and weapons charges before moving on after his release to establish the MADE (Money, Attitude, Direction, and Education) Institute, a Flint-based organization that helps former prisoners and at-risk youths.

Prisoners also use ramen soup as currency in prison, according to a University of Arizona study. But no one had to do a study to find that out. Just ask a prisoner. El-Alamin said ramen soup is “probably the No. 1 product people use to sustain themselves” in prison. He called it “maybe the ideal food” for prison.

“You can do so much with a ramen noodle,” he said.

El-Alamin confirmed that ramen soup is used like money in prison, but Gautz denied he was aware of that fact. However, he noted that certain varieties are more popular than others.

“Spicier varieties that they use when they make their own meals in their housing unit” are preferred, Gautz said.

PLN has previously reported on the popularity of ramen soup in prison, noting that the packages are sometimes called “tasty little death traps” because of their lack of nutritional value. But they’re cheap and filling, which is what counts for many prisoners. [See PLN, Aug. 2018, p. 1.]

The COVID-19 pandemic not only impacted the supply of ramen soups in the Michigan prison system, but it also required DOC to recruit the National Guard to help test every prisoner for the virus. As of July 14, 2020, all of the system’s nearly 38,000 prisoners had been tested, with about 3,800 of those results coming back positive for COVID-19. While employee testing at DOC is not mandatory, 385 staff were also positive. The disease had claimed the lives of three staff members and 68 prisoners.

In a June 2020 news release, DOC said it “was incredibly proactive and acted swiftly and effectively in minimizing the spread of COVID-19,” meeting or exceeding guidelines from the federal Centers for Disease Control (CDC) with “unprecedented cleaning and hygiene measures.”

Some DOC prisoners and employees disagree, complaining that classes and programs that did not allow for practicing social distancing should have been stopped sooner. El-Alamin and other prisoner advocates encourage Gov. Gretchen Whitmer to use her clemency powers to release medically vulnerable prisoners who pose the lowest risk to the public.

Sources: freep.com, foxbusiness.com, medium.com

Sixth Circuit: Courts Must Construe Pro Se Notice of Appeal as Motion for Extension of Time to Appeal

by Dale Chappell

While filing a notice of appeal on time is a mandatory, jurisdictional requirement that may not be waived or ignored, there is a provision that allows a motion for an extension of time to file the notice. The U.S. Court of Appeals for the Sixth Circuit held on February 19, 2020, that a pro se notice of appeal must be liberally construed by the district courts as a motion for an extension of time when the circumstances require it.

Brandon Young filed a prison-condition lawsuit in the district court when he was on “dry cell protocol” and was later moved to a psychiatric unit. During those moments, he was unaware that the district court had dismissed his lawsuit, triggering the 30 days he had in order to file his notice of appeal. When he later became aware, he filed his notice of appeal but it was eight days late. Attached to his notice, however, he provided proof for why he was late.

Determining on its own whether it had jurisdiction to hear Young’s appeal, the Sixth Circuit noted that Federal Rule of Appellate Procedure 4(a)(5) (“FRAP”) allows for a motion to extend the time for filing a notice of appeal for “excusable neglect or good cause,” which is filed in the district court. In prior cases, the Court had held that a “simple notice of appeal alone does not suffice if it doesn’t allege excusable neglect or good cause under the rule.

However, Young’s notice of appeal “effectively reads as a motion for an extension of time to file an appeal,” the Court said. While Young didn’t invoke the exact language of the rule, the Court held that “district courts must liberally construe a document that could reasonably be interpreted as a motion for an extension of time to file a notice of appeal [under FRAP 4(a) (5)] or a motion to reopen the time to file an appeal [under FRAP 4(a)(6)].”

Accordingly, the Court remanded to the district court to consider Young’s motion under FRAP 4(a)(5), holding his appeal in abeyance pending the outcome. See: Young v. Kenney, 949 F. 3d 995, (6th Cir. 2020).

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August 2020
Kansas Prison Dental Instructor Sentenced to 32 Months for Molesting Female Prisoner

by Matt Clarke

A man who taught female Kansas state prisoners how to make dentures was convicted on March 6, 2020 of molesting a prisoner, sentenced to 32 months in prison and required to register as a sex offender for 25 years.

Thomas Co, 73, was the supervisor of the dental lab program at the Topeka Correctional Facility, the state’s only women’s prison. He taught the prisoners to make dentures that were used for other prisoners and for people receiving dentures through the state’s social services programs.

Co arrived at Topeka in 2013 and complaints about sexual harassment of the women in the dental lab program began almost immediately. The complaints escalated to unwanted kissing and touching and eventually escalated sufficiently to justify criminal charges after an internal investigation determined that Co should be fired. He was terminated in 2018.

Co’s trial involved allegations of molestation by six women, but he was found guilty on only one charge. Shawnee County District Judge Cheryl Rios allowed Co to post a $50,000 appeal bond after the trial.

Sherman Smith, managing editor for The Topeka Capital-Journal, broke the story about Co in 2019. His investigation turned up at least a dozen women who said Co had molested them. Most of the women were afraid to make a formal complaint, fearing that they would not be believed because of their criminal histories and that they might face retaliation.

Indeed, some of the women who complained were removed from the program, one of the few that paid Kansas prisoners, and transferred to another prison. The women who filed formal complaints told Smith that investigators would say things like, “You know, this is a great opportunity for you,” referring to the program and implying that complaining would lead to their removal from it. They were under a great deal of pressure not to complain about Co. Further, investigators told Co about the complaints and he told the women, “I know that you told on me, and I can take everything away from you.”

Co is the first prison employee charged with sexual misconduct to receive a prison sentence. All of the other cases ended with plea bargains where the defendant pleaded guilty to a misdemeanor and avoided jail time.

Sources: hayspost.com, kmuw.org, Associated Press

Michigan Prisoner’s Malicious Prosecution Claim Survives Summary Judgment

by David M. Reutter

On February 28, 2020, the Sixth Circuit Court of Appeals held that the parties’ conflicting self-serving statements precluded the grant of summary judgement for defendants in a lawsuit alleging malicious prosecution.

Before the court was the appeal of Michigan prisoner Chris Davis, who is housed at Ionia Correctional Facility. His 42 U.S.C. § 1983 action was screened and several claims were dismissed, but Davis was allowed to proceed on his First Amendment claim of retaliation for filing a grievance and state and federal malicious prosecution claims against guard James Gallagher. The court subsequently granted Gallagher’s motion for summary judgment, and Davis appealed.

As Davis “was leaving breakfast one morning, Gallagher called him ‘Bubba’ and asked where he was going.” When Davis did not respond, Gallagher called Davis “boy” and demanded an answer to his question. Davis told Gallagher that “Bubba” and “boy” are racist terms and that he may file a grievance over his perceived racism. Gallagher responded that Davis better acknowledge him when called “or I will put your ass in the hole, boy.”

Gallagher did not dispute that interaction, but he disputed Davis’ version of events at lunch. As he was leaving the lunchroom, Gallagher asked Davis, “Hey Bubba, what’s that in your hand?” Davis responded, “season salt” and reiterated that “Bubba” was
Visceral Sin: A Grace-Centered Approach to Addressing Deeply Embedded Sin | Available on Amazon

by Zach Sewell, author of Prisoners in the Bible

- Challenges readers to look below the surface-level
- Each chapter's study guide includes questions specifically for people in prison
- Author presents a grace-oriented discussion on topic of masturbation

by Dale Chappell

I have to admit that the idea of a citebook in the age of searchable databases was a little lost on me. “Who needs a citebook these days,” I would say. But then Richard, managing editor at Criminal Legal News, asked me to take a look at a new citebook by Prison Legal News Publishing called The Habeas Citebook: Prosecutorial Misconduct (“THC”) and to give him my thoughts. So I did.

First, I want to say thanks to Richard — I’m keeping this book. You’re not getting it back. This book is a goldmine of information. This book proved me wrong about not needing a citebook these days.

If you have a prosecutorial misconduct claim or you think there’s even a possibility you might have a prosecutorial misconduct claim, you need this book. Sure, you could sit at a computer for hours searching for on-point cases to support your claim and trying to learn the perfect way to bring your claim to court.

Think of this book as the best “assistant” you could ever hire, one that’s an expert on prosecutorial misconduct. THC lets you invest your time into other important work, knowing that your “trusted assistant” has got this part covered.

And let’s face it, prosecutorial misconduct claims aren’t exactly easy to pursue. Even claims pointing out obvious and egregious errors by prosecutors are routinely denied by the courts. THC also includes these claims. Why? Because sometimes the best way to learn how to do it right is to learn from someone else’s mistakes the author of the book, Alissa Hull, says. She’s a managing attorney with Prisoner’s Legal Services of New York and a former staff attorney with the Human Rights Defense Center.

Of course, there are hundreds of successful cases in the book. Those are good to have as well. As I said, THC is a goldmine of information on the topic.

But it’s much more than just a collection of cases like most citebooks. Instead, Hull digs into every aspect of prosecutorial misconduct, so you can make an informed decision as to which prosecutorial misconduct claims likely represent the best chance for success. And she does it in a way that non-lawyers can understand and that lawyers will appreciate.

Providing a “play-by-play” of the contents is the best way to demonstrate how valuable THC is for anyone contemplating a prosecutorial misconduct claim. We’ll start right from the beginning, before it even gets into any cases: the Foreword.

Normally, I wouldn’t give much thought to a book’s Foreword, much less read one. But you’ve got to read this one. Susan Insolia Johnson, an investigating attorney in Vermont who specializes in getting innocent people out of prison, wrote the Foreword. In it, she doesn’t say how great THC is and why you should get a copy.

Instead, Johnson tells the moving story of a man, John Thompson, who spent 14 years of his life on death row because a prosecutor intentionally withheld exculpatory evidence in order to get a conviction. It’s moving not in a sad way but in a way that will make you want to get up and do something about prosecutorial misconduct. In fact, I have recommended Johnson’s Foreword to all my friends in the legal field. It’s good.

Johnson also points out that prosecutorial misconduct is the leading cause of wrongful convictions, and she provides ample evidence to back her claim. There are 106 footnotes in the Foreword alone, citing numerous sources to support her conclusions.

“There simply is no one holding prosecutors accountable,” she laments. Defense attorneys won’t say anything because they want to remain on the good side of prosecutors for future plea deals. Fellow prosecutors won’t say anything because they have to work with the offending prosecutors. Judges won’t say anything because, well, most judges were once prosecutors themselves.

So, who’s left to hold cheating prosecutors accountable? The defendants victimized by prosecutorial misconduct and the lawyers who bravely represent them.

That’s who this book is intended to help. It’s 16 chapters across 300 pages, containing over 1,700 cases dealing with prosecutorial misconduct claims. There’s also an Appendix with examples from actual prosecutorial misconduct claims filed in court, addresses for all the federal courts, a federal circuit division map, and a glossary of common legal terms.

Chapter 1: Introduction to Prosecutorial Misconduct

Attorney Hull begins her book with the basic question: “What is prosecutorial misconduct?” She answers this question in the first chapter, and importantly, she goes over what’s not prosecutorial misconduct.

“There are many ways a person can be wrongfully convicted,” she says. “Prosecutorial misconduct is just one.” THC will show you how to spot a viable prosecutorial misconduct claim.

She also provides an informative overview of the lineage of cases under the Brady umbrella where prosecutors withhold evidence from a person accused of a crime. The Supreme Court held in Brady v. Maryland, 373 U.S. 83 (1963), that a prosecutor may not withhold evidence that’s material to a person’s defense.

Chapter 2: Ways to Bring a Challenge

This chapter goes over every available avenue to bring a prosecutorial misconduct claim in court. It ranges from the common direct appeal to post-conviction relief in state and federal courts, including appeals of those if they are denied.

Interestingly, Hull also includes losing prosecutorial misconduct claims and explains that knowing these can help you to distinguish your claim from losing ones, showing the court why your claim is not like the one that lost. Distinguishing unsuccessful claims from yours is a smart lawyer tactic. Knowing why someone lost won’t only help you avoid the same mistakes, but it will also help you convince the court to grant you relief by avoiding the arguments that didn’t work for that other person.

Chapter 3: State Habeas Writ and Post-Conviction Relief Statutes

This chapter helpfully lists the post-conviction relief statutes and other rules and statutes relating to post-conviction relief for every state. It tells you the purpose of each statute such as the different statutes in Florida for post-conviction relief and...
Chapter 4: State Court Decisions

Here are over 1,000 cases across 110 pages providing case law explaining the procedural process for bringing habeas corpus and post-conviction actions in every state. This is also in addition to case law for each state on prosecutorial misconduct claims under direct appeal and post-conviction relief. This is the “meat and potatoes” of a traditional citebook, and THC delivers.

