Milestone: Thirty Years of *Prison Legal News* and the Human Rights Defense Center

*by Paul Wright*

Originally we were planning to celebrate the 30th anniversary of *Prison Legal News* (PLN) in the May 2020 issue. However, with the COVID-19 pandemic impacting prisoners and the criminal justice system we decided to postpone it until later in the year given the urgency of reporting on the pandemic. We also had planned to do events in Seattle and New York City to commemorate our 30th anniversary as we have in the past, but COVID has put a halt to in-person events.

Instead, we will do a national virtual event on December 10 to mark both International Human Rights Day and our 30th anniversary. Yale law professor and author James Forman Jr. will be our keynote speaker. Details on the event and how to attend virtually are inside this issue.

When I started PLN in 1990 I was 25 years old and three years into a life sentence. The United States had a million people locked in cages. Today, I am 55 years old and have been out of prison for 17 years, and the United States has around 2.5 million people locked in cages. In addition to having a lot more prisoners, living conditions, by every possible measure with the possible exception of disability rights, are far worse than they were 30 years ago.

Prison population growth has been fueled by the growth of the American police state and increases in sentences. With 5% of the world’s population, the U.S. has 25% of the world’s prisoners. The USA is indeed number one when it comes to caging people. Millions more are on probation or parole or other forms of state carceral supervision.

Over its 30 years, HRDC has grown from an all-volunteer organization in Seattle that published a monthly newsletter into a professional organization with 15 employees that publishes two monthly magazines, publishes and distributes books, litigates cases around the country and conducts national advocacy campaigns nationally. Going into our 31st year, in the middle of a pandemic, here is a look back at how we got here.

In 1987, I entered the Washington state prison system with a 304-month sentence after being convicted of first-degree felony murder for shooting and killing a drug dealer in an armed robbery attempt. The following year I met Ed Mead, a political prisoner and veteran prison activist, at the Washington State Reformatory (WSR) in Monroe, Washington. Ed had been incarcerated since 1976. During that time period, it became apparent that collectively prisoners were in a downhill spiral – they were suffering serious setbacks on legislative, political, judicial and media fronts. Prisoners and their families were the people most affected by criminal justice policies but also were the ones almost entirely absent from what passed as debate. There...
The Human Rights Defense Center (HRDC), which publishes *Prison Legal News* and *Criminal Legal News*, cannot fund its operations through subscriptions and book sales alone. We rely on donations from supporters!

HRDC conducts only one annual fundraiser; we don’t bombard our readers with donation requests, we only ask that if you are able to contribute something to our vital work, then please do so. Every dollar counts and is greatly appreciated and will be put to good use. No donation is too small (or too big)!

**Where does your donation go? Here’s some of what we’ve done in the past year:**

- We won censorship lawsuits against three jails in California and jails in Virginia and North Carolina which now allow prisoners to receive books and magazines.
- We won public records lawsuits against the US Marshalls Service, ICE, Geo Corporation and Corizon.
- As part of our Prison Phone Justice Project we continued to press the Federal Communications Commission to reduce the cost of prison and jail phone calls to no more than $.05 per minute and to eliminate all ancillary fees.
- We won a resounding victory in the federal Ninth Circuit Court of Appeals over the practice of taking prisoners money and giving them fee laden debit cards.

**With your help we can do so much more! Please send your donation to:**

Human Rights Defense Center, PO Box 1151, Lake Worth Beach, FL 33460

Or call HRDC’s office at 561-360-2523 and use your credit card to donate.

Or visit our websites at prisonlegalnews.org or criminallegalnews.org and click on the “Donate” link.
30 Years of PLN (cont.)

was a lack of political consciousness and awareness among prisoners, and widespread ignorance about the realities of the prison system among those not incarcerated.

Ed and I decided to republish *The Red Dragon* as a means of raising political consciousness among prisoners in the U.S. We planned to model the new publication on the old one: a 50- to 60-page Marxist quarterly magazine that Ed had previously published. We eventually put together a draft copy, but it was never printed for distribution. The main reason was a lack of political and financial support on the outside. We lacked the money to produce a large quarterly magazine and were unable to find volunteers outside prison willing to commit the time involved in laying out, printing and mailing such a publication. Additionally, in 1989 I was subjected to a retaliatory transfer to the Penitentiary at Walla Walla, due to success in the WSR overcrowding litigation. Prison officials also wanted to ensure that *The Red Dragon* never got published. The transfer meant that Ed and I were relegated to communicating by heavily censored mail.

