The headquarters of the Delancey Street Foundation occupies a piece of prime real estate near the base of San Francisco’s Bay Bridge, tucked between luxury condominiums and ritzy waterfront eateries. The 400,000-square-foot, four-story complex looks like a Disneyfied Mediterranean villa, with red tile roofs, flower boxes, and sun-filled windows overlooking the bustling waterfront. Inside are 177 dorms, a pool, a movie theater, and an unpretentious restaurant known as a hangout for local dignitaries. Rep. Nancy Pelosi described the facility as “the living room of the city.”

On a third-floor wall hang dozens of framed photos of “hot shots who like us”—a who’s who of California’s Democratic elite and celebrities of a certain vintage, posing with Delancey’s co-founder and CEO, Mimi Silbert. With her big auburn hair and infectious smile, she’s pictured with Hillary and Bill Clinton, Kamala Harris, former Mayor Willie Brown, Colin Powell, Tony Blair, Clint Eastwood, and Jane Fonda. The grip-and-grins are a tribute to Delancey’s reputation as one of the nation’s highest-profile self-help organizations, known for bringing countless lives back from the brink.

The photos are also a testament to the 78-year-old Silbert’s influence. Pelosi has likened Silbert to Mother Teresa and recently called her “the queen of redemption in all of America.” Sen. Dianne Feinstein once urged “anyone, anywhere in the United States that has an interest in replicating a program to rehabilitate American drug addicts that works to go to San Francisco, to call Mimi Silbert.” California Gov. Gavin Newsom became close with Silbert during his own efforts to get sober more than a decade ago. “I never went to rehab,” he told the San Francisco Chronicle. “I went to Mimi.”

Delancey is a bit like a kibbutz where people go instead of prison. With the exception of Silbert, the program is run entirely by people recovering from addiction, and former prisoners, nearly all of whom were sent to the program by judges as an alternative to incarceration or as part of probation or parole. Since it was founded in a cramped apartment in the early ’70s, it has grown into an operation with 1,000 residents in six locations nationwide and more than $119 million in the bank. Delancey’s facilities defy the stereotype of a gloomy halfway house: There’s a Mission-style former hotel in Los Angeles, a ranch in New Mexico, and a turreted manor in New York. Residents, most of whom live in the California facilities, stay for a minimum of two years while working for—and eventually managing—the program’s many enterprises, which include moving companies, catering services, and bustling eateries. The program is predominantly funded by profit from its businesses; residents receive free room and board. During the holiday season, Delancey runs dozens of Christmas tree lots, inviting customers to “Buy A Tree Save A Life!!”

Over nearly half a century, more than 23,000 people have completed the program. Yet as Delancey has become a beloved fixture in San Francisco and a model for rehabs and prison diversion programs around the world, it has been subject to little oversight or scrutiny. Interviews with dozens of Delancey graduates, lawyers, judges, and criminologists paint a picture of an eccentric program with a number of long-standing practices that are rarely discussed in public. New participants are cut off from the outside world and required to spend hours doing monotonous jobs. They must participate in “Games,” in which they receive and dish out intense criticism, often in the form of yelling and cursing. Until a few years ago, residents were required to stay awake for two-day sessions; sometimes those who nodded off were awoken with a spritz of water. They work long hours for...
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The Toughest Love (cont.)

no pay, sometimes at events for the politicians who praise the program. Delancey doesn’t offer mental health services and it forbids psychiatric medications. In private conversations, some public defenders in San Francisco liken the program to a cult.

There is loads of anecdotal evidence of the program’s successes, but there is little scientific evidence to support Delancey’s tough-love methods, some of which were inherited from the notorious rehab group Synanon. Even though nearly all of Delaney’s residents come through the criminal justice system, no state or local agency oversees the program, and its recidivism rates haven’t been studied in three decades.

It’s hard to question the appeal Delaney holds for judges and DAs trying to figure out what to do with a specific kind of offender: someone ineligible or unsuited for a typical rehab but deserving of one more chance before prison. Delancey checks a lot of boxes: It’s tougher and longer than most addiction treatment programs; it takes violent offenders; it’s not prison; and it’s free. “Most judges don’t relish the opportunity to send people to prison,” said one deputy public defender in San Francisco. “It’s kind of like, ‘Delancey will fix it.’”

During a 2014 sentencing hearing for Christina Williams, who was convicted of counterfeiting money to fuel a drug habit, federal Judge Lawrence O’Neill said, “I would have loved to have packed her and every other person that’s appeared before me in the last year into my car and driven them up to Delancey Street.” The deal he struck with Williams was typical: If she made it through the program, she would be put on probation. Fail out of Delaney and she would serve time in prison. O’Neill warned her, “It is going to take everything that you have. Every physical, every mental, every emotional drop of energy that you have.”

Today, Williams is thriving, with a full-time job, a fiancé whom she met at Delancey, a dog, and years of sobriety. She was one of several former residents I spoke with who credit the program with literally saving their lives. Lifting up the “bottom 2 percent,” as Silbert puts it, through a hybrid of old-fashioned bootstraps and self-actualization is the essence of Delaney. “Name a problem, they have the problem,” Silbert told me when I met her at Delaney’s waterfront headquarters, where she lives. “Drop out of school? They all dropped out of school for the most part. Violent? We go for violent people instead of just taking somebody who just made a mistake. We’re happy to take them. They too can change.”

Yet Delaney’s critics say it’s often presented as the only alternative to prison for people facing long sentences. “Delaney’s considered the be-all and end-all: If you can’t make it here, then you don’t deserve to be out any longer,” said Sangeeta Sinha, who was an attorney in the San Francisco Public Defender’s Office for 15 years, until 2017. In 2006, her client Leyon Barner was sent to Delaney in lieu of a long sentence. Barner buckled under the program’s relentless demands. “You have isolation, you have sleep deprivation, you have this constant pressure of having to go to these Games three times a week where you’re being attacked and insulted and verbally abused,” he recalled. Eventually, he was sent back to prison to serve a lengthy sentence. More than a decade after attending the program, he still has bad dreams about it; he requested that this article be titled “Nightmare on Delaney Street.”

As California attempts to reduce its swollen prison population, and policymakers increasingly agree that the addiction crisis can’t be solved with incarceration, taking a look inside Delaney seems more important than ever. But the questions about its methods and effectiveness resonate beyond the program itself: Does anyone really know the best way to set someone struggling with addiction and criminal activity on a path to recovery and stability?

Silbert is first to acknowledge that Delaney is not for everyone; 4 out of 10 new residents quit before they graduate. But she insisted that its achievements can’t be boiled down to statistics. “There’s just too many people and too many places and the numbers end up never meaning as much to me as the people themselves,” she said. She told me, pleadingly, to remember the alternatives as I wrote this story: “These people would end up in prison if they didn’t come here.”

...
The Toughest Love (cont.)

New York’s Lower East Side where many Eastern Europeans settled at the turn of the 20th century. The first phase of the program is called “Immigration.”

Chesley Cipolla arrived on the bench in San Francisco in 2012. At 40, she had spent more than half of her life floundering between prison, rehab, and homelessness. When the three residents who screened her asked why she was there, Cipolla repeated in a low, raspy voice what she’d told countless therapists and social workers over the years: She grew up in a violent household, started drinking heavily as a teenager, and never finished school. One thing led to the next, and here she was, just out of prison, having never successfully completed a parole.

“Oh, so you think you’re hot shit, just dropping out of school?” Cipolla recalls one of the screeners snapping at her. “How did you treat your mom?” another asked. “I bet you treated your mom real fucking good, huh? What about your kids? Are you a mom? How’d you treat your kids? How’s it feel being a mom like that, just walked away from your fucking own children?”

During her many stints in rehab, Cipolla had never experienced an intake like this. “The whole interview process, I was like, ‘These bitches want to fight. I’m going to have to fuck up three big bitches.’” By the time Cipolla left the room so the interviewers could confer, she was shaking, strategizing which of the three she would take down first. At the same time, the process had been such a jolt that it was almost refreshing. “You’ve got a few women just calling you on your shit,” Cipolla remembers. “It seems harsh, but it’s all true, you know?”

Cipolla was admitted, and she entered “Maintenance,” the grueling first part of “Immigration,” which is focused on repetitive cleaning. Residents assigned to cafeteria duty awake at 6 a.m. to scrub tables, stack chairs, sweep and mop, and put the chairs back on the floor—and then keep doing this routine on the already clean surfaces until the next meal. “I’ve heard it’s so we can learn how to work with others’ personalities,” said former resident Anthony Regino, who started at Delancey in 2017. Those on bathroom duty may stand in place for hours, wiping the same spot on the wall. “It was like an episode of Black Mirror,” said one former resident.

Delancey imposes a blackout period of a few months, during which new residents are prohibited from contacting family or friends. Blackouts for a few weeks are common at residential rehabs; the idea is to start with a blank slate, without the stresses and temptations of home. (There’s not much evidence about whether blackouts work—California bans them in the transitional housing programs it contracts with.) But Delancey’s first few months are far stricter than the typical rehab’s. Residents are forbidden from talking about their pasts or the outside world. Male residents have distilled the rules of “Maintenance” into the “three Ws”: no flirting with women, no working out, and no gazing out the windows—which, in San Francisco, provide sweeping views of the bay. (Silbert told me new residents are welcome to look out the windows as long as they don’t catcall women, but can’t use the gym because “they have not earned that right.” At Delancey, she said, “You need to feel you’ve earned things—and the more correct things you do, the more you earn.”)
From the get-go, the program has a do-it-yourself ethos that extends to every aspect of life. There are no outside staffers—no nurses or psychiatrists or social workers on-site for the hundreds of residents. Delancey portrays its lack of clinicians as a selling point. “Rather than hire experts to help the people with problems, we decided to run Delancey Street with no staff and no funding,” its website reads. A letter sent to jail inmates who request an interview warns, “Remember, we aren’t a counseling program. We’ll expect you to learn a different way of doing things by doing them and helping others along the way.”

Though the vast majority of residents have a history of addiction, Delancey isn’t monitored by the state health department because it isn’t registered as an addiction treatment facility and doesn’t take public funding. Silbert sees Delancey’s mission as transcending addiction: She’s called it a “re-education organization.” Usually, if prospective residents are detoxing, Silbert said, “We give you our chicken soup, some chocolate, and a broom.”

At least three nights a week, new residents participate in “Games,” confrontational group sessions where they’re encouraged to let out the anger and irritation built up over long days of tedious work. Beforehand, they request to “play” with those who have gotten on their nerves by submitting forms in a box in the cafeteria.

After dinner, groups of about 20 are called off to rooms where they sit in a circle. There are a few ground rules: no threatening, no getting out of your seat. Some topics—like a person’s appearance and family—are off-limits. Most swear words are allowed, but some offensive epithets like “cunt” and “fag” are not. The focus then turns to piling criticism on one member of the group, while, ideally, pointing out how to fix their problematic behavior—before moving on to the next participant.

Former residents recall hearing grievances ranging from minor slights (“You bumped into me yesterday, you bitch”) to general gripes (“You piece of shit motherfucker, who the fuck do you think you are?”). The “Game” serves as an emotional dumping ground from 7:30 to 10 p.m. Afterward, everyone trickles into the cafeteria for snacks. As a former resident in Los Angeles put it, “The joke used to be ‘Yell at each other, then go share a pizza.’”

“There’s a lot of yelling in Delancey Street for certain things, but it’s because a lot of people are angry,” Williams said. “And

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

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The Toughest Love (cont.)

part of our counseling is to release that in a healthy way.” Many residents have just come from correctional facilities, where a simple disagreement could erupt into violence. But at Delancey, you’re taught to “just go put their name in the Game box, and you can hash it out in the Game and yell until your heart’s content,” Williams said. “You basically get a PhD in how to argue,” said Cameron Bilbrey, a now-26-year-old who attended the Los Angeles facility from 2013 to 2015. “It teaches you how to solve your problems with words—and if you can’t solve your problems, you can at least keep yourself from getting up and beating the Jesus out of the person that you’re having a problem with.”

The verbal sparring is helpful for some residents but painful for others. “If words could cut, they’d have a trauma unit in Delancey Street,” one former resident told me. “Most of our clients come to us with a degree of PTSD. A lot of them suffered greatly as children,” said Sinha, the former public defender. “I question the necessity and efficacy of any treatment that requires them to undergo more trauma.” Another lawyer in the San Francisco Public Defender’s Office recounted checking in with a client at Delancey. “This is a grown man in his early 50s, a tough guy. He sat there and said, I’ve gotta tell you, I’ve been crying with my head in my hands. Can you arrange for me to go back to jail?”

Some residents do just that. In 2017, Regino, then in his late 20s, arrived at Delancey in San Francisco. He was hopeful that Delancey would give him the opportunity to get back on track and avoid the four-year prison sentence he was facing for stealing a car while he was using meth. He’d heard good things about the program—how it helps you get bank credit, a driver’s license, a job. “It’s a way of a new life,” he recalled. “That’s something that I was really looking forward to.” Regino, who is bipolar, weaned himself off his psych meds in jail so he could attend the program. Naturally conflict-averse, he contends that he didn’t know about “Games” until he arrived. “You have 10 guys yelling at the top of their lungs and cussing at you and all ganging up on you. I just shut down when they did that,” Regino said over the phone from the California Institution for Men in Chino, California. After five months at Delancey, he walked out and enrolled in a different program, violating the terms of his probation. A judge sent him back to jail.

Until a few years ago, residents who had spent several months at Delancey underwent a rite of passage called “Dissipation.” Groups of 18 would gather in a room and stay awake for more than 48 hours, talking through their childhoods and the mistakes that led them to the program. The marathon sessions, which sometimes featured the questioning and grilling of “Games,” plus role-playing, consoling, and weeping, were supposed to be a cathartic turning point. “It’s just letting it all out. It’s out and it’s done,” Cipolla said. “It doesn’t need to come back. We’re not going to talk about it later.” Designated “squirters” kept people up with cold water, remembers Bilbrey. “They focused on stressing out people who probably or definitely had more things to let go of.”

Overall, it felt like “a useful experience but it’s sometimes very weird,” he said. Some “Dissipation” sessions concluded with

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a “coffin ceremony,” in which residents were encouraged to mourn deaths that they may not have previously processed, in front of a coffin surrounded by candles as ambient music played in the background.

Today, instead of “Dissipation,” residents talk about their personal histories during “12-hour Games.” Silbert was opaque about exactly when or why she ended “Dissipation.” (One resident recalls the practice continuing as recently as 2017.) She suggested the process sometimes stirred up past hardships rather than enabling participants to let them go. “It wasn’t really what I felt was helpful,” but “I felt it was terrific while we did it.”

• • •

The flip side of the long days and nights is the many perks that come with residence at Delancey, where the atmosphere can feel camplike. Every morning, residents perform a skit and present a word of the day. Every week, there’s a social “function” like a fair or treasure hunt. Over the summer, residents go camping. Holidays are huge events featuring elaborate meals. “I ate my first shrimp, lobster, bisque at D-Street,” said Brandon Ingram, a former Los Angeles resident. At Christmas, Silbert becomes Delancey’s “Mrs. Claus,” she told me. “I make them practice: ‘When we open it, what do we say?’ And we all go, ‘Ooooh!’ And then we say, ‘Aaaah!’”

New residents live in spartan, nine-bed dorms and wear frumpy donated clothes. Women are forbidden from wearing makeup, and men are required to shave facial hair. With time, they earn more freedom, graduating to two-bedroom apartments and donated designer clothes. Technically, residents graduate after two years, but many, dubbed “explorers,” choose to stay longer. A handful of “lifers” pledge to stay at Delancey until their final days.

After a few months, residents graduate from “Maintenance” and begin working in one of the organization’s many enterprises. Residents train each other, and with time, rise in the ranks—from line cook to restaurant manager, or mover to crew boss. Some of the enterprises are major operations. Delancey Moving and Trucking completes thousands of jobs annually; recent corporate contracts include transporting the Macy’s flower show and moving the San Francisco Giants’ operations to Arizona for spring training. The entire Delancey organization kicks into high gear during the holiday season, when other enterprises shrink to skeleton crews so residents can focus on selling Christmas trees. In Los Angeles, residents deck out downtown buildings. Last year, Silbert says, Delancey sold 50,000 trees, bringing in almost $3 million in net revenue in the four weeks before Christmas. “Everybody is working night and day,” Silbert said.

The most obvious difference between a Delancey business and a regular business is that Delancey’s workers aren’t paid. All of the profits from its enterprises—technically called “training schools”—are funneled back into the nonprofit. “You don’t get rewarded with money—you get rewarded with responsibility,” Cipolla said. “You’re the shit if you have a ton of responsibilities.” (This model isn’t altogether unique: As a recent investigation by Reveal reports, Delancey is among at least 300 rehab facilities across the country requiring participants to work long hours with no pay.)

Cipolla first worked for the catering...
company and as a secretary in Silbert’s office, eventually becoming her personal assistant. Cipolla learned to type, dress professionally, and make eye contact when shaking hands. She fielded dozens of phone calls in a sing-song voice each day, taking messages for Silbert—a particularly big responsibility because Silbert, who admits that she is “old-, old-fashioned,” doesn’t have a cellphone or email address.

Because using Delancey’s services is seen as virtuous, and because Silbert is extraordinarily well connected, residents have often worked as caterers and servers at functions for politicians and celebrities. Williams spoke about them on a first-name basis. “Gavin was cool because he just hung out in the back with us,” she said. “Nancy”—as in Pelosi—“was nice… I don’t know, I’ll just leave it at that.” Cipolla said. “Nancy” was “nice… I just hung out in the back with us,” she name basis. “Gavin was cool because he helped arrange flowers for a personal event for Kamala Harris and catered functions for politicians and celebrities. I would flip over a mattress and there’s nobody around me, I’m alone by myself… and there’s a spilled half a prescription of Xanax under the bed.” Something like this happened dozens of times, and Bilbrey never took a pill. “That’s all that I wanted in the whole world: to know I wasn’t some thief,” he said.

Silbert said she instructs movers not to run but acknowledged that some crew bosses might have told them otherwise. To nitpick about things like running, in her view, misses the bigger point: “They do remarkable things, even if sometimes they’re not perfect,” she said. “They’re running a moving company! Please hear that.”

After hours, some residents take classes taught by other residents and friends of Silbert. Recent courses include feminist literature and theoretical geometry. Nancy Pelosi’s daughter Christine has taught several criminal justice classes there over the years. In 2017, she tweeted a photo of a whiteboard from her lesson on slavery and sweatshops that listed the characteristics of “exploitation”: low wages, long hours, no health care. Bilbrey described Delancey as “basically indentured servitude or slavery, whatever you want to call it.”

Still, Bilbrey is among the many residents who believe that Delancey has given them a gift far more valuable than wages. “I wouldn’t be here if Delancey Street didn’t exist,” he told me. Both Cipolla and Williams were moved to tears as they told me about their personal transformations from drug users to working professionals. “I’m telling you, I was a junkie,” Cipolla said. “Needle in my neck, abscesses everywhere, dirty hair, in and out of jail and prison and nowhere to live.” I met both women at the offices of Hornblower Classic Cable Cars, a tour company where a number of Delancey grads work. Until a recent move, Cipolla was the director of operations, overseeing dozens of people. Williams is a sales manager. “It is amazing and I am telling you: It’s Delancey Street,” Cipolla said.

During the last few months of their stay, residents are required to find outside jobs. During this transitional period, called “work out,” they pay rent to Delancey. Many work for moving or construction companies. Some work at a high-end grocery store at the base of Twitter’s headquarters. Delancey graduates have gone on to become EMTs, medical examiners, firefighters, social workers, sales managers, and real estate contractors. Rick Mariano, who attended the program in the ’70s and married Judge Katherine Feinstein (Dianne’s daughter),
became a Bay Area real estate magnate. Bill Maher (not the TV host), who lived at Delancey Street in the organization’s early years, went on to become a member of the San Francisco Board of Supervisors.

“I would have been dead in prison 40 years ago without Delancey Street,” he told me.

A common refrain at Delancey is “Act as if,” a variation of “Fake it till you make it.” You may not know how to be a restaurant server, or a mover, or a Christmas tree salesperson, but act as if you do—and after enough acting, you’ll have convinced everyone, including yourself. This philosophy has carried many residents through the program and beyond, but this ethos is also applied to health care and mental health services, putting Delancey at odds with best practices for addiction treatment and prison diversion programs.

“The only medicine you’re going to get at Delancey Street is literally ibuprofen,” Bilbrey said. Other former residents corroborated this, adding that they were given a hard time when they asked for medication or treatment. When he was with Delancey in Los Angeles, Bilbrey said, the Delancey resident in charge of medical services had no medical background, college experience, or even CPR training. Silbert explained that doctors come for regular checkups at the San Francisco facility, and if a resident is in serious need of medical care, they’ll see a doctor. Yet she acknowledged that the person deciding whether to let them go may not have medical training. In every family, “somebody has to make that decision,” she said. “Am I going to send you to the doctor, or am I not going to send you to the doctor?”

Delancey doesn’t advertise as a mental health treatment facility. Yet many of its residents come with substance use problems and psychiatric diagnoses. Former residents recalled that Delancey’s lack of counseling was reflected in an unofficial motto: “Fuck your feelings, get to work.” Bilbrey’s diaries from his time there show signs that mental health practitioners would likely have found troubling. In March 2014, he wrote, “I’m struggling with how to control my thoughts and emotions. I’m obsessing…I’ve been thinking those old suicidal thoughts.” He continued, “Helping other people is all that keeps me moving onward. I fear going to my room at night. To be alone with myself.”

There’s no way to measure if Delancey’s residents have more medical or mental health issues than residents of a typical rehab. Public records show the Los Angeles Police Department received three calls regarding overdoses at the address of Delancey’s Los Angeles facility between 2018 and the summer of 2019. (It’s unclear if Delancey residents were involved; the facility shares an address with a Denny’s.) Silbert recalled one fatal overdose in Los Angeles in recent years, and said that such events are very rare.

The program’s emphasis on self-reliance extends to discipline: Residents are responsible for policing each other. Sometimes this can result in seemingly arbitrary punishments. When Bilbrey cracked an off-color joke, other residents made him sit on a wooden bench for more than 24 hours before putting him on “contract,” meaning he was instructed not to talk to others and had to clean the floors for 60 hours. After Bilbrey’s girlfriend came to see him at a court hearing, his peers put him on contract for two weeks for not telling his higher-ups that she was coming. “18 hours a day, working from 6 am to 11:30 pm,” he wrote in his
journal. Regino says he was put on contract for weeks after a dispute with a roommate, made to quietly clean and reclean dishes in the scullery.

Occasionally, not fitting in with other residents can have life-altering consequences. Leyon Barner, who attended Delancey instead of going to prison for armed robbery, was instructed to leave the program after seven months even though, according to court records, he hadn’t broken any rules. At a court hearing, a higher-up at Delancey named Teri Delane said Barner seemed paranoid and posed a safety threat. “Do I have particular examples? No, I really don’t,” she told the judge. “You need to understand when we do an interview, we have no professional staff at Delancey Street. There is no way to determine whether or not someone will really make it in our environment.” Delane, a long-term Delancey resident, had earned a doctorate in psychology during her time there—“but not to practice therapy in Delancey Street, because it’s not what we do,” she testified. She suggested that Barner would be a better fit with another rehabilitative program. But Barner’s plea deal had specifically stipulated that he would go to Delancey, and the prosecutor, who reported to then-San Francisco District Attorney Kamala Harris, didn’t want Barner to go to another program. “Unfortunately, this is a situation that was contingent upon the successful completion of the two-year Delancey Street program,” said a reluctant Judge Charlotte Walter Woolard before remanding Barner to custody. Ultimately, Barner was sent to prison for seven years.

Even successful Delancey graduates acknowledge it doesn’t work out for everyone. Bilbrey showed me a photo of his former moving crew: more than two dozen strapping guys in green work shirts. “Out of about 30 people there, I think only seven or eight of them are now what I would call well-adjusted taxpayers, working jobs, back to their families, not selling drugs.” When I mentioned to Cipolla that former residents have called Delancey’s practices abusive, she bristled. “If you think it’s abusive, then fuck off and don’t do it,” she said. “You choose: You can go to prison or you can do what has worked for thousands and thousands of people and not cry like a little bitch.”

When we first met more than two years ago, I had not been prepared to be so completely charmed by Silbert, who is 5 feet tall and speaks with a booming, gravelly Boston accent. She buzzes with energy—a chatty, constantly gesticulating bubbe obsessed with changing the way society treats people who are addicted to drugs or have been convicted of crimes. We met at the Delancey Street Restaurant, billed as an “ethnic American bistro” where residents in slacks and bow ties serve homey fare like chicken soup, grilled cheese, and crab cakes. Silbert came up with many of the recipes herself. She hugged me—“I’m so excited!” she practically yelled—before asking, “Are you a vegetarian?” And, when I said no, “Oh good, thank heavens.” She seemed genuinely unfiltered: “I actually say everything I think,” she announced.

She let out a yelp when I asked about the architectural inspiration for the head-quarters, constructed by Delancey residents and completed in 1990. “No one asks me that!” she exclaimed. The tale went like this: Years ago, Silbert was in Italy, walking by a beautiful building, when she spotted an elderly woman in a narrow alley chasing a child with what looked like a cast-iron pan. “And she is literally chasing a child and I said, ‘That’s exactly what I want,’” she said. “I like it to look beautiful. But it’s also extremely real and everybody says everything they feel because that’s really important. We’re angry, not angry, happy, not happy. That’s why it’s set up that way,” she said. “Isn’t that hilarious?”

(When we spoke again in March, Silbert said the coronavirus had thrown a wrench into Delancey’s usual routine, particularly at the restaurant, which started offering contactless delivery. Still, she seemed unfazed. “We have so many other horrible things that we have to handle in everybody’s life that our people are probably less stressed than most people,” she said.)

Delancey began in 1971, when a self-described ex-junkie named John Maher rented out an apartment in San Francisco with friends who were sobering up. It quickly filled with people sleeping on couches and sprawled across the floors. They all worked and pooled their earnings in a group fund. Maher first called the flat Ellis Island, and then settled on Delancey Street. “We wanted to get back to the original concept of a bunch of wild-eyed fanatics who came over here to build the New Jerusalem and not ask Uncle Nixon for another handout,” he told Grover Sales in the 1976 book John Maher of Delancey Street.

Almost a decade earlier, Maher had sobered up at Synanon, the alternative community founded in 1958 that went on to spawn dozens of tough-love rehabs and treatment programs. Synanon sought
to cure addiction by breaking down users through isolation, attack therapy sessions, and hard labor. It was Synanon that first developed “Games”; founder Chuck Dederich said that a “Game” wasn’t “worth diddly shit unless every player is either screaming with laughter, hugging like a child, hugging each other—or on the verge of physical violence.” Synanon also developed the 48-hour “Dis-sipations,” complete with coffins.

Maher joined Synanon in 1962 and instantly took to it. The “little old Red Cross ladies cried a lot and told me what a hard life I had, or in jail, guards would beat me and scream what a dirty sonofa I was,” Maher told Sales. Synanon offered another way: The onus was on the individuals addicted to drugs to change their lives, with no help from professionals. When Maher left Synanon and started Delancey, he drew the analogy of a son building an extension on his father’s house. “Let’s get one thing straight—Synanon does nothing but good,” he told Sales. (Widespread violence and abuse in the group was exposed in the 1970s, and it shut down for good in 1991.)

Silbert told me that Delancey is worlds away from Synanon and Dederich. “Whoever he is, whatever he did, has nothing to do with us,” she insisted.

Maher met Silbert soon after he found Delancey. They couldn’t have seemed more different: He was an ex-con from the Bronx who’d dropped out of eighth grade; she was a Boston intellectual who had studied with Jean-Paul Sartre in Paris before completing a doctorate in psychology and criminology at the University of California, Berkeley. She was waiflike compared to the broad-shouldered Maher, but she commanded a room with her brassy charm. “John and I talked, talked, talked, talked—two total opposites,” Silbert told me. “Stunningly, we had the exact same responses to everything.” Like Maher, Silbert, who was working as a prison psychologist, also rejected constant talk about feelings and thought the power differential between her as an “expert” and inmates as “victims” obscured their potential to help themselves and each other.

Silbert left her husband to move in with Maher and build Delancey together. Their new rehab group grew quickly, eventually buying what had been the Russian Consulate in the tony Pacific Heights neighborhood. After complaints from neighbors, then-Supervisor Dianne Feinstein became an ally, pushing for Delancey to be allowed to stay. In 1973, the San Francisco Chronicle ran an article headlined “Delancey Street Is Big Business,” describing 250 residents who ran a restaurant, moving company, construction business, florist, and credit union. Maher energetically sought donations—“I never in my life ran into anyone with this much know-how about bartering, trading, and hustling free goods and services,” said then–state Assembly member Willie Brown—but Delancey eschewed money from the government, as it continues to do today.

Delancey did, however, work with the government in a different way: California counties started sending recovering drug users to Delancey on probation. “We tried to make friends with the district attorneys and the nasty judges as opposed to public defenders, who were naturally on our side, because we were trying to get the people nobody wants to give a chance to,” Silbert told me. Delancey residents started going to jails and prisons to screen potential recruits; by 2002, most initial interviews with prospective residents were done behind bars.

