Like most other individuals, prisoners sometimes need medical attention for ailments, injuries and diseases. However, there appears to be a misconception about prisoners’ medical rights among physicians, medical administrators, prison and jail staff, and law enforcement officials. This article will review some of the medical rights and court rulings that are pertinent to prisoners, including issues such as medical decision-making, medical information privacy, force-feeding and forcible medical procedures.

There have been several landmark rulings regarding healthcare and incarceration. Two of the seminal cases are *Estelle v. Gamble*, 429 U.S. 97 (1976) and *Farmer v. Brennan*, 511 U.S. 825 (1994). In *Estelle*, the U.S. Supreme Court established the standards that a prisoner must prove for an Eighth Amendment claim of cruel and unusual punishment related to inadequate medical care. In a dissenting opinion, Justice John Paul Stevens stated in a footnote: “If a State elects to impose imprisonment as a punishment for crime, I believe it has an obligation to provide the persons in its custody with a healthcare system which meets minimal standards of adequacy.”

The Supreme Court’s decision in *Farmer* held that a prison official’s deliberate indifference to a substantial risk to a prisoner violated the Eighth Amendment and resulted in cruel and unusual punishment. These two cases provided guidance regarding the legal standards for access to healthcare and deliberate indifference under the Eighth Amendment, but did not “define the minimal standards of adequacy” for medical care in prisons and jails, nor prisoner-patient rights in medical decision-making.

A recent example of medical decision-making abuse was published in the March 2019 issue of *Prison Legal News*. In Alabama, a warden who had no medical decision-making authority requested that a hospital take “no heroic actions” and implement a do-not-resuscitate (DNR) order for a prisoner who had been taken to the hospital in critical condition. Further, the warden later requested that life support measures be discontinued, resulting in the prisoner’s death. [See: *PLN*, Mar. 2019, p.29]. The hospital and clinicians grossly erred in agreeing to follow the warden’s orders for the prisoner’s medical treatment. Under Alabama state law, Alabama Code § 22-8A-11, the warden had no authority to request such actions and state law designates the patient’s family members as the appropriate medical decision-makers.

**Medical Decision-Making**

The legal landmark precedent for cases involving medical decision-making are not of a carceral origin. Two court rulings that affect patients’ rights in medical decision-making resulted from the tragic deaths of two young women, Karen Ann Quinlan (*In re Quinlan*, 355 A.2d 647 (NJ 1976)) and Nancy Cruzan (*Cruzan v. Director, Missouri Department of Health*, 497 U.S. 261 (1990)).

In 1975, Quinlan, 21, was found unconscious and in a persistent vegetative state. In subsequent months, with no improvement in her condition, her parents requested that the ventilator and other means of life support be removed. The Morris County, New Jersey prosecutor threatened homicide charges if life supporting measures were discontinued, arguing that the state had an obligation to preserve life. The Supreme Court held that Quinlan’s parents had the
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Beyond Estelle (cont.)

right to terminate medical care for their unconscious daughter. The Court ruled that the patient’s right to privacy overruled the state’s interest in this case. In addition, legal guardians, such as parents, can act on behalf of a patient’s rights if they are unable to do so themselves while incapacitated.

In 1983, Nancy Cruzan, 25, was in a car accident in Missouri. She was resuscitated by EMTs and, like Quinlan, remained in a persistent vegetative state. In 1988, her parents requested that feeding tubes and other life-sustaining measures be removed. As in Quinlan, the state argued that its responsibility was to preserve the life of its citizens. Cruzan’s parents and friends testified that when she was healthy, competent and had capacity, she indicated that she would not want to survive in such a dire medical condition. By providing evidence as to the decision that Cruzan would make if she had the capacity to do so, the U.S. Supreme Court held her parents had the right to act on her behalf, including to have the feeding tubes removed.

These cases established important medical decision-making rights for all patients, including prisoners; when competent and not incapacitated, patients have the right to make their own healthcare decisions, including the right to refuse certain kinds of medical care. All patients, including prisoners, have the right to designate who should make their medical decisions if they become incompetent or incapacitated.

All patients, including prisoners and their appointed surrogate medical decision-makers, have the right to be properly informed of medical conditions, prognosis, diagnosis, risk and treatment alternatives through the process of informed consent. Wardens, guards, sheriffs and police officers are not court-appointed legal guardians and therefore cannot make medical decisions on behalf of incarcerated patients.

As with the Alabama case mentioned above, in which a warden requested a DNR order for a hospitalized prisoner, it is a violation of law for correctional or law enforcement officials to subrogate medical decisions from a prisoner-patient or their surrogate medical decision-maker, and it is an ethics violation for physicians to abide by those requests. For doctors or other healthcare providers who obey such requests, it may also be a violation of professional ethical codes as well as various state statutes, including medical assault and battery laws.

Prisoners can appoint a surrogate medical decision-maker through a written advance directive, medical power of attorney or an oral order. Upon intake into a prison or jail, the prisoner should be asked to list a medical decision-maker. If not asked by officials, the prisoner can request that such a decision-maker be listed in their medical records. Often, an “in case of emergency” contact is requested during the intake or booking process. In practice and to avoid confusion, it is best that this designee be the same person who would be entrusted with making medical decisions on the prisoner’s behalf. However, the appointment of the same person as the emergency contact and medical decision-maker is not a requirement.

An emergency contact and the medical decision-maker can be different and should be listed separately, and their roles should be clearly identified in medical records. There are various reasons why the emergency contact and medical decision-maker may be different. For example, a prisoner may want an elderly parent notified in case of an emergency, but may not want them to have the burden of making medical decisions. Therefore, they may list a younger sibling, relative or friend as a surrogate medical decision-maker. Prisoners should ensure that this type of request be documented in their records at the prison or jail.

There have been cases where prisoners, having been estranged from their family for many years, appoint another prisoner as their medical decision-maker. The friend may have become a trusted confidant over the course of a long prison sentence. Surrogate medical decision-makers are to make decisions based upon the values of the patient, not the values or wants of the decision-maker. In other words, what does the surrogate believe that the patient would want in these circumstances? Often, long-term friendships may yield more accurate information when determining a patient’s desires than stale information from an estranged family member. Even though state and federal laws do not exclude prisoners from being surrogate medical decision-makers, the federal Bureau of Prisons’ policy 6031.4 explicitly states, “Under no circumstances will another inmate be appointed as proxy decision maker.”
Physicians and medical staff have an ethical and legal duty to adhere to the patient’s decisions, including through a surrogate decision-maker. Medical neutrality requires doctors to treat all patients, regardless of race, religion, socio-economic status, etc. as equal. This includes people who are incarcerated or otherwise in custody. If the prisoner has become incapacitated and a surrogate medical decision-maker is not appointed or available, medical personnel must proceed with treatment using the best interest standard.

Simply put, the best interest standard requires physicians to conduct medical treatments or procedures that a reasonable, competent person would choose in the same situation. The best interest standard err on the side of medical care rather than withholding of care if the patient’s wishes are not known. Often, there is a misunderstanding among healthcare clinicians, jail and prison administrators, and law enforcement officials that healthcare decisions can be made by wardens, sheriffs, guards or police officers if a patient is incapacitated. Under medical ethics and most state laws, those officials do not have medical decision-making authority for incapacitated prisoners. The best they can offer is to assure that an injured or ill prisoner is transported to a hospital or doctor for adequate medical care. The patient, patient’s appointed surrogate, patient’s legal surrogate appointed by state statutes, or court-appointed guardian or doctors using the best interest standard have the sole right to make medical decisions.

An area of frequent abuse in medical decision-making for prisoners is when a legally eligible or appointed surrogate decision-maker is neither known and/or available. This is sometimes a problem when people who are homeless or under the influence of drugs or alcohol are arrested. In cases when doctors and corrections officials do not know a legally eligible or appointed medical decision-maker, states have codified the legal hierarchy of medical decision-making through various statutes. Correctional or law enforcement policies do not trump state law, and prison and jail infirmaries and clinics are not excluded from compliance with state decision-making requirements.

States such as California, Washington, Texas, Pennsylvania, New York and Illinois have statutes to determine a surrogate medical decision-maker for a patient in the event they are incapacitated. The states recognize that medical decisions for an incapacitated patient, without an appointed medical surrogate or proxy, should be made on a familial basis. For married individuals it usually starts with a spouse or adult children. For people who are not married, the surrogate can include parents, adult children or adult siblings. State laws often stipulate the lineage for medical decision-making, even applying them down to cousins, nephews and nieces. For example, the California Code, Probate Code states: “Notwithstanding any other provision of law, within 24 hours of the arrival in the emergency department of a general acute care hospital of a patient who is unconscious or otherwise incapable of communication, the hospital shall make reasonable efforts to contact the patient’s agent, surrogate, or a family member or other person the hospital reasonably believes has the authority to make healthcare decisions on behalf of the patient.”

If a legal medical decision-maker cannot be located, then a court must appoint one on behalf of the patient through the legal guardianship process. In Washington State, like many other states, the law also determines the surrogate decision-maker by lineage. If an incapacitated prisoner-patient does not have a medical decision-making designee or a court-appointed legal guardian, the law stipulates that medical providers use a system of familial lineage from spouse to children to parents to siblings to nephews, nieces and cousins. Wardens, jailers and police officers are not authorized to make medical decisions for prisoner-patients.

That doesn’t stop them from doing so, though. Another egregious example of prison officials improperly exercising medical decision-making occurred in the case of Arizona state prisoner Marcia Powell. Powell, 48, died in May 2009 after being left outside in an unshaded chain-link cage for four hours while the temperature reached 107 degrees. She collapsed, was transferred to a hospital and placed on life support.
Even though Powell had a court-appointed guardian due to her mental illness, prison officials did not contact them. Then—interim Arizona Department of Corrections director Charles Ryan ordered the removal of life support measures, resulting in Powell’s death. [See: PLN, Feb. 2010, p.32].

In the event of a medical emergency, any contact, advance directive or guardianship information that corrections or law enforcement officials have for a prisoner-patient should be given to medical staff at the prison or jail infirmary or local hospital. Prison and law enforcement officials must refrain from making medical treatment decisions on behalf of incarcerated patients, and doctors must refrain from following treatment decisions made by such officials. It may even be necessary for the hospital to default to the best medical interest standard for the prisoner-patient’s care.

Law enforcement, jail and prison policies often restrict visitation privileges once a prisoner is sent to a hospital. When used for legitimate security concerns, such policies may not necessarily violate medical decision-making laws or ethics. However, when they are used as a way to restrict all visitors, including medical decision-makers, visitation policies may violate state laws and ethical obligations.

State decision-making laws are not subrogated to law enforcement or prison internal policies. Clinicians and hospital administrators should ensure that these types of policies do not deny a prisoner-patient their right to make their own medical decisions or restrict access to a decision-making surrogate. Restrictive visitation policies can be problematic with police and injured or wounded arrestees, too. For example, the hospital visitation policy of the Bureau of Police in Pittsburgh, issued in 2000, stated: “No one shall be permitted to visit a prisoner in custody in a hospital setting w/out permission from the zone commander....”

This is an ethical and legal landmine for hospitals and doctors, since it may deny a wounded or incapacitated suspect access to their surrogate medical decision-maker.
under the law. Such a violation occurred in a 2012 police incident involving a routine traffic stop. In a case of mistaken identity, Pittsburgh police shot nineteen-year-old Leon Ford five times after pulling him over for a stop sign violation. Ford was paralyzed from the waist down and had to undergo multiple surgeries at UPMC-Presbyterian Hospital. Under Pennsylvania state law, his medical decision-makers, as an incapacitated single adult, were his parents. However, his parents were denied access to their son for nearly seven days under the Bureau of Police’s policy. That policy did not excuse the hospital for its ignorance of medical decision-making statutes; an ethics committee at the hospital should have convened and determined the policy violated the state medical decision-making law as well as medical ethics related to patient decision-making. In a new policy issued in 2017, the Pittsburgh Bureau of Police removed the hospital visitation restriction.

However, as reporter Shelly Bradbury with the Pittsburgh Post-Gazette reported in September 2018, local medical centers such as Allegheny General Hospital erroneously have been enforcing “no visitor” policies and restrictions on behalf of the county jail. Additionally, the newspaper revealed a conflict of dual loyalties, as a physician at the hospital was also the medical director at the Allegheny County jail. Such dual loyalties by doctors can result in a conflict of interest, as they have to decide whether their decisions are for the benefit of the patient or in the best interests of their employer. Many times, hospital officials and clinicians may be intimidated by law enforcement or corrections officials, or may not understand the decision-making rights of prisoner-patients. Law enforcement or correctional policies that restrict hospital visitation by medical decision-makers should not serve as an excuse for healthcare providers to violate prisoners’ treatment rights.

As noted earlier, if a hospital or clinician allows a prison, jail or police official to make medical decisions on a prisoner’s behalf, they are violating medical ethics and state decision-making statutes. Further, they could be held liable in criminal or civil actions for medical battery, which is typically defined as “medical treatment undertaken without obtaining consent,” including “the touching of another person without implied or express consent.”

Precedent regarding medical consent and battery was established early in the twentieth century in Schloendorff v. Society of New York Hospital, 105 N.E. 92 (NY 1914), overruled in part by Bing v. Thunig, 2 N.Y.2d 656 (NY 1957). The plaintiff, during a hospital stay for a stomach ailment, declined surgery for the condition and requested a simpler treatment. However, without her permission, doctors performed the surgery anyway, which resulted in serious medical problems. The New York Court of Appeals – the state’s highest court – found that medical battery had been committed. The majority opinion noted that “every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient’s consent, commits an assault, for which he is liable in damages.”

Of course, not all medical procedures performed without consent are considered battery. The general rule is that when an incapacitated patient cannot give permission in a life-threatening situation, the hospital and physicians are immune from battery claims if they use the medical best interest standard to save the patient. However, when law enforcement and hospital officials ignore state medical decision-making laws and patient consent, the risk of liability for committing medical battery increases dramatically.

Being confined in a prison or jail infirmary does not subrogate medical decision-making statutes, either. A review of some decision-making laws, including those in Washington, California, Pennsylvania, Illinois, Florida, Illinois and New York, finds they do not have exclusions for the provision of healthcare to incarcerated patients. Therefore, doctors and other medical staff in prison or jail infirmaries must respect the medical decisions of prisoners, and if necessary, their surrogate decision-makers.

Requests for medical treatment by prisoners have to be reasonable and adhere to medical standards. At times, adhering to medical standards can be a problematic goal in carceral environments. For example, the Centers for Disease Control (CDC) and other medical organizations note that a new class of drugs for hepatitis C, specifically direct acting antivirals (DAAs), is the medical standard for treatment of that disease. Yet as repeatedly reported in Prison Legal News, prisoners continue to be denied DAAs and are forced to seek legal remedies such as through class-action lawsuits.

While In re Quinlan and Cruzan held that patients, through their surrogate medical decision-makers, could refuse life-prolonging medical care, the right to refuse treatment is not absolute for incarcerated patients. Refusal of psychotropic medications is especially prevalent in mental health
cases. In a landmark prison ruling, *Washington v. Harper*, 494 U.S. 210 (1990), the U.S. Supreme Court found prisoners have a liberty interest in refusing their treatment or medications. However, it noted that the state also has an interest in preserving life and ensuring security, though the state must adhere to the Constitution's due process clause and the patient must be deemed a harm to themselves or others to be forcibly medicated.

The Court ruled that due process can be satisfied in administrative proceedings held at the correctional level and does not necessarily have to include a judicial proceeding. In *Washington*, the Supreme Court held the state has a legitimate interest in forcible medication to maintain safety in correctional facilities when a prisoner has a serious mental disorder and is a danger to himself or others. Therefore, forcibly treating a prisoner with antipsychotic medication against his will, using the framework of the best medical interest standard, is legal.

In *Sell v. United States*, 539 U.S. 166 (2003), the Supreme Court affirmed that forcibly medicating a prisoner is an appropriate means to protect the state’s interest in allowing an incompetent defendant to stand trial for serious crimes. However, the Court outlined very specific circumstances that must be satisfied in such cases. First, the government must prove that important governmental interests are at stake, and that forced medication is necessary to protect those interests. Second, there must be a substantial probability that the medication will enable the defendant to become competent without substantial side effects that could impede his or her defense. Finally, the treatment must be in the best medical interest of the patient and there are no alternatives or less obtrusive treatments.

**Prisoners and Medical Privacy**

Privacy and confidentiality in the prison context are usually luxuries. Unfortunately, the same lack of privacy pertains to healthcare information. In 1996, the Health Insurance Portability and Accountability Act (HIPAA) was passed. For community hospitals and healthcare providers, HIPAA is clear regarding the privacy of a patient’s medical records. However, legal confusion was created in regard to the privacy rights of incarcerated patients.

A main purpose of the Act was for the protection of patient health information (PHI) when it was electronically received, handled or shared among healthcare-related agencies and individuals. HIPAA specifies that entities that engage in those processes are “covered entities.” However, the law had to be clarified for prisons and jails.

The U.S. Department of Health and Human Services (DHHS) later stated that identifiable health information about prisoners is considered PHI. In general, a covered entity is defined as an agency that 1) electronically transmits healthcare information for the purpose of reporting; 2) requests to review PHI in order to secure authorization for the care of patients; and 3) electronically transmits PHI for the benefit of payment and claims from a public or private entity. For example, a prison or jail that accepts payments on behalf of prisoner-patients from private insurance or Medicaid reimbursement is an entity required to be HIPAA compliant.

A HIPAA-covered entity must inform patients of their privacy rights and how their PHI will be used. However,
the unique circumstances of incarceration required a separate section under the Act. That section, 45 C.F.R. 164.512(k)(5), “Correctional institutions and other law enforcement custodial situations,” addresses permitted disclosures of PHI for prisoners. The language in the section is very broad to permit disclosure in many circumstances. For example, disclosures that include internal communications such as from a prison or jail physician to a guard, or external communications such as from a doctor at a local hospital to a guard. However, such disclosures must be made within the exclusion categories for incarcerated patients. That is, a permitted disclosure is allowed to law enforcement or corrections officials if the PHI is “necessary for the administration and maintenance of the safety and security and good order of the correctional institution.” Additionally, exclusions exist for safely transporting prisoners to and from medical facilities.

HIPAA was designed to strengthen patients’ privacy rights and give them greater control and access to their medical information. Ironically, a review of various court cases indicates that corrections officials abuse HIPAA by invoking the law’s privacy clause when prisoners seek their own medical records, such as when they file a suit alleging inadequate medical care.

There is no private cause of action in the HIPAA statute, thus patients cannot sue for damages resulting from HIPAA violations—though they may have other legal remedies under state law. They can also file complaints with the federal agency that oversees HIPAA compliance: Centralized Case Management Operations, U.S. Department of Health and Human Services, 200 Independence Avenue, S.W., Room 509F HHH Bldg., Washington, DC 20201.

**Force-Feeding Protocols**

*Before examining the ethical and legal issues of force-feeding, a review of this medical procedure is warranted. Since most prisoners who engage in long-term hunger strikes will likely be forced to endure a nasogastric tube (NG) procedure, they usually need to be physically incapacitated. This can involve the use of shackles and other restraint devices. Once the prisoner is subdued, an NG tube can be placed. The lubricated tube is inserted through the nose, into the throat, down the esophagus and then into the stomach. Because the insertion can cause a gag reflex, a sedative may be given to keep the patient calm during insertion. Sedatives and restraints will prevent movement of the patient while the tube is in place; otherwise, movement can cause the tube to flex and cause physical damage. The length of the tube varies, but is usually between 18 to 30 inches long. Potential complications include the tube entering the lungs, aspiration of stomach acid, or damaging or perforating the esophagus, larynx or trachea. A review of medical literature also indicates there have been cases where a wrongly inserted NG tube has entered the brain and caused irreversible brain damage.*

The medical profession has recognized many court decisions such as *In re Quinlan* and *Cruzan*, honoring the rights of patients and their surrogates to refuse medical treatment and procedures. Opinions and declarations of the medical profession on force-feeding are consistent with legal decisions regarding medical procedures that may violate a patient’s autonomy, bodily integrity and right to privacy. The medical profession recognizes that force-feeding is a medical procedure and, like other medical procedures, a competent patient who is not being coerced can refuse such treatment.

In 1948, the World Medical Association (WMA), which represents medical societies and doctors worldwide, adopted the Declaration of Geneva (Geneva). Informally known as the “physician’s pledge,” Geneva states: “I will not use my medical knowledge to violate human rights and civil liberties, even under threat.” Of course, through their participation in interrogations, torture and executions, medical professionals have littered history with violations of the pledge. Regardless, the Geneva declaration is clear on a physician’s ethical duty and responsibility to honor human rights.

In 1975, the WMA authored the Declaration of Tokyo – Guidelines for Physicians Concerning Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in Relation to Detention and Imprisonment (Tokyo). The declaration notes, “Where a prisoner refuses nourishment and is considered by the physician as capable of forming an unimpaired and rational judgment concerning the consequences of such a voluntary refusal of nourishment, he or she shall not be fed artificially....”

The most influential directive for the international medical community on force-feeding is the WMA’s Declaration of Malta on Hunger Strikes (Malta). The declaration was introduced in 1991 at the WMA conference in St. Julian’s, Malta. Since its introduction, it has been updated several times. The preamble cautions that “physicians need to ascertain the individual’s true
intention, especially in collective strikes or situations where peer pressure may be a factor.” In clinical settings, a hunger striker should be competent and voluntarily refuse food for specific purposes other than his or her own death. Physicians are cautioned that a hunger striker should not be suicidal. However, acceptance of the possibility of death by the striker, as an outcome to their protest, is morally acceptable.

Also, a hunger striker must have been competent before they began their strike and not have begun refusing food due to threats, coercion or peer pressure. Malta notes that when a hunger striker becomes incompetent while striking, a physician should honor the striker’s prior request of no nutrition or hydration. The declaration recognizes force-feeding as a medical procedure. Like other procedures, competent patients have the right to refuse them, and in legitimate hunger strike cases, doctors should avoid force-feeding.

The International Committee of the Red Cross’ position on force-feeding hunger strikers directs physicians to obey the Malta declaration.

Although the medical community has recognized the rights of hunger strikers, prison and jail officials find such protests to be a disruption and security threat. Therefore, carceral medical policies usually side with force-feeding procedures. For example, the federal Bureau of Prisons (BOP) addresses hunger strikes in policy P5562.05, which states when “… a medical necessity for immediate treatment of a life or health threatening situation exists, the physician may order that treatment be administered without the consent of the inmate.”

For hunger strikers, BOP policy advises doctors to initiate the procedure of inserting an NG tube. Before a decision is made on insertion of the tube, the policy requires staff to physically take three meals a day to the prisoner and document their refusal to eat. Staff must also remove all food and beverages that the prisoner may have bought from the commissary; ironically, the BOP wants the hunger striker to eat, yet confiscates their commissary food. The policy further urges prison administrators to contact “the Regional Counsel … so any legal issues may be addressed.” The standards referenced in the BOP policy are from the American Correctional Association and not from the WMA or American Medical Association.

While doctors must take responsibility for the risks and consequences of forced medical procedures, judges have been more liberal in issuing orders to force-feed hunger striking prisoners. Generally, state courts find that the state has an interest in preserving life and that a legitimate penological interest exists for force-feeding. This penological interest includes the ability of corrections officials to maintain order in their prisons and jails. A landmark force-feeding case came from Washington State.

In 2008, the Supreme Court of Washington, in McNabb v. Department of Corrections, 180 P.3d 1257, 163 Wash.2d 393 (Wash. 2008), affirmed a lower court decision that held the prisoner-plaintiff could be force-fed and hydrated. The Court decided that the state’s interests outweighed McNabb’s refusal to eat, and that prisoners’ rights are more limited because courts “must consider the state’s additional interest related to incarceration.” It further noted that there were various compelling state interests in the case, including “(1) the maintenance of security and orderly...
administration within the prison system; (2) the preservation of life; (3) the protection of interests of innocent third parties; (4) the prevention of suicide; and (5) [the] maintenance of ethical integrity of the medical profession in having a caretaking role." The state Supreme Court added that by force-feeding McNabb, it was attempting to protect the medical profession from participating in physician-assisted suicide should he die. Ironically, the same year as the McNabb ruling, Washington State voters approved a referendum allowing physician-assisted suicide.

As of 2019, the U.S. Supreme Court has not addressed the rights of prisoners who participate in hunger strikes. Like McNabb, legal cases for force-feeding and forcible medication often originate and are decided in state courts. A review of state rulings shows a divide over the rights of hunger-striking prisoners.

An early decision by the Appellate Division of the Supreme Court of New York, Matter Von Holden v. Chapman, 87 A.D.2d 66 (N.Y. App. Div. 1982), involved Mark David Chapman, who killed John Lennon. Chapman asserted he was on a hunger strike to draw public attention to the issue of world child hunger. Although he was ruled competent at the time of his hunger strike, according to a psychiatrist's testimony he had expressed a desire to commit suicide on prior occasions. Without citing precedential authority, the appellate division held "... that the right to privacy does not include the right to commit suicide."

In a Florida ruling, Singletary v. Costello, 665 So.2d 1099 (Fla. Dist. Ct. App. 1996), the Court of Appeals affirmed a lower court's decision that a prisoner had the right to refuse force-feeding and hydration. The appellate court noted that even though the prisoner understood his hunger strike may result in his death, the Department of Corrections "failed to prove that compelling state interests outweighed Costello's privacy right."

In 2007 at a Connecticut facility, prisoner William Coleman began a hunger strike to protest what he alleged was corruption in the state's judicial system. The Connecticut Department of Corrections sought an injunction to stop his protest, arguing it needed to preserve Coleman's life and prevent similar actions by other prisoners. The trial court found that Coleman was competent, understood the consequences of his actions and that his strike was not to bargain for greater privileges at the prison.

However, despite his medical decision-making rights, the court entered a temporary and subsequently a permanent injunction against Coleman's hunger strike. After the court ruling, an NG tube was used to forcibly feed him. The trial court's order was upheld by the state Supreme Court in Comm'r of Corrections v. Coleman, 38 A.3d 84 (Conn. 2012). The Court noted that the DOC had "appropriately sought to preserve the defendant's life using the safest, simplest procedure available, rather than improperly seeking to punish the defendant for engaging in his hunger strike."

Forcible Medical Procedures

Several alarming cases of forced medical procedures performed on prisoners, in the form of surgery or body cavity searches, have been reported. Earlier this year, Prison Legal News reported that a New York prisoner, Torrence Jackson, received a $4,595.12 hospital bill for a forced sigmoidoscopy to probe his rectum. In 2017, a judge granted an order to the Syracuse police for the body cavity search, as officers believed that Jackson had concealed drugs in his anus. Initially, hospital staff refused to perform the procedure. However, the hospital's attorney advised them to do so after receiving the judge's order. Jackson was rendered unconscious and the hospital performed the invasive procedure. No drugs were found. [See: PLN, April 2019, p.52].

In Sanchez v. Pereira-Costillo, 590 F.3d 31 (1st Cir. 2009), the First Circuit Court of Appeals agreed with the plaintiff, prisoner Angel Sanchez, that a surgical procedure conducted by doctors at the direction of corrections officials in Puerto Rico had violated his rights. Prison staff thought that Sanchez had a cell phone hidden in his rectum. Despite X-rays and bowel movements indicating there was no phone, hospital staff at the Rio Piedras Medical Center performed exploratory surgery at the request of prison officials.

The Court of Appeals noted in its opinion that Sanchez alleged "the exploratory surgery of his abdomen violated his rights under the Fourth Amendment. "We agree," the Court wrote. "The complaint states that he was forced to undergo dangerous, painful, and extremely intrusive abdominal surgery for the purpose of finding a contraband telephone allegedly concealed in his intestines, even though the basis for believing there was a telephone was slight...." The First Circuit added that, "Notwithstanding the existence of probable cause, a search for evidence of a crime may be unjustifiable if it endangers the life or health of the suspect."

A final example of abuse of medical rights by law enforcement, from 2017, was the viral Internet video of a University of Utah Hospital nurse being arrested for refusing to do a forcible blood draw on an auto accident patient rushed to the emergency room in a coma. The request was from a Salt Lake City police detective. The nurse read the hospital's policy to the officer, which required that either informed consent must be obtained from the patient or surrogate, or there must be a warrant issued by a judge authorizing the blood draw. Neither were done. The officer then handcuffed and arrested the nurse, dragged her from the hospital and took her to the local jail. No charges were filed against...
the nurse, no blood was drawn from the patient and after an internal investigation the detective was fired.

One issue that affects prisoners with respect to forced treatment, involuntary body cavity searches and medical decision-making is a doctor’s dual loyalties, which can be problematic in correctional healthcare. Physicians work as employees or contractors at prisons and jails, and thus sometimes have conflicts between their patients and employer. Examples include doctors who work for corrections departments or private medical providers such as Corizon, Wexford Health Sources, Centurion, Wellpath, NaphCare or Armor Correctional Health Services. The most authoritative medical ethics guidelines oppose doctors’ dual loyalties and self-interests that subordinate patient rights. The American Medical Association’s Code of Medical Ethics notes: “The relationship between patient and physician is based on trust and gives rise to physicians’ ethical responsibility to place patients’ welfare above their own self-interest and above obligations to other groups, and to advocate for their patients’ welfare.”