Chapter 5: An Overview of Federal Habeas

This chapter merits a close read because it’s so important. It’s a section adapted from the popular book by attorney Kent Russell, *California Habeas Handbook 2.0*, which has helped countless prisoners pursue post-conviction relief in California and federal courts. Russell gives a “cradle to grave” look at the life of a federal habeas corpus proceeding. He goes step-by-step through a habeas proceeding, from the filing of the petition and its exhibits and papers, to the government’s response, to the court’s decision, and then through an appeal, should one be needed.

The explanation is classic Kent Russell and easy to grasp. He also dives into the impact that the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) has on prisoners filing for habeas corpus relief in the federal courts.

This chapter is a must-read for anyone filing a habeas corpus petition in federal court.

Chapter 6: Misstating the Law to the Jury

This chapter goes over why it’s important to clearly explain how the prosecutor’s misconduct negatively affected the outcome of your case. Hull stresses that it’s not about how egregious the prosecutor’s misconduct was but how that misconduct impacted your case.

There is case law from every federal court on instances of prosecutorial misconduct involving juries, focusing on the prosecutor’s actions in front of the juries that may have changed the outcome of the case.

Chapters 7 and 8: Federal Habeas — *Brady* — Generally and Impeachment

These chapters are a more detailed look at *Brady* violations that were touched on in Chapter One’s overview of *Brady*. There is a plethora of Supreme Court cases applying *Brady* to prosecutorial misconduct cases, as well as case law from every federal court on the subject.

Chapter 8 specifically deals with the Supreme Court’s extension of *Brady* in *Giglio v. United States*, 405 U.S. 150 (1972), to evidence that was withheld by the prosecutor that could have impeached the prosecution’s witness. There’s also a collection of case law from virtually every federal court on the topic.

Chapters 9 and 10: Federal Habeas — Perjured Testimony and Inflammatory Remarks

What happens when the prosecutor allows its witness to lie on the stand — sometimes even telling him to lie — or when the prosecutor makes inflammatory remarks about you in front of the jury? These two chapters deal with that problem, providing case law from every federal circuit and the Supreme Court.

Chapter 11: Federal Habeas — Discretion in Jury Selection

This chapter is an explanation of *Batson v. Kentucky*, 476 U.S. 78 (1986), where the Supreme Court held that the prosecution striking jurors for racial reasons (e.g., to get an all-white jury) is unconstitutional. As with all the other topics in the book, there is an extensive collection of case law from the federal courts on the issue.

Chapter 12: Federal Habeas — Witness Threatened

Chapter 12 goes into how *Brady* applies to threats by a prosecutor to a defense witness, with cases from the courts on this interesting dilemma.

Chapter 13: Federal Habeas — Procedural Bars to Claims

Hull covers in this chapter the “complications” that filers face with prosecutorial misconduct claims, including procedural hurdles, with cases on how to deal with them to avoid being barred from raising your claim in court.

Chapters 14 and 15: Federal Habeas — Right to Not Testify and to Remain Silent

Prosecutors usually can’t comment on your decision to not testify as a sign of your guilt. This right is protected by the well-known Fifth Amendment privilege. Chapter 14 goes into the five-part test used to assess when such a claim on this topic might be successful.

Chapter 15 reviews the Supreme Court’s seminal case in *Miranda v. Arizona*, 384 U.S. 436 (1966), which held that the police must warn a person accused of a crime of their right to remain silent. The chapter explains how to determine whether the prosecutor mentioning your silence rises to actionable prosecutorial misconduct. It also goes over when a prosecutor is allowed to mention your silence, and it does not constitute prosecutorial misconduct.

Both chapters include cases from all the federal courts on these claims.

Chapter 16: Federal Habeas — Miscellaneous

Here, the book goes over many other evidentiary topics relating to prosecutorial misconduct, providing cases from all the federal circuits for further study on the issues.

Conclusion

The U.S. Department of Justice (“DOJ”) has a motto carved into the entrance to its headquarters: “The United States wins its point whenever justice is done one of its citizens in the courts.” Is “justice” really done when prosecutors cheat in order to win?

In an age of lies being spun and reframed as “mistruths” and “affirmative misstatements” by the very officials in charge of the DOJ, a book like *The Habeas Citebook: Prosecutorial Misconduct* is needed to help successfully expose misconduct by prosecutors.

This book review also appeared in *Criminal Legal News*, February 2020, p. 38. To order this book, see ad on page 37.
Bad Behavior: Key to Getting Promoted for Alabama Prison Officials

by Dale Chappell

It seems the best way to move up through the ranks within the Alabama Department of Corrections (ADOC) is to be a problem child. Personnel records reviewed by Injustice Watch show that prison guards who participate in and promote violence and abuse against prisoners get promoted despite numerous disciplinary infractions for abusing them.

The fatal beating of Billy Smith while a prisoner at the Elmore Correctional Facility in November 2017 sheds some light on ADOC’s condoning violence and abuse in Alabama’s prisons. Smith, 35, was hogtied and beaten allegedly by three guards, including Jeremy Singleton, while supervisory staff ignored Smith as he screamed for help. Hours later, he was unresponsive with snoring respirations — a sign of a major head injury. He died in December 2017 from a fractured skull, autopsy results showed.

Singleton was promoted to sergeant. He resigned in August 2019 after a grand jury returned a manslaughter indictment against him and Smith’s fellow prisoner, Bryan Blount. In the 21 months that lapsed after Smith’s death, ADOC conducted an internal investigation and delivered its findings to the Elmore County District Attorney’s office, which presented a case to the grand jury that indicted Singleton and Blount.

But who was in charge during this beating? Records show that Lt. Kenny Waver stood by as Smith suffered lethal injuries at the hands of his guards. He was in charge the night of the beating. Waver, a former textiles worker, was hired by ADOC in 1997, when it used a hitching post to punish prisoners. They would handcuff a prisoner to the post, forcing him to stand for an extended time.

After arriving at Elmore in 2007, Waver’s disciplinary record grew longer. He was suspended at least three times for abusing prisoners — “abusive or excessive physical force in dealing with inmates,” as one incident report described it. Nevertheless, ADOC then promoted Waver to lieutenant at Elmore. And he kept getting suspended for things such as falsifying reports and lying to supervisors. Yet, he remains in charge.

A wrongful death suit filed in November 2019 by Smith’s estate alleges “a state of lawlessness” at the prison, where guards and supervisors “were not disciplined or removed from the prison population in response to previous acts of violence.” The suit names Waver as a defendant, along with other ADOC officials. Waver denied responsibility for Smith’s death in a February 2020 response to the suit. The case has not yet gone to trial.

Another Elmore lieutenant, Gerald Tippins, had been suspended at least six times before transferring to the prison. In a 2008 incident, he failed to report the escape of a prisoner who went on to kill a man whose truck he stole. Records show that Tippins falsified the prison count to cover up the missing prisoner. He kept his job because ADOC concluded that his actions didn’t directly lead to the prisoner’s escape.

And then another prisoner escaped under Tippins’ watch in 2016, after he authorized the housing of prisoners in an area he was told was unsafe. He kept his job and was suspended just two days for not following orders.

As of May 2020, both Waver and Tippins still work at Elmore.

Trouble with leadership at Alabama’s prisons is nothing new. In 2014, a report by the Equal Justice Institute (EJI) showed a pattern of abuse by ADOC guards. When Lee Posey Daniels was warden at Elmore, he “paraded a severely injured man in front of other inmates and announced that the beating was intended as a warning.” This “management through force” is a longstanding practice and the root of the problems at Elmore, said Charlotte Morrison, a senior attorney at EJI. “The willingness to misreport and cover-up instances where the use of force is excessive,” she continued, “is a big part of why we have this culture of violence.”

When Daniels was transferred to Staton in 2015, Joseph Hedley was brought in to Elmore, and violence between prisoners more than doubled in 2017, according to an EJI report. Headley was since transferred to Staton Correctional Facility in 2019 to replace Daniels, who retired. Right after Headley’s arrival, Walter Green — one of the guards accused of beating Smith to death at Elmore, who had been transferred to Staton — was promoted to sergeant. Green’s disciplinary record lists at least 12 suspensions. He currently works under Headley at Staton.

The U.S. Department of Justice reported in 2019 on mismanagement at ADOC. It recommended that the state assess whether ADOC supervisors had the skills needed to run the prisons.

But prisoner abuse continued at Elmore. In early 2019, guard Ulysses Oliver beat two handcuffed prisoners with his baton numerous times on their hands, feet, and faces. He pleaded guilty to assault and is scheduled to be sentenced in August 2020. Lt. Willie Burks, who supervised Oliver during this beating, was indicted in September 2019 for allowing the assault to happen and for lying to a grand jury. Unsurprisingly, Oliver had a disciplinary record of suspensions for abuse and violence against prisoners.

In a statement to Injustice Watch about the abuse of prisoners by ADOC guards, Alabama Governor Kay Ivey (R) essentially gave a nonresponse, calling the situation “a multifaceted problem requiring a multifaceted, Alabama solution,” and citing “decades of neglect and an outdated model where inmates are warehoused instead of rehabilitated.”

Experts cite overcrowding — Elmore was designed to hold 600 prisoners but houses 1,200 — and understaffing as part of the problem. Steve J. Martin, a correctional consultant with over 50 years’ experience in prison systems who has overseen reforms at Rikers Island in New York City, called ADOC a “very poor system, in terms of both leadership and pay.”

“They simply do not put enough prison staff into their operations,” he said, “and they don’t have the quality of leadership for who they do put in there.”

ADOC’s promotion process favors experience — that is, they promote guards who’ve simply worked there longer — over other qualifications. In other words, ADOC promotes guards who have been trained in and have worked in a system that promotes abuse and violence against prisoners, under conditions that are unconstitutional.
One prisoner at Elmore, who spoke anonymously to avoid retaliation by ADOC guards, said nothing has changed in the years since Smith’s death. Prisoners still expect a beating by guards for even the appearance of disrespect to staff, “like what happened to Billy,” he said.

“If you’re an officer in here, and you don’t condone the corruption, the abuse, you’re going to be a loner in here,” he added.

“You’re going to be shamed by your fellow officers.”

Sources: injusticewatch.org, montgomeryadvertiser.com, al.com, docketbird.com

San Quentin Had Zero COVID-19 Cases Until California Officials Sent Infected Prisoners, Triggered Wildfire

by Douglas Ankney

According to a June 30, 2020, report from The New York Times, until recently San Quentin had zero cases of COVID-19. However, officials from the California Department of Corrections and Rehabilitation (CDCR) transferred infected prisoners to San Quentin from the California Institution for Men (CIM) in Chino. As of July 16, 2020, over 2,050 of 3,700 prisoners at San Quentin had tested positive for the coronavirus and 12 had died, according to data from the Centers for Disease Control and Prevention.

CDCR officials would argue that they didn’t deliberately transfer infected prisoners to San Quentin. But of the 121 prisoners transferred from CIM, not a single one had been tested within the three weeks before the transfer. Indeed, the reason the prisoners were transferred was to halt the spread of coronavirus at CIM, where nearly 700 prisoners were infected and nine had died. When they arrived at San Quentin, their temperatures were checked, but again, none were tested. For days, the new arrivals used the same showers and ate in the same dining hall as other San Quentin prisoners.

At a hearing before the state Senate, Ralph Diaz, secretary of the CDCR, said, “We care about the inmates, we care about the staff. Could we have done better in many instances? Of course we can.”

According to CDCR spokeswoman Dana Simas, agency officials were confident they could halt the spread of the virus, considering that the prison system had managed outbreaks of influenza, norovirus, measles and mumps.

But Brie Williams, a physician and professor of medicine at the University of California–San Francisco and director of the university’s Criminal Justice & Health Program, said, “The difference with this infection is that with all of those other conditions we were able to essentially, eventually throw money at them in the way of fancy medications.” According to Dr. Williams, without a coronavirus vaccine, prisons are outmatched.

Dr. Matt Willis, the top official at the county health department where San Quentin is located, said he was told by state prison leaders “very clearly that this is not part of our jurisdiction.” He said the corrections system has a “lot of control over every aspect of their processes” and has not been transparent about their handling of the virus. “It may work in certain settings, but when you have a complex disaster that’s moving quickly, I think we’re finding that the process is just not matching our needs.”

When it comes to the spread of viruses and other contagions, a correctional facility is the proverbial “disaster waiting to happen.” Built with poor ventilation systems, they house hundreds, oftentimes thousands, of people in small, cramped spaces. Occupants usually sleep within inches of one another. All of the prisoners share limited telephones, showers, toilets, and dining tables. Most of these places prohibit cleaners that have bleach or alcohol. Substandard medical care predominates.