Silbert and Maher proved to be gifted political hobnobbers. Residents provided security at the food giveaway organized by the Hearst Corporation to free newspaper heir Patty Hearst in 1974. Maher was a frequent speaker at Cesar Chavez’s rallies throughout the Central Valley. A 1976 article in the Chronicle posited that Delancey was “the most powerful single organization in the city today.” (A “slightly awed” Feinstein told the reporter that Maher “can mobilize people like that,” with a snap of her fingers.) Residents were not forced to engage in political activity, but when, say, a local politician stopped by while walking precincts, they were encouraged to tag along. Most Delancey residents were “people for whom the American Dream hadn’t produced a particularly good result,” recalled Bill Maher, John Maher’s younger brother. Getting involved in local politics “was an opportunity for folks to be part of society.”

John Maher sounded almost like a political boss as he described Delancey’s civic role. “There will be no Republican or...
Democratic conventions in our congressional districts in which Delancey Street’s political clubs are not the deciding factor,” he told Sales. “Delancey Street will also determine the swing vote in San Francisco’s next race for mayor...I have 600 fanatical volunteers waiting in the wings, and the candidate for mayor who promises the best for the people will get our support.”

Maher didn’t survive to see most of Delancey’s growth. In the early 80’s, he quietly relapsed into alcohol abuse. After a drunken car crash in 1985, he was sent to Delancey’s New Mexico ranch. He continued drinking, eventually resigned from Delancey, and made his way to New York, where he suffered a series of heart attacks. He died in 1988 at the age of 48. Silbert doesn’t like to talk about this chapter of her life. “This is not helpful to me or him,” she said when I asked about it, sounding weary for a moment. “It’s more important to know that he was brilliant. He was brilliant, and then he drank, and then he died.”

Silbert soldiered on, and her profile and influence grew. As mayor, Feinstein helped secure the waterfront property for Delancey’s headquarters, wielding a shovel at the groundbreaking ceremony in 1987. The complex, now worth at least $40 million, became a hub for liberal politicians, a spot where Feinstein, Pelosi, Harris, and Brown have held political events and town halls. Its restaurant became known as a place to network, a place where, as a promotional flyer put it, “the schmoozing reaches world problem solving levels.”

In 1986, the governor appointed Silbert to California’s Board of State and Community Corrections, the advisory committee that develops standards for training probation and corrections officers; she served until last year. In 1997, she helped rewrite San Francisco’s juvenile justice protocols, devising a program that provided young offenders with an alternative to juvenile hall. A year later, she opened Life Learning Academy, a school for juvenile offenders on San Francisco’s Treasure Island. Today, Delane is its principal. Feinstein called it the “single most important social experiment there has been in this area.” Delancey has also joined forces with Solano State Prison to form the Delancey Street Honors Program, a unit whose 100 inmates learn the program’s ethos from residents who travel up from San Francisco. The participants hope to open the first-ever restaurant based in a prison.

Delancey grads have gone on to start their own rehabs, often with a tough-love bent, in Salt Lake City and Alaska. In the same hall as the “hot shots” photos, a wall of “Replications abroad” displays photos of smiling job crews in Singapore, South Africa, and New Zealand, participating in programs inspired by Delancey.

Silbert is still intimately involved in the day to day at Delancey, but during our conversations, she sometimes compressed timelines and glossed over details. She was adamant that she was the only person who had the power to kick someone out, and was shocked to learn that Teri Delane had gone to court requesting that Leyon Barner be removed from the program. When I asked Silbert about Bilbrey, who said he was made to sit on a bench for more than a day, her eyes widened and jaw dropped. She asked, urgently, “Is he okay?”

When I asked about the three Ws of “Maintenance,” she said she’d never heard of the saying. So she asked our server, Will, who had been standing outside the private room where we’d been talking for several hours: “So when you were on ‘Maintenance,’ did you say the three Ws?” Will smiled. “The workout, the windows, and women,” he replied. Silbert, shocked, squealed with laughter.

“He said that to you?” she asked. “Everybody!” Will said.

Silbert conceded that she may be fuzzy on some details in part because, a decade ago, she fell ill, first with cancer, then two strokes. During her six years convalescing, when she was less involved with the program, some residents “had their own version of Delancey Street,” she said. Now that she’s back to her healthy, mile-a-minute self, she’s piecing together what happened. “I keep going, ‘Huh? When did that happen? And how?”

When Silbert learns that a Delancey resident or graduate has gone back into addiction or crime, she goes up to her room, closes the door, flings herself on the bed, and cries. “It doesn’t matter if they’ve done something wrong and I kick them out, or if they’re out there six years and fine and then something happens, or if they leave and fail,” she said. “It doesn’t matter: They go from somebody you know well to some person that you’ve never seen before.”

Yet Silbert doesn’t seem concerned about the program’s lack of hard evidence. “Quite frankly, if we have one person that’s totally changed and the whole time they’re here, they’re fine—and they go out and something happens, it makes me worry about society,” she said. “No one knows what recidivism is because recidivism gets changed every minute of every day.”

In a way, she’s right: There is hardly any data on programs like hers. Delancey occupies a unique spot—it’s a diversion program, where would-be inmates, many of whom struggle with addiction, go instead of prison, and it’s a reentry program, where residents transition after doing time. In many states, there are few licensing requirements for diversion programs, so judges have wide discretion in deciding who gets treatment and where they’ll be sent for it. “Judges can pretty much do what they want,” said Marc Mauer, executive director of the Sentencing Project, a prison reform advocacy group. “The reality is that there are no experts,” said Jeff Tauber, a retired trial court judge in Alameda County who helped develop the nation’s first drug courts. “And this is what makes this field so difficult, and so perplexing.”

Even reentry programs that contract with the state have limited oversight. In California, these programs, which range...
from residential facilities to day-reporting centers, serve 4,000 parolees each day. In exchange for state funding, these facilities are, in theory, obligated to comply with basic standards for the number of trained staff on-site and the services provided. But in practice, oversight appears minimal. Reentry facilities that don’t receive state funding—like Delancey—are not subject to any oversight. It’s unknown how many programs like it exist, what services they offer, or how many parolees participate. As UC Berkeley public policy researchers put it in a recent report, they “do not appear to be regulated at all.”

In San Francisco, reentry options include facilities run by GEO Group, one of the nation’s largest private prison companies, and a Salvation Army residential program called Harbor Light. Many lawyers in the public defender’s office opposed the city signing the multimillion-dollar Harbor Light contract in 2017. “They’re not queer-friendly. It’s a tough, Christian-based organization,” a deputy public defender told me. But, she said, “Everyone stopped objecting because housing is housing.” (Salvation Army disputes those allegations, contending that the program doesn’t ask participants about their sexual orientation or beliefs.)

In this context, a program like Delancey—with nearly 50 years of history, a charismatic leader, and many notable success stories—looks awfully promising. That its practices aren’t evidence-based or subject to official oversight isn’t a secret to the prosecutors or judges who send participants there. “If you had a chance to not go to prison by going to this program, are you going to really care that it’s not regulated by the state that much?” said Sacramento Deputy District Attorney Chris Carlson. Plus, it’s free. “This guy that doesn’t have a pot to piss in, I know we can send him” to Delancey, said Carlson. “And if they accept him, they’ll take him and he’s not going to have to pay anything. What are your other options?”

Therein lies the problem. What everyone—lawyers, criminologists, and mental health practitioners alike—seems to agree on is that, as Tauber put it, “treatment is a very individual thing.” What pulls one person out of a life of addiction and crime may not work for another. Silbert agrees: She doesn’t relish Delancey’s status as an exceptional prison-alternative program, or the knowledge that, if someone doesn’t fit in there, they could be headed straight back to a life behind bars.

Three years ago, when I first learned about Delancey’s odd practices—“Games,” “Dissipation,” unpaid labor—I couldn’t decide if the program was a myth or a miracle. Now, I think of Delancey as one big exercise in “Act as if”: Act as if you’re a credible alternative to prison, and the rest will follow.

After Delancey purchased its waterfront lot in the 1980s, Silbert put its residents in charge of building the new headquarters. Residents with no construction experience had to figure out how to construct a massive complex that wouldn’t crumble in an earthquake. “We had everybody working on it,” she recalled. “Literally, we had 300 and something people who knew nothing working on this building.” A resident who’d poured concrete for the handball court at San Quentin Prison became the head of the concrete crew. Silbert took a test to become the contractor and developer. “We would do a wall and then we would look at each other and say, Is that wall crooked?” If the wall wasn’t straight, Silbert would tell her workers, “Fixing your mistakes takes a lot of courage. You have to go through your mistakes sometimes.” Then they’d take down the wall and put it back up, over and over, until it was right.

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Has the Illinois Department of Corrections kept you past your out-date?

Were you not released from an Illinois Prison when you were supposed to be released?

Did the Illinois Department of Corrections miscalculate your release date?

Are you the victim of Excessive Force by a Police or Corrections Officer in Illinois?

Contact us to find out if you have a lawsuit!

Foutris Law Office, Ltd., Dept. PLN, 53 W. Jackson, Suite 252, Chicago, IL 60604
312-212-1200
This month's cover story reports on Delancey Street, the Bay Area Foundation that has gained fame for its programs that rehabilitate prisoners. Its success has allowed it to grow into a large operation with facilities in six cities. Readers can make up their own minds about the article. Over the past 20 years, I have noticed the huge efforts spent on "reentry" or "rehabilitation" yet since 1971, we have seen the number of prisoners rise from 198,061 to around 2.5 million today. This leads me to believe we suffer from a mass incarceration problem in the U.S., not a rehabilitation deficit. Of course, the mass incarceration problem in the U.S., from 198,061 to around 2.5 million today.

We seem to be settling in for the long haul on COVID in American prisons and jails. The big takeaway is that the government's attitude is to pretty much keep everyone locked up and hope for the best, and if a bunch of prisoners die, it's not that big of a deal. The number of state and federal prisoners who have been released due to COVID concerns is quite small. The second takeaway is that in class action lawsuits over COVID conditions, whatever prisoners gain at the trial court level they are losing on appeal with every single appellate decision to date being in favor of prison and jail officials. PLN will continue reporting the news and the litigation and releases occurring around COVID at all levels. Thanks to our many writers who have written and sent us updates on what is happening with COVID in their facility.

PLN's managing editor Ken and I read all the letters related to COVID that readers have sent us and they paint a dismal picture at every level. With winter coming, and with it "cold and flu season," we expect things to worsen even more.

As if COVID were not enough, prisoners in the Southeast are dealing with hurricanes while prisoners on the West Coast are subjected to forest fires. The wisdom of building all these prisons in remote rural areas may now be in doubt. Upcoming issues will report on these events as well. A pandemic, coupled with natural disasters in prisons, would seem like the topic of a very bad grade B movie, but sadly it is becoming all too common across the U.S.

A lot of new subscribers have joined us as part of our COVID special trial subscriptions. As the six-issue trial subscription ends, I hope readers decide to renew their subscriptions to continue receiving PLN. Please renew early so we can cut down on the renewal mailings — and it frees our staff up for other issues, like reading prisoner mail. We have also sent subscribers sample copies of our other monthly magazine, Criminal Legal News, so they will be aware of it as it is a newer publication. Subscribing to PLN and CLN will ensure you are well informed on all aspects of the criminal justice system. Subscribe now and encourage others to subscribe as well!

We have launched our annual fundraiser, and readers will soon receive our fundraiser packet, which includes our annual report and media articles about the Human Rights Defense Center, and more about everything else it does besides publish and distribute our magazines.

We only do one annual fundraiser, and we rely on support from readers like you to help pay for things like advocacy and litigation that subscriptions alone do not pay for. Please donate and support HRDC and the work we do if you can afford to do so. All donations, large and small, help. Please consider becoming a monthly sustaining donor. A number of people donate $10 a month to HRDC on a recurring basis, and while the donations seem small, they add up and do make a difference in the work we are able to do.

This is the last issue of PLN readers will receive before the election. For most presidential elections since 1992, we have run comparisons between the major party candidates and their track records on criminal justice issues. For the past 30 years, these have been comparisons in cruelty and brutality as candidates tried to outdo themselves in terms of who can serve the police state better. After John Kerry and John Edwards ran for president in 2004 on a platform calling for more rural prisons, I thought that would be tough to beat.

But Joe Biden, with over five decades dedicated to more cops, more prisons, more cages and less freedom for everyone, has managed to do so. He is truly a major and proud architect of mass incarceration and the modern American police state.

When Obama and Biden took office in 2008 amid the mortgage industry meltdown, they immediately sent billions of dollars to police, prisons and jails to prop up the repressive core of the American government at the local and state levels. Most likely every police and guard union endorsed Obama and Biden for office in 2008. The article with more details is in this issue.

From the day we first started publishing PLN on May 1, 1990, we have supported felon/prisoner voting and have long opposed felon disenfranchisement. But the bigger issue is not whether prisoners, felons or anyone else can vote, but who do we have to vote for? Not having candidates that differ from each other in any significant sense much less on any policy or practical
I n February 2020, WDRB News revealed a previously undisclosed $400,000 settlement paid by the Kentucky Department of Corrections (DOC) to the family of a state prisoner who starved to death while in segregation at the Kentucky State Penitentiary (KSP).

James Kenneth Embry, 57, died of starvation and dehydration at KSP on January 13, 2014. He had served four years of a nine-year sentence for drug and assault-related charges.

Embry had asked to be placed in segregation five weeks earlier, saying he feared for his safety, according to WDRB and court records from a lawsuit his family filed in 2016. He had a long history of mental illness. Despite this, KSP medical staff from CorrectCare-Integrated Health (CC-IH) took him off his medications at his request four months before he was placed in segregation.

Medical and security staff decided Embry must owe money, and fear of the people he owed caused him to ask to be placed in segregation. When he repeatedly asked to be placed back on his medications because he was feeling “anxious and paranoid,” they ignored his requests.

Likewise, they decided that he was just angling for a change in housing when he stopped accepting meals. This was despite the fact that he told them he wanted to hurt himself, banged his head on the cell door, and said he did not have “anything to live for.”

Embry refused 35 of his last 36 meals (and many meals prior to that), yet he was not even considered to be on hunger strike because, once in a while, he would accept the tea that went with the meal. Medical personnel considered accepting tea to signal the end of a hunger strike.

Medical personnel reportedly refused to provide mental health treatment. Security personnel repeatedly wrote Embry disciplinary cases for refusing (at least four consecutive) meals, twice placed him in a restraint chair, and pepper-sprayed him for scratching himself on the wrist with a plastic utensil. No one tried to help him as his psychotic state intensified.

An internal investigation by the state DOC determined that his death “occurred as the result of a systemic failure at the Kentucky State Penitentiary involving many interacting issues,” which included medical and security personnel scheduling their rounds for extremely early hours, “walking” their rounds without actually looking into the cells, placing burdensome restrictions on the request for medical services, not knowing what constituted a hunger strike, and having an unwritten policy of not starting psychiatric medications for prisoners who entered segregation off such meds.

Embry’s two surviving sons and his daughter filed a federal civil rights action, pursuant to 42 U.S.C. § 1983, against CC-IH, company personnel, and KSP staff, alleging violations of Embry’s civil rights and various state torts. They were represented by Tulsa, Oklahoma, attorney Daniel Smolen of Smolen Smolen & Roytman; Prospect, Kentucky attorney Gregory A. Belzley of Belzley Brathurst Attorneys; Owensboro, Kentucky attorney Bradley P. Rhoads of Rhoads & Rhoads; and Paducah, Kentucky attorney Daryl T. Dixon.

The $400,000 settlement paid by DOC was reached in March 2019, but did not become public until WDRB reported it on February 17, 2020. CC-IH reportedly also settled its part of the lawsuit, but details were not available under the state’s open records laws. The prison staff involved in the case no longer work for the DOC. One contract medical employee had his access to DOC institutions revoked. KSP currently contracts with Wellpath for prisoner health care. See: Burke v. CorrectCare-Integrated Health, U.S.D.C. (W.D. Ky.), Case No. 5:15-cv-00007-TBR.

Additional source: WDRB.com
For the first two months after the COVID-19 pandemic hit the U.S., Ohio’s response set an example. Thanks to an early shutdown order, the state’s per-capita deaths from the virus as of late April were less than half of those in neighboring Pennsylvania, a state with similar demographics.

But inside the two states’ prison systems, it was a different story.

By late April, the death rate from COVID-19 in Ohio prisons was 22 per 100,000, a rate more than 4 ½ times the overall Ohio rate and nearly twice the national rate. Ohio’s prisons have incubated two of the four largest COVID outbreaks in the nation.

In Pennsylvania’s prison system, which houses about 44,000 inmates at 25 facilities, the death rate was comparatively low—10 incarcerated people have died as of mid-August, for a death rate of 23 per 100,000 people, despite the virus showing up in each state just a few days apart. In fact, a Pennsylvania … inmate is less than half as likely to die of COVID-19 as a free Pennsylvanian.

Why have Ohio’s prisons failed so thoroughly to control the spread of COVID-19 when Pennsylvania fared far better?

No state has had a model approach for controlling the virus in prisons. All have made missteps that put inmates’ and staff members’ lives at risk, according to prisoners and prisoner advocates. Prison outbreaks have also spread into the communities outside their walls. But, whether through foresight or luck, factors in some states have kept the virus from running rampant as it has in Ohio prisons. As the country faces new waves of cases, corrections departments may be able to learn from what helped or harmed some states during the first stage of the pandemic.

While advocates for incarcerated people in Pennsylvania caution against holding that state’s experience as a model for how to respond to the pandemic, they agree that the answer may lie both in how crowded the prisons are, and how inmates are housed.

Crowded Prisons Spread Disease

Controlling an outbreak of infectious disease in a prison is never easy. As with other communal living facilities such as nursing homes, once a respiratory illness enters, close quarters gives a virus ample opportunity to spread.

Overcrowding only makes the situation worse. In Ohio, where the prisons were 32% above capacity in February, the virus spread rapidly.

In Pennsylvania’s prisons, at 95% of capacity in February, there were outbreaks in several prisons, but far fewer deaths.

That state’s biggest outbreak to date—183 infections and five deaths among inmates—happened at its oldest prison facility, the 131-year-old State Correctional Institution (SCI) Huntingdon in central Pennsylvania.

“SCI Huntingdon dates from the late 1800’s and has cells with open bars, and four-story housing units with open air shafts to all of the cells,” said Claire Shubik-Richards, executive director of the Pennsylvania Prison Society, a non-profit inmate advocacy organization. “So when the virus came in it spread like wildfire.”

In other, newer Pennsylvania prisons with significant outbreaks, such as SCI Phoenix, the virus proved easier to control. Only 49 inmates at Phoenix, which opened about two years ago, have tested positive and four have died, despite being located in hotspot Montgomery County, just north of Philadelphia.

“The thing about that facility was that the outbreak went up and then went down pretty quickly because it’s a facility where isolating people is pretty easy,” Shubik-Richards said, because it has more single- and double-occupancy cells than open dorm units.

In Ohio’s more crowded prison system, the virus was first detected in a staff member in the 66-year-old Marion Correctional Institution on March 29. Less than a month later, nearly 4,000 inmates across the state had tested positive for the virus; 10 were dead, as was one staff member.

Now, the death count is approaching 80. Ohio’s prison system is home to two of the four largest COVID-19 outbreaks in the nation, with 2,440 cases at Marion Correctional Institution in rural central Ohio, and 1,792 at Pickaway Correctional Institution outside Columbus.

Pickaway, built in the 1920s as a mental hospital and converted to a prison in 1984, was designed to hold 1,328 people. As the pandemic began in Mid-March, it held 2,047—54% over capacity.

In one cell phone video that purportedly shows the inside of Pickaway, seemingly endless racks of double-bunked beds are visible, with no barriers and little space between.

“Everybody’s stacked on top of each other, man,” says the person wielding the camera. “Ain’t no social distancing in here.
Virus Runs Amok in Dorms

Pickaway was designed to have 87% of its beds in open double-bunk dorms, described in a 2015 state prison renovation plan as “barrack-style” (sic), where beds were typically three feet apart. When prisons are overcrowded, staff often squeeze even more beds into the dorms than they were designed to hold, said Meghan Novisky, a Cleveland State University professor who studies how prisons impact health.

In the 2015 master plan, state officials acknowledged that the prison’s dorm-style housing was a problem, not because of disease, but because it elevated prisoners’ stress, setting the stage for unrest.

“A critical need is to improve the dormitory living conditions and reduce the very high levels of crowding,” the report said. “The [Strategic Capital Master Plan] recommends the phased conversion of all dormitory living units to a cubicle-type configuration where inmates will have a higher degree of personal space and privacy.”

Ohio Department of Rehabilitation and Correction (DRC) spokesperson Jo-Ellen Smith said that some of the plan’s recommendations for Pickaway have been implemented. The Orient Correctional Institution, a prison adjoining Pickaway that hasn’t been used since 2001, was demolished, as was Pickaway’s dilapidated E Block of dorms. But construction of a new unit with over 1,000 beds is on hold due to the pandemic.

Around March 29, leadership at Marion – designed to hold 73% of its inmates in dorms – declared that prisoners in dorms would sleep arranged head-to-foot. That way their faces would be more than three feet apart, according to an email between the prison’s medical services director and the Marion County public health department, obtained by the Documenting COVID-19 project at The Brown Institute for Media Innovation.

According to daily statistics released from Ohio DRC, on April 21, more than 28,000 of the state’s 48,396 inmates were either “isolated” or “quarantined.” But in overcrowded prisons where most inmates lived in dorms, both happened in groups, according to numerous inmates.

Daily coronavirus reports from DRC noted that “isolation” meant keeping infected inmates away from those who weren’t sick, while “quarantine” meant “limiting the movements” of someone who may have been exposed to the virus. Guidance issued by the DRC early in the pandemic said it was preferable to quarantine inmates in the infirmary, but if not enough cells were available, they could be “quarantined” in “an area large enough to hold beds and equipment for a minimum of 50 patients.”

Marion was designed to hold 450 inmates in cells. On April 16, 2,417 inmates there were listed as “in quarantine.”

The close quarters of dorm-style housing is a problem in other Ohio prisons, too, inmates reported.

Javalen Wolfe, an inmate incarcerated in dormitory-style housing at Belmont Correctional Institution in southeastern Ohio, said that every time a flu or a cold enters the prison, there’s no stopping it.

“This is how it works because we live so close together. If one person gets sick, everybody gets sick,” he said. “We are literally two feet, maybe two and a half feet between the next person, and there’s no divider, no wall.”
At least nine Belmont inmates had died of COVID-19 as of Aug. 10. Belmont was designed to have 1,855 beds, over 90% of which would be in dorms. As of March 17, near the beginning of the outbreak in Ohio, 2,719 inmates were crammed into the prison—146% of the population it was meant to hold.

Of the 77 confirmed COVID-19 deaths in Ohio prisons as of mid-July, 67 of them were in prisons that were designed to hold at least half their inmates in dorms. Of the deaths in prisons made up mostly of cells, 10 were in Franklin Medical Center, a small prison dedicated to caring for the system’s most seriously ill inmates.

The worst Pennsylvania outbreaks were at two prisons where inmates were housed almost exclusively in cells—Huntingdon and Phoenix. But the system overall houses just 19% of its inmates in dorms. Roughly 60% of Ohio’s inmates live in dorms, according to Department of Rehabilitation and Corrections Director Annette Chambers-Smith. Each dorm can hold anywhere from 40 to 300 inmates.

And even Pennsylvania’s worst prison outbreaks paled in comparison to Ohio’s. At Huntingdon, the prison with the most deaths, 359 coronavirus cases were confirmed, out of 1,835 inmates. Phoenix housed 2,825 inmates as of late July, 89 of whom tested positive for COVID-19 at some point.

Since mass testing wasn’t conducted at any of the Pennsylvania prisons, the death toll is probably a more faithful indicator of the spread of the disease. The inmate death rate at Huntingdon was 272 COVID-19 deaths per 100,000 people. At Pickaway, it was 1,709, and at Franklin Medical Center, it was over 2,000.

In an interview with Eye on Ohio, DRC Director Annette Chambers-Smith acknowledged that the open bays make it difficult to control the virus. She said they have attempted to mitigate dorm crowding by spreading inmates out in other areas that aren’t normally used for housing, such as gymnasiums and classrooms.

“They literally installed lavatories and facilities in a building so that it could be used overnight to house people,” she said.

And administrators are experimenting with makeshift barriers between dormitory beds at most of its prisons to reduce transmission.

Reducing Overcrowding – Release of Prisoners

Pennsylvania started the pandemic in a relatively good position in terms of space after years of modest, gradual population reduction. They freed up more space after the pandemic hit by giving 3,500 people sentence reprieves and shutting down the county court system.

Several other states have taken steps to free up space in their prisons since the pandemic began, with 15 reducing their prison populations 10% or more between March and June, according to data from The Marshall Project.

Connecticut has taken the most drastic measures, cutting its inmate population by more than 22%, from 12,364 on March 8, the day the virus was first detected in a Connecticut prison, to 9,604 on Aug. 12. Six inmates have died so far in the Connecticut system, which houses only 12,000 inmates thanks to a decade-long pre-pandemic decarceration effort that reduced the population from about 20,000 in 2008.

Compared to the state’s prison population in March, its per-capita death rate has been less than half that of Ohio’s prisons.

That’s despite the fact that, according to prisoner advocate groups in Connecticut, the state made many of the same missteps as Ohio in their attempts to quarantine and isolate inmates.

Melvin Medina, public policy and advocacy director for the ACLU of Connecticut, said that the CDC has recommended isolating people with laboratory-confirmed COVID-19 together and quarantining close contacts together as a group due to limited space in prisons, but did not indicate how large these groups can or should be.

“Our [Department of Corrections] took that to say that in dorm-style settings if there was one sick person in a dorm of 100 people, that meant that whole block was quarantined together,” he said. “They locked sick and healthy people in together and let the virus run its course. In hindsight, I’m deeply thankful that our death count was really low. We could have had a disaster, and we got very lucky.”

Advocates like Novisky say releasing inmates is the best way to protect them from COVID-19, since any group housing makes it hard to control the spread of disease.

Even in places where prison populations have dropped by double-digit percentages, advocates say it’s not enough.

“They need to release those that are medically vulnerable,” based on the CDC’s criteria, not just those who are close to the end of their sentences or incarcerated for non-violent offenses, said Nyssa Taylor, criminal justice policy counsel for the American Civil Liberties Union of Pennsylvania. The state is home to about 4,000 older adults serving life sentences, she said, one of the highest such populations in the country.

“I don’t think we should be politicizing who to release,” she said. “I think it’s really important to look at how to save lives, not just release all the non-violent.”

Meanwhile, Ohio’s prison population fell by about 5.2% between March and June. By Aug. 11, it had fallen 9%.

“I think part of the problem that they’re running into is we really haven’t taken advantage of options to reduce our population size,” said Novisky.

On April 15, Ohio Gov. Mike DeWine announced he was invoking an overcrowding statute to release some prisoners early. Inmates who were within 90 days of their planned release date could be eligible for early release, but only if they met a list of criteria. That excluded people convicted of most types of violent crime, who had served more than one sentence, who had previously been denied judicial release, or who had committed a serious infraction while in prison.

“It basically eliminated everyone,” Novisky said.

Chambers-Smith said the department has taken multiple steps to reduce the population, including reviewing cases of elderly inmates or those with health conditions that make them especially vulnerable to COVID-19. The list of crimes that disqualify inmates for early release under Ohio’s emergency overcrowding law, she noted, is set by the Ohio legislature. The law would have to be amended to loosen those criteria.

“There are more serious crimes where you wouldn’t want to think about people getting out before they’re ready,” she said. “There’s a balancing act here between keeping the public safe and keeping the people in prisons safe.”

Of the 77 Ohio inmates who have died of COVID-19, 34 – more than half – were in prison for sex offenses. Another 18 had been convicted of murder. The average sentences for rape or murder are more than...
20 years. Many of the men killed by the coronavirus had grown old in prison.

But most Ohio inmates are serving time for lesser crimes. Only about 12% of Ohio’s inmates were convicted of murder, and 16% were sex offenders. Meanwhile, 15% of Ohio’s inmates were in prison for drug offenses, with 10% serving time for burglary.

But almost a third of Ohio’s inmates released in 2014 ended up back in prison within three years, according to the most recent recidivism study published by the state. All of those prisoners would have been disqualified by DeWine’s exemptions. And with the prisons packed full of repeat offenders, even low-level ones, it would have been difficult to keep older, more vulnerable inmates serving long sentences for more serious crimes isolated.

A spokesperson clarified that it was a joint decision of the governor’s office and the DRC to disqualify repeat offenders, not a stipulation of the emergency overcrowding law.

The day of his announcement, DeWine said he had found 105 people who were eligible for early release, though he noted that more would be considered as they came eligible for early release, though he noted that more would be considered as they came within three years, according to the most recent recidivism study published by the state. All of those prisoners would have been disqualified by DeWine’s exemptions.

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The day of his announcement, DeWine said he had found 105 people who were eligible for early release, though he noted that more would be considered as they came within 90 days of the end of their sentence.

Since then, the number of inmates has declined slightly, but more due to court shutdowns meaning fewer people sentenced than the slow trickle of early releases. As of Aug. 11, Ohio’s prison population was still nearly 8,000 people over capacity.

Putting the Community at Risk
Ohio’s prison pandemics also put those outside of prison walls at risk.