In addition, the Malta declaration notes the following about dual loyalties: “... physicians with dual loyalties are bound by the same ethical principles as other physicians, that is to say that their primary obligation is to the individual patient. They remain independent from their employer in regard to medical decisions.”

**Conclusion**

Incarcerated patients are entitled to many of the same decision-making rights for medical treatment and procedures as nonincarcerated patients. Unfortunately, these rights are often violated due to ignorance by healthcare providers and arrogance and intimidation by corrections and law enforcement officials. In addition, judges are reluctant to uphold medical ethics, and have ruled, with generally broad criteria, in favor of force-feeding prisoners and other types of forcible medical treatment.

To avoid violating prisoners’ medical rights and their own ethical obligations, healthcare professionals and corrections officials should understand the medical decision-making rights of incarcerated patients. Further, like the Utah nurse who refused to draw blood without a warrant or informed consent, healthcare providers should advocate for their prisoner-patients when law enforcement officials are attempting to usurp those rights. Finally, the medical profession must deal with the issue of dual-loyalties, which can create an “us versus them” mentality rather than a beneficent and ethical approach to patient care in prison and jail settings.

Ed. Note: All states have a process for filing formal complaints against licensed healthcare professionals such as doctors, nurses, psychologists, psychiatrists, etc. Prisoners who have experienced violations of their medical rights by licensed healthcare staff can file complaints with the appropriate regulatory board, which is usually part of the state’s Department of Health or an equivalent agency.

Gregory J. Dober is an instructor in the Biomedical Ethics program for Lake Erie College of Osteopathic Medicine (LECOM). In addition, he is an Official Visitor with the Pennsylvania Prison Society. He wrote this article exclusively for Prison Legal News.
I am excited to report that The Habeas Citebook: Prosecutorial Misconduct, by former HRDC staff attorney Alissa Hull, is now available for purchase and shipping. Building on the success and popularity of The Habeas Citebook: Ineffective Assistance of Counsel, this book provides clear, concise information needed to challenge criminal convictions procured by unscrupulous prosecutors. Ordering information is included in this issue of PLN. This book is the perfect holiday gift for the pro se prisoner litigant as well as the experienced attorney who does post-conviction litigation; it provides a 50-state review of case law as well as federal citations. A big thanks to everyone at HRDC who worked on getting it to press.

By now all PLN subscribers should have received our annual fundraiser packet; if you have not donated yet, please do so! We rely on your support to help fund our advocacy and litigation around issues as diverse as prison telephone rates, education for prisoners, felon disenfranchisement, censorship by prison and jail officials, and much more. Please encourage others to donate as well, or to subscribe to Prison Legal News and Criminal Legal News.

Every dollar donated to HRDC helps build our capacity to undertake more extensive and complex advocacy projects. If you or someone you know is incarcerated and your prison phone bill has decreased over the past five years because the rates and costs went down, it is likely due to our national Campaign for Prison Phone Justice, which put pressure on the prison phone industry and led the FCC to cap interstate phone rates. Please consider donating some of those savings to HRDC so we can continue our advocacy work.

This month’s cover story examines the medical rights of incarcerated patients and how those rights are often violated by healthcare and corrections staff. Alas, we have been reporting on inadequate medical and mental health care in prisons and jails since we first began publishing PLN in May 1990. The larger issue is that the United States remains one of the few developed nations in the world where medical care is not a guaranteed human right for all citizens. Ironically, only prisoners in the U.S. are guaranteed government-provided healthcare, yet it is often inadequate and extremely expensive, and prisoners’ medical needs are frequently ignored.

Another reason to support HRDC is that we are one of the few—if not the only—organization that views conditions of confinement in the U.S., including poor medical care, as a massive human rights violation in need of urgent reform. It doesn’t matter how long or short a sentence is if prisoners die due to inadequate healthcare before they are released.

As the presidential election season approaches, it is interesting to note that many of the Democratic candidates are touting proposals for criminal justice reform. Their proposals range from banning private prisons to rolling back some mandatory minimums. I find it interesting that little attention has been paid to their actual voting records on criminal justice legislation while they have been in office, and how much money they have accepted from police and prison guard unions or the private prison industry. Once the Democratic nominee is determined, PLN will review their actual track record on criminal justice issues and see how it compares with their rhetoric on the campaign trail.

HRDC has been in contact with several of the presidential contenders, and our suggestions have had an impact. Among other issues we want to see addressed are the repeal of the Prison Litigation Reform Act (PLRA), the Anti-Terrorism and Effective Death Penalty Act (AEDEPA) and the 1994 Violent Crime Control and Law Enforcement Act. All were signed into law by President Bill Clinton, and Joe Biden played a significant role in the passage of all three bills. Senator Bernie Sanders voted for the 1994 crime bill, while Senator Kamala Harris, a former prosecutor, has a questionable record on criminal justice issues.

One area of advocacy where HRDC has been pushing for change is the use of fee-laden debit cards foisted on prisoners and arrestees who receive the cards instead of cash or a check upon their release. If you have been released from prison or jail and received a debit card that required you to pay fees to access your own money, HRDC would like to hear from you. We are interested in suing the debit card companies and the banks behind them in order to end these predatory and exploitive practices that target prisoners. See the ad on page 17 for details on how to contact us regarding release debit cards.

Lastly, this issue of PLN is dedicated to the memory of William “Buzz” Alexander, who died at his home outside Ann Arbor, Michigan last September. Alexander was a professor at the University of Michigan from 1971 until 2017. Early on, he was considered by many to be a radical, working with peasants in South America, leading campus activists and teaching courses on “leftist” cinema. He once wrote in a letter to his student Eli Hager, now a staff writer at The Marshall Project, “It is our duty to scream about the injustice and indignity of the U.S. prison system.”

In 1990, Alexander created the Prison Creative Arts Project (PCAP), the first and still largest project of its kind. PCAP provides workshops in theater, writing and visual arts at 26 state prisons in Michigan, as well as a federal prison, the Forensic Psychiatric Center and a public housing community, with up to 125 volunteers each semester. In 2004, Alexander wrote an article for Prison Legal News that described the project. [See: PLN, Nov. 2004, p.21].

Alexander lost his three-year fight with frontal temporal degeneration, a brain disorder, on September 19, 2019. He was 80 years old.

On that unhappy note, enjoy this issue of PLN and please encourage others to donate and subscribe.
Alabama Prisoners Bring Awareness of Abusive Conditions Through Hunger Strikes

by Kevin Bliss

In March 2019, nine Alabama prisoners went on a hunger strike after being placed in solitary confinement without being given any reason other than “preventative measures.”

The prisoners, members of Convicts Against Violence or the Free Alabama Movement, were housed at the St. Clair Correctional Facility when the prison was raided by 300 guards searching for contraband. The search resulted in 30 prisoners being transferred to the Holman Correctional Facility with 10 being held in solitary at the recommendation of Warden Cynthia Stewart.

Robert Earl Council, also known as Kinetic Justice, was the first to go on a hunger strike to protest his treatment, demanding to be returned to general population. He was followed by eight others who also wanted to know why they were placed in solitary. Attorney Donna Smalley, representing the group, said none of the prisoners had committed any infraction that required their placement in solitary. It seemed the only reason they were moved was because they were activists and organizers.

“I am on a peaceful hunger strike. I am not suicidal ... but I’m doing this because I’m being held in Holman Correctional Facility segregation without any justifiable reasons why I was taken from St. Clair correctional facility, general population, on February 28th, 2019, without any incident, nor disciplinary infractions,” the hunger strikers said in a statement. “I’ve not been involved in any Riots or escapes.... I feel as if my U.S. constitutional rights are being violated and I’m being deprived of my liberties, being placed in segregation without any due process of law.”

According to Swift Justice, an Alabama prisoner and co-founder of Jailhouse Lawyers Speak, prison officials cut off the water to the hunger strikers’ cells – which was confirmed by the DOC.

“As of today all those on the hunger strike at Holman Correctional Facility are being denied water until they eat and will be forced to live in a cell with no way to flush accommodating toilets or consume freshwater,” The Final Call reported on March 26, 2019.

Council co-founded the Free Alabama Movement, and in 2016 published a paper on the group’s website titled “The Holman Project.” He accused prison officials of removing older and more respected prisoners from the facility and replacing them with “younger ... and misguided youth.” Council noted that due to that change, the housing units were becoming violent war zones.

Alabama’s prison system is already well known for its high number of murders and suicides. [See: PLN, Dec. 2018, p.24; Aug. 2018, p.30; June 2017, p.51]. Prisoner advocates fear the destabilizing practice of such transfers will add to more violence in state prisons.

Of the eight other prisoners who went on hunger strike – Tyree Cochran, Mario Avila, Marcus Lee, Kotoni Tellis, Antonio Jackson, Jr., Corey Burroughs, Earl Manassa and Earl Taylor – most ended their protest and were reportedly returned to general population in late March 2019.

Alabama prisoner Kenneth Traywick, Jr. went on a hunger strike the following month at the Limestone Correctional Facility in protest of retaliatory transfers and the use of solitary confinement. He was placed on a force-feeding regimen on April 21, 2019.

Another hunger strike at the Limestone prison, involving five prisoners, including Traywick, began in June 2019. According to Truthout.org, they were protesting “corruption, abuse, and a lack of accountability for inhumane conditions in the state prison system.”

Their demands included an end to a practice known as “bucket detail,” which refers to shackling and taping prisoners to buckets for days on end until they defecate into the bucket multiple times, allegedly in an effort to discover hidden contraband.” Other demands were for intervention by the U.S. Department of Justice, the firing of corrupt officials at Limestone and an end to the “abusive use of solitary confinement.”

Solitary has long been an issue in the Alabama Department of Corrections. U.S. District Court Judge Myron Thompson ruled in February 2019, in a lawsuit filed by the Southern Poverty Law Center, that the DOC had violated the Eighth Amendment in its use of solitary, which aggravated conditions for prisoners with mental health issues.

In September 2019, Traywick reported he faced retaliation after speaking with the news media about conditions at the Fountain Correctional Facility. He said he was moved to another prison, stripped and put in a suicide watch cell for two days.

“Never in my life have I ever said I was suicidal,” Traywick stated. “I’ve never had mental health treatment. I believe that was a ploy to say they had a reason to transfer me out of the institution. That’s what I believe.”

Sources: newsweek.com, montgomeryadvertiser.com, apnews.com, al.com, theappeal.com, finalcall.com, truthout.org
Oregon Transgender Prisoner Must be Housed Alone or with Other Transgender or Non-Cisgender Prisoners

by Mark Wilson

A n Oregon state court held on May 28, 2019 that prison officials were deliberately indifferent to a transgender prisoner’s physical safety when they failed to house her in a single cell or with other transgender or non-cisgender (gender non-conforming) cellmates.

Brandy Hall, 34, formerly known as Brandon Nelson, entered prison in 2007 as a male. Hall was transferred to the Two Rivers Correctional Institution in Umatilla in 2009 and remained there until being transferred to the Oregon State Correctional Institution.

While incarcerated, Hall was diagnosed with gender dysphoria, a condition in which people identify as a gender different from the one they were assigned at birth. Hall has presented as a woman since 2014 and has undergone hormone therapy since 2016, according to court records. As a result of that therapy, Hall has female physical features, including breasts. She also has changed her name to fit her gender identity.

In September 2018, Hall was approved for gender reassignment surgery; as of June 2019, however, she had not received surgery. Hall also was recommended for transfer to Oregon’s only women’s prison, but that recommendation was denied by the Oregon Department of Corrections’ (ODOC) Transgender and Intersex Committee (TAIC). The denial was based in part on her convictions for sex crimes involving underage female victims.

Claiming that confinement in a men’s prison creates a constant threat to her physical and psychological safety, Hall said she “is regularly subjected to physical, mental and emotional harassment by ODOC staff and prisoners on the basis of her gender.” She also claimed that “she has been molested by prisoners and guards while in ODOC custody.”

She “cannot ever be safe in a male prison,” Hall argued, saying she “is not provided a completely private environment to shower or dress, and is subjected to catcalls and physical and emotional harassment by other prisoners, who can view her naked while showering and dressing.”

A male guard cupped her breasts and groped her while performing an April 2018 search, according to Hall. She “reported the incident to a Prison Rape Elimination Act (PREA) counselor, but no action was taken.” She also complained that she had “been improperly disciplined for attempting to protect herself from physical and mental harassment by other prisoners and staff.”

Throughout her incarceration, Hall has been housed in cells with male prisoners. She said it was “only a matter of time before she is attacked and raped if she remains in a male prison.”

Attorney Tara Herivel represented Hall in a state habeas corpus proceeding, claiming that ODOC officials improperly refused to schedule her gender reassignment surgery and refused to house her in a women’s facility. The complaint alleged that those failures constituted deliberate indifference to her serious medical needs and safety, in violation of the Oregon and U.S. Constitutions. Hall also argued she was denied due process and equal protection of the law when prison officials treated her differently than “her similarly-situated counterparts.”

Hall “is a woman in a male prison and I think at a very basic level, that is understood as being extremely dangerous and problematic by most people,” Herivel said. “But this is an area where as we’re expanding our ideas as a culture of what gender identity is, it’s also really expanding in the legal arena and I think this is a very important first step.”

The circuit court agreed, finding that prison officials were deliberately indifferent to Hall’s safety in violation of the Eighth Amendment “by not housing Plaintiff, while in a male prison, in a single cell or with a transgender or non-cisgender cellmate.” Accordingly, the court ordered that so long as Hall is held at a men’s facility, she must be housed “in a single cell or with a transgender or non-cisgender cellmate.”

The court further ordered that the “ODOC may not use Disciplinary Segregation Unit or Administrative Segregation cells to single cell Plaintiff for the purposes of complying with terms of this judgment.” Finally, “ODOC staff shall not verbally or sexually harass Plaintiff,” and the “ODOC must do everything within their ability to prevent other inmates from verbally or sexually harassing Plaintiff.”

The court found that on the record before it, the ODOC was not required to “transfer Plaintiff to a women’s prison[,]” but that Hall was “not precluded from requesting” a future transfer through TAIC. Further, Hall had failed to prove that prison officials were deliberately indifferent by refusing to transfer her or by disciplining her. The court also concluded that she failed to show prison officials had violated her due process or equal protection rights.

Claiming that the ODOC incarcerates 77 transgender or intersex prisoners, spokeswoman Jennifer Black said the department is developing more comprehensive policies to address the safety, medical care and housing needs of those offenders.

Attorney Herivel acknowledged the ODOC’s efforts, but noted that other states are doing more. She pointed specifically to Connecticut, where a recently-enacted law requires prisoners to be housed based on their gender identity. [See: PLN, Jan. 2019, p.22].

“It shouldn’t have to take a large-scale problem to occur for the system to change,” Herivel declared. But, sadly, that is usually the case. See: Nelson v. Bowser, Umatilla County Circuit Court (OR), Case No. 18CV24920.

Additional source: The Oregonian/OregonLive
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Behind Bars, Co-Pays Are a Barrier to Basic Health Care
by Victoria Law, Truthout

When Taylor Lytle began fainting every morning when she stood up, she had to make a decision: Should she seek medical care or should she save her hard-earned wages to buy soap, shampoo, deodorant and feminine hygiene products?

People across the United States struggle with similar concerns. But Lytle shouldn’t have had to make that decision. That’s because in a country without universal or even a nationalized health care system, one group of people has a constitutionally guaranteed right to medical care – people behind bars. In 1976, the U.S. Supreme Court ruled, in *Estelle v. Gamble*, that jails and prisons have a constitutional obligation to provide health care to those in custody. Failing to do so could be considered deliberate indifference, violating the Eighth Amendment prohibition against cruel and unusual punishment. Incarcerated people do not have access to jobs that pay minimum wage, meaning that they are dependent upon jails and prisons to provide for their basic needs, including health care needs.

That doesn’t mean that jails and prisons haven’t put up other barriers to essential care. In 41 states, if a person in prison wants medical care, they need to cough up a co-pay. These co-pays – which typically range from $3 to $5, but can be as high as $8 per visit – may not seem like an exorbitant expense, especially when compared to co-pays in the outside world. However, for people behind bars, even those few dollars may put basic care out of reach. Prison jobs pay pennies per hour, meaning that even a $3 co-pay might mean working anywhere between 12 to 23 hours to be able to pay that amount. In California, where Lytle was incarcerated, she was paid 8 cents an hour about $20 each month, or 8 cents per hour. That meant that she often had to choose between buying soap, shampoo and feminine hygiene products, or seeking medical care.

In 2012, Texas lawmakers changed the prison co-pay system from $2 per visit to a flat yearly fee of $100. The new law allows exceptions for emergencies, chronic care or follow-up services for an initial treatment. But the initial treatment still requires that $100 co-pay. Those who do not seek medical care can avoid that cost altogether – and it seems like that’s what they’ve been doing. In 2014, two years after the co-pay system changed, only 15,000 of the more than 150,000 state prisoners paid the $100 fee.

These co-pays not only deter people from seeking medical care for illnesses and injuries, but, in several instances, they have contributed to a mass outbreak that could have been prevented had jails and prisons not instituted this costly barrier. In 2003, the Centers for Disease Control identified co-pays as one of the factors that contributed to mass outbreaks of MRSA (Methicillin-resistant Staphylococcus aureus) in Georgia and Texas prisons, as well as the Los Angeles county jails.

Californians Fight to End Co-Pays in Custody

In California, incarcerated people have advocated around prison health care for decades. Their demands have included better medical and reproductive health care, an end to sterilization practices, and improved mental health care and suicide prevention practices. This year, they’re working with lawyers to introduce AB 45, a bill to eliminate the $5 co-pay in the state’s prisons and jails.

Romarilyn Ralston is an organizer with the California Coalition for Women Prisoners. She entered the California prison system in 1988 when no co-pay was charged for medical care. But that didn’t mean that people had ready access to health care or their concerns were taken seriously. Ralston recalls long medical lines, frequent misdiagnoses and many stories of people’s complaints not being taken seriously by medical staff.

Then, in 1994, the California Department of Corrections and Rehabilitation (CDCR) began charging a $5 co-pay for all medical and dental visits. The fee is waived for people who are considered indigent, or who have $1 or less in their prison account for 30 consecutive days. If the person received funds – say, money from a family member or loved one – within the following 30 days, the $5 co-pay would automatically be deducted. (In 2018, the amount for indigent status was raised to $25. That exemption now affects nearly 61,000 of the state’s 131,000 prisoners.)

Even with that exemption, the co-pay put medical care even more out of reach for many. For years, that included Ralston. “I had no one supporting me [financially] except for my grandmother, who lived on a pension,” Ralston told Truthout.

Ralston worked as a porter, earning about $20 each month, or 8 cents per hour. That meant that she often had to choose between buying soap, shampoo and feminine hygiene products, or seeking medical care.

That wage does not seem to have increased. Today, California prison wages range from 8 to 37 cents per hour; for the select few who work in correctional industries (or state-owned businesses), wages can be up to 95 cents per hour. Fifty-five percent of those wages go toward restitution fees, leaving most incarcerated people with $1 to $6 for their workweek.

Care has remained inadequate, sparking several lawsuits by incarcerated people. In 1995, women imprisoned at the Central California Women’s Facility filed *Shumate v. Wilson*, a class-action suit challenging the state’s medical care in its women’s prisons. In 2001, incarcerated people (of all genders) filed *Plata v. Brown*, a class-action lawsuit charging that California’s shoddy prison medical care violated the Eighth Amendment’s prohibition against cruel and unusual punishment. Though the state agreed to take a series of actions to improve prison health care, in 2006 the federal court found that the state continued to fail in providing a constitutional level of medical care to people in prison and appointed a Receiver (or an independent person) to take over the state’s prison health care.

For Ralston, the co-pay meant putting off medical care, which led to disastrous consequences. For months, she endured a tickle in her throat, which grew into a cough. “I probably should have gone months before,” she reflected, but each month she was faced with the choice of spending her paltry prison wages on hy-
gienne items or a doctor visit. When she finally did seek medical attention, the doctor ordered a chest X-ray. The X-ray revealed spots on her lungs. Ralston was taken to the hospital where she underwent a lung biopsy, which revealed that she had sarcoidosis, a growth of inflammatory cells on her lungs. Untreated, sarcoidosis can lead to pulmonary fibrosis (permanent scarring of the lungs) and problems in other organs.

For Ralston, having sarcoidosis led to inflammation not only in her lungs, but also in her eyes. She contracted a cataract and later had a small stroke. “Could they have caught it sooner? Probably yes,” she said. But she would have had to visit the doctor months earlier, which would have meant forgoing buying soap and deodorant or other needed items.

According to an analysis of the Assembly Committee on Appropriations, CDCR collects up to $1.68 million each year from co-pays. In fiscal year 2017-2018, it received approximately $460,178 in co-pays for medical and dental visits.

In February 2019, the CDCR announced a policy eliminating these co-pays. Starting on March 1, state prisoners no longer need to pay for medical visits. This new policy only extends to state prisons; it does not apply to the approximately 82,000 people in the state’s local jails, however, who will continue to pay as much as $3 per medical visit. And, as the Assembly Committee on Appropriations noted, “CDCR is not currently required by law to eliminate copays for inmate-initiated medical and dental visits.” In other words, prison officials could, at some other point, decide to reinstate co-pays for medical and dental care.

Lytle, now a community organizer with the California Coalition for Women Prisoners, sees this as a partial victory. Without legislative fiat, CDCR could reinstate medical co-pays.

Ralston agrees. “We commend CDCR for stepping up,” she said. “But we want to make sure this is in the law. Regulations can be changed at any given time. To go through the legislative process requires another legislative process.”

That’s why she, Lytle and other advocates are continuing to push AB 45 to both codify the lack of co-pay and to expand this right to medical care to people in the state’s jails as well.

In California jails that charge a co-pay, the cost is $3 per visit. Some, like Los Angeles’ Lynwood jail, don’t forgive the debt if a person is discharged. Instead, the balance is recorded, and, if the person returns to the jail, that amount is deducted from whatever money they have in their pockets when arrested.

That’s what happened to Lytle, who was in and out of the Lynwood jail for six years after she was discharged from foster care without a safety net or support system. “Every time I got out of jail and went back, I had a negative balance on my books,” she recalled. “Most of it was from co-pays.”

Lytle had about $80 in her pocket the last time she was arrested and sent to the Lynwood jail. She remembered making plans to stretch that amount to cover her basic necessities, but she owed the jail over $30 in co-pays for medical care during past incarcerations. Jail officials immediately deducted that amount. At other times, she recalled, “I went in with smaller amounts and my negative balance was bigger, so I’d have no money and still have a negative balance.”

AB 45 would change that. But it’s not without its detractors. The Riverside Sheriffs’ Association submitted its opposition, stating that while the association supports efforts to help people in custody remain healthy, “our members also recognize that if any inmate at any time can request medical attention for any reason, there would never be enough staff to handle the inmate transfers from cell to medical.”

Lytle disagrees. “Many incarcerated people in California never received proper medical attention on the street due to lack of coverage and care,” she stated during her recent testimony before the California Assembly Public Safety Committee. “Allowing medical fees inside jails and prisons further restricts them from needed medical and dental services. I’ve personally experienced and witnessed how much sicker people get in jail when they avoid asking for medical help because they don’t have the money or don’t want to be in more debt,” she told the Assembly members.

She rebutted the concerns of the Sheriffs’ Association about people making “frivolous” medical visits, stating, “We’ve seen in California and across the country what happens when incarcerated people are denied medical help because of this stigma. People die. Please do not allow this false idea about incarcerated people to direct your policy choices. AB 45 will save lives.”

The Public Safety Committee agreed and voted to pass the bill. AB 45 is now in the state’s Appropriations Committee, where it is being evaluated for its fiscal impact. If the bill passes the legislature and is signed into law, it would relieve the burden for tens of thousands of Californians behind bars.

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Please contact Kathy Moses at kmoeses@humanrightsdefensecenter.org, or call (561) 360-2523, or write to: HRDC, SPP Debit Cards, P.O. Box 1151, Lake Worth Beach, FL 33460.
bars, bringing the state in line with eight other states (New York, Missouri, Montana, Oregon, Vermont, Wyoming, Nebraska and Illinois) that do not charge for prison health care. It would also serve as a possible blueprint for prison justice advocates in the other 41 states where co-pays continue to be a barrier to basic health care.

Or, as Lytle reflected, “No one should have to choose between hygiene products or whether they don’t want to faint when they wake up tomorrow.”

Ed. Note: AB 45 passed the state legislature in September 2019, and was signed into law by California Governor Gavin Newsom the following month.

Victoria Law is a freelance journalist who focuses on the intersections of incarceration, gender and resistance. Her first book, Resistance Behind Bars: The Struggles of Incarcerated Women, examines organizing in women’s jails and prisons across the country. She writes regularly for Truthout and is a contributor to the anthology Who Do You Serve, Who Do You Protect? Police Violence and Resistance in the United States. Her next book, co-written with Maya Schenwar, critically examines proposed “alternatives” to incarceration and explores creative and far-reaching solutions to truly end mass incarceration. She is also the proud parent of a New York City high school student.

This article was originally published on April 3, 2019 by Truthout.org; it is reprinted with permission, with minor edits. Copyright, Truthout 2019.

U.S. Department of Justice Plans to Ramp up Federal Death Penalty

by Chad Marks

Attorney General William P. Barr has paved the way to restart the “machinery of death,” in the words of former Supreme Court Justice Harry A. Blackmun, in the form of capital punishment on the federal level. In July 2019, Barr directed the Bureau of Prisons (BOP) to adopt a proposed addendum to the federal execution protocol, which will allow death sentences to proceed.

While states have been executing prisoners on a regular basis, the federal death penalty has been on a hiatus since 2003, when Louis Jones, Jr. was put to death. Now, as part of Barr’s directive, the BOP has been ordered to schedule five executions.

“Congress has expressly authorized the death penalty through legislation adopted by the people’s representatives in both houses of Congress and signed by the President,” Barr stated. “Under Administrations of both parties, the Department of Justice has sought the death penalty against the worst criminals, including these five murderers, each of whom was convicted by a jury of his peers after a full and fair proceeding. The Justice Department upholds the rule of law – and we owe it to the victims and their families to carry forward the sentence imposed by our justice system.”

One of the prisoners scheduled for execution is Alfred Bourgeois. In August 2019, his attorneys renewed their fight against his death sentence. There is no objection to his conviction, but rather the fight centers around the fact that Bourgeois contends he is “intellectually disabled.” Under the Eighth Amendment standards established by the U.S. Supreme Court, he argues he can’t be executed due to his disability. If the courts fail to intercede he will be put to death in January 2020 in Terre Haute, Indiana, home of the BOP’s death chamber.

Challenges to the federal death penalty are not confined to the court system but are being raised in Congress, too. Attorney General Barr’s announcement and order regarding the death penalty led the U.S. House Oversight and Reform Committee to launch an investigation into the Department of Justice’s decision to resume executions.

House Democrats want answers as to why the administration decided to fire up the lethal injection machine; they also want to know how the Department of Justice plans to put prisoners to death, given recent controversy over capital punishment protocols.

In recent executions, pentobarbital has been used in states such as Texas, Georgia and Missouri. There have been complaints that the drug creates pain and a sensation of burning, and similar complaints regarding the execution drug midazolam. There will surely be legal battles contending that putting prisoners to death using those drugs violates the Eighth Amendment’s ban on cruel and unusual punishment.

Meanwhile, with the BOP preparing to resume executions, attorneys and advocates are gearing up to defend federal prisoners on death row. Bourgeois is just one of many condemned prisoners who are now literally fighting for their lives. The other four prisoners who face execution dates in December 2019 and early 2020 include Daniel Lewis Lee, Lezmond Mitchell, Wesley Ira Purkey and Dustin Lee Honken. According to a press release from the Attorney General’s office, they have all “exhausted their appellate and post-conviction remedies, and currently no legal impediments prevent their executions.”

Faith leaders have weighed in on this issue. In October 2019, the Catholic bishops of Indiana issued a statement calling the decision to resume federal executions “regrettable, unnecessary and morally unjustified.”

The bishops added that capital punishment “continues the cycle of violence; it neither helps the victims who survive, nor does it mitigate the loss of a loved one. And it precludes the possibility of reconciliation and rehabilitation.”

Among other faith-based groups, the U.S. Conference of Catholic Bishops, the Catholic Mobilizing Network and Sisters of Mercy have condemned Barr’s announcement.

As of July 2019, there were 62 federal prisoners on the BOP’s death row.

Sources: rollingstone.com, truthout.org, the-root.com, nytimes.com, crusnow.com
**Virginia Death Row Conditions Subjected Prisoners to Risk of Harm**

by David M. Reutter

On May 3, 2019, the Fourth Circuit Court of Appeals affirmed a district court’s order that found the conditions of confinement on Virginia’s death row violated the Eighth Amendment. The appellate court held the conditions that existed when the suit was filed created a “substantial risk” of serious psychological and emotional harm.

The lawsuit was brought in November 2014 by death row prisoners Thomas Porter, Anthony Juniper and Mark Lawlor, who were held at Sussex I State Prison.

