INSIDE

From the Editor 14
Private Prison Run by Gangs 18
Prisoners on Prime Time 24
CA Suicide Suit Settles 32
MI Prisoner Wins Retaliation Case 36
Releasing Violent Offenders 40
Impact of Climate Change 42
TX Jailers on Temporary Licenses 46
Denver Halfway House Contracts 50
Pot Possession Legal in CA Prisons? 54
FL Voting Rights Law Challenged 58
Prison Deaths Spike in MS 60
News in Brief 63

California Tried to Fix Its Prisons. Now County Jails Are More Deadly

On the night of January 17, 2018, Lorenzo Herrera walked into the Fresno County Jail booking area and sat down for an interview. Yes, he had a gang history, an officer wrote on his intake form. But Herrera, 19, said he did not expect problems with others inside the gang pod he'd soon call home.

His parents had encouraged him to barter for books and newspapers – anything he could to preoccupy himself until his trial on burglary and assault charges. His father, Carlos Herrera, offered advice: “Just be careful, and only trust yourself.”

Herrera survived the violent chaos of the Fresno County Jail for 66 days, including living through a brawl that left another prisoner unconscious. Then, on an afternoon in March, jail officers found him strangled.

Herrera didn't get a trial or a plea deal. He got a death sentence, his parents say. And even now, no one at the jail seems to know what happened.

The evening before Herrera entered the jail, Ernest Brock, 20, was also arrested and booked pending trial. Officers put him in a cell with a psychotic prisoner accused of rape who had refused to take medication and was beating his head against the walls.

Brock made it three days inside before the cellmate choked him into a coma.

Yet a third prisoner arrived soon after Brock, booked for a five-year-old probation violation. Andre Erkins, 30, writhed in pain for hours before dying of previously undetected cardiac disease. The jail staff failed to notice his worsening health until it was too late.

Three bookings within 48 hours. Three young men jailed for different reasons. Three people who walked into the overcrowded Fresno County Jail and left on gurneys, dead or barely alive.

The fates of Herrera, Brock and Erkins set the stage for the deadliest year in at least two decades at the jail, a sprawling complex of jam-packed cells, filled with prisoners working their way through a clogged criminal justice system.

Eleven prisoners died last year from drug and alcohol withdrawal, suicide, medical complications and murder. Thirteen other people were beaten and hospitalized for multiple days.

The increase in violence and death in Fresno started soon after the state was ordered in 2011 by the U.S. Supreme Court to reduce its prison population. That's when California officials approved sweeping reforms called “realignment,” shifting responsibility for thousands of offenders from state prisons to county jails.

While decreasing the overload in state prisons, the results in many county jails have been deadly. An investigation by McClatchy and ProPublica has found that many county jails have struggled to handle the influx of violent and mentally ill prisoners incarcerated for longer sentences than ever before. As a result, prisoners are dying in markedly higher numbers.

No other jail in California has seen a sharper increase in prisoner deaths than the Fresno County Jail, whose three buildings house more than 3,000 prisoners, mostly in the concrete cube known as the Main Jail in downtown Fresno. In the seven years before the 2011 realignment, 23 prisoners died in jail custody, data from the California...
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- HRDC filed First Amendment censorship lawsuits against the Michigan DOC, the Marshall County Jail in Tennessee and the Forrest County Jail in Mississippi; we also settled a censorship case against the Cook County Jail in Chicago, and a federal court ruled in our favor on liability in a suit against the Southwest Virginia Regional Jail Authority in Virginia.
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California’s Deadly Jails (cont.)

Department of Justice shows. That figure more than doubled to 47 deaths during the seven years after the state shifted more responsibility to the county jails.

Only one Fresno County prisoner killed another in the seven years before realignment. Since then, four have died at the hands of other prisoners.

The problem is particularly acute in places like Fresno, Kern and Merced counties, inland stretches of California, where deaths have surged disproportionately, a data analysis by McClatchy and ProPublica found. These less affluent counties in California’s Central Valley watched prisoner homicides triple.

In the past seven years, some counties took advantage of the billions of dollars attached to California's realignment efforts to address overcrowding. Others, the investigation shows, have viewed the changes as a burden.

The Fresno County Jail death toll illustrates how some counties have failed to institute reforms, keep up with federal court orders to improve conditions and prioritize prisoner well-being. As has long been the case, two-thirds of the people kept in jails are accused but not convicted.

Fresno County Sheriff Margaret Mims said that the county jails hold many dangerous people, and that awful events, including deaths, are almost inevitable. A few years ago, Mims said, a prisoner hid a razor blade in his nasal cavity and cut his co-defendant in court.

“How long does it take to inhale a razor blade?” she said. “If you wanted absolutely no assaults on inmates, no assaults on staff, no murders, no suicides you would almost have to have a [guard] assigned to every single inmate or continually have eyes on those inmates.”

However, the state data shows Fresno County recorded far more prisoner deaths, and particularly violent deaths, than some larger California jails. For example, Orange County’s jail on average holds twice as many people as Fresno County’s, but it had just one prisoner-on-prisoner homicide the past seven years. Fresno County had four.

Don Specter, director of the Berkeley, California-based nonprofit Prison Law Office, whose litigation against the state’s prisons spurred the realignment effort, called conditions in most county jails “a mess.”

The problems are compounded because county jails were never meant to accommodate these different prisoners with yearslong sentences. County jails also lack effective oversight, especially in monitoring the handling of difficult prisoners. And many sheriffs spend minimal amounts on jail health care and safety.

The Fresno County Sheriff’s Office does not segregate people awaiting trial from convicted prisoners serving a jail sentence. When more dangerous or mentally ill prisoners strain the short-handed staff, every part of the jail deals with the consequences. As the Herrera, Brock and Erkins cases illustrate, this can have a ripple effect throughout the jail. Officers are sometimes slower to conduct rounds, to notice prisoners who are gravely sick, to watch fights develop in a gang pod or to isolate psychotic prisoners.

Experts say apathy among officials in many of California’s 56 counties with jails has fostered a crisis.

“The sheriffs have been very indifferent to jail conditions,” Specter said. “There’s been a complete lack of action.”

Mims said 2018’s record number of fatalities inside her jail was predictable. In more than two hours of interviews, she repeatedly characterized such deaths as an unfortunate consequence of jail life after realignment and expressed no remorse over her office’s failure to prevent them. At one point she asked reporters for basic details about the fatalities in her own jail.

She also said one of the most “painful” moments of her time in office was releasing prisoners during the economic downturn. “Being a peace officer,” Mims said, “you know, you want to keep people locked up.”

Though running a jail is complicated work, prisoner deaths should not be dismissed as inevitable, said Marin County Sheriff Robert Doyle, speaking on behalf of the California State Sheriffs’ Association.

“As soon as someone walks in, they’re our responsibility,” he said. Asked if it’s the sheriff’s job to prevent prisoner deaths and jail violence, Doyle responded, “Of course.”

The Prison-to-Jail Churn

Fresno County’s jail system has been teeming with prisoners for decades. In 1993, county officials packed 20 people into a cell intended for 12, with prisoners sprawled on mattresses between and beneath bunk beds. In one incident, a prisoner clogged his toilet
California’s Deadly Jails (cont.)

with a sheet, causing other cells to overflow with waste when someone flushed.

“By the time we had breakfast, seventy-five people were eating with two inches of human waste on the floor,” one prisoner said in a sworn affidavit.

Months before the toilets backed up, a convicted murderer raped and killed a man booked on drug charges. Then-Sheriff Steve Magarian told The Fresno Bee, “The jail is full of dangerous inmates who kill with no notice.”

Lawyers representing Fresno County prisoners sued the sheriff’s office in February 1993, alleging cruel and unusual jail conditions that violated the U.S. Constitution’s Eighth Amendment. By November, the county settled with prisoners and agreed in a consent decree to cap the jail population. When any part of the jail reaches full capacity, the sheriff’s office must release prisoners and limit new arrivals. The sheriff is prohibited from having people sleep on the floor.

Though unpopular at first, “the reality is that putting some kind of sensibility of operation into the jail,” said Assistant Sheriff Tom Gattie, who oversees Fresno’s jail.

In negotiations, the prisoners’ lawyers agreed the sheriff’s office can house three people in a space designed for two. The sheriff is legally allowed to overcrowd the jail, but only to a point.

Then came back-to-back blows for Fresno County. The real estate market crash and recession dried up jail funding as tax revenues shrank.

Mims was running for a second term as Fresno County sheriff in 2010. She won the top job four years earlier, advocating tough-on-crime policies and denouncing early prisoner releases. But facing severe budget shortfalls, Mims laid off several dozen correctional officers. She closed several floors of the jail because she didn’t have enough officers to watch prisoners. And the consent decree required Mims to set some of them free.

The prisoner population dropped from 2,100 to 1,400 in the first six months of 2010, according to the sheriff’s office jail census data. The sheriff’s office primarily released people charged with misdemeanors or serving sentences for low-level crimes.

While Fresno County struggled with jail crowding and staffing, the state faced increasing pressure on its three dozen prisons. In May 2011, California lost its decades-long legal fight on prison overcrowding. In a 5-4 decision, the U.S. Supreme Court required the state to reduce its prisoner population by 46,000 prisoners. Without that dramatic change, there was “a certain and unacceptable risk of continuing violations of the rights of sick and mentally ill prisoners, with the result that many more will die or needlessly suffer,” Justice Anthony Kennedy wrote in the majority opinion. “The Constitution does not permit this wrong.”

Instead of releasing prisoners early, the state stopped thousands of new arrivals from going to prison at all.

Democratic Governor Jerry Brown and state lawmakers reduced the number of convicts sent to the prisons. They bundled the first reforms in 2011 into Assembly Bill 109, referred to as realignment. The legislation rerouted people convicted of nonviolent, nonsexual and nonserious crimes to serve sentences in county jails.

Realignment and subsequent sentencing reforms brought relief to state prisons and new burdens for many local governments. To ease the load, counties received billions of state taxpayer dollars to pay for new jail facilities, treatment programs and staff.

Previously, judges could not sentence people to more than a year in county jails. In the reform era, jail sentences extended for years, meaning that sheriffs must provide long-term care for county jail prisoners who previously would have gone to prisons.

County jails are not equipped for such strains, said Matt Cate, the former state

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corrections secretary who helped oversee realignment. In retrospect, Cate said he believes convicts sentenced to five years or more of incarceration should serve that time in prison, not the local jails.

“In some places, the sheriff had no chance,” Cate said. “The place was already crowded, and the place was already old, and the mission was already complex, and the budget was already not very good.”

As some state prisoners’ sentences ended in 2012, and realignment blocked new intakes, the prison population dropped by 20,000 within months.

The opposite occurred in county jails. The number of prisoners increased by almost 10,000, to about 82,000.

The release of prisoners has stabilized, but violence has increased. Mims said this has been an unavoidable result of the reforms that now involve longer stays for challenging prisoners. “Realignment changed the whole game,” the sheriff said.

Arguably, conditions inside the Fresno County jail should be improving. In 2015, the sheriff’s office agreed to a second consent decree in another class-action lawsuit over jail conditions. The agreement requires the sheriff to hire 127 additional correctional officers to protect and provide services to prisoners.

Mims has expanded the jail’s force by roughly 100 officers, court records show, but adding staff has not gone smoothly. Throughout 2017, the sheriff’s office hired 40 new officers but lost 39. Many departures were retirements, replacing experienced officers with rookies.

The churn continued into January 2018. When Brock, Herrera and Erkins entered the jail, the sheriff’s office was hemorrhaging correctional officers. In March 2018, 13% of the jail positions were vacant.

The deadline for hiring new officers is October, but Mims doubts the office will make the deadline.

“We’re never going to be always 100% compliant,” she said.

And the jail’s issues continue to fester. It had an average daily population of 3,136 prisoners in February 2019, 11% higher than the previous February. The number of people incarcerated has exceeded 3,000 for six of the past seven months, within a court-ordered population cap but more than any recent time. About 25% of the current prisoners would have previously gone to state prisons, jail records show.

Jail staffs feel overwhelmed at times, said Lt. Russell Duran, a jail officer for 17 years. Staff members talk about the demands of guarding such large populations. The gang members expand their influence in the jail while serving longer sentences, the maximum-security prisoners pose a greater threat, those with serious mental illness and those with chronic medical conditions suffer in a place built to temporarily seal them away.

“I’m not gonna lie,” Duran said, “it’s hard to manage.”

The Fresno County Jail is also holding all prisoners for much longer periods of time than before realignment. The average length of stay in 2011 was 16 days. That extended to 21 days the following year as prison reform began. It has grown nearly every year since, according to data from the California Board of State and Community Corrections. Prisoners stayed in Fresno County 35 days, on average, in 2018.

Even people awaiting trial have idled in jail far longer, with the average pretrial
stay doubling from 12 days in 2011 to about 24 days last year.

Jail conditions rarely came up as Mims successfully campaigned for her fourth term last year. She hasn’t faced an opponent since her first race in 2006.

Among the memorabilia adorning Mims’ office is the hard hat she wore January 25, 2018, at a ceremonial groundbreaking for the department’s new $110 million jail. The facility will replace a dilapidated 1947 jail annex, where female prisoners are housed, that is dangerous and in disrepair. It will hold 200 fewer people, reflecting realignment’s goal of reform and downsizing.

But it is a temporary fix.

“We’re building it,” Mims said, “with expansion in mind.”

A Psychotic Cellmate

The 48-hour period in which Herrera, Brock and Erkins entered the Fresno County Jail illustrates the failures of county jails since the 2011 realignment. They were not sent to jail because of realignment. But their lives were at increased risk at the troubled facility, in part, because of it.

On January 16, 2018, police found Brock at his grandmother’s house and arrested him on a warrant issued in April 2017 for allegedly possessing child pornography on his computer.

Then 20 years old, Brock lived with his grandmother on the north end of town along the San Joaquin River. He had dropped out of high school and spent his days riding dirt bikes, playing video games and helping his father work at a radiator repair shop. His mother, Tabatha Rankin, said her son loved hiking and fishing but hadn’t figured out what to do with his life.

When Brock was arrested, his family couldn’t afford to post bail. Rankin visited him at the jail the next day. “He seemed to be OK, everything was OK,” she said. “And then the next day was a whole different story.”

Brock had been assigned a frightening cellmate three days after he was arrested. He sounded alarmed in a call to his mother. “He told me there was a guy in there and he was crazy and he needed his psych medicine,” Rankin recalled. She urged her son to report problems to staff.

The sheriff’s office knew of the cellmate’s mental issues.

The cellmate was incarcerated for six months, awaiting trial in a rape case, court records show, and a psychiatrist prescribed medicine for psychosis. The cellmate, then 26, refused to take it.

A judge ordered him moved to a locked state psychiatric hospital so he could be forcibly medicated. It was an urgent matter, the ruling states, because “if the defendant’s mental disorder is not treated with anti-psychotic medications, it is probable that serious harm to the physical or mental health of the patient will result.”

He was still awaiting transfer a month later, when Brock was placed in his cell. Admission to a California state hospital often takes months, and in January 2018 the waitlist was more than 1,000 patients long. (Notably, Fresno County’s court sends more prisoners to state mental hospitals than almost every other large county in California, The Fresno Bee reported in 2013.)

Whether Brock reported his fears about his cellmate to jail staff is unclear. But on January 19, the cellmate, according to the Fresno County sheriff’s office, choked Brock until he’d squeezed off air to his brain.

Staff called the Fresno Fire Department and an emergency medical team arrived shortly before 9 p.m. Brock “had trauma to the neck and knuckles,” firefighters reported. Paramedics tried to reopen Brock’s airway and rushed him to the emergency room.

Rankin was unaware of the struggle to save her son. She repeatedly checked the online prisoner search tool that evening to see if Brock had been moved to a different, safer cell. No updates popped up, until she saw that her son had been taken to a hospital.

Rankin waited outside until the jail’s lobby opened. She told the front desk staff she “wasn’t going to leave until they told me something.”

A supervising officer assured her “that he was OK,” Rankin remembered. “It was just a little fight that they had gotten into and everything was fine.” Yes, Brock was hospitalized, but Rankin couldn’t visit him unless she first posted bail.

More than an hour later, an officer called to tell her that Brock might not survive. She rushed to his hospital room to find his wrists and ankles[c]uffed to the bed frame, dark bruises around his throat. He was comatose, but two officers stood guard to ensure he didn’t escape.

“They didn’t know how long he had been without oxygen,” Rankin said. He remained unconscious for two weeks, clinging to life.

When Brock awakened, he couldn’t walk. He had no short-term memory, his mother said, and seemed to have problems with basic mental functions.
Prosecutors dropped the charges against Brock, and Rankin has filed a wrongful injury lawsuit against the sheriff’s office, now scheduled to go to trial next year. Fresno County has denied all wrongdoing in the case.

Today, Brock’s future remains uncertain, his mother said. He still lives with his grandmother, and his family tries to safeguard him.

“There’s always someone there with him,” Rankin said. “He’s never there by himself.”

“No Reason Why that Boy Should’ve Died”

Andre Erkins got into trouble with the law for the first time on August 9, 2012. “While the victim was unloading groceries, Erkins took her purse from her shopping cart,” the arrest report said.

Fresno County prosecutors charged him with felony grand theft and simple assault, and he pleaded guilty in January 2013. A judge sentenced him to two years probation and 240 days in the Fresno County Jail.

When Erkins was released, he tried in his own way to get his life back on track. He moved to Southern California to start over but failed to give his probation officer advance notice. Then he missed a court date. A judge issued a warrant for his arrest. Erkins knew he was in trouble, but his relationship with longtime friend Natalie Meza was going well.

They had their first child, Joseph, in 2014, and Christiana was born in spring 2016. Erkins stayed home with the kids when Meza worked. She moved to the Sacramento metro area in 2016 to train as a sign-language interpreter, and he joined her for their daughter’s first birthday.

Erkins rarely talked with Meza about his probation violation. But the rest of his family urged him to resolve it.

On January 18, 2018, Erkins rolled through an intersection without stopping while driving Meza to work, with his children in the backseat. An officer pulled him over and ran his name.

Erkins knew he was caught. He told his partner, “I’m going to go.... It might as well be now than later so I can get it done with.” The officer put Erkins in the police car and told Meza to say goodbye. “I took that opportunity to go and tell him that I love him, that everything’s going to be right,” she said.

A judge on February 5 ordered that he spend four weeks in jail to resolve the theft charge.

But on February 17, Erkins “complained of not feeling well,” according to his autopsy report. He was “sent to the infirmary” and told staff he vomited seven times. Erkins was “interacting with infirmary staff when he collapsed,” after having “seizure like activity,” according to the report.

Jail staff began CPR, and an ambulance whisked him to a hospital five blocks away. He was pronounced dead at 8:37 p.m.

Erkins died a “natural” death caused by atherosclerotic heart disease, ruled the county coroner, who is part of the Fresno County Sheriff’s Office. His heart was slightly enlarged, and some of his arteries were 70% blocked. Investigators said that during his booking, he reported having high blood pressure but wasn’t taking medication.

That is the official version of events. But a cellmate said that doesn’t tell the full story of Erkins’ final hours.

Erkins’ bunkmate remembers trying to

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get help for him while he suffered for more than 10 hours, apparently unnoticed by correctional officers during hourly checks. Erkins complained of a headache, then vomited and poured sweat, his bunkmate said in a phone interview. (The bunkmate, now serving time in a state prison, requested his name not be used out of fear for his safety.)

“He did not look healthy at all. Pale.... He just looked drained,” Erkins’ bunkmate said.

Erkins’ speech slurred that evening as they sat at a dayroom table. His lips were turning blue, but he told his bunkmate he had no previous medical problems. “This guy needs medical attention ASAP,” the bunkmate remembered telling an officer. “He’s gonna die!”

Erkins was taken to medical staff some 30 minutes after the prisoners alerted the correctional officer, according to Erkins’ bunkmate. Officers locked down the jail five minutes later. Firefighters and emergency medical technicians arrived, loaded Erkins onto a stretcher and wheeled him away.

The bunkmate told his mother, Jenni-fer Sanders, what he saw. Bothered by the death of an otherwise healthy man in jail, Sanders wrote to officials accusing them of neglect and sent a letter to Erkins’ mom. She signed her letter “a concerned mother and citizen.”

“There was no reason why that boy should’ve died,” she said in a telephone interview.

The morning after Erkins died, an investigator called Erkins’ brother, Deijon, to ask questions about the family’s background and medical history. Deijon Erkins did not know what had happened to Ari, the family nickname for his brother.

“Is he alive?” Deijon Erkins demanded. “He just hesitated, and he’s like, ‘I’m sorry to inform you ....’ ”

Deijon Erkins called Meza, and she scolded him for interrupting her at the McDonald’s where she worked. “What was so important it couldn’t wait?” she wondered.

Ari died, Deijon told her.

Meza said she sobbed in the bathroom stall.

Erkins’ family tried to get lawyers to pressure the sheriff’s office for answers, but they eventually gave up, tangled in the county bureaucracy.

Erkins’ mother, Chrisie Collins, wrote to the court complaining that she was getting the “runaround.” A year later, when contacted about the letter in Erkins’ court file, she said, “Finally, somebody’s paying attention.”

The family created pendants to hold Erkins’ ashes. For Collins, a silver music note filled with his remains travels with her in the car. Meza misses her partner and the better life they were trying to build.

Four-year-old Joseph dealt with the loss of his father through grief counseling, Meza said. Christiana, who recently turned 3, is only beginning to ask questions.

An Unsolved Case
On January 17, 2018, Lorenzo Herrera called his parents, Carlos and Anna, to say he was OK but was under arrest.

He and two other young men were accused of smashing into a home southeast of Fresno and fleeing in a pickup. Herrera allegedly pointed a gun at an officer before surrendering.

Herrera was working as a janitor at the local high school, and as far as his parents knew, the only thing he had ever stolen was a family barbeque smoker he used to party with friends and never returned, his father said. Lorenzo Herrera had no previous criminal history, according to court records.

In a jail intake photo, Herrera wore black clothes, his hat turned backward. He held a dry-erase board proclaiming to be a “Northerner” from Reedley, a subsect of the Norteños street gang. He said his moniker was “Rampage.”

His father saw the image as a survival tactic. Self-identifying as a gang member is part of living in the Central Valley and being Hispanic, he said. “My son wasn’t no gang member,” Carlos Herrera said in an interview.

At booking, Herrera was assigned a cell in a Norteños gang pod. Correctional officers observe prisoners in six different pods from a glass-encircled observation deck. The feeling is different on the floor. Concrete walls separate the six pods, and some pods contain up to 72 prisoners. Some are serving yearslong sentences and others recently arrived and are awaiting their day in court.

Four correctional officers are expected to maintain order among some 200 prisoners on the floor. Correctional officers, who do not carry firearms, are required by the state to perform hourly checks. If trouble erupts, they must craft a plan to take back control.
On February 2, two weeks after Herrera arrived, a melee in the gang pod demanded action.

Three correctional officers appear to have been working the crowded sixth floor, and two officers in the security station noticed a group of men walking toward a prisoner, according to a sheriff’s office incident report. They saw prisoners beating a man under the stairwell.

An officer called for help. A pepper-ball launcher was rushed from the security station. An officer opened the door hatch, pulled a launcher from his leg holster and “instructed all inmates to stop fighting and to get down on the ground,” according to incident reports. That was met with “negative results.”

The officer fired six pepper-ball rounds toward the prisoners, forcing them to drop to the floor. At least 18 correctional officers and staff from across the complex flooded into the pod.

An unconscious prisoner was whisked to the hospital, and the pod was put on lockdown. The man assaulted “refused to press charges,” jail staff wrote.

In the 66 days Herrera was in Fresno County’s custody, four people were seriously injured in fights they required multiple-day hospital admissions, according to county records. That’s more than in all the preceding year.

While inside, Herrera spoke to his parents but never mentioned the violence. In one visit, he apologized to his mother for missing Valentine’s Day. “Mom, I’m really sorry. I don’t want to feel like you’re afraid for me. I’m OK. Don’t worry about me,” she said he told her.

About a month after that visit, on March 24, 2018, a correctional officer doing cell checks found Herrera dead on a cell bunk bed. A “man down” call was issued and the staff started CPR. He was pronounced dead about 25 minutes later.

An autopsy determined Herrera had been choked to death, the cause of death “ligature strangulation.”

The phone at Carlos and Anna Herrera’s home rang about 7:45 p.m., and they were asked to come to the jail. During the drive toward downtown Fresno, they wondered if their son would be released.

Instead, they were led into a meeting room and offered a box of tissues.

Herrera’s parents have filed a wrongful death lawsuit against the sheriff’s office, and a jury trial is scheduled for 2021. The county denies all wrongdoing.

The investigation into Herrera’s death remains open, and no one has been charged. Investigators have interviewed every prisoner in the pod at the time of his death, along with every officer on duty.

Detectives were awaiting results from a DNA test of some evidence from the scene, according to a recent court filing.

The prolonged homicide investigation is but one of Mims’ challenges in managing the chaotic Fresno jail. Since the 2015

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This book was accepted by the Department of Corrections and Community Supervision Commissioner Anthony Annucci and placed in all 54 general libraries in NYS prisons as it was deemed to be a useful resource and guide for general population inmates as they contemplate the challenges that lie ahead when they are released to the community. It is also in several other state prison libraries.

The Prison Library Project has moved to “In Arms Reach” an organization that features a program that teaches on-line STEM, Art, and Coding classes to children/young adults of incarcerated parents (ages 7 to 21). For free enrollment, anywhere in the US, participants can sign up at: http://inarmsreach.net/helpusinspirethem/ or contact:

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Our office does not assist with Appeals, Writ of Habeas Corpus, Commutation of Sentence or any other post-conviction matter

This Side of Freedom: Life After Clemency is being distributed for FREE to all prison libraries across the United States.

Activist, writer and artist Anthony Papa shares a riveting, compelling tale in his book. He tells firsthand of his experience of returning home after serving 12 years of a 15-to-life sentence for a non-violent drug crime, sentenced under the mandatory provisions of the Rockefeller Drug Laws of New York State. The book is illustrated with beautiful pen & ink drawings by Papa.

This book was accepted by the Department of Corrections and Community Supervision Commissioner Anthony Annucci and placed in all 54 general libraries in NYS prisons as it was deemed to be a useful resource and guide for general population inmates as they contemplate the challenges that lie ahead when they are released to the community. It is also in several other state prison libraries.

The Prison Library Project has moved to “In Arms Reach” an organization that features a program that teaches on-line STEM, Art, and Coding classes to children/young adults of incarcerated parents (ages 7 to 21). For free enrollment, anywhere in the US, participants can sign up at: http://inarmsreach.net/helpusinspirethem/ or contact:

IN ARMS REACH, INC.
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California’s Deadly Jails (cont.)

consent decree, lawyers and prison-reform experts have called for more jail staffing. In meetings with the sheriff’s staff, they examine progress in correcting a jail that has become known for its record of violence and death.

Mims does not attend those meetings and said she instead sends jail administrators to represent her office.

Specter, with the Prison Law Office, said a sheriff’s absence sends a clear message. “One indication of how much they care is whether they show up,” he said.

For her part, Mims has established herself as a voice on national immigration policy. She traveled with President Donald Trump to the U.S.-Mexico border in April 2019 to advocate tougher federal enforcement.

Meanwhile, the county jail is grappling again with setbacks. Within the past two months, three dozen correctional officers have retired or quit their posts.

The jail remains filled to capacity.

Stop Prison Profiteering:
Seeking Debit Card Plaintiffs

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

Please contact Kathy Moses at kmoses@humanrightsdefensecenter.org, or call (561) 360-2523, or write to: HRDC, SPP Debit Cards, P.O. Box 1151, Lake Worth, FL 33460.

Part II: There Has Been an Explosion of Homicides in California’s County Jails. Here’s Why.

Some California county jails saw their rate of prisoner-on-prisoner homicides triple or quadruple, and statewide the number rose 46% after 2011 prison reforms shifted responsibility from state prisons to county lockups. As sheriffs and jail staffs strain, some prisoner crimes go undetected for hours.

Deadly violence has surged in county jails across California since the state began sending thousands of prisoners to local lockups instead of prisons, the result of a dramatic criminal justice transformation that left many sheriffs ill-equipped to handle a new and dangerous population.

Since 2011, when the U.S. Supreme Court ordered California to overhaul its overcrowded prisons, prisoner-on-prisoner homicides have risen 46% in county jails statewide compared with the seven years before, a McClatchy and ProPublica analysis of California Department of Justice data and autopsy records shows.

Killings tripled and even quadrupled in several counties.

The increase in violent deaths in jails began soon after California officials approved sweeping reforms called “realignment” in response to the court ruling. The result has meant the conditions in many jails now mirror those in the once-overcrowded prisons, with prisoners killing each other at an increasing rate.

Prisoners have stabbed, bludgeoned or strangled their cellmates, moved bodies and wiped away blood before guards noticed, autopsy reports show. Staff at the jails have missed several of the crimes entirely, only finding the bodies hours later.

The state holds more than 70,000 prisoners spread across 56 counties with jails. Many prisoners now are serving multiyear sentences in jails originally designed to hold people no longer than a year. An increasing number of jail prisoners suffer from serious mental illness or chronic medical conditions that those facilities have been unprepared to handle.