As prisons were cut off from visitors, it may have created the false impression that diseases that spread in prisons would stay

in prisons. But the Marion outbreak demonstrated otherwise. County health officials and residents voiced concerns in emails that both staff and inmates who finished their sentences were capable of spreading the virus across multiple counties.

In one email obtained by the Documenting COVID-19 project, Traci Kinsler, the Marion County health commissioner, noted that the Marion prison was not isolating inmates before releasing them. Marion released at least one inmate who was known to be infected with COVID-19. He moved to Ashland County.

Marion staff members who contracted COVID-19 lived in at least 20 different counties, according to one message. Two were from out of state.

Chambers-Smith said the department initially offered staff members the option of staying at the facility where they worked to avoid infecting their families. When that offer had few takers, they contracted with hotels to give prison workers a place to sleep, or at least shower before they went home.

Inmates are tested before their release dates, she said, and those who were selected for early release have their release dates pushed back if they test positive until they are considered recovered—officially defined by the department as 14 days past the onset of symptoms, and 72 hours symptom-free. If they reach their regularly scheduled release date, the department has no authority to keep them incarcerated, but will release COVID-positive people with a quarantine order. She said the department collaborates with health departments and religious organizations to give them a place to live and supplies so they can self-isolate.

Kinsler told Eye on Ohio that the Marion prison outbreak flooded the Marion Public Health Department with cases all at once, and at first officials in various departments struggled with contact tracing. They were able to contact most of the infected people who were released, though, and alerted the county health departments where they settled.

Ultimately, most of the 2,532 people known to be connected to the outbreak at Marion Correctional were either inmates or staff. But the virus made its way to an additional 58 people outside the prison, including family members, health care workers and food workers.

And there could be other cases where health workers simply forgot to label the infection as related to the Marion prison outbreak in the database.

Chambers-Smith said the danger works both ways.

“If there’s COVID out in the community, there’s COVID in the prisons,” she said.

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New York Jail Accused of Discrimination by Female Prisoners

by Kevin Bliss

In March 2020, the Oneida County Correctional Facility in New York was accused of discrimination against the women who are housed there. Two months prior to that, all the women were moved from pods that offered the same privileges as men to two wings of a unit last used for disciplinary segregation.

The reasons stated for the move by county Sheriff Rob Maciol were a declining female population and a state order requiring the separation of “at-risk” women from the general population.

Guards came into the women’s pod on January 22 and told them to pack their property. Prisoners stated that they were then moved to an older section of the jail that still had the surfaces “covered with toilet paper, feces, and urine.”

It contained a closed-in recreation yard that they were given access to only one hour per day, smaller living spaces with no privacy for the toilets; tainted water; only one shower, and no access to video-chat services on facility tablets.

Upon entering Henry Block unit, the women were split up. Those considered to have medical or mental health issues or guilty of serious offenses were housed in Henry Left and all the others in Henry Right.

Maciol said the move was permanent. The original women’s unit cost much more to operate with three times the number of cells, which were simultaneously powered and heated, and the need for an additional guard (who received overtime pay). He said the move was based on population and not gender. There are currently 230 male prisoners in the jail.

A Freedom of Information Law request filed by the Observer-Dispatch showed that several of the female prisoners filed grievances over the move. They claimed that the loss of certain privileges created a disparity between them and the men prisoners. They said they endured housing far worse than the men and were being denied the ability to video-chat with loved ones.

Maciol said that all grievances had been addressed except the one concerning the video chats.

Staff responsible for responding to grievances answered the loss of privileges with: “Privileges (sic) aren’t a need they are a necessity. You are receiving the same rights as other inmates in the facility. Due to the different classifications in the pod, all of the females were moved to a different unit to separate (sic) the different types of classifications.”

Source: uticaod.com

BOP Inspector General Rips State for Failure to Control COVID-19 at Lompoc in California

by Derek Gilna

Federal Bureau of Prisons (BOP) Inspector General (IG) Michael Horowitz has issued a report itemizing the multitude of mistakes and mismanagement that aggravated the troubled agency’s response to the COVID-19 hotspot at the Lompoc, California, federal prison complex.

The 36-page, July 23, 2020 report found that continuing medical staff shortages and failure to follow BOP national guidelines for detection and treatment of COVID-19 put the Lompoc prison complex in a state of crisis, which had been beginning to abate in summer.

After two guards apparently introduced the virus into the prisons in February or March of 2020, it spread rapidly, and at one point over 75% of the prisoners at the FCI were found to be infected. According to a previous story in Prison Legal News (PLN, June 2020, p.32), “Federal Correctional Institution (FCI) Lompoc, located in Santa Barbara County, holds 1,162 low-security prisoners, of whom 911 had tested positive for the novel Coronavirus that causes the disease … the highest number of cases in any BOP prison.” As of mid-July, more than 1,000 inmates had tested positive and four had died.

All of this came after March 2020 when Attorney General William Barr directed the BOP to make liberal use of home confinement, but this did not happen at Lompoc, the report said. “Despite this admonition, the data does not reflect that the BOP took immediate action at Lompoc,” it said. In mid-May, only 34 prisoners had been moved out of the complex, a fact that the acting war-
den blamed on a lack of halfway house space, although he did not explain why vulnerable prisoners had not been transferred to home confinement instead.

The report further noted that, “Based on the available data, the (OIG) estimated that, as of April 12, approximately 957 of the 1,775 prisoners in Lompoc’s low and minimum security facilities were potentially eligible for home confinement under existing authorities and BOP guidance.

By comparison, as detailed above, the BOP Central Office included 509 prisoners in the nine rosters it provided to FCC Lompoc for home confinement consideration between April 4 and May 15, illustrating the BOP failed to follow its own guidelines.

The OIG, in an earlier report, had criticized the BOP for failure to properly staff the medical departments of its prisons, and this problem was especially acute at Lompoc.

According to the report, “prior to the COVID-19 outbreak the institution’s medical staffing was at only 62 percent. We found that this preexisting shortage of medical staff may have negatively impacted ... Lompoc’s ability to conduct screenings of inmates and staff members for COVID-19 symptoms, a time-consuming process that had to be performed on a regular schedule while also providing routine medical care to the institution’s approximately 2,700 inmates.”

Even when the staff at Lompoc belatedly began to follow BOP guidelines on March 16, 2020, the report said, “its initial screening process was not fully effective.” Staffers identified minimal direction from senior management and a lack of adequate personal protective equipment as a factor in the rapid spread of the virus. The high number of infected individuals only became known when health officials in Santa Barbara County, concerned about a spread of the virus from the prisons into their communities, offered to test all prisoners and staff, as the BOP maintains a policy of only testing prisoners and staff if they show obvious signs of infection.

As is his custom in his reports, Horowitz said that he would make no specific recommendations. “Rather,” he said, “our reports are intended to assist the BOP and the Justice Department in identifying strategies to most effectively contain current and potential future COVID-19 outbreaks.” He promised, however, to review “the Department’s and the BOP’s use of early release authorities, especially home confinement, to manage the spread of COVID-19 within BOP facilities.”

Sources: apnews.com, bop.gov, oig.justice.gov

Dark Web Creator Petitions President Trump for Clemency

by Ed Lyon

Young Ross Ulbricht (aka Dread Pirate Roberts) was an Eagle Scout, held scholarships throughout college, earned a master’s degree, worked in science, and became a self-described peaceful entrepreneur. A supporter of liberty, personal privacy and free markets, Ulbricht founded the website Silk Road when he was 26.

Somewhat analogous to Star Wars’ young Aniken Skywalker’s journey to the Dark Side of The Force, Ulbricht’s Silk Road moved to the Dark Web. Silk Road quickly became a virtual hotspot for selling all manner of illegal goods, including narcotics, fake passports and credit card information.

During Silk Road’s short-lived tenure between 2011 and 2013, it reputedly became the world’s largest virtual black-market economy. Paying for the illicit items available on Silk Road was accomplished through Bitcoin, the cryptocurrency. Ulbricht had reportedly made more than $100 million by the time he was arrested in 2013.

As Ulbricht’s 2015 trial for money laundering, conspiracy and computer hacking progressed, allegations of six murder-for-hire plots were brought up. During final arguments, the prosecutor told the jury none of the alleged contract murders ever happened. Why then bring unadjudicated offenses before a petit jury to support the charged offenses that culminated in two life-without-parole and one 40-year sentence?

Ross’ parents, Lyn and Kirk Ulbricht, have initiated a clemency petition drive, requesting President Trump to deliver their son from what is effectively a death by incarceration sentence. They have gained support from over 250 organizations and prominent individuals, from the right to the left of the political spectrum.

His online clemency petition had garnered over 340,000 signatures as of early August, but as of publication President Trump has not acted.

Sources: azcentral.com, decrypt.co, freeross.org

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COMMUNICATION BETWEEN ATTORNEYS and their clients has long been protected by federal law. Technology, however, has changed the way people in the legal field communicate in the span of a generation — a pace that has left legal protections behind.

“It’s common attorney sense, a bedrock of American law: when your attorney communicates with you, that’s supposed to be privileged,” said Jumana Musa, director of the Fourth Amendment Center at the National Association of Criminal Defense Lawyers (NACDL).

Common sense or not, that principle has not stopped federal prosecutors from prying into electronic communications to pursue convictions. The practice dates to at least 2011 when an incarcerated former Pennsylvania state senator’s emails to his attorneys were used as evidence to lengthen his sentence.

An assistant U.S. attorney in New York’s Eastern District warned defense lawyers in June 2014 that such communications were fair game, writing that “emails between inmates and their attorneys ... are not privileged, and thus the office intends to review all emails.”

A bipartisan bill passed in the U.S. House of Representatives on Sept. 21, 2020 seeks to end this practice by barring emails from prisoners to their lawyers from being monitored.


Jeffries has proposed similar bills before but hopes his persistence will be rewarded by the growing momentum of the criminal reform movement.

“Email is the most efficient way for an attorney to communicate with an incarcerated client and should enjoy the same protection as telephone calls and other forms of private communication,” Jeffries said.

The Bureau of Prisons had previously claimed its system lacked the complexity to sort emails to or from specific email addresses. An update in technology by October 2017 prompted then-Acting U.S. Attorney Bridget Rohde to inform the Federal Defenders of New York of the change in policy.

“The government now agrees to request that the BOP exclude from most productions communications between a defendant and his or her attorneys and other legal assistants and paralegals on their staff,” Rohde stated.

Several unanswered Freedom of Information Act (FOIA) requests by the NACDL led the group to file a FOIA lawsuit in October 2018 to discover to what extent prison emails were being filtered. Proponents of the new bill agree that it would allay fears of government intrusion into attorney-client communications to rest.

Sources: law360.com, washingtontimes.com

Growing Need to Protect Attorney-Client Emails
by Jayson Hawkins

Prison Postcard: Life in the Time of COVID, Correctional Center, Virginia
by Daniel Rosen

I’m here at the Greensville Correctional Center in southern Virginia. This place holds up to 3,000 inmates. On August 7, we went on lockdown for the second time in four months. There were just too many virus cases and too few staff for this place to function. On August 22, they tested everyone for the second time in three months.

The first round of testing was done in late May, with the National Guard’s help, inmates and staff alike. Everyone was locked down for a week while we awaited results. Around 250 inmates and 60 staff tested positive, roughly 8 to 10 percent of both populations. For a couple of months after that, when prisoners developed symptoms, they were removed from the cellblocks, quarantined, and monitored.

There was an entire building of sick and quarantined inmates on another part of the compound, though the official numbers didn’t appear to reflect that. Officially, one person has died from the virus here, according to DOC website — but two other recent deaths may have been virus-related. One of them was wheeled down the walk with CPR being performed on him as many of us watched from the rec yard. He didn’t make it, we found out.

Between May and August rounds of testing, in my ‘cluster’ of buildings most cellblocks have bounced back and forth between “code green” (clear) and “code yellow” (suspected exposure) status. Three have been on code red (total lockdown) at some point because of numerous confirmed cases.

My block was green almost this whole time — officially, no cases at all. We were manning the kitchen for a few weeks, because all the regular workers couldn’t leave their building. We know we were lucky — and we also know there were some people positive in here. They had obvious but mild symptoms, and they just laid low and toughed it out. Those feeling sick don’t want to report it and end up quarantined.

In late July and early August, some prisoners in code yellow housing units were tested, and scores of new cases were found. In one cellblock alone, 60 inmates — three-fourths of the pod — were infected. They went code red, and the 19 who came up negative were moved to the visitation room. A couple of other blocks soon went the same way, and the gym was used for makeshift housing for negatives, too.

Between the severe staff shortages...
and the rising positive cases, the August 9 lockdown was probably inevitable. Over 200 new cases were identified among just a few housing units. We went on code yellow ourselves on August 12 because of just one symptomatic inmate. The testing that followed on August 22 revealed three more positive cases on our block, and those people were moved out to quarantine in the segregation building. Many of the others in here who'd shown symptoms over the prior weeks had recovered enough to test negative by then, apparently.

Things have been going downhill since March, when virtually all classes, treatment programs, religious services, library, and non-essential work were shut down. Strangely though, the Virginia Correctional Enterprises (VCE) furniture shop has been kept open this whole time. I guess DOC considers VCE profits to be essential.

Visitation was canceled, of course, and outside volunteers no longer allowed. The chow hall was closed and meals served in cells. Outdoor recreation was curtailed to just a few hours a week, then canceled outright, and only recently reinstated. We've been restricted to cells for all but an hour or two a day. Short-staffing has often meant that even limited rec time was canceled, in practice.

Workers in the housing units are cleaning constantly, and they give us soap and disinfectant for our cells.

Masks were handed out pretty early on, though replacements are hard to get. Movement of inmates between pods was basically eliminated from the beginning. These changes have been unwelcome, and people grumble about them, but for the most part we understand they’re necessary to protect everyone.

What hasn’t happened to any serious degree is an early release of inmates. Besides the steps described above, thinning our ranks is the most effective thing VADOC could have done to reduce the spread of the virus. To that end, the State Assembly gave DOC authority to release 2,000 inmates who were deemed no threat to the community and going home within 12 months anyway.

About 575 inmates (or 1.5% of VA’s inmate population) have been released early so far, and many of those were DOC inmates held in local jails. Given the high number here of probation violators, the very elderly, those with underlying medical conditions — it’s hard to fathom why more haven’t left. Virginia must have thousands of inmates with less than a year left on their sentence.

This place is dysfunctional even on the best days. With the added chaos of the virus, everyone — staff and inmates alike — is now just trying to get through each day intact.

It seems like we are going to be on these restrictions for the long haul, until next year is the consensus. Meanwhile, no one can see their family or go to work or school, there’s little to do, and more fights are breaking out as frustrations mount. Many of us know that it could be worse though, and understand that things could still go downhill further. We try to stay flexible and roll with the punches. And we wake up every day hoping our color code has gone back to green.

[Editor’s Note: 655 inmates had tested positive for COVID-19 at Greensville CC by mid-September. The author’s cell block changed back to code green status on September 5, 2020.]
New York Governor Cuomo Creates Prison Nursing Home During Pandemic

by Anthony W. Accurso

A recent report by The Intercept outlined New York Governor Andrew Cuomo’s plan to move elderly prisoners to an “isolated” upstate prison to allegedly protect them during the pandemic, and how this plan may have backfired.

In June 2020, 96 elderly male prisoners were transferred to the Adirondack Correctional Facility in the mountainous North Country of New York State. Three years ago, the facility was converted to house teenagers prosecuted as adults, but the young prisoners were all transferred out to create a place to house vulnerable prisoners during the COVID-19 pandemic.

While the North Country area has seen some of the lowest rates of infection in the state, at least one of the elderly prisoners was confirmed to have the virus shortly after arriving despite (being at that time) asymptomatic.

There are two places that have seen higher than average rates of infections and deaths compared to the general population: prisons and nursing homes. At the Adirondack facility, Cuomo has merged the two entities.

Criminal justice activists have long criticized the business of operating correctional and detention facilities as no exception. Within the private prison industry, two firms stand out for their sheer size: Florida-based GEO Group, with 2019 revenues of $2.477 billion, and Tennessee-based CoreCivic, with $1.981 billion in 2019 revenues.

But they also stand out for another reason: Like other corporations accused of prioritizing profits over people, both firms have been plagued by allegations of controversial business practices. Critics claim that the public-private partnerships through which the companies take over prison operations actually serve to line the pockets of politicians in exchange for regulatory concessions that curb oversight and protect the industry’s financial bottom line — all at the expense of the prisoners they are charged to oversee.

That, however, may soon be coming to an end.

Criminal justice activists have long sought, without success, to dismantle the private prison industry. Their efforts have been thwarted, in large measure, by an apathetic public with little appetite for addressing issues related to mass incarceration in America. But with the 2018 immigration crisis, that began to change. Images of children being separated from their families and the abysmal conditions inside some privately operated detention centers brought a collective gasp from many Americans, who were appalled by what they saw, and they demanded action.

Galvanized by the public backlash, opponents of the private prison industry renewed their efforts. This time they sought to affect the industry’s bottom line by bringing the fight to a new battlefield: Wall Street. Using #FamiliesBelongTogether and #BackersOfHate as their rallying cry, a coalition of prison reform advocates circulated petitions, pressured stockholders, and organized protests to demand that Wall Street sever its financial ties with private prison companies. And they succeeded. In 2019, eight banks — JP Morgan Chase, Wells Fargo, Bank of America, to name a few — announced they would no longer finance the operations of GEO Group, CoreCivic, and others.

Source: theintercept.com

GEO Group and CoreCivic Lose Critical Financial Support

by Keith Sanders

Big business is king in America, and the business of operating correctional and detention facilities is no exception. Within the private prison industry, two firms stand out for their sheer size: Florida-based GEO Group, with 2019 revenues of $2.477 billion, and Tennessee-based CoreCivic, with $1.981 billion in 2019 revenues.

But they also stand out for another reason: Like other corporations accused of prioritizing profits over people, both firms have been plagued by allegations of controversial business practices. Critics claim that the public-private partnerships through which the companies take over prison operations actually serve to line the pockets of politicians in exchange for regulatory concessions that curb oversight and protect the industry’s financial bottom line — all at the expense of the prisoners they are charged to oversee.

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The effect on the private prison industry was severe. GEO Group and CoreCivic lost a reported $2.35 billion in credit lines and term loans, lowering their credit ratings and significantly curtailing their ability to obtain new contracts, finance their debt, and maintain their long-term operating budgets. GEO Group’s March 2019 quarterly report stated that the loss “could have a material adverse effect on our business, financial condition, and results of operation.”

Now there are 22 states with bans on contracts with private prison operators. The federal Bureau of Prisons uses them — as does federal Immigration and Customs Enforcement (ICE). From a 2012 peak of more than 136,000, the number of prisoners housed by industry firms has shrunk to about 122,000 — just over 8 percent of the people incarcerated in America.

GEO Group and CoreCivic responded by teaming with Management and Training Corporation (MTC), another company that operates correctional facilities, to form Day 1 Alliance (D1A). Launched in October 2019, D1A’s mandate is to “educate America on the small but valued role the private sector plays in addressing correctional and detention challenges in the United States,” according to its published mission statement.

To perform this task, D1A hired Alexandra Wilkes, the former executive director of the America Rising SuperPAC, a conservative opposition research firm that has also faced accusations of using questionable tactics to discredit Democratic political opponents.

“We launched D1A because of the huge gap that has opened up between the false, distorted rhetoric that activists and some politicians use against this industry and the facts on the ground,” Wilkes said.

With her at the helm, D1A went on the offensive. Wilkes crafted op-eds and press releases to recast the private prison industry as “private contractors [who] lead through innovative programs that reduce recidivism, help prevent humanitarian crises...and provide cost-effective solutions to government partners in order to achieve vital public safety needs.”

“Don’t be fooled,” warned Jess Morales Rocketto, chairwoman of the nonprofit Families Belong Together. “This is an effort to defend a multi-billion-dollar industry that regularly gouges American taxpayers and take attention away from the conditions in these jails.”

She said D1A’s published talking points are designed to rehabilitate the industry’s tarnished public image, but they may not reflect any actual changes in GEO Group, CoreCivic, or MTC’s business practices. Some claims made by Wilkes on behalf of D1A are refuted by numerous reports citing privately run prison facilities for inhumane living conditions and implementing cost-cutting security measures that put the safety of prisoners at risk. According to a study by The Public Interest, recidivism rates at private prisons are higher because prisoners are exposed to “higher rates of violence and [are] housed at facilities far from their communities.”

Will the Day 1 Alliance help the private-prison industry recover? Only time will tell. As Wall Street and others have abandoned GEO Group, CoreCivic, and MTC, it remains to be seen if the politicians who have staunchly supported the industry in the past will abandon them, too.

Source: news.littlesis.org, vox.com
Danish Funds Invest In American Private Prisons

by David M. Reutter

When one thinks of financial support for America’s privatized prisons, one assumes it primarily comes from entities in the United States. But that is not always the case.

A February 18, 2020 story by Danwatch, a Danish investigative website, uncovered three Danish pension funds that had invested into two of America’s biggest prison profiteers: CoreCivic and the GEO Group. PKA, Villiv, and Lærenes Pension are pension funds for Danish social educators, social workers, nurses, and medical secretaries.

PKA invested the equivalent of about $8.5 million in the two private prison companies. Lærenes Pension has invested about $1.1 million in CoreCivic, and Villiv invested about $160,000 in the two companies.

The Denmark pension fund investments come as America’s largest pension funds and banks have increasingly divested themselves from these prison profiteers. Politically, the companies are becoming pariahs, as some state Democratic parties are distancing themselves from these prison profiteers. The Obama administration issued an executive order to phase out federal use of private prisons, but that order was reversed by President Trump. Both CoreCivic and GEO Group were donors to the Trump campaign.

“This is an industry that profits from human suffering,” said David C. Fathi, director of the National Prison Project at the American Civil Liberties Union. “This is an industry that allows the United States to maintain the largest prison population in the world, and to detain tens of thousands of immigrants and asylum seekers.”

Following the Danwatch investigation, PKA announced it was divesting all of its shares in the two companies. “We invest in accordance with UN Global Compact’s principles on corporate social responsibility and sustainability which must, among other things, ensure that companies do not contribute to human rights violations,” PKA press officer Nicholas Rindahl said in an email to Danwatch. “We do not believe that these companies live up to these principles, and that is why we have recommended that they be excluded from our investments at the earliest opportunity.”

The problem is that investors see profit in privatized prisons. To dissuade such investors, media and other organizations must highlight how profits come at the expense of human suffering.

Source: danwatch.dk

$12.5 Million Settlement for Oklahoma Prisoner’s In-Custody Death Riled Sheriff’s Race

by Kevin Bliss

At a June 23, 2020, forum with the three candidates for sheriff in Garfield County, Oklahoma, questions arose about a $12.5 million 2019 settlement of a wrongful death suit filed by the family of former detainee Anthony Huff, who died at the county jail in Enid in June 2016.

Sheriff Jody Helm, Deputy Darrell Momsen and their fellow candidate Cory Rink all promised more training and transparency. Helm was appointed after the April 2018 death of acting Sheriff Rick Fagan, who had been tapped for the job when former Sheriff Jerry Niles went on administrative leave during the investigation into Huff’s death.

Niles and his daughter-in-law, Jennifer, the jail’s former administrator, together with Turn Key Health Clinic employee Lela June Goatley, allegedly left Huff in a restraint chair on June 6, where he remained until he died 55 hours later. The suit alleged that proper protocol was not followed in the decision to place Huff in the chair. He was not going to do anything and was not going to call a physician for any more help.

Huff began experiencing delusions and hallucinations and was placed in a restraint chair on June 6, where he remained until he died 55 hours later. The suit alleged that proper protocol was not followed in the decision to place Huff in the chair. He was not going to do anything and was not going to call a physician for any more help.

Huff’s arrest on June 4, 2016, was not his first visit to Garfield County Detention Center (GCDC), so guards and staff were familiar with him and his medical needs. They had records that showed Huff suffered from heart disease, insomnia, hypertension, and depression. But Huff did not receive an initial medical screening at intake. He was booked into GCDC without any of his prescriptions. He also suffered from alcoholism and was at high risk for withdrawal.

The suit held county Jail Administrator Jennifer Niles, county Jail Administrator Jennifer Niles,
Philadelphia Jails to Release Prisoners Earlier in the Day
by Bill Barton

Indepedently obtained and analyzed data from April 2017 to April 2018 showed that 73 percent of all prisoners — more than 16,000 in total — were released after Philadelphia jail facilities’ cashier offices were closed, which left them without phone, other possessions, identification and cash for hours, or in some cases days, as those offices are closed on weekends.

The information was revealed in a series of stories in August 2020 by The Philadelphia Inquirer. Following publication, Prison Commissioner Blanche Carney said, “Anyone released after the close of their facility’s Cashier’s Office will now receive their property at their facility.”

Ann Jacobs, director of the Prisoner Reentry Institute at New York City’s John Jay College of Criminal Justice, said, “This is a good example of a system listening and responding in a way that looks like it will make a big difference.” Making sure that the changes are permanent will require “collaborative vigilance,” said Jacobs.

“You can’t rest on your laurels. What we know about any kind of systems change is that it changes as long as it’s being observed and measured.”

Philadelphia Jail's spokesperson Mallie Salerno stated that every person released from jail will receive their possessions at the facility in which they were incarcerated, regardless of time. And those who require cash will be driven to Philadelphia’s largest jail, Curran-Fromhold Correctional Facility, to retrieve their money from a prison staff member, regardless of the time of day.

In terms of releasing prisoners at reasonable hours when public transportation is available, things aren't so straightforward. Shawn Hawes, a spokesperson for the Philadelphia Department of Prisons, said, “We cannot legally hold anyone beyond a court-ordered release.” The department has a policy of not releasing female prisoners after 1 a.m., but it was found that, according to the Inquirer, in a recent year 273 female prisoners were released between 1 and 5 a.m. when there were no city buses running.

“We try to discourage it, but we can’t hold them,” said Hawes.

“These women by design are vulnerable,” Jacobs said. “They are going to be preyed upon at best for sex; at worst it puts their lives in jeopardy.”

Source: inquirer.com

The Board of County Commissioners liable for creating a culture of abuse that allowed the restraint chair to be used against Huff as punishment rather than management — and left Huff restrained for over 55 consecutive hours, violating all manner of medical and safety regulations, resulting in his death.

The filing of the complaint in June 2017 sparked the investigation that led to the criminal charges. Sheriff Niles took leave, retiring in June 2019 after charges were filed against his wife and the two guards — but not the sheriff — by specially appointed District Attorney Chris Boring.

The Board of Commissioners of Garfield County, whose population is about 60,000, voted to settle the suit for $12.5 million paid over three years to Huff’s family. Their attorneys, Wyant Law Firm, Long Claypole & Blakley Law and Durbin, Larimore & Bialick, released the following statement concerning the settlement:

“The Federal Civil Rights lawsuit on behalf of our client, Anthony Huff, has been resolved in an amicable fashion which won’t require further litigation. As our client's family will never be made whole by any amount of money for the loss of a loved one, they do appreciate the Board of County Commissioners resolving this matter in a way that protects Garfield County from the potential of a much larger verdict and acknowledges the potential human cost in terms of mental anguish suffering and the potential for a loss of life.

As a result of their actions, the Board of Commissioners has agreed to make a significant payment for the loss of a loved one, they do appreciate the Board of County Commissioners resolving this matter in a way that protects Garfield County from the potential of a much larger verdict and acknowledges the potential human cost in terms of mental anguish suffering and the potential for a loss of life.

In a runoff election August 25, 2020, voters chose Rink to take over as county sheriff. The 33-year-old previously served as chief of police in Covington, Oklahoma. See: Graham v. Garfield, Cty.
Wisconsin Supreme Court Reverses “Dangerousness” Finding in Involuntary Commitment of Schizophrenic Man

by David M. Reutter

On April 24, 2020, the Wisconsin Supreme Court held that the evidence to support a petitioner’s involuntary commitment was insufficient to support a conclusion the petitioner was “dangerous” under state law. In reversing the circuit court’s order, it was held that going forward lower courts must make specific findings with reference to the subdivision of law that the recommitment is based upon.

D.J.W. was subjected to a January 30, 2017, commitment order from the Langlade County Circuit Court to the custody of the County for six months. The court also ordered involuntary psychotropic medication and treatment. The County sought recommitment for one year as the expiration of the initial commitment period approached. Dr. John T. Coates was appointed to examine D.J.W. He and D.J.W. were the only witnesses at the hearing.

The Circuit Court determined that D.J.W. was a danger to himself and was incapable of making an informed choice to accept or refuse medication. It granted recommitment and involuntary medication for one year. D.J.W. appealed.

The court of appeals affirmed, concluding the finding of D.J.W.’s dangerousness “was not clearly erroneous.” The Wisconsin Supreme Court granted D.J.W.’s petition for review.

In Wisconsin, involuntary commitment is regulated by Wis. Stat. § 51.20. It requires three elements be fulfilled: the individual must be (1) mentally ill; (2) a proper subject for treatment; and (3) dangerous to themselves or others.

In an initial commitment proceeding, there are five different means to demonstrate a person is dangerous. A recommitment proceeding requires proof of these elements. While the standard is a bit relaxed because the subject’s behavior may be altered due to treatment, “each extension hearing requires proof of current dangerousness.”