They alleged they were “denied access to any form of congregate recreation, either indoor or outdoor; they were not allowed to eat meals outside their cells; and they could not participate in congregate religious services or programs.” As a result, they spent 23 to 24 hours a day in their cells. The district court granted summary judgment to the prisoners and entered an injunction. [See: PLN, Sept. 2018, p.22] The state appealed.

The Fourth Circuit began its analysis by pointing to the prisoners “expert evidence establishing the risks and serious adverse psychological and emotional effects of prolonged solitary confinement [and] the surveys of the scholarly literature supporting that evidence.” It cited several recent cases, including two from the U.S. Supreme Court, that recognized this empirical evidence.

The Court of Appeals noted that its prior rulings upholding conditions of confinement similar to those challenged in this case “lacked the benefit of the recent academic literature” on the effects of prolonged solitary confinement. Thus, those earlier decisions were not controlling. The Court also found the facts presented by the plaintiffs belied the defendants’ contention that death row prisoners were not in “solitary” confinement or “subject to ‘prolonged isolation’ or ‘lack of stimulation.’”

Virginia prison officials also argued that the plaintiffs had failed to show they suffered harm from their confinement. While the parties presented conflicting expert testimony on that point, the Fourth Circuit agreed with the district court that such an argument missed the mark. What is relevant under the Eighth Amendment is not the harm suffered, but that the prisoners faced a “substantial risk” of serious harm from their conditions of confinement.

The district court was correct in finding that such a risk existed, and that the defendants were deliberately indifferent to that risk.

The Court of Appeals further held the district court did not err in granting injunctive relief to address the constitutional violations. Prison officials argued an injunction was not appropriate because they had voluntarily changed policies and conditions on death row. The prisoners agreed the current conditions were not unconstitutional, yet the record supported a finding of “cognizable danger of recurrent violation.”

The Fourth Circuit wrote the defendants had “shown no ‘repentence’ – they continue to argue, as they are entitled, that the challenged conditions comply with the Eighth Amendment.” Under those circumstances, injunctive relief was appropriate to ensure they do not return to the challenged practices. The district court’s order was affirmed; one appellate judge entered a dissenting opinion. See: Porter v. Clarke, 923 F.3d 348 (4th Cir. 2019), rehearing and rehearing en banc denied.

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**Prison Legal News**

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The Louisiana Department of Corrections’ (LDOC) prison industry program, Prison Enterprises (PE), was audited in May 2019. The resulting report found that the program still had some of the same issues with sustainability and inadequate training opportunities for prisoners as it did 20 years ago in its last audit.

PE manufactures products for sale to state agencies and nonprofit organizations within Louisiana, and produces agricultural commodities that can be sold on the open market.

The prison industry program’s catalog advertises office furniture, institutional clothing, silk screening, institutional bedding, printing, metal fabrication and janitorial products. PE also grows corn, cotton and soybeans, and raises cattle and heifers. It provides job training opportunities through the use of prison labor to operate its various industries. All proceeds go to the LDOC.

The audit report said the program was successfully assisting in reducing the cost of incarceration. Yet PE showed a net loss for 11 of the past 23 years. Several industries within the program were so unprofitable that they were shut down, such as the quail raising farm, which lost $137,200 between 2016 and 2018, and the horse training business, which lost $189,780 in 2016.

Many of PE’s industries reported a profit for the past year. The garment factory generated $577,990 in revenue, while license plate manufacturing made $346,461 and the heifer business made $224,649. Some reported a net loss. The cattle industry lost $1.1 million and silk screening lost $93,445. Overall for 2018, PE reported revenues of $27.9 million and expenses of $28.1 million, with a net loss of $235,087. The prison industry program had claimed a $1.9 million profit in 2017 and a loss of $288,326 in 2016.

“We’re absolutely sustainable,” said PE director Michael Moore. “We have some assets to cover down years and have gotten through so far.”

He noted that annual net income does not truly reflect the success of the program. Raw materials purchased at the end of one year may be for a large production order sometime during the next year, for example. Plus the overall cost savings by the LDOC have to be taken into account. Not only does the state prison system purchase goods from PE at discount prices, but the program also provides prisoner supervision, saving the LDOC in staff salaries.

Additionally, PE’s labor expenses are extremely low. The program employs about 760 prisoners statewide at anywhere from $0.02 to $0.20 an hour. Moore said the cheap labor alone does not guarantee a profit, though. PE has many restrictions that hinder its production, plus it has to pay staff salaries.

Wanda Bertram, spokesperson for the Prison Policy Initiative, said most states struggle with generating profit through prison industry programs. She added that such programs are not the best for job training – about 32 percent of PE’s industry jobs are in fields that do not have much growth expected in the labor market.

PE wants to add welder and fitter apprenticeship programs to its industries, job skills that are in higher demand, but refuses to discontinue its more lucrative programs, such as the garment factory, even though those skills are not as useful outside of prison.

“Too often, corrections industries are portrayed as incredible job training programs that also somehow make money for the state,” Bertram said. “But that’s not how training people works. Real training costs money.”

Sources: theadvocate.com, prisonenterprises.org

Washington DOC Medical Director Fired for Negligence

by Dale Chappell

A Washington Department of Corrections (DOC) medical director, Dr. Julia Barnett, was terminated on April 18, 2019 because she “failed to exercise sound clinical judgment and failed to provide adequate medical care” to prisoners at the Monroe Correctional Complex (MCC), resulting in the deaths of several prisoners.

Barnett had been on paid leave since October 2018 while the DOC investigated her provision of medical treatment at MCC, which is the state’s third-largest prison. In November 2018, Barnett’s staff – two other doctors and several physician assistants and nurses – submitted a vote of “no confidence” and complained to administrators that she had created “a toxic environment” and appeared to make decisions “to reduce health care costs rather than for the benefit of the patient.”

After working for private medical provider Corizon Health in Arizona, Dr. Barnett, a former pharmacist, assumed the role of medical director at MCC in 2017 with a starting salary of $260,000. Although she did not have all the necessary credentials, DOC administrators made an exception, citing a shortage of doctors willing to take the job.

Barnett’s 27-page termination notice, which was obtained from her personnel file through a public records request, detailed a host of incidents where she failed to provide adequate medical care to prisoners at MCC. Some 2,000 pages of supporting records also were obtained from a July 2019 DOC investigation, in which other doctors reviewing her cases described the care provided or supervised by Barnett as “shocking” or “bordering on ... negligence.”

“I no longer trust your clinical judgment and ability to be responsible for the health and welfare of the patients at MCC,” DOC Health Care Administrator Eric Hernandez stated in the termination notice. “You failed to advocate for the patients and delayed emergency medical care that was essential to life.”

Medical records obtained by the Seattle Times showed that Dr. Barnett was notified by nurses that prisoners with serious medical problems in need of emergency care were ignored. One patient was described in a clinical record as saying, “I ... can’t ... breath[e].” Another, who stuck a pencil up his urethra into his bladder to relieve “an
itch,” was refused treatment by Barnett. The nurses recorded her as saying, “Don’t do anything as long as he can urinate.” Five days later, the 41-year-old prisoner was rushed to the Providence Regional Medical Center for emergency surgery to repair his ruptured bladder.

“He needed emergency surgery. He could have gone into septic shock,” the DOC’s chief medical officer, Dr. Sara Kariko, told investigators after her review of the case records.

That prisoner lived but others weren’t as fortunate. The termination notice listed six patients under Barnett’s care, three of whom died. All six suffered unnecessarily due to a lack of medical treatment and, in some cases, improper care.

During the summer of 2018, prisoner Lee Johnson, who had been diagnosed with lung disease, experienced declining blood oxygen levels. When Dr. Kariko later reviewed the case records – which showed Barnett never examined the patient – she told DOC investigators that she’d “be calling an ambulance to come get” Johnson. The 58-year-old was finally sent to a hospital in late August 2018, where he died the following week.

Dr. Patricia David, the DOC’s medical director of quality and care management, told investigators in January 2019 that Barnett had failed to make “the right decision on several of these cases and that resulted in bad outcomes and even death.”

After the DOC completed its investigation it forwarded its report to the state’s Medical Commission, whose subsequent investigation widened to include four additional MCC prisoner deaths in 2017 and 2018.

Washington attorney Nick Allen, director of the Institutions Project at Columbia Legal Services, said that regardless of the crimes someone has committed, prisoners have a constitutional right to adequate healthcare.

“Poor medical care is not part of the punishment for a criminal conviction,” he declared. “When you show up at court for sentencing, the court doesn’t say, I sentence you to 10 years in a state prison and 10 years of poor medical care.”

Concluding the termination notice, DOC Health Care Administrator Hernandez wrote that Dr. Barnett’s actions demonstrated her “inability to perform” her duties as medical director. “Accordingly,” he added, “I have determined that discharge is the appropriate level of discipline. Any lesser sanction would not express the seriousness with which I view your misconduct, deter others, or maintain the mission, integrity and reputation of the agency.”

Through her attorney, Barnett said she is appealing what she called a “wrongful dismissal,” and argued her care for prisoners was proper, “particularly in this medical setting.” She remains licensed to practice in Washington while the Medical Commission’s investigation is pending.

A DOC spokesman said prisoners affected by poor medical care during Dr. Barnett’s tenure have not been notified of the investigative findings and her subsequent termination. But the department has already received legal claims related to Barnett, including a $1.5 million lawsuit alleging misdiagnosis and negligent treatment of diabetic lesions on a prisoner’s feet.

Sources: Washington DOC termination notice for Dr. Julia Barnett (April 18, 2019), seattle-times.com, injurytriallawyer.com

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Louisiana Enters into Subscription Model Contract for HCV Treatment

by David M. Reutter

In June 2019, Louisiana officials entered into a contract that will allow prisoners and Medicaid patients to receive advanced medications to treat hepatitis C (HCV). The five-year contract with Asegua Therapies, a subsidiary of Gilead Sciences, aims to treat at least 31,000 of the state’s 39,000 HCV-positive residents by 2024—a ten-fold increase over current treatment levels.

“This partnership will have a direct and immediate impact on the most vulnerable populations with hepatitis C—people who are on Medicaid or who receive care through the state corrections system. These populations are disproportionately affected by hepatitis C and often face the greatest difficulty in accessing care,” said Gregg Alton, Chief Patient Officer at Gilead Sciences.

Because HCV infections are easily spread by sexual contact and sharing needles, the disease poses a health risk to the rest of the population. About 3.4 million Americans carry the virus, which can cause liver inflammation and immune-response liver damage, though 70 to 80 percent of carriers have no symptoms.

In 2018, Louisiana treated only 384 patients with Asegua Therapies’ HCV drug Epclusa, one of a new class of medications called Direct Acting Antivirals (DAAs). The drug increases the effectiveness of HCV treatment from 50 percent to 95 percent, but at a price per patient of $10,000—still significantly less than when it was first introduced in 2014.

Lawsuits filed in 2018 and early 2019 by Louisiana state prisoners Richard Henderson, Tony Cormier and Level Doughty alleged the failure to treat them with DAAs was an “egregious act” that put them at risk of liver failure. The three men are housed in a medical unit at the Elayn Hunt Correctional Center.

The trio of lawsuits claimed the refusal of prison officials to administer the latest DAA drugs was due to their cost, amounting to a policy of “let them die” that reportedly contributed to the deaths of 15 state prisoners between 2014 and 2016.

“We've never refused medical treatment or care because of cost,” insisted Jimmy LeBlanc, secretary of the Louisiana Department of Corrections (DOC).

In fact no one actually dies from HCV, noted DOC spokesman Ken Pastorick, but complications attributed to the disease claim the lives of more Americans each year than all other infectious diseases combined.

Baton Rouge Nurse Practitioner Elizabeth Britton said her incarcerated Medicaid patients began receiving DAAs in 2014, but prisoners at the Elayn Hunt facility did not start getting the new drugs until 2017. Even then, another 10 Louisiana prisoners died due to complications from HCV in 2017 and 2018.

Because the state was paying for DAA treatments on a per-patient basis—at a total cost of nearly $60 million annually—the price to treat all state residents with HCV, including prisoners, was estimated at $760 million. The state's new contract with Asegua Therapies is based on a “subscription model” that allows Louisiana to pay a flat annual fee of $58 million—equal to its current spending on DAAs—for unlimited HCV treatment. Over the five-year agreement, the state’s costs will be capped at $290 million.

“We knew we had to do better,” said Governor John Bel Edwards when signing the contract with Asegua Therapies.

“We are committed to supporting efforts to eliminate hepatitis C in communities around the world and are excited to partner with the visionary leaders in Louisiana to make this public health opportunity a reality in this state,” added Alton.

HCV treatment for Louisiana residents under the state’s new subscription arrangement began on July 15, 2019.

Sources: Associated Press, The Advocate, modelhealthcare.com, ldh.la.gov, mavyret.com, gilead.com

Victim Notification Law Plagues Alabama’s Parole System

by Kevin Bliss

Admitting it is an “uncalled-for-situation,” Alabama Bureau of Pardons and Paroles (BPP) Director Charles Graddick announced on September 9, 2019 that all future parole hearings were being postponed in order to comply with a new law that took effect the first of that month. The law, signed in June by Governor Kay Ivey, requires notice to victims 30 days prior to a prisoner’s pardon or parole hearing.

The new statute followed the July 2018 murders of seven-year-old Colton Lee and his great grandmother, Marie Martin, as well as Martin’s neighbor, Martha Reliford, by Alabama parolee Jimmy Spencer. Though Spencer’s previous victims had been notified of his parole hearings in 2008 and 2013, they were not notified of the one that sent him to a Birmingham halfway house in January 2018, from which he walked away three weeks later. The police arrested him on drug charges in June 2018 but he was released after his parole officer failed to respond to their inquiries.

Former BPP Director Eddie Cook had opposed the new law, which tightens restrictions on the agency and creates additional oversight. Cook and two subordinates were placed on leave while state officials investigated allegations of “malfeasance,” including inappropriate solicitation of state employees through e-mail to take a stance against the law. Cook and Assistant Executive Director Chris Norman are reportedly using saved leave time to reach retirement and will not return to work. BPP Personnel Director Belinda Johnson, who was also placed on leave, is awaiting a hearing to determine her employment future.

When the notification statute took effect on September 1, 2019, Governor Ivey appointed Graddick, a former Mobile Circuit Court judge, as the BPP’s new director. Even though he was known as “lock ’em up Charlie” due to his tough-on-crime reputation while on the bench, Ivey promised that Graddick would be “fair-minded.” After placing Cook, Norman and Johnson
on leave, Graddick postponed 862 parole hearings scheduled through October 2019 because the BPP had no mechanism to ensure victims were receiving the required 30-day notice.

“The Board of Operations division is unable to assure me that the docket complies with the law,” he said. “Last week we had to postpone 113 hearings. We’ll resume parole hearings as soon as we’re sure legal requirements have been met. We’re working hard to learn if the dockets pass muster legally. It could mean notifying up to 700 people. Addresses must be verified. It’s going to take a few weeks,” he added, the situation was a “hot mess.”

In addition to the forced departures of Cook and his two subordinates, BPP chairwoman Lyn Head resigned in October 2019 and was replaced by Leigh Gwathney, an assistant attorney general. Spokesperson Skip Tucker called the former composition of the board a “snarl of cataclysmic proportion.”

“The priority is to resume parole hearings as soon as Judge Graddick is assured that the agency and the hearings are up to compliance with the new law. Anything else would be facetious,” he said.

The number of parole grants had already fallen dramatically after Governor Ivey issued an October 2018 moratorium ready fallen dramatically after Governor Ivey issued an October 2018 moratorium on releasing prisoners before their parole eligibility dates. From 267 parole grants on releasing prisoners before their parole eligibility dates. From 267 parole grants in June 2018, the number fell to just 80 one year later. While he acknowledged the overcrowding problem in Alabama’s prison system, which operates at 182% capacity, Tucker said the answer is not to start handing out parole “like candy.” An estimated date to resume parole hearings was set in early November 2019.

Since Graddick took over as the BPP’s director he has conducted employee training on the new law and instituted safety upgrades for parole officers. The agency also has a new website that features an “absconder” alert.

Civil rights advocates expressed concern about prisoners who could have been granted parole during the time their hearings were postponed. Beth Shelburne with the Campaign for Smart Justice – a project of the ACLU – said parole “is one of the only remedies available for people that are stuck in the system, and to put a stop to it is sending us in the wrong direction.”

Ebony Howard, senior supervising attorney for the Southern Poverty Law Center, added that parole was an important mechanism for release in the prison system, and that postponing hearings could have a devastating effect on overcrowding in state prisons. She said she hoped Governor Ivey and Graddick “were taking into account how important parole is not just to the prison crisis but also to the future of incarcerated people.”

Huntsville attorney Mark McDaniel, who has argued many state criminal cases, noted “the nature of the crime is what the board of pardons and paroles in most states consider.” He said a shortage of parole officers means one is sometimes saddled with thousands of cases.

“You say, well, why didn’t they go check on where this guy was living? They’ve barely got enough time to even go through the files for new cases they’re getting, much less the people that are on parole,” McDaniel remarked.

The state legislature has increased the 2020 appropriation for the Alabama Department of Corrections by $40 million, but it is unclear how much of that funding will be allocated to the BPP. The agency is moving to a new Montgomery location, one that both saves rental costs and provides more free parking for visitors attending hearings, which are scheduled to begin at the new location in January 2020.

Assuming that the BPP is in compliance with the notification law by then, that is.

Sources: pardons.state.al.us, waaytv.com, theappeal.org, wbnt.com, mynbci5.xom, abc3340.com

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Prison Legal News
November 2019
Florida federal district court has denied a motion to dismiss a civil rights action claiming that Florida Department of Corrections (FDOC) officials and the FDOC’s former medical services contractor, Corizon Health, deprived a mentally ill prisoner of care he needed to prevent him from starving to death.

The suit was filed by the estate of Florida prisoner Vincent Gaines; when the trial court sentenced him, it recommended that he be housed close to his family and placed in a mental health program. [See: PLN, Sept. 2018, p.24]. When Gaines entered the state prison system on June 24, 2013, he weighed 190 pounds and stood 5’9” with a body mass index of 28.1, which is characterized as overweight.

A disciplinary report in April 2015, for failure to obey a verbal or written order when he attempted to enter the food service area without permission, resulted in a transfer to the Florida State Prison, which was about 300 miles from his family. Gaines was then transferred to the Union Correctional Institution (UCI) on May 15, 2015 and placed on Close Management, which is Florida’s version of a Segregated Housing Unit.

His medical record from that point on indicated no issues with his behavior or mental state. Dr. Bhim Tambi, a psychiatrist, noted a discontinuation of Tegretol due to an increased blood sodium level caused by that psychotropic medication. The Tegretol was not replaced with another medication, leaving Gaines’ mental condition untreated. While Dr. Tambi and Corizon employee F. Morrison reported no behavioral or other issues of concern in Gaines’ medical file, all was not well.

The next day, on December 3, 2015, a guard contacted a nurse after noticing that Gaines had not moved or eaten since his lunch tray was delivered. Upon entering his cell, he was found unresponsive. Resuscitation efforts failed and an autopsy found Gaines was malnourished and weighed just 115 pounds – 60 percent of his body weight when he entered the prison system – and his lungs were filled with congestion. The medical examiner believed rigor mortis of the jaw had set in before paramedics tried to revive Gaines. He had been serving a five-year sentence.

In a March 28, 2019 order, the federal district court found that the complaint stated sufficient facts to support Eighth Amendment claims against former FDOC Secretary Julie Jones and former UCI Warden Kevin D. Jordan. It also found the alleged “unofficial custom or practices” of Corizon Health stated a claim for relief. As such, the defendants’ motion to dismiss was denied. Gaines’ estate is being represented by the Human Rights Defense Center, PLN’s parent non-profit organization, and by attorney Edwin Ferguson with The Ferguson Firm, PLLC. See: Gaines v. Jones, U.S.D.C. (M.D. Fla.), Case No. 3:18-cv-01332-BJD-PDB.

How High-Priced Drugs Cripple Prison Health Care – and Reform

by Priti Krishtel, The Crime Report

In a deeply divided political electorate, prison reform is one of the few issues that attracts bipartisan support. Yet there’s something missing from the current conversation about criminal justice reform: the high cost of prescription drugs.

In 1976, a landmark Supreme Court case, Estelle v. Gamble, established an individual’s fundamental right to access medical treatment while behind bars. Specifically, the court found that “deliberate indifference by prison personnel to a prisoner’s serious illness or injury constitutes cruel and unusual punishment contravening the Eighth Amendment.”

Prisons and jails, in other words, are constitutionally required to provide health care to people in their care.

When the drugs needed to treat prisoners are expensive, it puts enormous strain on state and county corrections budgets. That, in turn, leads to delays in treatment and substandard care that can have lasting, even deadly, consequences for people who are incarcerated.

It also impacts the state’s ability to improve prison conditions or implement rehabilitative programming that helps keep people from re-offending, things that the current First Step bill currently before the Senate seeks to do. [Ed Note: The First Step Act was signed into law by President Trump on December 21, 2018, three days after this article was first published].

Unless high drug prices are addressed, prisons and, to a lesser extent, jails will face a difficult trade-off between providing healthcare and enacting the reforms needed to keep people out of the system for good.

Nothing illustrates this problem as powerfully as the ongoing Hepatitis C crisis in state prisons. According to the Centers for Disease Control and Prevention, 17 percent of prisoners in prisons and jails – around 400,000 people – are infected with the virus, which is transmitted through blood contact and can lead to liver failure if left untreated.

People who are incarcerated represent less than one percent of the population, but they account for about a quarter of all diagnosed Hep C cases in the U.S.

The most common way for a prisoner to get the disease is by sharing needles used for injecting drugs, tattooing, or piercing with people who are already infected. And since prisons and jails hold a large number of people with histories of substance abuse – a situation that has gotten worse with the opioid and heroin epidemics – the disease is widespread.
There are highly effective cures for Hep C. Prisons pay anywhere from $25,000 to list prices of $90,000 for a two- or three-month course of one-pill-a-day Sovaldi-based treatment combination, manufactured by the pharmaceutical company Gilead.

Using the low end of that range, it would cost $1 billion to treat 40,000 people – just 10 percent of the number of incarcerated people infected.

Sovaldi is so expensive in part because the drug is protected in the U.S. by a fortress of 29 granted patent and patent applications, amounting to more than 30 years of monopoly power that prevents generic competition. Other countries, including Egypt, Ukraine, Argentina, Brazil, Russia and 38 countries in Europe, have rejected or restricted Gilead's patents on Sovaldi for failing to meet the requirements warranting a patent.

Last year, my organization, the Initiative for Medicines, Access & Knowledge, successfully challenged Gilead's patents on Sovaldi in China, opening the door for generic competition and billions of dollars in savings in that country. The U.S. Patent Office, in contrast, would not allow our challenges to Gilead's patents on Sovaldi to go to trial.

Gilead's monopoly pricing in the U.S., unsurprisingly, puts the drug out of reach of millions of Americans, not least those in our prisons and jails. According to a recent survey, 97 percent of people in state prisons with Hep C aren't being treated.

That has led to a string of lawsuits. Prisoners in Massachusetts, Colorado, Indiana, Pennsylvania, Michigan, Minnesota and Florida have sued and either won or reached a settlement securing their right to effective and timely treatment for Hep C. Similar lawsuits are pending in California and Tennessee.

Across the board, state administrators have cited the prohibitive price of Hep C treatment, and in virtually every case the courts concluded that cost couldn't be used as justification for failing to screen for Hep C, not treating, or treating with older, less effective drugs.

And that's just one drug for one disease. People in prison or jail with diabetes, asthma, opioid addiction and other conditions also need treatment and many of these are also expensive. Drugmaker monopolies lie at the heart of the problem, and we need our policymakers to take bold action to correct this abuse.

Where else could those billions of state and corrections dollars be spent if America didn't pay more per capita for prescription drugs than any other nation in the world? Some of that money could go to reforms like treating mental illness and substance abuse, reuniting families, implementing job and educational programs, and expanding transitional housing facilities.

These and other reforms will be far harder to achieve if nothing is done about abusive drug-maker monopolies that are causing over-the-top prescription drug prices.

Priti Krishtel is the Co-Executive Director of I-MAK.org, a global non-profit organization comprised of senior attorneys, scientists and health experts who have worked to lower drug prices through the patent system for 15 years. She can be reached at pritikrishtel. Readers' comments are welcome.

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Appellate Court Holds Louisiana Prisoner’s Medical Malpractice Claim May Proceed

by David M. Reutter

Louisiana’s First Circuit Court of Appeal held on May 23, 2019 that a prisoner who filed grievances and a lawsuit concerning his medical treatment “exercised reasonable diligence to the best of his ability to determine if something was wrong with him.” Under the circumstances of the case, the appellate court found his State Medical Review Panel (MRP) request was filed within one year of finding he may have been the victim of medical malpractice.

The ruling came after the trial court dismissed a lawsuit filed by state prisoner Cornelius Wilson, finding he had failed to timely file an MRP request. Louisiana law provides for a specified period in which to bring medical malpractice claims. La. R.S. 9:5628(A) sets forth two prescriptive limits applicable to such claims: one year from the date of the alleged act or the date of discovery, and a three-year limitation from the date of the alleged act, omission or neglect if the negligence was not immediately apparent.

Prescription commences when a plaintiff obtains actual or constructive knowledge of facts indicating to a reasonable person that he or she is the victim of a tort. The ultimate issue in cases like Wilson’s is “the reasonableness of the patient’s action or inaction, in light of his education, intelligence, the severity of the symptoms, and the nature of the defendant’s conduct.”

The appellate court noted that while Wilson was at the East Baton Rouge Parish Prison in February 2015, he began losing his voice and had throat congestion. He was treated intermittently by three contract doctors: Dr. Rani Whitfield, Dr. Michael Stuart and Dr. Charles Bridges. They continued the same treatment from that time until August 31, 2015; then, Dr. Stuart recommended a review by an ENT specialist. That review never occurred.

Wilson was transferred to the state prison system in October or November, and on February 29, 2016, a specialist, Dr. Rachel Barry, discovered a large tumor that was subsequently diagnosed as squamous cell carcinoma cancer. A total removal of his larynx was required, and he filed his MRP request on September 20, 2016.

The trial court held his request was not made within one year of the alleged malpractice, and dismissed Wilson’s lawsuit. The Court of Appeal found that dismissal was “manifestly erroneous,” noting it was reasonable to conclude Wilson was not “aware that he may have been a victim of a tort until February 29, 2016, when Dr. Barry discovered the large tumor on his left vocal cord.” The Court also said the case must be viewed in light of Wilson’s status as a prisoner, as he was without the ability to schedule appointments with a specialist or seek a second opinion and had to rely solely on the medical services provided to him by the parish prison.” The trial court’s order of dismissal was reversed; costs on appeal were taxed to the defendants. See: Medical Review Panel v. Whitfield, 2019 La. App. LEXIS 914 (2019).

Eleventh Circuit: Tasing of Inert Detainee is Excessive Force

by David M. Reutter

On May 9, 2019, the Eleventh Circuit Court of Appeals answered in the affirmative whether it is “excessive force to tase for a second time a man who, as a result of an initial shock, is lying motionless on the floor and has wet himself, and who presented only a minimal threat to begin with?”

The appellate ruling came in a civil rights action brought by the estate of Ricky Hinkle, who was held at Alabama’s Birmingham City Jail after being arrested while “visibly intoxicated.” Soon thereafter, he began suffering alcohol withdrawal symptoms and exhibited delusional behavior. He was moved three times before ending up in a cellblock with jail guards Habimana Dukuzumuremyi and Christopher Cotten.

Shortly after Hinkle arrived in the cellblock, Dukuzumuremyi realized he could not see Hinkle on the cell’s video monitor. Cotten went to investigate after Hinkle did not respond to a query over the loudspeaker. He found Hinkle standing in the corner of his cell wearing only his underpants and shoes. After Hinkle said he wanted to die, Cotten decided to move him to a padded cell.

While attempting to do so, Hinkle ran down the hallway, entered a bathroom and grabbed a shower curtain. Once the curtain was taken away, Cotten and Dukuzumuremyi tried three times to put Hinkle in the new cell. After the third attempt, Duku-

zumuremyi fired his Taser, hitting Hinkle on the left side of his chest just above the heart. The five-second shock caused Hinkle to fall to the floor and urinate on himself.

Dukuzumuremyi ordered Hinkle to roll over to be handcuffed, but he was unresponsive. Eight seconds after that order, Dukuzumuremyi tasked Hinkle again, hitting him on the front left side of his neck. The second shock caused Hinkle to go into cardiac arrest, and he was later pronounced dead at a hospital.

Hinkle’s estate filed suit. The Alabama federal district court denied the defendants’ motion to dismiss on qualified immunity grounds, though it dismissed a claim against Cotten for failing to intervene. The defendants appealed.

The Eleventh Circuit found the complaint did not plead facts sufficient to support claims of supervisory liability against Sheriff Mike Hale and Captain Ron Eddings. However, the appellate court upheld the finding that Dukuzumuremyi used excessive force.