While prisoner-on-prisoner homicides are up significantly in jails overall, Los Angeles County, home to more than 10 million people, including 16,000 in its jails, has been an exception. That follows a federal court order placing the nation’s largest jail system under an outside monitor in 2014 to overhaul operations after guards were caught allowing fights among prisoners and other abuses. Los Angeles County jails haven’t had a prisoner homicide in more than three years.

The rest of California saw its prisoner homicide count soar by 150%, from 12 killings in the seven years before realignment to at least 30 in the seven years after.

The surge in killings in county jails is particularly significant because the population there is vastly different than in prisons. The majority of people in jails statewide are accused of crimes, innocent under the law, whereas prisoners only hold those who have been convicted of felonies. Jails mix both populations, and the result has been deadly for some.

Three-quarters of those killed in jails since 2011 were awaiting trial, according to state data. Some of the victims were hours away from being released.

Diverting people from overcrowded state prisons to county jails brought organized criminal activity and other new burdens to local sheriffs, said Jonathan Caudill, an associate professor of criminology at the University of Colorado who studies realignment and incarceration in California. The increase in homicides suggests jail officials lack the resources to supervise, provide services and protect the jail population, he said.

“You have the importation of prison
politics into the county jail in concert with people being there longer and having to handle their problems there,” Caudill said. “It’s like fire and gasoline.”

**Kill, Clean, Report**

Increased deadly violence soon followed in every major California region, from the Bay Area to the Central Valley and the Southern California coastline.

In the seven years before realignment, only one jail prisoner was killed in Riverside County, east of Los Angeles. But five have died in homicides in the seven years since. In San Diego County, homicides jumped from two to five in that same period.

Legislation passed to enact realignment reclassified the way the state looked at about 500 crimes to effectively eliminate the possibility of prison time. The new rules applied to anyone convicted of a crime after October 1, 2011, and changed the statutes throughout California law, from the penal to the motor vehicle codes.

Realignment didn’t release people from prison early out a back door – it closed one of the front doors and made it more difficult to end up there at all.

Critics predicted the changes would inevitably lead to a spike in violent street crime statewide. But that has not happened. Researchers have found the prison realignment effort since 2011 has had little to no effect on public safety.

“Statewide violent and property crime rates are roughly where they were when California began implementing these reforms,” a Public Policy Institute of California report stated this year.

Inside California’s jails, the same has not been true. Sentenced prisoners make up a greater share of the jail population statewide, and there are thousands more people held on felonies than in the years before realignment, data from the Board of State and Community Corrections shows.

The state has tried to improve conditions in its sprawling network of state prisons. But county jails – designed to hold people for weeks, not years – have long mixed low-level prisoners with violent defendants in cells, including those charged with murder. But California’s in-custody death data and autopsy records indicate that risky practice has at least contributed to more deadly results in the years since realignment.

On May 8, 2013, Julio Negrete, Jr. was booked into a Riverside County jail on suspicion of drug possession. Officials assigned him a cellmate accused of murder. The next day, guards went to escort Negrete, 35, to a bond meeting but couldn’t find him. They searched the cell from top to bottom, found bloody socks and then came upon his strangled body under the lower bunk hidden by two small cardboard boxes, coroner and court records state. Video footage showed the attack happened roughly 10 hours earlier.

In a written statement, the sheriff’s department said it is “always troubled” by prisoner violence and investigates every assault in Riverside County jails. The agency said the five homicides since 2011 are not the result of its own failings. “When looking back at the totality as a whole, the assaults were discovered to be isolated from one another and acts of opportunity rather than a lapse of policy or procedure,” the department said. “All staff performed professionally and utilized their training to provide safety and security to the facility.”

Ross Mirkarimi, a former San Francisco County sheriff who now reviews...
California’s Deadly Jails (cont.)

prisoner deaths, said of county jails: “The system obviously has fundamental blind spots. Those who are hellbent on committing murder know how to defeat those blind spots.”

Mirkarimi said local sheriffs haven’t reacted with enough alarm to deaths in jail custody. He said that if dying in a cell is “the most vivid feature” of a jail’s shortcomings, a doubling of prisoner-on-prisoner killings should sound a blaring siren.

When dangerous or mentally ill prisoners strain a short-handed staff, every part of a jail suffers the consequences. Officers are sometimes slower to conduct rounds, to see fights develop in a housing area for dozens of gang members or to notice other signs of trouble. They often arrive too late to save lives.

Boredom and frustration alone can create tension among cellmates, said Michael Bien, a lawyer representing prisoners in lawsuits against California prisons and several county jails. “We know that incarcerating someone in a place where you don’t have anything to do is likely to lead to violence, mental illness, stress, suicide, all sorts of things.”

On December 14, 2014, a deputy at the Sacramento County Jail was conducting overnight rounds in a pod for sick prisoners where Edward Larson was housed. Larson, 54, was a mentally ill homeless man jailed for failing to register as a sex offender.

Jail staff assigned him a new cellmate after another prisoner complained of Larson’s lewd comments and poor hygiene. His behavior also bothered his new cellmate, Ernest Salmons, who alerted a deputy at 3:10 a.m. that something was wrong. Larson was lying on his back, eyes closed and a blanket pulled up to his neck.

The deputy instructed Salmons, who was in jail on suspicion of stealing a vehicle, to nudge Larson, according to the district attorney’s death-in-custody review, so Salmons jostled Larson’s mattress. He was unresponsive, his skin cool to the touch, and firefighters pronounced him dead minutes later. His autopsy report shows he was beaten to death sometime after the previous night’s “stand-up count,” when prisoners must stand so guards can take attendance. After that, staff only peer through cell windows for hourly checks.

Salmons first denied fighting Larson. But investigators noticed small areas of smeared blood on the wall of the cell, which had two beds. They found a bloodied T-shirt in the trash can and remnants of pooled blood on the floor. Larson’s head was bandaged, although he had never asked for a bandage. Salmons, however, received several of them.

“It appears,” investigators wrote, “someone had tried to clean up blood from the cell.”

Salmons was convicted of the killing and sentenced to 15 years in prison.

The Sacramento County Sheriff’s Office initially agreed to an interview about the safety of its jail. Then it rescinded the offer, saying instead it would only provide written answers to questions. Then it changed course again, saying the “topics” were the subject of “ongoing litigation” and it would answer no questions.

“I can tell you that the Sheriff’s Office is aware of the concerns regarding these topics,” Sgt. Tess Deterding, a spokeswoman, wrote in a statement.

“Agitated and Shirtless”

It’s not clear why Lyke Woodward was even in the San Diego Central Jail in early December 2016. Police had arrested him for alleged drug possession weeks earlier, though county officials later claimed in a court filing that he was jailed on a parole violation. Woodward had a history of mental illness and drug cases.

Regardless, on December 3, correctional officers responded to a “man-down” alert and found Woodward unresponsive, sprawled facedown on the cell floor with blood pooling around his head, according to medical examiner records. Jail staff described one of Woodward’s cellmates as “agitated and shirtless.”

Cellmate Clinton Thinn, a New Zealander charged with armed bank robbery, told officers he’d fought with Woodward several minutes earlier. However, bruises on Woodward’s neck suggested something had been tied around his throat to choke him off air. In the cell toilet, officers found a jail-issued blue shirt, torn into strips and knotted together. “It is unclear if the suspect attempted to flush the shirt portion,” the autopsy report stated.

Medics rushed Woodward to a nearby emergency room, where doctors and nurses resuscitated the 30-year-old. But his brain was gravely injured, and he began having seizures. Woodward’s condition worsened; his parents told the hospital to stop life support, and he died a week after the attack.

Last year, a jury convicted Thinn of murdering Woodward and sentenced him to 25 years in prison. Woodward’s parents have filed a wrongful death lawsuit against the sheriff’s department, alleging that jail staff failed to protect their son from a dangerous prisoner and were slow to provide medical care. The sheriff has denied the allegations.

In written answers to questions from McClatchy and ProPublica, the sheriff’s department said the number of high-risk prisoners inside San Diego County’s jail increased after realignment. It responded by forming a jail investigations unit.

“They work closely with facility staff members to develop, share and act upon information which could lead to violence and prevent it when possible,” Capt. Alan Kneeshaw wrote. “When assaults occur, they are documented and investigated.”

In Los Angeles County, a federal monitor and members of the public look into jail violence — not just the sheriff’s department. That independent scrutiny exists in only a couple of other California jurisdictions. And jail staff in Los Angeles didn’t volunteer for it.

Home to a quarter of the state’s residents, Los Angeles County once had as many prisoner killings as the other 55 county jails combined. In 2011, as state officials negotiated prison realignment, civil lawsuits and news reports expressed that guards at Los Angeles’ Men’s Central Jail intentionally allowed prisoners to assault each other.

County officials instituted an array of measures to protect people in the cells, including a civilian oversight board. The federal courts appointed an independent jail monitor.

Richard Drooyan, an attorney and the court-appointed monitor for the Los Angeles County Sheriff’s Department, said every jail fight is reviewed to ensure staff members followed safety protocols and intervened quickly. Gang members and other high-risk prisoners are escorted by guards when they leave their cells to prevent violence.

In other county jails, court and autopsy records show prisoners accused of serious violent crimes or suffering psychosis are sometimes housed with people facing mi-
nor charges. “That’s not the way they run the jails down here,” Drooyan said of Los Angeles County. The nation’s largest jail system now segregates and tightly controls where the high-risk prisoners go and what they do, he said.

The fixes appear to have reduced violence overall and homicides in particular. State in-custody death data shows Los Angeles County had 12 prisoner homicides from 2005 to 2011, compared with just five from 2012 to 2018.

A prisoner has not been killed by another person in custody in more than three years.

Today, officers and administrators in the Los Angeles County jails “understand their obligations to protect the inmates and they take those obligations pretty seriously,” Drooyan said. “And I think that it’s reflected in the statistics.”

Mentally Ill Prisoners’ Suit Against GEO Group Survives Motion to Dismiss

by Douglas Ankney

On March 29, 2019, the U.S. District Court for the Southern District of Indiana denied in part a motion filed by private prison company The GEO Group, seeking to dismiss a class-action suit filed on behalf of prisoners in the Mental Health Unit (MHU) at the New Castle Correctional Facility (NCCF).

GEO is paid more than $100 million to operate NCCF. In the MHU, over 100 mentally ill prisoners are locked in their cells 20 hours a day and forced to labor by cleaning, completing reports or assisting other prisoners. When not in their cells they are restrained with handcuffs and shackles.

Plaintiff class representatives Damarcus Figgs and David Corbin raised a number of claims, including: 1) Peonage in violation of the Trafficking Victims Protection Act (TVPA); 2) Forced labor in violation of the TVPA; 3) Harboring for labor in violation of the TVPA; 4) Cruel and unusual punishment; 5) Denial of equal protection; 6) Violations of the Rehabilitation Act and the Americans with Disabilities Act; 7) False imprisonment; 8) Confinement; 9) Unjust enrichment; and 10) Negligence.

The district court dismissed all claims except numbers 2, 3 and 9. In ruling on GEO Group’s motion to dismiss, the court accepted “as true all factual allegations in the complaint and draws all inferences in favor of the plaintiffs.... A motion to dismiss shall not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”

The allegation that MHU prisoners at NCCF are forced to work for GEO without wages (or miniscule wages of $10.00 per month), the purpose of that work is to turn a profit for GEO, and that GEO obtains [its] persons and labor by scheme of misrepresentation and deceitfully holding itself out as a facility that would assist Plaintiffs” stated a claim under the TVPA, the court found. So did the claim that GEO held the class members for the purpose of extracting their labor. And the allegation that GEO was unjustly enriched by the prisoners’ labor stated a claim under Indiana law.

Accordingly, the district court denied GEO’s motion to dismiss as to those three issues. The company has since moved for summary judgment, which remains pending. See: Figgs v. GEO Group, Inc., U.S.D.C. (S.D. Ind.), Case No. 1:18-cv-00089-MPB-TWP.

Additional source: theindianalawyer.com
From the Editor

by Paul Wright

For the past 29 years, HRDC has been reporting on the myriad problems in California prisons and the class-action lawsuits that have led to wholesale transformations of the criminal justice system in that state. The most significant prison conditions case of the 21st century is *Plata v. Brown*, where the U.S. Supreme Court upheld an order to lower California’s prison population after the trial court found that overcrowding had made the provision of adequate medical care functionally impossible, resulting in preventable deaths. While the state successfully managed to reduce its prison population, prisoners were not released but rather “realigned” and sent to county jails to serve often lengthy sentences.

California jails were hardly the model of well-run facilities before realignment increased their populations, and all too often were more dangerous and poorly run, and medical care was even more inadequate than in state prisons. This issue’s cover story explores the impact of realignment on county jails. Of course, none of this is new. *PLN* has been reporting for decades on deadly violence and corruption in jails in Los Angeles, Sacramento, Orange County and elsewhere in California. Realignment merely exacerbated conditions that were already bad and made them worse. All of which illustrates the abject failure of the state legislative and executive branches to be able to run a constitutionally adequate corrections system, because no matter how low that bar may be, they can’t seem to avoid tripping on it.

By now subscribers should have received their annual HRDC fundraiser packet which includes the Human Rights Defense Center’s annual report, media articles and more. Our subscription rates and advertising alone do not cover the expenses of our advocacy on behalf of prisoners and their families. If you can afford to make a donation to support our work, please do so. If you know anyone who might be interested in supporting what we do, please encourage them to make a donation as well as subscribe.

It has been almost two years since we launched *Criminal Legal News* to report on criminal law and procedure, sentencing, and police and prosecutorial issues. The publication has since grown in both size and circulation. *PLN* subscribers will soon receive a free sample copy of *CLN*; please consider subscribing to it as well. There is little overlap between the publications, and a subscription to both *PLN* and *CLN* will give readers an overview of the criminal justice system at all levels from arrest and sentencing through incarceration and reentry.

I am excited to announce that a new *PLN* Publishing book is available. After a lot of hard work, *The Habeas Citebook: Prosecutorial Misconduct* by Alissa Hull is available in time for the holidays. Building on the success and popularity of our first title in the series, *The Habeas Citebook: Ineffective Assistance of Counsel*, former HRDC staff attorney Alissa Hull has written a stunningly useful book that cites hundreds of cases where defendants were able to overturn their convictions based on prosecutorial misconduct. With an overview of relevant case law from all 50 states and the federal government, this is the most complete book on this topic anywhere. The title is exclusively available from HRDC and makes a perfect holiday gift. Ordering information is on page 37.

If you are incarcerated and have had problems receiving your subscriptions to *PLN* or *CLN* or the books we distribute, please let us know. We recently filed suit against the Michigan Department of Corrections and have litigation pending against prison systems in Arizona and Illinois. Further, we continue to monitor consent decrees in Nevada, California, Oregon and other states. Prison and jail officials frequently do not tell us when our mail is censored, so notify us if you are not receiving our publications so we can take appropriate measures to ensure that you do.

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

Class Certified in Lawsuit Challenging Missouri Parole Violation Procedures

by David M. Reutter

In January 2019, a Missouri federal district court certified a class in a lawsuit alleging the state incarcerates thousands of people without providing due process before depriving them of their liberty interest during “sham” parole violation proceedings. The class could number up to 15,000.

*PLN* previously reported the bizarre conduct of then-Missouri parole board member Don Ruzicka and staff working with him, who kept score to see if they could get prisoners appearing at parole hearings to say ridiculous words such as “platypus” and “armadillo.” The class-action complaint cited to that conduct as part of the sham proceedings that Missouri parolees face. [See: *PLN*, June 2018, p.27].

The suit, filed by the MacArthur Justice Center (MJC), alleges the Missouri Department of Corrections (MDOC) and its Division of Probation and Parole have “developed fundamentally unfair and procedurally flawed parole revocation processes” that violate the class members’ rights based on U.S. Supreme Court precedent. It further claims that “parole officers issue and execute their own violation warrants, taking parolees into custody without sufficient cause or independent review, and then re-incarcerate them within the prison system.”

Some of the parole violations are based on technical issues, such as parolees traveling from Missouri to Kansas. In other cases, violations ensued from criminal charges that were later dismissed, but the parole board upheld the violations based solely on the arrest. It was noted that many parolees are not even certain of the terms of their supervision because their parole order is often in conflict with the Release Decision Form or additional directives issued by their parole officer.

Upon entry into the MDOC on a parole violation, prisoners receive forms that provide notice of the alleged violation which “are in many instances dense and incomprehensible.” Further, the forms fail to provide parolees with important infor-
mation about their rights or what to expect at final revocation hearings.

Once in the system, “meaningful probable cause hearings or final hearings are almost never held.” Of 600 cases between March 20, 2017 and June 2, 2017, violation hearings were provided only six times. Waivers of such hearings were present in a handful of other cases. Where waivers do exist, parolees were often pressured to waive their right to a hearing or counsel. There is no provision for attorney representation other than for counsel to act as a witness, and no other witness can then be called.

When parole is revoked based on a new charge, the revocation order provides “no indication of what law was supposedly violated and based on what conduct.” There is also no information about the length of the parole “hit” or how an appeal may be filed.

The Missouri parole board considers about 6,000 revocation cases a year. “Perhaps the most shocking aspect of the flawed parole revocation in Missouri is that these parolees are never told that they might have the right to an attorney, let alone provided with one,” said MJC lawyer Megan Crane.

“This ruling reflects the systematic failure of the problem in Missouri,” added Amy Breihan, director of MJC’s Missouri office. “This should be a wake-up call to MDOC and its Parole Board that they can no longer avoid its constitutional obligations to the citizens it supervises.” The case remains pending. See: *Gasca v. Precythe*, U.S.D.C. (W.D. Mo.), Case No. 2:17-cv-04149-SRB.

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**Vermont Supreme Court Remands Prison Correspondence Claim**

*by Ed Lyon*

Vermont state prisoner Jeffrey-Michael Brandt won a correspondence claim through a Stipulation and Agreement of Dismissal (SAD) in a lawsuit filed in state court against the Vermont Department of Corrections (VDOC). The SAD allowed Brandt to correspond by mail with prisoners in states other than Vermont.

The VDOC later transferred Brandt to a facility in Pennsylvania under the Interstate Corrections Compact (ICC). The Pennsylvania prison did not have to comply with the SAD, as the ICC “allows Pennsylvania to apply its own inmate-correspondence policy.”

Brandt sought an order from the trial court to make the VDOC send him to a non-ICC prison where he could resume his correspondence under the SAD. The trial court denied relief.

Brandt appealed to the Vermont Supreme Court, which accepted the case. During the pendency of the Supreme Court’s review, the VDOC had Brandt transferred to a private prison in Mississippi, which is a non-ICC facility.

Once at the Mississippi private prison, operated by CoreCivic (formerly Corrections Corporation of America), Brandt resumed sending letters to his incarcerated out-of-state correspondents. The letters were returned to him. He said he sent numerous written complaints about this to prison officials, who did not respond.

The Vermont Supreme Court noted that Brandt’s placement at a non-ICC prison where the SAD was enforceable could result in his appeal being rendered moot. However, his claims that officials at the Mississippi private prison were refusing to abide by the SAD needed to be examined, as the VDOC said it was unaware of those problems.

Since appellate courts typically do not hold hearings on disputed facts or investigate claims, the case was remanded to the trial court where the SAD originated. That court was instructed to determine whether the Mississippi prison had violated the SAD and, if so, why.

Brandt also attempted to argue that the VDOC had initially transferred him to the Pennsylvania prison to deliberately stymie the SAD; however, since he did not raise that issue in the trial court first, the Supreme Court refused to entertain it. See: *Brandt v. Menard*, 2019 VT 32 (VT 2019).
San Francisco to Cut Costs for Jail Phone Calls, Commissary Sales
by Ed Lyon

San Francisco, California mayor London N. Breed has unique views regarding people who have become caught up in the criminal justice system. Her views extend to the families of prisoners and pretrial detainees, too.

Breed, unlike many U.S. politicians, grew up in public housing. Further, her knowledge of the criminal justice system and the experiences of prisoners’ families is intensely personal: Her brother is currently serving a 44-year sentence after being convicted of armed robbery and involuntary manslaughter.

“It’s something that has never sat well with me, from personal experience of the collect calls, and the amount of money that my grandma had to spend on our phone bill, and at times our phone getting cut off because we couldn’t pay the bill,” Mayor Breed noted.

She is not alone in her zeal to ease the financial burdens on prisoners’ family members, including the costs of phone calls and the ability of prisoners to purchase hygiene and other items from the jail commissary.

San Francisco Sheriff Vicki Hennessy, as well as Treasurer José Cisneros and his Financial Justice Project’s director, Anne Stuhl, are also firmly on board with Breed’s vision to ease the financial costs imposed on prisoners and their families. Currently a telephone call costs $0.14 per minute, or $2.10 for a 15-minute call in the city’s jail system. Phone calls generate around $1.10-$2.10 for a 15-minute call in the city’s jail system.

New York was the first city to provide free phone calls in its jails, effective early 2020. If the proposal for free phone calls and reduced commissary prices goes forward, it would likely go into effect in early 2020.

Sources: kqed.org, sfweekly.com, sfexaminer.com, sfbayview.com

Infamous Louisiana Sheriff on His Way Out
by David M. Reutter

I’m done. I’m beat up. I’m tired,” Iberia Parish, Louisiana Sheriff Louis Ackal, 75, said in November 2018, upon announcing his decision not to seek re-election. However, his words more accurately described the detainees at the Iberia Parish Jail and citizens in his community who were subjected to a culture of abuse during Ackal’s tenure as the parish’s top cop.

Ackal was elected sheriff in 2007 after campaigning on a reform platform. He was a New Iberia native who became a state trooper and served in Louisiana state government before retiring to Colorado, which, according to his supporters, gave him a worldly appeal when he returned home to Iberia Parish.

His first act as sheriff was to eliminate the internal affairs unit. Then, in 2010, he launched the IMPACT squad, which was an operation that put deputies on patrol in New Iberia’s black communities. While the operation was purportedly intended to reduce crime, it was marked by frequent and violent arrests. It was disbanded in 2016, and according to a December 2018 news report, 18 convictions were later dismissed due to misconduct by the squad’s members, including fabricating police reports.

Sheriff Ackal ordered that prisoners in his jail wear pink clothes and be denied ice during the summer, and he often joked about them to the press.

His tactics landed him in federal court on civil rights violations in 2016, but he was acquitted by a federal jury amid an unsuccessful petition for his recall from office. [See: PLN, Sept. 2016, p.33].

Ackal fired Deputy Deborah Lourd on November 4, 2016, the day he was acquitted, for cooperating with the FBI, she alleged in a subsequent lawsuit. Her cooperation included handing over an audio recording of the sheriff calling the federal
prosecutor a “Jew bastard” and threatening
to shoot him “right between [his] god-
dammed Jewish eyes.”

Other claims against Ackal and the
culture in the sheriff’s department were far
more serious. In 2014, his office claimed
that Victor White III shot himself to
death while handcuffed in the back of a
deputy’s squad car. The family sued and an
undisclosed settlement was reached. That
same year, Whitney Paul Lee, Jr. was strip
searched and forced to kneel at the jail.
He struggled to breathe, and a group of
deputies beat him with a baton and fired a
bean bag round at his leg. Lee filed suit and
reached a confidential settlement.

Also in 2014, 16-year-old Daquentin
Thompson committed suicide at the Iberia
Parish Jail. His mother sued and received a
$175,000 settlement.

By 2019, Ackal’s office had paid out
almost $6 million due to lawsuits, which led
the Louisiana Sheriff’s Law Enforcement
Program, an insurance group for sheriff’s
offices, to remove Iberia Parish because it
contributed to a third of the program’s losses
during the previous five years. Almost half
of the payouts in litigation against the Iberia
Parish Sheriff’s Office went to one man.

Derrick Sellers, 33, was arrested in
September 2013 on a domestic violence
charge that was later dropped. He was es-
continued text...
Audit Finds Mississippi Private Prison Plagued by Violence, Run by Gangs

by Kevin Bliss

Former warden Jody Bradley depended on gang leaders at a privately-run Mississippi prison to maintain control of the facility.

That was one finding of a December 2018 internal audit by Management & Training Corporation (MTC) at the Wilkinson County Correctional Facility (WCCF), which the company operates for the Mississippi Department of Corrections. Calling Bradley’s management ineffective, the audit accused him of ceding power and control to prisoners, leading to coercion and corruption of staff members.

Located near the Louisiana border in Woodville, WCCF houses 900 offenders, most of whom are classified maximum security, including former residents of a high-risk housing unit at the State Penitentiary in Parchman that closed in 2010. Some 80 percent of prisoners at the MTC-run facility are gang-affiliated.

A 2016 study of 39 prisons across the country by sociologist David Pyrooz with the University of Colorado at Boulder found that gang-related homicides nationwide averaged just two per year for every 100,000 prisoners. But WCCF averaged two per year with just under 1,000 prisoners – a homicide rate twice as high as Detroit’s.

Since February 2017, WCCF – which prisoners called “the Killing Field” in a 2014 article published by the Jackson Clarion-Ledger – has counted six homicides, four of which were gang-related. One of the slain prisoners was Brad Fitch, a 28-year-old member of the Simon City Royals gang who was brutally murdered by two fellow gang members the night he arrived at the facility in January 2018.

According to a log kept by prison supervisors, at least 170 weapons were confiscated at WCCF over a six-month period in 2018, during which there were nine assaults and three attempted assaults, including a trio of stabbings that resulted in serious injuries.

The audit also found substandard living conditions for prisoners, with moldy cell walls that leaked water onto prisoners’ bunks, along with shortages of soap, blankets and even food. However, according to Jody Owens, an attorney with the Southern Poverty Law Center who has headed a pair of class-action lawsuits against MTC over conditions at its Mississippi facilities, private prison operators cut the most corners with respect to payroll.

With a pay scale just over the federal minimum wage of $7.25 per hour and a high number of violent incidents, including attacks on guards, WCCF has an annual staff turnover rate of close to 90 percent. As many as one-third of the 241 positions at the facility have been vacant – the number stood at 23 percent when the audit was published – meaning some guards worked more than 40 hours of overtime a week in addition to their regular shifts.

Since 75 percent of guard positions at WCCF are filled by women, there were frequently not enough male guards to conduct strip-searches of high-risk prisoners, and no SORT team could be mustered during emergencies. Auditors also found that the overextended staff failed to conduct drug tests or enforce basic rules, sometimes leaving housing areas unmonitored for up to a week at a time.

MTC is not alone in its staffing woes. The Mississippi DOC reported in July 2019 that the number of guards at three state prisons had fallen to 627 from 905 two years earlier. At those facilities, the ratio of prisoners to guards ranged from 11:1 at Parchman, Mississippi’s most infamous prison, to 23:1 at the Southern Mississippi Correctional Institution (SMCI) – a ratio far higher than in other states.

“We regularly have clients begging to be kept out of SMCI because of the violence,” said Cliff Johnson, director of the MacArthur Justice Center at the University of Mississippi. “They’re scared for their lives.”

“This is not a sustainable situation,” added David Fathi, director of the American Civil Liberties Union’s National Prison Project, who characterized the prisoner-to-guard ratio “among the highest I’ve ever seen.”

A lockdown at SMCI in response to staff shortages in February 2019 was still in effect six months later. Among other deficiencies attributed to understaffing was a failure by guards to conduct required prisoner counts, with a 2019 memo from SCMI’s superintendent promising that “any
staff falsifying count will be reprimanded. This STOPS NOW!"

Mississippi corrections commissioner Pelicia Hall said she had asked state lawmakers to raise guard pay above the current level of $12.33 an hour – the lowest in the nation, according to the federal Bureau of Justice Statistics. The average hourly wage for prison guards nationwide is just over $23.70. The state legislature approved only a three percent raise, which is still low enough that a guard with a family of three qualifies for food stamps.

The DOC has paid MTC at least $78 million to operate WCCF since the company assumed operational control of the prison in 2013. Under its current contract, MTC receives about $43 per prisoner per day – an amount the audit admits “is considered mediocre.” The company claims it has returned money to the DOC for leaving staff positions unfilled, but declined to provide details of those reimbursements. It also said it has performed a comprehensive audit every two years to identify risk areas that prevent WCCF from operating in a safe and secure manner.

For the most recent audit, MTC used an outside consultant firm led by former federal Bureau of Prisons employee D. Scott Dodrill. Normally an “in-house” report, the 83-page audit was obtained and published by The Marshall Project, an online news organization focusing on the criminal justice system.

Even though the audit report said Warden Bradley had responded to problems at WCCF by going to gang leaders for help in controlling the facility, MTC regional vice president Sara Revell said it was inaccurate to state that gangs ran the prison. Company spokesman Issa Arnita added that the story published by The Marshall Project “cherry picked certain findings in the audit to paint a distorted picture of what really happens in the prison on a day-to-day basis.”

“We have dedicated STG [gang] officers who assess each inmate on intake to determine where that inmate and others will be the safest,” Arnita said. “The previous warden made comments regarding the prison’s management of STGs which may have been interpreted as [they] were in control of the facility.”

Yet the audit itself noted that gang leaders decided which prisoners got jobs and perks. They were escorted by personal protection details at WCCF, and were free to decorate their cells with gang paraphernalia. The auditors said that during their visits, “it never felt like staff were in control of the offender population.”