But San Quentin has additional crippling factors. It was built in 1852 and is at 117 percent of its capacity. Paint peels from the walls and puddles form after a rain due to leaking roofs. At least half of the prisoners housed there suffer from health conditions that increase their vulnerability to the virus.

The transfer from CIM to San Quentin has been denounced as a public health failure by health officials, a federal judge, and state lawmakers. But the denouncement needs to go to the core of the penal system itself. Instead of vengeance, degradation and humiliation of the prisoner being the primary goals, perhaps “justice” should be more concerned with treating poverty, racial inequality, mental illness, and yes, viruses.
Due to Steps Taken by New Mexico Officials, Only Sex Offenders Present When Prison Overwhelmed by COVID-19

by Matt Clarke

New Mexico’s Otero County Prison Facility is unusual in that half of it is used by the federal government and half by the New Mexico Department of Corrections (DOC). Both sides are run by private prison operator Management & Training Corporation, or MTC. The state side has the only Sex Offender Treatment Program in the DOC, which means almost all the 539 prisoners are convicted sex offenders. There is a 44-bed dormitory physically separated from the rest of the facility utilized to house non-sex-offenders.

The federal side holds prisoners for the U.S. Marshals Service and the Department of Homeland Security—mostly on drug charges. Next door is the Otero County Processing Center, which holds detainees for Immigration and Customs Enforcement.

In early March 2020, prisoners and staff began testing positive for COVID-19 on the federal side of the prison. Nonetheless, the DOC continued to pack more sex offenders into its most crowded prison, shipping them to Otero from the 10 other state prison systems. At the same time, the DOC quietly removed all 39 non-sex-offenders from Otero. The practice of shipping in more sex offenders did not cease until the first state prisoner tested positive in late March. By then, they had packed over 500 sex offenders into the prison’s tiny dormitories, where prisoners slept no more than 3 feet apart.

The expected happened. By June 24, 2020, 434 (81%) state prisoners, all sex offenders, had been infected by the coronavirus. Three had died and another eight had been hospitalized. At the same time, 275 (58%) of federal prisoners had contracted the virus. So many Otero prisoners had become infected that, on June 21, 2020, they were made up 30% of the state’s total new infections. As of June 26, 2020, 855 people at the DOC prisons had a coronavirus infection, in each case just one.

New Mexico Governor Michelle Lujan Grisham issued an executive order on April 6, 2020, to allow for early release of prisoners from the DOC because of the danger of COVID-19. As of the end of June, 71 around 6,200 DOC prisoners had been released pursuant to Grisham’s order.

To date, none of the Otero prisoners have been released under the executive order.

Why? The order has several conditions. The prisoner must be within 30 days of the end of the sentence; have a parole plan in place; not be serving time for domestic abuse, felony DWI, assaulting a police officer or any crime with a firearms enhancement; and not be a sex offender. Even if prisoners are otherwise eligible, they are not if they are a sex offender, even if that was a past offense and they are now incarcerated for something else. Clearly, the governor is not interested in sex offenders who are endangered by a highly contagious, potentially fatal disease.

“Whatever we have decided as a society to do to punish people, regardless of whether we think all of those things are justified or make sense, we as a society have not sentenced people to suffer in a disease-ridden cage,” said Lalita Moskowitz, an American Civil Liberties Union of New Mexico staff attorney.

Sources: lcsun-news.com, prison-insider.com

Darren Rainey Died in Scalding Prison Shower Eight Years Ago Today, Still No Charges Filed

by Jessica Lipscomb, originally published in Miami New Times, June 23, 2020

Eight years ago, today, Florida prison guards locked 50-year-old Darren Rainey inside a shower room, set the water temperature to scalding-hot, and turned it on. Roughly two hours later, Rainey collapsed and died inside that 3-by-8.5-foot room. After a five-year investigation, Miami-Dade State Attorney Katherine Fernandez Rundle chose to not charge any of the corrections officers with a crime.

Rundle’s decision to clear the officers is largely regarded as one of the biggest stains on her 27-year career as Miami-Dade County’s top prosecutor. Now, as protests mount over the lack of police accountability in America, the Rainey case is receiving renewed attention ahead of Miami-Dade’s August 18 election, in which voters will choose to re-elect Rundle for an eighth term or install her progressive challenger, Melba Pearson, a former prosecutor in Rundle’s office who resigned her post as deputy director of the American Civil Liberties Union of Florida in order to run against her former boss.

The details of Rainey’s death at the Dade Correctional Institution, a state prison, were sufficiently horrifying to gain national attention. On the night of June 23, 2012, corrections officers took Rainey into the shower room and cranked the water up to 180 degrees: hot enough to steep tea or cook noodles. Other inmates reported hearing him yell, “Please take me out!” while the guards allegedly laughed and asked Rainey, “Is it hot enough?”

Reports say Rainey, who had schizophrenia and was serving a two-year sentence for cocaine possession, was being punished for defecating in his cell and refusing to clean it up.

Although Rainey’s body was found in gruesome condition—a nurse said burns covered 90 percent of his body and that his temperature was too high to register on a thermometer—Emma Lew, the Miami-Dade medical examiner who performed an autopsy on Rainey, concluded that the skin peeling was due to “body decomposition” and not burning.

Based largely on Lew’s report, in March 2017 Rundle and her team of...
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prosecutors opted not to press criminal charges against the four guards who were responsible: Sgt. John Fan Fan and Officers Cornelius Thompson, Roland Clarke, and Edwina Williams.

Rainey’s torturous death was brought to light by Miami Herald investigative reporter Julie K. Brown, who has called the official investigation a “cover-up.” But this week, the killing is resurfacing on social media.

The Names You Don’t Know project, created by former New Times reporter Jess Swanson to document local instances of police brutality, highlighted the case in an Instagram post yesterday. And this morning, documentarian and activist Billy Corben posted a video on Twitter calling attention to the fact that Rundle did not prosecute the officers in the case. Although Corben tagged the beginning of his video with a warning about the graphic imagery, he says he felt that it’s important for people to see with their own eyes what happened to Darren Rainey.

“As it provocative? Yes. Is it indispensable? Yes,” Corben says. “When someone is boiled to death by people who are supposed to protect and serve and that is covered up by people who are supposed to uphold the law, I don’t know how else to illustrate that to someone, other than to show what that looks like.”

Corben says he and a team of volunteers produced the video on their own dime and volition, not in coordination with Pearson’s campaign. He calls the August vote “the most consequential election in our history.”

“As I travel the world and people ask me, ‘Why is Miami so crazy?’ I tell them it’s three words: Katherine Fernandez Rundle,” Corben elaborates. “The reason that political corruption and police misconduct flourish here is because our top cop refuses to do anything about it and hold anyone accountable for it. Kathy Fernandez Rundle is our greatest impediment to progress in this county.”

At least three of the officers who were investigated in Rainey’s death continued their careers in law enforcement. John Fan Fan (sometimes spelled Fanfan) worked for the Florida Department of Corrections through October of 2018. According to the Herald, Thompson took a job in the federal prison system.

Clarke, meanwhile, was hired in 2014 by the Miami Gardens Police Department, where he was twice investigated for having sex while on duty. Tania Francois, a spokesperson for the City of Miami Gardens, says that after going through due process, Clarke was terminated from the police department this past Thursday.

Despite the public attention, Rainey’s relatives have said little publicly about his grisly death. The family filed a civil-rights lawsuit and received a $4.5 million settlement from the state in 2018.

Corben believes the best way to honor Rainey’s life is to go to the polls in August [2020].

“All you can hope is that people like Darren Rainey didn’t die for nothing,” the filmmaker says. “That’s what happens when we re-elect a Kathy Rundle: We basically spit on the grave and spit in the face of the family members and survivors of all these people who died in Miami-Dade and Kathy Rundle did nothing about it.”

This article was originally published in Miami New Times, June 23, 2020; reprinted with permission. Copyright 2020 Miami New Times, LLC
Bill Schuette moved to dismiss the sexual orientation claim as there was no explicit federal protection for sexual orientation, but the newly elected and openly gay Democratic Attorney General Dana Nessel had the motion withdrawn in May 2019.

Democratic Governor Gretchen Whitmer, elected last year, endorsed a Michigan Civil Rights Commission ruling that the ban on discrimination on the basis of “sex” included discrimination against state employees on the basis of sexual orientation. The suit was then settled for $135,000. Menchacha was represented by James Rasor and Andrew Lauria of the Rasor Law Firm in Royal Oak. See: Menchacha v. Michigan Department of Corrections, USDC (S.D. Mich.), Case No. 2:18-cv-10874-TGB-EAS.

Additional source: freep.com

Harvard Prison Divestment Campaign Files Suit Seeking to Sever University's Financial Ties With Prison Industrial Complex

On February 25, 2020, student members of the Harvard Prison Divestment Campaign (HPDC) filed suit in the Supreme Judicial Court for Suffolk County, Massachusetts, seeking to force the university to divest its charitable trust investments from entities that directly or indirectly profit from the “prison-industrial complex” (PIC) — a sprawling group of privately owned firms that provide management and staffing, as well as food and health services to American prisons and jails.

Prompted by a similar student action in 2015, New York City’s Columbia University became the first American institution of higher education to restrict its PIC investments. Since then, the University of California system, Georgetown University, and more than a dozen other prominent universities have followed suit.

With nearly $40 billion invested, Harvard University holds the nation’s largest endowment for a learning institution. Students have been able to uncover specifics related only to about $400 million of that amount, but it includes at least $3 million invested in an equity fund that owns shares in the country’s two largest private prison operators, Florida-based GEO Group, Inc. and Tennessee-based CoreCivic, with 2019 revenues of $2.48 billion and $1.98 billion, respectively.

“Both my own parents have been incarcerated,” Harvard theology student Ashley Lipscomb told Essence in a 2019 interview. “I’m at the crossroads of these two dynamics. One, having a personal stake here [at Harvard] and wanting to make my mother proud. But the very place that I’m in is complicit in her incarceration.”

Harvard holds itself out to be an institution dedicated to truthfully confronting its past association with and profit from slavery, as well as a place where research and anti-racist work flourish and are welcomed. But the HPDC lawsuit alleges that the university is instead enmeshed in a “deeply repugnant and ethically unjustifiable industry,” whose “immense web of financial,
economic, and governmental actors and interests…use prisons, police, and surveillance to address issues arising from deeply racist social and economic systems.”

The 13th Amendment to the U.S. Constitution banned slavery, but it made an exception for prisoners. Because they can be legally subjected to slavery, and because a disproportionate share of U.S. prisoners are Black, the suit alleges that any PIC-supporting efforts violate the 13th Amendment.

Before filing suit, HPDC members became benefactors of the university’s endowment, since the university’s charter dictates that its endowment must be invested “according to the will of the donors.” They asked Harvard University President Lawrence Bacow and Senior Fellow of Harvard Corporation William Lee to divest from companies with PIC ties. The two men not only refused to divest but also refused to consider the proposal.

The suit names Bacow and Lee as defendants and alleges their actions, and Harvard’s PIC investment, violate Massachusetts state law — M.G.L. c. 266 § 91 — because refusal to divest demonstrates that the university’s “statements promising to address its legacy of slavery were untrue and misleading.”

The suit also accuses Harvard of deception, citing the fact that the university has refused to return to Tamara Lanier the daguerreotypes of her enslaved ancestors. Lanier was forced to file a lawsuit seeking return of the daguerreotypes. The university is vigorously defending its actions.

Bacow had previously stated that he wouldn’t divest because Harvard has an anti-divestment policy and because students request divestment from things such as “corn sweetener.” Yet the university in the past has pulled investments from companies tied to tobacco, genocide in Darfur, and apartheid in South Africa.

“It was as if [Bacow] was equating our concern for the suffering of people in prison with corn syrup,” said HPDC organizer Xitlalli Alvarez, a graduate student in anthropology.

On May 30, 2020, Bacow issued a strongly worded denunciation of the fatal choking of George Floyd five days earlier at the hands of Minneapolis Police, calling it “the senseless killing of yet another black person” that happened “at the hands of those charged with protecting us.” The death of 46-year-old Floyd touched off a weeks-long series of nationwide protests demanding policing reforms.

Ironically, Harvard then filed a motion to dismiss HPDC’s suit on July 1, 2020, calling the PIC-slavery link on which its argument rests a “heartfelt opinion,” rather than a fact.