At the initial hearing, it was determined that D.J.W. was a danger to himself because he could not “satisfy his basic needs for nourishment, shelter, or safety without prompt and adequate treatment.” On appeal of the recommitment order, there were conflicting messages from the county and court of appeals regarding the statutory basis for the commitment.

“ar order to avoid this problem in the future, we determine that going forward circuit courts in recommitment proceedings are to make specific factual findings with reference to the subdivision of paragraph of § 51.20(1)(a)2. on which the recommitment is based,” the majority’s opinion said. Further, it found an erroneous standard was used below. “A determination of dangerousness is not a factual determination, but a legal one based on underlying facts.”

In looking at the facts, it found that Dr. Coates provided no evidence that “death, serious physical injury, serious physical debilitation, or serious physical disease” would ensue if treatment were withdrawn. He testified only that D.J.W. “can’t care for himself” because he was unable to hold a job, had to rely on disability for income and live with family. He further indicated “danger in my opinion is not suicidal or homicidal ideations. Although those are possibilities. There is an increased risk of suicide in people with schizophrenia.”

The court, however, cited O’Conner v. Donaldson, 422 U.S. 563 (1975), which determined that “a State cannot constitutionally confine without more a non-dangerous individual who is capable of surviving safely in freedom by himself or with the help of willing or responsible family members or friends.”

The evidence failed to show prove “dangerousness,” the court held. Additionally, the County’s alternative argument that there was a “substantial probability” of physical impairment or injury if D.J.W.’s treatment was discontinued. “A diagnosis of schizophrenia, by itself, does not” meet that statutory standard. The evidence failed to show D.J.W. is dangerous under § 51.20. The decisions of the court of appeals and circuit court were reversed. See: Langlade County v. D.J.W. (In re D.J.W.), 2020 WI 41.

Michigan Settles Sex Abuse Claims by 1,300 Former Juvenile Offenders Housed With Adults for $80 Million

by David M. Reutter

On January 29, 2020, the Michigan Department of Corrections (MDOC) agreed to pay $80 million to resolve a class action lawsuit filed by juveniles who were housed in adult facilities where they were allegedly subjected to sexual assault and other harms.

The action consolidated in state court numerous lawsuits filed against MDOC in both state and federal courts. The class included persons incarcerated in MDOC while younger than 18 at any time during the period from October 15, 2010 to February 24, 2020. All of these juveniles were charged, convicted, and sentenced as adults, and MDOC placed them in adult facilities upon receiving them.

The complaint contained allegations related to 12 “John Doe” prisoners, all of whom alleged they were analy raped or coerced to engage in anal or oral sex, sometimes by guards but most often by adult prisoners with whom the juveniles were housed and left to fend for themselves. The events they described read like lurid movie portrayals of new prisoners being “fresh meat.” [See PLN, April 2020, p.50.]

John Doe #2 reported a physical assault and sexual harassment while at Oaks Correctional Facility in 2011. He was placed in solitary confinement and issued disciplinary misconduct tickets for making his abuse report. Once released from solitary, he was physically assaulted with a blade, “resulting in a scar across his face and marking him as a victim and ongoing target for other prisoners.” That incident again led to placement in solitary confinement.

Another plaintiff refused to leave solitary confinement after making a report...
of sexual abuse. He also was subject to disciplinary action for that refusal. Two juvenile plaintiffs alleged they were routinely sexually and physically assaulted by guards who grabbed and pulled on their genitals during body searches.

The parties sealed details of the settlement on February 26, 2020. The $80 million was to be paid in three installments: $25 million within two business days of the settlement’s effective date, another $15 million on October 15, 2020, and the final installment of $25 million due on October 15, 2021.

Incarcerated class members can maintain an outside bank account to receive settlement funds, but they can only have money from that account if it is sent to their prisoner accounts. Only settlement funds can be placed in the account. The settlement requires class members to pay any victim restitution, court costs and fees, institutional debt, and child support arrears.

With nearly 1,300 plaintiffs, it remained to be determined how the settlement funds would be distributed. But MDOC also agreed to implement a “Youthful Offender Policy Directive” within 180 days of final approval of the settlement agreement that will address “youth-specific policies for segregation, discipline, use of force, staff training, and the reporting and tracking of sexual abuse and harassment and allegations of retaliation for reporting the same.”

MDOC also agreed to eliminate its grievance process under the federal Prison Rape Elimination Act (PREA) and to allow for sexual abuse and harassment claims to be exhausted through the normal grievance process. MDOC’s PREA Grievance Process was found by the Sixth Circuit Court of Appeals in December 2019 to be so impractical that it was effectively unavailable to prisoners.

Since 2016, MDOC has housed juvenile prisoners in areas separated from adults. As of early 2020, just 28 juveniles remained in housing with the system’s 38,000 adult prisoners.

“These youths spoke out at great risk to themselves about the abuse that happened to them while in the care of the MDOC,” said plaintiffs’ lead counsel, Deborah LaBelle. “We started this suit six years ago to try to get the state to see the harm done to these children. We hope through the settlement that the state recognizes the harm and will do this no more.”

MDOC Director Heidi Washington agreed.

“Though this settlement brings finality to this case,” she said, “we call on the Legislature to bring this issue to an end once and for all and prohibit youthful offenders from being placed in adult prison.” See: Does v. Michigan Department of Corrections, 2020 Mich. LEXIS 131.

Additional source: Detroit News, Courthouse News Service
Missouri Downsizing Prisons to Save Cash

by Bill Barton

Missouri Governor Mike Parson on Wednesday, January 15, 2020, announced a plan to close a number of housing units at prisons throughout the state.

Budget director Dan Haug said, “What they are doing is they are consolidating space within various prisons around the state, closing certain housing units and those types of things.”

The Missouri Department of Corrections (DOC) housed 33,000 prisoners in 2017; the January 2020 prison population stood at 26,000. Changes in the state’s criminal code, replacing incarceration with probation in many cases, accounts for the drop in population.

DOC spokesperson Karen Pojmann noted that the plan will close housing units at Northeast Correctional Center in Bowling Green, Farmington Correctional Center, Boonville Correctional Center, Algoa Correctional Center in Jefferson City, Tipton Correctional Center, and Western Reception, Diagnostic and Correctional Center in St. Joseph.

“Closing housing units reduces staffing needs and enables the department to more effectively and efficiently staff facilities, boost safety and reduce mandatory overtime,” Pojmann said. “We’re hoping these changes also can reduce staff stress and improve retention.”

In addition to removing 1,756 beds for prisoners, the plan will also obviate the need for filling 131 currently vacant staff positions. It will save the state approximately $6.5 million and help it avoid more than $6 million in pending repair and maintenance projects.

The DOC plans to use $3 million to add more radios in all of its facilities, in addition to repairing security cameras. Other upgrades scheduled include the vehicle fleet used by probation and parole officers, plus work on building repairs throughout the prison system. Also to be addressed is long-running understaffing in the DOC, which as of January 2020 had 823 guard vacancies, many of them purportedly due to harsh working conditions and low pay.

Parson’s recent closure of the Crossroads Correctional Center in Cameron, combined with the plan’s proposed changes, will account for a reduction of more than 2,600 DOC beds over a one-year period. Pojmann said, “If approved, these upgrades will make our worksites safer, support field staff and ensure more efficient use of taxpayer dollars.”

Sources: ky3.com, stltoday.com
Important New KSK Info as of October 2020

**“OLD STYLE” CATS:** I am very sorry to say this but as of now Old Style catalogs 1-15 are now dead and gone. All brand new condition HS catalogs 1-15 can now be sent in and “swapped out” for New Style HS catalogs. We will NOT swap out worn out catalogs so don’t bother trying to send them in. I’m only doing the swap outs for all the dudes who bought “old style cat packs” in the last few months. There were many “blurry” photos in most of my old style 1-15 catalogs and I had to get the choice to get rid of the old and move on with the new, feel me? OLDSCHOOL!!! So once again to be clear: Old Style HS catalogs 1-15 can no longer be ordered from and will no longer be sold. If you would like to purchase old style HS catalogs: #16, #17, #18, #19, #20, #21, #22, #23, #24 and #25 you can send $20.00 for a copy of each in color. The price for individual color catalogs is $4.00 and each of the above “old style” cats has 396 images in it.

When ordering Starter Kits and/or Grab Bags please note that ALL photos will come in one (1) envelope or package. If you need your order split up due to mail room rules you will need to pay extra OR you can just abstain all to your people so that they can mail them to you as needed. It takes time and money to address several envelopes rather than one and it also costs much more to send several smaller envelopes than just one large one. For these reasons we are forced to charge extra for order splits.

****NEW KSK INFO AS OF OCTOBER 2020****

**FREE Rapid Shipping Notifications** are now being sent to almost all customers!!!

**FREE Order Tracking on all photo orders!!!**

We can now tell you the day your package was delivered and the address it was delivered to in the event you have a delivery issue!!!

No refunds, returns or swaps so please order with care to avoid mail-room denial.

I’m very sorry for all the “blurry” shots that were sold by KSK in the past and I promise all that blurry stuff is over with!!!

NEW “SPLIT” PRICES

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<th>Number of Shots</th>
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<tr>
<td>5 to 10 shots</td>
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<td>11 to 25 shots</td>
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<td>26 and up shots</td>
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Price is PER ENVELOPE. If you have any questions about order splits just shoot me a line.

50 PHOTO GRAB BAGS $15.00

And now to change topics for a moment... It is September as I write this. I will write a little in October that you read it... in the past several months our nation (and the world) has been hit by an amazing massive wave of hate. Never before in my lifetime (I’m 37) have I seen this much hate and division on full display. Never have I seen this much racism! Crime is skyrocketing, bro. Murderers are insane high all over the US. Rapes and robberies are also up all over. There is so much hate and evil and anger everywhere today. But it could all be worse! REMEMBER THAT SH*T TI ERNED. I learned that loooong ago.

No matter how bad your situation is, it could always be made worse. For example, let’s say you’re on lock-down. Now what happens if your power goes out and it’s 137 degrees inside the cell? Well your situation just got worse, lol! And if your water then goes out, well your dead. D-E-A-D, dead. Nothing worse than no power and no water in the middle of a hot summer. Actually yeah, there is... You could be sitting in a holding tank in county! See what I mean? I can think of a second or two or you can sure you can come up with several ways your situation could be worse, and doing that always helped me get through some really hard times. Maybe it can help you too? Only you can decide if it does or not though. All I can do is share, feel me? And holy moly do I have a lot to share, bro!

If you really want to think about a hard life try to imagine being in prison in China or Russia. It’s hard to do. And if you shoot more than a FIRE 50 or 10 pack for you today!

If you would like to hear more about this topic as well as others, please feel free to write me when you order shoot us your SASE. This way we will know you’re interested in more than just the photos. Please also press your game with some good reading!

Well, bro, I hate to cut this so short but I’m running out of room. Don’t worry: I talk a lot in my kit wires and flyin’ lol! If you would like to place an order TODAY with KSK you can do so by purchasing a Starter Kit and/or a Grab Bag. This is the currently the fastest way to get started with KSK. That being said you should ALWAYS send a Self Addressed Stamped Envelope for the latest Info Sheet BEFORE SENDING US ANY MONEY! The date at the top of the Info Sheet will always let you know if what you’re holding is the latest. And once again: MENTION THIS AD FOR FREE CATALOGS AND 5 FREE SAMPLE PHOTOS! NO SASE=No free stuff and no response. Also, PLEASE put 2 stamps on your SASE if you think it will help me out a lot! See you at mail call!!!

Your Homie, John The KSK Morgan
As protests and calls for police reforms continue in response to police shootings of unarmed suspects, both the Republican and Democratic parties seem to be on the same page: How do we maintain the status quo and strengthen the police state while pacifying the population. But even with these views in mind, the question of how each candidate, if elected, would deal with criminal justice reform needs to be examined. Since 1992 PLN has compared presidential candidates track records on criminal justice issues and the consistent result is two empty bottles with different labels. One reason the U.S. has a mass incarceration problem and an overwhelming police state is the bipartisan consensus in creating and sustaining it. This election is no different.

The problem starts for each candidate at different points in time, in different eras, and with divergent factors contributing to their positions. While it would be nice to say that one party is better for criminal justice reform, this isn’t possible. The only difference is asking whether it is better to be beaten to death with a 2 x 4 or a baseball bat. The result is the same.

Recently, the Democratic Party has talked a good game about supporting criminal justice reform, but for at least the last 35 years it has been the primary architect of the modern American police state. On the other hand, while Republicans have frequently based their politics on tough-on-crime policies, they have taken some positive steps on criminal justice but ones that are extremely minimal and tokenistic at best and that have done nothing to give prisoners enforceable rights or shrink the police state.

The Context of Speech and the Era of Crime

Part of the problem is that each candidate’s political speech has to be placed in context. For example, when President Trump suggested that we may learn a lesson from China and Singapore in executing drug dealers, was he really suggesting that we execute drug dealers? It’s more likely that he was arguing that drug dealers who sell drugs that subsequent users die from should be executed – which is still an alarming position.

Former Vice President Joe Biden has an equally sordid history with criminal justice reform, albeit from a different era. Elected to the Senate in 1973, Mr. Biden has significantly contributed to the current mass incarceration problem. The difference between the two is that for decades, before being elected President, Trump talked about criminal justice issues a lot. With 50 years in public office, during which time he became a multi-millionaire, Biden has acted on his talk. Trump talked about killing drug dealers. Biden authored the biggest expansion of the federal death penalty in American history in the 1994 crime bill and followed up by gutting all American prisoners’ access to federal habeas corpus review with the 1996 Antiterrorism and Effective Death Penalty Act (AEDPA). If there are federal prisoners for Trump to execute in 2020 it’s in large part because Biden helped create the legal framework to make it possible.

History of Biden’s Criminal Justice Reform

In a 1993 speech on the Senate floor, Mr. Biden exclaimed, “The truth is, every major crime bill since 1976 that’s come out of this Congress, every minor crime bill, has had the name of the Democratic senator from the State of Delaware: Joe Biden.” In support of this, and the then-Democratic party’s position on criminal justice, Mr. Biden rather unfortunately stated, “[President George H. W. Bush’s policies don’t] include enough police officers to catch the violent thugs, not enough prosecutors to convict them, not enough judges to sentence them, and not enough prison cells to put them away for a long time.” In a 1994 Senate floor debate about aggressive criminal justice policies and how to deal with convicted criminals, he remarked: “Lock the S.O.B.s up.”

For anyone who believes in a fair, even, and decent criminal justice system. Mr. Biden’s record is atrocious.

As early as 1977, Mr. Biden advanced mandatory minimum sentences. In 1989, in response to George H. W. Bush’s criminal justice policies, Mr. Biden advanced an approach to putting “violent thugs” in prison. In 1993, he warned about “predators on our streets.”

What can be said for Mr. Biden is that he followed his words with action. In 1984, he spearheaded the Comprehensive Crime Control Act, which expanded penalties for federal drug traffickers and supported civil asset forfeiture laws, allowing police departments to seize property used during the commission of a crime. In 1986, he sponsored and partially drafted the Anti-Drug Abuse Act, which increased the sentences for drug crimes, including instituting the now-infamous 100 to 1 powder cocaine to crack cocaine disparity for mandatory minimum sentencing. Then came the Anti-Drug Abuse Act of 1988, which further increased penalties for drug offenders. It also included the death penalty for drug dealers and life without parole sentences for minor drug offenders.

But Mr. Biden’s darkest criminal justice reform hour perhaps came in 1994, with his co-authorship of the Violent Crime Control and Law Enforcement Act followed, in 1996, by the Prison Litigation Reform Act and the Antiterrorism and Effective Death Penalty Act. These acts not only further created the perfect statutory scheme for today’s mass incarceration epidemic but also drastically restricted how prisoners could challenge their sentences and conditions of confinement. It also gave states billions of dollars to build new prisons and encour-
aged them to change their sentencing laws requiring prisoners to serve at least 85% of their sentences to get federal money.

While the above is a strong rebuke of Mr. Biden’s history of criminal justice policies, these must be viewed in the lens of the Tough on Crime and War on Drugs of the ‘70s, ‘80s, and ‘90s. These do not necessarily indicate a modern-day Biden presidency, and probably do not indicate what we would receive if Mr. Biden were elected president. It just shows what Mr. Biden has done for the past 50 years he has been in elected office. Mr. Biden was vice president as recently as 4 years ago and progressive criminal justice reform was not on his agenda. (It should be noted that President Trump has done little to challenge the worst impacts of Biden’s record and his court appointments have vigorously supported, and worsened, the Prison Litigation Reform Act.)

Alas, Mr. Biden has shown nowhere near the resolve, vigor and decisive action to help undo the very laws he drafted, legislated, enacted and enforced. In 2008, he backed the Second Chance Act, legislation designed to help with prisoner reentry by giving $100 million a year to prisons and religious organizations. That pale with the tens of billions doled out to build prisons and lock people up. In 2010, he supported the Fair Sentencing Act, which reduced the crack-to-powder cocaine disparity from 100-to-1 to 18-to-1. While not equity, this was a substantial step in the right direction.

Trump’s Criminal Justice Policy History

While not nearly as long as Mr. Biden’s criminal justice reform history, President Trump also comes with several black marks. But one problem with evaluating Mr. Trump’s criminal justice reform history is that it is often punctuated with absurd off-the-cuff statements and tweets. It’s difficult at best to discern President Trump’s thinking 140 characters at a time.

This is one factor that must be considered when evaluating another four-year Trump presidency. While Trump says many things, and many of these off-the-cuff quips are ill-advised, his most decisive action in the criminal justice reform arena focuses on spontaneity. And basing a criminal justice platform on spontaneity is, well, ill-advised.

Before his 2016 election, Mr. Trump frequently espoused pro-police sentiments and voiced his ardent support for the death penalty. In recent years President Trump has continued his death penalty rhetoric, suggesting a lesson in the approach taken in China and Singapore where drug dealers are executed. And while not directly on-point with criminal justice policy analysis, President Trump’s continued racist colonialism approach does not bode well for minorities or other non-American criminal defendants. His most famous episode was calling for the death penalty for the Central Park Five in 1989. Five Black teens were convicted of assaulting and raping a white woman jogger in New York City. Later, the five men were released from prison having been wrongfully convicted. Trump does not appear to have apologized for seeking the death penalty against innocent defendants.

During the Trump presidency, the president has made modest strides in criminal justice reform that seem significant only in comparison to the past 50 years of police state expansion. While President Barack Obama was a more sympathetic voice, and many had greater hopes for what he would achieve, President Trump has surpassed President Obama in terms of achieving some tiny amount of criminal justice reform. Prison reform is a separate topic that no one in American politics is willing or able to address.

For example, he did sign the First Step Act of 2018. This bipartisan Act, which corrected an existing computation error with how good conduct time is awarded to federal prisoners, resulting in small reductions in sentences (i.e., seven additional days per year for good conduct). This Act also reformed several mandatory minimum sentencing laws, directed the federal prison system to house prisoners closer to home where practicable, expanded home confinement placement, significantly reformed compassionate release processes, and, most important, put in a new structure where low-risk federal prisoners can earn time off their sentence for recidivism reduction programming.

While the First Step Act is a good first step, it should be highlighted that this piece of legislation did not blow federal prisons’ doors open. Instead, while many federal prisoners benefited from some provisions, a significant number of federal prisoners are not eligible for the highly touted earning of additional good conduct time through recidivism reduction programming as many were excluded based on their conviction offenses. The First Step Act stands out as one of the very, very few federal laws that actually benefit prisoners in the past century.

President Trump also has to his credit the awarding of select clemency applications, most notably Alice Johnson, whose case was advanced by Kim Kardashian. He has also commuted other sentences.
Trump v. Biden (cont.)

Unfortunately, it is difficult to anticipate what another four years under President Trump would look like given the stark contrast between the draconian views he has embraced and the policies he has passed while in office. He has also pardoned notorious criminals like Maricopa county sheriff Joe Arpaio and war criminals like Navy SEAL Eddie Gallagher.

Under Trump, the BOP’s response to the COVID-19 pandemic has been abysmal. Soon after it publicly erupted in March, the Justice Department announced that federal prisons would release medically vulnerable, nonviolent prisoners to home confinement to minimize deaths. Meanwhile, the BOP secretly drafted a policy document that made it harder for prisoners to qualify for release and only a tiny fraction have been freed. The BOP has also failed to take effective steps to protect those still behind bars, which has led to 122 deaths (as of mid-September) and several thousand cases of COVID-19 among federal prisoners, according to official statistics. We can note that none of the states have done any better and Biden has been silent on the issue of COVID-19 deaths in prisons and jails.

Trump and Biden’s Election Platforms

The real question for voters, and the millions of Americans who have lost their right to vote because of felon disenfranchisement, is what would each candidate bring to the table if elected or reelected president.

• **Death Penalty.** The death penalty is one area where there is a strong contrast between Mr. Biden and President Trump. While Mr. Biden says he will work to eliminate the federal death penalty and incentivize states to follow, President Trump is a staunch advocate of the death penalty and federal executions restarted this year. He has “already carried out more federal executions in 2020 than his predecessors had in the previous 57 years combined,” The Intercept reported, and more executions are scheduled this year. Biden has been silent as Trump carries out executions and of course, only two federal prisoners saw their death sentences commuted to life without parole under the 8 year Obama presidency.

• **Mandatory Minimums.** While Mr. Biden says he supports repealing federal mandatory minimums he helped pass and will incentivize states to do the same, Mr. Trump hasn’t made a clear position on this matter, instead, relying on the First Step Act’s shortening of some mandatory minimum sentences.

• **Commutations.** While Mr. Trump has granted a select few commutation petitions, and the administration has vowed to “build on [its] success,” Mr. Biden has vaguely stated that he will use the vehicle of commutations to commute “unduly long” sentences, but only for non-violent offenders.

• **Solitary Confinement.** The candidates also differ on their stance to solitary confinement. While Mr. Biden says that he is calling for an overhaul of inhumane prison practices and that it should be used only in highly limited situations, Mr. Trump does not have a stated policy position. It should be highlighted that the Trump administration did remove a policy provision on the Office of Juvenile Justice and Delinquency Prevention’s website stating that juveniles should not be placed in solitary confinement. Of course, neither has done anything about the BOP’s super max prison in Florence, Colorado or the BOP’s segregation units around the country, so we can likely expect no actual change there. It is also an open question as to whether anyone really controls or has oversight of the BOP.

• **Drug Policy.** The candidates’ policies on drug laws are also starkly different. Mr. Biden supports the decriminalization of marijuana and the retroactive application of expungements. His platform also supports rehabilitation instead of prisons, and incentivizes the states to treat, not incarcerate, drug offenders. (“End all incarceration for drug use alone and instead divert individuals to drug courts and treatment,” says his website.) This, after half a century of criminalizing drugs and the people who use them and caging millions of drug users. And, in a turn Biden has also pledged to correct the disparity between crack and powder cocaine. Biden remains opposed to legalizing marijuana.

President Trump has presented mixed messages with marijuana law reform. His administration has repeatedly targeted state marijuana protections through federal budget proposals. At least in his first presidential run, his administration suggested that recreational marijuana policy was an issue for the states to determine. President Trump’s policies on heroin are somewhat similar to Biden’s in that he has supported treatment. President Trump has also suggested that drug dealers should be executed if it is shown that a death resulted from the drugs sold.

• **Prisoner Reentry.** Both President Trump and Mr. Biden have supported prisoner reentry initiatives. For example, Mr. Biden has stated that he wants to expand “ban the box” initiatives, where companies are restricted from asking if an applicant has been convicted of a felony. He has also proposed eliminating restrictions on felons receiving federal assistance, such as Pell grants, food stamps, and federally subsidized housing. These restrictions were all put in place in laws he authored or sponsored as a Senator.

President Trump’s crowning achievement here is the First Step Act, which created additional recidivism reduction programs designed to help current federal prisoners. He also created the Ready to Work Initiative, designed to assist formerly incarcerated persons with potential employers, including nonprofits.

• **Prison Profiteering.** President Trump and Mr. Biden’s platform positions on prison profiteering directly conflict. Mr. Biden now supports ending cash bail, shutting down private prisons, and incentivizing the states to not participate in other privatizing criminal justice activities, such as commercial bail, electronic monitoring, and diversion programs. Mr. Biden and the Clinton administration helped bail out the private prison industry in 1999 with sweetheart immigration contracts. However, in 2016 the Obama administration announced it would phase out the use of some private prisons holding federal prisoners, which tanked the companies’ stock shares. Trump quickly reversed that after taking office.

President Trump is opposed to abolishing cash bail and strongly supports the private prison industry, which in turn strongly supports him with campaign donations and contributions.

• **Policing.** While both Mr. Biden and President Trump support increasing the number of police, Biden’s platform focuses on collecting data to make more informed decisions, while Trump is more concerned with protecting police officers. Whereas Biden has supported investigating police and prosecutor misconduct, Trump has
advanced the Community Reform Initiative, which supports funding for police departments to purchase bulletproof vests. Biden has long been supported by police and guard unions and has also long been a big supporter of giving police and prisons billions of dollars in federal money to hire more cops and guards.

However, this year most major police unions have backed Trump. In September, the Fraternal Order of Police, the country’s biggest police union with 355,000 members, endorsed Trump. “President Trump has shown time after time that he supports our law enforcement officers and understands the issues our members face every day,” said Patrick Yoes, the union’s president. “The FOP is proud to endorse a candidate who calls for law and order across our nation.” The endorsement came after Trump dispatched National Guard troops and federal units to crack down on protests that erupted following the police killing of George Floyd.

**Prison Phone Rates:** In 2012, the Human Rights Defense Center (HRDC), which publishes *PLN*, launched its Prison Phone Justice Campaign to reduce the rates prisoners and their families pay for phone calls. Working with Federal Communications Commissioner Mignon Clyburn, HRDC achieved significant regulation of prison phone rates nationally. Every one of these reforms was opposed by FCC Commissioner Ajit Pai and the prison telecom industry.

Securus and Global Tel Link filed suit challenging the order capping intrastate prison calls, which make up 85% of all prison calls. Shortly after the 2016 election, Trump appointed Pai as the commissioner of the FCC, which gave Republicans a 3-member majority. Two days before oral argument in the prison phone rate case, Chairman Pai ordered FCC lawyers not to defend the FCC’s order, a situation that is virtually unheard of in regulatory circles. The appeals court reversed the FCC.

Trump has remained silent about the issue of Prison Phone Justice as has Biden. The only potential difference between the two is that FCC commissioners appointed by a President Biden might be more receptive to the notion that prisoners and their families should not be viewed as profit centers for hedge-fund owned telecoms to gorge their coffers and give kickbacks to their government collaborators.

**Politicians and Their Promises**

The problem with politicians is that they will say just about anything to get elected. Just because presidential candidates say they will do something, it does not mean anything will come to fruition. Sometimes, this is more the result of the House and Senate’s political makeup than the president’s desires or objectives.

While it is easy to look to Mr. Biden’s history in the Senate and the majority of his political career and view him as an opponent of criminal justice reform, his more recent talk on the campaign trail shows he could seek it. And while President Trump did sign into law the First Step Act – a bipartisan effort, mind you – he has also suggested that we execute drug dealers and is presiding over more federal executions than any other president in the past 60 years.

The choice between these two candidates is hard, especially considering the Democratic Party’s dismal history on criminal justice reform and the Republican

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Alaska Supreme Court Upholds Dismissal of Delusional Prisoner’s Medical Malpractice Claim

by Dale Chappell

On March 20, 2020, Alaska’s Supreme Court shut down a state prisoner’s argument that his diagnosis as a schizophrenic was incorrect because he claims he can actually see ghosts due to a genetic mutation.

Adam Israel had been in custody of the state Department of Corrections (DOC) since 2005 for the stabbing death of his mother. Based on a clinical diagnosis of schizophrenia — he claimed that family members, possibly including comedian Steve Martin, had conspired to keep him in state custody to prevent him from testifying to rapes and murders they had committed — he was held in a mental institution.

In October 2014, he filed a pro se medical malpractice lawsuit, claiming that he was “fraudulently diagnosed” as schizophrenic, and that this had prevented him from release on parole and other rehabilitative progress. He said the delusions he suffers are actually real, claiming that he could see electro-magnetic fields emitted from “poltergeists” because of a genetic mutation resulting from family inbreeding.

Israel asked the court to allow him to demonstrate, but Superior Court Judge Frank Pfiffner called his testimony “bizarre and, at least from a lay perspective, consistent with that of someone suffering from paranoid schizophrenia.” He concluded that Israel’s explanation about his reported delusions “does not reflect reality.”

The court then granted the state’s motion for summary judgment, finding that Israel had failed to provide expert testimony to support his claims in the face of summary judgment.

Under Alaska law, anyone claiming medical malpractice usually provides an expert’s testimony in support of their claims, most often by attaching an affidavit to their complaint. But when the negligence is evident to a lay person, no expert is needed, because the claim is then not considered one of a technical nature. Israel provided no such expert testimony, arguing that his claim to extra-normal perception could not be disproved using current technology anyway. The court found that it could not accept his claim without proof — or at least corroboration from an expert — and dismissed his motion. Israel appealed.