“The prevalence of not only STG activity, but staff tolerance of it cannot be understated,” the audit found. “[Warden Bradley] speaks with the gang lords/leaders and asks them to ‘control their men,’” threatening to lock down the unit if they fail, and flatly telling the auditors that that was how Mississippi prisons operate. “It ain’t right, but it’s the truth,” the report quotes Bradley, who also reportedly told the auditors that he was encouraged in his approach by the head of the criminal investigations division of the state DOC.

However, DOC public information officer Grace Fisher said that “under no circumstances would the [DOC] convey that it condones or encourages the use of gangs to manage inmate behavior,” pointing to a longstanding zero-tolerance policy toward gang activity in the prison system.

Since the audit was published last December, MTC has hired a new warden to run WCCF and has raised guard salaries to $11.25 per hour — still lower than in state prisons. Other areas identified as needing improvement, such as poor living conditions and inadequate supplies, also have been addressed, according to Arnita, who stressed that MTC had resolved 83 percent of some 543 problems cited by the auditors.

“A construction crew has been on site for several weeks,” he said, noting that the facility is two decades old, with a leaky roof that the company has been working with DOC officials to get repaired. “They plan to have a new roof installed by the end of the year. Repairing the leaking will solve several other maintenance problems that happen as a result of the leaking. We also have a cell hardening project in the works once the roof is replaced. This will improve the security of individual cells.”

In 2014, Arnita told the Clarion-Ledger that MTC had made significant improvements since taking over operations at WCCF.

“Our priority in corrections is the safety and security of our staff, offenders and the community,” he stressed at the time, before the spate of assaults, murders and indications that gang members were running the facility.

Previously, a report by the Performance Evaluation and Expenditure Review (PEER) joint legislative committee found that assault rates at private prisons averaged two to three times the rate in state-run facilities. As an extreme example, the privately-operated Walnut Grove Correctional Facility, which has since closed, had an assault rate of 27 per 100 prisoners while the highest rate in a state-run prison was just seven per 100 prisoners.

Sources: themarshallproject.org, clarionledger.com, wapt.com, USAToday, theguardian.com
Why Our Movement Can’t Afford to Ignore Private Prison Corporations

by Caroline Isaacs, Program Director, AFSC

In 1998, I was a budding anti-prison activist, volunteering for the American Friends Service Committee in Arizona (AFSC-AZ). I was fortunate enough to attend the very first Critical Resistance gathering in Oakland and learn that I was actually part of a movement – a vibrant, fierce and committed group of people who, like me, saw the Prison Industrial Complex as one of the most dangerous threats to our communities. It was an energizing experience that solidified my commitment to this work.

Imagine my dismay, then, at receiving an email from Critical Resistance nearly 20 years later characterizing my work to combat private prisons as un-strategic and even as undermining the larger effort to end mass incarceration.

The critique, primarily leveled at prison divestment campaigns, was articulated by Ruthie Gilmore in her 2015 piece, “The Worrying State of the Anti-Prison Movement,” and was more recently espoused by John Pfaff in his book Locked In: The True Causes of Mass Incarceration and How to Achieve Real Reform.

The argument goes something like this: Because for-profit prison companies only hold about 8.5 percent of the nation’s state and federal prisoners, this proves that the profit motive is not a significant driver of mass incarceration. And, though private prison corporations make large campaign donations to elected officials, they do not have as much influence as prison guards or police unions. Finally, there is a larger concern that a focus on just those participants in mass incarceration that are for-profit entities allows the rest of the system off the hook, implying somehow that locking up millions of people is OK if corporations aren’t profiting directly.

I am a firm believer that our movement is strengthened by vigorous debate and constant interrogation of our strategies and methods. I appreciate the points being raised and would like to humbly offer a few of my own.

Let’s start with the places where we agree: The roots of mass incarceration are racism and social control, and the policies that created mass incarceration are ultimately the creation of government, not corporations. I would never argue that government-operated prisons are “better” than privatized ones, or a preferable alternative. The institutions that create, enforce and carry out criminalization and incarceration are frequently just as corrupt, mismanaged, abusive and unaccountable as for-profit corporations. AFSC-AZ is a prison abolitionist organization and our goal is to create a society in which prisons of any kind are unnecessary.

Privatization is merely an outgrowth – an inevitable response of the capitalist, political economy to an opportunity for profit. However, that outgrowth has continued to metastasize and is now working in many sectors to influence those government actors to make decisions that are in their corporate interests.

It is true that for-profit incarceration is a relatively small piece of the total pie that is mass incarceration. But the role these corporations play in the criminal punishment system depends a lot on where you sit. For example, nearly three-quarters of the average daily immigration detainee population is held in facilities operated by private prison companies.

A little over half of all states have for-profit facilities, and the extent of their use varies widely. In Arizona, almost 20 percent of our prison population is held in privately operated facilities (the sixth-highest rate in the country). Arizona also hosts six private prisons that import their captives from other jurisdictions. That includes contracts with Immigration & Customs Enforcement (ICE), the Bureau of Prisons and U.S. Marshals for immigrant detention, as well as states like Vermont, Hawaii, California and, most recently, Puerto Rico.

More concerning is the rate of growth in privatization. The number of people held in privately operated prisons nationwide has increased 47% since 2000. In Critical Resistance’s home state of California, the percentage of prisoners held in private facilities grew by a staggering 219 percent between 2015 and 2016.

In a state like Arizona, when a new prison is built, you can almost guarantee it will be run by a for-profit enterprise. A common sales pitch: Corporations like CoreCivic and GEO Group have unlimited cash on hand to bear the expenses of new construction – something most states would have to get voter-approved bond money to do.

The level of political and economic influence of these corporations is formidable in many states and based on years of strategic relationship cultivation and much more extensive investments than just campaign donations. For example, CoreCivic has an agreement with one county in Arizona (where it operates a total of six facilities) to pay $2 per day for every person held in one of its facilities there. The company paid a total of $1.4 million to the county in 2012. In other words, this private prison corporation is literally underwriting the county’s budget. CoreCivic and GEO
Group collectively own nearly 500 acres in that same county – ensuring that they can expand quickly to take advantage of future opportunities for new contracts.

Arizona is a vehemently anti-union state, with a stringent “Right to Work” law. Exactly half of U.S. states have these laws, and nationally we’ve seen a steady decline in the influence of organized labor. The lobbying power and political engagement of California’s prison guards’ union is unique to that state and is not at all representative of the level of influence wielded by these groups nationally. In the state where I work, you can be sure that prison guards, police officers or virtually any other group of workers has very little influence with state lawmakers. But anyone at the capitol can tell you who are the private prison lobbyists.

Our watchdogging of the for-profit prison industry helped us identify a disturbing new trend that is potentially more destructive than the growth of private prisons. As many states embrace sentencing reform to one degree or another, the prison building boom is winding down. This threat to their profit margins has prompted the big private prison companies – and a proliferation of other businesses – to adopt a new strategy: Capitalize on the emerging market for “alternatives.”

Starting around 2010, the major private prison companies began to pivot, changing their corporate structures, growth strategies and communications from a focus on prison operations to providing “community corrections” programs like electronic monitoring, re-entry services and operating day reporting centers for people on probation and parole. GEO Group added an entire division called GEOCare, and now advertises itself as “the Global Leader in Community Corrections” programs like electronic monitoring, re-entry services and operating day reporting centers for people on probation and parole. GEO Group added an entire division called GEOCare, and now advertises itself as “the Global Leader in Evidence-Based Rehabilitation.” Corrections Corporation of America went so far as to literally rebrand by changing its name to CoreCivic and removing any reference to prisons completely. Both CoreCivic and GEO Group have moved aggressively to acquire smaller companies that already hold such contracts, allowing them to expand their holdings rapidly in this segment.

This shift poses a very real threat to the success of many of our organizations’ efforts. These companies are essentially hijacking the national movement to end mass incarceration. They’re selling whatever governments are buying; right now, that’s community corrections and alternatives to incarceration. What they create, however, are not alternatives to incarceration, but alternative forms of incarceration – “prison lite” – or other less restrictive forms of supervision and surveillance that still amount to un-freedom.

Case in point: A quick search reveals that GEO Group currently operates a total of 37 facilities in California. None of these are state prisons, but they do include jails, as well as residential re-entry centers and day reporting centers. John Pfaff points out that New York state has no private prisons, but he may not realize that it does have two GEO Group facilities (one immigrant detention center and one federal community re-entry center), as well as a total of five facilities now owned by CoreCivic through its recent acquisition of Rocky Mountain Offender Management Systems. I’d be willing to bet that this is just the beginning.

As new potential sources of profit emerge, the industry is metastasizing. Along with the old-guard mega-corporations like CoreCivic, there are new ones springing up everywhere, jostling for position. Corporations that never had anything to do with criminal justice are suddenly looking to get in on the action, like 3M (yes, the company that makes Post-It Notes). The corporation’s second-highest earning division is the “Safety and Graphics Business Segment,” which provides high-tech security and surveillance products for law enforcement and correctional facilities. And small cities and towns are looking to play “private prison” by offering empty jail bed space to state and federal authorities.

In Arizona, opposing the privatization of punishment is just one part of a comprehensive strategy, which also includes policy advocacy, organizing with directly-impacted communities and communications work to change the narrative about what constitutes safety. We view the for-profit prison industry and the government criminal punishment apparatus as two heads of the same monster.

If we just focus on trying to enact sentencing reform while CoreCivic is lobbying for new contracts, we get nowhere. And if we were just fighting with the private prison industry while legislators were passing more tough-on-crime legislation, same outcome – more incarceration, not less. For us – doing the groundwork in this one state – the for-profit punishment industry is a real threat and a strategic target. It may not be strategic everywhere, but it’s wrong to say it is un-strategic anywhere.

To those who scoff at our work against for-profit incarceration, remember that when we stop a private prison, we stop a mass incarceration. They’re selling whatever governments are buying; right now, that’s mass incarceration. If we just focus on trying to enact sentencing reform while CoreCivic is lobbying for new contracts, we get nowhere. And if we were just fighting with the private prison industry while legislators were passing more tough-on-crime legislation, same outcome – more incarceration, not less. For us – doing the groundwork in this one state – the for-profit punishment industry is a real threat and a strategic target. It may not be strategic everywhere, but it’s wrong to say it is un-strategic anywhere.

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Survey: Jail Population Down but Incarceration Rates Higher for Whites, Women

by Jayson Hawkins

In April 2019 the U.S. Department of Justice released an analysis of its Annual Survey of Jails, which has tracked jail capacities, populations and demographics since 1982. The most recent year for which data was available, 2017, found the overall jail incarceration rate had dropped 12 percent from its peak in 2007, when 259 people were jailed for every 100,000 U.S. residents.

Despite a decline to 229 people in jail per 100,000 residents over the last decade, the United States still has the highest incarceration rate in the world.

Breaking down the overall rate into demographic categories revealed some notable trends. While men were jailed at a rate 5.7 times higher than women, the rate for women has increased 10 percent since 2005.

Criminal justice reform legislation over the past few years has targeted racial disparities in the justice system. While it may be too soon to judge the impact of those reforms, the rate of blacks held in jail decreased 23 percent from 2005 to 2017. The rate for whites, on the other hand, jumped 12 percent during that same time period.

The rate for Hispanics fell even faster than blacks, dropping from 263 per 100,000 to 185 per 100,000 residents over the last decade. The Hispanic portion of the jail population has remained virtually unchanged at 15 percent.

Over a quarter of all jails exceeded 100 percent capacity in 2005. Large facilities have eased overcrowding in some jurisdictions, yet one out of every five jails was running at over 10 percent of their rated capacity in mid-year 2017. For jails rated to hold between 250 and 499 prisoners, those operating beyond capacity exceeded 30 percent.

According to the Prison Policy Initiative, there are 3,163 city, county and regional jails nationwide, and around two-thirds of jail prisoners are pre-trial detainees who have not been convicted. There were 10.6 million jail admissions in 2017, which represented a 19 percent decline since 2007.

Sources: bjs.gov, prisonpolicy.org

Federal Court Sanctions New Mexico Corrections Department Over Out-of-State Legal Mail

by Matt Clarke

On April 18, 2019, a federal district court sanctioned the New Mexico Corrections Department (NMCD) for failing to comply with a prior order and judgment requiring prison officials to provide a state prisoner incarcerated in Virginia with envelopes and postage so he could send legal requests and grievances to the NMCD.

Jesse Trujillo is a New Mexico prisoner incarcerated at a facility in Big Stony Gap, Virginia. Previously, Trujillo filed a federal civil rights suit that resulted in the district court ordering the NMCD to create a plan to enable Trujillo to send legal requests and grievances to New Mexico prison officials. The NMCD’s plan was to initially provide Trujillo with three pre-stamped envelopes and then, when an envelope was received from him, replace the envelope that had been used with another pre-stamped envelope.

Five years later, in August 2016, Trujillo filed a pro se motion to reopen the case and find the defendants in contempt because they had failed to comply with the postage plan. On February 12, 2018, the district court declined to reopen the case but granted enforcement of the postage plan, holding the defendants in contempt and ordering them to comply or face civil
contempt sanctions.

On May 25, 2019, Trujillo filed another pro se motion, asking the court to hold the defendants in contempt for failure to comply with the postage plan and subsequent order. The NMCD defendants had not claimed they were in compliance or could not comply, arguing instead that they should not have to comply because they could not address prison conditions in Virginia. This time, they simply failed to file a timely response.

The district court had previously found the defendants were non-compliant since at least 2016, and had opted to ignore and defy the court’s orders. The defendants admitted that the NMCD director had informed Trujillo that the department would not provide any more postage-paid envelopes; they continued to argue that the burden of the postage plan was too great since the NMCD had no authority to address Trujillo’s grievances.

In an April 18, 2019 order, the district court noted that the only question it needed to address in a contempt sanction proceeding was whether the defendants had complied with the court’s orders. “The unequivocal answer is no,” it held.

The court therefore opted to sanction the defendants by ordering the NMCD to compensate Trujillo for his lost opportunities at filing grievances by providing him with 200 envelopes and 200 forever stamps. It further ordered that, should the defendants fail to comply with its sanctions order by May 20, 2019, they would be required to provide Trujillo with 200 envelopes and 200 forever stamps, plus pay him $1,000.

The district court noted it did not have the authority to order Trujillo returned to New Mexico, as he had requested. See: Trujillo v. Williams, U.S.D.C. (D. NM), Case No. 6:04-cv-00635-MV-GBW; 2019 U.S. Dist. LEXIS 66172.

Veteran Oregon Jail Guard Indicted and Jailed

by Mark Wilson

A n Oregon jail guard’s 22-year career ended in handcuffs in May 2019 when she was booked into jail on a five-count indictment, including witness tampering and official misconduct.

Marion County Sheriff’s Office (MCSO) deputy Janet Eagleston was indicted on four counts of first-degree official misconduct – for intentional failure to perform her duties at MCSO – which are Class A misdemeanors, allegedly committed between September and December of 2018.

The 48-year-old also allegedly tried to influence the testimony of a potential witness to her crimes, which is a Class C felony, sometime around December 26, 2018. Eagleston is being held in jail in an adjacent jurisdiction by the Linn County Sheriff’s Office (LCSO).

Eagleston began working for MCSO in 1997, employed as a deputy in the county jail in Salem. MCSO was first alerted to her possible policy violations in November 2018. The sheriff’s office responded on December 4, 2018 by requesting a professional standards investigation and asking the LCSO to look into the allegations. At that time, Eagleston was placed on administrative leave.

Based on the findings of LCSO’s investigation, a Marion County grand jury returned the five-count indictment against Eagleston. She was arrested on May 30, 2019, according to LCSO Lt. Michelle Duncan, and arraigned in Marion County Circuit Court the following month.

Source: Statesman Journal

If You Write to Prison Legal News

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

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

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

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

While we wish we could respond to everyone who contacts us, we are unable to do so; please do not be disappointed if you do not receive a reply.
Three Louisiana Prisoners Cleared in 1994 Rape of Another Prisoner

by David M. Reutter

AFTER 25 YEARS OF PROCLAIMING THEIR innocence in a rape case, three Louisiana prisoners accepted plea bargains that cleared their way for release. The plea offer came after the victim recanted his testimony in April 2018.

While serving a year-long sentence for burglary, Byron Morgan, who was 17 at the time, claimed on January 12, 1994 that he was sexually assaulted by fellow prisoners Louis Alexander, Jr., 51, Gerald LeBoeuf, 45, and Michael C. Williams, Jr., 46, while at the Orleans Parish Prison. Following a 1995 trial, the three men were convicted of aggravated rape and aggravated crime against nature, and sentenced to life in prison.

Morgan had a change of heart after doctors told him to “get [his] affairs in order” due to a serious illness. Against their advice, he traveled to New Orleans and testified in closed chambers before Judge Byron C. Williams. Morgan, now 43, said he lied about being raped, and picked Alexander, LeBoeuf and Williams at random after an older prisoner counseled him that a claim of rape would get him released. That proved to be incorrect, as it never affected Morgan’s sentence.

As he broke down telling the story, Morgan said, “It’s been a prison for myself. I mean, I wasn’t necessarily physically in prison for 25 years, but mentally and emotionally. My heart was convicted by God.”

In 2012, Morgan claimed that he had been raped at the Orleans Parish Prison again after being jailed at the facility — which he later said was “an attempt to focus attention on the earlier [rape] case,” The Advocate reported.

“Back in 2012, I purposely said it all over again ... so that they’ll know that something’s not right, because I could not get through to these people,” Morgan said.

Prosecutors continued to contest the reversal of Alexander, LeBoeuf and Williams’ convictions, and appealed to the Louisiana Supreme Court to challenge the trial court’s ruling that their convictions could be set aside outside the time limits due to “newly discovered evidence.” A DNA test of Morgan’s clothing also was pending; after Assistant District Attorney Kyle Daly announced that his office had recently found an evidence box containing the clothes Morgan was wearing when he claimed he was raped in 1994. Meanwhile, the prosecution disclosed that the original prosecutor in the case, Glynn Alexander, recalled Morgan saying before trial that “it [the rape] didn’t happen.”

While awaiting a ruling by the Supreme Court and the DNA test results, prosecutors offered pleas to aggravated battery that would result in Alexander, LeBoeuf and Williams’ release and will not require them to register as sex offenders.

“Defendants are happy to cut these sorts of deals and plead guilty, even if they didn’t do it, so they can go home today,” noted Dane Ciolino, a professor at the Loyola University College of Law. However, such plea bargains also make it difficult if not impossible for defendants to file suit over their wrongful convictions.

The three prisoners were returned to the Louisiana State Penitentiary at Angola pending the recalculation of their sentences. Only Williams will remain incarcerated as he waits to be paroled on a separate armed robbery conviction.

“Appreciate it, your honor,” Williams said after accepting the plea agreement. “Thank you, thank you, thank you.”

Sources: nola.com, theadvocate.com

Exploiting Prisoners on Prime Time

by Ed Lyon

IT IS, OR SHOULD BE, FAIRLY COMMON knowledge that most prisoners are disadvantaged, impoverished, often have substance abuse addictions or mental health issues, and have made poor life choices.

It would seem that this population has enough problems and thus should not be exploited. Alas, that has not been the case in Sacramento County, California, where Netflix produced its reality TV series Jailbirds, which was filmed in 2018 and began airing in May 2019. Adam Banner wrote a comprehensive critique of the show for the American Bar Association’s journal.

As with the national prison and jail population, 90 percent of Sacramento County’s main jail is composed of male prisoners. Despite this, the six-episode Netflix series focuses on the jail’s female population. Banner believes the show is trying to chase the success of Orange is the New Black, wooing the same viewers and seeking similar ratings.

He noted that the female prisoners in Jailbirds rarely discuss men in the episodes he viewed, with most of the relationships being between women, romantic as well as platonic. The prisoners themselves explain their relationships are one of the few things that help them maintain their sanity while incarcerated.

Administrative segregation was explored in one episode. In another, a female prisoner begs for release from ad seg, citing her fellow prisoners’ constant yelling and screaming. A prime opportunity to expose the inherent inhumanity of solitary confinement for the average viewer was completely glossed over by the producers.

Comparing Jailbirds to Netflix’s prior jail series, First and Last, Banner pointed out a few educational and informational aspects of the show; for example, how toilets are used as a makeshift means of cell-to-cell communication, and explanations of jail-specific jargon. One of the prisoners even demonstrated how to make “pruno.”

Prior to filming each episode of Jailbirds, the prisoners said they were told they would not be punished for any rule infractions committed while on camera. That did not turn out to be the case, as several of the women were disciplined with some receiving extended sentences as a result.

It was unclear if any of the “stars” of Jailbirds received compensation for appearing in the series. However, the Sacramento Bee reported in July 2019 that $42,211 was billed to the show’s producers to cover 482 hours of overtime for guards and supervis-
No money was supposed to change hands, according to jail Sergeant Tess Deterding. But billing invoices indicated deputy jailers made $83 per overtime hour and sergeants made $96 per overtime hour while providing security for the film crew.

Thus, Netflix benefited by producing and airing the series, and jail staff benefited from overtime pay, while the prisoners who appeared on JaiJalbirds were simply exploited.

Further, according to the Sacramento Bee article, during the filming of the show, “Sacramento County sheriff’s deputies watched fights break out, allowed inmates to incriminate themselves without their attorneys present and demanded editorial control of the reality series, even as the show’s producers amped up the drama in the name of entertainment.”

One prisoner, for example, said a fight scene was “damn near staged.”

“We have a sheriff’s department that appears to be more interested in helping to create dramatic circumstances or to stand back and watch ... potentially unsafe circumstances unfold,” stated Kristie Bunton, dean of the Bob Schieffer College of Communication at Texas Christian University. “That just seems to me to be an abrogation of their responsibility. They have a sworn duty to protect all those inmates, not to use them for the purposes of somebody's entertainment.”

“To think that we have deputies, our jailers, in a correctional system that are going out of their way to spend even more time and energy to accommodate the needs of shock value TV ... when we have so many other priorities is demoralizing,” added Sacramento County Supervisor Phil Serna.

Attorneys representing some of the prisoners profiled on Jailbirds said they were unaware that their clients were being filmed while discussing their cases, sometimes making incriminating statements.

Nor have some of the women who appeared on the Netflix series fared well following their release. One, Megan “Monster” Hawkins, 29, was arrested on May 17, 2019 after allegedly trying to open a bank account using false identification. Someone at the bank recognized her from the show and contacted the police. [1]

Sources: abajournal.com, sacbee.com, abc10.com
Arkansas: Private Prison Contractors Cited for Ethics Violations

by David M. Reutter

The Arkansas Ethics Commission (AEC) issued letters of caution to four companies that provide corrections-related services, for failing to report contributions to the Arkansas Sheriffs’ Association.

The companies, Tech Friends, Inc., City Tele Coin Co., Justice Solutions and Correct Solutions, LLC, agreed with the AEC’s August 16, 2019 finding that they violated Arkansas law by failing to register as lobbyists and neglecting to report lobbying expenses. The AEC began looking into the matter after it received a complaint from Charles Niell, chief executive officer of Tiger Correctional Services, who received a letter of caution for similar violations in 2018.

The AEC found that Tech Friends, which provides financial and communication services to jails, co-sponsored a breakfast during the Arkansas Sheriffs’ Association’s winter conference in January 2019. It also co-sponsored the association’s Ronnie Baldwin Memorial Trout Tournament in 2017 and 2018.

City Tele Coin bought fried chicken for over 30 sheriffs during the January 2019 conference, and co-sponsored a lunch. It also co-sponsored the 2018 trout tournament and paid for meals at Riverfront Steakhouse.

Justice Solutions, a jail software company, co-sponsored the 2018 trout tournament and lunch and breakfast at the January conference. It also co-sponsored an event for sheriffs’ widows.

“Justice Solutions was unfortunately put in the middle of an ongoing dispute between another vendor, who opted to weaponize the commission in order to attempt to gain competitive advantage, and a local lawmaker,” stated the company’s president, Daniel Boswell, who did not provide further details.

Correct Solutions, which offers financial and phone services for jails, failed to report the free meals it provided to 30 sheriffs at the January conference. It also co-sponsored a breakfast and lunch as well as the 2018 trout tournament, and reportedly pledged $4,500 to co-sponsor a meeting of the Arkansas Narcotics Officers Association in May 2019.

While the four companies agreed they had committed the ethics violations, they disagreed with the AEC’s interpretation of the law that they were acting as lobbyists. Nonetheless, they have since registered as lobbyists and are now reporting their activities, including wining and dining sheriff’s officials in order to obtain lucrative contracts.

Source: arkansasonline.com

Congressional Black Caucus Institute Accepts Donations from Private Prison Companies

by Matt Clarke

Although the website of the Congressional Black Caucus states that banning private prisons is part of its agenda during the current congressional session, the legally separate but affiliated Congressional Black Caucus Institute (CBCI) has accepted donations from CoreCivic, formerly Corrections Corporation of America, and the Institute’s 21st Century Council lists lobbyists for private prison firms as “platinum members.”

For-profit prison companies “are among the most committed entities in opposition to transforming our criminal justice system,” said Scott Roberts, senior director of Criminal Justice Campaigns at the racial justice organization Color of Change, which previously pressured then-presidential candidate Hillary Clinton and the Congressional Black Caucus’s political action committee to stop taking donations from private prison operators.

“They are the most invested in maintaining the status quo that’s got us to being a country that is leading in the history of the world in incarcerating its own people,” Roberts stated in an August 2019 article, adding, “It’s incredibly disappointing to know that any of the entities affiliated with the Congressional Black Caucus continue to take money from CoreCivic or any other private prison company, so there’s just no excuse for it. It’s unacceptable.”

In a lobbying disclosure report, CoreCivic revealed that, on April 15, 2019, it donated $25,000 in “honorary expenses” to the CBCI. The document listed as honorees CBCI chair U.S. Rep. Bennie Thompson and CBCI board members Rep. Jim Clyburn and Cedric Richmond. CoreCivic made a similar $25,000 “honorary expenses” contribution to the CBCI in 2018.

“It’s clear that the prioritization on fundraising has outweighed the principles that these people should be governing under,” Roberts noted. “One being that you can’t sell out our communities to the people who want them to be incarcerated, people who have benefited from the racial bias in the criminal justice system.”

Rep. Thompson chairs the House Committee on Homeland Security, which includes Immigration and Customs Enforcement (ICE), and Rep. Richmond is a committee member. Since 2008, ICE has awarded almost $1.9 billion in contracts to GEO Group, while CoreCivic has received over $1.1 billion in contracts.

Jeremy Wiley is a registered lobbyist and CoreCivic’s managing director of government relations. Emanuel Barr is GEO’s national director of legislative and...
community affairs. Both were listed as “platinum members” in the CBCTs 21st Century Council 2019 annual report.

That report promotes a new “pay for success” performance-based model to align prison contractors with public policy objectives for reducing recidivism, by holding “providers accountable for delivering measurable results, allow[ing] for ‘success’ payments if recidivism rates improve beyond a certain threshold, and penalties for unachieved goals.” This refers to programs like CoreCivic’s community corrections initiative, which includes running re-entry centers and providing non-residential services like electronic monitoring.

CoreCivic is reaping increasing profits from community corrections and reentry services. In 2018, its revenue from such programs grew by 37% over the previous year to almost $102 million. To maintain and expand its contracts, CoreCivic hires lobbyists and makes political donations as part of its business model.

The Congressional Black Caucus’s political action committee (PAC) cut ties with private prison lobbyists in 2016, following a campaign by Color of Change. That included lobbyists with the Washington, D.C.-based firm of Akin Gump Strauss Hauer & Feld, LLP who represented CoreCivic’s interests. [See: PLN, July 2016, p.17].

PLN previously reported a similar issue with private prison donations to the League of United Latin American Citizens (LU-LAC), which returned the contributions from Corrections Corporation of America after they were publicly reported. [See: PLN, Dec. 2009, p.26]. Thus far, there is no indication that CBCI intends to return the private prison money it received. [6]

**$157,000 Settlement in Michigan DOC Employee Discrimination Case**

*by David M. Reutter*

The Michigan Department of Corrections (MDOC) agreed to pay $157,500 to settle a lawsuit alleging it had discriminated against a female prison guard.

Merrianne Weberg, 58, began working for the MDOC in 1992 and was promoted to sergeant in 1995 while at the Western Wayne Correctional Center. She transferred to the Macon Correctional Facility (MCF) in 1998, and was promoted to lieutenant in 2006. She alleged that in 2008 she was the last female employee at MCF to be promoted to a shift commander position.

She further alleged that since that time she was “passed over for promotion to the rank of [ ] Captain or Inspector approximately twenty times.” When she applied for those positions, they “were filled by younger men with less seniority, less experience, and whom were …friends of the administrative staff.”

When Lt. Lawrence McKinney was promoted to captain, Warden Randall Haas told Weberg that she was “spent” and that unless she “got in the car” with one of the inspectors or deputy wardens, she would not be promoted.

Deputy Warden Darrell Steward acknowledged to Weberg that “while Lt. McKinney was not the most qualified for the position, which only he and [Weberg] interviewed for,” McKinney would learn the job.

Weberg alleged that she was demoted to a less preferential shift and denied training needed to advance to an Inspector’s position. Her grievances, she alleged, also resulted in more severe discipline than that imposed on other guards for a $12 pizza theft incident.

A federal district court in North Carolina has ordered expanded hepatitis C (HCV) treatment in a class-action suit brought by three state prisoners. The court’s entry of a preliminary injunction on March 20, 2019 enjoined the NC Department of Public Safety (DPS) from enforcing its existing policy on hepatitis C treatment.