Several other university endowment divestment campaigns — Fossil Fuel Divest Harvard, Harvard Puerto Rican Debt Divestment Campaign, Harvard Out of Occupied Palestine — joined with HPDC on April 30, 2020, to create the Harvard Endowment Justice Coalition. The Coalition would listen “to the voices of every community who is structurally impacted by its investments,” said organizer Ilana Cohen, an undergraduate slated to receive a diploma in 2021.

See: Harvard Prison Divestment Campaign v. President and Fellows of Harvard College, Commonwealth of Massachusetts (Supreme Judicial Court of Suffolk County), Case No. 20-00510.

Jayson Hawkins contributed to this report.

Additional sources: harvardprisondivest.org, medium.com
Eleventh Circuit Holds Trafficking Victims Protection Act Applies to CoreCivic “Voluntary Work Program”

by Matt Clarke

On February 28, 2020, the Eleventh Circuit Court of Appeals held that the Trafficking Victims Protection Act, 18 U.S.C. §§ 1589(a), 1595, or TVPA, applies to privately operated immigration detention centers. The Act prohibits forced labor and it subjects violators to criminal and civil liability.

Plaintiffs Wilhen Hill Barrientos, Margarita Velazquez-Galicia, and Shoaib Ahmed are current and former immigration detainees who were held at the Stewart Detention Center in Lumpkin, Georgia, a facility owned and operated by CoreCivic as an immigration detention facility under contract with U.S. Immigration and Customs Enforcement (ICE).

ICE requires CoreCivic to follow the Performance-Based National Detention Standards, one of which requires that it offer detainees an opportunity to participate in a “voluntary work program.” The standards allow detention centers to require detainees to “maintain their immediate living areas in a neat and orderly manner,” but specifically states that they “shall not be required to work” and that all other work assignments are voluntary.

The plaintiffs filed a federal complaint alleging the “voluntary work program” at Stewart was anything but voluntary. They alleged CoreCivic coerced detainees into performing labor by “the use or threatened use of serious harm, criminal prosecution, solitary confinement, and the withholding of basic necessities” such as food, toothpaste, toilet paper, and soap and contact with loved ones outside the detention center in violation of the TVPA. CoreCivic moved to dismiss the complaint, claiming that the TVPA did not apply to a private government contractor or cover labor performed in work programs by detainees in the lawful custody of the U.S.

After holding that the TVPA applied to CoreCivic, the district court denied the motion. CoreCivic filed an interlocutory appeal.

The Eleventh Circuit permitted the appeal on the narrow question of “whether the TVPA applied to work programs in federal immigration detention facilities operated by private for-profit contractors.”

The court noted that the TVPA prohibited anyone from obtaining labor or services: “(1) by means of force, threats of force, physical restraint, or threats of physical restraint to that person or another person; (2) by means of serious harm or threats of serious harm to that person or any other person; (3) by means of the abuse or threatened abuse of law or legal process; or (4) by means of any scheme, plan, or pattern intended to cause the person to believe that, if that person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint.”

The court held that the language of the TVPA is “plain and unambiguous.” It creates criminal and civil causes of action for “whoever” knowingly obtains labor by various coercive means. The use of the terms “whoever” and “person” places no limit on whom the Act applies to. Referencing the Dictionary Act, the court noted that this included “corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.”

Therefore, the court held that the TVPA applied to “private, for-profit contractors operating federal immigration detention facilities,” and the district court’s decision was affirmed. See: Barrientos v. CoreCivic, 951 F.3d 1269.

Alabama Says It Will Reform Prisons, the Nation’s Deadliest

by Bill Barton

According to Department of Justice (DOJ) statistics, Alabama’s prisons have the highest homicide rate among U.S. state prison systems, and it appears that rate is continuing to rise. A 2019 DOJ report said, “An excessive amount of violence, sexual abuse and prisoner deaths occur within Alabama’s prisons on a regular basis.” During the fiscal year that ended in September 2019, 11 prisoners were killed, more than in any previous year ... according to Alabama Department of Corrections (ADOC) records, which go back two decades. The next month, three other prisoners were killed.

Back in 2014 Alabama was sued in federal court regarding failures in taking care of the medical and mental-health needs of prisoners. Approximately three years later, U.S. District Judge Myron Thompson found the ADOC “horrendously inadequate” in meeting those needs and also criticized severe staff shortages in the system. He then subsequently ordered the state to hire more than 2,000 additional correctional staff by 2022.

The possibility of a DOJ lawsuit against the state has apparently spurred Republican Governor Kay Ivey to convene a criminal-justice panel. “We’ve done a great job of identifying the issues,” panel member Chris Englund, a Democratic state representative, said. “But if we can’t muster up the political will to actually invest in the system, then all this is meaningless.”

A spokesperson for Ivey said the state is continuing discussions with ADOC about solving the problems. “Our infrastructure was not designed to rehabilitate,” said ADOC Commissioner Jefferson Dunn. “It was designed to warehouse. We’re trying to update that.”

Ivey has proposed a plan that would close around a dozen prisons and replace them with three new facilities offering better mental-health and vocational services. As of October 2019, the prisoner population in ADOC facilities was 21,081, 171% of capacity. The state has made modest progress in mental-health service staffing, going from 212 in 2017 to 263 in 2019.

Thompson’s order to hire more correctional staff is another matter, coming up far short of the target of 3,826: The tally stood at 1,659 as of September 2019.

The group Alabamians for Fair Justice (AFJ) wrote an open letter to ADOC Com-
missioner Dunn and Attorney General Steve Marshall that said, “If ADOC wants to invite real oversight of its violent prisons, it must include independent, external observers in its new task force. The people of Alabama do not trust prison officials to provide meaningful oversight of the violence in their prisons and amidst their correctional officers’ ranks. They have had that option for the last several years and they have failed.”

Equal Justice Initiative Senior Attorney Charlotte Morrison said, “We believe it’s necessary in light of the resistance of the Department of Corrections to have transparency around instances of violence and the lack of information the public has about the violence in the prison. The delays in reporting, the under-reporting, and the unreliability of reporting by the ADOC about instances of violence within prison walls makes independent investigations of these incidents really important. Until we have information that is accurate, the safety of everyone within the prisons is at risk.”

LaTonya Tate, formerly a parole officer and now executive director of the nonprofit Alabama Justice Initiative, said of the ADOC, “Will people continue to trust their motives? Absolutely not. You need independent oversight. You need people looking at this thing from a different lens, who will make recommendations for change for the better. At the end of the day, these are humans At the end of the day, they are still people. They’re in your custody, and you have to be responsible for their care, in a meaningful, protective way.

“Those who are close to the problem are the problem solvers. The state of Alabama cannot continue to do business as usual. It’s been proven.” And “directly impacted people” should be part of the task force.

AFJ has called for not only legislators but also formerly incarcerated advocates, family members, currently incarcerated advocates, and lawyers to be part of the task force.

Sources: wsj.com, montgomeryadvertiser.com

New York: Prisoner Kills Himself After Brutal Beating by Guards

by Chad Marks

On February 24, 2020 lawyers filed a federal lawsuit on behalf of Dante Taylor’s estate after he was found dead in his prison cell at Wende Correctional Facility. The lawsuit alleged that prison guards beat Taylor until he was unconscious. Shortly afterward, Taylor committed suicide. Court filings say the suicide was a direct result of the beating.

Taylor was 21 years old when he entered the New York prison system — and 22 when he left in a body bag. Taylor had a past filled with mental health issues in conjunction with suicide attempts. He had been sentenced to life term at a young age, causing him documented bouts of depression, according to court records filed in the case.

On October 7, 2017 Taylor had his second negative reaction in two days after smoking synthetic marijuana, commonly referred to as K-2. A group of guards responded to Taylor’s cell where they beat him beyond recognition. Once the beating had stopped, he was hog tied and thrown down a flight of stairs face first, court papers say.

Taylor was seen at the infirmary at Wende prison after the brutal beat-down by guards. He was eventually transferred to an outside hospital in Western New York for his injuries but returned to the prison just hours later.

He told prison staff that he was depressed and asked to call his mother. That request was denied as he was placed on SHU (Special Housing Unit Status), for violating rules by using intoxicants. Despite records of past suicide attempts and his verbal expression just days earlier that he wanted to kill himself, rather than putting Taylor on suicide watch, staff ordered him to a cell by himself. Once there, court papers say, the assault by staff pushed him over the edge.

Taylor found a bedsheet and wrapped it around his neck, tying it to a bar in the cell, and took his own life. The lawsuit says that at the time Taylor took his life he was denied access to his support network and left unsupervised even though prison staff knew he had a history of depression, attempted suicide and frequent suicidal ideation.

In 2018, a New York State medical review board determined that 50 New York state prisoners have died in the past five years because of insufficient medical care. Many of the reported deaths were a result of suicide, and a number of them occurred at the Wende prison.

New York state has a history of guards brutalizing prisoners dating to the 1970s’ Attica riots, when prisoners were killed and beat. Beatings and prisoner deaths at the hands of prison guards is an injustice that needs to cease. If New York’s history is any indication of what is to come, it is unlikely the abuses will stop. See: McDay v. Eckert, USDC (W.D.N.Y.), Case No. 1:20-cv-00233.

Additional sources: buffalonews.com, washingtonpost.com

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 10-15 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.
$12.5 Million to Settle Class Action Suit Over Strip Searches of NYC Jail Visitors

by Anthony W. Accurso

New York City agreed to pay victims $12.5 million to settle a class-action lawsuit on October 18, 2019, brought by visitors to New York City jails at the Brooklyn, Manhattan, and Riker's Island facilities. The case was heard by the United States District Court for the Southern District of New York. The suit covered visitors to the jails between November 2012, and October 2019, who were subject to an invasive search, unless that search resulted in an arrest for possession of contraband.

Since 2012, hundreds of visitors have reported being subject to strip searches and sometimes cavity searches. Served case law only allows for such searches when there is a reasonable suspicion to justify a search. Reasonable suspicion might result from an obvious bulge in a visitor’s clothing, triggering of a metal detector, an alert from a drug-sniffing dog, confidential information, or a visitor’s documented history of attempting to introduce contraband into the lockups.

The Department of Corrections Inmate Visit Procedures Directive describes the circumstances that might give rise to reasonable suspicion. It then authorizes, only after obtaining a supervisor’s approval, a pat search. The policy does not authorize strip searches or cavity searches for visitors.

The experience of Dana Grottano is illustrative of the kind of violations described in the lawsuit, and she was listed as the only named plaintiff. Grottano passed through a metal detector and by a drug-sniffing dog without incident, but she was randomly chosen to undergo an invasive strip search. She was segregated behind a curtain with her 5-year-old daughter, where she was required to expose her breasts and vagina in full view of her child. The officer told her to “open her legs wider” while the officer placed a hand on Grottano’s vagina. When Grottano seemed unsettled by the experience, the officer explained that the search was “proper procedure.”

A NYC Department of Investigation report released in 2016 described abuses of policy regarding invasive searches. However, recommendations by the DOI were not implemented because of union pressure from the Correction Officers’ Benevolent Association. Then—Association head Norman Seabrook was quoted as saying that “the problem here is the DOI’s focus on correction officers and not on inmate visitors.”

This comment came in response to a 2014 DOI report detailing a contraband smuggling ring of COs introducing contraband to prisoners as “much larger than we had seen before and included different facilities.” Mayor Bill de Blasio and former Correction Commissioner Joseph Ponte also blamed contraband on visitors despite repeat and clear evidence that the overwhelming amount of contraband is introduced by COs.

This insistence on alternative facts will cost taxpayers, too. The city agreed to pay $12.5 million in damages to class members, $5.4 million in attorneys’ fees, and $500,000 in administrative costs to oversee a training and accountability program where only retrained officers may work visitation areas.

In addition, officers who have been the subject of complaints may be prevented from working visitation areas in the future.

“Invasive strip searches that violate protocol have plagued the city for decades,” noted Gothamist.com. “In 2010, the city paid $33 million to a class of roughly 100,000 people who were strip-searched after being charged with misdemeanors. Prior to that, there was a $40 million settlement that involved people being strip-searched while waiting to be arraigned. But these lawsuits involved people being charged with a crime, not visitors to a jail.”

Most plaintiffs were represented by the NAACP Legal Defense and Educational Fund, Beranbaum Menken LLP and Giskan Solotaroff & Anderson LLP. Because the settlement authorized only $4,000 per class member, clients represented by lawyer Alan Figman opted out of the settlement and were proceeding with individual lawsuits. See: Grottano v. City of New York, 2019 U.S. Dist. LEXIS 194049. Additional sources: gothamist.com, naacpldf.org

COVID-19 Causes Public Defenders to Change How They Handle Cases

by Dale Chappell

“OUR WORK HAS CHANGED. IT’S shifted.” That statement was made by Jessica McArkle, a public defender in Springfield, Massachusetts, who says she and her co-workers have had to get creative in representing clients during the coronavirus pandemic. “Everything’s done remotely now,” Kate Malone, another public defender and McArkle’s roommate, said. “As the situation unfolded, we had to make a decision about what was the best way to represent our clients but also protect them.”