In its review of the case, the state Supreme Court concluded that summary judgment was proper because the defendant (the state in this case) had shown an absence of a factual dispute on a “material fact,” and that this absence constituted failure of proof of an “essential element” to support Israel’s lawsuit. The Court allowed that it “assumed without deciding” that Israel was correct that he didn’t need an expert, but then it found that the “unrebutted correctness of Israel’s diagnosis of paranoid schizophrenia” foreclosed his malpractice claim.

On what did the Court base its finding? Because “Israel provided no psychiatric expert testimony to raise a genuine issue of material fact that the DOC’s psychiatrist’s diagnosis was incorrect.” In other words, despite granting Israel the assumption that he didn’t need an expert to be convinced, the Court did. It said it was unable to accept his argument — that he was not delusional, just exceptional — without hearing from an expert who agreed. Without providing that testimony, Israel failed to overcome summary judgment, since the Court said it had no choice but to conclude that Judge Pfiffner’s determination — that Israel’s visions were really delusions — was proper, given the facts before the court.

The Court also affirmed Judge Pfiffner’s denial of Israel’s motion to “compel” discovery from DOC, since he didn’t make any efforts to contact DOC for discovery before filing the motion to compel it. Though allowing that judges are required to construe pro se filings “liberally” in order to do justice, the Court said that “a self-represented litigant must make a good-faith effort to comply with the Civil Rules in order to get the court of difficulties in complying.”

The Court wrapped up its ruling by affirming the Superior Court’s order that Israel must reimburse the state for its attorney fees, in this case $5,600.00, since he did not file his claim as a constitutional issue but only as a malpractice issue — leaving him liable for the state’s requested attorneys’ fees as the losing party.

Accordingly, the Supreme Court affirmed the Superior Court’s rulings in all respects in dismissing Israel’s case. See: Israel v. Department of Correction, 460 P.3d 777 (Alaska 2020).
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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$300,000 a Year Not Enough to Convince Psychiatrists to Work in California Prisons

by Dale Chappell

Suicides in California prisons reached a record high last year, with 38 recorded. According to prison and union officials, a lack of psychiatrists and other problems in the state’s prison system contributed to the high number.

Despite an offer of a $300,000 annual salary plus government benefits, the California Department of Corrections and Rehabilitation (CDCR) has yet to convince psychiatrists to fill the vacancies in the prison system. About 40 percent of the state’s psychiatry jobs are empty, including those at the state’s prison and mental health institutions, according to data from 2018, the last year the numbers were available from CDCR

Elizabeth Gransee, a spokesperson for California Correctional Healthcare Services, said the vacancy rate is 28 percent if accounting for contract psychiatrists, including those who treat via telepsychiatry video conferencing. “We are continuously improving recruitment of health care staff including mental health care providers,” she responded in an email to the Sacramento Bee.

 “[CDCR] continues to make substantial improvements in the delivery of health care and we will continue to ensure our population has access to the care they need.”

Dr. Stuart Bussey disagrees. He is the president of the Union of American Physicians and Dentists, and says that in addition to pay increases, CDCR needs to improve the working conditions for staff psychiatrists. Right now, a psychiatrist’s treatment decisions can be overridden by prison workers with far less medical training, and the doctors face other frustrations and disruptions in the treatment of prisoners.

CDCR has tried to fill the vacancies with contract psychiatrists, due to the lack of interest in full-time positions, but it costs the state about $36 million for the seven-month period that ended January 2019. While prison psychiatrists are better paid than their private-sector counterparts, according to CDCR, union president Bussey said that does not account for other benefits in the private sector and other government agencies, such as loan forgiveness and zero-interest home loans.

“We’ve got a serious issue,” said Assemblywoman Shirley Weber at a budget hearing in March of 2020. “Whatever we’re doing is supposed to make life better for folks, not worse. These are folks who walking the street wouldn’t commit suicide, but they go into our place [the California prison system] and they do.” CDCR has also struggled with increasing rates of suicide among its prison guards.

California’s prison system has struggled for 30 years to provide adequate mental health care to prisoners. In 1990, a class action lawsuit was filed on behalf of prisoners with serious mental health issues. Since the 1995 trial in that case, CDCR has been under a judge’s supervision to make changes. In 2018, a whistleblower complaint by Dr. Michael Golding, the chief psychiatrist at CDCR headquarters, alleged that prison officials falsified data to cover up problems with psychiatric care in California’s prisons.

“The environment that we’re putting folks in is really toxic for everyone,” Weber said at the budget hearing. Dr. Bussey said the union is working on a resolution with the state legislature.

Source: sacbee.com

DC Federal Court Enters Partial Preliminary Injunction Against District Jails For COVID-19 Deficiencies

by Derek Gilna

In an order entered June 18, 2020, Judge Colleen Kollar-Kotelly of the federal district court of the District of Columbia entered a preliminary injunction against the district’s Department of Corrections (“DOC”), its Central Detention Facility (“CDF”), and the Correctional Treatment Facility (“CTF”), finding deficiencies in its social-distancing, sick-call procedures and treatment options for COVID-19 cases.

However, the court concluded, “the Court finds that some of the relief requested by Plaintiffs, such as the immediate release of inmates and the appointment of a downsizing expert, is inappropriate at this time on the current factual record.”

The court had initially ordered the jail “to provide a list of the names of the approximately 94 prisoners who had been sentenced to misdemeanors and who could be released; the numbers of people who had been tested for COVID-19 and a breakdown of the identities of those individuals ... and the results of those tests; the date on which Defendants began testing people coming into the jails; the number and a breakdown of the results of COVID-19 tests which had been done on those who were incarcerated prior to the date on which Defendants began testing all incoming inmates; (and) all relevant written procedures and practices concerning COVID-19.”

The judge then considered the arguments of the plaintiffs, especially those concerning pre-trial detainees, noting that subjecting them to hazardous conditions did not require them to meet the higher standard of “deliberate indifference” but rather just establish a violation of due process.

“The rights of pre-trial detainees are different than the rights of post-conviction detainees,” the court said. “Because pre-trial detainees are presumed innocent, they are ‘entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish.’ Youngberg v. Romeo, 457 U.S. 307, 322 (1982). “While a convicted prisoner is entitled to protection only against cruel and unusual punishment [under the Eighth Amendment], a pretrial detainee, not yet found guilty of any crime, may not be subjected to punishment of any description.” Hardy v. District of Columbia,
of infection and risk of harm than the population at large. Plaintiffs’ argument is supported by statistical evidence, Plaintiffs’ expert evidence, the declarations of DOC inmates and staff, and the amici reports. Accordingly, based on the limited record before the Court, the Court finds that Plaintiffs have established a likelihood that they will be able to show that they have been exposed to an unreasonable risk of damage to their health.”

Although the judge agreed that there was serious risk of infection for jail prisoners, the court declined to take decisive action, such as ordering a reduction in prisoners, that would effectively reduce the risk of infection. The court noted, however, that jail officials had voluntarily reduced the jail population by approximately one-quarter since the start of the proceedings.

The granting of the preliminary injunction does not conclude the litigation, which continues under court supervision, and further investigation will continue while the parties decide to either go to trial or reach a final settlement. See: Banks v. Booth, 2020 U.S. Dist. LEXIS 107762. \n
Additional source: courthousenews.com

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Prison Legal News 39 October 2020
Poetry for the Prisoners’ Soul

by Ed Lyon

A mong the few organizations intrepid enough to reach out to prisoners is a group called the Worker Writers School (WWS). From its beginning as a poetry workshop for traumatized prisoners in the aftermath of the slaughter of prisoners at New York’s Attica prison in 1971, WWS is now a worldwide program. WWS workshops have spread from the United States to Belgium, Canada, Netherlands, Panama, Puerto Rico and South Africa to the United Kingdom, to name just a few locations.

Why the focus on poetry? Poetry is a major form of literature. Literature is, in turn, one of the humanities’ main disciplines and involves heavy reading as well as writing. Studies by psychologist Raymond Mer at Canada’s York University and cognitive psychologist and professor emeritus at the University of Toronto published in 2006 and 2009 have shown that people with humanities-centered educations are more receptive to and empathetic where it comes to their fellow humans.

The University of Houston-Clear Lake offers a humanities-based Behavioral Science bachelor’s degree and master’s degree programs to prisoners at the Texas Department of Criminal Justice’s Ramsey Unit. Recidivism rates for UHCL’s bachelor’s degree earners is 5.6 percent and for its master’s degree earners is 0. That’s right, zero percent, as opposed to the national rate of 67.5 percent and Texas’ rate of 30.7 percent. All three UHCL curriculums incorporate poetry courses into their requirements.

A similar program is in place at the Illinois Department of Corrections at its Danville Correctional Center. It is administered by the University of Illinois (UI) through its Education Justice Program. Like the UHCL’s curriculum, UI’s is also humanities-heavy. Recidivism statistics for UI’s graduates are as-yet unavailable, probably due to the program’s low number of graduates caused by prison guards constantly interfering with the program. [PLN, October 2019, p. 59] Also, the UHCL’s programs have been in place continuously since 1988. The UI’s programs have been in place for 10 years, only a short time by comparison.

Cees Tisdale was the person who began leading poetry workshops in Attica after the uprising there. She was an assistant professor at nearby Erie Community College at that time. She saw first-hand the positive changes on the prisoners through their immersion in poetry. “Their sensitivity and perception were so intense,” Tisdale recalls, “that each Wednesday night [after class] I came home completely exhausted.”

Unfortunately, prisoner poetry books such as Betcha Ain’t: Poems from Attica, Mumia Abu-Jamal’s Live from Death Row, words from the House of the Dead, The Last Stop and Folsom Prison: the 52nd State are disappearing and nearly impossible to find any more. Lending libraries are increasingly responding to requests for those works with “WEENED” and “WITHDRAWN” in an eerie modern-day parallel to Ray Bradbury’s Fahrenheit 451. Only in this instance, those books are not burned but merely allowed to fade into antiquated obscurity, a loss for humanity in general and an effective muzzle to prison poets.

Sources: bostonreview.net, earlcarlinstitute.org, https://coursesite.uhcl.edu, prisoeduca-tion.org

Damage to South Carolina Prisons Shifts Prisoners to Lewisburg, Pennsylvania

by Derek Gilna

D amage from tornados with winds in excess of 150 miles per hour in April of 2020 forced the immediate transfer of 956 low-security federal prisoners from Estill, South Carolina to the maximum-security U.S. Prison in Lewisburg, Pennsylvania. The controversial move by the federal Bureau of Prisons (BOP) was cloaked in secrecy for “security” reasons, but confirmed by correctional officials in Pennsylvania. The move of non-violent prisoners from the relatively safe Estill facility to a United States penitentiary housing more violent offenders did not sit well with prisoners’ family members.

Speaking on condition of anonymity to spare loved ones retaliation from the BOP, the family members were highly critical of the decision, arguing that it put prisoners at risk. Heightening their anxiety was the ever-present risk of COVID-19, which has made all prisoner transfers problematic, and even before the storm the virus had forced the federal prison system to end all in-person visits. Inquiries to the BOP by family members as to their family member’s whereabouts went unacknowledged and unanswered.

BOP staff was also concerned about the abrupt transfer to a prison that was already short on staff. Union national president Shane Fausey of Employees Council 33 said in April that Lewisburg will have a “serious problem” with staffing, and expressed concern that the movement of almost 100 prisoners on short notice will spark a COVID-19 outbreak that could overwhelm the areas small hospitals. His concerns were shared by Andy Kline, Local 148 president, who said, “I’m concerned about the virus.”

Already on edge because of the threat of COVID-19, family members said the BOP has made it impossible to keep in touch with their family members, and is now shipping them hundreds of miles away to an uncertain future. One parent of a prisoner, Kaye, pointed out that “These are medium-low inmates,” who were now shipped en-masse to a maximum-security prison with a past history of violent incidents. Another parent from the Chattanooga, Tennessee area said she would still visit her son: “I have calcu-
lated the drive from my home to Lewisburg, and it is 711 miles away. Over a 10-hour drive. Will it stop me from visiting him? No ma’am.”

Lewisburg area Congressman Fred Keller, of the 12th Congressional District, also registered his displeasure at the abrupt move of prisoners into his district after the movement of prisoners in New York and Ohio was blamed for outbreaks at their new institutions. “Despite this recent success in stopping inmate movement, (news of Estill inmate transfers) came with little notice and was decided without input from my office or the people of said district,” he said.

“I am extremely concerned that any rapid increase in USP Lewisburg’s inmate population would create challenges for the prison’s staff, and potentially local hospitals. USP Lewisburg has been under a reduced inmate population and staff for several years. Also, our local hospitals are on record expressing concerns about their capacity to handle a COVID-19 outbreak among a large prison population,” Congressman Keller said.

Prisoner families who temporarily lost track of their incarcerated family members were not the only ones who were disrupted by the move. Prisoners who had settled in to their Estill facility, where they were familiar with staff of the low-security prison, were now thrust overnight into a new environment, generally only with the clothes on their back, having hurriedly packed up their personal property and court documents for later shipment from Estill by BOP staff.

At least one prisoner who made the quick journey to Lewisburg said that the BOP failed to hand over most of his purchased clothing and personal toiletries, and his box of irreplaceable court documents that had been left behind. He alleged that the guards at Lewisburg failed to properly open his property in front of him and inventory it in his presence, as required under BOP program statements, and that he was taunted by the guards and told, “that is all of your property,” and to “file a tort claim,” a laborious undertaking for a confined prisoner.

The abrupt transfer of prisoners to a strange facility hundreds of miles from home, in the midst of a pandemic that has caused much of the country to be locked down for months, and the subsequent loss of much of those prisoners valuable documents and many persona items, is yet another indication that to the federal Bureau of Prisons, you are often regarded as merely a number, not a person who is entitled to the same humanitarian considerations and constitutional protections that other individuals often take for granted. See: pennlive.com; dailyitem.com; princetonlegalnews.com

Offensive Facebook Posts Cost Wisconsin Warden His Job

by Kevin Bliss

Richard “Sam” Schneiter, a 65-year-old Wisconsin deputy prison warden in charge of 14 minimum-security prisons, was fired in November 2019 after posting offensive memes on his Facebook account.

Schneiter posted two memes on Facebook last July, which were reported in the Milwaukee Journal Sentinel: One compared a Muslim woman and child, both in black burkas, to bags of trash. The other equated the flying of the gay pride rainbow flag with the flying of the Confederate flag. After the newspaper story was published, Lt. Gov. Mandela Barnes tweeted that Schneiter should not have compared Muslims to garbage and that he was the one who had “to be taken out.”

Schneiter, represented by attorney Nate Cade, said the Department of Corrections and Rehabilitation did not establish just cause to fire him. Its investigation into the incident was not thorough, objective or fair, he said, and the postings did not represent his personal views. He claimed he was simply stimulating discussion and debate on the topics. He pointed to his posting of the gay pride flag at the Kenosha Correctional Center in response to Governor Tony Ever’s declaration of June as Pride Month as evidence in support of his claim.

He said Barnes’ comments amounted to a premature conclusion that he be fired and prejudiced his case. “As the second-highest ranking government official in Wisconsin it is not unreasonable to believe that his comments influenced the investigators and decision-makers to a point that his comment became prophecy fulfilled,” he claimed.

Schneiter lost an appeal filed last December to the Wisconsin Employment Relations Commission. He filed a second appeal in January 2020. If he loses, he still has the option of pursuing the case in the state’s court system.

Sources: nytimes.com, madison.com

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More Than Half of Chicago’s COVID-19 Cases Linked to Cook County Jail

by Dale Chappell

Almost 60 percent of COVID-19 cases in Chicago were linked to police throwing people in the Cook County Jail and then releasing them to their home communities, according to a Harvard University study published in June 2020. Researchers found that “jail cycling” accounted for over one-third of coronavirus cases in Illinois.

The study examined the relationship between jail cycling and community infections across different neighborhoods in the state of Illinois, one of the nation’s largest jails. That data showed that as of April 19, 2020, almost 1 in 6 COVID-19 cases in the state were linked to people who cycled through the Cook County Jail in Chicago in March.

Jail cycling happens when people are arrested for minor infractions and put in jail for a short time and then released. According to studies, about 95 percent of people booked into jails across the country were arrested for non-violent crimes, and 42 percent were proven innocent. The numbers add up fast. According to the FBI, about 28,000 people are arrested every single day in this country. That means over 10 million people are arrested and cycled through a county jail every year in the U.S.

Jail cycling has a “multiplier effect,” says Eric Reinhart, one of the study’s authors. “For every one person you cycle through the jail [whether that person becomes infected or not], in the ZIP code from which they have come and which they will return to, within a three to four week lag you’re going to see 2.149 more cases.” When you consider that more than 100,000 people cycle through the Cook County Jail every year, that’s a huge scale, he said.

To be more specific, researchers found that the cycling of 2,129 people through the Cook County Jail in March alone was tied to 4,575 additional known COVID-19 cases in the state in mid-April. That’s almost 16 percent of all COVID-19 cases in the entire state linked to the jail.

“We forget that these institutions are not simply contained spaces, but part of our communities,” Reinhart said. “They’re very porous. People go in and they go out.”

Unsurprisingly, the study found jail cycling disproportionately affected Black communities. These are highly policed communities resulting in more arrests. In Chicago, Blacks make up 30 percent of the population, but make up 75 percent of the prisoners in Cook County Jail. The rate of release was highest in Black-dominated ZIP codes, the study found.

The study did not account for the hundreds of jail staffs returning home to their communities, bringing the virus with them, because that data were not available. But the authors suggest it’s an additional source of COVID-19 spread that must be considered.

The Cook County Sheriff’s Office and the Chicago Department of Public Health disputed the study and requested it to be removed.

Source: harvard.edu

Mother of Decapitated Prisoner Sues California Prison Officials for Housing Her Son with Prisoner Who Tried to Murder Previous Cellmate

by Matt Clarke

On March 2, 2020, the mother of a man murdered at the California State Penitentiary, Corcoran filed a lawsuit against California Department of Corrections and Rehabilitation (CDCR) officials, whom she alleged were responsible for the murder of her son. Her son was decapitated on March 9, 2019 by his cellmate, who had previously attempted to murder a cellmate and whose lengthy history of violence rendered him unsuitable for housing with another prisoner. He decapitated her son and made a body-parts necklace.

CDCR prisoner Luis Romero was transferred from another prison to Corcoran, which has a lengthy history of violence. According to a court document, instead of following the usual procedure of having a committee of prison administrators find appropriate housing for Romero, taking into consideration whether a potential cellmate was an appropriate fit, and having both prisoners sign forms agreeing to be housed with one another, they simply placed him in a cell with Jamie Osuna, a prisoner with a violent history. Osuna was serving a no-parole sentence for the torture-murder of a woman. He also was known to collect “trophies” of his violent acts.

That night, guards allegedly failed to perform safety checks on Osuna’s cell even when a sheet was stretched across the bars, blocking their view.

During the night, Osuna tortured and decapitated Romero. He was found in the blood-covered cell wearing a necklace of Romero’s body parts. Romero’s body showed signs of extreme torture, all of which was done with a weapon Osuna made from a small razor blade and string.

With the assistance of Encino attorney Justin Sterling and Los Angeles attorney Erin Darling, Romero’s mother filed a federal civil rights lawsuit pursuant to 42 U.S.C. § 1983, alleging violations of Romero’s federal civil rights as well as pendent state torts. The matter is pending before the court. See: Solares v. Diaz, USDC (E.D. Cal.), Case No. l:20-CV-00158.

Additional sources: courthousenews.com, fresnobee.com
On April 10, 2020, the Supreme Court of Wisconsin held unconstitutional a statute permitting an involuntarily committed prisoner to be forcibly medicated without a court finding that the prisoner was dangerous.

C.S. suffers from schizophrenia. He was convicted of mayhem as a repeat offender and sentenced to 10 years of extended supervision. Then the state filed a petition to have him involuntarily committed and medicated.

Almost a decade later, the state filed to extend C.S.’s involuntary commitment and medication. A jury found that he was mentally ill, a proper subject for treatment, in need of treatment, a state prisoner on whom less restrictive forms of appropriate treatment had been unsuccessfully attempted, and fully informed of his treatment needs and rights.

This met the requirements of Wis. Stat. § 51.20(l)(ar), permitting commitment without a determination of dangerousness, which the court did. The court also found that C.S. was incompetent to refuse medication pursuant to Wis. Stat. § 51.61(1) and ordered involuntary medication. C.S. appealed, arguing that the involuntary medication statute was facially unconstitutional.

The court of appeals affirmed. With interest to be medicated and the prisoner is not competent to refuse medication or make an informed choice of medication or treatment unless ordered by court or necessary to prevent serious physical harm to the person or another. Section 51.61(l)(g)3 authorizes the committing court to order involuntary medication if it determines that the person is not competent to refuse medication or treatment. That is what happened in C.S.’s case.

The court followed the reasoning of Washington v. Harper, 494 U.S. 210 (1990) that a state could involuntarily medicate a prisoner only if it was in the prisoner’s interest to be medicated and the prisoner was dangerous. Further, the court had previously determined that the “mere inability of a defendant to express an understanding of medication or make an informed choice about it is constitutionally insufficient to override a defendant’s ‘significant liberty interest’” in avoiding involuntary medication. State v. Fitzgerald, 929 N.W.2d 165 (Wis. 2019).

Therefore, “§ 51.61(l)(g)3 is facially unconstitutional for any prisoner involuntarily committed” under § 51.20(l)(ar). The court of appeals was reversed and the case remanded to the circuit court with an order to vacate the involuntary medication order. See: Winnebago County v. C.S. (In re C.S.), 2020 WI 33 (Wis. 2020).

Sharing his life story for the first time, renowned psychotherapist Dr. Darryl Wheat tells of his early years of trauma, parental abandonment, and being left to live with his grandmother. His defiance led him into numerous jails, detention houses, and reform school. Young, brash and reckless, Darryl racked up over 40 arrests, 12 institutional escapes, and endless parole violations. He is seemingly destined for an early death when miraculously, his loving grandmother intervenes. “Nanny” instills wisdom, which, at age 19, results in turning her grandson’s life completely around. Darryl then sets out to accomplish what people tell him is impossible. This is his unbelievable, yet true story.
Wildfires Threaten Prisoners in West, While New California Law Helps Prisoner-Firefighters to Continue Work After Release

by Dale Chappell

It used to be that specially trained prisoners who worked on the front lines fighting wildfires couldn't continue to work as firefighters after their release. Thanks to a new law signed by Gov. Gavin Newsom on September 11, 2020, some prisoner-firefighters may find it's possible to stay on the job.

The new law (designated as AB 2147) allows releases to petition the court to dismiss their convictions after completing their sentences, which would then allow them to obtain certification as an emergency medical technician (EMT), something most fire departments require to get in the door. It's not that prisoner-firefighters couldn't be firefighters after release, but that they couldn't get the additional certifications to obtain actual employment after release. The state categorically barred anyone with a felony conviction from obtaining an EMT certification. Now that obstacle has been removed for some.

“Inmates who have stood on the frontlines, battling historic fires should not be denied the right to later become a professional firefighter,” Newsom said as he signed the bill into law.

Assembly member Eloise Gómez Reyes, who sponsored the bill, said the new law has a broader purpose. “Rehabilitation without strategies to ensure the formerly incarcerated have a career is a pathway to recidivism,” she said in a statement. “We must get serious about providing pathways for those that show the determination to turn their lives around.”

Michael Gebre was a prisoner-firefighter for years in the program before his release. In 2011, he was sentenced to 10 years and during his fourth he learned about the firefighting program. He said it “changed everything” for him.

He wore the bright orange turnout gear that identified prisoner-firefighters and helped at many of the state’s biggest fires, such as the Thomas Fire, the Mendocino Complex Fire, the Ferguson Fire, and the Carr Fire, among others. He says the Camp Fire, his last as a prisoner-firefighter, was the “craziest fire” he’s worked.

Upon his release in 2019, he was recommended by Cal Fire staff for an official position in the fire academy, and he became a fulltime firefighter with Cal Fire. However, he’s limited without an EMT certification. “Without the training, I can’t get certain jobs,” he says. “I can’t do what an EMT does, so it limits me and it would limit me for promotions.” He adds, “I could be of more help, I could be of more assistance.” He said the new law is huge not only for himself but also for the community he serves.

They ‘Risked Their Lives’

“It doesn’t make sense that these people have risked their lives to save Californians,” said Romarilyn Ralston, who leads Project Rebound, a California State University program that supports formerly imprisoned pupils. “They’ve already been doing the job, and they’re barred from the jobs after release. When there’s a fire burning, when your life is in danger and you can’t breathe — you’re not going to do a criminal background check before you let someone save you.”

But law enforcement groups and prosecutors opposed the new bill, saying that the former prisoners pose a danger to the public. This despite the fact that they did the job already and that only minimum-security prisoners can qualify. Sex offenders, murderers, and certain violent felonies are automatically excluded from working as prisoner-firefighters from the outset, and they’re also excluded under the new law.

California has used prisoner-firefighters for more than 80 years. Like regular firefighters, they work alongside, prisoner-firefighters use chainsaws and other tools to battle fires, even sleeping with the crews on the fireground. They are paid about a dollar an hour while fighting fires, and $2 a day when not on the job. They also receive time off their sentence for the work.

State officials such as the prisoner-firefighter program because it saves the state about $100 million a year. That would be the cost to hire fulltime firefighters to fill the boots of the prisoner-firefighters. Some disagree with using prisoners to save money. “Every fire season it’s the same,” Ralston said. “The pay is so little, the work is so dangerous.”

“It’s a super imbalanced system; it’s much like the system of slavery,” said Deirdre Wilson, a Master’s student of social work at the University of Southern California. “There’s a reliance on this population, on this cheap labor.”

The state runs 44 prison fire camps with Cal Fire in 27 counties. In a typical year, the state employs around 200 prisoner-firefighter crews. But as of August, the state employed only 113 of those crews, mainly due to the coronavirus. Back in July, Newsom said only 94 of those crews were available.

Thousands of low-risk prisoners were released to ease overcrowding in the prisons during the pandemic. And some of the fire camps were locked down because of COVID-19. This reduced the available prisoner-firefighters to fight the record-breaking wildfires sweeping through the state this year. The state says the total prisoner-firefighters able to work has been reduced by about a third this year.

The COVID-19 crisis has highlighted just how dependent the state is on its prisoners to fight fires.

In July 2020, in deep in the coronavirus pandemic Newsom announced a plan to limit the spread of COVID-19 in state prisons by releasing up to 8,000 non-violent prisoners with less than a year left to serve. Many of California’s prisoner-firefighters met that criteria, but not many were released.

“The inmates should have been put on the fire lines, fighting fires,” said Mike Hampton, a former CDCR prison guard who worked for decades at a prison fire camp. “How do you justify releasing all these inmates in prime fire season with all these fires going on?”

“Inmate fire crews are absolutely imperative to our ability to create hand line[s] and do arduous work on our fires,” says Brice Bennett, a spokesman for Cal Fire. “They are a tremendous resource.”

Prisoner Transfer Woes

The wildfires have also compounded

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problems for prisoners all along the West Coast. In the early part of September, prisoners from four different Oregon prisons were transferred to other prisons to escape wildfires threatening their prisons. The Oregon Department of Corrections (ODOC) evacuated Coffee Creek Correctional Facility in Wilsonville to Deer Ridge Correctional Institution in Madras. Coffee Creek is the intake facility for Oregon State prisoners before they are designated to other prisons. It’s also a COVID-19 hotspot.

The Oregon Department of Corrections (ODOC) evacuated Coffee Creek Correctional Facility in Wilsonville to Deer Ridge Correctional Institution in Madras. Coffee Creek is the intake facility for Oregon State prisoners before they are designated to other prisons. It’s also a COVID-19 hotspot in the ODOC.

The prisoners were loaded into school buses at 11 p.m. one night and zip-tied to each other. They were allowed one bag with a change of clothes, a towel, an address book, and shower slides. No commissary or other personal items were allowed. Arriving at Deer Ridge at 4 a.m., they sat on the bus for around three hours without access to a bathroom. They were told to urinate in cups and throw them out the window. About 2,750 prisoners were evacuated from the wildfires, ODOC said.

But the conditions weren't any better at Deer Ridge, they said. Prisoners from all sorts of facilities were housed together without any consideration of security level. Fights broke out and at least one person was reportedly stabbed, Tara Herivel, an Oregon public defender, said. ODOC sent 1,450 prisoners to the maximum security state penitentiary, which was already at its 2,000-person capacity.

There also wasn’t any consideration by ODOC about the coronavirus, she said. “It’s like COVID doesn’t even exist,” she said. Herivel is leading a team of lawyers who are bringing 180 cases against ODOC for failure to protect prisoners from COVID-19. “These are constitutional claims against the Department of Corrections for failing to protect inmates from COVID,” she said. “Inadequate treatment, inadequate medical care — all conditions of confinement claims. We’re more likely to have some kind of super-spreader event,” she explained.

The conditions were so bad at Deer Ridge that some female prisoners protested. They refused to “bunk up” until they were given food and water. One prisoner's daughter told Oregonian/OregonLive that within five minutes the prisoners were given food and allowed showers.

In California, 26 prisoners died and more than 2,500 prisoners and staff were infected with COVID-19 at San Quentin Prison after infected prisoners were transferred from a Southern California prison to San Quentin in May without being tested.

An ODOC spokesperson addressed the conditions and protests at Deer Ridge and said that “during an emergency, operations do not run as smoothly as normal.” She said prisoners did receive food and medications, but “not on their normal schedule.”