The class consists of DPS prisoners “who have or will have chronic hepatitis C virus and have not been treated with direct-acting antiviral drugs (DAAs).” The lead plaintiffs alleged they were diagnosed with HCV but had not received treatment. Dr. Andrew Joseph Muir testified on their behalf that they are candidates for DAA medications, which should begin immediately. State prison officials “offered no explanation for [the DPS’] failure to treat” them. The district court said that after evidence was presented at the hearing, that failure “appears to constitute deliberate indifference.” It ordered the three lead plaintiffs to receive DAA treatment.

However, the court added the evidence was insufficient to show there was a likelihood of success that all class members were entitled to DAA treatment regardless of fibrosis level, or for universal opt-out screening. While the class may prevail on those issues later in the case, the standard was not met for a preliminary injunction. The district court gave little weight to Dr. Muir’s testimony as to those issues because he had no experience treating prisoners and was applying a community standard of care rather than the deliberate indifference standard.

“Medical care in the prison setting must be adequate, not necessarily ideal, and HCV treatment in the prison system is dependent upon the availability of resources,” the court wrote. According to a DPS spokesperson, the cost of DAA treatment is around $33,000 per prisoner.

U.S. District Court Judge William Osteen enjoined the DPS’ policy on hepatitis treatment, and found constitutional flaws in the prison system’s screening and prioritization of treatment for prisoners with HCV. For example, prohibitions on treatment for prisoners with less than 12 months left to serve, or who had “infractions related to the use of alcohol or drugs in the last twelve months,” had no medical justification. The district court made the same finding as to excluding HCV treatment for prisoners due to unstable “medical or mental health conditions and life expectancy.”

The DPS had a new HCV screening and treatment policy that was scheduled to go into effect on March 25, 2019, which was not considered by the court because the plaintiffs had not had an opportunity to respond.


“This ruling is an important step toward combating a major public health crisis that leads to the suffering and death of thousands of people both inside and outside prison walls,” stated Emily Seawell, a staff attorney for the ACLU of North Carolina. “The vast majority of people who are incarcerated will one day re-enter the community, and medical experts have made it clear that to combat the hepatitis C epidemic, we must provide treatment as quickly as possible.”

This ruling continues a national trend in litigation over the provision of DAA treatment for prisoners with HCV. [See: PLN, June 2019, p.44].

Additional source: Associated Press

North Carolina Prisoners Sue Over Gang Violence, Obtain $62,500 Settlement

According to a February 8, 2019 news report, a lawsuit filed by North Carolina prisoners Tavieolis Hunt, 39, Benjamin White, 35, and Sean Smith, 38, settled for a total of $62,500. The settlement was reached after the trio and two other state prisoners, Orlando Harshaw and Stacey Wynn, sued Lanesboro Correctional Institution Superintendent Lawrence Parsons and other prison officials for allowing and facilitating attacks by gang members in a part of the prison run by Unit Supervisor Jeffrey E. Wall. Guards allegedly opened doors to permit Blood and MS-13 gang members to attack Hunt, White and the other plaintiffs. Harshaw dropped his claims after learning the prison was slated to be converted into a women’s facility.

Wynn, who was reportedly stabbed in the chest and beaten in November 2011, lost his suit after it went to trial in July 2018. The jury found that Superintendent Parsons had not been indifferent to violence at the prison.

Jeffrey Wall was barred from the Lanesboro Correctional Institution and then fired after he tried to use force to enter the facility and remove bloody homemade weapons and videos of the unit where the attacks occurred, which were hidden in the drop ceiling of his office. He also displayed a gun and threatened that he could “get anyone” outside the prison, according to his letter of dismissal. Superintendent Parsons retired in 2016.

The five plaintiffs were attacked during a 10-month period of violence that included the murder of prisoner Wesley Turner. Guards allegedly allowed gang members to enter Turner’s cell to attack his cellmate. According to Hunt’s lawsuit, it was only after that incident that prison officials began to address the violence and corruption in that wing of the prison.

Investigators found that just before Turner was killed, two of his attackers went to an assistant unit manager’s office. Shortly thereafter, a guard allowed the gang members into the pod where the murder occurred.

According to Smith’s complaint, “The Supervisor of the Union Unit, Defendant Jeffrey E. Wall, deliberately fostered gang violence within the Union Unit. He was either a member of the Bloods gang or profited personally from facilitating the gang-controlled contraband economy that flourished in his Unit. He assigned most ‘Blood’ or ‘United Blood Nation’ gang-controlled contraband economy that flourished in his Unit. He assigned most ‘Blood’ or ‘United Blood Nation’
(UBN) gang members to a single cell pod – the ‘E’ Pod – that was one of the six pods on the Union Unit. Defendant Wall and his staff allowed gang members to move freely throughout the Unit, in and out of his office, in complete violation of DPS prison control policies. His staff opened secured, controlled-access doors to allow gang members to enter other pods on the Unit to commit acts of retaliatory violence. All of the assaults involved contraband metal weapons resembling razors, shanks, knives, ice picks, and similar dangerous weapons.

White added in his complaint, “As a result of the deliberate indifference to the culture of violence fostered by Defendant Wall in the Union Unit and enabled and permitted by Defendant Parsons, Plaintiff suffered a violent attack causing physical injury that deprived him of his Constitutional right to bodily integrity while in government custody, and he has served his prison sentence in constant fear for his life and safety.”

Ian Mance, a staff attorney with the Southern Coalition for Social Justice who represented four of the five plaintiffs, stated:

“We hope that the settlements illustrate that people who are in the custody of the state have a right to safety, that administrators have a responsibility to know what’s going on in their prisons. The violence in Lanesboro was pervasive and it should have triggered an intervention and investigation from the state much earlier than occurred. That didn’t happen, and so these plaintiffs filed a lawsuit in part to get people to pay attention to what was happening there.”

Wall was specifically excluded from the settlements to allow legal claims to continue against him. His attorney, Joseph Ledford, said Wall is negotiating separate settlements with the plaintiffs out of his own pocket. Although Wall has denied facilitating gang attacks at the prison, he has never explained why he kept weapons and security videos hidden in the ceiling of his office. See: White v. Parsons, U.S.D.C. (W.D. NC), Case Nos. 3:14-cv-00625 and 3:17-cv-00120, and Smith v. Kennedy, U.S.D.C. (W.D. NC), Case Nos. 3:14-cv-00625 and 3:17-cv-00119.

Additional sources: apnews.com, correctionsone.com, charlotteobserver.com
Monte Whitehead was incarcerated at the Otero County Prison Facility in New Mexico, operated by for-profit contractor Management & Training Corp. (MTC). He filed suit in state court raising various claims under the federal constitution and New Mexico Tort Claims Act, alleging in part “that certain defendants limited his access to information which prevented him from writing opinion articles, engaging in religious reading, and staying current with developments in the veterinary profession.”

Whitehead said he had requested books on religion and veterinary medicine, but the defendants denied his requests because the books were hardback. The defendants also denied his requests for books from non-approved vendors, newspaper articles sent to him by mail, and Internet access. Additionally, he claimed that he was “transferred for bringing this suit” – a common retaliatory act by prison officials.

The case was removed to federal court, where the district court dismissed the federal claims, declined to exercise jurisdiction over the state claims and remanded those claims back to state court. Whitehead appealed and the Court of Appeals for the Tenth Circuit granted limited relief in an April 2, 2019 unpublished ruling.

Specifically, the appellate court reversed and remanded the district court’s denial of Whitehead’s earlier motions to amend his complaint and supplement the pleadings. With regard to the denial of those motions, the appellate court wrote: “Further, the district court denied both motions without an ‘apparent or declared reason’ such as ‘undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, or futility of amendment.’”

The Tenth Circuit affirmed the dismissal of several other claims and defendants in the case, and concluded, “We vacate the district court’s dismissal of the First Amendment claims relating to hardback books, internet access, mailed-in newspaper articles, and materials limited to approved vendors.... We remand these claims for further proceedings consistent with this order and judgment. We also remand the equal protection and Commerce Clause § 1983 claims with directions to specify that the dismissal of those claims is without prejudice.” See: Whitehead v. Marcantel, 766 Fed. Appx. 691 (10th Cir. 2019), petition for cert. filed.

Alabama Jail Prisoner Accused of Conspiring to Get Pregnant, Claiming Rape

Twenty-six-year-old pretrial detainee and capital murder defendant Latoni Daniel gave birth to a baby boy on May 29, 2019. But she wasn’t pregnant when she was processed into the Coosa County jail in Alabama 17 months earlier, and claimed she didn’t remember having sex while incarcerated.

Daniel’s attorney, Mickey McDermott, said that after her arrest Daniel was prescribed seizure medication which causes her to sleep for prolonged periods, and someone raped her at the jail while she was unconscious.

“She’s reported she’s a rape victim and no one is investigating,” McDermott said. Since giving birth, Daniel reported that she wasn’t receiving proper medical care, had missed doctor’s appointments, suffered from abusive behavior by a nurse and was underweight.

Daniel, an honorably discharged Army National Guard veteran, was charged with capital murder in December 2017. She was in a car when her boyfriend and co-defendant, LaDaniel Tuck, allegedly robbed and killed 87-year-old Thomas Virgil Chandler, a combat veteran. Even though Daniel did not kill him, she was allegedly the getaway driver.

Thus, under Alabama law, she is just as culpable for Chandler’s death as an accomplice. However, Coosa County District Attorney Jeff Willis – who is seeking the death penalty against Daniel – said, “You may have read somewhere that she was a getaway driver. That is not a correct statement.” He declined further comment.

Willis has nearly unlimited discretion as to whether to seek the death penalty. According to the Circuit Court clerk, he has sought the death penalty only one other time in the last five years, and was unsuccessful in that case.

Since Daniel was in jail on capital murder charges, she wasn’t allowed contact with visitors; she could communicate with family and friends only through letters. Under Alabama law, as in most jurisdictions, it is illegal for jail employees to have sex with prisoners.

Daniel was moved to the neighboring Talladega County Jail (TCJ) in December 2018. At that time, Coosa County Sheriff Terry Wilson told TCJ officials to give Daniel a pregnancy test. Wilson

Tenth Circuit Reverses Dismissal of New Mexico Prisoner’s First Amendment Claims

by Scott Grammer

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Whitehead said he had requested books on religion and veterinary medicine, but the defendants denied his requests because the books were hardback. The defendants also denied his requests for books from non-approved vendors, newspaper articles sent to him by mail, and Internet access. Additionally, he claimed that he was “transferred for bringing this suit” – a common retaliatory act by prison officials.

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by Douglas Ankney

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Daniel’s attorney, Mickey McDermott, said that after her arrest Daniel was prescribed seizure medication which causes her to sleep for prolonged periods, and someone raped her at the jail while she was unconscious.

“She’s reported she’s a rape victim and no one is investigating,” McDermott said. Since giving birth, Daniel reported that she wasn’t receiving proper medical care, had missed doctor’s appointments, suffered from abusive behavior by a nurse and was underweight.

Daniel, an honorably discharged Army National Guard veteran, was charged with capital murder in December 2017. She was in a car when her boyfriend and co-defendant, LaDaniel Tuck, allegedly robbed and killed 87-year-old Thomas Virgil Chandler, a combat veteran. Even though Daniel did not kill him, she was allegedly the getaway driver.

Thus, under Alabama law, she is just as culpable for Chandler’s death as an accomplice. However, Coosa County District Attorney Jeff Willis – who is seeking the death penalty against Daniel – said, “You may have read somewhere that she was a getaway driver. That is not a correct statement.” He declined further comment.

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Daniel was moved to the neighboring Talladega County Jail (TCJ) in December 2018. At that time, Coosa County Sheriff Terry Wilson told TCJ officials to give Daniel a pregnancy test. Wilson
On February 10, 2015, Alexander Jeffrey Sutherland was arrested in Manteca, California and charged with public intoxication. The police took him to the San Joaquin County Jail (SJCJ).

After booking, Sutherland, 27, was placed in an isolated sobering cell, which required him to be monitored at 15-minute intervals to ensure his well-being. This was not the SJCJ's first encounter with Sutherland; in fact, it was his 107th visit to the jail. Ninety-eight of those prior visits had been alcohol-related.

Jail records verified that from 9:41 p.m. until 11:10 p.m., jailers checked on Sutherland 11 times. The intervals between two of those checks exceeded 15 minutes by one and eight minutes. Jailer Lynda Mendoza became occupied with other matters and did not perform another check on Sutherland until 12:09 a.m. the next morning, during which time he died.

SJCJ staff attempted unsuccessfully to revive him until 12:40 a.m., when he was officially pronounced dead.

It was not known how ill Sutherland really was until a post-mortem was performed. The county's forensic pathologist, Dr. Bennet Omalu, discovered that Sutherland had been suffering, “from alcohol-related liver and pancreatic disease.” The toxicology screen revealed alcohol and methamphetamines in his system.

Sutherland’s parents, represented by Stockton, California attorneys Gilbert D. Somera, Trina C. Cervantes and Stewart M. Tabak, filed a wrongful death suit in state superior court with a simultaneous claim against San Joaquin County. In April 2019, the county’s Board of Supervisors approved a $300,000 settlement. See: Sutherland v. City of Manteca, San Joaquin County Superior Court, Stockton Branch (CA). Case No. STK-CV-UPI-2016-000290.

Additional source: recordnet.com
Jason Nishimoto, 44, committed suicide on August 27, 2015 by hanging himself with a bedsheets after being placed in solitary confinement at the Vista Detention Facility (VDF) in San Diego, California.

Nishimoto had been diagnosed as a "high-functioning paranoid schizophrenic" at age 18, and, according to a wrongful death suit filed by his family in federal court on June 18, 2018, the medications he took caused him "to suffer from serious side effects such as morbid obesity, restless leg syndrome, and symptoms resembling Parkinson's disease. Jason would constantly feel like his legs were on fire. He also began developing muscle spasms throughout his body. Towards the end of his life, Jason 'wanted out' as he could no longer tolerate his illness and the side effects of the medication he took to control it." According to the complaint, Nishimoto had attempted suicide three times in the last five months of his life.

On September 24, 2015, Nishimoto reportedly attempted suicide again by swallowing a bottle of Klonopin, a medication used to treat and prevent seizures, panic disorder and akathisia – a movement disorder. His brother tried to take him to a hospital but he resisted. His brother called police so Nishimoto could be hospitalized on a "5150 hold," and told the dispatcher that Nishimoto was mentally ill and had attempted suicide several times.

Deputies arrived at the home and arrested Nishimoto for assault. His brother explained to the deputies that Nishimoto had tried to commit suicide. They took him to the Tri-City Medical Center for medical clearance then transported him to VDF, where Nurse Leah Gache asked him various intake questions and wrote in her notes, "seen at TCMC claimed he took a bunch of Klonopin yesterday." According to the complaint filed by Nishimoto's family, "Based on this admission, the death investigators quoted Charge Nurse Salter, stating that Jason should have been placed in an enhanced observation cell (herein 'EOH'). Defendant Gache's failure to house Jason in an EOH cell started a series of events that eventually lead to Jason's death."

That series of events included Nishimoto being put in administrative segregation instead of an EOH cell, despite the fact that deputies knew he had just attempted suicide and was still experiencing the effects of the Klonopin he had taken, and that he would receive neither help for his mental illness nor suicide precautions. Instead, Nishimoto would "spend twenty-three hours a day secluded and isolated, without medications."

On September 25, 2015, Nishimoto's mother was contacted by VDF's contract psychiatric nurse, Anne Brantman, who was employed by Correctional Physicians Medical Group (CPMG). A discussion ensued about Nishimoto's condition and medications, and the nurse said that "she was unsure if they could get Jason's medicine because they were too expensive and that she would schedule a psych appointment for August 27, 2015" – the day Nishimoto took his own life. His mother then told the nurse directly about his suicide attempts. The nurse responded, "Don't worry mom, we'll take good care of your son."

On February 4, 2019, county officials agreed to a $595,000 settlement with Nishimoto's family. Danielle Pena, the family's attorney, said that county records indicated there were 17 suicides in San Diego's jail system from 2014 to 2016, most of which involved prisoners with mental illnesses. The lawsuit "generated significant media attention that, in turn, prompted investigations by the San Diego County Grand Jury and Disability Rights California, an independent watchdog group," Pena said. "Both recommended modifications to the jails' suicide prevention programs and deputy and staff training, and the county did that. And in 2017, they reported zero jail suicides. So I like to think this case made a difference." See: Nishimoto v. San Diego, U.S.D.C. (S.D. Cal.), Case No. 3:16-cv-01974-BEN-LL.

Additional source: nbsandiego.com

Santa Clara County Jail Captain Accused of Misconduct, Retires

by Scott Grammer

In early June 2019, Captain Amy Le, 51, former president of the Santa Clara County Correctional Peace Officers' Association, was walked off the sheriff's office property and placed on paid leave. The reasons for her abrupt departure were not immediately forthcoming; neither sheriff's officials nor Le would comment on the incident, though a source said Le was served with an administrative letter and her badge was confiscated.

An early report stated that Captain Le had been sanctioned for improperly ordering prisoners to build a gazebo and barbecue grill on jail property, projects she paid for with private funds. Further, it added that Le did not have a building permit. The sheriff's office sent out a department-wide memo stating the report "was not accurate."

"[The Public Safety Officers Procedural Bill of Rights Act] prohibits us from disclosing specific information about any personnel matter and we respect those protections afforded to our employees," the memo said. The Act affords privacy protections for members of law enforcement.

John Hirokawa, a retired Undersheriff and Chief of Correction, noted, "It's very unusual for a captain to be walked off in that manner for a project that wasn't for personal gain, on jail property. There may have been policies or procedures broken with regard to that project, but there must be more to the story."

In her position as the first female president of the Santa Clara County Correctional Peace Officers' Association, Le got the union to endorse Sheriff Laurie Smith during the most recent election. After Smith won, Le...
was promoted to captain in December 2018. Her 2017 earnings from Santa Clara County, including benefits, were almost $450,000. She received more overtime than any other sheriff’s employee that year.

Le was a supervisor at the sally port of the main jail in September 2018 when a mentally ill prisoner, 24-year-old Andy Hogan, was seriously injured while beating his head against the inside of a transport van. Hogan, who suffered major brain damage, was forced to sit in the van at the sally port without assistance until EMS arrived some 20 minutes later. A lawsuit is pending.

According to Le, she was accused of dishonesty in an internal affairs investigation over the gazebo, including being “evasive” about donations collected to fund the building project. She retired on June 12, 2019, and attributed her departure to her union work and “heavy-handed” reactions by the sheriff’s office “over minor matters.”

Sources: mercurynews.com, abc7news.com

Author John Grisham Pens Editorial Criticizing Death Penalty in North Carolina

by Scott Grammer

On October 11, 2018, world-famous author and attorney John Grisham published an editorial in a North Carolina newspaper regarding capital punishment in that state.

“Today, there are 141 people on North Carolina’s death row,” Grisham wrote. “By comparison, in Virginia, a state with similar politics, demographics, and crime rates, there are just three. It is both out of line with other states and out of character for North Carolina to have such an outsized death row – especially one made up mostly of people whose trials and sentences are outdated and grossly unfair. The vast majority of North Carolina’s death row inmates were tried in the 1990s before the state, true to its historically progressive ways, passed a whole slew of new laws to make capital prosecutions fair. However, these reforms do not apply to those who were already convicted.”

Grisham discussed several prisoners on death row in particular: “Men like Nathan Bowie, convicted and sentenced to death in Catawb County in 1993. At trial he was represented by an incompetent lawyer who reeked of alcohol and later died of an alcohol-related illness. Three of his clients went to death row, and one has proven his innocence.”

Grisham continued, “Sadly, the list goes on. Seventy-five percent of North Carolina’s death row inmates were tried before all these reforms and would face radically different prosecutions today. Almost none would get the death penalty. . . . The death penalty is dying, not because of the courage of lawmakers or judges, but because of the compassion shown by jurors who are fully informed in trials that are fair.... By today’s standards, and certainly under today’s laws, the bulk of North Carolina’s death row inmates did not receive fair trials. It’s time for North Carolina to stop fighting for executions that represent not its future, but the battles of an unjust past.”

In August 2019, North Carolina’s Supreme Court heard arguments in an appeal brought by six death row prisoners alleging racial bias in capital punishment cases, including prosecutors using racist language and excluding black jurors. The state’s Racial Justice Act, which allowed death row prisoners to challenge their convictions based on racial discrimination, was repealed in 2013.

Sources: newsobserver.com, npr.org

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Compiled and published by Prison Legal News managing editor Alex Friedmann.

Arizona Prisoner Receives $175,000 after Guards Read His Legal Mail, Shared it with FBI and Prosecutors

by Matt Clarke

On May 7, 2019, Maricopa County, Arizona agreed to pay a prisoner $175,000 to settle claims related to jail guards reading his legal mail, sharing it with the Attorney General and FBI, and failing to deliver his letters to his attorney.

Thomas Orville Bastian, who represented himself in the settlement negotiations while receiving advice and assistance from attorney Holly Gieszl, had not yet filed a lawsuit. A few weeks later, prosecutors dropped pending terrorism charges against him.

Bastian, 41, was a state prisoner serving a life sentence for murder when he was charged with five felony counts— including terrorism, promoting prison contraband, possessing a prohibited weapon and providing advice to a criminal syndicate— based on allegations that he plotted with his wife to smuggle plans for making an explosive device into ASPC-Lewis in Buckeye. His wife was sentenced to nine years for her role in the scheme.

When Bastian was incarcerated at Maricopa County’s Fourth Avenue Jail awaiting trial on the terrorism-related charges, three guards opened and read his legal mail and one shared the contents with an FBI agent.

Maricopa County Superior Court Judge Danielle Viola ruled in March 2019 that the guards “opened, copied, and read” Bastian’s legal mail outside his presence, which violated his First and Sixth Amendment rights, and that the guards lied under oath about their actions. She specifically found that jail intelligence supervisor Sgt. Tara Spaulding falsely claimed during a four-day hearing that Bastian’s legal mail was only opened once, by accident, and her unit did not maintain a binder of his letters. Guard Christopher Williamson also falsely testified that the jail did not keep a binder of Bastian’s correspondence.

Guard Brad Landry contradicted Spaulding and Williamson by revealing the existence of the folder to the court, but then lied by claiming to have never read Bastian’s letters. The lie came out when it was revealed that Landry had quoted “almost verbatim” from one of Bastian’s legal letters when relaying its contents to an FBI agent.

In a scathing order, Judge Viola found that the guards engaged in “outrageous” and “appalling” conduct by opening at least 17 pieces of Bastian’s legal mail outside his presence, sharing the contents with the Attorney General’s office and the FBI, and failing to deliver six letters he wrote to his legal team. Two months later, the county offered a $175,000 pre-litigation settlement and prosecutors dismissed the pending terrorism-related charges against Bastian.

“Our office recently became aware of information that we believe makes a reasonable likelihood of conviction for Mr. Bastian on terrorism charges unlikely,” said Rayan Anderson, a spokesman for the state Attorney General’s Office. “More importantly, we felt it was necessary to dismiss the case given our ethical obligations.”

“A lot of people hoped that [Maricopa County Sheriff Paul] Penzone was going to bring about a lot of needed changes—and he has—but the sheriff is not being well-served by the people under him,” attorney Gieszl said. “He needs to be sure the men and women below him have his back on constitutional issues.”

Sources: phoenixnewtimes.com, azcentral.com

Court Grants Remittitur in Former Prison Teacher’s Sexual Harassment Case – Total Award of $6.4 Million Plus Fees, Costs, Interest

by Matt Clarke

A New York federal jury awarded a former state prison teacher $9.19 million after she proved that a guard had sexually harassed and stalked her—both at work and at home—and that high-ranking prison officials who were informed of the problem retaliated against her and did nothing to the offending guard.

The defendants filed post-trial motions for judgment notwithstanding the verdict, a new trial, a reduction in the award and remittitur. On April 14, 2019, the district court granted a reduction in a portion of the award to the statutory maximum, granted a remittitur of $1.05 million, and awarded attorney fees, costs and pre-judgment interest.

Pamela S. Small was a civilian teacher working for the New York State Department of Corrections and Community Supervision (DOCCS) at the Attica Correctional Facility when she met and befriended guard Carl Cuer, who also worked in the prison’s education department. Based in part on their shared Christian faith, their friendship went well for about four years. Then Cuer began telling Small that God had told him his wife was about to die and she would become his new wife. His behavior became increasingly alarming, and included stalking and implied death threats at work and home. She did not return his affections.

Small and her supervisor reported the harassment to prison officials. Instead of investigating, however, they retaliated against Small— even after a court issued a restraining order against Cuer.

Small’s mental and physical health deteriorated, and she was terminated after missing too many days of work on sick leave due to the stress.

With the assistance of Rochester attorneys Alina Nadir and Jennifer A. Shoemaker, Small filed a federal lawsuit alleging: 1) DOCCS subjected her to discrimination and a hostile work environment in violation of Title VII, 42 U.S.C. §§2000e, et seq.; 2) DOCCS retaliated against her in violation of Title VII; 3) Cuer, Attica Superintendent James Conway and Deputy Superintendent of Programs Sandra Dolce deprived her of her federally-protected right to be free from a hostile work environment under 42 U.S.C. § 1983; and 4) Cuer aided and abetted unlawful discrimination and a hostile work environment in violation of New York Rights Law § 296(6).

Following a 12-day trial in September 2018, the jury found in Small’s favor on
Specially trained to observe signs that a prisoner hanging.

In April 2019, the Cook County Board of Commissioners agreed to pay $1.7 million to settle a lawsuit over the death of Devin Lynch, a Marine Corps veteran and active reservist, while he was held at the Cook County Jail.

Lynch, 26, was booked into the facility in February 2016 after being arrested on a domestic-related sexual assault.

During his medical evaluation at intake, jail officials documented Lynch’s depression, anxiety and post-traumatic stress disorder. Most notably, they also documented his two suicide attempts – the most recent being the previous day.

Lynch was assigned to a “psych tier,” where, pursuant to a settlement agreement with the U.S. Department of Justice in 2010, jail staff are to ensure that all prisoners are closely monitored by guards specially trained to observe signs that a prisoner is about to harm himself. Two guards are to be assigned to a psych tier in order to conduct security checks every 30 minutes; they are supposed to have a special “cut-down tool” in case they find a prisoner hanging.

However, Darrell Maloy was the only guard assigned to the psych tier on March 22, 2016. He had received no specialized training to work that post, nor was he provided with a cut-down tool. Between 4:30 and 5 p.m., Lynch was seen on security video speaking to his family on the phone. He then enters the bathroom while crying, checks the door to the utility closet and returns to the phone. Between 5:35 and 6:09 p.m., Lynch obtains sheets from his bed and takes them into the bathroom. Maloy, instead of making his rounds every 30 minutes, makes one round at 7:21 p.m. where – on Lynch’s request – he leaves the utility closet unlocked.

At 8:46 p.m., a sheet can be seen tied around Lynch’s neck with other sheets clearly visible under his jail uniform as he enters the utility closet. Maloy doesn’t find Lynch hanging in the closet until an hour later. Because he doesn’t have a cut-down tool, several more minutes pass before the sheet around Lynch’s neck is removed.

Charlene Bigelow, Lynch’s mother, filed a lawsuit in federal court alleging that Maloy and Sheriff Thomas Dart, along with Cook County, failed to protect her son. Sheriff’s Office spokesperson Cara Smith denied the jail was at fault, saying the phone calls with his family had caused Lynch to kill himself. The $1.7 million settlement was reached a year after the wrongful death suit was filed. See: Bigelow v. Dart, U.S.D.C. (N.D. Ill.), Case No. 1:18-cv-02055.

Additional source: chicagosuntimes.com

Cook County, Illinois to Pay $1.7 Million for Former Marine’s Suicide in Jail

by Douglas Ankney

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Michigan Prisoner Prevails in First Amendment Retaliation Case; $30,000 in Damages and Attorney Fees

by David M. Reutter

A Michigan federal district court has awarded $18,325.28 in attorney fees and costs in a prisoner’s civil rights action, which followed a jury verdict on First Amendment retaliation and conspiracy claims that totaled $11,500.

Prisoner Arthur L. Campbell was housed at the Mound Road Correctional Facility when, on April 4, 2007, he received a minor misconduct ticket for leaving his wet coat on the back of a chair in his cell. Prior to that, Campbell had been in verbal conflicts with guards Angela Dye and Mark Bragg over the handling of his legal mail, and had filed grievances against Bragg and guard Cynthia Gause.

Campbell asserted at a disciplinary hearing that he had been told by Gause at previous resident unit meetings that “it was permissible to hang a wet coat on a chair.” Nonetheless, he was found guilty and told, “you’re a legal beagle, appeal it.”

His appeal was denied. Then, on April 24, 2007, Campbell was abruptly transferred to another facility. He was told by Dye that they were “going to fix his legal beagle ass.” As he was leaving the prison, Dye, Bragg and another guard, Joslyn Conyers, were in his cell unpacking his property. When it arrived at Campbell’s new facility on May 4, his typewriter, television, headphones and tape player were broken or damaged. Other items were missing, including religious items, and his legal papers were in disarray. Some of his prescribed medications had been confiscated.