With courthouses in Worcester County, Springfield, and Holyoke closing multiple times after staff there tested positive for the virus, Malone and McArkle had to work from their dining room table in their apartment overlooking Forest Park. Instead of working from their offices, they consult by phone with clients, who are often stuck in jail waiting for a hearing to be released. And that call isn’t always private.

While the Public Defender Division has tried to convince the jails to allow Zoom meetings, even offering to give them the equipment for free, they’ve largely refused. “In fact for one sheriff’s office, we have a computer we’re ready to loan to them that’s set up with an operating system and a browser,” Randy Gioia, deputy chief counsel for the Public Defender Division of Massachusetts, said. “We haven’t had a taker yet, and that’s a concern for me. I think sheriffs should be accommodating.”

So, the public defenders make incessant phone calls and file endless motions to get their clients out of jail. In one case, one of Malone’s clients had to sit in jail an extra...
two weeks waiting for a hearing, and then another three days because the probation officers had not yet talked to each other. “How am I supposed to tell this person, ‘I’m really sorry, but you’ve got to sit for another three days?’”

A bigger problem, public defenders say, is their clients becoming invisible to the courts due to the impersonal nature of technology. “If we’re in court and this person has their mom, their dad, their sister, their girlfriend, other family members showing support, that’s really compelling to argue to a judge,” McArdle said. “Obviously, with this transition to how bails are happening, we don’t have that contact necessarily with the people who support our clients.”

Even with Zoom conferencing, they say it’s hard for a judge to evaluate who they’re dealing with in a two-dimensional video meeting. “It’s not a good substitute,” says Gioia. “It’s better than nothing and probably better than a telephone hearing at this point, but it should be temporary.”

“It’s just totally dehumanizing,” McArdle said. “All the judges have is this image of somebody that they don’t know, in a bright orange jumpsuit, with a mask and beanie on. It was just such an awful feeling to see this kind of playing out.” The public defenders used to handle all the clients at a jail with just a few lawyers, but it wasn’t working. “It was sort of this assembly line. You couldn’t even keep people straight,” McArdle said. They stopped that because they thought it wasn’t safe.

And, of course, people sitting in jail accused of a crime want answers. But there aren’t any. “The best we can do is say, ‘Hey, I’ll stay in touch with you,’” she said. “I know you were supposed to be in court tomorrow, but that’s not going to happen.”

McArdle said public defenders also don’t have any say in the matter and can’t force a court to hold a hearing during the pandemic. This has brought up prisoners’ rights. As the COVID-19 crisis continues, Gioia said there are lots of rights being violated: The right to be present in court, the right to confront and examine witnesses, the right to a jury trial and to present witnesses. “How do you present your witnesses to a court when that’s being done remotely?” he asked. These are fundamental rights.”

Those sitting in jail aren’t just worried about themselves. They also worry about the coronavirus and their families, some of whom may be in a demographic more at risk of life-threatening problems from the virus.

One of McArdle’s clients has a mother with heart failure, who was already in and out of the hospital before the pandemic hit. With face to face contact cut off, communication between the mother and son has suffered, she said. “Not being able to have regular updates and just being worried that she’s going to get COVID-19 and he’s not going to be able to see her or help take care of her has been really stressful.”

Defense attorneys’ work right now is more important than ever, Gioia said. “Public defenders’ work right [now] is nothing short of saving peoples’ lives.”

Source: masslive.com

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**New Book from Prison Legal News**

**Prison Education Guide**

by Christopher Zoukis

This exceptional new book is the most comprehensive guide to correspondence programs for prisoners available today. *Prison Education Guide* provides the reader with step-by-step instructions to find the right educational program, enroll in courses, and complete classes to meet their academic goals.

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Can’t think of the right word? Let Roget’s help you! Over 11,000 words listed alphabetically. See page 69 for more information.
Ohio's Cuyahoga County Jail (CCJ) agreed to a $140,000 settlement on February 14, 2020 in a civil rights action alleging a prisoner was subjected to excessive force and retaliation by guards.

Corrionne Lawrence was booked into CCJ on September 16, 2018, for a probation violation.

When he answered a booking guard's question in Spanish, the officer insisted he was “just giving [them] a hard time.” The officer told others, “He’s bullshitting, put him in the chair.” Lawrence was strapped into a restraint chair and placed in a “freezing-cold room.”

After going four hours without being checked on, Lawrence responded in English and was removed from the chair.

Upon completing booking, Lawrence requested to remain separated from a Stacy Norris, who was charged with murdering Lawrence’s cousin. Lawrence, however, had his housing assignment switched on October 17, 2018, and was moved to a cellblock with Norris. The next morning, Norris stood at Lawrence’s cell door taunting him as a guard prepared to open the cell door.

In preparation to defend himself, Lawrence urinated in a milk container. He claimed that he threw it on Norris as a pre-emptive strike, splashing some on the guard. Once the attack was broken up, guards were more concerned that the guard was splashed with urine than the assault upon Lawrence. He was handcuffed and escorted to an elevator without working video and Corporal Christopher Little deactivated his body camera. Once the elevator doors closed, Lawrence was viciously attacked.

Little threatened Lawrence with further injuries. If he did not remain quiet, and he prevented him from talking to or receiving medical care for his injuries. Lawrence was disciplined for the fighting and placed in isolation. Another guard threatened to mace Lawrence and hang him to “make it look like a suicide” when Lawrence asked for a shower. U.S. Marshals visited Lawrence’s cell on October 30, 2018, to inquire about CCJ’s conditions, and Lawrence told them about his treatment. He was subsequently retaliated against and labeled a “snitch.”

The civil complaint alleged other instances to show a policy, pattern, and practice of “unprovoked and unwarranted acts of violence” on other persons confined at CCJ.

Lawrence was represented by attorneys from the Chandra Law Firm in Cleveland. The February 2020 settlement provided that Lawrence receive compensation of $82,930.67 and his attorneys were awarded $56,000 in attorney fees and $1,033.93 in costs. See: Lawrence v. Cuyahoga County, USDC (N.D. Ohio), Case No. 1:2019-cv-024.

Jury Award $700,000 to Maryland Prisoner Assaulted by Guards

Kevin Younger was a prisoner at the Maryland Reception, Diagnostic and Classification Center (MRDCC) when he was viciously assaulted by prison guards. The beating was in retaliation for an assault on one of the guards. Richard Hanna, Jemiah Ramsey, and Kwasi Ramsey were part of a “goon squad,” which assaulted prisoners, according to Hanna.

After hearing evidence, a jury awarded Younger $700,000 on February 3, 2020.

On September 29, 2013, Younger witnessed a fight between two prisoners and a guard in which the guard was seriously hurt. Although Younger was simply a witness, he was moved to another housing unit. According to Court records, between 6:40 and 7 a.m. Ramsey, Green, and Hanna entered a cell and threw him from the top bunk to the concrete floor. Once on the floor, the three beat Younger on his head, face, and body with handcuffs, radios and metal keys. They also slammed his head against the toilet bowl, all while verbally berating him.

When the guards left the cell, Younger was left bloody, with serious, and permanent injuries.

Four other prisoners were beaten in the same manner by the goon squad in relation for the same incident.

Realizing that Younger needed medical attention, Green put him in a wheelchair, taking him to the medical unit. Once there, Green ordered his victim to sign an incident report indicating his injuries were sustained from falling from his bunk.

Court records show then-Warden Tyrone Crowder admonished the guards by calling them soft, and stating that the cops “should had beat the inmates” worse than they had.
days solitary and grotesque beating that Younger received for a crime he did not commit. See: Younger v. Green, 2019 U.S. Dist. LEXIS 201375.

IRS Blocks Prisoners from CARES Stimulus Checks
by Derek Gilna

The U.S. Internal Revenue Service is seeking to block state and federal prisoners from receiving any of the $2.2 billion in coronavirus relief checks authorized by Congress and mailed out by the Treasury Department, despite there being no language in any of the legislation preventing incarcerated individuals from receiving the money.

The various laws merely state that anyone filing a federal income return in either 2018 or 2019, or receiving Social Security payments, is entitled to a $1,200 stimulus check.

In some instances, the IRS also is asking various state departments of corrections to not deliver these checks to prisoners, and is also seeking to “claw back” funds from checks already cashed, citing regulations that prevent the incarcerated from receiving federal Social Security payments.

However, the Social Security regulations clearly do not apply to these checks, and no new rules have gone into effect limiting the scope of the payments. The IRS has issued an “advisory” on its website, which lacks the force of law.

According to IRS spokesman Eric Smith, “I can’t give you the legal basis. All I can tell you is this is the language the Treasury and ourselves have been using. It’s just the same list as in the Social Security Act.” Nonetheless, there is clearly no law or administratively-promulgated rule that requires an incarcerated recipient to return the money.

One prisoner advocate, Wanda Bertram, of the Prison Policy Initiative, finds this all to be quite unfair to prisoners, many of whom rely upon their families to send them funds to purchase additional food and simple toiletries not provided by their prison, and who themselves might be economically stressed by the pandemic.

“Loved ones right now are also under a squeeze because of the pandemic and being out of a job, so when you send a stimulus check for someone, the person in prison is not the only one who benefits from that,” she said.

Unfortunately, prisoners generally lack the legal resources to prevent their prison mailroom from intercepting and returning these payments. However, many prisoners and their economically disadvantaged families have already received hundreds of thousands of dollars in funds that the IRS has no legal authority to recover, and most likely never will.

At press time, the Senate was debating another $1,200 check. Prisoners would be precluded.

See: time.com, usatoday.com

COVID-19 Prison Legal News Subscription Special:
$1 Six Issue Trial Subscriptions

To help ensure more prisoners are able to access news and information about their rights and staying safe during the COVID Pandemic a generous funder has donated almost 1,700 six month subscriptions to PLN for prisoners. If you are interested in receiving a six month subscription to PLN please send $1.00 to the address below. This offer does not apply to current or prior subscribers. Please do not respond if you have less than 9 months remaining on your sentence. Subscriptions will be entered on a first come, first served basis until they are exhausted. We will accept new unused stamps as payment.

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Seventh Circuit: Totality of the Circumstances Must be Considered to Show “Policy or Custom” by Government Agency Caused Injury for Monell Claim

by Dale Chappell

The U.S. Court of Appeals for the Seventh Circuit held on February 19, 2020, that a totality of the circumstances must be considered in determining whether a “policy or custom” of a government agency caused an injury in order to file a Monell claim in federal court.

Kenya Bridges was a pretrial detainee at the Cook County Jail in Illinois in 2014 when he fell off the top bunk and had to be hospitalized after sustaining a head injury. The problem was that Bridges had a valid lower bunk pass and shouldn’t have been on the top bunk. He then filed a lawsuit in federal court against Cook County, claiming that the jail staff purposely ignored his lower bunk pass, which resulted in his injury.

However, Bridges could not sue jail staff per se for his injuries, but only the county as an entity, pursuant to Monell v. Department of Social Services of the City of New York, 436 U.S. 658 (1978). In that case, the U.S. Supreme Court held that “a local government may not be sued under [28 U.S.C. § 1983] for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government’s policy or custom ... inflicts the injury that the government as an entity is responsible under § 1983.” Bridges, then, had to show that a “policy or custom” of the jail led to his injuries.

This “policy or custom” doesn’t have to be a formal policy or directive by the entity. A practice that’s “widespread and well settled” can be enough. But it cannot be a random event or even a short series of random events, the Seventh Circuit has held.

To show that Cook County had a policy or custom that led to Bridges’ injury, he offered five cases over the span of about seven years in which the county had been sued by prisoners with lower bunk passes who had fallen off the top bunks and were injured. The district court, though, concluded that even if Bridges had established a widespread policy or custom of ignoring lower bunk passes, he failed to meet the standard to show that the county had acted with deliberate indifference or that it had been objectively unreasonable.

On appeal, Bridges relied on only three of the earlier cases, which the Seventh Circuit rejected. It pointed out that two of the cases were settled without any admission of liability by the county, and one was dismissed. “It is not enough to demonstrate that policymakers could, or even should, be aware of unlawful activity because it occurred more than once. The plaintiff must introduce evidence demonstrating that the unlawful practice was so pervasive that acquiescence on the part of policymakers was apparent and amounted to a policy decision,” the Court explained.