She acknowledged that a crisis team was dispatched to break up the protests at Deer Ridge, but that the incident ended without the use of force.

Prisoners seem to have been delivered from one disaster to another, from coronavirus-infected prisoners to prisons with subhuman conditions, all in an effort to escape from the wildfires.

Sources: oregonlive.com, theguardian.com, nytimes.com, npr.org, abc7.com
**National Guard Called in to Help Run Indiana State Prisons**

*by Dale Chappell*

The Indiana National Guard has switched roles in helping the Indiana Department of Correction (“IDOC”) during the coronavirus pandemic, from that of health-care workers to prison guards, as prison staff become infected by COVID-19.

Back in May 2020, as COVID-19 infected the nation’s prisons, the National Guard was brought in to help IDOC with detection and treatment of COVID-19 in state prisons. It was an effort to stay ahead of the game, or at least keep up with the wildfire spread of the disease. But things got out of hand and the National Guard switched from medical workers to actually running the prisons.

At first, teams of four National Guard members were deployed to Plainfield, Pendleton, and Westville Correctional Facilities. They expected to be there until the end of May, maybe a few weeks. Members with experience as EMTs, firefighters, and other health-care background were selected to bolster IDOC’s medical staff.

“These medical professional quickly augmented the governor’s efforts to reduce the impact of COVID-19 in correctional facilities during this public health crisis,” the National Guard’s website said about its work in state prisons.

By August 2020, entire National Guard units were deployed to operate some of IDOC’s prisons. When staff members at Miami Correctional Facility in Bunker Hill became sick with COVID-19, National Guard units took over working control pods in the prisons. According to IDOC spokesman James Frye, the National Guard has no direct contact with the prisoners.

What began as four-person teams quickly turned into hundreds of National Guard members operating in Pendleton, Miami, and Westville prisons. The IDOC would not confirm those numbers, but said in a news release that “while other businesses may be able to operate with a reduction in their workforce, the unique duties performed by correctional staff must continue with proper staffing levels.”

Monroe County Sheriff Brad Swain said he’s not surprised that IDOC had to call in the National Guard. “I spoke with my jail commander and neither of us can recall a time when this kind of remedy to staffing shortage has occurred,” he said.

He also said that federal lawsuits either brought by or threatened by state prisoners alleging improper medical care might have prompted IDOC to seek outside help.

Sources: nationalguard.mil, indianapublicmedia.org

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**Eleventh Circuit Reinstates Pay-To-Vote for Florida Felons Who Completed Sentences**

*by David M. Reutter*

In a 6-4 en banc ruling, the Eleventh Circuit Court of Appeals held that Florida can bar ex-felons from voting until they pay all court fines, fees, and restitution — even if they are unable to pay.

The court’s September 11, 2020, opinion was written by Chief Judge William Pryor. The case was before the court after Florida appealed U.S. District Judge Robert Hinkle’s April 7, 2020, order that found Florida law constituted an “unconstitutional pay-to-vote system.” [See PLN, June 2020, p. 62.]

The controversy started when a 64.55% super-majority of voters in 2018 approved Amendment 4, which restored voting rights to people who had completed “all terms of sentence,” except those convicted of murder and sex offenses.

During its 2019 legislative session, Florida’s GOP-dominated legislature passed SB 7066. It defined that re-enfranchisement prerequisite to mean “any portion of a sentence that is contained the four corners of the sentencing document,” including “full payment of LFOs (legal financial obligations) ordered by the sentencing court as part of the sentence.” [See PLN, Oct. 2019, p. 58; Sept. 2018, p. 14]

The Eleventh Circuit divided its en banc majority opinion into three parts. The first addressed the Equal Protection Clause claim. It noted that in approving Judge Hinkle’s grant of preliminary injunction in an interlocutory appeal by the State, a three-judge panel applied a “heightened scrutiny” standard to find Amendment 4 and SB 7066 invidiously discriminated based on wealth. See Jones v. Governor of Fla., 950 F.3d 795 (11th Cir. 2020).

The en banc majority said “[t]hat decision was wrong.” It found “Florida withholds the franchise from any felon, regardless of wealth, who has failed to complete any term of his criminal sentence — financial or otherwise.” A rational basis review applies in cases that scrutinize reenfranchisement in the absence of any suspect classification, the court wrote in overruling the panel’s previous ruling to the contrary.

The majority found the re-enfranchisement requisite was not a poll tax. Rather, it found the requirement to pay LFOs are “directly related to legitimate voter qualifications.” Turning to the prerequisite classification, the court said Florida has two relevant interests.

“The twin interests in disenfranchising those who disregard the law and restoring those who satisfy the demands of justice are both legitimate goals for a State to advance,” the Court wrote. “If a State may decide that those who commit serious crimes are presumptively unfit for the franchise, it may conclude that those who have completed their sentences are the best candidates for reenfranchisement.”

Having found no Equal Protection violation, the court determined that there was no basis to conclude that court costs and fees imposed as part of a criminal sentence are taxes. It pointed to SCOTUS precedent that holds that “if a government exaction is a penalty, it is not a tax.”

The imposition of court fines, fees, and restitution is part of the penalty imposed as punishment for a crime, the court said. Florida law is clear that costs of prosecution are criminal punishment. If a felon cannot pay an LFO, the sentencing court may “convert the statutory financial obligation into a court ordered obligation to perform community service.”

The majority rejected the felons’ argu-
ment that the LFO payment requirement violates the Twenty-Fourth Amendment. The court further found there was no Due Process violation based on a vagueness challenge. That felons argued SB 7066 “makes it difficult or impossible for some felons to determine whether they are eligible to vote.” Registering to vote or voting without pay all LFOs could subject the felons to prosecution.

Judge Hinkle found there was no way for felons or even the State to determine how much they owe or have paid in the LFOs. “[T]hose concerns arise not from a vague law but from factual circumstances that sometimes make it difficult to determine whether an incriminating fact exists,” the Eleventh Circuit said. It is clear that felons cannot register to vote or vote unless they have satisfied the LFOs, so “the laws are not vague.” It found that as the laws are legislative, they are not subjective to procedural due process.

In dissent, Judge Jill Pryor said that figuring out whether LFOs have been paid is merely “legislative.” She said it was adjudicative because “the Division of Elections is tasked with both conducting an individualized assessment of felon’s LFOs and determining whether they have been satisfied.”

SB 7066 failed to “provide sufficient standards for how to determine whether a felon has satisfied the LFO requirement, resulting in an arbitrary application.” Judge Hinkle’s judgment granted injunctive relief to set in place procedures to make that determination.

The majority noted that 85,000 felons have registered to vote and none have been removed from the voter rolls, and until they are removed, “all 85,000 are entitled to vote. In a dissenting opinion, Judge Jordan said that “Florida has not completed screening even a single registrant for unpaid LFOs.”

“The truth is that many of these registrants will not vote to avoid the risk of prosecution, even if they are in fact eligible, creating a de facto denial of the franchise,” wrote Judge Jill Pryor. “Florida ignores this reality, and the majority is blind to it.

The 2020 presidential election on Nov. 3 is only weeks away. Florida has been a swing state that has tipped the scales in recent elections. In 2000, Florida’s outcome hinged on “hanging chads” and the matter was only resolved after a ruling by SCOTUS. That court may weigh in on the current dispute next year. In denying an appeal to overturn the Eleventh Circuit’s stay of Judge Hinkle’s order in July 2020, Justices Sonia Sotomayor, Elena Kagan and Ruth Bader Ginsburg dissented. Ginsburg died on Sept. 18, 2020.

“This court’s order prevents thousands of otherwise eligible voters from participating in Florida’s primary election simply because they are poor,” Justice Sotomayor explained in her dissent. The court’s “inaction continues a trend of condoning disenfranchisement.” (Florida has an estimated 774,000 disenfranchised felons in the state.)

For now, the voters’ will in approving Amendment 4 has been negated by Florida’s GOP-dominated legislature. Unless SCOTUS intervenes, the re-enfranchisement victory that already created a class based upon offenses has another class: the poor who have little hope of paying off their LFOs. See: Jones v. Governor of Fla., 2020 U.S. App. LEXIS 28851. Additional source: latimes.com
Every state spends more money on prisons than on schools, according to PolitiFact. But you can’t blame the states — the federal government made them do it. Some 25 years ago, President Bill Clinton signed into law the biggest incendiary device that lit the fire of mass incarceration: The Violent Crime Control and Law Enforcement Act of 1994 (VCCLEA). “Gangs and drugs have taken over our streets and undermined our schools,” he said as he signed the bill into law before a wall of uniformed police officers.

Under the VCCLEA, the federal government coerced the states to adopt harsher sentences and require that prisoners serve at least 85 percent of their sentences. States that refused to go along lost out on $12.5 billion in grants ($19 billion in today’s terms) to build new prisons and bulk up police forces. Most states jumped on board.

But states had already been hiking up their sentences because violent crime was rampant in the early 1990s. So requiring even longer sentences, especially with the 85 percent rule and abolition of parole, meant lots more prisoners in jail for lots more time. This “Truth-In-Sentencing” scheme filled prisons to capacity, prompting the prison construction boom. Early on, a new prison was opened in the U.S. every 15 days.

The VCCLEA was late to the party, though. Violent crime peaked in this country in 1991, three years before Clinton signed VCCLEA into law. Nevertheless, federal and state law enforcement were bound to follow the new law, and they still adhere to its outdated and faulty reasoning.

The Brennan Center for Justice said in a September 2019 report that “undoing this failed system must be deliberate.” The VCCLEA fueled the mass incarceration problem we have today, and “we must confront the legacy of decades of federal funding” that created it, the center said.

It was the funding enabled by VCCLEA that encouraged states to increase arrests, prosecutions, and incarceration, the center said. While most agree that mass incarceration should be fixed, “the federal government has never sent a clear message to states that decarceration should be a goal,” the center noted. Instead, the Act of 1994 continues to plod along.

Legislators have reintroduced the Reverse Mass Incarceration Act, which would provide financial measures to states to decrease imprisonment, the opposite of the VCCLEA’s purpose. Presidential candidate Joe Biden has included the same plan in his criminal justice reform platform, though he was a key supporter of the VCCLEA back in the day.

For six decades, the switch from using prisons for rehabilitation to using prisons for retribution has caused an explosion of the prison population. The VCCLEA was a major force in that change. While the word “reform” is thrown around with abandonment, mass incarceration happened because of reform — namely the VCCLEA. It’s time to undo the “reforms” and dismantle the VCCLEA, the center says.

Sources: brennancenter.org, thecrimereport.org

**Ford Foundation President’s Support to Replace Rikers With Other Jails Criticized**

*by Chad Marks*

Ford Foundation President Darren Walker published a blog titled, “In Defense of Nuance” in the fall of 2019. A larger portion of the missive supported the building of four smaller detention centers to replace the infamous Rikers Island Jail. Many subsequently pushed back, including hundreds of Ford Fellows, criminal justice reform activists, public health advocates, grassroots organizations, and others.

The Rikers jail has for years been plagued with deplorable conditions and riddled with violence from staff and prisoners alike. Unjust detentions also have been part of the jail’s makeup.

New York City has long been planning to shut it down for good. Part of that plan is to build four smaller jails throughout the city. This proposal does not sit well with many people.

Activist groups have voiced opposition, saying building more lockups for New York City will only contribute to the mass incarceration problem facing our nation as a whole. More jails and prisons are not the solution, according to those disputing Walker.

One of the biggest grassroots organizations objecting to the city’s plans, No New Jails, has pushed back Walker’s support for the new jails. More jails means more people of color will be subject to unjust incarceration, according to the objectors. They want a different plan than more prisons, saying on their website that “billions of dollars budgeted for new jails should be redirected instead to community-based resources that will support permanent decarceration.”

Walker, an African American, sits on the Commission on New York City Justice and Incarceration Reform.

In his blog, he wrote, “I am proud of [the commission’s] work to propose reasonable, workable solutions to shutter this warehouse of inhumanity [Rikers] and to end its long history of abuse and injustice. This was heavy lifting, full of competing interests and complexity — of nuance.”

Walker went on to write “without question as a community, we will need to hold replacement jails to account, especially in light of the negligent affronts to human dignity at other New York City Jails.”

During a Q&A at the Riverside Church in Manhattan, Angela Y. Davis, a member of No New Jails, was asked about Walker’s blog post. Davis’ response was that a demonstration should be staged. With such blessing from Davis, a protest was organized outside the Ford Foundation.

An open letter, with former and current Ford fellows signing on, addressed Walker’s post stating: “[W]e take issue with the implicit characterization of organizations, activists, and advocates fighting for prison
abolition as ‘extremist’ and ‘ideological purist,’ while situating those who support building new jails as taking a reasoned or ‘nuanced’ approach, particularly as you sit on the commission that developed the proposal.”

The letter went on to say that more jails lead to higher rates of incarceration and disruption of families. Shandre Delaney, director of Human Rights Coalition Fed Up! and a mother of a son who spent 10 years in solitary confinement, was quoted in the letter. She stated, “It doesn’t matter that you trade in the old dungeon for a new dungeon. The brutality, disparities and inhumanity of incarceration will still exist.” The producers of the letter encouraged more Ford Fellows to add their names to it using a Google form.

Walker did not remain silent. Instead, he published a response: “The Ford Foundation is unwavering in its commitment to ending mass incarceration. We envision a world where people are not locked up in cages, [are] treated inhumanely, and stripped of their dignity.” He added: “As a black man with many family members who have been ensnared in the system, I know, personally, that the distance between justice and injustice is perilously, painfully short—especially as a result of entrenched discrimination and economic inequality. I am proud of our work—all of it—to reform a discriminatory system that treats millions of people so unfairly.”

Two things remain certain. It’s time to close Rikers, and it’s time to come up with real solutions to end the era of mass incarceration. In order to achieve those goals, people on both sides must sit down and work together on common goals.

Sources: fordfoundation.org, hyperallergic.com, nonprofitquarterly.org

California Judge Reconsiders Six Months’ Jail for Cookie Theft at Rehab Program

by Anthony W. Accurso

Gregory Fields was in a court-ordered rehab program at the Salvation Army Harbor Light Center in San Francisco. He had completed a 30-day detox and blackout period when he started the program, during which he could not contact family or friends.

He was “acclimated in groups, he was talking openly about issues that he had and how they affected his life,” said his public defender, Dana Drusinsky. “He’s a really endearing person, so [the treatment facilitators] were all proud of him.”

Then he stole a cookie.

In November 2019, Fields and other from Harbor Light were preparing food packages for charity. According to the local CBS affiliate, Fields “ate a leftover cookie without permission” and “Harbor Lights asked him to leave the program afterward.”

Fields was offered a deal: He could resume treatment if he agreed to restart the program, including the 30-day blackout period. Not wanting to lose contact with his mother, he refused the deal he saw as punishment.

The circuit court then sentenced him to six months in jail. “The treatment program is justifying it by saying that he stole and he needed to be reprimanded,” said Drusinsky. “The way the drug court is rationalizing it is that by not starting [treatment] over, he’s not complying with the terms of his treatment staff.”

Jennifer Byrd, communication director for the Salvation Army, said the organization could not comment about specific clients, but said “each client admitted to a Salvation Army facility agrees to behavioral expectations.”

Drusinsky asked Judge Michael Begert to reconsider his decision, and the district attorney went along with the resentencing.

Fields was released on probation with credit for time served.

“If the court and providers were in fact focused on Mr. Fields’ recovery, they would not have locked him up for eating a cookie,” said Drusinsky. When some people expressed disdain at Fields’ sentence, Drusinsky argued that disproportionate sentences for arbitrary offenses are not unusual in the U.S. legal system. She said, “What is unusual is for a person to actually stand up for themselves and say, ‘No, I don’t deserve this.’”

Sources: vice.com, sanfrancisco.cbslocal.com
Conditions at South Carolina Juvenile Facility Unconstitutional
by David M. Reutter

The U.S. Department of Justice (DOJ) issued notice on February 5, 2020 that it has found the “totality of the conditions, practices, and incidents” it discovered at Broad River Road Complex (BRRC), South Carolina’s long-term juvenile commitment facility, violated the juveniles’ Fourteenth Amendment rights.

After stating its intent in September 27, 2017, to investigate BRRC, the DOJ conducted three onsite visits, reviewed documents and videos, and conducted dozens of interviews with juveniles, staff, and management within South Carolina’s Department of Juvenile Justice (DJJ). The DOJ noted that the DJJ was very cooperative and took steps to address concerns raised on site.

This is not the first time DJJ came under scrutiny for its failure to provide constitutional conditions of confinement for juveniles committed to its custody. In the 1990s, a federal court issued an injunction requiring DJJ to implement minimally acceptable standards to remedy the unconstitutional confinement conditions at its facilities. See: Bowers v. Boyd, 876 F.Supp. 773 (D.S.C. 1995). It developed and implemented a plan that resulted in that case being terminated in 2003.

The DOJ found DJJ fails to keep the average daily population of 100 juveniles at BRRC reasonably safe from harm and its use of isolation is unconstitutional. Over an 11-month span from July 2018 and May 2019, “there were 134 fights and 71 assaults that resulted in 99 injuries to youths. On average, youth fights and assaults occurred every two of three days and a youth sustained an injury every third day. Staff reports in 2017 “describe significant incidents such as youth being punched, knocked to the ground and stomped, struck in the face, grabbed by the genitals, and having their glasses broken in altercations with their peers.” The injuries included loose teeth, a bite, and a broken nose.

The physical plant’s design was seen as contributing to the problem because it prevented supervision because it lacked a line of sight in two pods and video did not cover certain areas of the campus. Combine that with only one guard overseeing 10 juveniles in each pod, and the result is that youths are able to assault each other without fear of intervention.

The DOJ noted that staff decreased by 27 percent, from 235 in September 2017 to 172 in May 2019. Yet, the population increased from 119 to 127 over that period. It also found the failure to have videos held for longer than two weeks prevented investigation of incidents. Of 47 incidents in 2017, video for only 12 was available for the DOJ’s review. Failure to train staff de-escalation techniques resulted in them using force to restrain youths or in response to fights.

While the constitution prohibits using isolation solely for punishment of youths, DJJ uses isolation for punishment even where the youth was not a threat to health or safety. Youths were placed in isolation for “having playing cards,” “being unable to complete a drug test,” and “tattooing each other with ink pens.”

The average stay in isolation was three days, but in 2017 youth were isolated 39 times for 10 or more days. The longest stay was 225 days. On average, BRRC used isolation 94 times a month from July 1, 2018, to May 31, 2019. There were 46 instances of youth under suicide watch being placed in isolation or mental health observation.

The conditions of isolation are harsh, for the cells are dark and have no natural light. The only window in the cell was painted over “to impede the youth from interacting with other youth or staff outside.” The DOJ found instances of youths’ mental health deteriorating from prolonged isolation. In a few cases, juveniles were not provided psychiatric care after attempting self-harm.

The DOJ’s report listed remedial measures to correct the conditions. The February 5, 2020, notice points out that DOJ can file suit if the conditions are not corrected.

Source: Investigation of South Carolina's Department of Juvenile Justice's Broad River Road Complex, U.S. Department of Justice

How Kamala Harris’ Orange County, California “Snitch” Scandal Investigation Imploded
by Derek Gilna

Kamala Harris, the Democratic nominee for vice president, has long touted her law enforcement background in winning election to the offices of district attorney, California attorney general, and U.S. senator. But, serious questions have been raised about an investigation her office launched in 2015 regarding corruption in the Orange County jail.

That investigation quietly ended without any charges filed against law enforcement personnel who perjured themselves and compromised many criminal trials, resulting in numerous retrials and dismissals, as detailed by the Los Angeles Times in a January 20, 2020 story. “Though the scandal sparked a U.S. Department of Justice investigation and led to retrials for dozens of defendants, including convicted murderers, the unexplained conclusion of the state inquiry has stirred frustration that many key players will escape accountability, the Times said.

The investigation began after a public defender probed the Orange County Sheriff’s Office practice of placing prisoner informants, or “snitches,” in cells with individuals already charged with serious crimes, hoping to elicit an unguarded confession. That violated their constitutional right to have an attorney present while being questioned.

Orange County public defender Scott Sanders uncovered this clearly unconstitutional practice as he reviewed discovery records given to him in the case of Scott Dekraai, who eventually pleaded guilty to the 2011 Seal Beach salon murders, which showed sheriff’s officials had purposely placed a well-known snitch close to Dekraai while he was in custody. A California Superior court judge later said that two deputies...
“intentionally lied or willfully withheld material evidence” during his murder trial.

Dekraai faced the death penalty over the worst mass killing in Orange County history, eight people murdered at a hair salon. He was expected to receive the death penalty, but Orange County Superior Court Judge Thomas Goethals ruled he could not receive a fair trial as the Sheriff’s Department’s had failed to turn over evidence about the scandal.

In 2017, he was sentenced to life in prison without the possibility of parole. (Capital punishment is legal in California, but Governor Gavin Newsom declared an official moratorium on further executions in March 2019.)

Among other defendants who received retrial due to the scandal was a man who killed a woman who was eight months pregnant and dumped her body into Long Beach harbor.

Sanders was clearly dissatisfied with the apparent lack of interest by Harris’ office and by her successor, Xavier Becerra, in pursuing those Orange County sheriff’s deputies who perjured themselves but escaped criminal consequences for their misdeeds.

The end of the investigation in 2016 was not publicized until three years later, and Sanders implied that this was done to avoid embarrassment to Harris and her successor.

“It’s been pretty hard to sit here watching them pretend like they had an ongoing investigation when they were done in 2016,” he said. “All of them knew. It’s not like Sen. Harris didn’t know. It’s not like Becerra didn’t know they were perpetuating a scam. There was no reason not to tell us the investigation was over, but they clearly did not want to deal with questions about why they did and didn’t do certain things.”

Sanders, who was in a position to speak with authority regarding the investigation, was clearly unimpressed by the efforts of the Harris-led attorney general’s office: “It was just striking ... it was really, clearly, not a hard and penetrating investigation determined to get to the truth about what happened. You couldn’t read this and say these folks were really trying to get to the bottom of this. It was softballs and little follow-up,” he said.

“You would have never examined these materials and decided the A.G.’s office was trying to put any sheriff’s deputies in harm’s way.”

Sanders went on to specifically criticize Harris for a lack of resolve to get convictions for obvious criminal misconduct: “Three deputies committed blatant perjury: Three deputies committed blatant perjury: Three deputies committed blatant perjury: "Three deputies committed blatant perjury: The Harris administration had everything it needed to prosecute for perjury, except for the courage to stand up to law enforcement.”

Although Harris’ spokespeople said they were also frustrated by the investigation’s lack of success, Sanders was not convinced, and said that the inept investigation did nothing to end widespread police misconduct in Orange County.

“When you do an investigation like this and it’s not done in good faith and it’s not responsibly done, members of law enforcement just become more dangerous in terms of their willingness to commit misconduct,” he said. “The last line of protection for the public was the attorney general’s office.”

See: latimes.com
First Wrongful Death Claim Against San Quentin Prison Filed Over COVID-19 Death

by Dale Chappell

The family of one of the prisoners who died of COVID-19 at San Quentin prison in California has filed the first wrongful death claim — a precursor to a lawsuit — against the prison. Papers filed by the family’s lawyers on September 10, 2020, detailed how prison officials ignored the risks of the coronavirus and transferred 121 prisoners to San Quentin from a known COVID-19 hotspot without testing them — and then housed those prisoners in an open dorm with San Quentin prisoners without any precautions.

In short order, more than 2,237 prisoners became infected and 26 died (one guard also died). The transferred prisoners came from the California Institution for Men in Chino, where more than 600 cases of COVID-19 were reported with at least nine deaths.

Known for being the home of California’s death row, San Quentin also houses large numbers of low-level, non-violent prisoners, with many being older and at-risk for COVID-19. One of those prisoners was Daniel Ruiz who, at age 61, had at least four identified medical problems that put him at risk for death of COVID-19, according to the papers filed. He was one of 40,000 prisoners identified across the state as being at-risk for COVID-19 complications.

When Gov. Gavin Newsom ordered the release of thousands of at-risk prisoners, Ruiz was one of those selected. He had just weeks to go before his release when he was exposed to COVID-19 at San Quentin. When he fell gravely ill and was transferred to the hospital, prison officials refused to let hospital staff notify his family, the papers said. Ruiz’s family had no idea he was sick or even in the hospital. Within days, he was on a ventilator and the family, the papers said. Ruiz’s family had no idea he was sick or even in the hospital. Within days, he was on a ventilator and near death. Only then was his family notified. He died on July 11.

The Demand Letter filed with the California Department of Corrections and Rehabilitation (“CDCR”) to preserve evidence for a lawsuit planned by attorneys for Ruiz’s survivors identified the missteps by prison staff in response to the deadly virus. On May 30, 2020, San Quentin had no reported cases of COVID-19. But on the same day the Chino prisoners were transferred in. Within three weeks, San Quentin went from zero cases to almost 500.

A federal court ordered a person to medically monitor the prison’s handling of the virus, and on June 13, 2020, a group of health experts toured the prison. They wrote an “urgent memo” on June 15 warning that COVID-19 at San Quentin could develop into a “full-blown local epidemic and health care crisis in the prison and surrounding counties.” They found prison staff were ignoring safety measures, like wearing masks, and not testing for COVID-19.

The experts also reported that use of disciplinary segregation to house COVID-19 prisoners “may thwart efforts for outbreak containment as people may be reluctant to report their symptoms.” Nevertheless, San Quentin moved COVID-19 prisoners to disciplinary segregation, including solitary confinement. Prisoners then began refusing testing to avoid being punished for having the virus.

But it was the transfer of the Chino prisoners to San Quentin that was the focus of the claim. The letter cited a California Senate Committee on Public Safety meeting on July 1, 2020, where state senators called the transfer “the worst prison health screw up in state history.” Newsom himself admitted the Chino prisoners “should not have been transferred.”

Attorneys for the family claimed that CDCR “knew or should have known that Daniel Ruiz had multiple high-risk factors for COVID-19,” and that he was “due to be released within a matter of weeks.” They claimed that “due to [CDCR’s] wrongful decisions, acts, and omissions described [in the letter], Daniel Ruiz contracted COVID-19 while in [CDCR’s] custody and care.” They further claimed “deliberate indifference” by CDCR to Ruiz’s “serious medical needs.”

They claimed damages for wrongful death, pain and suffering, emotional distress, loss of companionship and economic support, and punitive and statutory damages, among others.

The family is represented by Michael J. Haddad of Haddad and Sherwin out of Oakland, California. See: Claim of Daniel Ruiz, Deceased, et al., pursuant to Gov. Code § 910 et seq., and Demand for Preservation of Evidence.

Additional source: latimes.com

$420,000 Settlement in Lawsuit Over Opioid Withdrawal Death in Georgia Jail

by Matt Clarke

Wilkinson County, Georgia, agreed on January 2, 2020 to pay $420,000 to settle a lawsuit brought by the son and estate of a woman who died five years earlier of apparent prescription opioid withdrawal that went untreated in the county’s jail, after her pleas and those of her cellmates for medical help were repeatedly ignored.

In January 2015, Amanda Helms began suffering from opioid withdrawal soon after she arrived at the jail three days before Mixon. Jailers ignored her pleas for medical treatment and told her she needed to “dry out.”

“At no point during those nightmarish two and a half days was Ms. Mixon ever taken to see a doctor or a nurse despite the county’s jail, after her pleas and those of her cellmates for medical help were repeatedly ignored. She had been taking the Oxycodone for back pain and fibromyalgia. Helms began suffering from opioid withdrawal soon after she arrived at the jail three days before Mixon. Jailers ignored her pleas for medical treatment and told her she needed to “dry out.”

“Debbie Mixon, 52, took her own life on January 17, 2015. She had no idea she was sick or even in the hospital. Within days, she was on a ventilator and near death. Only then was her family notified. She died on July 11.”

The Demand Letter filed with the California Department of Corrections and Rehabilitation (“CDCR”) to preserve evidence for a lawsuit planned by attorneys for Ruiz’s survivors identified the missteps by prison staff in response to the deadly virus. On May 30, 2020, San Quentin had no reported cases of COVID-19. But on the
fellow inmates telling every jailer working at the time that Ms. Mixon was ‘detox - ing’ and needed medical attention,” said her complaint. “Instead, the jail followed the policy and practice articulated by Jail Administrator Thomas ‘Buster’ King when speaking with the parent of another inmate: ‘We’re not running a rehab center here’.”

In response to a plea for medical attention for his daughter, Helms’ father was told by King, “We’re gonna dry these people out.”

Meanwhile, a friend of Mixon’s delivered her prescription medications—which included anti-seizure and high blood pressure medications—to the jail the day after she turned herself in. He asked King to ensure she got them. Despite a jail policy requiring King to contact the jail’s contract doctor to have the medication approved, he never did so.

Mixon suffered from obvious symptoms of opioid withdrawal soon after arriving at the jail. These included uncontrollable vomiting, diarrhea, fever, chest pains, loss of appetite and weakness. She and the other prisoners in her cellblock repeatedly tried to get jail staff to summon medical assistance for Mixon to no avail. Jail records—including her intake forms—did not note Mixon’s medical issues until the second day after she arrived at the jail. That notation, made on the evening of January 29, 2015, on the jail’s roster merely said, “Vomiting+ Fever Needs Doc Appt.”