There was no dispute that the first Taser shock was constitutionally permissible. The dispute surrounded the second shock. That Hinkle was motionless at the time indicated he could not roll over as ordered. The Court of Appeals wrote that within eight seconds, “any reasonable officer would have concluded that a detainee who lay inert on the floor, having soiled himself, was no longer putting up a fight.”
The Court therefore found “no legitimate basis for the second shock, particularly considering (1) that the first shock had immobilized Hinkle and (2) the minimal threat to order, safety, and security that Hinkle posed even from the outset.” Thus, Dukuzumuremyi was not entitled to qualified immunity. The district court’s order was reversed in part and affirmed in part, and following remand the parties entered into mediation. See: Piazza v. Hunter, 923 F.3d 947 (11th Cir. 2019).

### Judge Orders Federal Prisoner with Cancer Released Due to Poor Medical Care

_by Matt Clarke_

In June 2019, a U.S. District Court ordered that a prisoner held at the Federal Correctional Institution in Aliceville, Alabama be released due to the poor medical care she received from the Bureau of Prisons (BOP) for invasive breast cancer.

In 2013, Angela Michelle Beck, 47, pleaded guilty to conspiracy to distribute methamphetamine and possession of a firearm in connection with a drug trafficking offense. She was one of 21 people indicted on charges of being part of a large-scale methamphetamine ring, and received a 166-month sentence. She had served over six years.

According to court documents, Beck found a lump in her left breast while taking a shower in September 2017. She reported the lump to prison officials and was seen by a doctor on October 16, 2017, then by a surgeon two months later. She had a mammogram on December 21, 2017 that showed multiple breast masses and cysts. A prison doctor ordered a biopsy.

Eight months later, the biopsy confirmed Stage II cancer and Beck was told she would need to have the breast removed. That didn’t happen for another three months. It took five more months before she received a follow-up appointment with an oncologist for further treatment. By then it was too late for chemotherapy, and she had found two lumps in her right breast.


Judge Eagles gave BOP officials 21 days to evaluate Beck’s residence and implement a five-year period of supervised probation. In her order, Eagles said she had granted compassionate release due to Beck’s “invasive cancer and the abysmal health care [that the] Bureau of Prisons has provided,” which qualified “as ‘extraordinary and compelling reasons’ warranting a reduction in her sentence to time served.”

“The with appropriate supervision, the court concludes that Ms. Beck ‘is not a danger to the safety of any other person or to the community,’” Judge Eagles wrote. “Ms. Beck poses little risk of recidivism or danger to the community... As such, Ms. Beck is entitled to compassionate release.”

BOP officials did not deny any of the allegations in Beck’s request for compassionate release or provide an explanation for the delay in her medical care. However, they did argue, unsuccessfully, that she did not qualify for compassionate release because she didn’t have a terminal disease or a debilitating medical condition that prevented her from taking care of herself, and that she may still “present a danger to the community” given the seriousness of her offenses.

Beck had previously filed a lawsuit seeking an order requiring the BOP to provide treatment for her cancer. In that case, which was also heard by Judge Eagles, prison officials were ordered to ensure that Beck received immediate medical care. In granting compassionate release, Eagles noted that the BOP “continues to justify delays by blaming non-BOP officials, such as her oncologist, and logistical issues, and it has provided erroneous information about her recent appointments to the Court. The quality of Ms. Beck’s cancer treatment at [the BOP] in the past remains the best predictor of what it will be in the future.” See: United States v. Beck, U.S.D.C. (M.D. NC). Case No. 1:13-cr-00186-6-CCE; 2019 U.S. Dist. LEXIS 108542.

Additional source: journalnow.com
Alaska Supreme Court Rules Against Muslim Prisoner on Correspondence Ban

by Ed Lyon

Unlike most state prison systems, Alaska’s Department of Corrections (DOC) usually allows prisoners to correspond by mail with prisoners in other units. In February 2014, prison officials adopted a policy that prohibited prisoners assigned to three units from sending letters to each other. The reason for the policy change was concerns over prisoners returning from being housed in other states who were believed to have become involved with gangs and drugs. DOC officials did not want to allow them to correspond with other prisoners regarding those issues. There were exceptions for communication with family members and legal correspondence.

Raymond Leahy, a Muslim prisoner who self-identifies as the Imam of the “Ummah of Incarcerated Alaskan Muslims,” was assigned to the Goose Creek Correctional Center, which is one of the three units where prisoner-to-prisoner correspondence was banned. The Islamic holy month of Ramadan occurred following the policy change, yet Leahy sent a letter to another Muslim prisoner at one of the other affected units. It was returned marked “undeliverable.”

In June 2016, Leahy filed a 42 U.S.C. § 1983 lawsuit in superior court after exhausting his state remedies. His basis for the suit was the prophet Muhammad’s requirement that there be “no clearly established existing law” concerning prisoner-to-prisoner religious correspondence prior to the DOC’s 2014 correspondence ban, that was the correct legal basis to grant qualified immunity to the prison superintendents.

Additionally, the Court noted that Leahy had failed to make a prevailing party argument before the superior court, which meant he “cannot raise one for the first time on appeal.” See: Leahy v. Conant, 436 P.3d 1039 (Alaska 2019).

Pennsylvania’s Buck County Liable for Illegally Disclosing Criminal Records

by David M. Reutter

A federal jury awarded $1,000 to each person who was subjected to a privacy violation due to Buck County’s willful violation of Pennsylvania’s Criminal History Record Information Act (CHRIA). Up to 66,799 people whose arrest information was posted online are eligible for inclusion in the class-action lawsuit.

Despite that order, in 2007 the BCCF disseminated information about Taha’s arrest on a county website. The site published his mugshot and criminal arrest record. In 2011, Unpublish LLC, which does business as mugshots.com, and Citizens Information Associates, LLC (CIA), which operates bustedmugshots.com and mugshotsonline.com, obtained the arrest information and published it on their respective sites.

Taha sued Bucks County and the two companies in 2013 by Daryoush Taha, who was arrested on September 29, 1998 by the Bensalem Police Department and booked into the Bucks County Correctional Facility (BCCF) on various charges. Taha was subsequently placed into an Accelerated Rehabilitative Disposition program for one year on one of the charges, and the others were either discharged or not pressed. Upon completion of the program, the Bucks County Court of Common Pleas ordered the records of the participants to be expunged.

The claim against Bucks County went to trial and the jury returned a verdict on May 28, 2019. It found the county had willfully violated CHRIA and awarded punitive damages of $1,000 to each class member, which could amount to over $66 million.

“This is a landmark decision in the arena of the criminal stigma on the Internet,” said Jonathan Shub, one of the class attorneys. He said the verdict sends “a message to local counties and governments in general that privacy matters and that you cannot recklessly put our data on the Internet.”

Bucks County countered that it “vigorously dispute[s]” that Taha or the class is entitled to punitive damages. It also said the two companies took advantage of its “inmate lookup tool” for commercial value. “Those companies, such as mugshots.com, specifically targeted the County and use[d] it for their own purposes to obtain money from those who had criminal records,” Bucks County commissioners said in a statement.

The county expects that 45,000 to 55,000 people would be eligible for payments. “We know that certain [class members] are dead,” Shub noted. The defendants appealed to the Third Circuit in late July 2019, and their appeal remains pending. See: Taha v. Bucks County, U.S.D.C. (E.D. Penn.), Case No. 2:12-cv-06867-WB.

Additional sources: CNN, WFMZ
Sex Offenders Excluded from Florida Shelters During Hurricane

by David M. Reutter

As Florida was preparing for Hurricane Dorian in August 2019, government officials told registered sex offenders to seek shelter in county jails. “It was such a traumatic experience to be incarcerated. I’m not going to subject myself to that voluntarily,” said a representative with the Florida Action Committee (FAC), which advocates for the reform of sex offender laws. “I’d rather tie myself to a tree.”

Failure to comply with the law by staying away from shelters where children are present can result in new felony charges and imprisonment. Officials in Nassau and Flagler counties directed sex offenders to seek shelter at the county jail as Dorian’s 185 mph winds threatened Florida’s Treasure Coast. Osceola County set up a shelter specifically for sex offenders.

For those who chose to evacuate, a 2018 state law made seeking safety more onerous. That law requires sex offenders to register their temporary address, in person, with the sheriff’s office if they will be away from home for more than three days. They also must update their drivers license or ID card with the temporary address within 48 hours of their departure date. Failure to comply carries a mandatory sentence of six months of GPS monitoring, with a maximum of up to five years in prison.

The laws create a Hobson’s choice for registered sex offenders: They can shelter in place, go to jail, or risk evacuating and try to meet registrant requirements. “In many cases where it’s impossible to comply, you have no choice,” said the FAC representative. “You can’t go anywhere. You’re risking a third degree felony just to keep yourself safe.”

During Hurricane Irma in 2017, the Polk County Sheriff’s Office announced it would prevent sex offenders from going to shelters, and would arrest anyone with an outstanding warrant who sought safety at a shelter. Over 40 sex offenders were allowed to stay at a county administrative building instead.

“We’ve always done this,” said Polk County spokeswoman Carrie Horstman. “We’ve always checked for sexual offenders and predators during hurricanes.”

Pasco County set up a separate building as a shelter for sex offenders during Hurricane Irma, while offenders in Gadsden County were offered no other alternative shelter.

PLN has reported on this issue previously, in 2005. [See: PLN, Sept. 2005, p.23]. Apparently, over a decade later, Florida lawmakers still have taken no action to ensure that all state residents – including those convicted of sex offenses – are afforded safe shelter during hurricanes. More than 28,500 registered sex offenders reside in Florida.

Sources: theappeal.org, pbs.org, orlando-weekly.com

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The Oregon Court of Appeals held on March 13, 2019 that a prisoner was guilty of the crime of identity theft because he used the personal identification numbers (PINs) of two other prisoners to access a jail telephone.

Michael Steven Connolly was confined at the Multnomah County Detention Center (MCDC) in Portland, Oregon after violating a pretrial release agreement in a domestic violence case. The trial court prohibited him from contacting the alleged victim, identified only as K.

Nevertheless, while in jail, Connolly used the PINs of two other prisoners who were housed in his unit to call K five times. He used one prisoner’s PIN to make four calls and another PIN for one call. All of the calls were recorded.

Connolly was charged with five counts of identity theft for using the other prisoners’ PINs to place the phone calls.

An MCDC prisoner’s PIN is a combination of his jail identification number and date of birth. “A person commits the crime of identity theft if the person, with the intent to deceive or to defraud, obtains, possesses, transfers, creates, utters or converts to the person’s own use the personal identification of another person.” See: ORS 165.800(1). Oregon law requires a mandatory 13-month prison term for repeat identity theft convictions.

During Connolly’s bench trial, two jail guards testified for the prosecution about how prisoners are allowed to make phone calls. A guard identified Connolly’s voice in portions of each of the five calls that were played for the court. No voices were heard on any of the calls except Connolly and K’s.

Connolly moved for judgment of acquittal on all counts, arguing there was insufficient evidence about the way the calls were placed to find him guilty of identity theft. The trial court denied his motion and he was convicted on all counts.

The Oregon Court of Appeals affirmed, concluding “that the record contains sufficient evidence from which a rational trier of fact could find, by making reasonable inferences, that defendant ‘possessed’ or ‘obtained’ the other inmates’ PINs.”

The appellate court rejected Connolly’s argument that the prosecution offered insufficient evidence that he exercised control over the PINs because no evidence was introduced that he keyed in or knew the PINs or that the other prisoners informed him of their PINs.

“Defendant made five different telephone calls under PINs that were not his own. Defendant’s and K’s voices were the only voices on each call,” the appellate court wrote. “The jail rule is that only one inmate is allowed at each phone. From that evidence, viewed in the light most favorable to the state, a reasonable factfinder could infer that, in order to speak on the calls, defendant had to have exercised control over the other inmates’ PINs.”

The Court of Appeals explained that its analysis stopped “at the question of control,” because the parties presented only the narrow question of whether Connolly had “possessed” or “obtained” the other prisoners’ PINs, not whether he had “appropriated” the PINs for his own use.

“In other words, because the state concedes that defendant did not ‘convert to his own use’ the PINs,” the Court held “it is immaterial to our inquiry in this case whether defendant possessed the PINs without the permission of the person they identified” (emphasis in original). See: State v. Connolly, 296 Ore.App. 492, 439 P.3d 481 (Ore. Ct. App. 2019), review denied.

On July 2, 2019, a strongly divided three-judge panel of the Fifth Circuit Court of Appeals issued an opinion terminating the consent decree in Brown v. Collier, which allowed Muslim prisoners in the Texas Department of Criminal Justice (TDCJ) to hold religious services without direct supervision when a TDCJ-trained religious volunteer or chaplain was unavailable.

The consent decree had been previously superseded by the “Scott Plan,” which gave all religious groups a sufficient size the ability to meet one hour per week under direct staff supervision when a volunteer or chaplain was unavailable.

Brown v. Collier, a federal class-action civil rights lawsuit, was brought by a TDCJ prisoner named Bobby R. Brown in 1977. It alleged discrimination against Muslim prisoners and requested that they receive the same number of group religious services per week as adherents of the Protestant, Catholic and Jewish faiths.

The resulting consent decree exempted Islamic services from the TDCJ policy requiring direct supervision of all religious services, allowing indirect staff supervision of prisoner-led services when needed.

In 2009, TDCJ prisoner William Scott, a Jehovah’s Witness, filed a federal lawsuit seeking the same accommodation for his faith. The court in that case found the consent decree in Brown violated the Establishment Clause by giving Muslims preferential treatment, and ordered the TDCJ to devise a religion-neutral plan. In response, prison officials developed the Scott Plan.

They then filed a motion to terminate the Brown consent decree pursuant to the termination provision of the Prison Litigation Reform Act. This operated as a stay of the consent decree. The TDCJ then implemented the Scott Plan, which applied to all religions and permitted one hour of staff-supervised group religious services per week when a volunteer or chaplain was unavailable.

The Brown court dismissed without opposition 20 of the 22 provisions in the consent decree. However, it held that the provisions requiring Muslims be given equal time for religious services each week as Protestants, Catholics and Jews, and allowing prisoner-led indirectly-supervised
Islamic services when a volunteer or chaplain was unavailable, should continue to be enforced.

On appeal, the Fifth Circuit acknowledged the district court’s finding that one hour per week would not be sufficient for Muslim prisoners to complete the three mandatory group practices of their faith – Jumu’ah, Taleem and Qur’onic studies. However, it held that the reason for that insufficiency was not the facially neutral policy requiring direct supervision, but the lack of Islamic volunteers.

The appellate court noted that lawsuits attempting to require the TDCJ to allow prisoner-led services had failed for members of the Yahweh Evangelical Assembly, Jewish and Odinist faiths. The TDCJ justified its direct-supervision requirement on concerns over potentially disruptive behavior and PREA requirements.

The Court of Appeals also found that the fact that the TDCJ concentrated Jewish and Native American prisoners in a few facilities – which the district court found was to facilitate their religious worship and house them closer to volunteers – but did not do so for Muslim prisoners, did not violate the Establishment Clause. Therefore, the Fifth Circuit reversed the district court’s order and terminated the Brown consent decree.

Judge Carolyn King filed an opinion concurring in part and concurring in the judgment, in which she concluded that the housing policy violated the Establishment Clause but the consent decree was broader than needed to remedy that violation. Judge James Dennis filed a dissenting opinion, concluding that the Scott Plan violated the rights of Muslim prisoners under the Religious Land Use and Institutionalized Persons Act (RLUIPA). He also criticized the majority for retrying the facts of the case de novo. See: Brown v. Collier, 929 F.3d 218 (5th Cir. 2019).

**Conditions Lawsuit Against Indiana County Jail Certified as a Class Action**

by Kevin Bliss

A n Indiana federal district court held that a former jail detainee, Adam Bell, had presented sufficient evidence to allow certification of a class comprised of all persons currently confined, and who will be confined in the future, at the Henry County Jail. The ruling came in a lawsuit against the Sheriff’s Department that alleged unconstitutional and inhumane conditions of confinement.

Represented by the Civil Liberties Union of Indiana and attorney Joel E. Harvey, Bell filed suit while housed at the jail, saying it was originally designed to hold 76 prisoners but officials began adding additional bunks and mattresses to cells without required authorization, expanding the capacity to 116 prisoners.

Bell said the facility had been deemed overcrowded 100% of the time by the chief jail inspector of the Department of Corrections. Prisoners were forced to sleep on cell floors, in offices, in indoor recreation areas and near toilets. He also alleged that the jail was constantly understaffed which, with the overcrowded conditions, led to assaults and other violent incidents.

Henry County acknowledged the claims of additional beds but denied other allegations in the complaint. The county said the jail did not have more prisoners than permanent bunks, and denied claims that jail staff would not supply prisoners with proper grievance forms and refused to hear grievances except on approved forms.

Bell asked that the district court certify the case as a class action. Henry County responded that Bell did not qualify as class representative because he was no longer held at the jail and therefore could not fairly protect the interests of the class.

U.S. District Court Judge Sarah Evans Barker held the U.S. Supreme Court had ruled in Sosna v. Iowa, 419 U.S. 393 (1975) that there are exceptions to Article III of the Constitution, requiring that a plaintiff have a personal stake in the litigation throughout the entire proceeding. Exceptions include when the harm is continuing in nature, outlasting the named plaintiff. If a claim is so inherently transitory that it could not survive live controversy long enough for one individual to certify a class, but the deprivations continued for a subsequent group of people, a class can still be certified.

Judge Barker noted that Bell was “strongly committed” to this action and had promised to remain in contact with his attorney and make himself available for any depositions or trial. She said he therefore “adequately represented the interests of the class,” and certified the suit as a class action on June 25, 2019. The case remains pending. See: Bell v. Sheriff of Henry County, U.S.D.C. (S.D. Ind.), Case No. 1:19-cv-00557-SEB-MJD; 2019 U.S. Dist. LEXIS 105856. Additional source: city-countyobserver.com
Mario Sentelle Cavin, incarcerated at the Macomb Correctional Facility in Michigan, filed an appeal in the Sixth Circuit after a federal district court ruled that his religious freedoms had not been violated when the Michigan Department of Corrections (MDOC) refused to allow him communal worship for Wiccan services.

Wicca became a recognized religion in the MDOC in 2005, and the prison system permits group worship during major holidays called Sabbats. Another Wiccan holiday, Esbat, is celebrated each lunar month. Cavin believed that Esbat was to be celebrated communally too, with certain items such as candles and incense, and requested the opportunity to do so from Chaplain David Leach at the Macomb prison.

The MDOC denied Cavin’s request, and in 2015 he filed suit and requested appointment of counsel, injunctive relief to eliminate the restrictions, and monetary damages from both the MDOC and Chaplain Leach. The federal district court ruled in a summary judgment order that prison officials and Chaplain Leach were entitled to immunity; the court also refused to appoint counsel, and following a bench trial held the MDOC’s policies did not violate Cavin’s rights. It found that additional worship services would overtax limited prison resources and that many Wiccans celebrated Esbat alone. Cavin appealed.

The Sixth Circuit held that Cavin’s sincere Wiccan beliefs were sufficient to establish a right protected under the Religious Land Use and Institutionalized Persons Act (RLUIPA). The appellate court noted the district court had found he was a “sincere adherent” of the Wiccan faith, and “saw no reason to overturn that factual finding.” Therefore, it did not matter if other members of the same religion did not hold similar views as Cavin, as long as his beliefs were not “idiosyncratic.”

In addition, the Court of Appeals wrote that Cavin’s religious practices were burdened because the MDOC did not allow him access to religious supplies such as candles and incense, and forced him to celebrate Esbat in his cell with a cellmate who may have been “unfriendly” to the practice.

The Sixth Circuit pointed out that the district court did not rule on whether the MDOC’s policy furthered a compelling governmental interest in the least restrictive manner possible. As Cavin’s belief was communal worship during Esbat, and since the MDOC’s decision to prohibit such communal worship burdened Cavin’s practice, that question needed to be addressed to determine whether his rights had been violated.

The appellate court agreed that immunity prevented Chaplain Leach and the MDOC from being liable for monetary damages. It also noted that Cavin’s case did not involve unusually complex issues requiring appointment of counsel, and that he was doing an admirable job of representing himself.

Accordingly, in a June 17, 2019 decision, the Sixth Circuit affirmed summary judgment in favor of immunity for Chaplain Leach and the MDOC, vacated the ruling against Cavin’s RLUIPA claim and remanded the case for further proceedings. See: Cavin v. Mich. Dep’t of Corr., 927 F.3d 455 (6th Cir. 2019).

Additional source: freep.com

Whistleblower Lawsuit Exposes Violence, Cover-ups at Rikers Island Jail

A former guard at the Rikers Island jail complex in New York City has filed a lawsuit in state court exposing misconduct and cover-ups by staff. A subsequent report by the city’s Department of Investigation (DOI) confirmed evidence of cover-ups of over a thousand prisoner fights in just three months, while the latest Mayor’s Management Report (MMR) included statistics showing a surge in jail violence.

Manuel Carvalho Calvelos, the former guard, reported to his supervisors that three other jailers were smuggling contraband into the facility and planting it on prisoners. He also reported that a female captain “twerked” for a masturbating male prisoner in an attempt to get a razor away from him.

Jail officials promptly took action — against Calvelos. They fired him, and in May 2018 he filed a lawsuit alleging that he had been terminated in retaliation for exposing corruption at Rikers. See: Matter of Calvelos v. Brann, Supreme Court of New York County (NY), Docket No. 154110/2018.

“Manuel had a legal obligation to report the illegal activities and corruption he witnessed within the Department of Correction [DOC] and he took that duty seriously,” his attorney said. “Unfortunately, those at DOC that decided to terminate him do not.”

In April 2019, the court hearing Calvelos’ lawsuit denied the city’s motion to dismiss and ordered the defendants to respond to his claims.

Calvelos’ allegations appear to be only the tip of the iceberg in regard to problems at the Rikers jail complex. A March 2019 DOI report found systemic violence in New York City’s jail system, with officials failing to report prisoner fights, assaults on staff and excessive use of force by guards. According to the report, jail staff were “coached” by supervisors on how to classify fights to avoid unwanted scrutiny.

In addition to the DOI report, the September 2019 MMR revealed a sharp rise in violent incidents at all jails, though most of the city’s approximately 8,000 prisoners are held at Rikers. Mayor Bill de Blasio has championed a plan to close the aging island facility and reduce New York’s prisoner population, which would then be housed in new jails located in four of the city’s boroughs.

According to the MMR, incidents of prisoner-on-prisoner violence jumped to 69.5 per 1,000 prisoners, representing a nearly 25 percent increase from fiscal year 2018. Incidents of prisoner-on-staff violence also were up sharply, rising nearly 37 percent to a rate of 12.6 per 1,000 prison-
ers, as were uses of force by jail staff, which spiked nearly 30% to a total of 6,670 incidents – 571 of which involved juvenile offenders.

DOC spokesman Jason Kersten said the city’s efforts to reduce its overall prisoner population had left its jails full of “people charged with more serious offenses.” He added that incidents involving serious injuries had begun to fall for both staff and prisoners as the use of body cameras by guards increased.

“We have zero tolerance for unnecessary and excessive use of force,” Kersten promised.

However, the 11-page DOI report found the DOC had three separate ways of tracking jail violence, of which “none provided a complete and accurate record.” The investigation also reported the DOC only logged violence that resulted in serious injuries, such as stabbings, suffered by prisoners or staff members. Excluded were thousands of fights, injuries and uses of force by jailers, the report noted.

The DOI made 13 recommendations to fix the city’s jail problems. DOC officials fully adopted just two of them, while partially adopting five more. The agency argued it didn’t have court approval or enough money to implement the other six recommendations. The union representing the city’s jail guards said the DOC needs to do more.

“Without accurate tracking of violent assaults on correction officers, which occur all too frequently, policy makers and the public will be given a false impression that we don’t need better tools, resources, and equipment to drive jail violence down,” stated Correction Officers’ Benevolent Association president Elias Husamudeen.

A DOC spokesman noted that Calvelos’ allegations “do not in any way represent the hardworking New York City correction officers who come to work every day as part of a law-enforcement community dedicated to helping keep New Yorkers safe.”

Between the DOI report and the MMR, a third report was released in April 2019 by Steve Martin, who was appointed to oversee New York City jails in 2016 under a federal consent decree. According to his findings, uses of force by guards had reached its highest level since his monitoring began. DOC officials countered that the problems are concentrated in three of Rikers Island’s eight active facilities, but Martin called the entire complex deeply dysfunctional with an entrenched culture of violence.

“We’re replicating best practices across all of our facilities,” insisted DOC Commissioner Cynthia Brann, “and won’t be satisfied until we see success across the board.”

Because every use-of-force incident triggers an investigation, Martin said the increase has swamped investigators, who have 18 months to complete their work before the statute of limitations runs out on a complaint and staff cannot be disciplined. About 1,500 pending cases were older than 18 months at the end of fiscal year 2018.

As for the DOI report, a DOC spokesperson said, “Any claim that our numbers are manipulated is absolutely false,” adding, “[w]e have a rigorous process for capturing and reporting incidents.”

“It’s just another exclamation point on the urgency of closing Rikers Island,” countered City Council Member Rory Lancman after the MMR was released. “At some point, people have to accept that the Rikers Island model is broken and we need a new model.”

Sources: nypost.com, politico.com, wnyc.org, complex.com

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Muslim Civil Rights Group Files Discrimination Suit Over Virginia Jail’s “God Pod”

by Matt Clarke

On November 2018, the Council on American-Islamic Relations (CAIR) filed a federal civil rights lawsuit on behalf of four Muslim prisoners at the Riverside Regional Jail in North Prince George, Virginia.

The complaint alleged that Riverside officials, including the jail’s superintendent, senior chaplain, food services supervisor, security chief and programs supervisor, discriminated against Muslims by creating a “God Pod” cellblock to house prisoners in a Christian-centric program. Participants in the “God Pod” received special privileges and were immersed in a Christian environment with daily Christian programming, while Muslim prisoners were denied regular religious services despite their availability.

Further, the jail officials allegedly discriminated against Muslim and other non-Christian prisoners by excluding them from the “God Pod.” Essentially, the lawsuit alleged that while being open to prisoners of all faiths on paper, the only non-Christians allowed into the “God Pod” program were those willing to convert to Christianity.

Staff from the Good News Jail & Prison Ministry, a religious group whose website says it has chaplains providing Bible-based programs in 22 states, runs the “God Pod” at the Riverside Regional Jail. The program is the only religious class allowed to be regularly provided at the jail, and participants in the “God Pod” are allegedly the only prisoners given religious study materials.

Mitchell Young, Desmond Horton, Dominic Robertson and Chris Mayo, the named plaintiffs in the suit, are represented by D.C.-based CAIR Legal Defense Fund attorneys Gadeir L. Abbas, Lena F. Masri and Carolyn M. Homer. They contended that, in addition to the requirement that prisoners in the “God Pod” agree to live in accordance with the Bible, effectively eliminating non-Christians, senior chaplain Joe Collins had repeatedly refused to allow outside religious volunteers into the jail to teach Islamic lessons. They said Collins had only allowed two Islamic classes to be taught at the jail in the first ten months of 2018.

The complaint also said the jail’s food services supervisor denied Muslim prisoners adequate food during the Islamic holy month of Ramadan, when eating and drinking during daylight hours is prohibited. Specifically, the suit claimed that prisoners participating in Ramadan were not allowed to store food in their cells and thus were dependent on the food service department for meals. However, for 20 of the 30 days of Ramadan, Muslim prisoners were not served breakfast until after the sun rose, forcing them to forego those meals. Even when given both the morning and evening meals properly, the daily calorie count was only 1,400 to 1,500 combined – less than the 2,400 to 2,600 calories recommended by dietary guidelines.

Additionally, the lawsuit alleged that chaplain Collins refused to add a prisoner to the Ramadan program who had converted to Islam early in Ramadan. Muslim prisoners requesting permission to receive pork-free meals were reportedly given a test regarding the core beliefs of Islam and their daily religious practices. Those who scored too low were denied pork-free meals.


Meanwhile, the Riverside Regional Jail ended the “God Pod” program upon the “advice of counsel,” according to September 2019 news reports.

Additional sources: cair.com, startribune.com, richmond.com

Missouri Jury Awards $113.7 Million to Prison Guards Required to Work Without Pay

by Matt Clarke

On September 14, 2018, a Missouri state court issued an amended final judgment in a class-action lawsuit brought by Missouri Department of Corrections (DOC) guards who alleged they were required to work without compensation before and after each shift. The judgment included a jury award of $113.7 million, inclusive of over $37.9 million in attorney fees and more than $219,000 in litigation costs.

With the assistance of the Missouri Corrections Officers Association and St. Louis attorneys Gary K. Burger, Jr. and Brian M. Winebright, DOC guards Thomas Hootsell, Jr., Daniel Dicus, Oliver Huff, Powell Meister, Billie Sine, Beverly Ann Stevenson, Amanda Strange and Morgan Strange filed a class-action complaint alleging that DOC guards, who work five eight-hour shifts per week, were being required to work without compensation before and after their shifts.