In other words, the incidents Bridges provided to support a “policy or custom” under Monell were nothing more than “isolated instances of possible misconduct or negligence on the part of individual employees,” the Court said.

A totality of the circumstances must be considered in assessing whether a policy or custom existed for Monell, the Court suggested: If “Cook County Department of Corrections housed as few inmates as Sheriff Andy Taylor’s two-cell lockup in small town Mayberry, three or five incidents in a short period of time might create a question for a jury regarding whether a practice is widespread. But more than five million people reside in Cook County, and the Department houses thousands of detainees, with hundreds entering and leaving on a daily basis. In this context, three or five incidents over a seven-year period is inadequate as a matter of law to demonstrate a widespread custom or practice.”

Accordingly, the Court affirmed the district court’s grant of summary judgment to the county, dismissing Bridge’s lawsuit. See: Bridges v. Dart, 950 F.3d 476, (7th Cir. 2020).

Former Prisoners Are Running for Office In 2020

by Daniel A. Rosen

When those who have been incarcerated run for office, they can speak with authority about prison reform. They bring credibility that others simply can’t. In 2020, more ex-inmates than ever are coming out of the shadows and running for office, viewing their time behind bars as an asset. They’re bringing new voices to state and national races.

Tarra Simmons is one of those voices, running for a state representative seat in Virginia. Simmons, like many others, found herself addicted to opiates after a serious injury led to dependence on painkillers. Charges for drug dealing, theft and weapons possession followed, leading to almost two years behind bars.

Being incarcerated is part of her story and her identity, and she’s using it as an asset. “I went to prison. It’s not something I’m proud of, but I understand how people end up there,” Simmons says. As lawmakers try to reform policing and justice, it’s vital to have that perspective represented in state capitals and Congress.

Prison is not the only experience Simmons brings to the race. She was an ER nurse prior to her incarceration, and afterward earned a law degree and started a civil rights nonprofit. She understands the public health, policing, and economic crises facing her community, and says she wants to “prevent [incarceration] from happening to begin with.”

Some states restrict former inmates from serving in government or holding public office. Illinois, Alabama, West Virginia, and Delaware all deny or limit that privilege. The media may also focus solely on an ex-inmate’s record, as opposed to his or her platform. And fundraising during a pandemic, especially for first-time candidates, is difficult, with traditional activities like canvassing and rallies off-limits.
Despite these challenges, candidates are finding ways to participate. Keeda Haynes, a former public defender who served four years in federal prison, is running for Congress in Tennessee. First, she had to petition a court to restore her civil rights, a hurdle she knows many other felons face, too. “This is an opportunity to change the narrative and have tough, hard conversations about barriers to reentry,” she said.

Former inmates can have trouble finding jobs or housing — or even life insurance — because of their felony records. Ex-inmates running for office understand that and can advocate for the restoration of rights.

Angela Stanton-King is running for Congress as a Republican in Georgia’s 5th District. She supports restoring the right to vote for anyone with a felony on their record after prison.

Voters have rarely heard from candidates who’ve experienced the criminal justice system firsthand. But with a newly invigorated conversation about justice reform in the wake of George Floyd’s death, it may be the right time for those perspectives. A majority of both Democratic and Republican voters say they’d more likely vote for someone who “supports criminal justice reform.”

Regardless of the outcome, a candidate openly discussing a criminal past can be liberating to some. Many former inmates may “come out” sooner and share their mistakes, as office-seekers use their experience to improve their communities. Removing that stigma, says Kelly Olson, a civic organizer, “makes me realize our stories do matter.”

Sources: *The Marshall Project, Mother Jones*
$122,000 Payout as Utah Settles Suits Claiming Daggett County Jail Torture

by Dale Chappell

On November 15, 2019, the Utah Department of Corrections (DOC) settled lawsuits with four former prisoners who were tortured at the hands of Daggett County Jail guards, agreeing to pay out a total of $122,000. The abuse, which led to the closure of the jail, occurred between May 2015 and February 2017 and further led to criminal charges against the sheriff and four of his underlings in what the Utah Attorney General called “unbelievably inhumane conduct.”

A key player in the abuses was former guard Joshua Cox, who the lawsuits said required prisoners to submit to being shocked and bitten by attack dogs in order to keep their jobs working outside the prison fences. Sometimes Cox abused them if they simply wanted to return to their cells, or even no reason at all. Cox would taunt the prisoners, calling them “bitches” and “pussies,” wrestle with them and choke them out.

Cox was convicted of aggravated assault and spent just four months in county jail. He also lost his peace officer’s certification for life. Jorgensen, the former sheriff who condoned this abuse, was charged in 2017 with failing to keep the prisoners safe.

While prisoners did complain, they were ignored. This is because they were state prisoners housed in county jail in an agreement with the DOC under a program called Inmate Placement Program (IPP), which farms out 20 percent of its prisoners to 21 remote county jails across the state, in what is described as an effort to provide jobs to those areas.

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Such an arrangement made the grievance process useless, because the local jails handled the complaints, not DOC. This meant that any complaints against Cox were handled by the person who approved of his behavior: former Sheriff Jorgensen, who was said to fly by the rule that, “If it wasn’t on camera, it didn’t happen.”

The abuse was finally exposed when a Church of Jesus Christ of Latter-day Saints volunteer made the church aware, which in turn informed the DOC. But the abuse went on for two years before anyone let the public know.

Court papers said Cox’s intent was to “humiliate and degrade” the prisoners. When someone did complain, Cox reportedly said, “You can’t do shit, I’m a cop .... This badge says I can do anything I want to anyone here.”

And as far as Jorgensen’s no-camera, no-incident rule, Cox simply had the control room shut off the cameras, documents said.

While Cox was the perpetrator of much of the torture, the other guards named in the lawsuits stood by and never stopped the abuse. In fact, the lawsuits say the other guards encouraged it and “enjoyed” it.

Cox’s abuse of the prisoners with Jorgensen’s seal of approval led to the closure of Daggett County Jail, which severely hurt the county’s economic well-being. The county derived 30 percent of its revenue from the DOC funds under the IPP. Daggett County Jail was supposedly the region’s biggest employer.

The state chose to settle the lawsuits instead of going to trial, but it did not admit to any wrongdoing in the settlement. “While the state does not believe that the Department of Corrections or its employees violated these plaintiffs’ constitutional rights,” and assistant attorney general said, “the State of Utah opted to settle these cases in order to conclude the litigation and eliminate further risk to taxpayers.”

“These lawsuits have sent a very strong message that everyone’s rights need to be respected,” attorney John Mejia, legal director of the American Civil Liberties Union, which represented three of the prisoners.

The ACLU is still looking into a broader problem with the IPP, which they say puts prisoners too far out of reach of the DOC’s care and opens them up to abuse, like what happened in Daggett County.

More prisoners said they felt “scared all the time” while at Daggett County Jail. The four prisoners in these lawsuits have since been released and were paid between $30,000 and $32,000 each in the settlement agreement. More lawsuits are pending. See: Asay v. Daggett County, USDC (D. Utah), Case No. 2:18-cv-00422; Porter and Drollette v. Daggett County, Case No. 2:18-cv-00389; Olsen v. Daggett County, Case No. 2:19-cv-00188. Additional source: sltrib.com

Jewish Michigan Prisoners Win Injunction for Religious Sabbath and Holiday Meals

by David M. Reutter

On January 30, 2020, a Michigan federal district court found the state Department of Corrections (MDOC) “places a substantial burden” on Jewish prisoners’ “religious beliefs by mandating a vegan diet for inmates approved for kosher.” Its order found that injunctive relief was required to cure the violation of the prisoners’ rights in the Religious Land Use and Institutionalized Persons Act.

An October 2019 settlement in this class action lawsuit required MDOC to provide Jewish prisoners with kosher meals. The lead plaintiffs were Gerald Ackerman and Mark Shaykin, both of whom were raised Jewish and identified as same upon entering MDOC.

The court held a bench trial on the issue of Ackerman and Shaykin’s belief that they “consume meat and dairy products on the Sabbath and the Jewish holidays of Rosh Hashanah, Yom Kippur, Sukkot, and Shavuot.” After hearing the evidence, the court had “no trouble” finding these were sincerely held beliefs, and that the quantity of meat and dairy the plaintiffs consume must be part of a “meal” — “a joyful meal.”

The court also was “convinced that it must accept plaintiffs’ assertion that eating cheesecake on Shavuot is a Jewish ritual” that must be followed to observe the holiday properly.”

MDOC argued that it makes meat and dairy items available for sale in the prison store. The court rejected that argument for...
Is someone skimming money or otherwise charging you and your loved ones high fees to deposit money into your account?

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

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

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

This effort is part of the Human Rights Defense Center’s Stop Prison Profiteering campaign, aimed at exposing business practices that result in money being diverted away from the friends and family members of prisoners.
Texas Prison System Bans Greetings Cards, Postcards, Colored Paper in Mail

by Matt Clarke

On March 1, 2020, the Texas Department of Criminal Justice (TDCJ) began enforcing sweeping new restrictions on the mail received in its 104 prisons. The new policy basically bans prisoners from receiving anything except letters written on plain white paper mailed in plain white envelopes.

The mail restrictions are part of what prison officials refer to as their “Inspect 2 Protect” initiative, which included using drug-sniffing dogs on visitors and employees arriving at the prisons, and a ban on prisoners receiving money transfers into their trust fund accounts or electronic commissary purchases from anyone not on their visitor or phone lists.

The mail restrictions specifically prohibit mail from general correspondents on colored paper, decorated paper, card stock, construction paper, and linen or cotton paper. It also prohibits letters containing “unidentifiable substances,” such as perfume, lipstick, bodily fluids, powdery substances, artwork using paint, glitter, glue or tape, and stickers.

According to TDCJ spokesman Jeremy Desel, the policy change is a response to a significant amount of drugs smuggled into prison on paper that was dipped in liquid drugs, then dried and mailed to prisoners. He said searches turned up greeting cards containing SIM cards for use in contraband cellphones.

Prisoners, former prisoners, and prison reform advocates counter that most of the drugs in prisons are brought in by employees, not received through the mail. One Texas prisoner who was Skyping with a journalist on a contraband smartphone admitted selling drugs in prison and held up a baggie of meth. He told her that while some drugs do come in through the mail, “Nobody is gonna buy a greeting card if you can come up in here and buy the real shards.”

TDCJ officials counter with a statistic showing that only 53 of its 21,000 guards were caught with contraband in 2019 while over 300 visitors were flagged for contraband. Of course, this ignores the fact that a visitor who inadvertently leaves common daily use items such as cash, a penknife, or a Bluetooth-enabled device in a pocket or on a wrist when arriving for a visit would be flagged for contraband whereas guards would have to be carrying drugs, tobacco or multiple cellphones to be flagged.

“If we caught only 53 officers in 2019, we suck,” said a former prison warden who questioned the accuracy of the data. “We have a distinct inability statewide to catch contraband.”

TDCJ flagged just over 1 out of 200 of the 7.5 million letters received by prisoners in 2019 for suspicious substances. However, glue, glitter, stickers and perfumes are considered suspicious substances, so it is unclear how many actually contained drugs.

“Greeting cards are one of the few sources of cheer and color in an otherwise dull and depressing atmosphere,” wrote a coalition of over a dozen advocates and organizations, including the ACLU of Texas, Just Liberty, and the Texas Inmate Families Association. The coalition also complained that the new policy would further disrupt communication between prisoners and families.

The Texas prison board modified the policy to allow families an option to purchase greeting cards to be mailed by a third-party, but some dislike the idea. “We can’t add a personal touch,” said Margie Stone, whose son spends most of each day in a Huntsville cell. “I can’t put hearts and a smiley face and write, ‘I love you’ in my own handwriting.”

Sources: texasmonthly.com, centralmaine.com

News in Brief

California: Beyond Prison Walls, now in its eighth year with Playwrights Project partners at San Diego State University, spotlights the works of prisoner playwrights participating in Out of the Yard programs at Richard J. Donovan Correctional Facility, Centinela State Prison and Community Transition Center. This year, San Diego State University Theatre students performed the prisoners’ original plays in late June, over two days, via the online conferencing program Zoom. Billed as pay-what-you-can performances, the proceeds were donated to the Playwrights Project for future programming. Discussions with the cast and prison representatives followed each performance. Cecelia Kouma, executive director of the Playwrights Project, said, “We are honored to give voice to our writers and celebrate the imagination and resilience of these artists creating art within confinement.”