Campbell filed suit on April 1, 2010. After a week-long trial, on October 17, 2017 a jury awarded Campbell $11,500, which included $2,500 against Conyers on a conspiracy claim with Dye. Campbell, who was represented by attorneys Cale A. Johnson, Dante A. Stella and Matthew M. Dybas, then moved for attorney fees. It took the district court around 18 months to rule on that motion, in May 2019.

The court set the fee rate at $198 per hour and said the PLRA fee cap of 150% of the verdict would be reached at 87.12 hours, which would have easily been exceeded in the case. It ordered Campbell to pay $1 of the fee award out of the jury verdict. The court also awarded $1,075.28 in costs. It denied Campbell’s request for pre-judgment interest and he filed an appeal with the Sixth Circuit on June 7, 2019, challenging the district court’s denial of his motion to withdraw a stipulated order that had dismissed a First Amendment free exercise claim and RLUIPA claim. His appeal remains pending. See: Campbell v. Gause, U.S.D.C. (E.D. Mich.), Case No. 2:10-cv-11371-RSW.  

Denial of Summary Judgment for Prison Officials Affirmed in West Virginia Excessive Force Case

by Scott Grammer

Miguel Delgado, incarcerated at the Mount Olive Correctional Complex (MOCC), alleged in a civil rights complaint that MOCC Warden David Ballard had authorized policies and procedures that allowed guards to use force against prisoners in the segregation unit without any requirement that they first “make efforts to temper their use of force against inmates.”

According to a March 9, 2017 ruling denying the defendants’ motions for summary judgment, Delgado claimed that he was sprayed with Oleoresin Capsicum (OC) spray at close range by guards Kevin McCourt and Jess Mattox, after Delgado had words with a nurse who refused to speak with him. Delgado alleged that after being sprayed with OC through the tray slot of his cell, he tried to use water from his sink to reduce the burning on his face and hands; however, Mattox and another prison guard, Hobert Allen, turned off the water so he could not decontaminate himself.

About ten minutes later, McCourt, Allen and Mattox, along with other guards, reportedly returned to Delgado’s cell to take him to the rec yard to be decontaminated. Allen turned on water in a sink, and told Delgado he was to be decontaminated. When Delgado pointed out that he was still wearing clothes drenched in OC, Allen accused him of refusing decontamination. Another guard told Delgado to remove his clothes, but that guard refused to take off Delgado’s handcuffs. He was again accused of refusing decontamination.

After meeting with the same nurse with whom he had had words earlier, the nurse allegedly took no action to help Delgado; instead, she sat down and read a book. The guards left him sitting at a table, still wearing his OC-soaked clothes, while they cleaned his cell. Delgado was unable to decontaminate himself for about an hour after being sprayed.

He argued in his complaint that the guards used excessive force in violation of the Eighth Amendment, and had exhibited deliberate indifference to his serious medical needs when they did not properly decontaminate him. Delgado alleged claims against Warden Ballard and also brought tort claims of assault and battery against McCourt, as well as intentional infliction of emotional distress against McCourt, Allen and Mattox. See: Delgado v. McCourt, Circuit Court of Kanawha County (WV), Case No. 15-C-1885.

The defendants filed motions for summary judgment based on qualified immunity, which were denied by the trial court. The denials were eventually upheld by the Supreme Court of Appeals of West Virginia on March 25, 2019. The Supreme Court praised the trial court’s summary judgment ruling, stating, “Rather than being deficient or inaccurate, we find the circuit court’s well-reasoned order sufficiently addresses the parties’ disparate factual allegations and the legal standards upon which the court’s decision was based.” Justice Evan H. Jenkins issued a dissenting opinion. See: Ballard v. Delgado, 826 S.E.2d 620 (WV 2019).
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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On April 18, 2016, Rikki Martinez, 39, was a pretrial detainee at the Elmwood Correctional Facility in Santa Clara, California. According to a complaint filed in federal court, on that day deputies alleged that Martinez had kicked another deputy in the face. As a result, he was to be moved out of Elmwood and housed in the main jail.

Sergeant Elmer Wheeler, who was working at the main jail in intake/booking, was reportedly informed about the kicking incident and Martinez’s impending move. Wheeler was accused of conspiring with guards Salvador Jacquez, Jon Quiro, Jason Satariano, Eamonn Dee and Adam Torrez to “give [Martinez] a beating as punishment.” He allegedly went so far as to explain to the other guards how they would proceed, what parts they would play and how to make the beating “seem spontaneous and legitimate” on video.

Martinez, who had been diagnosed with PTSD by a jail doctor in 2015, and was medicated accordingly, claimed he was punched “in the face three to five times with a closed right fist” by Jacquez while being held down by Satariano. Martinez “could be heard screaming to exclaim, ‘I can’t breathe! I can’t breathe!’” as at least three deputies were on top of him as he laid face first on the bed.” Then Torrez allegedly hit Martinez at least twice.

Martinez was moved to the jail infirmary where nurses called an ambulance to take him to an emergency room. His right eye was swollen completely shut. Martinez’s emergency contact, his mother, was not notified despite his repeated requests that she be called. The next day, Martinez slipped a note to another prisoner in the infirmary where nurses called an ambulance to take him to an emergency room. His right eye was swollen completely shut. Martinez’s mother was not allowed to see him until April 26, a full week after the beating. His eyes were still black and he had “visible knots” on his head. He also suffered a bloody nose and chipped front tooth.

A settlement was reached on September 19, 2018, awarding Martinez $365,000. Attorney Robert Powell, who filed the lawsuit with co-counsel Sarah Marinho, said, “He was basically given vigilante justice.... [The settlement] indicates there is some accountability for what was done to Mr. Martinez.” See: Martinez v. Santa Clara, U.S.D.C. (N.D. Cal.), Case No. 5:16-cv-05626-LHK.

Additional source: mercurynews.com

California Prisoner Wins $365,000 Settlement for Assault by Jail Guards
by Scott Grammer

Martinez’s girlfriend and his mother scheduled a visit on April 22, 2016 and arrived an hour early to check in, but were told the visit had been canceled because they arrived too late. Martinez’s mother was not allowed to see him until April 26, a full week after the beating. His eyes were still black and he had “visible knots” on his head. He also suffered a bloody nose and chipped front tooth.

The Fourth Circuit Court of Appeals reversed a grant of summary judgment to guards who tased a prisoner three times during a 70-second period. In its May 10, 2019 ruling, the appellate court also found error in the district court’s dismissal of a defendant for failure to perform timely service and denial of a discovery request for the prison’s use-of-force policy.

Before the Fourth Circuit was the appeal of South Carolina prisoner Altony Brooks. His pro se complaint alleged excessive force in violation of the Eighth Amendment. At issue was an incident that occurred on September 18, 2013 at the Hill-Finklea Detention Center, where Brooks had arrived the day before to attend a court hearing.

Brooks claimed he was “sovereign” and refused to comply with a policy that required his picture to be taken. Guards allowed the refusal to pass the day he arrived, but insisted on the photo as he was preparing to leave to return to his assigned prison. Five guards took the handcuffed Brooks to the photo room, and they reasoned with him for about seven minutes to allow the picture to be taken. He responded with what the appellate court termed “aggressive” verbal resistance, and continued to refuse.

The incident was recorded on video, and Sergeant Sheila Johnston was seen pointing her Taser at Brooks. She warned him that she would deploy it if he did not cooperate, and did so when he again refused to be photographed. Brooks “fell to the ground, writhed and kicked for approximately five seconds, and ultimately laid still.” Roughly 16 seconds after the first shock, Johnston activated the Taser a second time. Brooks was brought to his feet, but continued to move so a picture could not be taken. About 45 seconds after the second shock, Johnston again tased Brooks. The photo was subsequently taken.

Brooks appealed the district court’s dismissal of Johnston for failure to timely serve her, denial of a discovery request for the prisoner’s use-of-force policy and grant of qualified immunity to two of the defendant guards. The Fourth Circuit found error on all three issues.

As to service on Johnston, Brooks had her name spelled incorrectly and her rank listed as a lieutenant. The Fourth Circuit noted that “Brooks made multiple attempts during the 120-day service window to advise the Marshals and the district court of Johnston’s service information, including her correct name and title.” Those efforts constituted “good cause” under Fed.R.Civ.P. 4(m), which provides “the court must extend the time for service for an appropriate period” if good cause for failure to effect timely service is shown.

The Court of Appeals further found error in not compelling production of the prison’s use-of-force policy. Adherence to
that policy could “provide powerful evidence that the application of force was tempered and that officers acted in good faith.” The Court noted the policy could be redacted to and that officers acted in good faith.” The
question was motive and the matter could only be resolved by a jury. “[W]hether or not the first use of the Taser, standing alone, would give rise to any inference of malice, a reasonable jury viewing the three shocks together – three uses of an instrument designed to inflict excruciating pain in under 70 seconds – could infer ‘wantonness in the
infliction of pain,’ intended not to restore order and induce compliance, but to punish Brooks for his belligerence.”

The district court’s orders were reversed, and counsel was appointed to represent Brooks following remand. See: Brooks v. Johnson, 924 F.3d 104 (4th Cir. 2019).

California Federal Court Orders City to Pay $150,000 for Failure to Comply with Jail Settlement

by Chad Marks

In May 2013, a class-action lawsuit was filed on behalf of prisoners housed at the Monterey County Jail in California. A settlement agreement was reached on May 1, 2015, in which the City of Monterey agreed to develop plans to improve medical care, services, programs and activities at the jail. [See: PLN, April 2018, p.58].

Attorneys representing the prisoners were tasked with monitoring the city’s compliance with the agreements. In July 2017, the class members filed a motion to establish they were entitled to recover fees and expenses in the amount of $150,000.

On May 1, 2019, the federal district court agreed that the city was not in full compliance, and found the plaintiffs had es-
Cutting the U.S. prisoner population by half is the goal of the #cut50 and End Mass Incarceration movements, and of the criminal justice reform group JustLeadershipUSA, but that will not be possible for at least 75 years unless the issue of long sentences for violent offenses is addressed. That was the conclusion of “The Next Step: Ending Excessive Punishment for Violent Crimes,” an April 2019 report by The Sentencing Project, a nonprofit research and advocacy organization.

While the violent crime rate has plummeted by half since hitting its peak in the early 1990s, the number of people imprisoned for violent crimes has grown, the report notes, peaking at 740,000 in 2009 – nearly half of the 1.6 million people then held in state and federal prisons. It has declined by just three percent since then.

The annual cost of holding so many people in prison is at least $182 billion, the Prison Policy Initiative estimates, which is $280,000 per person. The cost of a long prison sentence is a deterrent to crime because it is likelihood of arrest, not the possibility of serving a lengthy sentence if arrested.

For example, prisoners like Michael Crawford, who spent two decades behind bars in New York for a murder he committed at age 17. During that time he earned associates and bachelor’s degrees from the Bard Initiative; earned a master’s degree from New York Theological Seminary; obtained certification as an HIV/AIDS counselor; became a sighted guide for other prisoners who are blind; and coached other prisoners dealing with anger management issues.

He also worked with Needle Wizards to crochet clothes and toys for cancer patients and homeless shelters, trying to “shed a different light on what a prisoner can do with their time if they’re allowed the opportunity,” he said.

“Prison can be an incubator or a casket,” noted Flournoy, who was encouraged to file his clemency application by Crawford. “[It’s] a place where you learn to be a better criminal or a place where you transform your thinking, transform your behavior.”

Governors in Arkansas, California, Colorado and Tennessee have commuted sentences for violent crimes in recent years. And after retroactively reducing the truth-in-sentencing threshold for non-violent offenses in 2008, the Mississippi legislature reforming its law for certain violent crimes to homicide, in Graham v. Florida (2006).

As a result, by 2016 a quarter of the prisoners incarcerated for violent offenses were serving life sentences. Due to this huge population of lifers, “scaling back the most excessive penalties is key to ending mass incarceration,” The Sentencing Project report notes. Recent reforms for the punishment of violent crimes fall into three main categories:

- Legislative action, such as a move by California lawmakers to limit the felony murder rule to those who participated in the murder or intended to kill;
- Executive action, such as an offer by Philadelphia's District Attorney of below-guidelines resentencing for people sentenced to life without parole (LWOP) as juveniles; and
- Judicial action, such as a ruling by Iowa’s Supreme Court that all mandatory sentences for juveniles are unconstitutional.

LWOP became popular as an alternative to the death penalty, especially after the U.S. Supreme Court banned capital punishment for juvenile offenders in its 2005 ruling in Roper v. Simmons. Three subsequent Supreme Court decisions curtailed LWOP for juvenile offenders, by limiting life-eligible crimes to homicide, in Graham v. Florida (2010); striking down mandatory LWOP for juveniles in Miller v. Alabama (2012); and extending the ban on LWOP retroactively in Montgomery v. Louisiana (2016).

A juvenile offender may still be sentenced to LWOP, the Supreme Court has held, so long as the sentence is not mandatory but instead based on the individual facts of the case. Still, that left around 50,000 prisoners serving LWOP in 2016 – over four times the number with life without parole sentences in 1992.

The Sentencing Project suggests that real reform first needs to address excessive sentences for juveniles, before moving on to reforming parole and sentencing for adult offenders, and encouraging policymakers to end unjust punishment.

The District of Columbia has followed this process with its Incarceration Reduction Amendment Act (IRAA), which was implemented in three phases. First, in April 2017, it created a path to sentence reductions for prisoners who had been tried as...
Former Hawaii Prisoner’s Sexual Assault Lawsuit Settles for Paltry $10,000

by Ed Lyon

C hristina C. Riley was a model prisoner at the Maui Community Correctional Center in Hawaii, and thus was allowed to participate in a work-release program. Parking her car at the jail, she left for work in the mornings and returned after-ward to the lock-up. MCCC guard James Siugpiyemal targeted Riley and sexually assaulted her after threatening to have her removed from the work-release program if she told anyone.

In one incident of oral rape, Riley kept the clothing that Siugpiyemal ejaculated on to use as evidence. Another time when the guard raped her, she had secreted a camera in her car and recorded the entire incident. Riley collected this evidence because she believed her accusations as a convicted felon needed corroboration in order to be credible.

When word leaked that Riley had reported the sexual abuse to the police, Siugpiyemal convinced another guard to falsely report a positive drug test for Riley, even though she had passed another test just minutes before. The supposed positive drug test results could not be found. Prior to his arrest, Siugpiyemal absconded to Yap, Micronesia. He was found several years later, extradited to Hawaii, prosecuted and sentenced to prison for raping Riley. [See: PLN, Nov. 2017, p.1; April 2017, p.63; July 2015, p.63].

After Siugpiyemal was convicted, Hawaii’s attorney general defended the state against Riley’s civil rights lawsuit filed in federal district court. The court granted Eleventh Amendment immunity to the state. In an unusual turn of events, Hawaii officials filed a cross-claim against Siugpiyemal, and obtained a $5,000 stipulated judgment against him in April 2019.

Honolulu attorney Myles S. Breiner represented Riley. When the state’s Eleventh Amendment defense succeeded, he and his client decided to accept a nominal settlement offer of $10,000 in April 2019. Under the amount of time that people are exposed to a negative and often violent prison environment may be a better alternative, particularly in cases where offenders no longer pose a threat to public safety.

Such as New York prisoner Michael Crawford, mentioned above, who was granted clemency by Governor Cuomo in January 2019 after serving 20 years. The governor granted pardons or commutations to 28 other current or former prisoners at the same time, including several convicted of violent crimes, stating they had “demonstrated substantial evidence of rehabilitation and a commitment to community crime reduction.”

Sources: cut50.org, sentencingproject.org, theguardian.com, justice.gov, governor.ny.gov
As Climate Changes, High Temperatures Plague Prisons and Jails

by Matt Clarke

At a September 2019 hearing, a U.S. District Court judge threatened to throw officials with the Texas Department of Criminal Justice (TDCJ) into the same excessively hot prison cells that the agency had failed to air condition.

Despite agreeing in 2018 to install cooling at the Wallace Pack Unit northwest of Houston, the TDCJ failed to comply with the year-old order, part of a settlement in a 2014 class-action lawsuit that argued excessive heat was endangering prisoners’ health and lives in violation of both the Eighth Amendment and the Americans with Disabilities Act. [See: PLN, July 2018, p.1].

“This is not a mere compliance issue – this is a life and death issue,” argued Jeff Edwards, the prisoners’ lead attorney. “Someone is going to die because of one of two things: utter incompetence or utter indifference.”

TDCJ officials did not appear at the hearing, which was hastily called a day after Edwards filed a motion asking the court to hold the agency in contempt for continuing to expose prisoners to excessive heat and then attempting to cover up the violations. But speaking to the court via phone, Assistant Attorney General Leah O’Leary promised that the problem was being addressed. That’s when Judge Keith Ellison debated letting prison officials experience the stifling temperatures in prison cells for themselves.

“What can I do to get the state’s attention?” the judge asked O’Leary.

“We understand that civil sanctions are something you intend to impose here,” O’Leary replied. “We hear your message, you have our attention.”

At the following hearing, TDCJ executive director Bryan Collier appeared and said the judge had every right to be frustrated, admitting that “we failed as an agency.” However, he stressed that all 850 of the remaining Wallace Pack prisoners covered by the settlement were currently being housed in air-conditioned areas.

Driven by climate change over the past few decades, the average number of days each year with temperatures exceeding 100 degrees has increased from 5 to 15 in Houston. The Wallace Pack Unit was home to some of the TDCJ’s most elderly prisoners, part of some 13,000 state prisoners who have been deemed medically sensitive to excessive heat. Collier said 8,000 of those prisoners have already been placed in air-conditioned housing, with plans to move the other 5,000 within two years.

The Wallace Pack Unit is one of 75 TDCJ facilities without air conditioning, and heat relief – such as providing ice water and showers – is provided based on outside temperatures. Because air conditioning the prison was also part of the settlement agreement, Judge Ellison instructed the TDCJ to record indoor temperatures at the facilities where the prisoners covered by the Wallace Pack settlement are housed. Yet prison officials admitted they did not do so.

In 2019, state legislators failed to pass two bills to address the situation, including one that would have required the TDCJ to monitor indoor temperatures at state prisons, which can climb into the triple digits. Another bill that would mandate indoor prison temperatures to be kept between 64 and 84 degrees was amended to only require a study. Since 1998, the TDCJ has had at least 23 heat-related prisoner deaths, including 10 during a 2011 heatwave. Spokesman Jeremy Desel said that as of August 28, 2019 there had been 56 heat-related illnesses reported among TDCJ prisoners and staff that year, down from 71 in 2018.

Calling conditions at the Wallace Pack Unit “grotesque,” Judge Ellison accused the TDCJ of setting poor priorities to address a situation where “the stakes could not be higher.”

“For us to need these hearings to seek something as simple as regular temperature readings makes me worry about what else I haven’t discovered yet,” he told Collier.

“We should have been monitoring those [indoor temperatures] all along,” Collier acknowledged, claiming that he had been kept in the dark by unidentified TDCJ employees.

“This is a pattern I’m concerned with,” Ellison countered. “These perfectly appropriate, even pressing questions are invariably met with a response – ‘I don’t know, it was somebody else, we’re not sure, you assume too much.’ When you’re talking about life and death, those are not sufficient answers. They’re just not.”

Yet even air conditioning prisoners’ housing areas does not solve all heat-related problems. On July 19, 2019, the family of TDCJ prisoner Seth Donnelly received a call from the prison’s chaplain saying Donnelly had been transported to a hospital with a core body temperature of 106 degrees after laying scent tracks used to train dogs to track escaped prisoners. The job required Donnelly to wear a padded suit that retained heat, and he had complained of inadequate access to water while working. After he died two days later, an autopsy report listed his cause of death as hyperthermia. [See: PLN, Sept. 2019, p.60].

The issue of prisoners being exposed to excessive heat is not limited to Texas, which is one of 13 state prison systems that lack air conditioning in most prisoner housing areas. In the Florida Department of Corrections (FDOC), prisoners do not even have access to fans.

FDOC secretary Mark Inch recently signaled an openness to a proposal by advocacy group Florida Cares to allow prisoners to purchase plastic, battery-operated personal fans. With the exception of death row, state prisons do not have electrical outlets in housing areas. Even the dorms reserved for cancer and dialysis patients at the FDOC’s Reception and Medical Center in Lake Butler do not have air conditioning.

Speaking anonymously, a guard said only two of the units at that facility were air conditioned, and those AC systems were in poor repair and failed often. Florida prisons do not record temperatures in housing areas. Two petitions on change.org have over 1,200 signatures asking the FDOC to install air conditioning in state prisons.

“Renovations would require significant funding as these renovations are prohibitively expensive in older buildings not designed for modern cooling systems,” said FDOC spokesman Rob Klepper.

Privately-operated prisons in Florida do have air conditioning, and are favored by many prisoners for that reason.

During the four years the TDCJ spent fighting the Wallace Pack Unit class-action suit, it claimed that it would cost $20 mil-
lion to air condition the facility, and an estimated $2 billion for all 75 of the state’s un-cooled prisons. By the time the case settled, the TDCJ had spent $7 million fighting the lawsuit while the estimated cost to install air conditioning at the Wallace Pack Unit had fallen to about $4 million.

An August 2015 study by attorney Daniel W.E. Holt with the Sabin Center for Climate Change Law at Columbia Law School found widespread risk factors for illnesses caused by excessive heat among the nation’s 2.2 million prisoners, including advanced age, mental illness, certain medical conditions and some medications.

“If you think about climate change, the prison population probably doesn’t come to mind; but things can get out of hand quickly in summertime,” said Holt. “If it gets too hot, I can put on the air conditioning or go to the movies. In prison, you can’t take as good care of yourself other than ask for water and ice. A lot of people are in danger.”

A recent Prison Policy Initiative (PPI) study found that the 13 states where prisons lack climate control are in the hottest parts of the country – mainly in the South. The study noted that 95% of households in the South have air conditioning, including 90% of households with annual incomes of less than $20,000 – indicating that air conditioning is considered a necessity.

“Prisons are often built of heat-retaining materials which can increase internal prison temperatures,” said PPI policy analyst Alexi Jones. “Because of this, temperatures inside prisons can often exceed outdoor temperatures.”

She also noted that excessive heat can damage the kidneys, liver, heart, lungs and brain, adding that with air conditioning being nearly universal in the South, it should not be considered a privilege or amenity but rather a human right.

“The lack of air conditioning in Southern prisons creates unsafe – even lethal – conditions,” Jones said. “Prolonged exposure to extreme heat can cause dehydration and heat stroke, both of which can be fatal. States and counties that deny air conditioning to incarcerated people should understand that, far from withholding a ‘luxury,’ they are subjecting people to cruel and unusual punishments, and even handing out death sentences.”

Heat-related issues in prisons and jails are not limited to the South. From July 19 to 21, 2019, staff from the New York City Board of Corrections (BOC) conducted unannounced tours of some of the city’s jails during a heat emergency declared by Mayor Bill de Blasio. They reported excessive heat in both non-air-conditioned and air conditioned areas housing heat-sensitive prisoners.

The investigators also noted that some jail staff were not taking temperature readings in housing units, some administrators were unaware of which prisoners were heat sensitive and where they were housed, and some prisoners were not allowed showers to keep cool. Four of the five jail units without air conditioning did not have ice despite regular ice deliveries having been logged on two of the units.

The BOC report found that heat mitigation efforts were insufficient in the areas without air conditioning, stating, “people should not be detained or required to work under these conditions.” It recommended air conditioning all of the city’s jails and decreasing the jail population.

New York City’s Department of Correction said it was unaware of any health concerns during the summer heatwave, according to press secretary Jason Kersten, who promised that the agency takes “the health and safety of those in our custody seriously” and is “looking into these reports to address any issues accordingly.”

In July 2019, nearly two dozen people protested outside the Bergen County Jail in Hackensack, New Jersey after the facility’s air conditioning failed and prisoners were forced to endure extreme temperatures. The AC repairs dragged on for weeks. The 1,150-bed jail, which houses around 400 immigration detainees in addition to county prisoners, was also under quarantine from July 20 to 29, 2019 due to an outbreak of the mumps.

The air conditioning in part of the 1,800-bed George W. Hill Correctional Facility in Thornton, Delaware failed during the July 2019 heatwave. As a result the temperature soared in the medical unit, solitary confinement and a youthful offender housing area at the prison, which is operated by The GEO Group. When power went out for the entire facility, some interior temperatures reached over 100 degrees. It took seven hours to restore power and
Climate Change (cont.)

more than two days to repair the faulty air conditioner.

Prisoner advocate Jane Dunbar said Blocks B and C and Units 1, 5 and 6 at the prison had been without air conditioning for weeks, and experienced temperatures of up to 110 degrees. She stated several prisoners told her that only hot water was available to drink, adding that the number of prisoners impacted was six times the figure of 28 quoted by prison officials.

The heatwave also caused the families of prisoners incarcerated at the Nottoway County Correctional Center and other Virginia jails and prisons to worry. Adam Young said his son, who was incarcerated at Nottoway, described having to lie on the concrete floor to keep cool in a cell where the temperature reached 125 degrees. He said the jail had a water shortage and prisoners could not shower or flush toilets, and were limited to three small cups of ice a day.

Denny Barger, who had family and friends at Nottoway, said the problems with excessive heat and water restrictions extended to the Buckingham and Augusta Correctional Centers as well. She was concerned for both the prisoners and guards due to high temperatures and limited access to water.

The Virginia Department of Corrections operates 18 facilities without air conditioning. Prisoners’ families disputed the DOC’s claims that staff were using fans, extra ice and water to keep prisoners hydrated.

On June 26, 2019, during “a historic Miami heat wave,” federal prison officials had to relocate 30 prisoners housed at the Federal Correctional Institution in Miami after the prison’s air conditioning failed. They were moved to another facility. FCI Miami was repeatedly cited by federal regulators for failure to perform proper maintenance.

And in one telling incident, even dogs received better treatment than prisoners. An animal rescue group, New Leash on Life, received better treatment than prisoners. An animal rescue group, New Leash on Life, received better treatment than prisoners.

**New York State Prisoner Wins Medical Malpractice Suit, Awarded $30,000**

_by Ed Lyon_

On April 15, 2019, a New York Court of Claims awarded prisoner Dain Morawski a total of $30,000 for pain and suffering caused by an overdose of incorrectly filled prescription medication. The judgment followed a four-day bench trial in which the defendants and medical experts presented testimony.

Morawski was born with cystic fibrosis (CF). One of the many problems associated with CF is difficulty absorbing nutrients in the digestive tract. To aide his digestive system in functioning properly, Morawski was required to eat two daily snacks to supplement a three-meal dietary regimen, and to take the medication Creon in dosages of six pills per meal and three with each snack, amounting to 24 pills daily.

Morawski lived with his mother until he entered the prison system at age 21. He arrived at the Franklin Correctional Facility on November 19, 2013, and his medical records from his prior prison unit indicated he was taking the medication Colace to relieve constipation — another CF-related condition — as well as Creon.

When he received his medication on November 21, the pill pack labeled Creon did not match the appearance of the drug he was used to seeing. He spoke with nurse Tammy Hyde about this at the infirmary. Hyde told Morawski that she called the pharmacy and was told the drug was a generic form of Creon, so he began taking it as directed.

The drug was actually Delzicol, which is used to treat ulcerative colitis or Crohn’s disease, with a maximum dosage of six pills daily. By the next day Morawski had overdosed to the point that he was suffering from nausea, burning stomach pain and bloody stools, and was vomiting blood. Hyde again told him the Delzicol was generic Creon.

Morawski called his mother and gave her a description of the pills he was taking. She called a pharmacy and was informed those pills were actually Delzicol and not generic Creon. Later that evening, when his mother relayed that information during a phone call, Morawski immediately stopped taking the Delzicol. He had taken 50 of the pills by then, and went to late sick call that night.

Nurse Dawn Ball took the remaining Delzicol from him and made a note to investigate the situation on Monday morning. No calls were made to a poison control center regarding the overdose, no physician was called for a consultation and while TeleMed was available, it was not used by prison staff.

At trial, the pharmacist admitted to making a mistake and the attending nurses testified truthfully. The court based its decision and $30,000 award on finding that the pharmacist was negligent and the nurses had deviated from the accepted standard of medical care. See: _Morawski v. State of New York_, New York State Court of Claims, UID No. 2019-032-502, Claim No. 123752.
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Former DOC Employee Awarded $300,000 in Workplace Sexual Harassment Case

by Matt Clarke

In May 2019, a federal district court issued an amended judgment awarding $300,000 to a former employee of the Idaho Department of Correction (DOC) in a lawsuit over sexual harassment and a hostile work environment for women.

Cynthia Fuller worked for the DOC for eight years. Hired as a guard in 2004, she was first promoted to sergeant then later employed at the Caldwell III Probation and Parole Office. She later met senior parole/probation officer Herbt Cruz, who initiated an off-duty romantic relationship with her in 2011.

After dating briefly, Fuller attempted to end the relationship with Cruz because he felt he was “becoming overly-controlling and physically aggressive toward her.” She was initially unsuccessful at breaking off the relationship and began seeing a therapist due to the stress it caused her. Eventually, she disclosed the relationship to her DOC supervisors. Soon thereafter, Cruz allegedly kidnapped, beat, raped and sodomized Fuller because she was trying to end their relationship. She did not immediately report this to the police.