Specifically, they claimed they were required to be at their posts at the start of a shift, which was when their pay started, but were also required to do the following after arriving at the prison but prior to reporting to their posts: 1) remove their uniform jackets and belts and pass through a security checkpoint; 2) put the jackets and belts back on and proceed to an equipment area where they must line up, sign in and be issued keys and communications equipment; 3) proceed to another control area where they were required to line up, sign in again; and 4) pass through an “air lock,” walk to their assigned posts, and be briefed on census information and activity reports. This process took 15 to 25 minutes each day, sometimes longer, and did not count toward compensated work hours.

After the shift’s end, guards were required to perform another series of uncompensated tasks, including: 1) completing end-of-shift activity reports and census reports; 2) traversing multiple security...
checkpoints and control points; 3) checking facility email and communications sent to them; and 4) returning and signing in keys and communications equipment. This also required 15 to 25 minutes, sometimes longer. Failure to be at the prison in time to complete these unpaid tasks and be on post at the start of a shift was punishable by disciplinary action. Thus, the guards were being forced to work between four and seven uncompensated hours each 40-hour workweek.

Among other claims, the lawsuit alleged those practices violated the guards’ labor agreement with the DOC as well as the Fair Labor Standards Act. The trial court granted summary judgment to the guards on the legal and factual issues, and a jury set damages at $113,714,632. The court awarded $37,904,877 of that judgment in attorney fees, and $219,647.34 for litigation costs. It also awarded named plaintiffs Hootselle, Dicus and Huff $25,000 each as a service award, and ordered the remainder of the judgment to be divided among the class members according to how many shifts they had worked. The class was defined as all people who worked for the Missouri DOC as a Corrections Officer I or II at any time from August 14, 2007 to the present.

A 2013 report by the U.S. Department of Labor found $500,000 in overtime violations for the pre- and post-shift duties at just one DOC facility, but prison officials had neither investigated nor acted on the report. Burger noted that the DOC had retaliated against guards who complained about the unpaid work. See: Hootselle v. Missouri Department of Corrections, 19th Circuit Court of Cole County (MO), Case No. 12AC-CC00518.

Additional source: sltoday.com

New York: Prisoners Have No Expectation to Privacy During Jail Phone Calls

by Chad Marks

IN 2012, EMMANUEL DIAZ FOUND HIMSELF in the custody of the New York City Department of Correction (DOC). While housed at the Rikers Island jail complex on multiple counts of burglary and robbery, he made nearly 1,100 phone calls. During some of the calls he made incriminating statements.

Diaz later went to a jury trial, and the state sought to introduce excerpts from four of the phone calls recorded while he was in DOC custody. Diaz objected, arguing that he had an expectation of privacy on the calls since he was a pretrial detainee and had not been convicted of a crime.

The trial court, after hearing from both sides, allowed the telephonic evidence to be introduced. The court found that Diaz had subjectively believed that his calls were private – a notion that is largely belied by the record – that expectation was not objectively reasonable.” Further, the Court noted that “federal and state courts across the country have held that detainees provided with prior notice of the government’s monitoring and recording of their phone calls have no reasonable expectation of privacy in the content of the communications.”

While Diaz also tried to argue that “the release of the recordings to the prosecutor’s office without notice was an additional search that violated the Fourth Amendment,” the Court of Appeals disagreed, finding “there were no additional Fourth Amendment protections that would prevent DOC from releasing the recording to the District Attorney’s Office absent a warrant.”

In New York, like most states, prisoners have no expectation of privacy in non-attorney phone calls made from jail, and prosecutors – and juries – can listen to those conversations. See: People v. Diaz, 33 N.Y.3d 92, 122 N.E.3d 61 (NY 2019).
A Michigan federal district court initially held that a prisoner’s allegation that a guard's use of a Taser constituted excessive force stated a viable claim. The court also denied the defendants’ motion to seal evidence in the case, though the suit was later dismissed.

Prisoner Gregory Graham was attacked by another prisoner on July 25, 2014 while at the Oaks Correctional Facility. Guard Douglas Murtland wrote a misconduct report charging Graham with fighting.

The hearing officer rejected that claim, as video evidence showed Graham was attacked by a shank-wielding prisoner while his hands were full. The hearing officer was “unconvinced” that Graham “was fighting back versus protecting himself.”

Graham alleged in his civil rights complaint that “Murtland used the Taser on him without warning or justification and that he continues to suffer eye, neck, and back pain from the incident nearly eighteen months after the fact.”

The district court found his factual allegations were sufficient to meet the subjective and objective components of an excessive force claim. Thus, the court allowed that claim to proceed, though it dismissed claims for failure to protect and denial of access to the courts, the latter being predicated on withholding evidence to prevent him from pursuing his lawsuit.

At the summary judgment stage, the claims appear to have changed, as it was alleged that guard Matthew Turner had deployed the Taser rather than Murtland. The defendants moved to seal the video of the incident, video from the guard who deployed the Taser and the Michigan Department of Corrections’ use of force policy.

The district court found the defendants’ “talismanic invocation of ‘security,’ in the absence of relevant evidence or focused argument is simply insufficient to overcome the ‘strong presumption’ that materials submitted in support of a motion for summary judgment be available to the public.”

The court’s July 19, 2019 order denied the defendants’ motion to seal. Just over two months later, however, in September 2019, the court adopted a magistrate judge’s report and recommendation and granted summary judgment to the defendants, dismissing the case.

“Plaintiff’s claim involving the use of a taser must be analyzed under the Supreme Court cases authorizing appropriately limited use of force against prisoners,” the district court wrote. “This analysis, furthermore, must be made in the context of the constant admonitions by the Supreme Court regarding the deference that courts must accord to prison or jail officials as they attempt to maintain order and discipline within dangerous institutional settings.”

The court concluded that “The undisputed record ... demonstrates a classic case where a corrections officer needed to respond to a crisis situation in the heat of the moment. And nothing in the video or the rest of the record demonstrates a genuine issue of material fact regarding whether Defendant Turner acted maliciously or sadistically for the purpose of unjustifiable infliction of pain and suffering when he deployed the taser.” See: Graham v. Turner, U.S.D.C. (W.D. Mich.), Case No. 1:16-cv-00149-RJJ-PJG; 2019 U.S. Dist. LEXIS 162946.

Ex-Offenders Work for Organization that Repairs and Sells Vehicles at Low Cost

In 1999, Marty Schwartz started Vehicles for Change (VFC) – a nonprofit that repairs donated vehicles and sells them to low-income families for $700 to $850. The charity provides reliable vehicles to solve “the No. 1 barrier for employment for low-income residents – which is [lack of] transportation,” according to Schwartz’s group.

But finding workers trained in automotive repair was a challenge. To solve the need for skilled mechanics, VFC came up with the idea for “Full Circle” in 2002. The goal was to have a program for ex-offenders to help bridge the gap to employment after their release from prison.

“They screwed up; they know they screwed up,” Schwartz said. “They want to fix it. They are sincere, they are incredible and they work hard.”

Sean Howard was released in February 2019 after serving 21 years. While behind bars, he acquired an education and job skills, including a passion for auto repair in a prison shop class. Instructors recognized his exemplary attitude and work ethic, and recommended him for enrollment in VFC’s school located just outside Baltimore, where the donated vehicles are repaired. There is also a VFC program in Detroit, and Schwartz is hoping to expand elsewhere.

At the 33,000-square-foot VFC site, Howard and other workers get paid while earning their Class B automotive technician certification. After four months of training, the men and women graduate and are placed in high-demand jobs with car dealerships and auto repair shops. The pay averages around $60,000 annually after three years.

“We’re not just a jobs program,” Schwartz said. “This is a career opportunity. We have two guys making over $100,000 a year.”

To get into the VFC program, Howard had to pass the “Nikki Test” – an interview with Nikki Zaahir, director of VFC’s Automotive Reentry Internship Program. “I look for the three A’s,” Zaahir said. “Attitude, aptitude, and attendance. I also want to see if they can articulate their dreams, have a vision of where they want to go. Or if they are just trying to get in to pass their time.”

Her evaluations are so accurate that of the 109 ex-offenders accepted into the program since 2015, only one has returned to prison.

Sources: washingtonpost.com, baltimoresun.com, vehiclesforchange.org

by David M. Reutter

by Douglas Ankney
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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Why Not Let Prisoners Vote While Incarcerated?

by Bill Barton

During an Iowa event in March 2019, U.S. Senator and presidential hopeful Elizabeth Warren spoke about felon disenfranchisement, saying that while giving former felons the right to vote is the correct thing to do, extending that right to prisoners is “something that we could have more conversation about.”

“Once someone pays their debt to society, they’re out there expected to pay taxes, expected to abide by the law, they’re expected to support themselves and their families,” Warren noted. “I think that means they’ve got a right to vote. While they’re still incarcerated, I think it’s a different question.”

South Bend, Indiana mayor Pete Buttigieg, another Democrat running for president, agreed that “when you are convicted of a crime and you’re incarcerated ... you lose certain rights; you lose your freedom. And I think during that period, it does not make sense to have an exception for the right to vote.”

But in an opinion piece in The New York Times, Jamelle Bouie asked, “Why not let prisoners vote – and give the franchise to the roughly 1.5 million people sitting in federal and state prisons? Why must supposedly universal adult suffrage exclude people convicted of crimes?”

As precedent for the idea, Bouie observed that “California allows voting for those in county jails (with limited exceptions). Colorado does, too. New York recently allowed those on parole or probation to vote. And two states, Maine and Vermont, already let prisoners vote.”

“My state,” added Bernie Sanders, the U.S. Senator from Vermont who is also running for the Democratic presidential nomination, “what we do is separate. You’re paying a price, you committed a crime, you’re in jail. That’s bad. But you’re still living in American society, and you have a right to vote. I believe in that, yes I do.”

Restoring voting rights to former felons was supported by nearly 68 percent of those who responded to a March 2018 poll by HuffPost and YouGov. But according to the Washington, D.C.-based Sentencing Project, disenfranchisement laws prevented around 6.1 million Americans from voting during the 2016 election cycle.

In Trop v. Dulles, 356 U.S. 86 (1958), the U.S. Supreme Court considered the rights of a military deserter. Chief Justice Earl Warren wrote for the majority that citizenship “is not a right that expires upon misbehavior,” and the Court held it was unconstitutional to revoke citizenship as a punishment for crime.

In other democratic nations, the right to vote is rarely revoked permanently, and even in countries with some form of mandatory disenfranchisement, it exists only for specific crimes and there is almost always judicial discretion.

Felon disenfranchisement laws in America can be traced back to the ancient concept of “civil death” – that some crimes are so severe they effectively snuff out citizenship rights. Such laws in the South were enacted during the Jim Crow era, to limit political involvement by freed slaves during the late 19th century.

In The New Jim Crow, author Michelle Alexander wrote that “we use our criminal justice system to label people of color ‘criminals’ and then engage in all the practices we supposedly left behind,” making it “perfectly legal to discriminate against criminals in nearly all the ways that it was once legal to discriminate against African Americans.”

But even as restoring voting rights for former felons gains broader support, extending the franchise to those who are still incarcerated has not caught on. Recent polling by The Hill and HarrisX, a market research firm, found opposition to the idea from 69 percent of registered voters, including 61 percent of registered Democrats. Senator Warren’s home state of Massachusetts, which previously allowed prisoners to vote, repealed that right in a 2000 constitutional amendment.

Other than Senator Bernie Sanders, none of the front-runners for the Democratic presidential nomination have been willing to publicly support voting rights for prisoners. Like Buttigieg, U.S. Senator and former prosecutor Kamala D. Harris has staked out a position similar to Warren’s — in favor of re-enfranchising former felons but not for allowing people who are currently incarcerated to vote. Fellow presidential candidate U.S. Senator Cory Booker has also expressed support for restoring ex-felons’ voting rights, including, potentially, for nonviolent offenders while they are incarcerated.

The controversy is further fueled by the fact that “there’s some scholarly debate about whether Congress even has the power to end felony disenfranchisement at the federal level,” German Lopez, writing for Vox.com, pointed out. He added, “65 percent of Americans disagree with Sanders’s statement that all prisoners, including ‘terrible people’ like the Boston Marathon bomber should be allowed to vote.”

An email to supporters from the Republican National Committee put it more succinctly: “The Boston Marathon Bomber killed three people and injured 280 more. Bernie’s concern? That he gets his absentee ballot.”

In addition to Maine and Vermont, 13 other states have joined the District of Columbia as of 2018 to automatically restore voting rights to felons upon their release from prison, up from just nine states before new laws were enacted in New York, Louisiana and Nevada, and a Constitutional amendment was approved by Florida voters.


“We spent years working with folks all over the state on our amendment language,” said Neil Volz, political director of the Florida Rights Restoration Coalition. “It was a reflection of what was supported by the people.”

Iowa, Kentucky and Virginia have made disenfranchisement permanent for ex-felons. Although Democratic governors in all three states rescinded felon voting bans through executive action – Iowa’s Tom Vilsack in 2005, Kentucky’s Steve Beshear in 2015 and Virginia’s Terry McAuliffe in 2016 – they were restored by Republican governors Terry Branstad in Iowa and Matt Bevin in Kentucky. A bill to amend the state constitution to allow former felons to vote in Virginia died in committee in January 2019.

New Mexico’s Democratic-controlled legislature flirted with enfranchising prisoners earlier this year, though the provision never made it to a vote. A similar bill was introduced in New Jersey in 2018 but stalled in committee. And on October 21,
2019, the ACLU filed suit in state court in Minnesota, challenging a law that prohibits felons from voting while they are on probation or parole. The lead plaintiff, Jennifer Schroeder, is serving a 40-year term of probation — which means she is unable to vote until 2053.

The disenfranchisement issue should see renewed interest and debate during the lead-up to the 2020 elections. Notably, Maine and Vermont serve as examples that allowing people to vote while incarcerated does not subvert the democratic process; rather, it ensures that everyone, including prisoners, are allowed to have a political voice.

Sources: nytimes.com, vox.com, npr.org, courthousenews.com, themarshallproject.org, commercialappeal.com, washingtonpost.com, huffpost.com

**Nevada Supreme Court Reverses Dismissal of Prisoner’s Native American Religion Suit**

*by Matt Clarke*

On May 10, 2019, the Nevada Supreme Court reversed a summary judgment order dismissing a prisoner’s claim that requiring him to prove tribal affiliation or otherwise demonstrate Native American association or ethnicity before he could participate in Native American sweat lodge and sacred pipe ceremonies violated his equal protection rights.

David August Kille, Sr., a Nevada Department of Corrections (DOC) prisoner held in protective custody at the High Desert State Prison (HDSP), filed a lawsuit in state court under 42 U.S.C. § 1983 alleging the DOC had violated his equal protection rights by requiring he prove Native American tribal affiliation, association or ethnicity before being permitted to take part in sweat lodge and other religious ceremonies.

The district court granted the state’s motion for summary judgment, ruling that Kille could not sue state entities such as HDSP, the DOC and prison staff in their official capacity. The court further found that Kille had failed to prove intent or purposeful discrimination.

On appeal, the Nevada Supreme Court noted the state did not dispute that Kille is a sincere practitioner of a Native American religion. The DOC also admitted that Native American prisoners are the only group required to prove association or ethnicity before being allowed to participate in religious ceremonies. Accordingly, the Court held that “the policy is facially discriminatory because it imposes differential treatment based on ethnicity or ancestry and, as applied to Kille, denies his right to have his religious request considered equally with those prisoners who can prove Native American heritage.”

The state argued it had “provided admissible evidence of actual security concerns and destruction of property rather than hypothetical concerns,” but failed to point to any specific evidence. A mention in a prison official’s affidavit that he was “familiar that there have been incidents at various institutions where Native American inmates have destroyed their lands or their sweat lodge because they believed it had been desecrated” by the presence of non-Native American prisoners was insufficient to show the DOC’s discriminatory policy was rationally related to the goal of prison safety and security.

Instead it showed, at best, that some Native American prisoners at other prisons “were offended by white inmates practicing Native American rituals.” In remanding the case, the state Supreme Court wrote that “As the policy is facially discriminatory and is not reasonably related to legitimate penological interests, we conclude that the State’s association- or ethnicity-based policy violated Kille’s equal protection rights.” See: Kille v. Calderin, 440 P.3d 655 (Nev. 2019); 2019 Nev. Unpub. LEXIS 551.

Additional sources: lawprofessor.typepad.com, leagle.com
Lisa R. Easley was a longtime New Jersey prison employee. She began her career in February 1996 as a prison guard, and by 2009, after forking over some bribes, became an assistant superintendent.

The pay-for-play scheme within the New Jersey Department of Corrections began after Easley met Lydell B. Sherrer while working at the Northern State Prison. At the time, Sherrer was an administrator at that facility. As he moved up the ladder, he was able to secure positions for those who wanted to advance their careers through cash payments.

Sherrer did just that for Easley, who paid bribes of $500 in 2006 for a shift as superintendent, $2,500 in 2007 for a position in the DOC’s Special Operations Group and $7,500 in 2008 to become an assistant superintendent—a position for which she was not qualified, according to court records. But the money she paid to Sherrer landed her the job anyway.

Easley’s stint as assistant superintendent at the Alfred C. Wagner Youth Correctional Facility lasted only a short time because the FBI got wind of the scheme. When the dust settled, Sherrer was sentenced in 2013 to 46 months in federal prison on an extortion charge, after admitting he solicited $69,000 in bribes from eight prison employees.

Easley lost her plum position in January 2012 after an investigation by the DOC; she was demoted and then fired. She later filed a lawsuit arguing that she was terminated for being a whistleblower. She took the case to trial and the jury heard evidence that Easley had cooperated with the FBI by wearing wires, by admitting that she took payments from other employees for Sherrer and by turning over the names of other staff members who paid for promotions.

The jury awarded her $6.5 million in punitive damages and $1 million for distress. The trial judge included another $1 million for Easley’s legal bills. However, her newfound fortune, like her job as assistant superintendent, was short-lived.

The Appellate Division reversed the verdict on July 17, 2019, at least temporarily, when it held the jury should not have been allowed to hear certain evidence during the trial.

“Considered separately or collectively, the prejudicial impact of the improperly admitted evidence undermined the reliability of the resulting verdict,” the court wrote.

A new trial was ordered where Easley must refute the state’s theory that she was not a whistleblower “because she actively participated in and committed a criminal act” by paying bribes to secure promotions. She must again show that she was fired in retaliation for helping to expose the bribery scheme in which she took part. See: Easley v. N.J. Dept of Corr., 2019 N.J. Super. Unpub. LEXIS 1643 (NJ App. Div. 2019).

Additional sources: courier.com, nj.com

New Jersey: Appellate Court Shoots Down $7.5 Million Verdict in Prison Whistleblower Case

by Chad Marks

On August 1, 2019, the Seventh Circuit Court of Appeals held that non-medical correctional staff were entitled to qualified immunity in a lawsuit alleging they had failed to provide a medical accommodation to a prisoner that had neither been ordered by the medical department nor was obvious to a layperson.

In the spring of 2015, Jeffrey Leiser was diagnosed with Post Traumatic Stress Disorder (PTSD) while incarcerated in the mental health unit at the Stanley Correctional Institution in Wisconsin. Leiser told his psychiatrist that his symptoms were triggered whenever anyone stood closely behind him. The psychiatrist arranged for Leiser to receive his medication directly from the nurse rather than waiting in the med line. None of the medical staff informed the guards of Leiser’s diagnosis or of any needed accommodation.

In 2013, however, Leiser had told Sergeant Karen Kloth that he suffered from PTSD and asked her not to stand closely behind him. Kloth told Leiser he would just have to “deal with it.” She then began standing directly behind him every time she worked. Leiser complained to Kloth’s supervisors—Unit Manager Paula Stoudt and Warden Reed Richardson—about her behavior, but neither acted on his complaint.


The Seventh Circuit observed that qualified immunity is a doctrine that protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.”[See: PLN, May 2018, p.48]. A right is clearly established whenever a plaintiff can “show either a reasonably analogous case that both articulated the right at issue and applied it to a factual circumstance similar to the one at hand or that the violation was so obvious that a reasonable person necessarily would have recognized it was a violation of the law.” Existing precedent must have placed the constitutional question beyond debate, the Court of Appeals added, citing Reichle v. Howards, 566 U.S. 658 (2012).

The Court determined there was no precedent requiring a prison guard to accommodate a mental health need based upon a prisoner telling the guard of the need without confirmation from medical staff, when the need for the accommodation was not obvious. Such a requirement could create a danger of prisoners manipulating guards for purposes unrelated to their mental health conditions; consequently, the defendants were entitled to qualified immunity.

The Seventh Circuit reversed the district court’s order and remanded with instructions to grant summary judgment in favor of the defendant prison officials. See: Leiser v. Kloth, 933 F.3d 696 (7th Cir. 2019), rehearing and rehearing en banc denied.
Prison Legal News

November 2019

$3.1 Million Settlement for Washington Jail Detainee’s Death

“Will You Get Back Up?”

by Douglas Ankney

In November 2017, Piper Travis was arrested for failure to appear on two misdemeanor counts of stealing a TV and a $3.48 bag of Easter candy from a Walmart in Washington state. On November 20 the 34-year-old from Whidbey Island was booked into the Snohomish County jail to await trial. On the first day of December she was observed lying on the floor of her cell, foaming at the mouth. Around two weeks later she lost brain activity. Then she died.

When she was two, Travis survived a car crash that killed her mother and older sister. Doctors said a head injury sustained in the accident likely contributed to her later development of bipolar disorder. She was taken in by her aunt, Paulette Beck, who along with her husband raised Travis as their own.

Travis wrote poetry in her adolescence as an emotional outlet. At the alternative high school she attended, she won six scholarships for her writing skills. But timed tests proved too challenging as a result of her bipolar disorder, so she never earned a degree from the community college she attended nor a license after completing cosmetology school.

Instead, Travis managed to get by on Social Security and groceries from a local food bank, where she regularly volunteered “to give something back.” Her friend, Karmen Chastain, described Travis as a bright, bubbly and engaging woman – “just a beautiful mess” – who was “attentive to people’s needs” and had a “sixth sense about when somebody just needed some quiet or a sympathetic ear.”

But after a few days in jail, Travis was no longer bright or bubbly. According to a lawsuit filed by the Becks, on November 28, 2017, a deputy noticed Travis in her cell, crying from what she described as a “terrible headache.”

She then began refusing meals, moaning and screaming in pain. Deputies told her to “quiet down.” Because she was making strange noises and was “very slow to process instructions,” they punished her by taking away her recreation time. Her condition worsened until she was, according to one deputy, “removing her clothing, smearing feces on herself, shaking, breathing fast, and yelling incoherently.”

“She looked like she was in pain, but since she wasn’t talking, I really did not know where she stood,” the deputy added.

Unable to walk, Travis was eventually taken by wheelchair to an observation unit. After continuing to refuse meals and foaming at the mouth, a nurse called an Emergency Medical Technician (EMT) for a psychological evaluation.

According to the lawsuit, jail staff told responding EMTs that Travis was “faking it.” But the emergency responders discovered she had a fever of 102 and observed seizure activity, and immediately transported her to a hospital.

Doctors there diagnosed sepsis, pneumococcal meningitis and acute respiratory distress. The EMTs attributed “possible neglect” as the cause for Travis’ condition. She was placed in a medically induced coma. When doctors observed she showed no signs of brain activity, the Becks allowed her to be removed from life support, and she died on December 16, 2017.

The program from Travis’ funeral displayed lines from a poem she wrote when she was 18: “Posing for pictures, as the poster child for the rebellious teen, will leave you spinning and kidding around and around, so just remember ... in the end we all fall down.... Will you get back up?”

The county settled the Becks’ wrongful death suit for $3.1 million in September 2019, while admitting no wrongdoing in exchange for the family’s agreement to drop the case. The payout was at least the fourth made in just eight years over deaths at the Snohomish County jail. See: Beck v. Snohomish County, U.S.D.C. (W.D. Wash.), Case No. 2:18-cv-01827.

In the other cases, the family of Marilyn Mowan received a $675,000 settlement for the 62-year-old’s 2014 death after she ingested a lethal quantity of water; the estate of Michael Saffioti was paid $2.3 million after the 22-year-old went into anaphylactic shock due to a food allergy and died in 2012 [see: PLN, Jan. 2016, p.54]; and most of a $1.3 million settlement went to the minor son of Lyndsey E. Lason, 27, following her death from a lung infection in 2011. [See: PLN, Jan. 2016, p.36].

In 2015, the Sheriff’s Office implemented reforms including increased staffing and screening by a nurse during the booking process. No deaths were reported in 2015 or 2016, earning a commendation from Governor Jay Inslee when he toured the jail – prematurely, according to attorney Cheryl Snow, who represented the Becks.

“When you look at this case, you can’t help but scratch your head and think: You have somebody coming in on a minor misdemeanor charge who dies in your care,” she said.

Sources: kuwow.org, heraldnet.com

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L I T T
Pattern of Abuse and Mismanagement at North Carolina Jail

by David M. Reutter

The sheriff’s office in Cherokee County, North Carolina lost five veteran deputies to abrupt firings and resignations in just two months following an October 2018 news report that described allegations of staged fights between prisoners in a crude form of “jailhouse justice.” In December, two former deputies were indicted for assault—form of “jailhouse justice.” In December, two of staged fights between prisoners in a crude form of “jailhouse justice.” In December, two of staged fights between prisoners in a crude form of “jailhouse justice.” In December, two of staged fights between prisoners in a crude form of “jailhouse justice.” In December, two of staged fights between prisoners in a crude form of “jailhouse justice.” In December, two of staged fights between prisoners in a crude form of “jailhouse justice.” In December, two of staged fights between prisoners in a crude form of “jailhouse justice.”

In December, two of staged fights between prisoners in a crude form of “jailhouse justice.” In December, two of staged fights between prisoners in a crude form of “jailhouse justice.” In December, two of staged fights between prisoners in a crude form of “jailhouse justice.” In December, two of staged fights between prisoners in a crude form of “jailhouse justice.” In December, two of staged fights between prisoners in a crude form of “jailhouse justice.” In December, two of staged fights between prisoners in a crude form of “jailhouse justice.” The most recent investigation began in December 2018, when former guards Wesley “Gage” Killian and Joshua Gunter were indicted on misdemeanor assault charges for an altercation with prisoner George Victor Stokes, which occurred at the jail in May 2018. Stokes, who was handcuffed, was allegedly shocked with a stun gun by Gunter and then kicked in the head by Killian. Both deputies were fired later that month.

Claims depicting a pattern of detainee abuse were verified by Joseph Preston Allen, who retired as a sergeant in March 2018 after 11 years at the jail, and by Tom Taylor, a veteran guard of seven years who quit in August 2018. Both said inexperienced jailers encouraged prisoners to fight each other using a practice called “pop the locks,” in which a detainee’s cell was opened so other prisoners could attack him.

Allen pointed to the March 14, 2018 attack on detainee Corey Hall, who “got the piss beat out of him” by other prisoners. Over a six-week period, Hall was moved out of the medical wing four times but returned within days. Allen protested to Chief Deputy Mark Thigpen and the jail administrator, Captain Mark Patterson, citing a policy that gives newly arrived prisoners a chance to alert guards to possible issues with other prisoners assigned to the unit they are assigned to, but his concerns were disregarded.

“Captain [Patterson] told me, ‘This is jail, they might as well get used to it,’” Allen said.

The death of Joshua Shane Long after he was booked into the facility on drug charges on July 11, 2018 was also addressed in the SBI investigation. Long was acting erratically and seen consuming a pill upon his arrest. He was taken to the jail and placed in an observation cell; about five hours later he collapsed, and efforts to revive him failed.

“If he ingested something, he shouldn’t have even been in that jail,” Allen said. “I would have sent him to the Murphy Medical Center.”

However, Thigpen first spent around 45 minutes calling court personnel to get Long’s bond unsecured before finally having him transported by helicopter to a Tennessee hospital, where he was pronounced dead. In November 2018, the SBI turned over its investigation to District Attorney Ashley Welch, whose office is still completing its review.

Another incident at the jail involved prisoner Steven Hall, who was chained to a floor drain while naked. Thigpen claimed Hall was out of control and harming himself, but jail policy requires a detainee to be placed in a restraint chair and a nurse to be called in such situations, Taylor said. Cherokee County deputies dressed Hall in a jail uniform from the neighboring Graham County Detention Center, then dropped him off at that facility.

After the SBI investigation, Chief Deputy Thigpen was fired from his $54,000-a-year job in March 2019—reportedly for allowing his wife, Libby, to make personal use of a Sheriff’s Office cell phone. Libby Thigpen, a former deputy, was fired in December 2018 after resisting a transfer to the county’s Department of Social Services (DSS), where Sheriff Palmer’s wife, Cindy, is a former director and current business officer. DSS has also been the subject of a recent SBI inquiry.

By the time Thigpen left, Patterson had already retired as jail administrator after learning he was being demoted. Three other veteran jailers—Lt. Tom Beasley, Lt. Sally Lawson and Lt. Jeremy Bresh—quit or were forced to resign around the same time.

Source: carolinapublicpress.org

No Fourth Amendment Violation for Abusive Group Strip Search of Female Prisoners

by Ed Lyon

On July 16, 2019, the Seventh Circuit Court of Appeals, in a two-to-one ruling, affirmed a district court’s dismissal of a Fourth Amendment claim prior to a jury trial, at which the jury found for the defendant prison officials on an Eighth Amendment claim.