By 7 the next morning, Mixon was having seizures and the women in her cellblock were screaming and banging on the door as she turned blue and bled from her mouth. Jailer arrived, but instead of performing first aid, they rolled her onto her side, called out her name, and patted her hand. When, after some time, she did not respond, they finally asked the dispatcher to call for an ambulance. It arrived too late, and Mixon was pronounced dead on arrival at a Milledgeville hospital.

After Mixon died, Helms was rushed to the jail’s physician. He scolded the jailers for depriving prisoners of their medications without first consulting him. Helms received medical treatment and survived.

In 2016, Atlanta attorneys Mark Begnaud and Nathanael A. Horsley of Horsley Begnaud, LLC helped Mixon’s son file a federal civil rights lawsuit against the county, its sheriff, and jail personnel alleging violations of Mixon’s constitutional rights and state torts.

In May 2019, a federal judge said King’s actions could be interpreted by a jury as “more than grossly negligent.” The two sides agreed to a settlement in December 2019 and the figure of $420,000 was soon negotiated.

“Through the lawsuit, [Mixon’s family members] were able to get some answers about what happened in the jail, and they feel that they’ve gotten some measure of justice,” said Begnaud, who also noted that the county hired a nurse for the jail, which previously had no full-time trained medical personnel. “Now they can move forward, knowing they fought hard for Cynthia.”


Additional sources: 13WMAZ.com, wgxa.tv, macon.com

Dictionary of the Law
Thousands of clear, concise definitions. See page 69 for ordering information.

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**Theft, Lies and Bribes Force California Warden’s Early Retirement, $11,500 Monthly Pension**

by Mark Wilson

A longtime California prison warden abruptly retired during an investigation into alleged theft, lying and bribery.

Joe Lizarraga began working for the California Department of Corrections and Rehabilitation (CDCR) in 1986. He was appointed warden of the Mule Creek State Prison (MCSP) in 2013, where he was named Warden of the Year by the California Prison Industries Authority in 2017.

Lizarraga reportedly stole from the Interfaith Food Bank Thrift Store in Sutter Creek, California on September 14, 2018. Despite earning an estimated $150,000 annually, he allegedly removed price tags from merchandise, then suggested lower prices to the cashier.

When Sutter Creek police investigated the matter, Lizarraga allegedly lied to the police chief, claiming that he did not suggest prices to the clerk. He also told the chief that he purchased the equipment for his family when it was allegedly for personal financial gain.

Lizarraga wrote a $125 personal money order in an attempt to dissuade a witness from participating in a criminal prosecution and later made a second bribery attempt using prison charitable funds, according to investigative reports.

On January 25, 2019, FBI agents raided Lizarraga’s Mule Creek office, seized his computer and escorted him off the premises. “I wasn’t walked off,” claimed Lizarraga. KCRA News said FBI officials would not confirm nor deny an investigation.

“I can confirm there’s an ongoing investigation, and Mule Creek State Prison Warden Joe Lizarraga is currently on Administrative Time Off,” acknowledged CDCR Press Secretary Vicky Waters at the press conference.

When he resigned in fall 2019, Lizarraga was paid $433,000 in unused vacation, leave time, holiday and weekend pay and other special pay he had accrued, noted CDCR spokeswoman Dana Simas. He collects an $11,500 monthly pension, according to the California Public Employees Retirement System.

“The investigation concluded in December 2019,” said Simas. “As a result, CDCR sustained that there had been instances of dishonesty and theft that would have been grounds to terminate Lizarraga’s employment.”

Eleven of the 16 allegations against Lizarraga were blacked out of the heavily redacted investigation report that was obtained through a public records request by journalists. Yet the report concluded that Lizarraga’s dishonesty, theft and “failure of good behavior” warranted firing.

The report did not indicate whether Lizarraga was criminally charged. The police chief and Amador County District Attorney’s office also declined to comment.

Source: mercurynews.com, marinij.com, Bakersfield.com, Ledger.com, Fox40.com

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**Lawsuit Over Hellish 9-Day Prisoner Transport Reinstated**

by David M. Reutter

On April 29, 2020, the Eighth Circuit Court of Appeals reversed a grant of summary judgment to Inmate Services Corp. (ISC), allowing to continue a civil rights action alleging a pretrial detainee’s constitutional rights were violated in 2016 when the private firm transported him “shackled and unable to lie down, for eight continuous days across twelve states, with only momentary breaks for bathroom use.”

The lawsuit was filed by Danzel Stearns. Two ISC employees picked him up in Colorado Springs, Colorado, on September 17, 2016, under contract with Union County, Mississippi, to extradite him to the county courthouse in New Albany to stand trial on a charge there. The firm, based in West Memphis, Tennessee, should have covered the 1,145-mile trip in less than 17 hours.

But instead of heading east toward Mississippi, its drivers headed west and “wandered through 13 states,” passing through some twice to pick up and drop off as many as 17 other prisoners and detainees at a time and overcrowding the van “before finally delivering a sick, sleep-deprived Stearns for prosecution on a minor drug charge,” his suit stated.

The transport made no overnight or lengthy stops. The two drivers took turns sleeping on a mattress on the floor. One female defecated in her pants, urinate in cups that ultimately spilled onto the floor. One female defecated in her pants, change clothes, or to use the toilet more than irregularly and while chained, and able only to snatch an occasional nap while sitting up on hard seats for nine continuous days’ violated Stearns’ Eighth Amendment right to be free from cruel and unusual punishment, the complaint alleged.

The district court denied ISC’s motion for summary judgment under the Prison Litigation Reform Act, but it granted a second motion to dismiss charges of excessive use of force, inadequate medical care and improper conditions of confinement. Stearns appealed.

The Eighth Circuit analyzed Stearns’ claim under the Fourteenth Amendment and civil rights law.

Source: mercurynews.com, marinij.com, Bakersfield.com, Ledger.com, Fox40.com
and *Bell v. Wolfish*, 441 U.S. 520 (1979), which holds that “due process requires a pretrial detainee not be punished.” Under *Bell*, the appeals court ruled, the district court was required to focus on ISC’s policies or customs to determine whether Stearns’ confinement conditions were reasonably related to a legitimate goal or were excessive as compared to that goal. If excessive, then the conditions might constitute punishment, from which *Bell* explicitly protects detainees.

The court found that “Stearns was subjected to painful, unsanitary, and severe conditions and restraints for over one week.” Yet ISC’s representation in its contract was for “a much shorter contract of no more than 24 hours.” The Court then looked to the totality of the circumstances.

Under ISC’s policy, Stearns was kept in handcuffs and leg shackles connected to a belly chain during the entirety of the transport, in violation of another company policy that restraints be removed “from inmates that are on transport more than 48 hours.” Its policy also provided he be given water and fast food, but he was provided only limited amounts. ISC’s policies also contemplate “transports as long as 7 to 10 days,” and the evidence showed its practice is to pick up and drop off prisoners on multi-state journeys such as Stearns.

In reversing the district court’s order, the Eighth Circuit concluded a jury could find the totality of the circumstances endured by Stearns violated his Fourteenth Amendment right to be free of punishment, remanding the case to the district court for reconsideration. See: *Stearns v. Inmate Services Corp.*, 957 F.3d 902 (8th Cir. 2020).

Additional source: *Arkansas Democrat Gazette*

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**Seventh Circuit Protects Guards Who Allegedly Failed to Protect Wisconsin Prisoner**

*by David M. Reutter*

On April 6, 2020, the Seventh Circuit Court of Appeals affirmed the grant of summary judgment to guards who allegedly failed to protect a Wisconsin prisoner. The court agreed that the prisoner failed to mention during the prison grievance process that the guards were aware of threatening behavior by the attacker before the assault and failed to take steps to prevent the threat of harm.

Before the court was the appeal of prisoner Daniel A. Schillinger, who was confined at Wisconsin’s Secure Program Facility when he was assaulted on September 17, 2015. While on the recreation yard, a prisoner named Terry approached Schillinger as he was playing chess.

Terry made threats and demanded Schillinger buy canteen items for him. Guards Randy Starkey and Josh Kiley approached and asked, “Are you guys horse playing or are you for real?” Terry responded, “No, it’s all good.”

As the recreation yard was closing, Starkey and Kiley asked Schillinger if he was going to be okay. He responded he didn’t know because Terry made threats and he did not trust him. Another prisoner overheard Starkey say that he thought there was going to be a “rumble.”

When Schillinger arrived at his unit, Terry attacked. It took about eight to 10 minutes for guards to respond. Schillinger was knocked unconscious. He suffered a skull fracture, cuts to the face that required stitches, a cut on his elbow; he lost a tooth and suffered a chipped one, and sustained possible nerve damage on the left side of his mouth, plus a bruised lung.

Schillinger filed a grievance that identified the date of the incident and his injuries.

The Second Circuit agreed with the district court that the grievance failed to inform prison officials of the nature of the wrong and the grievance did not exhaust administrative remedies as required by the Prison Litigation Reform Act, known as PLRA.

Neither Starkey or Kiley were mentioned in the grievance, and there was no reference to an earlier confrontation between Schillinger and Terry. Thus, it could not be concluded from the grievance that they failed to take appropriate measures to prevent the attack.

The district court’s grant of summary judgment was affirmed. See: *Schillinger v. Kiley*, 954 F.3d 990 (7th Cir. 2020).
Bloomberg Allies Make $20 Million Push to Help Enfranchise 30,000 Florida Ex-Felons

by Derek Gilna

Deep-pocketed friends and foundations associated with business mogul Michael Bloomberg are planning to spend around $20 million to pay the outstanding fines and court debts of former state felons in Florida, obligations that would otherwise disqualify them from voting in November.

Computer scientist Robert Montoye noted in a New York Times opinion piece Sept. 21: “Because of an 11th Circuit appeals court ruling on Sept. 11, an estimated 774,000 Floridians who have already served their time in jail or prison are not eligible to vote in the 2020 election until they pay the fines and fees associated with their sentences.”

The funds will flow to the Florida Rights Restoration Coalition (FRRC), run by former felons, Bloomberg said. “The right to vote is fundamental to our democracy and no American should be denied that right,” he said. “Working together with the Florida Rights Restoration Coalition, we are determined to end disenfranchisement and the discrimination that has always driven it.” NBA star LeBron James is one of the major backers of the Coalition.

The money will aid tens of thousands of ex-felons who have served their sentences and had debt of less than $1,500, allowing them to cast ballots in the upcoming presidential and state election.

Until 2018, former felons in Florida were unable to vote, but state constitutional Amendment 4 re-enfranchised most of them. It excluded murderers and sex offenders.

However, a new law, which withstood a recent Florida Supreme Court challenge, made that right to vote conditional upon payment of all restitution, fines and costs, a serious challenge for a generally economically disadvantaged group.

Some news reports said that only Blacks and Latinos would have their fines and debts paid with Bloomberg’s money, but the FRRC specifically denied that.

Blacks and Latinos are disproportionately impacted by Florida’s criminal justice system. “African Americans account for nearly half of the 96,000 people locked up in Florida prisons while making up about 17% of the state population,” a 2019 story in the Tallahassee Democrat newspaper said, to cite just one example. “Whites with half of the overall population make up 38% of inmates, while 13% of inmates are Hispanic.”

However, the majority of ex-felons whose voting rights stand to be restored are White. In a 2018 interview, Desmond Meade, chairman of the FRRC and himself a former felon and now a law school graduate, said most people “assume that this is only an African American issue, or it’s only African Americans that are impacted by this particular policy and in reality, the opposite is true...There are more people who are white, there are more people who are not African American, that are impacted.”

Bloomberg, a billionaire former Republican mayor of New York City, ran unsuccessfully for the Democratic presidential nomination until withdrawing in favor of eventual nominee Joe Biden. He has separately pledged to invest $100 million in the pivotal Sunshine State to help elect Biden.

The law requiring payment of court fees, passed by a Republican state legislature, and signed by Republican Gov. Ron DeSantis, threatened to delay the efforts of advocates who fought for years to see voting rights restored for the more than 1 million ex-felons in Florida. Their efforts had resulted in Florida’s Amendment 4 passing with over 60% support in a statewide vote.

According to ACLU Executive Director Howard Simon, “Florida voters took a stand for fairness and voting rights, and to remove an ugly stain that has been in our state’s constitution since the Civil War era.”

Florida immediately announced plans to investigate “potential violations of election laws” over Bloomberg’s donation, said Attorney General Ashley Moody. She urged statewide prosecutor Nick Cox to work with Florida Department of Law Enforcement and the Federal Bureau of Investigation. As of press time, DeSantis was considering calling a grand jury to look into the matter.

Tampa attorney Michael Steinberg, who represents one of the plaintiffs in ongoing Amendment 4 litigation, told the Miami Herald that there is no legal issue with someone paying a released prisoner’s court fees, fines or restitution. “It’s no different than if someone gave someone a gift to pay their fines,” he said. “There’s absolutely nothing wrong with it.”

Sources: The Associated Press, cnn.com, tallahassee.com

Mental Health and Prison Systems in Major Need of Reform

by Kevin Bliss

An article in the Harvard Political Review by Jenna Bao published March 9, 2020, reported that the movement to deinstitutionalize mental health facilities and save costs, which began in the 1950s, has resulted in a large over-representation of the mentally ill in U.S. prisons and loss of quality of treatment for them.

Bao said that although driven by noble ideas, governments failed to replace mental health institutions with an immediate effective alternative, resulting in conditions that contributed to higher incarceration rates. People with mental illness are 4.5 times more likely to be arrested than others and their proportional presence in prisons has exceeded the rate of the general population by a factor of somewhere between three and six. In addition, prisons and jails do not have the mental health facilities or personnel necessary to properly treat these individuals. Bao called this a pseudo-criminalization of illness.

The report stated that the system provoked great ethical concerns. The Center for Prisoner Health and Human Rights Director Scott Allen described it as counter-therapeutic. He said, “This is the wrong
environment to try and treat people with mental illness. Very likely isolating people from their outside community and confining them to the criminal justice setting has harms, so that when someone returns ... they may be worse off than they were, even if mental health care was provided in the facility.”

He asserted that this perpetuated the mentally ill’s cycle of arrest and incarceration.

Bao discussed the continuity of community care. A patient’s caregiver is not normally contacted when a patient is incarcerated. The arresting department is not given the patient’s diagnosis and history. Intake is a brief interaction with the patient. Most process through and are out again pending court in just a few hours. It is difficult to determine who needs treatment and who does not.

The mentally ill have been found to be 15 percent more likely to recidivate within five years. They make up more than half the prisoners who commit suicide in correctional facilities. Incarcerating the mentally ill costs taxpayers about $15 billion per year.

Several communities are now attempting new programs to address the problem. Mental health-care professionals are pairing with police to help de-escalate situations involving the mentally ill. Many have developed crisis stabilization centers as safe alternatives to hold mentally ill patients.

Miami-Dade County of Florida launched a pilot program a decade ago created by Eleventh Judicial Circuit Judge Steve Leifman. Called the Criminal Mental Health Project, it diverts individuals with mental illness from serving time over minor offenses with the use of voluntary community-based treatment plans and law enforcement training to resolve crises.

The report by Bao stated, “While increasing efforts for reform are spreading across the country, deliberate and widespread change is still beyond reach. Establishing a sustainable alternative for the seriously mentally ill will require collaboration between multiple sectors and systems.”

Source: harvardpolitics.com

NYC Floating Jail May Finally be Closed
by Jayson Hawkins

The Hunts Point neighborhood of the Bronx was emblematic of the Big Apple’s rotten core in the 1990s, an area saturated with drugs, homelessness and prostitution. Facing an influx of inmates from rising crime rates, the city had resorted to a fleet of jail barges but lacked a place to dock its fifth and final ship.

As an ex-president of a local community board lamented, “Hunts Point was a place to put things that no one else wanted.”

In January 1992, tugboats pulled the Vernon C. Bain Center, a featureless five-story jail, into port. The facility, which holds 800 prisoners and has over 300 employees, did not seem out of place among the strip clubs and other eyesores that marked the neighborhood at the time.

Much has changed in the intervening 28 years. Mirroring the renewal of Times Square, Hunts Point has shuttered the sex shops; violent crime has plummeted 280 percent since 1990. Next up is a planned marine terminal along the waterfront, which the city hopes will shift movement of goods from congested roadways to the East River. Part of that shift will include closing the Rain Center to free up potentially valuable real estate.

Bain is believed to be the last floating jail in the nation. It rocks in the wake of the river, and small portholes provide prisoners their only window to the outside world. Conditions inside rank as medieval.

“The heat was unbearable, and it was dark and cramped and sweaty,” recalled Marvin Mayfield, a Bronx native who was incarcerated at the facility. “We were in a cargo hold of a slave ship—a modern-day slave ship owned by the City of New York.”

The city has plans to close both Bain and the Rikers Island prison complex as part of an effort to create a more humane criminal justice system. The closures may not take effect until 2026 even if the City Council approves the proposal, though, and it remains to be seen what impact the COVID-19 crisis that ravaged the city will have on the timeline.

Critics question why the jail barge still exists 28 years after it was floated as a temporary measure. The exploding prison population it was meant to address has long since receded, yet Bain remains as an annual $24 million reminder to taxpayers of their support for a system slanted against economically disadvantaged people of color.

“Closing Rikers is one thing,” said Mayfield. “Closing the boat should have happened decades ago.”

Source: nytimes.com

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Fourth Circuit Holds South Carolina DOC Lawyers Entitled to Qualified Immunity

by David M. Reutter

The Fourth Circuit Court of Appeals held that lawyers for the South Carolina Department of Corrections (SCDC) who made a legal error in interpreting new state law were entitled to qualified immunity.

The Court’s August 20, 2020, opinion was issued in an appeal brought by former prisoner Marion K. Campbell, who was convicted in December 2011 of distribution of cocaine. He alleged Eighth and Fourteenth Amendment violations from a memorandum written by Chris Florian, SCDC’s deputy general counsel who interpreted the state’s Omnibus Crime Reduction and Sentencing Reform Act of 2010. Florian concluded the Act made prisoners who committed a “no parole offense” were now eligible for parole, but they were still required to serve 85% of their sentence if they were not granted parole. That interpretation was approved by David Tatarsky, SCDC’s general counsel.

Prisoner Michael Bolin challenged the memo. The South Carolina Administrative Law Court endorsed Florian’s interpretation of the Act. The South Carolina Court of Appeals disagreed, finding that under the Act an offense under S.C. Code Section 44-53-375(B) is no longer a “no parole offense.” That meant persons convicted of those offenses were eligible for work and good time credits. See: Bolin v. South Carolina Dep’t of Corrections, 718 S.E.2d 914 (S.C. Ct. App. 2016).

As of that opinion, SCDC re-calculated Campbell’s release date, and he was released in March 2016. At that point, he had served about five years of his seven-year sentence. After his release, Campbell filed a class action under 42 U.S.C. § 1983, alleging SCDC’s initial interpretation of the Act precluded the application of good-time and work credits based on the 85% rule, and he was held longer than provided by law.

The defendants, Florian and Tatarsky, moved for summary judgment. The district court granted the motion, holding they were entitled to qualified immunity. Campbell appealed.

The Fourth Circuit found Florian acted reasonably in coming to his legal conclusion. It found he took appropriate steps in making a statutory interpretation, especially in the face of contradictory provisions of existing law and those contained in the Act. It noted that it is not uncommon for courts to make an interpretation only to have a higher court find error with that interpretation.

The court further found that “Tatarsky could rely on the good judgment of his subordinates until he had reason to believe otherwise.”

Although it is now settled that Florian and Tatarsky were wrong in interpreting the Omnibus Act, “legal error alone is not deliberate indifference.” The district court’s order was affirmed. See: Campbell v. Florian, 2020 U.S. App. LEXIS 26489.

New Study Shows “Tough on Crime” Generation Spent More Time in Prison Despite Falling Crime Rate

by Dale Chappell

A study by a group of criminologists and sociologists published in August 2020 found that an entire generation during the “tough on crime” era of the 1980s and early 1990s spent more time in prison serving longer sentences than any other generation before or after. Many are still serving time under those harsh sentences.

The collaboration of experts from the State University of New York at Albany and the University of Pennsylvania analyzed data from 1.6 million prisoners, focusing mainly on North Carolina during 1972 to 2016, as it was representative of the idea of longer prison sentences in an attempt to curb crime across the country.

The highly detailed study found that the crime rates for rape, aggravated assault, burglary and other violent crimes were higher in the 1970s than in the 1990s. Yet, those adults who came of age during the 1990s had higher rates of arrest and incarceration than their counterparts just 20 years earlier.

Titled “Locking Up My Generation,” the study’s authors identified a “cohort effect” that filled the nations prisons in record time, which they defined as a group that shares “common historical or social experiences.” To be more specific, it’s a group of people the same age who got caught up in the “war on drugs” during the crack epidemic.

For example, they said those who turned 20 in 1990 and got locked up would be 50 today — and likely still in prison. Whereas those who turned 20 in 2020 had less than half the rate of incarceration as their previous generation. This is because of several factors, the authors noted.

One reason is that harsh mandatory-minimum sentences for drug crimes during that earlier era means more twenty-something-year-olds were handed long prison sentences. And if they did get out of prison, they were more likely to be rearrested and given even longer sentences because of the stricter laws enacted to punish repeat offenders.

Even though the national crime rate has dropped to the lowest levels last seen since the 1960s, the experts said the incarceration rate for the U.S. still remained about four times the level of that in the 1960s. They attributed the increase to the harsh sentences of the tough-on-crime era.

“The unprecedented rise in incarceration rates can be attributed to an increasingly punitive political climate surrounding criminal justice policy formed in a period of rising crime and rapid social change,” the study said, quoting the National Research Council. This, then, provided a series of policy choices that “significantly increased sentence lengths, required prison time for minor offenses, and intensified punishment for drug crimes.”

Simply put, adults who entered the criminal justice system in their early twen-
ties back in the 1980s and 1990s, “became enmeshed in a sequence of incarceration throughout their entire life course,” the authors wrote. “In this fashion, a boom in crime and punishment at a given historical moment carries forward through time, even as the politics and policies that were enacted in response diminish in the rearview mirror of history.”

That is, after the realization that the tough-on-crime and war-on-drugs stances weren’t working, the casualties of those draconian laws enacted at the time were forgotten and left to sit in prison serving sentences everyone now says were ineffective.

The experts found that the group affected by the lock-em-up attitude three decades ago was the Black community. “It turns out that that sentencing shocks have been felt most acutely among the African-American population,” they wrote.

Of course, as the cohort born in the 1970s ages out of prison, prison populations will continue to fall. But the authors say that decreasing punishment is the best way to ensure that a generation doesn’t get stuck in a cycle of long prison sentences that do no good. “The solution to ‘mass incarceration’ is change in the criminal justice policies that reduce punishment,” they concluded. “Federal and state policy makers should revise current criminal justice policies to significantly reduce the rate of incarceration in the United States.”

The report called for additional research and said, “The challenge now is to use the micro data…to flesh out how this process plays out over the life course.”

Sources: thecrimereport.org, wiley.com

**Beltway Sniper Marries in Prison**

*by Jayson Hawkins*

**FOR THREE WEEKS IN OCTOBER OF 2002,** the residents of the Washington, D.C. area lived in fear of unknown assassins taking aim at random victims. Thirteen people were shot during that period; 10 died. Perhaps the only thing more shocking than the arbitrary nature of the crime spree was the identity of the snipers: a middle-aged man, John Allen Muhammad, and teenager Lee Boyd Malvo.

Muhammad was depicted as the mastermind behind the murders. He received the death penalty and was executed in 2009. Malvo, only 17 at the time of the killings, was believed to have been heavily influenced by Muhammad. Convicted in eight of the slayings, Malvo received sentences of life without parole for each. Under current laws in Maryland and Virginia, he will never leave prison.

Malvo, a native of Jamaica, has managed to find a measure of joy and normalcy amidst his incarceration. In early March 2020, he wed a woman whom he had been writing and visiting with for the previous two years. The woman’s identity was not revealed, but two of Malvo’s attorneys described her as close to his own age and “an absolutely wonderful individual.”

Carmeta Albarus, part of Malvo’s original defense team, served as a witness at the ceremony and said the prison was “very accommodating.” She remembered feeling “overwhelming sadness that this boy was taken down this path” after his convictions in 2003. “But when I left there after the wedding, I left with overwhelming joy that two people could find joy the way they have.”

Source: washingtonpost.com

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Prisoners Evacuated but ICE Detainees in Louisiana Suffer During Hurricane Laura

by Ed Lyon

The year 2020 has been rife with unpleasant surprises. The planet has contended with the coronavirus pandemic — the worst since the Spanish flu — and protests sparked by the police killing of George Floyd. Even the weather chose to join in the fray. August saw two hurricanes, Laura and Marco, invade the U.S. Gulf Coast at the same time — an event last seen in the 1930s.

As these two wound their way inexorably toward the Louisiana and Texas coastlines, federal and state emergency management agencies prepared for the worst and prayed for the best, working feverishly around the clock. In prison-rich Jefferson County, Texas, federal and state prisons were left bereft of inhabitants as busload after busload of prisoners were evacuated.

However, to the east, a completely opposite scenario played out for many state and federal prisoners, particularly immigrant detainees held under the U.S. Immigration and Customs Enforcement (ICE) agency at Jackson Parish Correctional Center (JPCC) immigration jail in Olla. In the wake of Hurricane Laura's swath of utter destruction through that area, the Southern Poverty Law Center said family members reported “suffocating conditions,” including poor ventilation in the extreme heat, plus power, flooding and sewage failures.

Louisiana’s economic fortunes improved in 2019 when ICE decided on for-profit jailers like GEO and LaSalle Corrections to house asylum seekers and detainees awaiting hearings and deportation.

Even amid the raging coronavirus pandemic, ICE and immigration judges denied applications for bond and parole and kept the eight detention facilities — some of which were formerly shuttered prisons — full of human misery. Instead, they left detainees in place to weather Laura’s wrath and aftermath.

On August 28, the JPCC lost power and water. Without air conditioning, the heat soared to the point that guards allowed detainees to sleep in the yard at night. Without water, toilets could not flush and it was not long until back flushing began. Detainees had no choice but to mop and clean this bare-handed as LaSalle Corrections was not about to furnish personal protective equipment to them, even under the dire circumstances.

In fact, LaSalle at first prohibited its employees from wearing masks at the beginning of the coronavirus pandemic, despite the fact that coronavirus comes in from outside of lock-ups, not originating from within the lock-ups themselves.

Detainees suffering coronavirus symptoms were tested, then returned to their dorms. When their tests returned with positive results, only then were they isolated. By then they had infected other detainees. Conditions became so bad that by August 30, JPCC had a minor uprising, although officials denied any use of force.

As of September 1, ICE’s website admitted to nine active coronavirus cases at JPCC, but that agency is not exactly a paragon of timely self-reporting. None of the other seven GEO and LaSalle ICE detention centers in that area fared any better than JPCC, according to reports.

Sources: houstonpublicmedia.org, motherjones.com, splcenter.org

Fifth Circuit Reinstates Lawsuit Over Texas Jail Prisoner’s Death

by Matt Clarke

The family of a Texas detainee who died of a suicidal overdose under jailers’ noses can continue its lawsuit against Young County, Texas. That decision was handed down on April 22, 2020, by the Fifth U.S. Circuit Court of Appeals, which reversed in part a summary judgment in favor of the county granted by a district court in the case.

Diana Simpson had previously attempted suicide when she told her husband she would try again by overdosing on pills. She even laid out her plan to get cash from an ATM and check into a motel where he could not find her. A few weeks later, when he noticed a withdrawal from their bank account, he became worried. But he was unable to contact her. When she missed work the next evening, he notified law enforcement.

Police in a nearby city found Simpson asleep in her car the next day, surrounded by empty beer containers and empty blister packs of medication. They asked her how much she had taken. She said, “all of it.”

After denying it to police, Simpson admitted to a medic she was trying to kill herself. She was arrested for public intoxication and taken to the Young County Jail, where jailers only partially completed the book-in process before placing Simpson in a holding cell to “sleep it off” because they assumed she was drunk. Simpson’s husband called the jail three times, told jailers she had been missing and was suicidal and asked them to get her help. They ignored him.
Hours later, Simpson was found half-naked and dead of “mixed-drug intoxication” on the floor of her holding cell. Her family filed a federal civil rights lawsuit against Young County and its sheriff’s department, alleging they deprived her of her civil rights.

The district court granted defendants’ motion for summary judgment and dismissed the case on two theories: Neither the jail’s “episodic acts or omissions” nor its “conditions of confinement” rendered it liable for Simpson’s death. The appeals court agreed with dismissal on the first theory but remanded the case for the district court to reconsider the plaintiffs’ other claims, ruling that they raised a question as to the possibility that the jail had created a de facto policy allowing improper monitoring — a question which could be factually answered.

On remand, the district court again granted summary judgment. On appeal following remand, the Fifth Circuit noted that jailers had testified that there was a policy of having highly intoxicated pre-trial detainees “sleep it off” before completing the mandatory suicide-screening form, a computer-based medical intake form, as well as a state-mandated Continuity of Care Query. The only thing jailers had to do on were Simpson’s own responses to the first part of the suicide-screening form in which she denied having taken medication.