Cameroun: Rampant overcrowding in Africa’s prisons has thwarted efforts to track and contain the spread of the coronavirus. Cameroon’s central prison in the capital city of Yaoundé is at five times capacity with a population of nearly 5,000. Social distancing, self-isolation and adequate hand washing are not possible. Maroua prison, in the north, was built for 350, but holds over 1,450, of which 70 percent are pre-trial detainees. Malnutrition and limited health care, combined with crowded conditions, exacerbate the dangers of COVID-19 across the continent. Governments in South Africa, Togo, Democratic Republic of Congo, and Kenya have reported coronavirus outbreaks in their prisons. But Cameroon has been mum on the subject, despite President Paul Biya’s efforts in April to reduce the spread by releasing nearly 1,800 prisoners, hundreds of who were already infected. The infection rate was believed to have been 58 percent. As of July, Cameroon had about 15,000 confirmed cases of COVID-19 and at least 350 deaths.

Colorado: The Colorado DOC announced in July 2019 that the state had reached a settlement agreement with transgender prisoner Lindsay Saunders-Velez. Saunders-Velez sued the CDOC in July 2017. [See: PLN, June 2018, p.54] In 2018, she was placed in solitary, commonly
referred to as “the hole,” for her protection, after two in-custody rapes at her assigned men’s prison. Her attorney, Paula Greisen, commented, “We believe this settlement signifies that the State of Colorado is committed to continuing its work to hopefully set a national standard for the humane and fair treatment of the LGBTQ community and all of our citizens, especially those in the custody of the state.” The $170,000 settlement monies were held in trust until Saunders-Velez was released in late 2019. A spokesman for Attorney General Phil Weiser’s office told reporters that the state did not admit any liability in the settlement. The state contends that Colorado is a “national leader” in implementing fair and appropriate transgender policies and the settlement prevented extending a costly legal process. Saunders-Velez is now an executive director at the Colorado Justice Advocacy Network.

Connecticut: “Under no circumstance should anybody be giving birth in a prison cell,” said Representative Steven Stafstrom after a federal judge ordered the release of a DOC report on the circumstances that led Tianna Laboy, then 19, to give premature birth in her York Correctional Institution cell toilet in February 2018. The review was completed in July 2018, but the DOC denied repeated FOIA requests. A motion to have it released was granted in December 2019. Laboy and her mother filed a lawsuit in March 2019 alleging denial and delay of care. The Attorney General tried to block the suit, saying Laboy failed to file a grievance after the birth. U.S. District Judge Janet C. Hall ruled the suit could proceed, “Under the circumstances of this case, there was no available remedy.” The report revealed that there was no OB/GYN on call at York and no requirement that medical staff be trained in labor and delivery. Laboy went to medical over several days complaining of stomach pains but was turned away without an exam.

Florida: Few details are available surrounding the July 2020 grand jury indictment in Tallahassee of Phillip Golightly, 38, on two counts of sexually assaulting a female prisoner while on temporary duty at FCI Marianna in November 2019. A jury trial is scheduled for August 24, 2020 in Tallahassee. The charging documents say the alleged victim “was under Golightly’s custodial, supervisory, and disciplinary authority.” It is unclear how long Golightly had been employed by the BOP. Each charge carries a maximum sentence of 15 years in prison.

Georgia: Trump crony Roger Stone sought another delay in surrendering to the BOP to begin serving the 40-month sentence on his November 2019 convictions on lying and witness tampering charges. Citing the coronavirus pandemic, Stone, 67, said the sentence was “a death penalty.” U.S. District Judge Amy Berman Jackson disagreed and granted a two-week delay in July. She noted that there had been no reported coronavirus cases at FCI Jessup. The Justice Department, which had intervened on Stone’s behalf before his sentencing, agreed that the new July 14 report date was “a reasonable exercise of that court’s discretion based on the totality of the factual and legal circumstances.” The BOP had previously granted one 60-day surrender delay. None of that mattered. President Trump commuted Stone’s sentence days before his report date, erasing Stone’s prison time, two years’ supervised release and $20,000 fine. The grant of clemency press release stated, “Roger Stone is a victim of the Russia Hoax that the Left and its allies in the media perpetrated for years in an attempt to undermine the Trump Presidency.”

Germany: A Syrian doctor, identified as Alaa M., was arrested in the central state of Hesse in June 2020. Alaa M. is suspected of carrying out crimes against humanity in 2011, at a prison in the city of Homs run by Syrian intelligence services under the Bashar al-Assad regime. Alaa M. has practiced as a doctor in Germany since 2015, after leaving Syria. German prosecutors said in a statement that the doctor is believed to have “tortured a detainee ... in at least two cases.” The victim had taken part in a protest and had an epileptic fit after his arrest. Alaa M. was called to assist. The statement claims Alaa M. beat the victim with a plastic pipe, and that even “after he had gone down, Alaa M. continued the beatings and additionally kicked the victim.” The following day, Alaa M. was accused of beating the man again, this time to unconsciousness and in the presence of another unnamed prison doctor. The victim later died. In Koblenz, also in June, two former Syrian secret policemen were in court for crimes against humanity, at another government-run detention center.

Honduras: Traditionally, gang violence among female prisoners is low in Central America’s Northern Triangle (El Salvador, Guatemala and Honduras). A recent string of gang killings in June at the National Women’s Penitentiary for Social Adaptation — Penitenciaria Nacional Femenina de Adaptación Social (PNFAS) — outside Tegucigalpa suggests this might be changing. In June, a Barrio 18 woman was strangled by her cellmates. Weeks earlier, alleged Barrio 18 women had set fire to PNFAS and stabbed alleged MS-13 rivals. Violence between the MS-13 and Barrio 18 gang members has been common in male prisons. Honduras’ National Anti-Gang Force (Fuerza Nacional Anti Maras y Pandillas) in Tegucigalpa has been clamping down on gang extortion of shopkeepers in the Honduran capital. PNFAS is at double capacity this year. Videos circulating in the press, reported to have been filmed inside the prison, suggest the prison director has ignored the uptick in violence. Digna Aguilar, the spokeswoman for Honduras’ National Prison Institute (Instituto Nacional Penitenciario de Honduras), confirmed that the June slaying was the first acknowledged multiple homicides in a Honduran women’s prison.

Indiana: Clark County Sheriff’s Colonel Scottie Maples told reporters that Gerald Kopp Jr.’s credentials as a probation officer recommended him as a credible candidate as a jail culinary instructor for the jail’s food-service provider, but that was the very job that gave Kopp access to women. Gerald Kopp Jr., 49, was arrested in January 2020 on charges of sexual misconduct with two prisoners. A December 2019 letter to the jail initiated the investigation; it alleged that Kopp was having sex with prisoners and had brought sex toys and headphones to them. Court records indicate that Kopp took two women from their housing unit to a probation office after hours, shut off the lights, blocked the door with a cart, and “the three engaged in sex acts.” Hallway surveillance video shows them entering and exiting the office on October 14 and 29, 2019. The first visit lasted three hours, the second about an hour and a half. Kopp denied the allegations but resigned his position in December 2019. Cash-only bond was set at $10,000.

Iowa: Benjamin Schreiber was found guilty of first-degree murder in 1997 and was sentenced to life without the possibility of parole. In April 2018, he filed for post conviction relief, citing his hospitalization in March 2015. He arrived at the hospital...
unconscious from septic poisoning caused by large kidney stones. The hospital administered an IV with lifesaving resuscitation fluids and repaired the kidney stone damage. Schreiber contended that since he had “died” at the hospital, he had fulfilled his life sentence and should be released. The district court found his claim “unpersuasive and without merit.” The Iowa Court of Appeals affirmed that decision in November 2019, but the case alarmed Senator Roby Smith, who introduced the “life means life” bill in March 2020. It would define a defendant’s “natural life,” regardless of life-sustaining procedures used during the period of the sentence. Representative Liz Bennett suggested implications if Schreiber had won his case, “Would you have to go back and marry your wife again? Could you get out of paying child support if you are a new person?”

Michigan: The Alger Correctional Facility in Munising received drug shipments from Mexico, coordinated by deported convicts and prisoners in the Upper Peninsula. DEA agents did not explain how the heroin, cocaine and crystal meth got into the prison. They did say the Alger prison probe began in 2019. A federal wiretap was initiated after a JPay account was discovered to be the communication conduit with a drug supplier in Mexico. In May 2020, MDOC guards raided the Alger cell of Donay McMann, 40. Federal agents say McMann dealt drugs with Juan Mejia. Mejia messaged deported cocaine dealer Hector Plascencia-Rolon from acontraband phone, “I need the windows that you sold me one day for my car.” Investigators say “windows” is dealer slang for methamphetamine. Phone record analysis pointed to Alger. The DEA agent explained, “One confidential source that has spoke(n) directly to McMann about his drug trafficking confirmed that McMann works on behalf of Mejia.” A MDOC spokesperson has stated, “There has been nothing found to suspect staff involvement at this time and no staff have been suspended/disciplined-fired.”

Massachusetts: The Massachusetts Alcohol and Substance Abuse Center (MASAC) in Plymouth is run by the MDOC. Former MASAC nurse Julie Inglis-Somers pleaded guilty in June 2019 to supplying two civilly committed patients five doses of her own prescription Suboxone pills, for opioid use disorder, to ease their sleeplessness due to opioid withdrawal in November and December 2018, before the medication was approved for use at MASAC. She was unaware that one of the patients was a DOC informant, facilitating a sting operation. Inglis-Somers had been offered $1,000; she declined it. Used to treat heroin addiction, Suboxone is sought after contraband in New England prisons for getting high. The former nurse was arrested in December 2018 in Jacksonville, Florida, after sneaking out of Massachussets. Inglis-Somers was sentenced to time served and three years’ supervised release in November 2019. She is barred from future nursing. The first three months of her sentence were served under house arrest. MDOC began offering Suboxone at MASAC as medication-assisted treatment in April 2019.

Mississippi: Arthur Lestrick, 40, had tired of serving his life sentence for murder at the Mississippi State Pen in Parchman since his sentence for a capital murder in November 2009. Lestrick was confirmed missing from Unit 28, a work camp, on July 5, 2020. Few details were released about how he managed his escape, but the MDOC offered $2,500 for information leading to his capture and a Crime Stoppers alert was issued. Two days later, the U.S. Marshals Fugitive Task Force and the Metro Nashville Police Department captured Lestrick in a wooded area off Brick Church Pike in Nashville, according to Metro Police. It had been widely reported that Lestrick was found in a Tennessee hotel room. Lestrick was returned to the Mississippi State Pen. July 2019 saw three prison escapes in Mississippi, one from Parchman and two from the Central Mississippi Correctional Facility in Pearl.

Missouri: Pevely Police Department (Jefferson County) surveillance video from April 2019 shows Ryan Bossum being booked into the jail for violating a court order. Former Corporal Robert Watson gets up, walks around the desk, and grabs Bossum by the neck from behind with both hands. Bossum is dragged off the seat and shoved through an open holding-cell door across from the desk. Watson slams the door It all takes less than a minute. Watson had worked for the department for three years. Former Officer Wayne Casey sits across the desk with no apparent reaction. Watson was suspended without pay in May 2019 before the Pevely Board of Aldermen voted to fire both officers. Watson initially said his actions were justified, because Bossum ignored his commands. Watson pleaded guilty to depriving a prisoner of his right to be free from unreasonable force in January 2020. He was sentenced in July to five years’ probation, 150 hours of community service, a $9,000 fine and cognitive-behavioral treatment. He also must surrender his license to be a police officer.

New Mexico: Suboxone, a drug used to treat opioid dependency, is not prescribed to prisoners in New Mexico facilities because it is too easily misused. A Summit Food Service employee, working at the Southern New Mexico Correctional Facility, was booked into the Doña Ana County Detention Center in October 2019 under suspicion of supplying Suboxone to a prisoner. Julian Velasco, 25, was charged with a single felony count of bringing contraband into a prison. State police officers found 196 Suboxone strips seared around Gerald George Cuellars’s cell. Prisoner Aaron Charles Lujan signed a confession and gave it to a NM State police investigator, claiming Velasco gave him 300 Suboxone strips, which Lujan passed on to Cuellar. It is unclear whether the discovery of the strips or the confession came first. Surveillance footage shows Velasco handing Lujan something on October 27; Velasco claimed it was probably gloves. The video shows a box of nylon gloves on a desk, but neither man takes any gloves. Bond information and court dates were unavailable.