Unbeknownst to her, weeks earlier Cruz had been placed on administrative leave due to a pending criminal investigation against him for allegedly raping another woman. Although DOC supervisors knew about the investigation, they did not tell Fuller about it when she reported her relationship with Cruz. However, they did warn other female employees at the parole office to “watch out for Cruz.”

After learning the nature of the investigation, Fuller met with the investigating officer and reported that Cruz had assaulted her. She obtained a court order temporarily restraining Cruz from coming within 1,000 feet of her.

DOC supervisors initially told Fuller she could take paid administrative leave, then backed down on that offer. They refused to inform the parole office workers, many of whom were friends of Cruz, that he was prohibited from returning to work due to the restraining order. Fuller was afraid to return to the office; she used up her leave and sick days, then decided to quit.

With the assistance of Boise attorneys Erika Birch and Kass Harstad, Fuller filed a federal lawsuit against the state, the DOC and two DOC supervisors, alleging violations under 42 U.S.C. §§ 1983, 1988 and 2000, et seq., Idaho Code § 67-5902(6) (the Idaho Human Rights Act) and state tort law. A jury found in her favor in February 2019 and awarded her $1.8 million, which was reduced by the district court to $300,000 on May 22, 2019 due to a cap on damages for Title VII claims under 42 U.S.C. § 1981a(a)(1). See: Fuller v. State of Idaho, U.S.D.C. (D. Idaho), Case No. 1:13-cv-00035-DCN.
Investigations into Texas Jail Deaths Find Thousands of Guards Untrained, on Temporary Licenses

by Matt Clarke

An investigation by the Dallas Morning News into the Christmas Eve 2016 death of prisoner Andy Debusk at the Parker County jail revealed that not only did the guards at the privately-operated facility contribute to Debusk’s death, but several were untrained and employed under temporary licenses. The jail is one of 14 in Texas run by LaSalle Corrections, a family-owned private prison firm based in Louisiana. [See: PLN, Feb. 2013, p.1]. DeBusk’s death was one of an average 93 jail deaths a year, tallied since 2005 by the Texas Justice Initiative.

DeBusk died just 28 hours after he was booked into the jail, located about 60 miles west of Dallas. Struggling with methamphetamine addiction, the 38-year-old’s legal troubles had begun earlier in the year when he hallucinated someone was after him and sought to enter and hide in a neighbor’s house. The neighbor called police to report DeBusk was “shaking the door” to enter the house. Due to that report, he was arrested and charged with attempted burglary. He posted bond but returned to jail twice – once for forgetting to recharge his ankle monitor, then again when he tested positive for drugs. His Christmas Eve arrest was for pulling his mother’s hair during a fight earlier in December.

Surveillance video showed a disheveled-looking DeBusk arriving at and being booked into the jail before he was placed in a solitary cell. Once there he allegedly took off his clothes, yelled insults at guards and threw water around the cell. When the guards decided to move DeBusk to a more secure cell, he struggled with them. Two guards were accidentally doused with pepper spray when they tried to subdue him; one had to leave to seek medical attention. The remaining guard was joined by others who piled onto DeBusk to put him in restraints.

“They’re gonna kill me,” he screamed. Four guards hoisted DeBusk and carried him to a new cell. They piled onto him again to remove the chains.

“I can’t breathe,” he said.

Guards ignored him until he vomited. Then a guard told another to “knee in.” The second guard drove a knee into DeBusk’s back.

“He’s turning a different color,” a third guard noted, while another said DeBusk was “out.”

“He’s fine, get the cuffs,” replied a fifth guard.

DeBusk was placed alone in a cell, unmoving and making faint gasping noises. Seven minutes later the guards called 911, but DeBusk was already dead. The medical examiner listed his cause of death as “undetermined,” but noted that pepper spray and “prolonged periods of prone restraint with compression of his torso” were contributing factors.

Some of the jail guards involved in the incident had no training, though Texas law requires 120 hours of training, 72 of which can be completed online with a passing score on a final exam. The untrained guards had been employed by LaSalle using a temporary license, which is valid for one year and intended to allow employment while the guard undergoes required training. Texas issues 4,000 to 5,000 temporary licenses per year.

Ty Ashley, then 21, was one of the guards who piled on DeBusk the night he died at the Parker County jail. Hired just two months earlier, Ashley had received no state training. When the Dallas Morning News investigated in November 2018, it found that 24 of the jail’s 77 guards were working on temporary licenses and LaSalle had hired over 370 temporary-licensed jailers since 2017 to work at the jails it operates around the state.

Two LaSalle-run facilities, the Fannin County jail and McLennan County’s Jack Harwell Detention Center, were listed as out-of-compliance with state jail standards. Not long after the company took over management of the Fannin County jail, a 67-year-old prisoner with several life-threatening medical issues named Paul Plecker died in November 2018. Former LaSalle guard Javier Marroquin said at the time that he had worked at the facility for just five months, all under a temporary license, without receiving any training to recognize symptoms of medical distress.

The Texas Commission on Law Enforcement said that 3,200 – 14 percent – of some 23,000 jailers in the state are working on temporary licenses. However, an investigation by Dallas television station WFAA reported over half the guards in at least six Texas county jails had temporary licenses. Among the jails operated by LaSalle, 29 percent of the guards at the Bowie County jail had temporary licenses, as did 42 percent at the Johnson County jail, 25 percent in Fannin County and 24 percent at the Parker County jail.

“We wouldn’t put our police officers on the street without training,” remarked corrections expert Lance Lowery. “We shouldn’t be putting the jailers in the same situation. We’re endangering people’s lives.”

Kim Vickers, executive director of the Texas Commission on Law Enforcement, said some jails never train the guards they hire on temporary licenses.

“If they’re simply trying to fill [the open positions with] warm bodies and they’re trying to just keep business running, the propensity is there to hire somebody, keep them for a year and terminate them and hire somebody else and keep a revolving door,” she stated.

There may also be an economic motive, as some jails pay guards with temporary licenses significantly less than fully licensed jailers. Yet some guards with temporary licenses are promoted to supervisory positions.

When Michael Sabbie died after being pepper sprayed at the LaSalle-run Bowie County jail in 2015, the supervisor left in charge of the facility had been promoted to the rank of sergeant seven months earlier while still holding a temporary license. Only after his promotion did he attend state-mandated training and pass the licensing test. Sabbie had asthma and heart problems, and repeatedly told jailers he could not breathe when they pepper-sprayed him. But no one checked on him for hours; when they did, he was dead on the floor of his cell. [See: PLN, Aug. 2019, p.25; Aug. 2018, p.24].

When state Rep. Garnet Coleman, chairman of the Texas House Committee on County Affairs, asked about the practice
of promoting jailers with temporary licenses during a committee hearing, Rodney Cooper, LaSalle’s chief executive in Texas, reacted testily.

“What if I had to go without sergeants? Is that what you want to see?” said Cooper. “Just don’t have sergeants. Then we would be answering questions from you, ‘Why don’t you have sergeants in place?’”

“Essentially, we have minimally trained jailers supervising minimally trained jailers,” Rep. Coleman countered.

“The one thing they could never explain away is why they had such a high percentage of untrained jailers,” state Rep. Bill Zedler said after the hearing. “There needs to be a cap on the number of untrained individuals in each facility.”

He proposed that the cap be set at 10 percent, that temporary licenses be limited to 180 days, and guards with temporary licenses be required to work under the direct supervision of trained and licensed jailers. During hearings on the proposed law, Coleman heard testimony from the mothers of two prisoners who died in custody, who had been featured in the WFAA investigation. He then subpoenaed LaSalle executives to appear, telling them he was “angry about this.”

“I don’t like listening to mamas talk about their dead sons,” he added.

Zedler and Coleman co-sponsored a bill during the 2019 state legislative session that would have limited a temporary jailer license to 90 days, but the measure didn’t pass after it was opposed by several sheriffs.

“Sometimes, it takes a year [to get a newly hired guard licensed],” said Jackson County Sheriff A.J. Lauderback.

Rural counties like his, with a population of less than 15,000, are “hard-pressed” to hold a single training class each year, noted Lauderback, who usually hires guards in January and enrolls them in training class during the summer.

“County jails are in the unique situation where they don’t control their own funding and salaries,” he added.

As a compromise, legislators agreed to ban unlicensed guards from supervisory positions and require county sheriffs to enroll them in certification classes within 90 days of hiring, while still allowing a full year to complete their training.

According to Rep. Coleman, “poor and incomplete” staff training is a factor contributing to in-custody deaths, of which there were 53 in Texas during the first half of 2019.

Sources: dallasnews.com, texasstandard.org, wfaa.com, palestineherald.com

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Third Circuit: Showers Part of Prison Operations for ADA and RA Purposes

by David M. Reutter

The Third Circuit Court of Appeals held on August 8, 2019 that the provision of showers “is a part of the programs, activities, or services” referred to by the Rehabilitation Act (RA) and the Americans with Disabilities Act (ADA). The appellate court concluded that prison officials had denied a prisoner showers due to his disability, and were deliberately indifferent for failing to provide a handicapped-accessible shower for more than three months.

The ruling came in an appeal by Pennsylvania prisoner Robert Furgess, who suffers from a neuromuscular disease that inhibits his ability to see, walk, speak and lift things.

Upon his arrival at State Correctional Institution-Albion in 2014, prison officials provided accommodations for his disability. His conditions of confinement, however, drastically changed when he was found guilty of a disciplinary infraction and placed in a Restrictive Housing Unit (RHU) on December 14, 2015. The RHU was not equipped with handicapped-accessible showers.

Furgess’ repeated requests to be provided with an accessible shower went unheeded. A March 7, 2016 grievance resulted in his move to a handicapped-accessible cell, but he still was not provided access to a shower. It was not until March 16 that Furgess was finally escorted to a shower, but it was not handicapped-accessible.

He was given a rimless plastic chair to sit on, which caused injuries when he tried to exit the shower because the hot water was exacerbating his symptoms. He slipped and fell due to a lack of safety bars and rails.

After completing the grievance process, Furgess sued under Title II of the ADA and Section 504 of the RA for the prison’s failure to provide an accessible shower. The district court granted the defendants’ motion to dismiss, finding that a shower was not a “service, program, or activity” under either statute.

The Third Circuit disagreed. It found § 504 defines a “program or activity” quite broadly to include “all of the operations” of a state instrumentality.” While the ADA does not define “services, programs, and activities,” Congress and the courts have recognized the statute provides the same protections as Section 504. The Court of Appeals concluded that “[a] prison’s provision of showers” is one “of the operations” of the facility.

The Court was then tasked with determining whether Furgess suffered discrimination due to his disability. It held that he did, rejecting the defendants’ argument that “but-for his alleged misconduct, he would not be in the RHU and thus deprived of a shower.”

The appellate court wrote that a “prisoner’s misconduct does not strip him of his right to reasonable accommodations, and a prison’s obligation to comply with the ADA and RA does not disappear when inmates are placed in a segregated housing unit, regardless of the reason for which they are housed there.”

The Third Circuit also found prison officials were aware of Furgess’ disability and were deliberately indifferent for failing to provide him with a handicapped-accessible shower for over three months. The district court’s order was reversed. See: Furgess v. Pennsylvania Department of Corrections, 933 F.3d 285 (3d Cir. 2019).

Connecticut Prison Writing Program Leads to Lawsuits

by David M. Reutter

Wally Lamb was an English teacher when he published his first novel, She’s Come Undone, in 1992. It became a huge hit after Oprah Winfrey selected it for her book club. In 1999, Lamb began a writing workshop at a Connecticut women’s prison, the York Correctional Institution.

The prisoners’ writings were edited by Lamb, and in 2003 he published an anthology of autobiographical essays titled Couldn’t Keep It to Myself: Testimonies from Our Imprisoned Sisters. It was published by HarperCollins and became a huge hit after being featured on 60 Minutes.

As reported in PLN, that success resulted in state officials suing to recoup the costs of the women’s incarceration, but the state later settled the case and allowed the prisoners to keep proceeds from the book because they were not profiting from their crimes and the money was not a windfall. [See: PLN, Feb. 2005, p.34].

A second book from the prison writing program, I’ll Fly Away: Further Testimonies from the Women of York Prison, followed in 2009. Then Lamb put together another anthology, You Don’t Know Me: The Incarcerated Women of York Prison Voice Their Truths, which was bought for $20,000 by Counterpoint Press, a small publishing house in California. The 14 contributing writers were each to receive around $1,400. Some of the women, however, were upset.

Chandra Bozelko, a former prisoner who contributed to the book and a Princeton graduate, freelance journalist and vice president of the National Society of Newspaper Columnists, filed suit in state court against Lamb, Counterpoint Press and talent agency Anonymous Content in May 2019, alleging fraud and emotional distress.

“This last book distorted everything the program was about and what was supposed to be achieved by women telling their stories,” she said. “The behavior that [Lamb] has shown toward the contributors challenges the narrative.” Bozelko said she was promised a contract and payment but received neither.

“In all honesty, my exchanges with some of you have left me feeling fed up, discouraged, and disrespected,” Lamb wrote to the contributing writers in March 2019. “When I committed to editing and publishing a third volume of work by past and present members of the York workshop, I handed you an opportunity to speak to a wider audience and – ideally – to be agents of change at a rare time when the country is increasingly receptive to prison reform. I
confess that I did not expect to be blindsided by what, in my opinion, is frivolous hassling, cajoling, and self-interested complaining."

The latest book is now “on hold,” said Lamb’s attorney, former Connecticut Supreme Court justice Joette Katz, who added the prison workshop “is something he’s done as a labor of love.” The lawsuit is “a classic case of no good deed goes unpunished.”

Prisoner Tracie Bernardi is also a plaintiff in Bozelko’s suit. Bernardi expressed disappointment with the $1,400 advance for her essay, and disagreed with Lamb’s plan to donate all royalties from the book to the state victim advocate’s office and a college program at Wesleyan University, though she supported some money going to those programs. Prison officials said they were investigating to ensure the women had agreed to have their essays published.

That investigation found no wrongdoing by Lamb, and the writing program was reinstated in September 2019. 

Sources: courant.com, middletownpress.com, chicagotribune.com, nytimes.com, Associated Press

**Lawsuit: Woman Gave Birth Alone in Colorado Jail Cell**

*by Kevin Bliss*

Diana Sanchez gave birth to her son on July 31, 2019 at the Denver County Jail (DCJ), with no assistance from the medical staff. Guards and medical personnel watched from a remote location through a live video feed as Sanchez went through five hours of labor, ultimately delivering her child in her cell. [See: PLN, Oct. 2018, p.51].

Represented by attorney Mari Newman, Sanchez filed suit against the City and County of Denver, the Denver Health and Hospital Authority, two nurses and four sheriff’s deputies in August 2019. The suit claims that she suffered unnecessary pain and humiliation, and that neither she nor her baby received even the most basic medical care.

Sanchez was booked into the DCJ for writing a check on her sister’s bank account. She was eight months pregnant at the time, was on prescribed methadone for opiate withdrawal and had other high-risk pregnancy issues that could result in premature birth. An examination on July 30 ended with a nurse telling Sanchez that she was to immediately call for assistance if she felt any contractions or vaginal leakage.

Sanchez went into labor about 5 a.m. the next day. Screaming in pain, she told a guard that she needed medical attention. The nurse, informed by the guard, ignored Sanchez’s call for help. He did not even request an ambulance to transport her to the hospital. The guards requested a transport van, but knew it would not arrive until after the morning booking process was over, hours later.

The nurses and guards were evidently monitoring the birth through a video feed but did not come to Sanchez’s cell to help her. That was apparent because about 45 minutes before she gave birth, an absorbent pad was slid under the door. A nurse entered 15 minutes after the baby was born to clean him, but did not even have the necessary tools to cut the umbilical cord.

Sanchez’s lawsuit claims that an internal investigation found DCJ staff did not commit any misconduct, yet the jail’s policy was changed so guards could call for an ambulance at any stage during a pregnant prisoner’s labor.

“That pain was indescribable,” Sanchez said of giving birth in her cell. “What hurts me more though is the fact that nobody cared.” Her suit remains pending. See: Sanchez v. City and County of Denver, U.S.D.C. (D. Colo.), Case No. 1:19-cv-02437-DDD-NYW.

Additional sources: usatoday.com, abc7.com, theguardian.com, washingtonpost.com

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Denver Tries to End Private Prison Companies’ Halfway House Contracts

by Matt Clarke

In August 2019, thanks to the efforts of newly elected Denver, Colorado councilwoman Candi CdeBaca, the city council declined to renew contracts worth a total of $10.6 million with GEO Group and CoreCivic (formerly Corrections Corporation of America) to operate six halfway houses. With a total of 517 beds, the halfway houses represented over 70 percent of the 748 total beds available in Denver.

CdeBaca was sworn in to office in July 2019 and soon noticed a $3.89 million contract with Community Education Centers, Inc. docketed on the city council’s consent agenda. When she learned that company was a subsidiary of the GEO Group, she recognized it was the same firm operating a controversial Aurora, Colorado facility housing detainees for Immigration and Customs Enforcement (ICE). She requested that the contract be pulled off the consent agenda and heard for public comment.

Over time, the GEO Group and CoreCivic have bought six of the 10 halfway houses in Denver, where former prisoners live and obtain jobs while they transition into the community or await parole. The remaining halfway houses are operated by locally owned Liberty House and the University of Colorado.

“We’ve watched these large entities gobble up smaller providers with public dollars and little to no transparency or accountability,” said CdeBaca. “I believe we shouldn’t be investing in organizations that are perpetuating harm.”

She organized witnesses for the public comment hearing to testify about private prison operators doing business with the city. Over 15 people testified, including criminal justice reform advocates. A few staff members from the halfway houses also appeared and spoke. No one testified in favor of the GEO Group or CoreCivic, which also operates controversial immigrant detention centers for ICE.

Before the hearing, CdeBaca told The Independent she expected to be the sole dissenting voice on the city council. But the public comments alone took four hours and, following another five hours of debate, she was joined by council president John Clark and councilmembers Robin Kniech, Jamie Torres, Amanda Sandoval, Amanda Sawyer, Chris Hinds and Stacie Gilmore in voting down the halfway house contracts, 8 to 4.

Kniech called it the toughest vote of her eight years on the council, since ending the contracts could have the effect of sending over 500 halfway house residents back to prison if they could not find alternative programs. Clark said the issue was tearing the council apart. The four members who voted to renew the contracts said they also wanted to end GEO Group and CoreCivic’s involvement in Denver’s halfway houses, but felt another year was needed to transition into a new halfway house system.

“We’ve got to quit feeding the beast of for-profit in our criminal justice system,” testified Denise Maes, policy director at the ACLU of Colorado. “You, the city and county of Denver, can run your own community corrections program, and, by God, I’m sure you’ll do it far better.”

“I think there is some element of risk, and that is what we were tasked with tonight: weighing the risk of people who are in these specific facilities, versus getting better outcomes in the long run,” CdeBaca said after the vote. “What we heard tonight is that all of the outcomes have been subpar and we’ve renewed [the contracts] over and over.”

Denver’s zoning codes make it nearly impossible to open new halfway houses in the city, leaving it unclear where current or future residents of the affected halfway houses might go.

“There are no alternatives in the marketplace,” said Mayor Michael Hancock, who called the council’s vote “regrettable” and “short-sighted.”

After the decision not to renew the contracts, Denver Department of Public Safety spokeswoman Kelli Christensen said the city had come to a verbal agreement with GEO Group and CoreCivic to continue operating the six halfway houses until a plan could be developed for the current residents. Amanda Gilchrist, director of public affairs for CoreCivic, said both her company and GEO had decided to continue operating without a contract, though they were not accepting new residents.

“We think it’s important to remain committed to the [current] residents,” she said. Of course, the companies are still being paid by the city.

Christensen said over 200 prisoners approved to transition to the halfway houses have been left on hold in prison, waiting for space at an approved facility.

Three weeks after voting not to renew the contracts, the city council approved $8.7 million to extend CoreCivic’s contract through June 2020 and GEO Group’s contract through the end of 2019. CdeBaca opposed the move, citing her visits to the facilities and conditions reported to her by residents, including group showers for 8-10 men and “forced labor.” Her chief of staff, former mayoral candidate Lisa Calderón, who holds a Ph.D. specializing in the issue, said the halfway houses are based on an “old standard.”

However, Greg Mauro, Denver’s director of community corrections, testified that an abrupt end to the contracts would lead to “complete chaos,” adding the forced labor cited by CdeBaca was merely “chores” to build character for residents, who are prohibited from doing any work that adds value to the halfway house property. Two current residents also spoke in favor of contract extensions.

In September 2019, the city council formed a 13-member advisory panel to recommend replacements for the affected facilities. But at a hearing the next day, CdeBaca and fellow councilmember Chris Hinds said they had received emails from residents indicating that the private prison operators were not acting in good faith.

“We were being told that residents who have parole in two weeks were being transferred and that doesn’t make sense at all,” said CdeBaca.

“The reason why we granted a six-month extension for GEO and 12-month extension for CoreCivic is so we could be measured with our approach,” Hinds added.

Mauro said the city had thus far been unable to find other halfway houses to accept the residents affected by the pending closings. He added that because the affected
halfway houses were not accepting new residents, GEO and CoreCivic were having trouble maintaining them at full capacity without losing money, necessitating the return of some residents to prison.

“The outrageous antics of Denver Councilmembers CdeBaca and Hinds to use our treatment facility for their political theater has crossed the line,” GEO Group said in a statement.

“All we’re asking is for the plan ... before we take action, all we’re asking for communication about what’s happening,” CdeBaca insisted.

Sources: westword.com, coloradoindependent.com, denverpost.com, thedenverchannel.com, kdvr.com

Arizona DOC Publishes, Then Rescinds, Prison Tour Policy that Excluded Public Officials and Media

by Matt Clarke

The Arizona Department of Corrections (ADC) generated a media storm when, on July 22, 2019, it published a draft of a new department order that excluded elected officials and the news media from a list of people eligible for tours of state prisons.

The draft order was to supersede a previous order that specifically authorized tours for “elected officials and their staff” and “news media staff.” It was to go into effect on August 22, 2019, but was removed from the ADC’s website just a day after being posted.

“In a time when it’s been made clear that the executive branch is not willing to hold the Department of Corrections and Director Charles Ryan responsible, and accountable, it really defaults to the media and the Legislative Branch,” said state Rep. Athena Salman, who called the changes in the policy “outrageous” and noted that she and a group of lawmakers already had a prison tour scheduled for the end of August.

“Now that there is a lot of pressure coming from the media and the Legislature, the idea that the prisons then think that they can restrict access and make it more difficult for elected officials and journalists to investigate – that is just completely reckless,” she added.

“The department shouldn’t expect to receive its billion dollar budget from lawmakers if it’s not willing to let them in to see how that money is being spent,” said Molly Gill, vice president of policy at FAMM, a sentencing reform group that has encouraged state lawmakers to visit prisons with its #VisitAPrison campaign.

“A policy change like this shows why lawmakers need to visit prisons more often and provide more oversight, not less,” Gill continued. “No government actor getting one billion dollars of taxpayer money each year is entitled to operate a black box, especially when human lives are at stake.”

“I hope the new policy’s omission of the news media and elected officials is an oversight that will be corrected immediately,” stated attorney Dan Barr, who specializes in First Amendment law. “The events of the last few years regarding abysmal health care provided in the prisons, the absence of working locks on prison doors, and chronic understaffing show that the Arizona prison system needs far more attention, not less, from the news media and elected officials.”

ADC spokesman Andrew Wilder called the omission of elected officials from the draft order “unintentional.” He went on to explain how it had been removed from the order as part of a review schedule intended to delete duplicate language to avoid confusion.

He said the department orders addressing tours for public officials and the news media were in a separate, stand-alone policy unaffected by the revision. Nonetheless, the new version of the prison tour policy (DO #202) had been rescinded so it could be revised to include elected officials and their staff as well as members of the media.

Several months before the controversy surrounding the draft prison tour policy, Warden Glenn Pacheco at ASPC-Douglas was criticized for promoting a public tour of the prison complex in March 2019. According to a local paper, Pacheco said, “Come and experience a day behind the razor wire and enjoy a free meal, a free bus tour, and a prison unit tour,” adding, “This is a one-day event and is a once in a lifetime opportunity for you and your family to experience.”

Visitors would reportedly visit an unused housing unit and eat burgers and hot dogs in a former prison dining room while listening to “jailhouse rock and roll music.”

The ACLU of Arizona condemned the warden’s comments, noting that the ADC was under federal court oversight for failure to provide adequate medical care to prisoners, and state prisons had high levels of violence – issues unlikely to be addressed during the dog-and-pony-show public tour. The organization called Pacheco’s statements “disgusting” and “unconscionable.”

ADC spokesperson Wilder countered by calling the ACLU’s criticism “heinous.”

“The ACLU demands (and regularly receives) its own tours of Arizona prisons, so it should applaud the agency’s transparency in welcoming the community into the prison to learn firsthand about modern corrections,” Wilder stated. “We want the public to see our positive inmate programs and active efforts to reduce recidivism.”

While that may be a worthy goal, it does not change the fact that providing a public tour of a state prison that does not address the realities of prison life is analogous to inviting people to observe prisoners as if they were animals in a zoo.
Oregon Supreme Court Reverses Course: Secretly Taping Prisoner’s Statements Does Not Violate Right to Counsel

by Mark Wilson

In a 4-to-3 ruling, departing from its previous recent decisions, the Oregon Supreme Court held on May 23, 2019 that secretly recording a prisoner’s solicitation of another prisoner to kill two witnesses and assault a prosecutor in his pending criminal case did not violate his constitutional right to counsel.

Yevgeny Pavlovich Savinskiy was jailed and appointed a defense attorney on numerous charges following a shoot-out with police and high-speed car chase. While in jail awaiting trial, Savinskiy offered another prisoner money and weapons to assault a prosecutor and kill two of the witnesses against him.

The prisoner alerted authorities, who used the information to obtain sealed ex parte court orders to secretly record Savinskiy’s conversations with the informant. Prosecutors then used the body wire evidence to charge Savinskiy with two counts of conspiracy to commit murder of the witnesses and one count of conspiracy to assault the prosecutor. Those charges were included in an amended indictment.

The trial court granted Savinskiy’s motion to suppress statements he made about the original charges, because the secretly recorded statements violated his constitutional right to counsel. However, the court refused to suppress his statements related to the new conspiracy charges.

The new and original charges were tried together, and the state naturally introduced Savinskiy’s statements about soliciting the murders and assault. A jury convicted him of both the original and new solicitation charges.

Following the state Supreme Court’s decision in State v. Prieto-Rubio, 359 Or. 16, 376 P.3d 255 (Or. 2016), the Oregon Court of Appeals agreed with Savinskiy that the secretly recorded statements violated his constitutional right to counsel. However, the court ultimately convicted Allen; his conviction was subsequently reversed, and he was tried again and re-convicted of the same offenses.

The Oregon Court of Appeals reversed, holding that the trial court improperly denied Allen’s motion to try the charges separately because it would violate his right to counsel if evidence gathered from the body wire was offered during his murder trial.

Nevertheless, the trial court held that the body wire evidence was admissible in the attempted aggravated murder and conspiracy to commit murder trial. A jury ultimately convicted Allen; his conviction was subsequently reversed, and he was tried again and re-convicted of the same offenses.

Specifically, the Supreme Court found two factual distinctions were “constitutionally significant.” First, in contrast to Prieto-Rubio, “any duplication between the facts and circumstances of defendant’s new criminal activity and the facts and circumstances of his charged crimes is minimal.” Second, “and more significantly, unlike the uncharged crimes in Prieto-Rubio, defendant’s uncharged criminal activity began after he was charged with the original offenses, and the uncharged criminal activity involved his ongoing effort to harm the prosecutor and witnesses against him to obstruct the pending prosecution,” the Court wrote.

The dissent criticized the majority’s decision as departing “from this court’s prior cases and the constitutional principles that underlie them in order to reach its preferred result given the particular facts of this case.” The majority “offers no principled reason for its result,” the dissent stated. “Instead ... it attempts to distinguish this case from this court’s precedents based on differences that are irrelevant to the legal issue.”

A legal test that “permits the state to question a defendant without counsel about subjects that could incriminate him on charged crimes is antithetical to a defendant’s constitutional right to counsel,” the dissent declared. “And permitting such questioning encourages officers ‘to undermine the suspect’s decision to rely upon counsel,’ which not only leaves a defendant’s rights unprotected, it subverts the attorney-client relationship.” See: State v. Savinskiy, 364 Or. 802, 441 P.3d 557 (Or. 2019).

In a separate but similar case, the Oregon Court of Appeals held in a February 2019 ruling, before the Supreme Court’s decision in Savinskiy, that a prisoner who solicited another prisoner to kill a witness could not be convicted of attempted aggravated murder, and body wire evidence should have been suppressed.

Marcellus Ramon Allen was arrested for a May 2012 homicide, and counsel was appointed to represent him. While in jail awaiting trial, Allen offered money to another prisoner to kill a key witness. That prisoner alerted detectives, then agreed to wear a body wire to record conversations with Allen concerning the murder-for-hire plot.

Allen was charged with attempted aggravated murder, conspiracy to commit aggravated murder and other offenses. Those charges were based on his statements to the informant, both before and after he began wearing the body wire.

The charges were initially joined with the original murder charge, but the trial court later granted Allen’s motion to try the charges separately because it would violate his right to counsel if evidence gathered from the body wire was offered during his murder trial.