A Texas Ranger who investigated the death noted discrepancies between jail logs of checks on Simpson’s cell and video recordings of the cell area. Her death occurred some time during a six-hour period for which video was inexplicably missing. Even these questionable records showed excessive periods between cell checks.

During the five years prior to Simpson’s death, the Texas Commission on Jail Standards filed numerous reports citing the jail for several failures:

- to properly complete intake screening forms,
- to properly monitor prisoners, and
- to document the monitoring.

These reports put the sheriff on notice of the problems, the appeals court noted. The claim covered failure to assess, monitor and train. The last was barred by the previous summary judgment, but the others were not.

Jailers consistently testified that the suicide-screening and medical intake forms were not completed until a highly intoxicated detainee had “slept it off.” Together with a de facto policy of not monitoring highly intoxicated prisoners, this could have denied Simpson her needed medical care.

The Fifth Circuit opinion said: “The County has no apparent process or policy for preventing such an overdose from successfully killing herself. The jail has no medical staff, jailers do not consider outside information that contradicts what a detainee states at intake, and after intake, jailers do not conduct follow-up assessments. The only follow-up they do is periodic monitoring. And Plaintiffs claim that this monitoring is pervasively inadequate. Given the different, compounding ways that these alleged policies might interact, a jury could reasonably conclude that they had a ‘mutually enforcing effect’ that deprived Simpson of needed medical care.”

Therefore, the court upheld the dismissal of the failure-to-train claim and reversed the dismissal of the failure-to-assess and failure-to-monitor claims and remanded the case for further proceedings. See: Sanchez v. Young County, 956 F.3d 785 (5th Cir. 2020).
Fifth Circuit Upholds Dismissal of Texas Jail Suicide Lawsuit, Holds Discrimination Not Proven

by Matt Clarke

On April 15, 2020, the U.S. Court of Appeals for the Fifth Circuit affirmed the summary dismissal of a lawsuit brought by the estate of a man who committed suicide at the Harris County jail in Houston, Texas.

Danarian Hawkins was 27 in February 2014 when he died by hanging himself with a bedsheets in his holding cell at the jail. He had been arrested in June 2012 after allegedly threatening a man with a knife in a parking lot.

His mother, Jacqueline Smith, said she was unable to pay his $30,000 bail, so he remained in custody over a year and a half awaiting trial. He made an unsuccessful suicide attempt in April 2013, after which he spent time in the jail’s Mental Health Unit (MHU). But he was then released back into the general population at the jail.

All told, Hawkins attempted suicide at least five times at the jail—usually by hanging but once by an overdose of 100 prescribed pills he amassed by hiding them under his tongue when he was supposed to take them.

Two and a half weeks before he died, he was found attempting to hang himself using a sheet tied to a smoke detector and transferred to MHU. He was discharged after two weeks and returned to the same cell.

Four days later, a nurse on rounds talked with Hawkins, who said he recently tried to kill himself because the Illuminati was watching him. However, he indicated that he was not presently suicidal.

The next day, a guard noticed the window in Hawkins’s cell door was covered with a towel. Upon investigation, he found Hawkins hanging by a sheet tied to the smoke detector. The guard performed CPR after he and others got Hawkins down. Hawkins was taken to the jail’s clinic, where he died.


Harris County moved for summary judgment as there was “no evidence of intentional discrimination, which is required for compensatory damages.”

In February 2019, the trial court corrected granted summary judgment to Harris County. The Court said: “[The] laws allow Smith to recover damages only if she can prove that Harris County or its employees intentionally discriminated against Hawkins. Because Smith cannot prove that Hawkins was subjected to intentional discrimination, the district court correctly granted summary judgment to Harris County.”

Therefore, the judgment of the district court was affirmed. See: Smith v. Harris County, 956 F.3d 311 (5th Cir. 2020).

Additional sources: harriscountyaao.org, chron.com

News in Brief

Alabama: In February 2020, a grand jury in Limestone County, Alabama, returned an indictment for “possession/receipt of a controlled substance” against Travis Wales, a former guard at the Limestone County Correctional Facility in Harvest. According to Columbus, Georgia, TV station WBRL, Wales was arrested in September 2019 after a canine unit from the Investigations and Intelligence Division (IID) of the Alabama Department of Corrections (DOC) found him entering the prison with contraband: a bag of methamphetamine, a tablet of Subutex—a methadone alternative used in treating addiction—and a bottle of synthetic urine substitute called U-pass, which is used to fool a urine test. The 39-year-old Wales, a 12-year veteran of DOC, resigned immediately after his arrest. IID Director Arnaldo Mercado called the arrest “an example of our department’s proactive measures to eradicate criminal activity inside our correctional facilities.”

California: A brutal attack at the U.S. Penitentiary in Atwater, California, left an officer with the federal Bureau of Prisons kicked, beaten and stabbed with homemade knives in October 2017. Six prisoners were charged, four of whom pleaded guilty to aggravated assault, while the other two were tried in May 2019. Jonathan Mota, 37, was convicted of attempted murder, and Dominic Adams, 27, was convicted of assault. Both were sentenced in July 2020 by federal Judge Lawrence J. O’Neill, receiving the maximum 20-year sentence, to be served consecutive to their current terms. The guard was working as a teacher when he was attacked. Another guard was injured when he attempted to respond to the incident. The other prisoners were Eric Chiago, 28, who received a 188-month term; William Roe Acevedo, 33, who was sentenced to 13 years; Michael Martin, 30, whose sentence was set at 150 months; and Joey Thomas, 26, who received a 97-month term.

California: On August 21, 2020, actress Lori Laughlin and her husband, fashion designer Mossimo Giannulli, were sentenced for their role in a 2019 college admissions bribery scandal. The couple paid consultant William “Rick” Singer $500,000 to help get their daughters accepted to the
University of Southern California using fake credentials as members of a crew team. The young women, now 20 and 21, had never participated in the sport. Laughlin, best known for playing “Aunt Becky” on 1990s TV hit Full House, was sentenced to two months in prison, two years of supervised release and 100 hours of community service. U.S. District Judge Nathaniel Gorton also fined the 56-year-old $150,000. Giannulli, 57, received a five-month prison term, two years of parole, 250 hours of community service and a $250,000 fine. Laughlin admitted to Judge Gorton that she had “made an awful mistake” which “undermined and diminished” her daughters’ “abilities and accomplishments.” Singer, who has pleaded guilty to racketeering and other charges, has been cooperating with federal prosecutors and has not yet been sentenced.

**California:** On August 10, 2020, San Francisco Mayor London Breed (D) announced that the city’s jails would become the first in the nation to provide prisoners and detainees free phone calls. Video calls will also be free, Politico reported. Breed said Sheriff Paul Miyamoto had also eliminated jail commissary markups, reducing prices an average of 43 percent. Prisoners at the Calaveras County Jail (CCJ), 125 miles east of San Francisco, had threatened a hunger strike in September 2019 to protest phone rates and commissary prices. CCJ Capt. Chris Hewitt said that when research showed some items were offered for less at the Tulare County Jail commissary, the vendor for both jails, Swansons Service Corp., agreed to lower prices at CCJ. Hewitt added that negotiations were still ongoing with the jail’s phone service provider. But strike leader Marc Holocker said on October 2, 2019, that he and 16 other inmates would call off their hunger strike. State Sen. Holly Mitchell (D-Los Angeles) has sponsored SB 555 to reduced both phone rates and commissary prices in state jails and prisons. It was scheduled for a hearing before the state Assembly Appropriations Committee on August 14, 2020.

**California:** On July 25, 2020, two months after a Minneapolis policeman brutally murdered an unarmed man – George Floyd, whose death set off nationwide demonstrations demanding police reform – a related protest in Oakland, California, turned violent when a handful from a crowd of about 700 demonstrators vandalized the Oakland Police Department building and set fire to the Alameda County Superior Courthouse, Arab News reported. The violence also targeted police with lasers and fireworks. The protest began peacefully, with marchers gathering in solidarity with protesters in Portland, Oregon, who clashed violently with federally contracted armed militiamen sent by President Trump to guard that city’s federal courthouse. Two similar protests the same day elsewhere in the state also turned violent. In Sacramento, some 150 demonstrators attacked a TV news crew. And in Los Angeles, about 100 protesters vandalized the federal Bureau of Prisons’ Metropolitan Detention Center. Violent clashes resumed after a Milwaukee policeman shot another unarmed man, Jacob Blake, on August 23, 2020. Three days later, Oakland police said that “numerous fires (had been) set, dozens of windows broken, (and) multiple businesses vandalized.”

**Florida:** In July 2020, Justin Lane was scheduled to finish a 15-year term at Florida’s Santa Rosa Correctional Institute near Pensacola. But instead of release, the 36-year-old headed to federal prison for another 10 years to serve a sentence received in July 2019 after the FBI traced a pair of threatening letters to him that were sent to prosecutors at the Polk County State Attorney’s Office in Lakeland. As reported by the Associated Press, the August 2017 letters contained a powdery substance and a message: “die, die, die, ha, ha, ha, anthrax, goodbye.” Rachel Rojas, special agent in charge of the FBI’s Jacksonville Division, said that bio-threat protocols were initiated, and the substance was determined not to be harmful. Lane had been serving a sentence earned with a conviction in state court for committing similar crimes in West Palm Beach.

**Florida:** The Jacksonville Sheriff’s Office (JSO) has disciplined more officers for excessive force than any other law enforcement agency in Florida, according to a June 2020 analysis by the USA Today Network. The study, which covered a 35-year period dating back to 1985, found that 72 JSO deputies were disciplined, including former deputy Jared Tazewell, who resigned before he could be fired for punching a mentally ill prisoner to the floor in April 2019 at the JSO jail. Though 54-year-old Marc Duncanson became agitated and threw his walker at the deputy, he was not charged with assault because he had already been declared mentally unfit to stand trial. JSO investigators found Tazewell’s use of force excessive, and a termination memo for him had already been signed by Sheriff Rick Staly when the deputy resigned. Statewide data revealed that less than a third of the officers disciplined for excessive force were fired or resigned, and 20 percent of those were rehired elsewhere in the state.

**Florida:** On July 8, 2020, Janaul Akeem Jackson was arrested at Lowell Correctional Institution (LCI) near Ocala, where the 30-year-old prison guard held a supervisory position, and charged with sexually assaulting a female prisoner. The unnamed woman had provided investigators from the Department of Corrections’ Office of the Inspector General with evidence that she preserved from the incident, which took place several days earlier in a dormitory maintenance room at the women’s prison, the state’s largest. Jackson, who was hired in November 2015, then complied with a DNA request and admitted the incident, according to a report in the Ocala Star Banner. His case follows that of another LCI worker, 37-year-old Samuel Derea Williams, who lost his job as food service coordinator after he was arrested on September 18, 2019, and charged with battery for grabbing a prisoner’s buttocks. That same day, former LCI guard trainee Nicholas Seaborn Jefferson, 27, was sentenced to a two-year prison term for having sex with a prisoner a year earlier. Meanwhile former LCI guard Keith Turner remains under investigation, along with Ryan Dionne, who remains employed at LCI, for their role in an August 2019 beating that left prisoner Cheryl Weimar paralyzed. On August 25, 2020, the state settled her lawsuit with an agreement to pay the 51-year-old $4.65 million, the Tampa Bay Times reported.

**Florida:** In July 2020, an unnamed 34-year-old woman from Fort Pierce, Florida, was charged with attempting to smuggle contraband into the St. Lucie County Jail after deputies conducting a strip search ordered an X-ray that revealed a suspected meth pipe hidden in her anus.
According to a report in the *TC Palm*, the woman had been taken to the jail on suspicion of DUI after she was found slumped over the steering wheel of her car with her foot on the brake pedal and the engine running in “drive.” Her arrest for attempted smuggling followed that of a guard at the jail, Toby Johnson, who delivered an allegedly pornographic magazine to an inmate in September 2019. Investigators found evidence of the crime in text messages left on a contraband cellphone that the inmate also had. According to a report by TV station WTOG in St. Petersburg, Florida, the 25-year-old guard, Michael Eaddy, accepted a $246.25 bribe from Jean Civil, also 25, who is a Haitian inmate at the D. Ray Janes Correctional Facility in Folkston, Georgia. Eaddy will serve six months in federal prison, followed by three years of supervised release. Civil had a month added to a 78-month sentence he is serving for a cocaine-dealing conviction. The prison, the largest employer in rural Charlton County, is owned and operated under contract from the federal Bureau of Prisons (BOP) by Florida-based GEO Group, Inc., the country’s largest private prison operator with $2,477 billion in 2019 revenues. All BOP inmates at the prison were scheduled to be relocated outside the county by the end of September 2020, resulting in a loss of some 316 jobs.

**Georgia:** Four stings conducted between September 2019 and June 2020 netted a total of 35 arrests in northwest Georgia, including those of two Floyd County Jail guards. Deputies Michael Landon Jones, 30, and Samuel James Kendrick, 25, were arrested by agents with the state Department of Corrections in September 2019 for smuggling contraband— including drugs, tobacco and cellphones—to prisoners at the lockup. That same month a task force of Rome police officers and Floyd County deputies nabbed 20 people, including Christopher Shane Smith, who allegedly helped run a branch of the Aryan Brotherhood gang from his cell during a 15-year prison term he completed in July 2019. The task force made five more arrests in December 2019. On June 25, 2020, officers nabbed 37-year-old Christopher Pope after he sold meth to a witness cooperating with the task force. Angel Pope, 38, and Chet White, 35, were also collared in that sting.

**Georgia:** When they saw a deputy guarding them lose consciousness in July 2020, three men held at the Gwinnett County Jail in Lawrenceville, Georgia, did not ignore him or try to take advantage of the situation, instead pounding on cell doors for help, *CNN* reported. The unnamed deputy regained consciousness and opened the cell doors, believing in his confusion that prisoners were trying to alert him to the distress of one of their own. He then passed out again, but rather than attempting escape through their opened cell doors, the three inmates—who were also unnamed—began trying to revive the unconscious deputy. A post to the Facebook page of the county sheriff’s office said the incident “clearly illustrates the potential goodness” found in both the inmates and the deputy, whose plight moved them to offer help because he had treated them “with the dignity they deserve.” As of August 31, 2020, the post had been liked and shared over 270,000 times.

**Kentucky:** A former guard at the Boyd County Detention Center in Catlettsburg, Kentucky, was charged with sodomy in September 2019 for allegedly having sex with an inmate at the jail. Kristopher D. Mackey, 36, then pleaded not guilty and was released from the Greenup County lockup on a $25,000 cash bond, according to a report in the Ashland, Kentucky, *Daily Independent*. An internal jail investigation resulted in Mackey’s arrest and charge for engaging in “deviate sexual intercourse” with an inmate, resulting in his termination later that same month. If convicted he could serve up to five years in prison.

**Louisiana:** Adrian T. King, a guard at the Elayn Hunt Correctional Center in St. Gabriel, Louisiana, was arrested in September 2019 and charged with attempting to smuggle drugs to prisoners. According to a report in the *Plaquemine Post South*, a crackdown on contraband at the state’s second-largest prison resulted in a search of King’s car that turned up 0.10 ounces of marijuana. The guard, then 29, had worked at the prison just under 11 months, allowing the state Department of Public Safety and Corrections to terminate his employment under provisions of his initial probationary term.

**Maryland:** Because he “placed our officers and staff in danger and jeopardized our public safety mission,” Maryland Department of Public Safety and Correctional Services Secretary Robert L. Green told Washington, D.C., radio station WTOP that former prison guard Antoine Fordham would begin serving a 35-year prison term in September 2019, with no more than 15 years suspended. The harsh sentence was handed down in Anne Arundel County Circuit Court that same month to the then-33-year-old for his role leading members of a Crips gang both inside and outside the Jessup Correctional Institution where he was a sergeant. Another 25 people were also convicted on charges of smuggling contraband into the prison and engaging in gang activity, including a second guard, Philippe Jordan. He received a 10-year prison sentence, with no more than 6-and-a-half suspended. The two guards were caught in 2017 taking bribes from an inmate’s sister to smuggle drugs and cellphones to prisoners.

**New Jersey:** A 42-year-old nurse at a New Jersey prison for young men was arrested in September 2019 and charged with illegally accessing medical records to “further her illicit relationship with an inmate,” the *New York Post* reported. As a result, Charita Wimberly lost her job as a contract employee at Mountainview Youth Correctional Facility in Annandale. The prison, which was renamed in early 2020 for former state Department of Corrections head William H. Fauver, houses over 800 men ages 18 to 30, all of whom were convicted as juveniles. No details were released of the prisoner with whom Wimberly allegedly had her affair. Acting Hunterdon County Prosecutor Michael H. Williams also charged her with official misconduct for assuming a false identity to transmit money to the prisoner.

**North Carolina:** On August 6, 2020, the Forsyth County Sheriff’s Office released video showing 28 times over 46 minutes on December 2, 2019, that detainee John Neville told staff at the county jail in Winston-Salem, North Carolina, that he couldn’t breathe after the 56-year-old...
fell from bed in a holding cell and was restrained on his stomach with his feet and hands “hogtied” together behind his back. He was transferred to Wake Forest Baptist Medical Center, where he died two days later of a brain injury caused by oxygen deprivation, the Raleigh News and Observer reported. After Sheriff Bobby Kimbrough Jr. waited seven months to publicly announce Neville’s death, Forsyth County Superior Court Judge R. Gregory Horne ordered the video footage released on July 31, 2020, citing a “compelling public interest.” Kimbrough has said he delayed partly at the request of Neville’s family. On July 8, 2020, Forsyth County District Attorney Jim O’Neill announced criminal charges in the incident against jail nurse Michelle Heughins, 44, and five former guards: La-vette Maria Williams, 47; Edward Joseph Roussel, 50; Christopher Bryan Stamper, 42; Antonio Woodley Jr., 26; and Sarah Elizabeth Poole, 36.

Ohio: Two people guilty of casing $3,000 in forged reimbursement checks for unused commissary funds from the Licking County Justice Center in Newark, Ohio, have been sentenced. Keith Gibson, Jr., 34, received a four-year prison term in September 2019, plus a concurrent six-month term following three years of supervised release in November 2019, for two convictions of counterfeiting a legitimate refund check he had received following his 2018 release from the jail, according to reports in the Zaynesville Y City News and the Newark Advocate. His co-defendant, Nikole Wiegand, 30, was already back in jail on felony drug charges when she admitted her involvement in spending the money and received an additional 18 months added to her sentence in September 2019. However, she denied knowing where the checks had come from. The sentences included fines for restitution – over $840 for Gibson and $2,000 for Wiegand.

Ohio: In June 2020, a guard at the Gallia County Jail in Gallipolis, Ohio, filed suit over injuries she sustained during a September 2019 jailbreak. Debra Smith’s complaint alleges that Sheriff Matt Cham-plin ignored jail policy that prevents female guards from supervising male inmates without assistance from male guards. Smith and another female guard were left alone at the jail on the night of September 29, 2020, when four men – Troy McDaniel Jr., 30, Brynn Martin, 40, Christopher Clemente, 24, and Lawrence Lee III, 29 – used a shank to overpower the women, stealing keys from one of them to a personal vehicle in which they fled to another waiting getaway car.

Lee was recaptured a day later in Durham, North Carolina, not long after his three fellow escapees were found and arrested at a Red Roof Inn in Cary, North Carolina. The Gallia County Jail is a 50-year-old facility whose cell doors have remained unlocked for several decades to make room for all of its 22 beds, according to a report by TV station WGCL in Atlanta, Georgia.

Ohio: In late July 2020, former guard Amanda Smith, 37, was scheduled for arraignment on a sexual battery charge after she was discovered in September 2019 conducting a sexual affair with a prisoner at Warren Correctional Institution, one of two state prisons in Lebanon, Ohio. That same month, another former guard at the facility allegedly received oral sex from a prisoner. Ari D. Combs, 30, was slated for trial in August 2020 on a sexual battery charge stemming from that incident, though pros ecutors admitted the case against him was severely weakened by the inadmissibility of statements he made before being read his Miranda rights. He was terminated by the state Department of Rehabilitation and Correction in February 2020, a month after Smith resigned. A year before their alleged trysts played out, a former guard at the other prison in town assaulted a hand-cuffed prisoner after helping to break up a...
fight between rival gangs at Lebanon Correctional Institution. During the September 2018 melee, former guard John B. Hinkle, 52, wielded a baton in a “tomahawk motion” to strike a handcuffed prisoner, leaving Malcom Cox, 24, with a fractured jaw and a hole in his mouth, according to assault charges reported in the Butler County News Journal. A Warren County jury convicted Hinkle in October 2019.

Ohio: A detainee who pried his own eye out of its socket at the Hamilton County Jail in Cincinnati, Ohio, has had his murder case continued until late September 2020. Aqeel Watson, 43, is also no longer listed at the jail, according to a report in The Cincinnati Enquirer. Watson is charged with fatally stabbing 45-year-old Lamont Palmer 50 times in Palmer’s Mt. Airy home in September 2019. Watson was on suicide watch at the jail when guards noticed blood in his cell and found him with a severe head wound from his self-conducted enucleation.

Ohio: In September 2020, guard John Wilson was suspended without pay for 15 days from the Cuyahoga County Jail in Cleveland, Ohio, as punishment for his February 2020 guilty plea to a misdemeanor assault charge against a former prisoner. During the February 2018 incident, Wilson pepper-sprayed Joshua Castleberry and knocked out three of the Army veteran’s front teeth, one of which lodged in a nasal cavity and required surgery to remove it, according to a report in the Cleveland Plain Dealer. Wilson and fellow guard Jason Jozwiak were acquitted of civil rights violations following the incident, and a mistrial was declared when the jury split along racial lines to get hung on additional charges of felonious assault against Wilson. His plea avoided a retrial on those charges. A lawsuit filed by Castleberry in February 2020 against both guards and the county is still pending.

Oregon: In January 2020, a second prisoner at the Marion County Jail in Salem, Oregon, was sentenced for attacking guard Stacy Headrick in 2016, according to a report by TV station KPTV. She was strangled but able to fight off the men and call for help from other deputies. For his part in the incident, Brian Eller, 43, received a 10-year prison term after pleading guilty to charges including attempted aggravated murder. His fellow inmate, 49-year-old Bradley William Monical, was convicted by a jury on the same charge and others in September 2019, receiving a 14-year sentence. Monical was convicted of a series of 2010 bank robberies, but he escaped from the Jackson County Jail with a dramatic jump from the roof in 2012. Following a 51-week manhunt, he was recaptured in 2013. The state Department of Corrections says his earliest release date is April 2076.

Pennsylvania: At a hearing in Pennsylvania’s Indiana County Court on May 21, 2020, the trial of Simere Alford was postponed from June 22 to September 8, Pittsburgh radio station WCCS reported. Alford, who is also known as Simere Orde, was first arrested in 2017 at age 18 for the attempted murder of his 7-year-old sister while high on drugs. On June 24, 2019, the then-20-year-old was being transported from a hearing at Magisterial District Court in Clymer back to the State Correctional Institute (SCI) at Pine Grove when he escaped his restraints and took the gun of a male state trooper, firing it and nearly hitting him. The patrol car then crashed into a guard rail, fracturing the arm of a female trooper also escorting Alford. He was charged with a pair of counts of attempting to murder a law enforcement officer, two of 22 total charges for which he will stand trial before President Judge William Martin.

Pennsylvania: In May 2020, former counselor Samantha Heinrich, 38, was sentenced to a prison term of three to 18 months after pleading guilty to propositioning inmates for sex while working at the Lackawanna County Prison in Scranton, Pennsylvania, According to a report by local TV station WNEP, she is the fourth...
staff member convicted in a recent series of sexual abuse charges at the prison. In February 2019, former guard Jeffrey Staff, 43, pleaded no contest and was sentenced to nine months of probation for having sex with a prisoner on work release. Three months later, former guard George Efthimiou, 51, received a two-year probationary sentence for having sex with another inmate at her home after her release on probation. In February 2020, former guard James Walsh, 53, was fined $500 after he admitted to sexually harassing prisoners. A fifth former guard, Mark Johnson, 54, was acquitted by a Scranton jury in September 2019 of charges he forced inmates to have sex.

Peru: By April 2020, as the COVID-19 pandemic spread to Latin America, 2,500 inmates incarcerated at Lurigancho prison in Lima, Peru, had become infected with the novel coronavirus that causes the disease, which had killed 33 of them. Protests erupted to demand improved conditions, resulting in nine more deaths and several dozen injuries before the National Penitentiary Council created a containment plan for the prison, with which Vice President Rafael Castillo plans to prevent a wave of sick prisoners from swamp ing the country’s hospitals. Now some prisoners act as health-care monitors to alert medical staff to potential new COVID-19 infections, Voice Of America reports. According to a Washington Post database, Peru – whose population ranks forty-third in the world – had the fifth-highest case total and the eighth-highest total number of deaths to COVID-19 as of September 2020.

South Africa: After a jailbreak July 26, 2020, from the Malmesbury Correctional Facility in the Western Cape of South Africa, all 68 escapees were recaptured following a two-day manhunt, according to the country’s justice ministry and al Jazeera. The men were pre-trial detainees at the facility, which holds 451 prisoners and a staff of 20 about 40 miles from Cape Town. They “overpowered officials, took the keys and locked three officials in a cell and opened other cells before escaping through the main entrance and over the roof,” a ministry statement read. Nine staff members reported injuries sustained during the incident.

South Carolina: Eight former South Carolina Department of Corrections employees pleaded guilty in 2019 to federal charges of bringing contraband into state prisons. Former food-service worker Holly Mitchem and former horticultural specialist Robert Hill both admitted accepting bribes to smuggle contraband – including marijuana, K2, tobacco and cellphones – into Tyger River Correctional Institution (CI). Six former guards also admitted taking bribes in exchange for smuggling contraband into the prisons where they worked:

- Former Ridgeland CI guard Jamal Early – tobacco and the synthetic narcotic A-PVP
- Former Kershaw CI guard Frank Pridgeon – cocaine, marijuana, tobacco and cellphones
- Former Perry CI guard Miguel Williams – tobacco and liquor
- Former Lieber CI guard Ebonynisha Casby – a watch and jewelry
- Former Broad River CI guard Sharon Johnson Breeland – methamphetamine
- Former McCormick CI guard Catherine Prosser – marijuana and cellphones.

A former fellow guard of Prosser’s at the maximum-security prison, James Harvey, was still awaiting trial.

Virginia: After an August 2020 report by the Virginia Inspector General (IG) cited the state parole board for failing to follow procedures in releasing several convicts, chairwoman Tonya Chapman dismissed demands from GOP leaders in the General
Assembly for the resignations of all board members. Virginia abolished parole in 1995, but the board may still grant it to those convicted before then, such as Vincent Martin, who was sentenced to life in prison for killing a Richmond cop in 1979. It was his release – approved before Chapman assumed the chair – that incensed Republican politicians, who called on the IG to investigate. Former board Chair Adrienne Bennett called for help from a Virginia Beach attorney and ally of Gov. Ralph Northam (D), Jeffrey Breit, who accused the IG of overstepping its authority in examining the board. Four of its five members are Black, including its newest member appointed in 2019, Kemba Smord Pradia, who served time in federal prison for her involvement in a former boyfriend’s drug dealings that got him murdered before she was pardoned in 2000 by former President Bill Clinton.

West Virginia: A former West Virginia detainee who escaped a hospital transport van only to be recaptured, then passed away in August 2020, according to an obituary in the Morgantown Dominion Post. Craig Allen Martin, 47, was an inmate at North Central Regional Jail in September 2019 when he escaped a van transporting him to Ruby Memorial Hospital and stole an ambulance, crashing into another ambulance and several cars before fleeing on foot to a nearby apartment complex, where he was caught attempting to break into a unit. A cause of death was not immediately available, nor were the charges on which Martisko was being held before his escape. He was arrested in September 2017 and charged with rape, but he was freed when a cellphone video showed he was elsewhere at the time of the incident and the victim then refused to testify.

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**Criminal Justice Resources**

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

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

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

**Centurion Ministries**
Centurion is an investigative and advocacy organization that considers cases of factual innocence. Centurion does not take on accidental innocence. Centurion reports on drug war-related issues, releasing drug war prisoners and restoring civil rights. No longer published, back issues are available online, which includes all back issues of the Justice Denied magazine and a database of more than 4,500 wrongly convicted people. Contact: Justice Denied, P. O. Box 66291, Seattle, WA 98166. www.justicedenied.org

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

**Justice Denied**
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. 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-FCI at Rutgers-Camden, 405-7 Cooper St. Room 103, Camden, NJ 08102 (856) 225-2718. https://nrccf.camden.rutgers.edu

**November Coalition**
Advocates against the war on drugs and previously published the Razor Wire, a bi-annual newsletter on drug war-related issues, releasing drug war prisoners and restoring civil rights. No longer published, back issues are available online. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 680-4679. www.november.org

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


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

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

**The Federal Rules of Civil Procedure, Practitioner’s Desk Reference 2017**, by A. Benjamin Spender, 439 pages. $54.95. This concise compilation of the Federal Rules of Civil Procedure and portions of Title 28 of the U.S. Code most pertinent to federal civil litigation provides attorneys and pro se litigants with a handy resource that facilitates quick reference to the Rules.

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Prisoners’ Self-Help Litigation Manual, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 928 pages. $54.95. The premiere, must-have “Bible” of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Includes detailed instructions and thousands of case citations. Highly recommended!


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