We scaled back our ambitions and instead decided to publish a small, monthly newsletter focused on prison issues in Washington state. If the support was there, it would grow. Originally named *Prisoners’ Legal News*, we set out with the goal of publishing real, timely news that activist prisoners and their supporters in Washington state could use.

With the social movements that had traditionally supported prison reform efforts in this country at a low ebb (i.e., the civil rights, women’s liberation and anti-war movements), we saw PLN’s objective as one that would emphasize prisoner organizing and self-reliance. Like previous political journalists who had continued publishing during the dark times of the 1920s and 1950s, we saw PLN’s role as being similar. From the outset, PLN has striven to be an organizing tool as much as an information source. When we started, we had no idea that things would get as bad as they have in our nation’s criminal justice system. Nor that they would continue to be as bad as they have for as long as they have.

In 1990, I was transferred to the Clallam Bay Corrections Center, a then-new Washington prison. The first issue of *PLN* appeared in May 1990. Ed and I each typed five pages of *PLN* in our respective cells. Columns were carefully laid out with blue pencils and graphics applied with a glue stick. We sent the proof copy to Richard Mote, a volunteer in Seattle, who copied and mailed it. PLN’s start-up budget for our first six issues was a whopping $300, or $50 to print and mail each issue. We did not have the money to continue publishing after the $300 ran out but vowed that as long as the money came in we would continue publishing. If it did not, it meant there was a lack of interest and we would have to cease publishing and regroup.

The first three issues of *PLN* were banned in all Washington prisons on spurious grounds. Ed was inf racted by WSR officials for allegedly violating copyright laws by writing law articles. Officials at Clallam Bay ransacked my cell and confiscated my writing materials, background information and anything that was *PLN*-related. Ed’s infraction was eventually dismissed, and my materials were later returned.

Just as we were on the verge of filing a civil rights lawsuit challenging the censorship of *PLN*, the Washington DOC capitulated and allowed *PLN* into its prisons. Jim Blodgett, then the warden at the Penitentiary in Walla Walla, told me that *PLN* would never last because its politics were “harmless and outmoded,” and prisoners were too “young and immature to be influenced” by our radical ideas. The reprisals had been fully expected, given prison officials’ historic hostility to the concepts of free speech and due process.

Then disaster struck: Richard Mote turned out to be mentally unstable. He refused to print and mail *PLN*’s second issue because he took offense to an article written by Ed that called for an end to the ostracization of sex offenders. Mote took off with all of *PLN*’s money that contributors had sent, about $50, the master copy of the second issue and our mailing list. For several weeks it looked like there would be no second issue of *PLN*. Fortunately we located another volunteer, Janie Pulsifer, who was willing to print the publication. Ed and I sent Janie another copy of the issue, which she copied and mailed. We were back on track.

The Presses Keep Rolling

Ed’s then-partner, Carey Catherine, had agreed to handle *PLN*’s finances and accounting, such as they were, after Mote
jumped ship. This was short-lived, because by August 1990 she was preparing to go to China to study. The only person we knew with a post office box who might be able to take care of PLN’s mail, mainly to process donations, was my father, Rollin Wright. He lived in Florida but generously agreed to handle PLN’s mail for what Ed and I thought would be a few months at most, until we found someone in Seattle. Those few months became six years as he served as PLN’s office manager, publisher and board member.

Support for PLN slowly began to grow, as did our circulation. In January 1991 we switched to desktop publishing. Ed and I sent our typed articles to Judy Bass and Carrie Roth, who would retype them and lay them out. We would then proof each issue before it was printed and mailed. In 1991, PLN also obtained 501(c)(3) nonprofit status from the IRS so we could use lower postage rates. PLN’s circulation had stabilized at around 300 subscribers; we purposely did not seek further growth because we did not have the infrastructure to sustain it. Once we had nonprofit status and postal permits from the post office, we were ready to expand.

In the summer of 1992, we did our first sample mailing to prison law libraries. Since PLN’s reader base had increased and changed, we decided to reflect that change by renaming the publication Prison Legal News, as PLN wasn’t just for prisoners anymore. PLN was now being photocopied and mailed each month by a group of volunteers in Seattle.

When PLN started out in 1990, Ed and I had decided it would be a magazine of struggle, whether in the courts or elsewhere, and everything would be chronicled. At a time when the prisoners’ rights movement was overcome by defeatism and demoralization, we thought it important to report the struggles and victories as they occurred to let activists know that theirs was not a solitary fight.

A mainstay of PLN’s coverage from the beginning has been the issue of prison slave labor. This is where the interests of prisoners and free world workers intersect at their most obvious. If people outside prison didn’t think criminal justice policies affected them, PLN would make prisons relevant by showing how prison slave labor took their jobs and undermined their wages. This coverage was helped by the fact that Washington state was a national leader in the exploitation of prison slave labor by private businesses.