Nevertheless, the trial court held that the body wire evidence was admissible in the attempted aggravated murder and conspiracy to commit murder trial. A jury ultimately convicted Allen; his conviction was subsequently reversed, and he was tried again and re-convicted of the same offenses.

The Oregon Court of Appeals reversed, holding that the trial court improperly denied Allen’s motion for judgment of acquittal on the attempted aggravated murder charges. It also found that the court erroneously refused to suppress the body wire evidence, based on Prieto-Rubio. See: State v. Allen, 296 Or. App 226, 438 P.3d 396 (Or. Ct. App. 2019). That ruling is no longer good law with respect to suppressing the body wire evidence, however, following the Oregon Supreme Court’s more recent decision in Savinskiy.
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I n what it called “a legal question of first impression” within its jurisdiction, on May 24, 2019 the Second Circuit Court of Appeals ruled that the lack of a discharge plan to obtain medication and treatment for mental health care after a detainee is released from custody “can be considered a claim to in-custody care cognizable under the ‘special relationship exception.’”

Plaintiff-appellants Michelet Charles and Carol Small are lawful U.S. residents. Both were detained by Immigration and Customs Enforcement (ICE) for immigration hearings and held in jail for several months in Orange County, New York as civil detainees. Charles had a history of mental illness that was managed by drugs, while Small’s mental health condition manifested while she was in custody.

Both were treated with psychotropic medication and monitored by medical staff and psychiatrists during their detention. Once released immediately after their immigration hearings, they were not provided with an interim supply of their prescribed medications, nor did they receive a discharge summary with which they could obtain a continuation of treatment and drugs from a new mental health care provider. While a discharge summary was prepared for each of them, it remained in their records.

After their abrupt release from custody, both Charles and Small suffered remanifestations of their mental illness. Charles became so unmanageable that his family had to summon police, who took him to a hospital for commitment and inpatient treatment to stabilize him. Small realized what was beginning to happen to her and sought treatment at a hospital emergency room. There she obtained the proper psychotropic drugs to stabilize her condition.

The pair sued Orange County and several defendants for deliberate indifference to their serious medical needs. The district court dismissed the case, erroneously holding that since Charles and Small were no longer in custody following their release, the defendants had no duty to provide discharge summaries or medications for an interim period so they could secure treatment and medications from another provider.

The Second Circuit noted the U.S. Supreme Court’s decision in Estelle v. Gamble, 429 U.S. 97 (1976) imposed an obligation to provide necessary medical care to prisoners. That obligation was extended to pretrial detainees in Youngberg v. Romeo, 457 U.S. 307 (1982). Following that decision was the Supreme Court’s “special relationship exception” that imposes an affirmative duty to provide for a prisoner’s “safety and general well-being” due to “the limitation which [the state] has imposed on [the person’s] freedom to act on his own behalf.” See: In DeShaney v. Winnebago Cty. Dept. of Soc. Servs., 489 U.S. 189 (1989).

“Plaintiffs have plausibly alleged that Defendants were fully aware of, and violated, both Orange County and ICE policies by failing to provide them with discharge planning as part of their care,” the Court of Appeals wrote. “Plaintiffs’ allegations, if proven true, are sufficient to establish that Defendants knew, or should have known, of the substantial risk that Plaintiffs would relapse and suffer serious adverse health consequences if they were not provided with necessary discharge planning, such that a fact-finder could infer ‘reckless disregard’ beyond mere negligence or medical malpractice.”

Accordingly, the district court’s order was vacated and the case remanded for further proceedings. See: Charles v. Orange Cty., 925 F.3d 73 (2d Cir. 2019).

California Court of Appeal Reverses Convictions for Possession of Marijuana in Prison

O verturning the convictions of five defendants, the Third Appellate District Court of Appeal in Sacramento, California held on June 11, 2019 that Proposition 64’s decriminalization of possession of less than an ounce of marijuana also applied to possession in a state prison.

The five defendants, separately convicted of possessing marijuana in prison, were still serving their sentences when they filed petitions requesting relief under Proposition 64, arguing that the new decriminalization law invalidated their convictions. The superior court denied each petition and the prisoners appealed, which were consolidated into a single appeal.

The question before the appellate court was whether Proposition 64 reached beyond prison walls and decriminalized possession of less than an ounce of marijuana by prisoners. The Court of Appeal held that it did.

The statute of conviction at issue, California Penal Code Sec. 4573.6, criminalized the possession of “any controlled substances” prohibited by Sec. 11000, et seq., within a prison without authorization. It is a felony punishable by two to four years.

In 2016, California voters approved Proposition 64, which decriminalized possession of up to 28.6 grams of cannabis (or 8 grams of concentrated cannabis) by persons 21 years or older. However, Proposition 64 expressly left intact laws prohibiting “smoking or ingesting cannabis” in any California Department of Corrections and Rehabilitation (CDCR) facility. Because “possession” was left out of the carceral exceptions in Proposition 64, the prisoners argued that meant it decriminalized possession behind bars, too.

Recognizing that a different California Court of Appeal had held Proposition 64 did not apply to possession of marijuana in a CDCR facility – see People v. Perry, 32 Cal.App.5th 885 (Cal.App.1st 2019) [PLN, June 2019, p.63] – the appellate court nevertheless agreed that the absence of the term “possession” in the exceptions to Proposition 64 was decisive.

While the state argued that decriminalizing possession of marijuana in prisons could not have been the intent of the ballot initiative, the Court of Appeal said that was
immaterial. Citing the “gradual change in attitude” toward marijuana over the seven decades since Sec. 4573 was enacted, the Court explained that what the voters approved was what mattered, not what the state thought they should have approved.

“The plain language of Proposition 64 is clear,” the appellate court wrote. “Here the voters, exercising their constitutional right to legislate through the initiative process, have changed the law and, in doing so, simply and plainly have decided to decriminalize that which the Attorney General would not,” the Court of Appeal concluded. “Judges cannot rewrite statutes to conform to either our, or the Attorney General’s, notion of wise drug policy.”

Because the conduct underlying the defendants’ convictions – possession of marijuana in prison – was no longer criminal, the superior court’s denial of their petitions was reversed and remanded with instructions to vacate their convictions. Yet the appellate court also noted that while possession of small amounts of cannabis in prisons may no longer constitute a felony, CDCR officials could still administratively ban marijuana possession “to maintain order and safety in the prisons and other penal institutions.”

“While the court’s decision is still under review, we want to be clear that drug use and sales within state prisons remains prohibited,” stated CDCR press secretary Vicky Waters.

The Supreme Court of California granted review in this case on August 21, 2019, which remains pending. See: People v. Raybon, 36 Cal.App.5th 111 (Cal.App.3d 2019), review granted.

Additional source: npr.org

$2 Million Settlement in Lawsuit Over California Jail Prisoner’s Suicide

by Matt Clarke

In March 2019, Kern County, California agreed to pay $2 million to settle a lawsuit brought by the parents and estate of a man who committed suicide at the county’s jail. The suit alleged jail staff ignored obvious signs of his mental instability and self-harm behavior at intake.

Sergio Derkevorkian, 29, called 911 to report his involvement in a single-vehicle accident. He told responding officers “I’m a danger to myself,” but denied drug use. He acted paranoid, saying someone was trying to kill him, and made other bizarre statements and refused transportation to a hospital. The officers concluded he was under the influence of a controlled substance, arrested him and took him to a substation to conduct a Drug Recognition Evaluation (DRE). During the DRE, Derkevorkian became increasingly “paranoid and delusional.” He was then taken to a hospital.

At the hospital, Derkevorkian began to cry, scream and falsely accuse the officers of placing drugs in his rectum and a nurse who gave him a cup of water of trying to poison him. He thought everyone around him was laughing at him and trying to drug him. He panicked and curled up on the floor.

Officers took Derkevorkian to the Kern County jail in Bakersfield. Receiving deputies thought he was delusional. Deputy Marcum asked the intake screening questions at a very fast pace, paraphrasing some of them and omitting others. Derkevorkian did not respond to a question about whether he was feeling suicidal. Marcum later stated that she was trained to ask the intake questions at a high rate of speed to minimize her contact with prisoners in order to “maximize officer safety.” She also ignored Derkevorkian’s positive answers to Prison Rape Elimination Act-related questions. She noted his bizarre behavior, but believed it was due to being under the influence of drugs.

Derkevorkian was sent to the county jail at Lerdo, but, contrary to jail policy, was not interviewed at intake. A family friend called the jail to inform staff that Derkevorkian was suicidal; however, he was never seen by mental health providers or placed on suicide watch. Instead, he was put in a segregation cell where, two days later, he hanged himself using a bedsheet.

With the assistance of Pasadena attorneys Ronald O. Kayne and Kevin J. LaHue, Derkevorkian’s parents and estate filed a civil rights suit against Kern County, its sheriff, the head of its mental health department and various jail personnel.

During the course of pre-trial discovery, it was revealed that deputies received little or no training on mental health issues and intake screening. Most were unaware of multiple recent suicides at the jail, or that suicide was the leading cause of prisoner deaths in California jails. In light of those unfavorable facts, the county opted to settle the case for $2 million.

“It’s a real tragedy and it seems it should have been prevented at multiple stages during his incarceration,” LaHue said of Derkevorkian’s death. “He came in and was presenting this bizarre, erratic behavior. And he was never referred to mental health despite the fact that they have mental health staff on the premises.” See: Lopez v. County of Kern, U.S.D.C. (E.D. Cal.), Case No. 1:17-cv-00864-AWI-JLT.

Additional source: bakersfield.com
Oregon Sheriff Places Own Head on the Chopping Block for Budget Cuts

by Kevin Bliss

Harney County, Oregon expects an $800,000 budget shortfall in the next fiscal year. Nonunion employees and elected officials in the county are already being furloughed 10 hours a month to help make up existing shortfalls, the county jail fails to meet state law standards, and there are insufficient funds to support search and rescue missions or law enforcement services.

Sheriff Dave Ward recently announced that the only alternative is to cut positions, which he started by eliminating himself.

Ward was sheriff in 2016 when Ammon Bundy and his followers conducted an armed occupation at the Malheur National Wildlife Refuge for 41 days. Ward’s handling of the situation led one community to erect signs that read, “Dave Ward for President.”

Yet in April 2019, the sheriff announced his plan to resign at the end of the year in a letter sent to the Burns Times-Herald. He said he was concerned the lack of funding was hurting law enforcement and creating legal risks at the jail.

“I am no longer willing to accept the civil liability associated with the failure to appropriately fund/staff our jail, search and rescue, or law-enforcement services to our community. These are not frivolous expenditures, they are duties and responsibilities of the sheriff, mandated by law,” he wrote.

The Harney County jail fails to meet standards required by Oregon law and has been understaffed for years. A lawsuit was filed by jail prisoner Mac Runnels in August 2019, citing 24-hour lockdowns without access to outside recreation, no access to a law library and no staff nurse to provide medical care.

Harney is not the only county in Oregon facing budget shortfalls. Counties such as Jefferson and Waco have unsuccessfully attempted to supplement their budgets with public safety levies, and Josephine County approved such levies after several years of trying.

Sheriff Ward suggested that the next logical step to correct the budget was to begin eliminating positions.

“I am not willing to cut services to the citizens of this community, nor am I willing to continue operating a jail that is not funded to meet the minimum standards required,” he stated. “If a person needs to be eliminated from the sheriff’s office, then I chose for that person to be me.”

He recommended that county officials appoint a deputy to replace him as sheriff, and not backfill the position in order to save funds.

Sources: opb.org, btimesherald.com

Third Circuit Affirms Refusal to Appoint Successive Counsel in Prisoner’s Civil Rights Case

by David M. Reutter

In a precedential ruling, on June 19, 2019, the Third Circuit Court of Appeals held that a district court did not abuse its discretion when it declined to appoint successive counsel in a prisoner’s civil rights action after initial counsel withdrew from the case.

In 2010, Pennsylvania prisoner Darien Houser filed a pro se complaint alleging a prison superintendent, Louis S. Folino, and medical director, Dr. Jin, were deliberately indifferent to his serious medical needs. Houser first moved for appointed counsel in 2012, but the district court concluded it was too early to determine whether the suit had sufficient merit and complexity to justify appointing an attorney.

After the court denied the defendants’ motion for summary judgment, it granted Houser’s renewed motion to appoint counsel. Two lawyers declined to take the case in mid-November 2014, but the law firm of Reed Smith LLP stepped up to the plate. Over the next year, the firm expended over 1,000 hours of pro bono representation in conducting discovery and preparing the case for trial.

Houser, however, was not satisfied with the representation because he disagreed with Reed Smith’s trial strategy, believing it would “dismantle” his case. The law firm moved to withdraw as counsel in August 2015. At a hearing, the district court warned Houser that it was “not going to ask anyone else to do this.” The court also said it would “make a decision about how you’re going to proceed, or you’re going to proceed on your own, if you tell me that’s what you want to do.” Houser did not provide a straightforward answer, and continued to disagree with Reed Smith’s trial strategy.

The court granted the firm’s motion to withdraw, then denied a motion to appoint successive counsel.

On appeal, Houser cited Tabron v. Grace, 6 F.3d 147 (3d Cir. 1993), which set forth six factors for courts to consider when appointing counsel, and argued that “district courts must appoint new counsel if initial appointed counsel withdraws.” The defendants countered that “Tabron does not apply at all to successive requests for counsel and therefore district courts can summarily deny new counsel once litigants squander their first chance.”

The Third Circuit wrote that “[n]othing in our precedents distinguishes first requests for counsel from later requests. Tabron’s guidance applies just the same.” It also held the district court did not abuse its discretion in denying Houser’s request for successive counsel, as it found that he could ably represent himself and that “the scarcity of pro bono resources weighed against appointing Houser another lawyer.” The district court’s order was affirmed.

See: Houser v. Folino, 927 F.3d 693 (3d Cir. 2019).
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Lawsuits Challenge Florida Law that Undermines Voting Rights Ballot Initiative

by David M. Reutter

Organizations that supported Amendment 4 – a 2018 ballot initiative to amend the Florida Constitution to restore voting rights to most people with felony convictions – have sued to block a new law that not only undermines the intent of the initiative but also “creates wealth-based hurdles to voting” – a modern poll tax, they argue, that will have the same racially discriminatory effects as those that persisted during the Jim Crow era of segregation.

With nearly 65 percent of voters supporting Amendment 4 in the November 2018 elections, Florida was poised to enact what the Brennan Center for Justice called “the single largest expansion of voting rights in the United States since the 26th Amendment lowered the voting age to 18 in 1971.”

“Our research shows that the people who have registered to vote under Amendment 4 are disproportionately black and low-income,” said Myrna Pérez, director of the Brennan Center’s Voting Rights and Elections Program.

The Sentencing Project estimated that 1.4 million Floridians would have their voting rights restored as a result of Amendment 4. The ballot initiative provided for the restoration of voting rights for ex-felons “upon completion of all terms of sentence including parole or probation,” except for people convicted of murder or felony sex offenses.

But when the Florida legislature went into session in March 2019, lawmakers filed bills to limit the scope of Amendment 4. By the end of the session in May, legislators had passed SB 7066, which states that completion of “all terms of sentence” requires “[f]ull payment of fines or fees, and thus unable to vote. Those two actions and a third by the Campaign Legal Center were combined into one case by a federal district court. That case was then added to a fourth filed by the Southern Poverty Law Center, overseen by U.S. District Court Judge Robert Hinkle.

The plaintiffs in the consolidated lawsuit argue that SB 7066 “creates two classes of returning citizens: those who are wealthy enough to vote and those who cannot afford to,” with the result that “disenfranchisement will be borne disproportionately by low-income individuals and racial minorities, due to longstanding and well-documented racial gaps in poverty and employment.”

“There can be no mistaking the racial and class implications of this regressive new legislation,” said Pérez.

Political science professor Daniel Smith with the University of Florida studied data from 48 of the state’s 67 counties and concluded that over 80 percent of former felons had outstanding financial obligations – putting their voting rights at risk.

The plaintiffs pointed out that Florida’s constitutional disenfranchisement provision was created in 1868 after the former confederate state was ordered by Congress to “adopt a constitution without an explicitly racially discriminatory suffrage rule.” Florida was also the first state to adopt a poll tax and followed that with “voter suppression tactics such as literacy tests and residency requirements,” the lawsuit states.

It further alleges that many “returning citizens (from incarceration) have outstanding financial obligations that they cannot pay.” Moreover, the clerk of courts labeled 83 percent of all court-related fines and fees as “minimal collections expected due to the fact most defendants are indigent.”

Of particular concern is a provision in SB 7066 that requires former felons to pay any “financial obligation arising from a felony conviction” – including those unrelated to their original sentence.

While SB 7066 was being debated, the bill’s sponsor in the House, state Rep. James Grant, said he didn’t “want to know the impact” it might have. After it passed he said he “intentionally stayed blind to the data of the affected classes.” County election officials are also left blind, as there is currently no simple way to determine if a former felon has satisfied all of his or her legal financial obligations.

Some lawmakers noted that supporters of Amendment 4 apparently agreed with SB 7066’s interpretation of the ballot initiative, pointing to comments by former House Speaker Jon Mills, who said during 2017 testimony before the state Supreme Court in support of Amendment 4 that fines and restitution were considered part of an offender’s sentence.

In a September 12, 2019 editorial published in the Fort Lauderdale Sun-Sentinel, a trio of top House Republicans – Speaker Pro-Tem Mary-Lynn Magar, Majority Leader Dane Eagle and Majority Whip Mike Grant – blasted opponents of SB 7066 for “flip-flopping and telling the court one thing to get the amendment on the ballot and then telling the legislature something else to speed up restoration.”

In August 2019, Governor DeSantis asked the state Supreme Court for an advisory opinion as to the legality of SB 7066, and the following month the state asked Judge Hinkle to delay the consolidated lawsuit challenging the law until the Supreme Court issued a ruling.

“A stay, like a dismissal, would promote judicial economy and federal-state comity,” the state wrote in its brief to Judge Hinkle. “If the Florida Supreme Court agrees that the phrase ‘all terms of sentence’ encompasses financial obligations imposed as part of the sentence, this might well alter the course of the pending federal proceeding, or at the least, require plaintiffs to amend their complaints.”

Judge Hinkle denied the state’s motion for a stay on September 11, 2019, meaning the consolidated suit against SB 7066 can proceed before the state Supreme Court issues an opinion on the new law. PLN will report future developments. See: Gruever v. Barton, U.S.D.C. (N.D. Fla.), Case No. 4:19-cv-00300-RH-MJJF.
The Human Rights Defense Center, PLNs parent organization, opposed Amendment 4 because it created classes of felons ineligible for restoration of their voting rights.

“The problem with Amendment 4, the voting rights ballot initiative, is that it perpetuates the discrimination and bigotry of disenfranchisement against a subclass of ex-felons — those convicted of murder or sex crimes,” wrote HRDC executive director Paul Wright. “All the talk of Amendment 4 being about second chances, redemption and reintegration into the community rings hollow and opportunistic when it excludes certain former prisoners from the franchise.” [See: PLN, Oct. 2018, p.32; Sept. 2018, p.14].

Sources: politico.com, sun-sentinel.com, vox.com, thecentersquare.com

Illinois DOC Interferes with Prisoners’ College Program by Removing Books

by Ed Lyon

For over a decade, the Education Justice Program (EJP), an extension of the University of Illinois, has taught classes at the Danville Correctional Center (DCC), a facility in the east-central part of the state run by the Illinois Department of Corrections (DOC). Core classes in subjects like calculus are offered to prisoners, as well as humanities-centered courses like Critical Race Theory in Education.

In 2017, the DOC spent a total of $300 on materials for libraries in over two dozen prisons, an indication that DCC’s general population library does not have the materials needed to support a college-level study program. Thus, EJP is allowed to maintain a separate library at the facility. The student prisoners “are actually student librarians,” said Holly Clingan, who has volunteered with the program to help manage the library for the last five years.

“They catalog,” she said. “They maintain the spaces. They check books in and out. They help with research questions, guide the other students that are in program to the resources.”

The EJP library is subjected to a review process separate from the process that reviews books sent to prisoners through the mail. With some of the books in the EJP library having been donated by current and former prisoners, many of its 4,000 titles received both types of review.

The arrangement worked well for over a decade until November 2018. At that time, new books that were submitted for review began to be summarily denied. Others that did receive approval were held by the prison for weeks, delaying the start of the EJP’s 2019 spring term. Finally, in January 2019, the program was suspended and prison officials removed over 200 books from its library.

“I felt sick,” recalled the program’s director, Rebecca Ginsburg.

As she later discovered, Charles Campbell, the head of DCC’s internal affairs, had inspected the books and advised warden Victor Calloway that they were “racially motivated.” Among the titles that Calloway then agreed to confiscate were Uncle Tom’s Cabin, Race Matters, Incidents in the Life of a Slave Girl, Rethinking Our Classrooms: Teaching for Equity and Justice, Booker T. Washington’s Up From Slavery and Visiting Day, which is a book written for children of incarcerated parents.

“I’m stunned,” Ginsburg said after learning what had happened. “I’m stunned that the order to remove books wholesale would have been coming from the warden without authority from a higher up. I am stunned that the order was made with such vague wording.”

Ginsburg insisted that nothing in the books was intended to provoke “anti-white feelings,” only “to help students better understand historical context – that’s clearly the purpose here.”

But outgoing DOC director John Baldwin said, “Somehow, a lot of books got into the institution without going through our review process. That was our fault. We let books in and some of them maybe shouldn’t have been, [though] some of them are very good books.”

EJP might still be fighting the removal of the books were it not for media outlet Illinois Newsroom, which obtained emails pursuant to Freedom of Information Act requests that showed not all of the books had skipped the review process. Some were previously approved by prison staff to enter the facility, while some arrived with other titles that were not removed. Asked to explain those discrepancies, Baldwin said, “I have no idea.”

The DOC has since relented and allowed EJP to submit the censored books for review and approval. But prison officials still haven’t made it easy.

“It takes sometimes months for the resources for our courses to be cleared through the clearance process,” said Clingan. “Sometimes we’re not allowed to teach particular courses because the materials are considered controversial.”

The publicity generated by EJP’s plight captured the attention of state Rep. Carol Ammons, who was upset when she saw the list of banned titles.

“Are they removing all black books?” she asked.

In July 2019, state legislators held a hearing on the situation. EJP director Ginsburg urged lawmakers to “aggressively and assertively question the Department of Corrections staff and administrators about what sort of culture permits the censorship of books on black history and the Holocaust and children coping with incarcerated parents.”

She added that she would not accept the DOC’s promises that it will stop its censorship practices, noting that “without action from the legislators or [someone] very very high up in state government, we can expect this to continue to happen.”

Illinois Lt. Governor Juliana Stratton is a criminal justice reformist in favor of prison education. She received an email from the DOC stating the confiscated books had been returned to DCC, but Ginsburg said the EJP program had yet to receive them. That’s because officials at the facility insisted on reviewing the books first.

Sources: earlcarl.org, prisoneducation.org, chicagotribune.com, news-gazette.com, news.stltoday.com, will.illinois.edu
Mississippi Prison Deaths Spike for Second Year; Disturbing Photos Revealed

by Matt Clarke & David M. Reutter

In July 2019, seven prisoners died in facilities operated by the Mississippi Department of Corrections (DOC). The deaths followed a similar spate in August 2018, when 16 deaths occurred at the DOC’s three state prisons. Media coverage of the most recent deaths was bolstered by the release of photos and videos on social media in the spring of 2019 that showed unsafe conditions, understaffing, violence and the presence of weapons inside two DOC facilities.

The images – reportedly filmed at the Mississippi State Penitentiary (MSP) in Parchman and South Mississippi Correctional Institution (SMCI) in Leakesville – sparked a May 2019 letter of complaint to the U.S. Department of Justice’s Civil Rights Division from the nonprofit advocacy group Families Against Mandatory Minimums (FAMM).

“We’ve heard about Parchman over the years,” said FAMM President Kevin Ring, “but it’s only been in the last few weeks that we started to get more clips, videos, and messages from people inside.”

State health officials are required by law to conduct annual inspections at MSP. The inspections conducted between June 3 and 7, 2019 found hundreds of environmental and sanitation deficiencies at the prison, including more than 400 cells with flooding and leaks, broken plumbing fixtures, lack of lights, and missing mattresses and pillows. There was also exposed wiring, standing raw sewage, black mold and mildew, as well as inoperable showers and ice machines.

A review by Mississippi Today found that health inspectors had cited the same or similar deficiencies in reports going back to 2016. Prison officials insisted they had fixed previously noted flaws. Jim Craig, senior deputy and director of the Office of Health Protection, said that in some cases, prisoners damaged or destroyed fixtures that had been repaired. Health officials have no enforcement power and can only submit a report to the governor.

Some of the images posted to social media by former MSP prisoner Kelvin Sanders were taken at the facility and smuggled out when he was released in January 2019, he said. Sanders has since left the state, but not before allegedly receiving a threatening phone call promising retaliation for publishing the materials.

The photos and video taken at SMCI were shared with and posted by Lakeshia Payton, whose fiancé is currently housed at the prison. She said she cried when she saw them.

“I couldn’t even look at that,” Payton said of one video showing moldy shower areas.

The images from the two state prisons “depict showers with peeling walls and stained floors; sparse food trays; emaciated men slumped over their bunks and lying on mattresses on the floor,” Mississippi Today reported. The photos and videos were spread to a wider online audience by Carol Leonard, a prisoner advocate based in Tennessee who acknowledged the danger of using a contraband cell phone to make the recordings.

“The guys take a huge risk in leaking this stuff,” she said.

Mississippi DOC Commissioner Pelicia Hall requested $22.3 million from state lawmakers for fiscal year 2020 just to repair Unit 29 at the Mississippi State Penitentiary. The amount needed to repair all the deficiencies at the prison was not available. Her request was rejected.

“If they don’t maintain these buildings, it will cut the life of the buildings in half,” noted attorney Ron Welch, who represented prisoners in a 1970s class-action suit challenging conditions in Mississippi state prisons.

As for the prisoners, “the implications of long-term exposure to unhealthy and dangerous conditions are not a mystery,” said Cliff Johnson, director of the MacArthur Justice Center’s office in Mississippi.

“People are sick,” he continued. “People are dying in our prisons. People are in need of services that they don’t receive, and we hear weekly that there aren’t enough people at [the DOC] to remedy the situation.”

With 48 percent of its guard positions vacant, SMCI was on lockdown for at least seven months in 2019. The 404 guards it needs are part of a group of at least 500 that the DOC is trying to hire. But with a starting salary of $24,903 per year – $26,148 with a college degree or prior prison experience – there are few takers to replace departing experienced staff like former SMCI guard Wallace Carpenter. The 12-year veteran survived a 2007 attack by prisoners, only to quit in 2015 as staff dwindled and violence increased.

“I didn’t feel like pressing my luck,” he said.

The understaffing and lack of experienced guards has resulted in security lapses at DOC facilities.

In July 2018, Greene County Herald publisher Russell Turner went to his Leakesville home and found a man sitting on his porch. The man asked for a ride to a hospital, which Turner gave him, only to find out later that he was convicted murderer Michael F. Wilson. The 47-year-old had escaped from SMCI several hours before, but no alert had been issued because the understaffed prison hadn’t noticed.

One year later, a pair of prisoners escaped from the Central Mississippi Correctional Facility (CMCF) and remained at large for six days before being captured some 90 miles away. That same month, in July 2019, an MSP prisoner with two other escapes on his record broke out again. He was caught the next day.

DOC policy requires guards to regularly count prisoners, but internal memos indicated that some of those counts may have been falsified by overworked staff.

“A convicted murderer, serving a life sentence, strolled out of a state prison in broad daylight and was on the run for quite some time before anyone was looking for him,” Turner wrote in the Herald after Wilson was recaptured. “That is the issue we need to be discussing and pushing state and local officials to address.”

Meanwhile, six prisoners died at MSP and a seventh at CMCF in the first 16 days of July 2019. Prisoners Lance Hagan and Kenneth Brown died at MSP on July 6 and 9, respectively; Jeffery Allen and Keith Bogan on July 10; Joseph Groff on July 13; and Howard Goodin on July 16. The death
of prisoner Veronica Boatman at CMCF was the only homicide. A DOC database indicated 21 state prisoners died between January and early May 2019.

Goodin, 41, was convicted of capital murder and armed robbery in 1999. He had been removed from death row after being found mentally disabled. Groff, 43, was convicted of capital murder and arson in 2005. His state appeals were postponed while he underwent mental health treatment after having been found incompetent to stand trial.

The DOC experienced a similar spike in prisoner deaths in August 2018, when 16 prisoners died at SMCI, MSP and CMCF.

Families of the deceased prisoners said no provisions were made for visitation or phone calls, and no medical condition updates were provided before their deaths. Most heard from a chaplain associated with the prison just before or after their incarcerated family member died. DOC officials promised transparency and called for a federal investigation of the deaths in 2018.

When the number of fatalities hit 12, Commissioner Hall said that number was “not out of line with the number of deaths from previous months.” However, federal statistics indicate otherwise.

Between 2001 and 2014, the DOC averaged 51 prisoner deaths per year, a rate 27 percent higher than the national average during the same time period. Over a six-month period from November 2015 through May 2016, 18 prisoners died at MSP alone. [See: PLN, July 2016, p.28].