The facts of the case were that 200 female prisoners at the Lincoln Correctional Center in Illinois were forced to strip and stand so close together that they were touching, in groups of four to 10. “Menstruating inmates had to remove their tampons and sanitary pads in front of others, were not given replacements, and many got blood on their bodies and clothing and blood on the floor,” the appellate court wrote. “The naked inmates had to stand barefoot on a floor dirty with menstrual blood and raise their breasts, lift their hair, turn around, bend over, spread their buttocks and vaginas, and cough.”

Meanwhile, trainee guards made “derogatory comments and gestures about the women’s bodies and odors, telling the prisoners that they were “dirty bitches,” “fucking disgusting,” “deserve to be in here” and “smell like death.” Male guards watched the women from a gymnasium during the 2011 training exercise.

The plaintiffs originally raised a Fourth Amendment claim, which was dismissed by the district court based on Seventh Circuit precedent, holding “that a visual inspection of a convicted prisoner is not subject to analysis under that amendment, though a claim properly lies under the Eighth Amendment if an unnecessary or demeaning inspection amounts to punishment.”

Following the jury’s defense verdict on their Eighth Amendment claim, the plaintiffs appealed trying to have their cause of action under the Fourth Amendment reinstated.

Because the prisoners were ordered by prison guards to expose their genitals...
themselves, and were not probed by staff members, King v. McCarty, 781 F.3d 889 (7th Cir 2015) was held not to apply in this case.

“Applying the Fourth Amendment to all unwelcome observations of prisoners would eliminate the subjective component [of Eighth Amendment analyses] and create sort of Eighth Amendment lite, defeating the objectives that the Justices sought to achieve by limiting [Fourth Amendment] liability in Whitley v. Albers, 475 U.S. 312 (1986) and similar decisions,” the appellate court wrote.

The majority went on to identify a split between the circuits on this issue in Harris v. Miller, 818 F.3d 49 (2d Cir. 2016) and Hutchins v. McDaniel, 512 F.3d 193 (5th Cir. 2007), and noted dissents in some Seventh Circuit panels.

The Court of Appeals reasoned that once convicted of a felony, even a former prisoner on parole has a greatly diminished expectation of privacy and may “be searched without either probable cause or suspicion,” citing Samson v. California, 547 U.S. 843 (2007). The Seventh Circuit ultimately decided that until the Supreme Court holds otherwise, the established precedent that the “Fourth Amendment does not apply to visual inspections of [convicted] prisoners” would remain in effect.

“It has been 35 years since the justices last considered the extent to which convicted prisoners have rights under the Fourth Amendment while still inside prison walls,” the majority opinion stated. “For more than 20 years it has been established in this circuit that the Fourth Amendment does not apply to visual inspections of prisoners. It is best to leave the law of the circuit alone, unless and until the justices suggest that it needs change.”

“The Fourth Amendment affords all people a base level protection against the most intrusive of searches by government officials,” countered Ruth Brown with the law firm of Loey & Loey, one of the attorneys who represented the prisoners. “This was, for the 200 women, degrading. This is what the Fourth Amendment is designed to protect, in our opinion.” See: Henry v. Hulett, 930 F.3d 836 (7th Cir. 2019).

Additional sources: abajournal.com, injusticewatch.org
Missouri Sheriff Tells Judge that County Won’t Pay for Prisoners’ Food, Medical Care

by Bill Barton

In April 2019, Clay County Sheriff Paul Vescovo sued the Missouri county’s three-member commission, claiming that it slashed his operating budget by over 40 percent “in retaliation for a criminal referral made two years ago.”

That referral involved assistant county administrator Laurie Portwood, who was accused of directing a subordinate to tamper with public records by removing the name of Presiding Commissioner Jerry Nolte. Sheriff Vescovo passed the investigation of the allegation to the Missouri Highway Patrol. Portwood, the county’s top budget official, then entered into a deferred-prosecution agreement to resolve the criminal investigation. She retained her job and later received a salary increase from $107,000 to $140,000 annually.

Meanwhile, the sheriff’s department ran out of money to pay contractors that provide food and medical services to some 300 prisoners at the county jail.

Vescovo requested $2.8 million in 2018 to fund the jail and administrative costs but received only $1.79 million upon a recommendation by Portwood, down from $2.58 million received in 2017 when the sheriff had requested $3 million.

When Vescovo’s lawsuit went to trial in August 2019, Portwood struggled to defend her budget recommendation to state Circuit Court Judge Darren Adkins. The county’s other two commissioners, Luann Ridgeway and Gene Owen – who voted to approve the reduced budget for the sheriff’s department – did not testify. The litigation drew an expression of regret from Nolte, Vescovo’s lone ally on the county commission.

“One like many citizens, I am frustrated by the enormous drain on county taxpayers’ money over such a large volume of litigation on issues like the state audit and others,” Nolte said.

Clay County citizens collected more than 9,000 signatures on a petition to have the local government audited. After the signatures were verified, State Auditor Nicole Galloway’s office attempted to conduct a performance audit, but was forced to seek court orders to obtain financial and meeting records from the county. Audit officials cited an “unprecedented level of obstruction.”

Often the lone dissenter in 2-1 votes on the three-member county commission – whose “reputation for dysfunction and political backbiting” was decried in an August 20, 2019 editorial by the Kansas City Star – Nolte deemed the sheriff’s 2019 budget too low and voted against it.

“I believe many of the actions taken by the County Commission are not in the best interest of the people we serve,” he declared. His attorney, Jerry Red doch, added that “the system in this county is in need of some help.”

In August 2019, Judge Adkins agreed that the underfunding of the sheriff’s department was deliberate, finding Portwood’s testimony “was at best not credible.” He ordered the county commissioners to provide Vescovo with nearly $1 million in additional funding to cover operational expenses through the end of the year.

In another 2-1 vote that sidelined Nolte, the county commission voted in September 2019 to appeal the judge’s ruling. Through an attorney, both Ridgeway and Owen ridiculed Vescovo’s lawsuit as “expensive and unnecessary,” but justified their appeal by asserting the effort “will cost less than 5% of the legal expenses incurred in defending against the suit.”

Sources: kansascity.com, fox4kc.com, excelsior springsstandard.com

Three Deaths in Three Days at Illinois Prison Spur Calls for Greater Transparency

by Chad Marks

In September 2018, three prisoners died on three consecutive days at the Menard Correctional Center in Illinois. Kevin Curtis, 31, who was on suicide watch, died on September 5. The next day, Edwin Freeman, 45, also on suicide watch, was found unresponsive in his cell and taken to a hospital, where he was pronounced dead. And on September 7, prisoner Timothy Murray, 32, died due to “probable intoxication with an unknown substance,” according to the coroner.

An internal investigation by the Department of Corrections (DOC) said its employees had committed no wrongdoing in connection with the deaths, despite the fact that one guard, Nickolas Mitchell, admitted he falsified cell checks during the time that Curtis died. One staff member was temporarily suspended by the DOC in connection with the deaths, according to a spokesperson.

WBEZ obtained records that indicated at least 166 prisoners had died in DOC facilities from January 2017 to September 2018. In about 80 of those deaths, the prison system’s research department listed no reason for the cause of death. When requests were made regarding specific deaths, the DOC said in some cases it had no death certificates or reports.

This lack of transparency makes it easy for prison officials to conceal any misconduct or negligence. Family members of the three prisoners who died in September 2018 said they received few details about the deaths of their loved ones.

The “Department of Corrections acts in private, behind locked doors – that’s the whole point of the Department of Corrections,” said Alan Mills, an attorney with the Uptown People’s Law Center.

Illinois lawmakers failed to pass a bill (HB3090) that would have required state prisons and local jails to provide family members and the Attorney General with details about prisoner deaths, and to conduct investigations and issue annual reports. The DOC, in conjunction with the Illinois Sheriffs’ Association, had opposed the legislation.

Lawmakers and advocates say they have plans to reintroduce a similar bill. Illinois Governor J.B. Pritzker initially refused to say whether he would support legislation requiring greater transparency.
with respect to prisoner deaths. But according to a September 23, 2019 news report, Pritzker expressed his support for such a bill, citing “logistical concerns” as the DOC’s reason for opposing the prior legislation. He said his administration is “working with the sponsors in the next session to adopt legislation that will promote transparency.”

“We absolutely need better reporting standards for our deaths in custody,” stated Rep. Anne Stava-Murray. “Given the limitations of current data, including missing critical information, it’s clear more transparency is needed to identify stronger prevention policies.”

With 166 prisoners dead in less than two years, there is an obvious need for increased transparency and accountability when it comes to deaths in custody, particularly for family members of the deceased.

“We should be concerned that we don’t know very much about how people in custody, people who are removed from their families and their communities and the public eye, are dying,” observed Jennifer Vollen-Katz, executive director of the John Howard Association, a prison watchdog group. “Knowing about injuries and deaths that occur inside our prisons is critical to understanding and monitoring the administration of medical care, institutional safety, and abuse and neglect of injured and sick prisoners,” she added. “This information provides a critical window into how prisoners are treated and must be made publicly available so that the public can hold the department accountable for the safety and well-being, physically and emotionally, of the people in its custody.”

Sources: wbez.org, npr.org

Seventh Circuit: Failure to Provide Medical Accommodation is Deliberate Indifference

by Kevin Bliss

The Seventh Circuit Court of Appeals held in a June 26, 2019 ruling that sufficient evidence existed for a reasonable juror to conclude that prisoner LeRoy Palmer’s congenital deformity constituted a serious medical condition, and that a prison medical employee’s knowledge of the heightened risk of harm and failure to prevent that harm qualified as deliberate indifference.

Palmer was born without his left hand, with his arm terminating at the wrist. When he was transferred on January 11, 2012 to the North Reception and Classification Center in Illinois for an upcoming court appearance, he underwent routine intake screening by Craig Franz.

Palmer stated that he told Franz, employed by private contractor Wexford Health Sources, of his condition and need to have a low bunk pass similar to the one he had at his previous facility, the Shawnee Correctional Center. He said Franz failed to issue the pass, and he was assigned to a top bunk.

Palmer then filed two requests to see the prison’s doctor, both of which were ignored. On January 22, 2012, he fell from the top bunk and seriously injured his knee.

He filed suit against Franz in U.S. District Court, alleging negligence and deliberate indifference. After the close of discovery Franz moved for and was granted summary judgment. He claimed Palmer grew up with his deformity and it did not classify as a serious medical need, that Palmer did not show Franz was aware of his medical needs and that Palmer failed to prove deliberate indifference.

Palmer appealed, and the Seventh Circuit held that his risk of injury was obvious; simply because he was born with the deformity did not mean he had adapted to it and did not need accommodation.

The Court of Appeals said the district court had erred in assessing credibility to testimony that Franz could not issue a low bunk pass as a basis for granting summary judgment. It was sufficient for Palmer to submit evidence to the contrary for the case to be decided by a jury. Further, evidence suggested that Franz was aware of the heightened risk due to Palmer’s medical condition and acted with deliberate indifference by declining to take steps to mitigate that risk. The case was reversed and remanded, and remains pending. See: Palmer v. Franz, 928 F.3d 560 (7th Cir. 2019).
In May 2019, a circuit court held the West Virginia Regional Jail and Correctional Facility Authority was entitled to sovereign immunity in a lawsuit seeking payment for prisoner medical bills.

The suit was brought by Cabell Huntington Hospital to recover $168,985.65 for medical care provided to prisoner Arthur L. Edens between January 28, 2016 and February 15, 2016, while he was under the Authority’s custody. Despite being given notice of the outstanding bills, the Authority refused to pay. Edens was hospitalized after he reportedly “sustained serious injuries” at the South Central Regional Jail.

The circuit court granted the defendants’ motion to dismiss the case after the Authority argued it was a state agency that could not be sued under Article VI, Section 35 of the West Virginia Constitution. The court said that in determining whether a particular entity is a state agency, the two most important factors are “whether the organization’s powers are substantially created by the Legislature and whether its governing board’s composition is prescribed by the Legislature.”

The court found the Authority was created by the state legislature, which also prescribed the board’s composition. Also relevant was whether the organization is dependent on public funds and whether it is required to deposit its funds in the public treasury. The Authority is required by law to deposit its funds into the state’s treasury, and relies on public funding to operate.

Thus, the circuit court concluded the Authority was entitled to sovereign immunity and the lawsuit must be dismissed for lack of jurisdiction. It noted that the Legislative Claims Commission was the proper venue for the type of claim asserted by the hospital for the Authority’s failure to pay the medical bills it owes.

The hospital, represented by attorney Ralph Nagy, had argued that the Authority was a quasi-public entity not entitled to immunity. See: Cabell Huntington Hospital v. West Virginia Regional and Correctional Facility Authority, Kanawha County Circuit Court (WV), Case No. 18-C-486.

Additional source: wvgazettemail.com

Allegheny County Jails Entitled to Sovereign Immunity

by David M. Reutter

Allegheny County, Pennsylvania has settled a lawsuit over lack of adequate care by Corizon Health, the medical contractor at the county’s jail, for failing to feed a prisoner, which led him to go into cardiac arrest, according to court records.

The prisoner, Christopher Wallace, was arrested on February 25, 2015 and immediately taken to a hospital due to his poor health caused by his inability to obtain feeding tubes after his Medicaid benefits were suspended. Wallace had his esophagus severed in a prior shooting, and is unable to eat anything by mouth.

He was treated at the hospital and then sent to the jail with instructions to feed him through his feeding tube five times a day. On March 2, 2015, Wallace was rushed back to the hospital after losing consciousness. He was diagnosed with “starvation.”

Once treated, he was returned to the jail a week later with the same instructions to feed him five times a day.

Wallace was again transported to the hospital less than two weeks later, this time after his heart stopped. Records indicated that he was fed even fewer times than when he was returned to the jail previously, sometimes without any feedings for an entire day.

Hospital staff refused to let Wallace return until jail staff assured them they understood the seriousness of feeding him properly. He spent 19 days in the hospital before going back to the jail, then was released from custody on May 30, 2015.

Wallace filed a lawsuit in federal court in 2016, claiming damages from the lack of medical care by Corizon staff while at the Allegheny County Jail (ACJ). His complaint alleged that he was 28 years old at the time of his arrest and stood 6 feet, 4 inches but weighed just 77 pounds. Yet staff refused to feed him despite his emaciated condition.

He alleged that Dr. Abimbola Talabi, a Corizon physician who was the interim medical director at the jail, and other Corizon employees, not only refused to feed him but also refused to authorize his transport to medical appointments to repair his esophagus.

Wallace claimed that Corizon and jail staff were “deliberately indifferent” to his serious medical needs, and that his starvation and heart attack were “directly related to the disorganized, dysfunctional, and deficient system of health care at ACJ.” [See: PLN, Dec. 2016, p.49].

On June 4, 2018, Allegheny County Manager William McKain approved a payment of $5,000 to settle Wallace’s lawsuit, which was dismissed by stipulation in January 2019. See: Wallace v. Fitzgerald, U.S.D.C. (W.D. Penn.), Case No. 2:16-cv-01565-LPL.

Just before that settlement, the county agreed to pay $950,000 to the family of prisoner Frank Smith, 39, who was refused his seizure medication by Corizon staff, then was choked and suffocated by guards when he had a seizure in January 2015. The guards thought he was trying to fight them so they handcuffed him, placed him face down and then sat on him until he stopped breathing, according to court records. One report said that guards later joked about “how they killed that guy” while Smith pleaded, “I can’t breathe.”
In denying summary judgment to the defendants, the district court noted that the county admitted it knew that Corizon had “serious deficiencies with respect to dispensing medication on a timely basis to the inmates,” and that the case was “replete” with factual contradictions and discrepancies. County officials chose to settle rather than go to trial. See: Smart v. Allegheny County, U.S.D.C. (W.D. Penn.), Case No. 2:15-cv-00953-DSC.

And just three weeks after Wallace’s settlement, the county paid $80,000 to the family of Jamie Gettings, who had committed suicide at ACJ. Jail staff found her hanging in her cell in April 2017. [See: PLN, May 2019, p.49]. That’s three settlements by Allegheny County within six months due to deficiencies at the county jail. In December 2014, an audit had revealed that Corizon had numerous contract violations due to its failure to provide adequate medical services.

Additional sources: triblive.com, post-gazette.com

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A Connecticut man arrested for his unintentional failure to serve a 13-year-old federal prison sentence was released from custody in March 2019.

Philadelphia native Demetrius Anderson had not only remained free for those 13 years after completing his sentence at a Connecticut state prison in 2006, he also built a new life as an upstanding citizen, as he had promised his mother. Since 2012 he had worked for New Haven’s parks department as a caretaker for the Lighthouse Point Park carousel. He owns a two-bedroom condo and is an active member of Joy Temple Church.

Then on February 28, 2019, U.S. District Court Judge Paul Diamond in the Eastern District of Pennsylvania signed a warrant for Anderson’s arrest. A routine audit by the U.S. Marshals Office revealed the 43-year-old had never served a 16-month sentence imposed in 2005, after Anderson pleaded guilty to federal charges and was sent to prison in Connecticut. He said he thought the sentences were run concurrently. After finishing his state prison term in 2006, no one remanded him to federal custody and no detainer had been entered in his file. Federal officials said that was due to a clerical error, so the U.S. Marshals secured a warrant for Anderson’s arrest.

“You’re talking about somebody, who for 13 years, almost, has not had an overdue library book,” said criminal justice reform advocate Van Jones with the nonprofit organization Reform Alliance. “This is someone who is gainfully employed, this is somebody who is part of a church community, this is somebody who is doing all the things we want him to do. Why would you go back then, to the back of the sock drawer, to find some clerical error to destroy this man’s life? It makes no sense at all.”

Anderson’s attorney, Michael Dolan, argued it would be cruel and unusual punishment to return his client to prison after he had successfully turned his life around.

“He’s been crime free, drug free, has employment,” he said. “And now they try to take him back into custody.”

“It’s called corrections,” Anderson noted. “I corrected myself. I don’t want pity. I just want people to be ethical.”

Prison sentences are generally served continuously, not in intervals separated by over a decade. Federal prosecutors and the Bureau of Prisons (BOP) apparently agreed, because they gave Anderson credit toward his sentence for his time spent successfully staying out of subsequent criminal trouble – known as the “Doctrine of Credit for Time at Liberty” – which satisfied his outstanding, unserved prison sentence.

“I’m overjoyed but waiting for official paperwork,” Anderson said. “It’s a blessing, but I want the blessing to be official. My heart is back in my chest where it should be.”

Sources: cnn.com, yaledailynews.com, inquirer.com, newhavenindependent.org, theroot.com, thegrio.com

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EXECUTIVE CLEMENCY
STATE AND FEDERAL
For Info on Sentence Reduction through Executive Clemency:
NATIONAL CLEMENCY PROJECT, INC.
3324 W. University Avenue, #237
Gainesville, FL 32607
954-271-2304
www.nationalclemencyprojectinc.com
nationalclemencyprojectinc@gmail.com
(35 Years of Clemency & Parole Assistance)
IN MARYLAND, prisoners sentenced to life with the possibility of parole must serve 15 years before they can be considered for release. After serving the minimum 15-year term, they have an initial hearing before two commissioners. Once passing that hurdle, they are scheduled for a risk assessment exam before a doctor – then it’s up to the governor to approve their parole.

The problem with the risk assessment is there is only one doctor with a waiting list of 85 prisoners. Until the exam is completed, prisoners are stuck waiting. Absent the exam, no recommendations can be made to the governor, who must sign off on parole for lifers seeking a second chance at freedom.

Eleven prisoners who have passed through the initial hearing stage died while waiting for their risk assessment over the past 15 years.

Fransharon Jackson, a 45-year-old woman who has spent more than 20 years in prison, had been waiting over a year for her exam when her legal team reached out to Maryland’s Parole Commission to inquire about the delay. A program manager told them, “I would encourage you to not give her a time frame.”

The judge who imposed the life sentence on Jackson, James T. Smith, said a delay of one day, one week or one month does not understand the concept of “life with the possibility of parole.”

However, Senator Johnny Ray Salling opposed any changes to the existing process, saying, “Life means life, and we need to make people realize that.” He apparently does not understand the concept of “life with the possibility of parole.”

Maryland has a parole commission for a reason – to give prisoners deserving of a second chance that opportunity. Leaving them waiting for years for that second chance due to a backlog of parole applications undermines the intent of that process.

On April 24, 2019, Governor Hogan accepted an 8-0 recommendation by the parole commission and commuted the life sentence of Calvin Ash, 68, who had served 47 years in prison for killing his wife’s boyfriend in 1972. A spokesman for the governor’s office said Ash had been “a model inmate,” with no disciplinary infractions for three decades.

“I’m grateful the governor agreed to commute his term,” said Parole Commission Chairman Blumberg. “I’m looking forward to an uneventful re-entry. We do not feel he is a risk to public safety. He made good use of his time while he was incarcerated.”

Governor Hogan has commuted the sentences of 15 prisoners since 2015, when he took office, including five serving life sentences. Maryland is one of only three states that require the governor to approve parole for lifers.

Sources: afro.com, washingtonpost.com, baltimoresun.com, foxbaltimore.com

Maryland: Parole Changes Needed for Life-Sentenced Prisoners

by Chad Marks

AN APRIL 2019 STUDY by UNIVERSITY of California, Berkeley professor Tolani Britton established a link between the so-called “War On Drugs,” embodied in the Anti-Drug Abuse Act of 1986, and college enrollment by black men. Her research found that despite the fact that college enrollment for black men between 18 and 24 years old grew at a faster rate than for white males from 1980 to 1985, after the enactment of the draconian 1986 federal drug law, the odds that a black man would enroll in college dropped by 10 percent.

According to the study, “[b]etween 1980 and 1989, arrest[s] of Blacks for drug sales and manufacturing or use rose by 219% when compared to the increase in the arrest rate for Whites of 56%.” This disparity in drug arrests by race was also reflected in the juvenile population.... Drug offense arrests among Black juveniles increased from 1985-1989 and remained stable from 1989-1992. Among White youths, rates decreased between 1985 and 1992.”

Those trends followed not only the passage of the 1986 law but an increase in anti-drug funding from $2.9 billion in 1986 to $4.8 billion in 1987. The study quoted a 1991 report by the U.S. Sentencing Commission that said, “non-Whites were more likely than Whites to receive a mandatory minimum sentence for similar crimes and ‘the greatest expected impact [in the federal prison population] could be attributed to the Anti-Drug Abuse Act of 1986.’” It also cited a 2001 study which found “that the largest federal sentencing...
disparities between Black individuals and White individuals occurred for drug trafficking offenses, after controlling for past criminal history. Ironically, much of this disparity was driven by departures from federal guidelines, whereby Black men were more likely than White men with similar criminal histories to receive punishments that were harsher than mandated federal penalties.

Britton’s study pointed out that “[i]ncarceration for drug offenses could lead to underinvestment in human capital for young adults through numerous channels. Firstly, time in the criminal justice system impacts academic preparation, which might increase the psychic loss associated with additional years of education. Access to quality secondary and tertiary education within jails and prisons is limited, although studies have demonstrated that higher levels of education are associated with lower rates of recidivism....

“Secondly, incarceration limits access to funding for college. Incarcerated persons are ineligible for both federal Pell Grants and student loans while in prison, delaying, and possibly reducing the likelihood of college entry....

“Thirdly, drug convictions can limit a young adult’s ability to receive student aid from the government even after release.... Fourthly, involvement with the criminal justice system may have a dampening effect on the educational aspirations of youth.

One study provided some evidence that being asked about imprisonment serves as a deterrent in applying for financial aid and college, given the discrimination against persons formerly incarcerated....

“Finally, young adults who have served time in correctional institutions have a 12% lower likelihood of being employed after release when compared to youths who have not had contact with the criminal justice system due to the stigma associated with conviction.... As approximately 41% of undergraduate college students worked to meet their educational expenses in 2011, the inability to work likely impedes the ability to pay for college for formerly incarcerated adults....”

The study also discussed “somewhat surprising” differences between maximum penalties and mandatory penalties: “After 1986, a number of states increased the minimum and maximum penalty for marijuana possession and distribution.... Other states imposed mandatory minimum penalties for drug possession. As a result, Black and Latino young men were more likely to be arrested and incarcerated for drug infractions when compared to their White peers.... Further, Black and Latino individuals received longer prison sentences than White persons for similar crimes in both federal and state courts.... Given the increased likelihood of arrest for Black young men, an increase in both the minimum or maximum marijuana penalty could have led to decreases in Black male college enrollment.

“However, the results demonstrate that states that had increases in the minimum marijuana possession penalty had only small and marginally significant decreases in college enrollment for Black men when compared to both Black women and non-Black men. When looking at cocaine, increases in the maximum cocaine penalties led to decreases in relative college enrollment for Black men.”

The 53-page study concluded with the following observation: “There is some evidence that the more salient drug with respect to changes in Black male college enrollment is crack cocaine.” That was likely due, in part, to sentencing disparities for crack versus powder cocaine offenses – a disparity that still exists in current federal sentencing laws.


Sources:

If You Write to Prison Legal News

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

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

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

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

While we wish we could respond to everyone who contacts us, we are unable to do so; please do not be disappointed if you do not receive a reply.
On March 18, 2019, an Arizona federal district court granted in part a motion for summary judgment filed by Prison Legal News in a lawsuit over censorship by the Arizona Department of Corrections (ADC). The court ruled that the ADC had violated PLNs due process rights by failing to provide notice of publication denials and an opportunity to appeal. It also held that ADC Director Charles L. Ryan and now-retired ADC Office of Publication Review employee Alf Olson were liable – Ryan for facilitating an unconstitutional policy, DO 914, and Olson for personally rejecting PLN publications. The court further wrote that “ADC’s policy prohibiting sexually explicit material violates the First Amendment on its face.”

PLN filed suit in 2015 after receiving notification from subscribers that the ADC was refusing to deliver certain issues of Prison Legal News. The then-current policy, promulgated in 2010, did not require notification to the publisher when a publication was denied. In 2016, the ADC amended DO 914 to require notification of publication denials and allow publishers an opportunity to appeal those decisions. In April 2017, the policy was again modified.

In its order granting in part and denying in part both parties’ cross-motions for summary judgment, the district court focused on the 2017 version of the ADC policy. It noted that while the policy prohibits only the receipt of “sexually explicit material,” it goes on to define that term so broadly as to include “all sexually related material.” The policy also bans any content that “may, could reasonably be anticipated to, could reasonably result in, is or appears to be intended to cause or encourage sexual excitement or arousal.”

Prison staff were provided with examples of “bright-line, unauthorized content” in publications, including visual or textual depictions or descriptions of nudity, masturbation, sexual representations of prisoners, and sexual contact with unwilling partners or children.

The district court noted that, in addition to PLN articles about court cases involving sexual abuse of prisoners by guards, the ADC policy had been used to prohibit or redact mainstream news articles on the persecution of the Yazidi people by ISIS, the “Me Too” movement, Maya Angelou’s book I Know Why the Caged Bird Sings, a New Yorker book review of a scholarly biography of Sigmund Freud, a Mayo Clinic newsletter containing a medical illustration of a herina and self-portraits of former President George W. Bush.

The court held that the overbroad application of the policy was not rationally related to the ADC’s stated penological goals of assisting rehabilitation and treatment, reducing sexual harassment, and preventing a hostile environment for prisoners, staff and volunteers.

“The textual depictions of sex in Prison Legal News are informative and educational in nature – some are direct quotes from court opinions. As PLN correctly points out, these descriptions of facts are essential to understanding legal matters, especially ones that involve sexual harassment and/or assault in prison,” the district court stated. Further, the exclusions were arbitrary and inconsistent and thus irrational as the court could “discern no meaningful difference between the allowed text and redacted text – either in factual content or writing style.”

Thus, the ADC had “acted unconstitutionally in censoring” four issues of PLN.

The court also narrowed PLNs theories of liability to compensatory damages for frustration of mission. The parties reached a partial settlement in September 2019 with respect to PLNs Fourteenth Amendment claims against several defendants and First Amendment claims related to the ADC’s refusal to deliver one of PLNs books. The issue of attorneys’ fees and costs in the case remains pending.


Arizona Court Grants Partial Summary Judgment to PLN in Censorship Suit

by Matt Clarke

Usual Cruelty: The Complicity of Lawyers in the Criminal Injustice System, by Alec Karakatsanis

(Book review by Sam Feldman)

Over 2.2 million people in America are being held in cages by the government, and Alec Karakatsanis’ new book demands that we ask why. Karakatsanis, a civil rights attorney and executive director of the Civil Rights Corps, has spent his career fighting mass incarceration. He is convinced that prisons, jails and the system that refers to itself as “law enforcement” are making us less safe, not more. In Usual Cruelty: The Complicity of Lawyers in the Criminal Injustice System, he sets out to demonstrate the hypocrisy, irrationality and everyday horrors of what he calls the “punishment bureaucracy.”

The three essays that make up Karakatsanis’ book were written at different points in his career and have different focuses, but his central themes are consistent and compelling. The supposed values of our criminal justice system – the impartial administration of law, reluctance to infringe on protected rights, safeguards against arbitrary abuse of power – are nowhere to be found in the communities subjected to surveillance, search and seizure, or in the courtrooms and cages through which the human beings extracted from those communities are processed.