New York: The Rikers Island jail complex has 10 facilities and sits in the East River between Bronx and Queens. In June, while the COVID-19 pandemic gripped the city, prisoner Arthur L Brown, 37, held at the George R. Vierno Center on an assault charge, broke loose, scaled a razor-wire fence and jumped into the surrounding water. K-9 unit guards Larry McCardle and Gregory Braska leapt into the river to retrieve him. Three days later, Brown was at it again. This time he made it onto a roof for a 30-minute standoff. Brown had to be lowered to the ground in a basket-style stretcher. DOC spokesman Peter Thorne, who was full of praise for staff after Brown’s first attempt, said, “This detainee was quickly apprehended and returned to custody. The incident is under investigation and there will be immediate...
staff suspensions if warranted." Dominique Peters, another Rikers prisoner, told reporters that Brown had to try to escape, “because measures taken to combat the COVID-19 pandemic have made Rikers intolerable.”

**New York:** A federal judge’s order July 23, 2020 allowed President Trump’s former attorney and “fixer” Michael Cohen to be transferred from federal prison to home confinement to serve the remainder of a three-year sentence for tax evasion, lying to Congress and violating campaign finance laws. In May, Cohen had received a medical furlough from the prison camp at Otisville due to coronavirus concerns. In July, Cohen and his attorney Jeffrey Levine went to the Lower Manhattan courthouse expecting that Cohen would be fitted with an electronic ankle monitor. However, Cohen balked at signing a document that required “no engagement of any kind with the media, including print, TV, film, books, or any other form of media/news,” The New York Times reported. The prohibition was to “avoid glamorizing or bringing publicity to your status as a sentenced inmate serving a custodial term in the community,” according to the document. Cohen declared in a lawsuit that the government was retaliating against him for wanting to exercise his First Amendment right to publish a book about Trump. Federal Judge Alvin Hellerstein sided with Cohen.

**North Dakota:** On March 16, 2020 Robert Eugene Johnson, 72, was sentenced to four months in prison for federal tax evasion; just one week later, he lied about his conviction while attempting to buy a semi-automatic weapon. It is unclear why Johnson wanted to purchase the gun. U.S. Attorney Drew Wrigley characterized it as a ‘lie and try case.’ Johnson’s lie was quickly revealed, and the sale scuttled when the store consulted the National Instant Criminal Background Check System. Johnson was arrested again in June, pleaded guilty to making a false statement about his criminal record while buying a firearm and was sentenced to five more months in prison with a further year of supervised release. Johnson will have to pay a $100 special assessment for the Crime Victims’ Fund. The case was investigated by the IRS and the ATF in Fargo.

**Oklahoma:** In 1984, Donna Haraway was abducted and murdered in Ada, Oklahoma. Karl Fontenot and Tommy Ward were tried together, convicted and sentenced to death. The Oklahoma Supreme Court overturned those convictions. They were tried separately, convicted again in 1989 and sentenced to life in prison. Fontenot and Ward’s convictions appeared as subplots in John Grisham’s 2006 book, *The Innocent Man: Murder and Injustice in a Small Town,* and later in the 2018 Netflix docuseries based on that book. In November 2019, a court order from the U.S. District Court for the Eastern District of Oklahoma stated Karl Fontenot should be released or granted a new trial, based on new evidence uncovered by Tommy Ward’s legal team. Fontenot was released in December 2019. Attorneys for Ward filed a brief and a motion for summary disposition in March 2020: “Newly discovered, undisputed evi-
Pennsylvania: A vial of fake urine and handwarmers tipped off Adams County Prison officials that Kody Fuller, 25, was up to no good. Fuller was a drug counselor at the prison in April 2020, when a search of his backpack revealed two pocket knives and the fake pee. Surveillance video from a counseling session a week earlier showed Fuller handing contraband to prisoner Terrence Pearsall, 24. Thirteen strips of Suboxone were found in Pearsall’s cell. Fuller told police that Pearsall threatened to tell staff that Fuller smoked pot, if he didn’t bring him drugs in exchange for $200. Pearsall’s girlfriend, Greta Hashani, 24, who was also charged, admitted to providing the drug package for delivery. A police report reveals that Pearsall was selling Suboxone for personal benefit and forged signatures on fraudulent checks. He blamed his behavior on alcoholism and prescription painkillers. Liesenfeld was ordered to pay $100,000 restitution to cover the union’s losses. His report date was set for August 7.

Scotland: The Scottish Prison Service efforts in June to alleviate feelings of isolation among youth at the Polmont Young Offenders jail backfired spectacularly. Mobile phones were distributed in a £1 million initiative to help the prisoners keep in touch with family, while in-person visits were prohibited due to COVID-19 concerns. Each handset was loaded with 310 free minutes. The 400 Polmont prisoners were limited to 12 pre-vetted contacts. The Scottish Prison Service did not foresee the scores of calls to The Samaritans, a suicide hotline, and to “999” – the local version of 911. A prison source told reporters, “One of the prisoners was telling his pals that he’s called to complain that he was locked up in a building with a bunch of dangerous pedophiles. There could obviously be a serious side to this. If scores of prisoners are jamming 999 lines at the same time, it could stop ambulances attending real emergencies.”

Staff at the facility are embarrassed that it had not anticipated the mischief, which is likely to delay phone privileges for the rest of Scotland’s 7,000 prisoners.

Texas: “The day I received clemency was like I was born again. It was like getting a brand-new birth certificate,” exclaimed Jason Hernandez, now 42. Hernandez was 20 when he was convicted on federal drug charges and sentenced to life plus 320 years in 1998. “The two most important days of your life are the day you are born and the day you figure out why,” continued Hernandez. “For me, it was the day that I thought I wasn’t born to be a prisoner.” Hernandez
Composer Nigel Osborne infused the piece with elements of Kurdish, Turkish, Arabic, and Balkan music. Kavala’s creative friends from across genres collaborated without pay. Kavala’s attorney took charge of the snails, after Kavala was told he was moving to a new prison. At least the snails are free.

**United Kingdom:** The Home Office in the UK is responsible for immigration, security and policing. Since 2000, the Home Office has tracked what are deemed to be “terror offenses” in the UK. Although Islamist extremists make up the greatest number of prisoners, there has been a marked increase in far-right cases. Three years ago, there were only nine “extreme right-wing” prisoners; in 2019 there were 33 and this year there are 44. Conor McGinn MP, the opposition “shadow security minister” (Labor Party), said: “This significant rise shows the very serious and dangerous nature of far-right extremism.” In 2016, the UK government banned the far-right group National Action, the first such group to be banned since World War II. In June, thousands gathered for a far-right “unity demonstration” in central London’s Parliament Square in reaction to graffiti defacing a Winston Churchill statue the week before. A Home Office Conservative Party spokesperson said it is “increasing funding for counterterrorism policing by £90m this year and creating new powers and tougher sentences via the counterterrorism and sentencing bill.”

**Turkey:** Osman Kavala is one of Turkey’s most high-profile political prisoners. Imprisoned since 2017 on various coup and terrorism charges, Kavala is a target of President Recep Tayyip Erdoğan’s crackdown on dissent. In June 2020, Opera Circus, a British performing-arts company, released a 10-minute YouTube video opera, *Osman Bey and The Snails*, which chronicles an event during Kavala’s solitary confinement in a high-security prison outside Istanbul. Kavala rescued two snails from a salad and nurtured them as companions. The snails star in the opera, “In some kitchens, we’d end up in a pot with garlic butter and seasoning. Our luck to be here with Osman, a man of such honor and reason.” Composer Nigel Osborne infused the piece with elements of Kurdish, Turkish, Arabic, and Balkan music. Kavala’s creative friends from across genres collaborated without pay. Kavala’s attorney took charge of the snails, after Kavala was told he was moving to a new prison. At least the snails are free.

**Vermont:** Ben & Jerry’s, the Vermont-based ice cream brand, is known for its strong progressive identity. Over the years it has released “Limited Batch” flavors to advocate for change and donate to progressive causes. It released Justice ReMix’d in September 2019, in partnership with the Advancement Project National Office, to highlight racism and support work in criminal justice reform. The announcement coincided with a planned Miami-Dade County School Board meeting addressing issues impacting the school-to-prison pipeline. The flavor features “cinnamon and chocolate ice creams, gobs of cinnamon bun dough, and spicy fudge brownies.” In June 2020, Ben & Jerry’s posted a statement under the title “Silence Is Not An Option.” One sentence stood out, “The murder of George Floyd was the result of inhumane police brutality that is perpetuated by a culture of white supremacy.” The post outlined a four-point plan to dismantle white supremacy: A call for reconciliation, not aggression; a call to Congress to pass H.R. 40; a task force to increase police accountability; and a call on the DOJ to reinvigorate its Civil Rights Division.

**Washington:** Convicted child rapist Robert Munger, 70, was sentenced to a minimum of 43 years in prison by Cowlitz County Superior Court Judge Michael Ev...
ans in December 2019, after he was found guilty in several child sex abuse cases. He served less than one year of his sentence at Airway Heights Correctional Center, just west of Spokane, before he was bludgeoned to death by fellow prisoners in June. It is unclear how many prisoners were involved in his beating or what prompted the attack. A fractured skull sent him to Sacred Heart Hospital, where he died three days later. The Spokane County Medical Examiner ruled Munger’s death a homicide. The assault investigation is ongoing. Munger had four separate trials over two years before sentencing. His attorney had said Munger was planning to appeal.

**Washington**: August 4, 2020 may be another landmark date for Tarra Simmons, who won a Supreme Court fight in 2017 to sit for the Washington state bar exam, despite her prior criminal conviction. [See: *PLN*, Feb. 2019, p.1]. Simmons announced her bid to run as a Democrat for Representative Sherry Appleton’s open House seat in the 23rd Legislative District. The district includes Bainbridge Island and parts of Kitsap Peninsula. Appleton served the district for eight two-year terms and recruited Simmons to run for her seat, when she announced she would retire at the end of her term in January 2021. Simmons is director of the Civil Survival Project at the Public Defender Association in Seattle. Simmons had not planned for public life — “I never felt like it was something I wanted to put myself or my family through based on my background” — but her lawyer’s life became fodder for political hits during supporter Emily Randall’s 2018 state Senate campaign. But Simmons found unexpected support in the community, which paved the path for her current run.

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**Criminal Justice Resources**

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

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

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

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

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

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

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

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

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

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

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

**National Resource Center on Children and Families of the Incarcerated**
Provides free resource directory for prisoners and supports activists working to expose and end the abuses of the Prison Industrial Complex and mass incarceration. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. www.prisonactivist.org
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**Prison Education Guide,** by Christopher Zoukis, PLN Publishing (2016), 269 pages. $49.95. This book includes up-to-date information on pursuing educational coursework by correspondence, including high school, college, paralegal and religious studies. 2019

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

**Prison Nation: The Warehousing of America’s Poor,** edited by Tara Herivel and Paul Wright, 332 pages. $35.95. PLN’s second anthology exposes the dark side of the ‘lock-em-up’ political agenda and legal climate in the U.S. 1041

**The Ceiling of America, An Inside Look at the U.S. Prison Industry,** edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. $22.95. PLN’s first anthology presents a detailed “inside” look at the workings of the American justice system. 1001

**The Criminal Law Handbook: Know Your Rights, Survive the System,** by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 642 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, Nolo Press, 536 pages. $39.99. Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. 1037

**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

**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,** 17th Ed., by Stephen Elias and Susan Leviniland, 363 pages. $49.99. Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. 1059

**Deposition Handbook,** by Paul Bergman and Albert Moore, Nolo Press, 426 pages. $34.99. How-to handbook for anyone who conducts a deposition or is going to be deposed. 1054

**Criminal Law in a Nutshell,** 5th edition, by Arnold H. Loevy, 387 pages. $49.95. Provides an overview of criminal law, including punishment, specific crimes, defenses & burden of proof. 1086

**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

**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

**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

**The Federal Rules of Civil Procedure, Practitioner’s Desk Reference 2017,** by A. Benjamin Spender, 439 pages. $54.95. This concise compilation of the Federal Rules of Civil Procedure and portions of Title 28 of the U.S. Code most pertinent to federal civil litigation provides attorneys and pro se litigants with a handy resource that facilitates quick reference to the Rules. 1095

**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


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**Criminal Procedure: Constitutional Limitations**, 8th ed., by Jerold H. Israel and Wayne R. LaFave, 557 pages. **$49.95.** This book is intended for use by law students of constitutional criminal procedure, and examines constitutional standards in criminal cases.  

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**Prisoners' Self-Help Litigation Manual**, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 928 pages. **$54.95.** The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Includes detailed instructions and thousands of case citations. Highly recommended!  

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6737 N. Milburn Ave. Ste 160-310 Fresno, CA 93722
Write a letter stating “Send me an order form”. Include your return address, inmate number and any special instructions. Once you receive an order form, fill it out and send with your stamps.

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Any requests mailed to us including this page will be rejected and we will not provide service to you because of the loss of exposure from our advertisement. We have the right to refuse service to anyone.