Maricopa County Pays $300,000 to Settle Lawsuit Over Arpaio-Era Prisoner Death

On November 23, 2018, Maricopa County, Arizona agreed to pay $300,000 to settle a lawsuit over the death of a prisoner at the Maricopa County Jail while self-styled “America’s Toughest Sheriff” Joe Arpaio was still in office.

Anthony Singleton, 27, was arrested on October 21, 2015. He had a history of seizures caused by withdrawal from opiates and alcohol. During his incarceration at the jail, he experienced multiple seizures and asked for medical care, but staff ignored his requests, saying he was “faking.” Singleton became delirious and “started coughing up blood,” yet still received no medical care. On November 2, 2015, he complained of abdominal pain and was taken to the medical unit where he reported a burning sensation in his stomach and “vomiting bloody, foamy material.” A non-urgent X-ray was ordered but never taken.

Two days later, Singleton was found in his cell, kneeling with his head on his bunk and unresponsive. “There was bloody emesis and black tarry stools noted on the floor of his cell and blood was draining from Mr. Singleton’s nose.” He was taken to a hospital where he was pronounced dead.

With the aid of Phoenix attorneys Joel B. Robbins and Anne E. Findling, Singleton’s mother filed a lawsuit against Maricopa County and then-Sheriff Arpaio on behalf of Singleton’s children, who were three, six and eight years old at the time of his death.

The county opted to settle the case for $300,000, consisting of a $150,000 lump-sum payment that included attorney fees plus four periodic payments to the children after they turn 18, totaling another $150,000.

“Anthony Singleton’s death is a tragedy,” said county spokesman Fields Moseley. “Maricopa County and its Board of Supervisors hope this settlement allows his family to move forward and the county to continue focusing on improving its complex jail system that sees approximately 100,000 people every year.”

That is basically what the county has been saying for over a decade. Yet the settlement in the Singleton case was the latest in a series of lawsuits over jail deaths and injuries during Arpaio’s administration. Previous settlements ranged between $2 million and $9 million, most of which have been reported in PLN.

The last such settlement, for $7.25 million, occurred in March 2018. It was paid to the family of Ernest Atencio, 44, who died at the Maricopa County Jail after deputies allegedly punched and tased him for refusing to take off one of his shoes. [See: PLN, Nov. 2018, p.38].

This history of multi-million-dollar settlements and repeated prisoner abuse makes it doubtful that the county will focus on improving its jail system after a mere $300,000 payout. Rather, it seems more likely that the county settled the case so it could walk away from causing a prisoner’s needless death without admitting guilt, and for a relatively small amount in comparison to other lawsuits. See: Kramer v. Penzone, Maricopa Co. Superior Court (AZ), Case No. 2016CV-016687.

According to September 2019 news reports, Joe Arpaio, now 87, plans to run for sheriff in Maricopa County again despite a controversial career that, as reported by the Associated Press, has included $147 million in taxpayer-funded legal bills, a failure to investigate more than 400 sex-crimes complaints made to his office, a 2013 racial profiling verdict that discredited his immigration patrols and his own conviction.”

That conviction – for criminal contempt for failing to comply with a federal district court order to stop racial profiling by the sheriff’s office – resulted in President Trump pardoning Arpaio in 2017. [See: PLN, Nov. 2017, p.42].

Additional sources: azcentral.com, Associated Press
Report: Summit Food Services Provides Inadequate Nutrition at Missouri Jail

by Kevin Bliss

Attorney and retired judge Gary Oxenhandler conducted a study in 2017 on the prisoner population at the Boone County Jail (BCJ) in Columbia, Missouri. He reported that prisoners were complaining about the quality and quantity of meals at the facility – specifically, that they were not receiving any fresh fruits, vegetables or dairy products.

Oxenhandler, along with Rusty Antel, chairman of the Boone Judicial Law Enforcement Task Force, and attorney Sarah Aplin, wrote to the Boone County Commission with concerns that prisoners’ daily nutritional needs were not being met. They requested that the county’s grand jury conduct an independent investigation.

Summit Food Services, LLC contracted with BCJ in 2016 to be the jail’s food service provider. The minutes of a commission meeting at the time showed that Sheriff Dwayne Carey called Summit’s meals healthy and a positive change, and that he was “impressed” with the company.

After an investigation on February 15, 2019, the grand jury issued a report that mirrored Oxenhandler’s concerns. They felt that daily nutritional values were not being met, meals at the jail needed more fruit and vegetables, and the fortified beverages currently being served should be replaced with dairy products.

Summit Foods CEO Marlin Sejnoha disagreed with the grand jury’s findings and said the company always meets nutritional recommendations.

Oxenhandler noted that the dietitian who approves Summit menus, although state certified, is an employee of the company. He asked an independent registered dietitian, Melinda Hemmelgarn, to give an objective opinion. Hemmelgarn reported that the jail’s menu did not meet U.S. Dietary Guidelines for Americans.

“...in summary,” her report stated, “the food is too high in sodium, too high in processed, refined carbohydrates and sugars and too low in fiber.” She said such diets contribute to “high blood pressure, constipation, poor blood sugar control and cardiovascular disease.”

The Boone County Commission appointed an evaluation committee and received a recommendation on June 13, 2019 to award BCJ’s food service contract to Trinity Correctional Services – another for-profit company that has a poor track record. [See, e.g.: PLN, June 2018, p.52; Jan. 2018, p.46].

“It would probably be true that none are perfect, but out of those willing to make proposals, this seemed to be the best set of circumstances,” said Presiding Commissioner Dan Arwill. “But we’ll try it. We will enter into an agreement and hold them to the promises they make and hope they will be an appropriate food service for the people who eat the food.”

At a subsequent commission meeting, Sheriff Carey noted that an RFP for another food service provider was already in the works when Oxenhandler first began raising concerns. He also said, according to the meeting minutes, that “There is a big emphasis on fresh fruits and vegetables when it is not fiscally responsible to spend money on fresh fruits and vegetable that will only be good for so long.” Carey noted that the “number one thing that detainees order [from the commissary] is Ramen Noodles,” followed by cookies and candy.

Of course, if the jail provided better and more nutritious meals, prisoners might be less inclined to supplement the food with commissary purchases. The Boone County Commission approved the BCJ’s food service contract with Trinity on June 20, 2019.

Sources: columbia tribune.com, showmeboone.com

Alaska Pays $400,000 to Settle Jail Prisoner’s Wrongful Death Suit

by Douglas Ankney

On April 18, 2019, the state of Alaska agreed to pay $400,000 to John Green, the father of Kellsie Green, to settle his lawsuit against the Alaska Department of Corrections over his daughter’s death in an Anchorage jail.

Alaska has a unified corrections system where the DOC runs both state prisons and local jail facilities.

In January 2016, the 24-year-old Kellsie was being held at the jail on a probation violation. Six days later she was dead. Her death certificate indicated she died due to malnutrition, dehydration, renal failure and heart dysrhythmia, and weighed just 80 pounds. [See: PLN, Aug. 2017, p.44].

John Green alleged in his wrongful death suit that Kellsie was a heroin addict and her addiction was apparent and obvious. He also claimed that jail officials failed or refused to provide her with medical care during serious and obvious withdrawal symptoms.

“This isn’t a jail in Turkey or somewhere,” Green remarked. “This is America.”

He settled partly because the state released video, audio, depositions and reports that he said detailed how the system had failed his daughter. According to Green, the state took responsibility for decisions that resulted in Kellsie’s death, including a failure to provide adequate IV fluids and medically supervised drug detoxification.

Further, jail personnel did not respond to the numerous and frequent calls for help from other prisoners in Kellsie’s housing unit.

Green said he hoped the publication of the case materials will cause the state to change its detox procedures. “I’m just mad,” he said. “There’s no reason this should have happened. And it will continue to happen. My biggest fear is it will continue to happen.” See: Green v. Alaska, Superior Court, Third Judicial District at Anchorage (AK), Case No. 3AN-16-05552CI.

Additional source: Associated Press

Dictionary of the Law
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News in Brief

Arizona: On January 31, 2019, dramatic footage was released of a two-hour hostage incident in the library at ASPC-Lewis in Buckeye. The video shows a librarian working alone when prisoner Timothy Monk enters, closes the door, bends over, then grabs the librarian by the neck with one arm while brandishing a handmade shank with the other. The librarian manages to pepper spray Monk several times as he is dragged toward a supply closet. Both men suffer the effects of the spray. Eventually a tactical unit throws in a flash bang before eight guards and a dog storm the room. No one was seriously hurt during the December 26, 2018 incident. Monk wanted a transfer to another prison. On December 31, he was found guilty of possession of a weapon, aggravated assault on staff and hostage taking, and was moved to ASPC-Eyman. Monk has been in prison since he was 16 years old; in 2006, he used a shank to demand a move to Montana during a five-hour hostage-taking at ASPC-Tucson.

Arizona: Luis Moreno turned himself in to the Pima County jail to serve 30 days on an outstanding DUI arrest warrant on December 27, 2018. By 2 p.m. the next day he was gone after reportedly escaping out a “back door” near the jail’s kitchen. On January 10, 2019, Moreno was found dead in Mexico; no details surrounding his death have been released.

California: A tower guard at the Deuel Vocational Institution in Tracy was put on paid administrative leave after firing one round from a Mini-14 rifle and wounding a prisoner, when breaking up a February 7, 2019 two-on-one attack on the facility’s basketball court. Two prisoners wielding handmade weapons attacked a third at 2:20 p.m. in the main recreation yard. Guards ordered the assailants to stop and drop to the ground, but were ignored and the intended victim was stabbed in the head and chest. The victim and the prisoner who was shot were taken to a hospital for treatment, while the second attacker was treated onsite for a hand laceration. The names of the prisoners involved were withheld by prison officials.

California: On December 16, 2018, Concord police circulated surveillance video from the Sunvalley Mall to media outlets and the department’s Facebook page, asking the public for tips after a customer accidentally dropped his gun near a Cinnabon restaurant, which discharged as he picked it up. No one was injured. The man and a female companion hurried out of the mall after the incident. The customer contacted the Concord Police Department the next day, and he turned out to be a state prison employee with a concealed carry permit. Although the gun appeared to have gone off accidentally, Lt. Mike Kindorf said they had referred the matter “up the chain of command” to the California Department of Corrections and Rehabilitation’s human resources department.

California: Employees at the Mule Creek State Prison were surprised on January 25, 2019 when FBI officers showed up, confiscated Warden Joe Lizarra’s computer and escorted him out. Lizarra began as acting warden at the facility in 2013 and had worked for the State of California for 20 years. CDCR press secretary Vicky Waters stated, “I can confirm there’s an ongoing investigation, and Mule Creek State Prison Warden Joe Lizarra is currently on Administrative Time Off. As this is a personnel matter, we are unable to provide additional information. The prison’s administrative duties are being overseen by CDCR leadership while the investigation is being conducted.” Lizarra has not been arrested or charged.

Colorado: Former Weld County jail guard Zachariah Cullison pleaded guilty in January 2019 to unlawful sexual contact in a correctional facility for having sex with a female prisoner on suicide watch. Cullison faced a possible one to three years in state prison, and Weld County Sheriff Steve Reams stated, “Whatever he gets, I hope it’s to the fullest extent of the law. What he did was not only a despicable act, but despicable to law enforcement in general. He took advantage of a person who was not in a good position to make decisions for herself in the first place.” However, Cullison will not serve prison time. His attorney, David Kaplan, negotiated two possible options: one to three years in community corrections, or a court-determined term of sex offender intensive supervised probation and 90 days in jail or two years of work release. It is unclear which sentence option the court imposed, but Cullison is now listed on Colorado’s sex offender registry.

Connecticut: Fans of Dateline NBC’s To Catch a Predator had some excitement in January 2019 after an arrest warrant was issued for the show’s host, Chris Hansen. Philip Russell, Hansen’s attorney, called the situation “unfortunate,” but Peter Psychopaidas, owner of Promotional Sales Ltd., had been waiting to be paid $12,998.05 owed by Hansen since September 2017. The former TV show host had purchased mugs, T-shirts and decals for a Kickstarter campaign to fund a proposed new show, Hansen vs. Predator. He paid with a business check, which bounced. In April 2018, a $13,200 check also bounced and Psychopaidas filed a complaint with Stamford police. Hansen told an investigator that he would come in to make a statement, but was a no-show. On January 14, 2019, Hansen was arrested for larceny and then released, signing a promise to appear in court. By the time a hearing was held nine days later, he had paid the debt; consequently, the charge will be dismissed if no other action is taken within 13 months. “As a practical matter, this case is in the dead letter office,” said Russell. Numerous backers of the Kickstarter campaign complained they had never received their donation premiums, including mugs and T-shirts.

Delaware: “Patience is a very beautiful thing,” declared Elmer Daniels, a 57-year-old black man, at a press conference on December 18, 2018. Daniels was released from the Howard R. Young Correctional Institution just five days earlier, after serving nearly 39 years on a rape conviction handed down by an all-white jury in 1980. Daniels’ attorney, Emeka Igwe, noted there were many problems with Elmer’s original trial, but key to the prosecution’s case was FBI analyst Michael Malone’s testimony involving hair microscopy – which has since been proven to be “junk science.” The U.S. Department of Justice sent a letter to the Delaware attorney general in 2018, stating that Malone’s testimony “exceeded the limits of science.” Delaware offered a pardon or commutation but Daniels said no, asserting his innocence. In 2018, fingerprints from the scene were run through the FBI’s database; they did not match Daniels. A motion to dismiss his conviction was pending. A motion to dismiss his conviction was granted on December 13, 2018. Daniels testified in June 2019 before the Delaware legislature, which is considering creating a compensation fund for people who were wrongfully convicted. The bill was voted out of committee and remains pending.

Florida: In December 2018, former prison guard Terrance Reynolds was arrested on charges of conspiring to violate
the civil rights of three “youthful offenders” (under 24 years old) at the South Florida Reception Center in Miami-Dade. On June 18, 2019, Reynolds’s attorney, Antonio Valiente, said, “My guy just, flat out, did not do this. This other guy admits to doing it and is already in prison.” Valiente was referring to Brendan Butler, Reynolds’s supervisor, who had cooperated with the FBI and U.S. Attorney’s Office, and pleaded guilty to a conspiracy charge in May 2018. Butler was sentenced to two years in federal prison. According to the indictment, Reynolds allegedly conspired with Butler “to physically assault and intimidate youthful offenders for conduct perceived by the officers as disruptive or disrespectful.” The assaults occurred in a mop closet at the facility. Because he testified against Reynolds, Butler will be eligible for a Rule 35 motion that may reduce his sentence.

**Florida**: Lake County jailer Marcus Moore, Jr. was arrested on January 31, 2019 for solicitation of prostitution. According to Sergeant Fred Jones, a former high school classmate contacted Leesburg Police in September 2018 after Moore persistently “offered her his paycheck for sex,” which she declined. On October 18, Moore again offered the woman money for sex. Police confirmed that messages such as “You can take all my check, you throw it at me on the low and you can have it idc [I don’t care]” came from Moore’s phone and Snapchat account. Despite being suspended and facing possible termination at the time, Moore appears to have kept his job. He began working for the Lake County Sheriff’s Office in 2016.

**Florida**: On December 14, 2018, Marion County jail guard Kelly Robert resigned. In June 2018, Robert came to work claiming that former prisoner Dustyn Purser had taken her agency-issued Glock 9mm, held it against her head and threatened to kill her. She said their relationship began after his release from the jail. An investigation revealed that Purser had sold the Glock to a mechanic for $60 while Robert waited outside the shop. They bought it back a week later. Jail guards are issued guns, but do not carry them in the jail. Robert had also pawned her Sheriff’s Office flashlight for $35. When prisoner Jeffrey Brown was interviewed, he said he acted as a lookout for the couple when Purser was in jail, adding that Purser “started to get careless with his contraband and relationship with Deputy Robert.” The State Attorney’s Office declined to prosecute due to “numerous inconsistent statements in this case.”

**Georgia**: It is unclear whether charges will be filed after a Floyd County Prison work release prisoner was killed on December 26, 2018. Lester Robert Baker, 43, was nearing the end of his sentence when he volunteered to work with the Cartersville Sanitation Department, picking up after-Christmas trash. The prison has work-release contracts with Bartow County Public Works and Cartersville. Baker and another prisoner were riding on the back of a garbage truck. “While the driver of the truck was backing, he ran off the road to the right, making contact with a utility pole with the right rear of the truck,” the Georgia State Patrol reported, and Baker was pinned to the utility pole. He was transported to the Cartersville Medical Center shortly after the accident and was pronounced dead, said Floyd County Prison Warden Mike Long.

**Louisiana**: Eric Prudholm, 58, walked out of the Louisiana State Penitentiary at Angola on January 10, 2019, 37 years and three months after his wrongful conviction for aggravated rape and robbery. It took five years, help from the Innocence Project of New Orleans and a trip to the Louisiana Supreme Court to have DNA evidence in the case tested. In 1982, Prudholm was sentenced to life in prison without parole for aggravated rape plus 50 years for armed robbery. Once the DNA eliminated him as one of the rapists, Prudholm entered an Alford or “no contest” plea to simple robbery and was resentenced to time served. Asked why Prudholm didn’t push for a full exoneraton, Innocence Project staff attorney Kia Hayes said, “This compromise allows him to be released immediately so that he can enjoy the remainder of his life with his family in freedom, rather than lose precious years while we fight in court.” The Alford plea, however, bars Prudholm from seeking compensation for his wrongful imprisonment.

**Louisiana**: On January 28, 2019, a Washington Parish grand jury indicted two prisoners, Toby J. Walker and Samuel E. White, on charges of first-degree rape for sexually assaulting another prisoner. They and 14 other prisoners at the parish jail were also charged with simple battery in connection with a separate incident. Additionally, five former Washington Parish Sheriff’s deputies were indicted on charges ranging from malfeasance in office to aggravated battery and second-degree battery. “In early September [2018] I learned of an incident in the jail that I believed merited immediate investigation,” stated Washington Parish Sheriff Randy Seal. He contacted the Louisiana State Police and the FBI. Deputies Frank Smith, Elliot Smith, John Donaldson, Pamela P. Willis and Austin Rogers were charged with malfeasance in office. Frank and Elliot Smith were also charged with aggravated second-degree battery for using a power cord to beat a prisoner sometime between July and September 2018.

**Nevada**: The Crime Stoppers program has moved into the Clark County Detention Center in Las Vegas. The Metropolitan Police Department announced on February 14, 2019 that they have been showing pictures and videos of wanted persons and details of unsolved crimes where prisoners and jail visitors can see them. “At the jail, we have a captive audience, right?” said Police Captain Harry Fagel. “Everybody’s there. They’re gonna be there for a little while. They don’t have a whole lot to do all day, so we thought we’d provide them with the same information that we push out to the public.” Prisoners can submit information using kiosks that they already use for commissary services, filing grievance and absentee voting. Fagel noted that using the kiosks allows prisoners to pass along tips “a little bit more covertly within their general population so their safety isn’t compromised at the same time.” Tracking the success of the program will be problematic, since Crime Stoppers reports are anonymous. Prisoners are eligible for cash rewards if a tip leads to a conviction.

**North Dakota**: Standup comedian Spencer Dobson performed a series of shows in state prisons in December 2018. “You do your show for the most part. There’s a new minefield of issues that you didn’t have to take into account at a normal show. You still want to stay away from religion,” Dobson commented. “They did say, don’t go too deep into sex stuff, and don’t graphically go into drug stuff. It’s amazing how much you touch on things [in regular shows] that you don’t think about.” He was originally contacted by someone at the Missouri River Correctional Center in Bismarck. One comedy show there turned into a mini-tour.
During the shows, he talks about ubiquitous ramen noodles and the many ways to embellish them, and about loneliness. “Most aren’t actually bad people. They are in prison because they were working with the best tools available to them at the time,” Dobson said. “When you see a smile go across a really hard face, there’s something great about that.”

Ohio: Google searches on Sylvia Davis’ phone, including “can you go to jail for lying about a cop raping you,” cast doubt on her claim that Parma Heights Police Chief Steve Scharschmidt had picked her up in a car on July 26, 2018 before raping her in his office at the police station. Davis filed the rape report at the Cuyahoga County Sheriff’s Department in August 2018. The day that Davis claimed she was raped was memorable for Scharschmidt, because his mother had suffered a fall, requiring him to be at the hospital for assessment and returned to the use of force. According to an October 26, 2018 incident report, “McCloud initiated the altercation and never followed protocol by calling for assistance.” The report quotes the guard as saying, “I can’t remember. It was kind of like a blur, like I blacked out or something.” The video, however, was clear — as well as graphic: McCloud put the prisoner in a head lock, threw him down and dragged him during the nearly seven-minute incident. The former guard has not been charged.

Oregon: Joseph Anaya, 25, received a ticket for reckless driving on January 9, 2019, after his Chevrolet Express van plowed into the rear of an Oregon Department of Transportation pickup. A four-man work crew from the Multnomah County jail was clearing tree branches and brush along Highway 224 in Milwaukie, near the Southeast Lake Road exit, at the time. One prisoner was thrown from the bed of the truck and another was hit on impact. Rogelio Miguel Francisco, 26, and Robert Adam Miller, 32, were taken to a nearby hospital for assessment and returned to the

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jail by the afternoon. The front of the van was crushed but Anaya was unhurt. Despite driving recklessly, Anaya was not under the influence at the time; he remained at the scene and cooperated with police.

Russia: When Nadezhda Tolokonnikova, a member of the feminist rock group Pussy Riot, was convicted in 2012, she was sent to the IK-14 women’s penal colony in Mordovia. On her arrival at the facility, prison head Yuri Kupriyanov reportedly said, “You should know that when it comes to politics, I am a Stalinist.” Of the labor code, another prison administrator, Colonel Kulagin, added, “The code is one thing – what really matters is fulfilling your quota. If you don’t, you work overtime.” In December 2018, President Vladimir Putin stated at his end-of-year press conference: “Any violation of the law, especially torture, is a crime. These crimes should be punished.” One week later, Federal Penitentiary Service (FPS) inspectors carried out a surprise inspection at IK-14, and Kupriyanov was suspended. Valery Maximenko, deputy head of the FPS, reported, “Women were threatened with isolation and being deprived of food for the slightest transgression.” The prisoners were sewing clothing for Kupriyanov’s family and friends, often being forced to work from 7 a.m. until 1 a.m. the next morning.

South Carolina: The state Department of Corrections began a pilot program in 2016 with the Riley Institute at Furman University, called “A Mother’s Voice.” The first participants were female prisoners at the Graham Correctional Institution in Columbia. Twenty-five women met to review six recordable books and choose one to read aloud that would be mailed to their children. As the child turns each page, the words are heard in their mother’s voice. “The average age of children with a mother in prison is eight,” said SCDC Director Bryan Stirling. “It is easy to forget that when a parent is sentenced their children are forced to pay for that crime as well through no fault of their own.” The program expanded to women in the Leath Correctional Institution in 2017, and to male prisoners, as “A Father’s Voice,” at the Kirkland Correctional Institution in time for Father’s Day 2018. Participants must maintain good behavior to stay in the program; the cost of the books is covered through grants and donations. Men at the Tyger River Correctional Institution recorded their first “A Father’s Voice” books in March 2019.

Texas: Employees at the Rio Grande Detention Center have not had a pay raise in six years. That fact prompted the International Union, Security, Police and Fire Professionals of America to stage a protest rally on January 16 and 17, 2019. Rio Grande is run by The GEO Group, a private prison company, under contract with the U.S. Office of the Federal Detention Trustee. The union’s position is that the cost of living in the area has increased while staff wages have not. Employees are overdue for a raise of one to two percent per year, for a total of six to twelve percent; some of the protesters have worked at the facility since it opened in October 2008. At the time of the protest, they had not been able to reach an agreement with GEO Group. The company’s spokesman, Pablo Paez, told reporters that GEO is engaged in negotiations with the union and is confident they will “come to a mutually beneficial solution.”

Texas: Even though Harold Millican, 37, was scheduled to be released from the Gist State Jail in August 2019, he won’t be done with the system. He filed a lawsuit in December 2018 seeking $200,000 and more medical training for prison staff, after a MRSA infection left him disfigured and “permanently handicapped.” Millican, who is represented by attorney Allie Booker, alleged that a fall while on a work assignment at the state jail caused the infection. He pleaded for help, but staff let the injury
to his arm fester because there “was no one available to take him to the hospital.” He was only transported to a hospital after he passed out. Millican required several surgeries to control the infection. His lawsuit states that prison officials “knew that allowing an abscess that was yellow and green in color, growing, painful, damaging the skin, eating away at the skin and muscle of Plaintiff and that had a foul odor was dangerous and or harmful to his health.”

**Thailand:** Just after midnight on Christmas morning 2018, three prisoners at a southern Surat Thani province prison attempted to escape by scaling the 20-foot wall, which was topped with high-voltage electrified barbed wire. One fell on the opposite side, breaking his arm, and was immediately captured. Another managed to make it over and escape for a few hours, before guards found him while searching the perimeter. The third prisoner, Wivate Akorsom, 32, touched the electrified wire and was instantly killed. When Colonel Wanchai Palawan, superintendent of Chaiya district police, asked the two surviving escapees what motivated their attempt, they said they were homesick. All three were ing escapees what motivated their attempt, United Kingdom: In August 2018, Prisons Minister Rory Stewart vowed to resign if he could not reduce assaults inside the ten worst prisons in the UK. As of February 2019, he told reporters that violence was on the decline in seven facilities and he was “pretty confident” he would retain his job, but was “most worried about” the Nottingham and Wormwood Scrubs prisons in west London. Pages of Harry Potter and the Goblet of Fire, found in a Nottingham cell, tested positive for a “spice-like substance” – referring to synthetic marijuana. Staff believe that 400 missing pages were torn into strips and smoked. Prison guard Adam Donegani estimated each strip was worth around £50 ($60). In the past each prison had its own dedicated search team with drug detection dogs, but staff shortages have shifted the burden to one team per five facilities. Spice use has reportedly reached epidemic levels in many UK prisons.

**Virginia:** On October 26, 2018, Circuit Judge Lynn S. Brice ordered mentally ill prisoner Brandi Leah Gonzales transferred from the Riverside Regional Jail to Central State Hospital, so she could be restored to competency. The move did not take place until December, when Gonzales was due back in court for a status hearing. Jail Colonel Jeffrey Newton and Major Douglas Upshaw were charged with contempt of court, and appeared before Judge Brice on January 10, 2019. They blamed the oversight on a records clerk. Brice found them guilty of misdemeanor contempt and fined them both $100. The judge also chastised them, saying that Gonzales “had been in your jail since July 5 ... and was keeping a blanket over her head and refused to even acknowledge the evaluator, and staff tells the
from attempted escape to conspiracy and destruction of property, Jonathan Felts was apparently the ringleader. Felts allegedly asked the informant to help create a hole in the cell that Felts shared with a cellmate. Felts was able to loosen the toilet paper holder and get to bolts to remove the sink. State Troopers found an 18-inch hole that provided access to prohibited areas of the facility. The informant said Felts would spend two hours working inside the hole each night after the 7 p.m. head count.

Wisconsin: Former Marathon County jail guard Jennifer Kowalski was freed on a $15,000 signature bond after pleading not guilty to having sexual contact with a prisoner she was guarding at the Aspirus Wausau Hospital in 2015. [See: PLN, Aug. 2017, p.63]. She pleaded no contest to fourth-degree sexual assault and two counts of obstructing an officer. At a sentencing hearing on January 9, 2019, Circuit Judge Jay Tlusty held off on convicting her on the two obstruction charges, contingent on her successfully completing all terms of her sexual assault sentence. Kowalski will serve 90 days at her former workplace, the Marathon County Jail, followed by three years’ probation and 150 hours of community service. She must pay $1,500 in fines and court costs, stay sober and complete any treatment “deemed appropriate.”

### Criminal Justice Resources

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

**Black and Pink**
Black and Pink is an open family of lesbian, gay, bisexual, transgender and queer prisoners and “free world” allies who support each other. A national organization, Black and Pink reaches thousands of prisoners across the country and provides a free monthly newspaper of prisoner-generated content, a free (non-sexual) pen-pal program and connections with anti-prison movement organizing. Contact: Black and Pink, 614 Columbia Rd., Dorchester, MA 02125 (617) 519-4387. 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) 229-0979 (collect calls from prisoners OK). www.centerforhealthjustice.org

**Centurion Ministries**
Works to exonerate the wrongfully convicted, in both cases involving DNA evidence and those that do not. Centurion only takes 1-2 new cases a year involving actual innocence. They do not consider accidental death or self-defense murder cases, he said/she said rape cases, or child abuse or child sex abuse cases unless there is physical evidence. All case inquiries must be from the prisoner involved, in writing. Contact: Centurion Ministries, 1000 Herrontown Road, Princeton, NJ 08540 (609) 921-0334. www.centurionministries.org

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

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

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

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

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

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

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

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

**November Coalition**
Advocates against the war on drugs and previously published the Razor Wire, a bi-annual newsletter on drug war-related issues, releasing drug war prisoners and restoring civil rights. No longer published, back issues are available online. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 680-4679. www.november.org

**Prison Activist Resource Center**
PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners and supports activists working to expose and end the abuses of the Prison Industrial Complex and mass incarceration. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. www.prisonactivist.org
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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.

### 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-cons and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more.

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### 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.

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