Karakatsanis points an accusatory finger at the operators of this system, lawyers and judges in particular. We require proof of guilt beyond a reasonable doubt to convict someone at trial, and we demand compelling reasons before we allow the infringement of constitutional rights such as the right to raise one’s children. At the same time that we pride ourselves on these
legal traditions, however, we’ve developed a system of mass incarceration despite the lack of any proof that it is solving the social problems used to justify its existence.

As Karakatsanis emphasizes, the way crime is defined and punished is profoundly political. Gambling in the street over dice is illegal, but operating casinos or speculating in currency or real estate is both legal and highly profitable. A wide array of plants and chemicals are so illicit that selling or even possessing them can land you in prison, yet hospitals and museums have wings named for generous benefactors who reaped their wealth selling different types of harmful plants and chemicals. It’s a crime for government officials to reveal certain information they’re supposed to keep secret, but it’s not a crime for them to withhold information they’re legally required to disclose.

Once these political decisions have been made – often with input from those who stand to benefit – they’re carried out unequally. For example, drug raids are directed at low-income neighborhoods rather than dormitories at the nearby university, and resources spent on those raids aren’t used to investigate insider trading and tax evasion in the skyscrapers downtown. If wealthy white communities were policed at the same rate and in the same manner as the least powerful neighborhoods, Karakatsanis suggests, the resulting outcry would attract constant news coverage and demands for change.

While Karakatsanis’ well-researched and precisely footnoted book aims to make his legal colleagues and the public see what’s in front of their eyes and behind our prison walls, he also aims to make us feel. One of his most effective moments comes in the introduction, when he describes his fight against the practice of shackling every child brought into D.C. juvenile court. These children, some as young as eight and many already traumatized, were held in metal chains for as long as an entire day. In his three years as a D.C. public defender, Karakatsanis writes, “I never saw a white child in those courtrooms.” He and his colleagues eventually managed a partial victory, so that only 20 percent rather than all of the children are shackled in D.C. court today.

Karakatsanis grimly imagines the reaction of the judges, prosecutors and other court personnel who routinely oversaw the shackling of vulnerable black children in court if they returned home one night “to find that their babysitter had bound their children in metal chains.” Even if the babysitter claimed the children had misbehaved, Karakatsanis suspects the parents would have demanded a full justification for such extraordinary measures. Is it too much to ask that we extend the same concern to other people’s children?

Although he’s wary of the new wave of self-described progressive prosecutors, Karakatsanis has hope for the future. In outlining six shortcomings of overly cautious reforms, he also identifies corresponding principles for shrinking the criminal justice system and repairing its harms. In the end, he suggests, the solutions may come from the bottom up; that is, from the communities that have suffered the brunt of the punishment bureaucracy. Usual Cruelty’s clear indictment of our justice system will be a useful tool in bringing about those solutions.

Karakatsanis’ book is available from Amazon and other booksellers.
South Carolina: Lawsuit Alleges Medical Staff, Guards Negligent in Baby’s Death
by Bill Barton

Sinetra Geter Johnson discovered she was pregnant just two days before she was required to report to prison on a parole violation. In October 2012, she began serving a two-year sentence at the Camille Graham Correctional Institution in Columbia, South Carolina. Twenty-four years old at the time, it was her first pregnancy. She was carrying twins: a girl, Kamrin, and a boy, Kamrin.

Kamrin was born successfully in an ambulance parked on prison grounds. Tragically, however, Kamrin was born preceding Karmin, while her mother was sitting on a toilet in a prison bathroom. The baby girl did not survive; the twins were born 14 weeks early.

According to April 2019 news coverage of the incident, Karmin’s death could have been prevented if prison officials “had responded to Johnson’s calls – and later screams – for help” while she was in labor. Johnson filed a lawsuit in state court.

“I knew something was wrong,” she said. A nurse checked her vital signs, but she did not receive a vaginal exam and was not seen by an OB/GYN. Instead, Johnson, still in pain, was sent to work at the prison’s clothing plant. Hours later, she returned to the medical unit but was sent away.

That evening, Johnson again went to the clinic and again was turned away, according to her lawsuit. At 11:15 p.m., in extreme pain, she rushed to a bathroom. “I still wasn’t sure ... that it was labor because it was my first child. I had never been pregnant [before],” she said. “I’m doing this alone. I’m in prison.” As she sat on the toilet she gave birth to Karmin, who was still inside her amniotic sack. “I had my first child inside the restroom there at SCDC in the dorm,” Johnson stated.

Although she screamed for help, no guards responded. Other prisoners put Johnson in a wheelchair and took her to the medical unit. Guards reportedly left Kamrin in the toilet for 45 minutes, then put the baby’s body in a hazmat bag. She reportedly suffocated in the amniotic sack. After giving birth to Kamrin in the ambulance, Johnson was taken to a hospital and then returned to the prison five hours later.

“This shouldn’t have to happen,” Johnson said. “Inmate or not, we’re still people.”

According to her lawsuit, Karmin could have survived her premature birth if prison staff provided timely medical care.

As of December 2018, at least 83 medical malpractice lawsuits against the DOC were pending, according to news reports, and over the past four years South Carolina has paid more than $10.5 million in litigation related to medical care for prisoners, based on data from the S.C. Insurance Reserve Fund.

Sources: greenvillenews.com, metro.co.uk, ththestate.com

Washington State Settles Suit Over 15-Hour-a-Day Lockdown of Mentally Ill Prisoners
by Matt Clarke

In June 2019, Washington State officials settled a lawsuit over conditions of confinement for mentally ill prisoners at the Washington State Penitentiary (WSP), by agreeing to improve their living conditions. The settlement will end mandatory 15-hour-per-day lockdowns of prisoners with mental health issues, regardless of their custody level, and will increase access to programming.

In 2018, attorneys Rachael Seever, Heather McKimmie and David Clarkison with Disability Rights Washington (DRW), and Andrew Biviano, Breean Beggs and Mary Dillon with the law firm of Paukert & Troppmann PLLC, filed a federal civil rights suit against Washington State over the excessive use of lockdowns for mentally ill prisoners at WSP.

The problem was structural. Treatment programs for mentally ill prisoners were only available in a close custody unit at the facility. Close custody is high security – the next step down from maximum security – and prisoners in the close custody units were required to spend 15 hours a day locked in their cells with limited access to the communal dayroom and outside recreation. Thus, prisoners classified as minimum- or medium-security were being treated as if they were close custody simply because they were seeking mental health treatment.

“Essentially, what was happening was anybody that needed mental health services in that facility was placed in close custody because mental health services were offered in a unit that was close custody,” said Seever. “And it doesn’t matter if you followed the rules and you had no infractions for years. You’ll stay in this restrictive custody.”

The close custody status also limited prisoners’ access to educational programming, job assignments and other programs for which they were otherwise qualified. This affected about 70 mentally ill prisoners at WSP.

DRW began investigating the situation in 2016 after receiving complaints from prisoners. The Washington Department of Corrections (DOC) resisted all attempts at informal resolution, resulting in the lawsuit being filed in federal court.

The settlement noted that the DOC had already received a legislative appropriation of $5,000,000 to allow it to designate a unit at WSP as medium-security, with at least two “mods” reserved for treatment of mentally ill prisoners. The settlement defines a mod as “a prison unit containing a dayroom area, showers, and cells.” Prisoners in those mods will be able to access their cells using a personal key or push-button control.

The parties agreed that mentally ill prisoners were protected by the Americans with Disabilities Act, and that they should be housed in the least-restrictive environ-
Florida Supreme Court Issues Death Penalty Rulings
by Ed Lyon

The final two weeks of 2018 were extremely busy for Florida’s Supreme Court with respect to capital punishment jurisprudence.

Florida codefendants Gerald Murray and Steven Taylor were convicted in separate trials for capital murder and sentenced to die by nonunanimous jury verdicts in the 1990s. Taylor’s case became final in 1994, but Murray won three new trials, each ending in a guilty judgment and death sentence, the last by an 11-1 jury verdict.

In 2016, the U.S. Supreme Court negated Florida’s sentencing procedures under which Murray and Taylor were tried, finding that capital defendants had a right to have a jury determine all of the facts exposing them to a death sentence, rather than a judge making the final decision. See: Hurst v. Florida, 136 S.Ct. 616 (2016) [PLN, Feb. 2016, p.22]. Subsequent to that ruling, Florida’s Supreme Court held that a Sixth Amendment violation occurred in capital cases where a juror had not voted for a death sentence that was imposed, and such a violation could never be harmless error. Any death penalty assessed under such circumstances violated the state constitution.

Allowing for retroactive application of that decision, the Florida Supreme Court set a cut-off date for cases that became final after June 2002 – the date of the U.S. Supreme Court’s first ruling that announced jury fact-finding to be a Sixth Amendment right in the penalty phase of capital trials. That meant Murray’s case, which became final after his fourth trial in 2009, was eligible for relief from his death sentence – but not his codfendant, Taylor.

Florida Supreme Court Justice Barbara J. Pariente blasted the cut-off deadline, especially in Murray and Taylor’s cases, calling it “the textbook example of the ‘unintended arbitrariness’ in one of her prior dissents and stating, “Taylor and Murray were both convicted of first-degree murder and sentenced to death after nonunanimous jury recommendations for death.... Yet only one will receive a new death penalty phase. Clearly, the Court’s line-drawing for the retroactivity of Hurst creates unconstitutional results for defendants like Taylor.” See: State v. Murray, 262 So.3d 26 (Fla. 2018); 2018 Fla. LEXIS 2590.

In other rulings in December 2018, the Florida Supreme Court reversed a trial court’s decision regarding a defendant’s intellectual disability in a capital case, ordering reconsideration “using contemporary clinical diagnostic standards.” It also affirmed another lower court’s order for “limited DNA testing” in a death penalty case. Additional sources: deathpenaltyinfo.org
Compassionate Releases Needed for an Aging Prisoner Population

by Ed Lyon

From 2007 to 2016, New York’s prison population dropped by 17 percent, mainly due to efforts to divert low-level, first-time offenders into alternatives to incarceration. But during that same period the state’s number of elderly prisoners increased 46 percent. New York’s 10,337 elderly prisoners now represent around 20 percent of its total prison population.

A similar ratio exists in the four other largest state prison systems in the U.S. Texas has 142,000 prisoners, 28,502 of them elderly. California is next with 136,000 prisoners, of whom 27,806 are elderly. Florida follows with around 100,000 prisoners, 21,620 of them elderly. New York is fourth. Fifth is Pennsylvania with 51,000 prisoners, 10,214 of whom are elderly.

The federal Bureau of Prisons (BOP) housed about 176,700 prisoners as of October 2019, and 19.2 percent were over age 50. That is the age at which a prisoner is considered “elderly” by the National Institute of Corrections. At the current growth rate for the elderly prisoner population, as calculated by the ACLU, such prisoners will make up a third of the nation’s total prison population by 2030.

The problem is not limited to the costs of treating age-related health issues such as arthritis, cancer, emphysema, joint replacements and strokes. Research also shows that 40 percent of elderly people will suffer from dementia. Already, about half the U.S. prison population is afflicted with some type of mental health problem. [See: PLN, Feb. 2019, p.22]. With many prisons short-staffed, advocates fear that prisoners suffering from age-related dementia will end up in solitary confinement or segregation cells.

There have been 21 health studies of elderly prisoners from 2008 to 2018. Tina Maschi, a professor at Fordham University’s Graduate School of Social Science, noted that it costs an average of $68,000 per year to incarcerate an elderly prisoner versus $22,000 to lock up a younger one.

As previously reported in PLN, the main reason that parole boards deny release is due to the seriousness and nature of the underlying offense, which will never change. How a prisoner has reformed himself or herself since being incarcerated – or whether they are elderly or seriously ill – is rarely given similar weight. [See: PLN, Jan. 2019, p.60].

BOP prisoner Anthony Bell applied for compassionate release predicated on a medical prognosis that he had just six months to live. He was denied by non-medical prison officials who disagreed with the doctors and opined that Bell had 18 months left to live. He died two days later in April 2015, with one year remaining on his 16-year sentence.

Another federal prisoner, Carlos Tapia-Ponce, was denied compassionate release despite being 94 years old, due to the seriousness and nature of his offense. He died the following month, in February 2016.

A third BOP prisoner, Kevin Zeich, had less than two years to live due to advanced cancer but still had three- and-a-half years to serve on his sentence. His compassionate release requests were denied three times. His fourth request was granted, but he died just prior to his release in March 2016. His daughter keeps his ashes in the closet.

“We brought him home, but not the way we wanted to,” she said.

From 2013 to 2017, federal prison officials received 5,400 requests for compassionate release, of which just six percent were granted. Meanwhile, 266 of the prisoners who applied died while awaiting a decision. [See: PLN, Dec. 2014, p.50].

Compassionate release requests by the majority of state prisoners typically fare no better.

As of May 2019, a full year after the Massachusetts legislature enacted compassionate release for state prisoners who are incapacitated or terminally ill, just four of 22 applications had been approved according to Cara Savelli, spokeswoman for the state’s Department of Correction (DOC).

“They’re [effectively] repealing the statute and they’re spitting on the Legislature and spitting on the governor, who signed the statute,” argued Ruth Greenburg, an attorney suing the DOC on behalf of Joseph Buckman, a 73-year-old prisoner seeking medical parole.

Massachusetts prisoners who request medical parole must present a notarized medical diagnosis along with a treatment plan, then the prison superintendent has 21 days to review and make a recommendation to the DOC Commissioner. A closed hearing is held, at which victims or their relatives can testify and District Attorneys can also weigh in.

“We shouldn't be warehousing people
Is someone skimming money or otherwise charging you and your loved ones high fees to deposit money into your account?

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- Fees charged to submit payment for parole supervision, etc.

This effort is part of the Human Rights Defense Center’s Stop Prison Profiteering campaign, aimed at exposing business practices that result in money being diverted away from the friends and family members of prisoners.
Department of Justice Report Shows Small Decrease in U.S. Prison Population

by Scott Grammer

A report by Jennifer Bronson, Ph.D. and E. Ann Carson, Ph.D., released by the U.S. Department of Justice’s Bureau of Justice Statistics (BJS) in April 2019, found that at the end of 2017, the state and federal prison population had decreased by 1.2 percent from the previous year. The report stated that “[d]uring the same period, the number of prisoners under the jurisdiction of federal correctional authorities decreased by 6,100 (down 3%), and the number of prisoners under the jurisdiction of state correctional authorities fell by 12,600 (down 1%).” Those findings were based on the National Prisoner Statistics (NPS) program, administered by the BJS.

The report noted that “[t]he imprisonment rate for sentenced prisoners under state or federal jurisdiction decreased 2.1% from 2016 to 2017 (from 450 to 440 sentenced prisoners per 100,000 U.S. residents) and 13% from 2007 to 2017 (from 506 to 440 per 100,000).” It also found that 55 percent of prisoners in state facilities were incarcerated for violent offenses at the end of 2016, the last year for which data was available. But in the federal prison system, nearly 50 percent of federal prisoners “were serving a sentence for a drug-trafficking offense at fiscal year-end 2017.”

The private prison population dropped five percent from 2016 to 2017. Montana had the highest percentage of its prisoners held in for-profit prisons (38.1 percent). Other states with large private prison populations included Montana, Hawaii, Tennessee, Oklahoma and Arizona.

Importantly, according to the report, “[t]he imprisonment rate of sentenced black adults declined by 4% from 2016 to 2017 and by 31% from 2007 to 2017.” Still, at year-end 2017, “the imprisonment rate for sentenced black males (2,336 per 100,000 black male U.S. residents) was almost six times that of sentenced white males (397 per 100,000 white male U.S. residents).” The report also found that “[a]t year-end 2016, an estimated 60% of Hispanics and blacks sentenced to serve more than one year in state prison had been convicted of and sentenced for a violent offense, compared to 48% of white prisoners.”

The number of female prisoners nationwide dropped by 470 from 2016 to the end of 2017, a decline of 0.4 percent, while the number of male prisoners dropped by almost 18,300 (1.3 percent). Texas reduced its female prison population the most, while Tennessee increased its female prisoner population during the same time period. The imprisonment rate for women was highest in Oklahoma (157 per 100,000 female residents of the state).


Court Orders Changes to Alabama Prison System After 15 Suicides; Feds Threaten Suit

by Scott Grammer

A May 4, 2019 federal district court order in a five-year-old lawsuit over inadequate mental health care and a resultant high suicide rate in Alabama’s prison system was entered “in the wake of 15 inmate suicides in a 15-month period.”

The order stated that the Alabama Department of Corrections (ADOC) “continues to fail to provide adequate suicide-prevention measures and, thus, subjects prisoners to a substantial risk of serious harm, including self-harm, continued pain and suffering, and suicide. The risk of suicide is so severe and imminent that the court must redress it immediately. Therefore, the court will grant the plaintiffs’ motion for immediate relief by making permanent most provisions of an interim suicide-prevention agreement that the parties reached early in this litigation; by adopting, in large measure, the recommendations proposed by experts for both parties; and by requiring court monitoring that is limited to the immediate relief ordered here.”

Previously, the district court had approved a partial settlement in the suit on claims related to mental health care and the Americans with Disabilities Act; it awarded $1 million in attorney fees, and later ordered Alabama officials to address problems with overcrowding and understaffing in state prisons. [See: PLN, Jan. 2019, p.16; Nov. 2017, p.28].

According to the court’s May 2019 ruling, “[t]he plaintiffs in this class-action lawsuit include a group of seriously mentally ill state prisoners and the Alabama Disabilities Advocacy Program (ADAP), which represents mentally ill prisoners in Alabama. During the liability trial, and in response to the suicide of class member Jamie Wallace just days after he testified, the parties agreed to a series of interim suicide-prevention measures.... In June 2017, the court issued a liability opinion in which it found that ADOC’s mental-health care for prisoners in its custody was, ‘[s]imply put, ... horrendously inadequate’ and violated the Eighth Amendment.”

The court described the circumstances of all 15 prisoners who killed themselves during the 15-month period mentioned in its order. Those prisoners were Rashaud Morrisette, Matthew Holmes, Daniel Gentry, Paul Ford, Roderick Abrams, Ryan Rust, Kendall Chatter, Mark Araujo, John Barker, Ross Wolfinger, Jeffery Borden, Timothy Chumney, Robert Martinez, Billy Thornton and Ben McClure. The district court found that “[m]any of the inadequacies, detailed in the 15 cases ... are instances of ADOC’s pervasive and substantial noncompliance with the interim agreement and other remedial measures that they agreed to implement.”

On April 2, 2019, the U.S. Department of Justice stated in a letter to Governor Kay Ivey that “there is reasonable cause to believe that conditions at Alabama’s prisons violate the Eighth Amendment to the Constitution and that these violations are pursuant to a pattern or practice of resistance to the full enjoyment of rights protected by the Eighth Amendment.”
The letter went on to warn the governor that the Attorney General “may initiate a lawsuit under CRIPA [Civil Rights of Institutionalized Persons Act] to correct the alleged conditions,” and that “[t]he Attorney General may also move to intervene in related private suits....”

The district court’s May 2019 ruling concluded with a somber statement: “The defendants argue that they cannot prevent all suicides in ADOC. It is true that, as in the free world, not all suicides can be prevented. But this reality in no way excuses ADOC’s substantial and pervasive suicide-prevention inadequacies. Unless and until ADOC lives up to its Eighth Amendment obligations, avoidable tragedies will continue.” The case remains pending. See: Braggs v. Dunn, U.S.D.C. (M.D. Ala.), Case No. 2:14-cv-00601-MHT-WO.

On October 1, 2019, the Alabama News Network reported that ADOC officials were investigating the September 26 death of prisoner Marco Dewayne Tolbert at the William Donaldson Correctional Facility as a suicide, after he was found hanging from a light fixture in his cell.

Additional sources: al.com, scribd.com, alabama news.net

Federal Prisoner Challenges Constitutionality of Death Penalty; Gets Plea Deal for Life Without Parole

by Matt Clarke

On September 28, 2018, a Vermont federal judge approved a plea bargain to grant life without parole to a death-sentenced federal prisoner who had challenged the constitutionality of the death penalty in post-conviction proceedings.

Donald Fell was convicted of the interstate kidnapping and murder of Teresca King, which he and codefendant Robert Lee committed in 2000. Fell was convicted and sentenced to death in 2005, while Lee killed himself in jail before going to trial.

Fell filed a post-conviction challenge to the federal death penalty in November 2015, claiming disparate racial and geographic application caused it to be applied in an unreliable, arbitrary and discriminatory manner. U.S. District Court Judge Geoffrey W. Crawford agreed that the federal death penalty “operates in an arbitrary manner in which chance and bias play leading roles,” and that it “falls short of the [constitutional] standard ... for identifying defendants who meet objective criteria for imposition of the death penalty.” Nonetheless, he left the possibility of the death penalty in place on retrial, feeling he lacked “authority to rewrite the law so as to overrule the majority of the Supreme Court.” Judge Crawford overturned Fell’s death sentence because the prosecution had used what he determined were unreliable statements made by Lee, which attempted to shift the blame for the murder to Fell. The government appealed.

In July 2018, the Second Circuit Court of Appeals upheld the district court’s ruling prohibiting the use of Lee’s statements at trial, calling them “unreliable.”

Without that key evidence to prove the extent of Fell’s involvement in the murder, federal prosecutors were open to a plea bargain for life without parole. Judge Crawford accepted that agreement, and Fell became the 10th federal prisoner to be permanently removed from death row, leaving 62 federal death-sentenced prisoners.

The Department of Justice recently announced that it plans to resume executions, and has set execution dates for five federal prisoners. [See related article in this issue of PLN, p.18].

Source: deathpenaltyinfo.org

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Staffing shortages in the Missouri Department of Corrections (MDOC) have been problematic for a number of years, due in part to a high turnover rate fueled by the fact that MDOC employees are among the lowest-paid in the nation, with salaries starting at $28,000 per year. In September 2018, there were 4,733 guard positions in the MDOC, of which 848 (18 percent) were vacant.

A May 12, 2018 “sit-in” by prisoners at the Crossroads Correctional Center was due to anger over lockdowns and cuts in recreation time and other programs caused by short-staffing.

In May 2019, Missouri officials announced they were awarding a six-month, no-bid contract to the Association of State Correctional Administrators (ASCA) to evaluate MDOC staffing levels. The purchasing document said the ASCA was “the only feasible source from which to acquire the custody staffing evaluation services since it is the only national corrections organization to provide the required operations, management and staffing analysis.”

However, MDOC director Anne Precythe also happens to be the ASCA’s treasurer and is a member of the organization’s executive committee – a potential conflict of interest.

“Staffing shortages in the MDOC have been problematic for a number of years, which is why we are seeking a consultant to provide the required operations, management and staffing analysis,” said Precythe, who added that she did not know how much the state will be paying the ASCA for its evaluation, which recommended hiring 100 additional staff members.

In January 2019, Missouri Governor Mike Parson’s administration said it planned to consolidate the Crossroads Correctional Center and Western Missouri Correctional Center, and would use the cost savings to provide raises for most of the MDOC’s 11,000 employees.

Source: stltoday.com

$860,000 Settlement in Suit Over Michigan Female Prisoner’s Suicide

The Michigan Department of Corrections (MDOC) agreed to pay $860,000 to settle a lawsuit brought by the estate of a female prisoner who hanged herself after a guard placed a bet on whether she would become suicidal.

Janika Edmond, 25, had a documented history of “multiple attempts and threats of suicide” while held at the Lenawee County jail. That history was provided to officials at the Women’s Huron Valley Correctional Facility (WHV) upon her transfer to the prison in February 2013. From July 14, 2014 until August 18, 2015, Edmond exhibited self-injurious behavior and suicidal ideation and attempts on eight occasions.

Her history and diagnosis of mental illness and major depressive and mood disorders resulted in a prescription for psychotropic medication to treat her condition. On September 11, 2015, the MDOC issued a Mental Health Management Plan for Edmond. Under the plan’s “Behavior to Observe and Report” section, guards and other staff members were instructed to report disruptive behavior, refusal to take medication and “any behavior or verbalization of harm to self or others.”

Edmond was assigned to a segregation unit on November 2, 2015. She was placed in the unit’s “shower/module” by guard Dianna Callahan, who did not remove Edmond’s clothing despite the fact that she had previously used a towel or other cloth material to attempt suicide by hanging herself. Just over an hour later, Edmond yelled that she wanted a “Bam Bam,” which was a slang term for a suicide prevention vest.

In a security video recording, Callahan reacted with elation. She “waved and pumped her fist three times into the air with her thumb up while nodding her head and looking in the direction of the Segregation Control Unit area,” Edmond’s estate alleged. Callahan repeated, “Somebody owes me lunch!” She and prison counselor Kory Moore were then heard conversing about a Subway sandwich. Callahan had placed a bet for lunch that Edmond would become suicidal.

Three minutes later, choking sounds were heard coming from the shower area. Those sounds continued for four minutes, but no one checked on Edmond for almost 20 minutes. Attempts to revive her were initially successful, but she was declared brain dead on November 6 and life-sustaining measures were removed on November 11, 2015. [See: PLN, June 2017, p.62; Dec. 2016, p.19].

The MDOC failed to follow policy by not immediately informing the Michigan State Police (MSP) of Edmond’s death, and MSP officials had to obtain a search warrant to gather evidence to conduct their investigation.

Callahan and Moore were suspended on November 9 and December 21, 2015, respectively. Both were terminated in March 2016, though Moore was reinstated following arbitration. Callahan was criminally charged and pleaded no contest.
to involuntary manslaughter; she was sentenced in December 2018 to six months in jail and two years of probation.

Meanwhile, Edmond's estate filed a wrongful death suit in 2017. The parties reached an $860,000 settlement that was approved by the federal district court on May 30, 2019. [See: PLN, Sept. 2019, p.63].

Edmond's two adult siblings each received $274,754.92, while the remaining $310,490.16 went toward costs, guardian fees and attorney fees. The estate was represented by attorney David S. Steingold and the law firms of Papista & Papista PLC and Pitt, McGehee, Palmer & Rivers PC. See: Clarke v. Michigan Department of Corrections, U.S.D.C. (E.D. Mich.), Case No. 2:17-cv-10528-RHC-DRG. Additional sources: Detroit Free Press, mlive.com

$8,500 Settlement in Allegheny County Jail Sexual Harassment Suit

by David M. Reutter

Officials in Allegheny County, Pennsylvania paid $8,500 to settle a sexual harassment claim brought by a former female guard. Tanisha Ramsey started working at the Allegheny County Jail on June 30, 2015. While being trained, she “began to be subjected to unwelcome sexual harassment from Major Robert Bytner.” His advances included following Ramsey on camera, sending her inappropriate text messages, asking her for pictures (including to see her in a bikini) and inviting her over to his place to swim alone.

The harassment continued until Bytner was terminated in November 2015. Ramsey’s complaint alleged that “Allegheny County was fully aware of Mr. Bytner’s propensity for sexually harassing female employees” at the jail.

After Ramsey complained about the sexual harassment, she was moved from pod duty to a less desirable position of phone duty. She was told by administrative officials that she would remain on phone duty until she stated in writing that she was satisfied with her work environment. Ramsey’s complaints resulted in “harassing and hostile comments” from other employees, she claimed, and a captain told her that if she wanted to keep her job, she should “keep her mouth shut.”

Ramsey’s last day of work at the jail was on June 11, 2016. She filed suit in early 2018 and the parties reached a settlement on September 11, 2018, in which Ramsey received $5,295 and $3,205 was paid to the NDB Law Firm, which represented her. See: Ramsey v. Allegheny County, U.S.D.C. (W.D. Penn.), Case No. 2:18-cv-00071-CRE.

Guards are not the only ones subjected to unwanted sexual advances at the Allegheny County Jail. In August 2019, an unidentified female prisoner, who was pregnant at the time, claimed in a federal lawsuit that she was sexually assaulted by her cellmate after guards shut off the intercom system in her cell so she could not call for help. She is raising claims of deliberate indifference by jail staff and improper training; her complaint alleges jail officials tolerated sexual abuse by failing to discipline staff who refused to intervene, which “created a culture whereby rapes, sexual assaults and sexual harassment of inmates could not only continue, but were both tolerated and permitted.”

Additional source: post-gazette.com

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Prison Legal News 59 November 2019
The Cost of Prison Censorship: Florida Taxpayers to Pay $1.2 Million in HRDC Case

On October 22, 2019, a federal district court in Tallahassee awarded almost $1.2 million in attorneys’ fees and costs in a censorship lawsuit against the Florida Department of Corrections (FDOC).

The suit, filed in 2011 by Prison Legal News, a project of the non-profit Human Rights Defense Center (HRDC), followed years of censorship by the FDOC. Prison officials had rejected all issues of PLN, purportedly due to an incidental number of advertisements for prison phone services, penpals and companies that purchase postage stamps from prisoners. [See: PLN, Dec. 2011, p.32].

PLN, which has published for almost 30 years, is not censored on the basis of its advertisements in the 49 other state prison systems, nor in the federal Bureau of Prisons, including maximum-security facilities. PLN raised a First Amendment censorship claim as well as a due process claim for the FDOC’s failure to provide adequate notice when publications were rejected by prison staff.

Following a bench trial, in October 2015 the district court held the FDOC’s censorship practices did not violate the First Amendment, but that prison officials had violated PLN’s due process rights. The court issued a permanent injunction on the latter claim.

PLN appealed to the Eleventh Circuit, which affirmed the district court’s ruling on January 7, 2019, resulting in remand to the district court.

In his 36-page order, U.S. District Court Judge Mark E. Walker awarded $1,148,210.89 in fees plus $33,448.57 in litigation expenses to PLN as the prevailing party in the case, as it had succeeded on its due process claim. The court had previously awarded $6,204.42 in costs, for a total award of $1,187,863.88. PLN’s attorneys expended over 4,064 hours in litigating the suit, both before the district court and on appeal, and the district court rejected most of the defendants’ objections to the fee award. PLN’s fee expert was William K. Hill with the Gunster law firm.

“This Court finds Plaintiff’s success on its Due Process claim imparted a substantial public benefit by having this Court enter an injunction requiring Defendant to comply with its notice provisions,” Judge Walker wrote. “Said otherwise, Plaintiff’s victory on its Due Process claim prevented Defendant from continuing to censor without regard to its Due Process obligations under the Fourteenth Amendment.”

Most of the attorneys’ fees will go to the law firms that represented PLN in the litigation.

“Free speech isn’t free,” said Human Rights Defense Center executive director Paul Wright. “In this case, censorship by the Florida Department of Corrections cost state taxpayers almost $1.2 million – because of the vicious efforts by the prison system to censor HRDC’s publications. The Attorney General’s office spent over 3,000 hours in attorney time fighting this case. The real tragedy is that Florida prisoners remain unable to read PLN and other HRDC publications that will educate and inform them of their rights.”

PLN was represented in the litigation at the trial level by Dante Trevisani and the late Randy Berg with the Florida Justice Institute; by the ACLU Foundation of Florida; and by former HRDC general counsel Sabarish Neelakanta, current general counsel Dan Marshall and staff attorney Masimba Mutamba. The case is Prison Legal News v. Inch, U.S.D.C. (N.D. Fla.), Case No. 4:12-cv-00239-MW/CAS.

Source: HRDC press release (Oct. 25, 2019)

NBC Sends Anchorman Lester Holt to Prison as Part of its “Justice for All” Series

by Chad Marks

NBC anchorman Lester Holt has been to many prisons as part of his news reporting. But he had never slept in a locked cell for a few nights – until he went to the infamous Louisiana State Penitentiary at Angola in April 2019.

Holt said he and others at NBC wanted to shed light on overcrowding in prisons throughout the U.S. As part of his plan to “go big,” he met with some of the 5,500 prisoners at Angola, most serving life sentences. Holt also joined them on a bus ride to the fields to pick crops, went to the hospice ward where he met dying prisoners and spent two nights in the closed cell restriction unit that houses unruly prisoners.

“For two nights I slept and to a limited extent lived like an inmate in Angola, housed in a tiny cell in the same facility where the most difficult inmates are kept, and chillingly just a few steps away from death row,” Holt said. “Journalism thrives on access. To understand the issues of criminal justice reform that are now riding atop a bipartisan wave, it was important to me to get close. And so I did.”

In 2016, Diane Sawyer briefly spent time at the Rikers Island jail complex in New York City during the “Justice for All” series.
New York City, which some critics characterized as a publicity stunt.

“This wasn’t meant to be a stunt, it wasn’t ‘Lester Holt’ playing a prisoner,” Holt noted. “You have to recognize there are people who are trying to turn their lives around with the knowledge that 95% of prisoners are going to get out someday and we, as a society, need to listen to them and hear them.”

His brief time at Angola gave Holt and NBC viewers a small glimpse of what a life sentence in prison really looks like. People were able to see an elderly prisoner named Frank, so sick with cancer that he could not even open a butterscotch candy wrapper. Frank had been incarcerated for over 40 years and had succumbed to the reality that he was going to die in the prison’s hospice unit. After Holt opened the candy for him, he had to step out of the room wondering how no one could have compassion for someone like Frank.

Frank died before the show could air.

The public was also given a look at what an 83-year-old man looks like after being in prison since he was a teenager. And Holt visited Angola and maximum-security facility in New York to host a town hall meeting on the criminal justice system, where he was joined by famed singer John Legend and former Attorney General Loretta Lynch.

When the United States leads the world in incarcerating more of its citizens than any other industrialized nation, telling the truth about a broken criminal justice system from the inside out makes sense – even if it provides only a brief look into the lives of prisoners who spend years, and sometimes decades, behind bars.

“On the outside, criminal justice reforms are often weighed against hard data points on recidivism risk and crime,” Holt stated. “Living on the inside, I found it to be a complex world filled with contradictions and still rooted in punishment but aspiring to be a place of rehabilitation. A work in progress that is now getting the attention it demands.”

Apparently more reporters need to go to prison – and spend more time there – so they can contribute to the public dialogue about crime, punishment and mass incarceration in America.

Sources: nypost.com, usatoday.com, nola.com, variety.com, nbcsn.com

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Prison Education Guide
Christopher Zoukis
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**News in Brief**

**Alabama:** In September 2018, Granitt Culliver, then-Associate Commissioner for Operations for the Alabama Department of Corrections (ADOC), was placed “on leave” after misconduct allegations surfaced. “Your absence from work is deemed to be in the best interest of the department due to the nature of the allegations against you,” his suspension notice stated. The nature of the misconduct was not initially disclosed. Effective November 30, 2018, Culliver opted for early retirement with his full state pension and an unrealized benefits check of nearly $30,000. “The investigation’s findings were sent to the Alabama Ethics Commission for review,” stated ADOC Public Information Manager Bob Horton. “Therefore, the ADOC cannot provide further comment at this time.” An initial complaint was ignored by ADOC Commissioner Jeff Dunn, but Governor Kay Ivey’s administration demanded a thorough probe. In January 2019, the Alabama Political Reporter revealed that two complaints had been filed alleging Culliver used his position to coerce women into sexual acts. “If a female staff member didn’t have sex with him, she was transferred to Timbuktu, Alabama. And if you did, it meant promotions or other favors.”

**Arizona:** After 17 years of employment with the federal Bureau of Prisons, Darrell E. McCoy, 51, was sentenced to six months of house arrest and five years of probation on February 27, 2019. McCoy had been convicted on two counts of abusive sexual contact with a ward. The charges stemmed from his sexual relationship with a female prisoner at a facility in Phoenix where he was foreman of a work crew from September 2016 through December 2016. The pair continued to communicate through text messages and love notes for four months after the prisoner was released to a halfway house. Special Agent in Charge Sandra D. Barnes said in a press release, “Darrell McCoy’s duty was to protect the inmates at the prison where he worked, but instead he abused his power by engaging in sexual conduct with one of those inmates.” McCoy was not required to register as a sex offender.

**California:** Paul James Hayes II, 49, was a lieutenant with the Bureau of Prisons' Special Investigation Services (SIS), which investigates illegal activity by prison staff and prisoners, when he was arrested on February 28, 2019. He had been on leave since October 2018. SIS became aware of Hayes while monitoring phone calls and emails between an unnamed prisoner and Angel Marie Wagner, 42. Wagner was set to meet a BOP employee in the parking lot of a Home Depot on July 15, 2018. Agents watched Hayes arrive in his Hyundai Santa Fe. Wagner approached and handed him a brown-colored envelope, which he stashed in his car. During interrogation, Wagner admitted to receiving wire transfers for Hayes from other people and passing him wrapped items, which she speculated were cell phones and drugs. She said she believed she had passed him $40,000 in cash. Hayes' bank account also received $12,520 in unexplained cash deposits. Wagner was arrested on March 1, 2018 on conspiracy and bribery charges, and released on $50,000 bond. Hayes' bond was set at $170,000.

**California:** Johna Martinez-Meth, 46, visited Adrian Sepulveda, who was serving a life sentence at the California Medical Facility, on May 28, 2018. Soon after, Sepulveda was found dead. An autopsy revealed at least one meth-filled balloon inside his body had burst, causing a fatal overdose. Investigators determined that Martinez-Meth had secreted the balloons on her body and passed them to Sepulveda, who swallowed them during their visit. A search warrant was served on Martinez-Meth's home on August 2, 2018. Methamphetamine, balloons and glue were found, and she was arrested. On February 21, 2019, Martinez-Meth pleaded guilty to involuntary manslaughter and was sentenced to two years in prison. Jared Lozano, acting warden of the California Medical Facility, released a statement, saying: “I am proud to work with a team that continues to show an unrelenting commitment to protecting our staff, inmate population and visitors alike.”

**Colorado:** It started with complaints of sexual harassment by Undersheriff Fernando Mendoza at the Lake County Sheriff’s Office. He was fired and restraining orders were entered. In April 2018, his attorney withdrew from the case “due to insurance issues.” He was provided with a public defender. The complaints, by female 911 dispatchers, helped Autumn Roybal gain the courage to speak out in court on December 6, 2018 against Mendoza, her stepfather, for attempted incest. Four days later he was found guilty of attempting to commit first-degree aggravated incest and attempting to commit invasion of privacy for sexual gratification. He had placed a Sheriff’s Office camera in Roybal’s bedroom and bathroom. Fifth Judicial Judge Karen Romeo reduced the invasion of privacy charge from a felony to a class two misdemeanor. She also increased Mendoza’s bond from $100,000 to $250,000. He was acquitted on attempted sexual exploitation of a child and embezzlement of public property charges. Mendoza was sentenced on April 26, 2019 to 15 months in jail. “He was supposed to uphold the law, and rather he flaunted it,” said Assistant District Attorney Heidi McCollum.

**Connecticut:** Carlos Sanchez, 33, reported to FCI Oakdale on May 21, 2019...
News In Brief (cont.)

to serve a 10-month sentence, followed by five years of supervised release. Sanchez was a guard at FCI Danbury in July and August 2018 when he had sex with a female prisoner. In December 2018, he had pleaded guilty to one count of sexual abuse of a ward.

Florida: Aaron Hull, a 12-year veteran of the Pinellas County jail, was fired by the Administrative Review Board on January 17, 2019 after video footage confirmed his use of excessive force against a wheelchair-bound prisoner on September 24, 2018. “He knew what he should have done but it seems like he got mad and couldn’t control his anger,” stated Sheriff Bob Gualtieri. During a housing unit lockdown, disabled prisoner Taylor Schuessler, 24, talked back to Hull and other prisoners. Hull told him to stop. When Schuessler ignored him, Hull kicked his own chair out of the way, grabbed Schuessler by the neck and poked him in the face several times. Schuessler spat at Hull. The guard then slapped Schuessler on the left side of his face three times. A Pinellas County spokesman said, “[Hull] grasped him around his torso until the inmate de-escalated his resistance.” Hull told investigators, “I realized I could have handled things a little differently, definitely better.” No charges were filed and Schuessler was not seriously hurt. Hull had been disciplined in 2015 for flipping a table over.

Florida: Ron Book, 66, a powerful lobbyist for private prison company GEO Group, ran his Lamborghini into the rear of a Ford Focus, causing the Focus to flip over on I-595 on February 25, 2019. Book was charged with first-time DUI and DUI with damage to a person or property. “Out of nowhere, I got hit from the back and I ended up rolling three times right into a concrete barrier,” said the driver of the Focus, Deryk Rivera. “Next thing I know, I’m hanging upside down inside the car with the seat belt still attached.” Book claimed that Rivera cut him off, but the damage to the vehicles didn’t back up his statements. Dashcam video showed Book struggling to pass a field sobriety test. He refused a breathalyzer, leading to a charge of refusal to submit to a DUI test. Book paid $1,500 bail the following day and was released from the Broward County Main Jail. He suggested to reporters that his cancer medications were responsible for the accident. Rivera, meanwhile, has retained an attorney.

Georgia: It is unclear when Deangelo Bell, 26, was recaptured. On February 20, 2019, detectives with the Motor Vehicle Theft Unit (MVT) were surprised to find a “cloned” 2018 Dodge Challenger with an Alabama dealer tag parked at the Gwinnett County Department of Corrections’ work release center. Detectives believe Bell saw them investigating the car and took off, not reporting back to the center after his work shift. Dealer tags are often used to conceal stolen vehicles; the MVT had already recovered 10 such vehicles with altered VIN numbers. The Challenger had been purchased from a Conyers dealerships using fraudulent information. The Gwinnett County jail roster later showed Deangelo Bell being held without bond on charges of probation violation, theft by receiving stolen property and two counts of identity fraud.

Idaho: Three men who tried to escape the Payette County jail are now in separate state prisons. Christopher Eversole, 32, John Lott, 26, and Mason Hughes, 21, all faked being sick after midnight on December 9, 2019. They were taken to the medical area, they beat Lieutenant Andy Creech with a tablet they had slipped into a pillow case. Creech said the men never made it outside the facility; he was taken to a local hospital for stitches to several cuts to his head and released that day. Lott is now serving time at the Idaho State Correctional Institution for aggravated battery, attempted escape and riot – all related to the escape attempt. Eversole is in state prison on a variety of forgery, burglary, bad checks, riot, aggravated battery and theft convictions as well as for the escape attempt. Mason Hughes is at the Idaho Maximum Security Institution on grand theft, stolen vehicle and escape convictions.

Illinois: Asante Brown, 23, was beaten at the Pontiac Correctional Center on February 3, 2019. Former prison guard Giovanni Rodriguez, Sgt. Jason Cremer and Lt. James Fike were charged with battery and official misconduct in Livingston County Court later that month, following an internal investigation. It is not clear if the three guards resigned or were fired. Fike entered a plea deal on July 16, 2019, in which prosecutors dropped a felony misconduct charge in exchange for a guilty plea on the battery charge. He received a conditional discharge, avoiding a three-month sentence so long as he complies with the terms of the agreement. Charges against Cremer were unexpectedly dropped on August 9, 2019 with no explanation from prosecutors. Rodriguez pleaded guilty to a felony and a misdemeanor in early September, and will be sentenced in November 2019.

Kansas: Calvin Henry Green III, 36, had served four years at the Lansing Correctional Facility during his latest stint behind bars when he absconded in a camo-painted state dump truck on January 7, 2019. Green wasn’t on work release but had a job inside the prison, so it was unclear how he was able to gain access to the truck. The warden ordered an emergency head count at 1:20 p.m. to confirm Green’s absence. The U.S. Marshals Fugitive Task Force was called in and Crime Stoppers was alerted to seek assistance from the public. The dump truck was found abandoned in Kansas City the following day. Green remained on the lam until January 10, 2019, after the Marshals received a tip he was at a home in Independence, Missouri. Green answered the door when they knocked, and left peacefully. He was returned to the Lansing prison, where he will presumably face additional charges.

Kentucky: Allen Lewis was being moved from the Greenup County Detention Center, where he had completed one sentence, to Morgan County, where he faced other charges, on December 18, 2018. He was supposed to be temporarily housed at the Rowan County Detention Center. During the transport he complained about his handcuffs. Greenup County jailer Mike Worthington pulled over to adjust them. A struggle ensued, one cuff was released and Lewis fled. “We got a dog from Boyd County ... searching where we had lost the tracks and they started tracking him, and we tried to cut off all his avenues,” Worthington said. Lewis made it to Highway 64 and started hitchhiking. A car driven by a Morehead State University campus police officer stopped to pick him up. The driver noticed the cuff on one of Lewis’ hands, and drove him back to jail. Worthington told reporters, “He thought he was getting a ride, and he did.”

Louisiana: On February 8, 2019, detectives started an investigation after a Terrebonne Parish prisoner complained that Kelly Nelson Norris got his family to pay $2,500 in cash to the “Linda Green Bail Bond Company.” The victim realized
it was a scam when he wasn’t bonded out of jail. After Norris was arrested and jailed with a bond of $150,000, he threatened his victim. An intimidating a witness charge was added, raising Norris’ bond to $475,000. Before the bail bond scam, Norris had been charged with unauthorized use of a motor vehicle and possession of crack cocaine with intent to distribute. Wilhelmina Clay, 35, was identified as his accomplice in the bail bond scheme, and faces conspiracy to commit theft and felony theft charges.

**Michigan:** The trial of Dr. Steven Paul Cogswell, 54, on five counts of second-degree criminal sexual conduct involving three female Macomb County jail prisoners during medical exams in August and September 2018, was scheduled for November 19, 2019. Cogswell had worked for the jail’s medical services provider, Correct Care Solutions, for 13 months until he was fired and criminally charged in October 2018. Another prisoner tipped off the sheriff’s office about Cogswell’s misconduct, and investigators seized his phone and found photos and videos of the three victims and alleged sexual acts. Cogswell waived his right to a probable cause hearing, and posted a $250,000 bond in February 2019.

**Minnesota:** Ramsey County Commissioners voted unanimously to give Terrell Wilson $525,000 in compensation for an excessive force incident at the Ramsey County jail that occurred on April 13, 2016. A 13-minute video of the incident wasn’t released until February 2019. Travis Vandewiele and five other guards are seen on the surveillance video attempting to strap a handcuffed Terrell Wilson into a restraint chair. Wilson had been arrested for stealing two cell phones from a nightclub. Vandewiele, a former Marine, is heard saying, “You ain’t seen excessive force yet,” before punching Wilson in the abdomen four times. Wilson then pleads, “Please don’t kill me. Please don’t kill me. I’m sorry.” The Washington County Sheriff’s Office began a criminal investigation 13 days later. Vandewiele was initially put on paid administrative leave. In a January 2018 plea agreement with the Minneapolis City Attorney’s Office, he pleaded guilty to misdemeanor disorderly conduct and paid a $150 fine. By the time he resigned in February 2019, Vandewiele had collected $121,555 in wages and was entitled to $9,629 more in vacation and sick pay.

**New Mexico:** Three prisoners who escaped from the Curry County Adult Detention Center on the morning of June 15, 2018 had inside help from a female master control operator, according to jail administrator Mark Gallegos. The guard shut off alarms, unlocked doors and gave a false prisoner headcount, allowing the escapees an 11-minute head start. Sarina Dodson, 28, the master control operator, was fired and pleaded guilty on January 24, 2019 to three counts of aiding escape and a single count of bringing contraband into the jail. The escapees, Aaron Clark, Victor Apodaca and Ricky Sena, surrendered four days after they absconded, following a stand-off with a SWAT team at the apartment of Jon Hausmann. Hausmann pleaded guilty on January 24, 2019 to harboring or aiding a felon, a fourth-degree felony.

**New York:** Former Wallkill Correctional Facility guard Trayvon Webb was held at the Ulster County jail before posting $5,000 cash bail. Webb, 30, resigned in February 2019 after he was caught trying to smuggle 64 grams of synthetic marijuana, known as “K2,” into the prison. Investigators found an additional 137 grams of the drug in Webb’s vehicle. He was charged with first-degree promoting prison contraband and fifth-degree criminal possession of a controlled substance, both felonies, and two misdemeanors: seventh-degree criminal possession of a controlled substance and official misconduct.

**Ohio:** On December 10, 2018, at about 10:45 a.m., Victor Crenshaw turned himself into the Erie County jail for failure to appear for a court hearing. According to Crenshaw, “I was told that it would take an hour or an hour and a half, and I
would be released on bond. I took my dogs
with me because they are my best friends." However, there were problems with the fax machine and Crenshaw wasn’t able to post the $13,000 bond. At 5:45 p.m., he asked guards to check on his Chihuahua and Yorkshire terrier, which had been left in his truck for seven hours. He now faces charges of animal cruelty, carrying a concealed weapon (a knife with his work tools) and marijuana possession. “If you’re not able to post bond, that’s fine, the dog warden would have come to take care of them,” said Erie County Sheriff Paul Sigsworth. “But to wait seven hours to tell someone, that’s inexcusable.” The dogs were unhurt. However, there were problems with the fax machine and Crenshaw wasn’t able to post the $13,000 bond. At 5:45 p.m., he asked guards to check on his Chihuahua and Yorkshire terrier, which had been left in his truck for seven hours. He now faces charges of animal cruelty, carrying a concealed weapon (a knife with his work tools) and marijuana possession. “If you’re not able to post bond, that’s fine, the dog warden would have come to take care of them,” said Erie County Sheriff Paul Sigsworth. “But to wait seven hours to tell someone, that’s inexcusable.” The dogs were unhurt.

Oklahoma: A supervisor was fired and two deputies resigned after Isaiah Smith got to the Wagoner County Detention Center’s booking area on February 15, 2019 with a handgun still on his person. Sheriff Chris Elliot said the problems began with the Wagoner City police. The arresting officer was responsible for making sure a suspect has no weapons, but he didn’t find the firearm. When Smith, who was wearing several layers of clothing, was asked if he had anything illegal on him, he said, “no.” Bringing a gun into the jail is a felony offense. A second search also missed the weapon. From there, Elliot said other breaches of protocol occurred. Smith was allowed to stand behind guards while at the jail, and was left alone in the booking area. Sheriff Elliot said he is now supervising the training of new hires and retraining current officers himself. It is unclear if the arresting police officer was reprimanded.

Oregon: In an attempt to bail out a friend arrested for driving while intoxicated, Eric Benjamin Sumpter, 35, succeeded in getting himself arrested on the same charge. Early on January 20, 2019, Christina Elizabeth Morton, 40 was seen driving away from the Pour House Tavern in Springfield with a $3,000, and Sumpter, 35, came to pick her up from the Springfield Municipal Jail. He was, however, “very intox[i]cated,” according to dispatch records. He was booked on suspicion of driving under the influence of intoxicants, with bail set at $2,500.

Pennsylvania: The state’s prison system had a contraband problem, so they hired a private company to receive and scan all incoming mail in an effort to stop illicit items, including drugs, from being mailed to prisoners. [See: PLN, Sept. 2019, p.60]. However, at least five staff members at various prisons have been arrested for smuggling contraband in the past year, indicating the problem is an internal one. Stephen Palermini, at SCI Somerset, was apparently a middleman in a K2 and cell phone racket. When one of his imprisoned customers was caught with a cell phone, the prisoner flushed the evidence down the toilet. Damien Robinson, 45, an activities specialist at SCI Somerset, hid K2 in
crossword puzzle and Sudoku books. Rick Davis, at SCI Houtzdale, used dining hall bathrooms as drug pick-up spots; he was busted in March 2019, as were Palermi and Robinson. Jay J. Groover III, a guard at the old SCI Graterford, brazenly hid Suboxone in bathroom trashcans for prisoners to pick up. He was sentenced to six to 12 months in jail in October 2018. Skyler R. Galgon, 35, was arrested in January 2019 for smuggling weed and drug paraphernalia into SCI Cambridge Springs. In 2017, Galgon had been sentenced to probation after alcohol, a pistol and ammunition were found in his vehicle on prison grounds. [See: PLN, March 2018, p.63].

Tennessee: Thomas J. Myers, 29, a Juvenile Court Probation Officer in Nashville, was immediately placed on administrative leave and his access to juvenile court records blocked in December 2018, amid accusations that he had inappropriately touched one of his probationers. A 16-year-old male reported that he and Myers were in Myers’ truck discussing the terms of the young man’s probation in November 2018 when the touching occurred. Sex Crimes Detective Elizabeth Mills opened an investigation. The victim told the investigator that Myers gave him a choice of engaging in sexual acts in return for making his drug test disappear, if the results registered positive for drug use. Myers was arrested on December 6, 2018 and charged with sexual battery by an authority figure. He was released on $10,000 bond. Metro Nashville’s Youth Services Sex Crimes Unit asked that other youths victimized by Myers call a hotline.

Texas: Another former prison employee, FCI Seagoville guard Erica McCoy, 32, has had to register as a sex offender. She pleaded guilty to abusive sexual contact with a prisoner in August 2018. McCoy said she “stumbled upon” prisoner “D.E.” in the summer of 2017, when he was cleaning the carpet in her office. They had regular sexual contact until “D.E.” was moved to the Special Housing Unit (SHU) after the Office of the Inspector General began an investigation. McCoy then resigned. At sentencing on February 25, 2019, Deputy Assistant Inspector General for Investigations Elise Chawaga stated, “Today’s sentence demonstrates that corruption and abuse of power have no place in our federal prisons and will not be tolerated.” McCoy was sentenced to a year and a day.

Utah: Weber County jailer Jeremy Clark Miller, 41, who was in charge of female prisoners at the jail in downtown Ogden, was indicted on five counts of custodial sexual relations on January 7, 2019. An investigation by the county attorney’s office began in November 2018. Miller was placed on paid administrative leave the following month. Two state prisoners admitted to having consensual sexual intercourse with him at the jail; the Utah DOC contracts with county jails to house some state prisoners. Miller admitted to “sexual conversations” with the prisoners, but lied about giving his cell phone number to one of the women, so they could continue their relationship after she was released. A search of his truck turned up condoms. He was booked into the Box Elder County jail on January 3, 2019, then posted bail and was released. In July 2019, Miller pleaded no contest to one charge of custodial sexual relations; in exchange, four similar charges were dropped. He was sentenced in September 2019 to 60 days in jail, with all except one week to be served on work release. He was also placed on probation for four years.

West Virginia: A former high-ranking federal Bureau of Prisons guard at FPC Alderson, Captain Jarred Grimes, 40, was sentenced to a maximum 10-year prison term on January 9, 2019 for having intercourse with four prisoners and other
sexual contact with two others between November 2016 and December 2017. Upon his release he will have to register as a sex offender. In June 2018, Grimes pleaded guilty to four counts of sexual abuse of a ward and two counts of abusive sexual contact involving a ward. At that time, U.S. Attorney Mike Stuart stated, “Grimes was in a position of trust and near absolute authority over inmates who had absolutely no ability to flee or escape. Any and all instances of gross and egregious corruption like this will be prosecuted by my office and we will seek the maximum penalties permitted by law.”

**Wyoming:** The Casper Re-Entry Center has a retention problem. Each year for three years, at least a dozen prisoners have escaped, usually by not returning from work. The Re-Entry Center is tasked with providing rehabilitation and substance abuse treatment; it provides an “alternative to incarceration or traditional probation/parole supervision,” according to the Wyoming Board of Parole. If prisoners abscond, the Natrona County District Attorney’s Office files charges of “escape from official detention,” a felony that carries up to ten years in prison. The facility does have a secure unit. In December 2018, Richard Thomas Fountaine climbed a wall and chain-link fence to escape. He was aided by Re-Entry Center employee Kimberly Belcher, who had given him a cell phone and was believed to be on the lam with Fountaine. They were captured on January 11, 2019 in Georgia. Monica Hook, a spokeswoman for the GEO Group, the private prison company that runs the Re-Entry Center, declined to comment on the troubling history of escapes and employee/prisoner sexual encounters at the facility.

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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. They are not receiving proper HIV medication or are denied access to programs due to your HIV status. Contact: 1000 Herrontown Rd., Clock Bldg. 2nd Fl., Princeton, NJ 08540. www.centurion.org

**Justice Denied**
Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, which includes all back issues of the Justice Denied magazine and a database of more than 4,500 wrongfully convicted people. Contact: Justice Denied, P.O. Box 66291, Seattle, WA 98116. www.justicedenied.org

**Prison Activist Resource Center**
PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners and supports activists working to expose and end the abuses of the Prison Industrial Complex and mass incarceration. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. www.prisonactivist.org

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

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

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


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**Legal Research: How to Find and Understand the Law,** 17th Ed., by A. Benjamin Spender, 439 pages. $54.95. This concise compilation of the Federal Rules of Civil Procedure and portions of Title 28 of the U.S. Code most pertinent to federal civil litigation provides attorneys and pro se litigants with a handy resource that facilitates quick reference to the Rules. 1095

**Represent Yourself in Court: How to Prepare & Try a Winning Case,** by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 536 pages. $39.99. **Represent Yourself in Court: How to Prepare & Try a Winning Case** breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. 1037

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

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**Deposition Handbook,** by Paul Bergman and Albert Moore, Nolo Press, 426 pages. $34.99. **Deposition Handbook** is a how-to handbook for anyone who conducts a deposition or is going to be deposed. 1054

**Criminal Law in a Nutshell,** 5th edition, by Arnold H. Loevy, 387 pages. $49.95. **Criminal Law in a Nutshell** provides an overview of criminal law, including punishment, specific crimes, defenses & burden of proof. 1086

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Hepatitis and Liver Disease: What You Need to Know, by Melissa Palmer, MD, 471 pages, $19.99. Describes symptoms & treatments of Hepatitis B & C and other liver diseases. Discusses medications to avoid, diets to follow and exercises to perform, plus includes a bibliography. 1031

Criminal Procedure: Constitutional Limitations, 8th ed., by Jerold H. Israel and Wayne R. LaFave, 557 pages, $49.95. This book is intended for use by law students of constitutional criminal procedure, and examines constitutional standards in criminal cases. 1085

Prisoners' Self-Help Litigation Manual, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 928 pages, $54.95. The premiere, must-have “Bible” of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Includes detailed instructions and thousands of case citations. Highly recommended! 1077

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

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

Advanced Criminal Procedure in a Nutshell, by Mark E. Cammack and Norman M. Garland, 3rd edition, 534 pages, $49.95. This text is designed for supplemental reading in an advanced criminal procedure course on the post-investigation processing of a criminal case, including prosecution and adjudication. 1090a

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