PLN has broken stories on how corporations like Boeing, Microsoft, Eddie Bauer, Planet Hollywood, Starbucks and Nintendo, plus then-U.S. Representative Jack Metcalf, all used prison slave labor to advance their interests. These stories were picked up by other media, increasing PLN’s exposure. While PLN continues to be the leader in reporting on prison slave labor, my own views on the subject have changed. Influenced by the writings of Bruce Western, I came to realize the big story wasn’t the 5,000 prisoners who work for private companies in PIE programs or the estimated 80,000 who work in state prison industries – and those only because of the massive government subsidies that prison industries receive – but the 2.3 million prisoners who have been removed from the U.S. labor market completely.

In June 1992, I was transferred back to WSR where Ed and I could collaborate on PLN in person for the first time since the magazine started. I had been infractioned by Clallam Bay officials for reporting in PLN the racist beatings of prisoners by gangs of white prison guards. Unable to generate attention for the beatings themselves, my punishment for reporting the attacks received front-page news coverage in the Seattle Times. Eventually the disciplinary charges were dropped, but not before I had spent a month in a control unit for reporting the abuses. The PLN presses kept rolling.

PLN Becomes a Magazine

On PLN’s third anniversary in May 1993, we made the big leap. We switched to offset printing instead of photocopying and expanded to 16 pages. PLN was no longer a newsletter; we were now a magazine with 600 subscribers.

In October 1993, Ed was finally paroled after spending 18 years in prison. The state parole board, no doubt unhappy at PLN’s critical coverage of their activities, imposed a “no felon contact” order on Ed.
This meant he could have no contact, by mail or phone, with me or any other felon. The parole board made it very clear that this was for the purpose of preventing Ed’s involvement with PLN. If he were involved in publishing PLN in any way, he would be thrown back in prison.

The ACLU of Washington filed suit on our behalf to challenge the rule as violating Ed’s right to free speech as well as my own. In an unpublished ruling, Judge Robert Bryan in Tacoma dismissed our lawsuit, holding that it was permissible for the state to imprison someone for publishing a magazine while they were on parole.

The Ninth Circuit Court of Appeals eventually dismissed our appeal as moot when, after three years on parole, Ed was finally discharged from the parole board’s custody. In the meantime, Ed had tired of PLN as he had with his previous publishing efforts, and got on with his life and moved to California.

PLN switched to an East Coast printer that offered significant savings over Seattle printers. This allowed us to expand to 20 pages. Within the year, PLN was no longer being mailed by volunteers; our printer did the mailing for us.

We hired our first staff person, Sandy Judd, in January 1996. PLN’s needs and circulation had grown to the point that volunteers were simply unable to do all the work that needed to be done. With some 1,600 subscribers, data entry, layout, accounting and other tasks required full-time attention. As the workload of increased circulation grew, so did our staff.

The bulk of each issue of PLN is written by current and former prisoners. In 1999, the Washington DOC banned correspondence between prisoners. The resulting breakdown in communication made coordinating PLN difficult, to say the least, between myself and PLN’s incarcerated contributing writers.

Upon my release in 2003, I was able to do a lot more in the way of research and advocacy as PLN’s editor than I had while imprisoned. In 2005, I hired Alex Friedmann as PLN’s associate editor. Alex had been serving a 20-year sentence in Tennessee when he first began writing for PLN in 1996 as a volunteer contributing writer. His invaluable skills as a researcher and editor vastly improved the content of PLN and the depth and breadth of our coverage. He became PLN’s managing editor until earlier this year when he was replaced by Ken Silverstein. Ken has over 30 years’ experience as an investigative reporter and journalist and was one of PLN’s earliest subscribers in the 1990s.

More than a Monthly Publication

My first day out of prison illustrates the transition from prisoner editor to non-prisoner editor. I was picked up at the Monroe Correctional Complex in Washington state at 8:30 a.m. on December 16, 2003 by two PLN employees. By 10:30 a.m. we were in PLN’s Seattle office and I was learning to use the Internet and e-mail, my first experience with both. At noon, we had lunch with Jesse Wing and Carrie Wilkinson, part of the MacDonald, Hoague & Bayless legal team that successfully represented us in PLN v. Lehan, a censorship suit against the Washington DOC. By 2:30 p.m. I was back in PLN’s office doing a television interview with Fox News on prison slave labor. It hasn’t stopped since then.

The November 2020 issue of PLN marks our 30-year anniversary and 367th
consecutive published issue. We now have around 9,000 subscribers in all 50 states. PLN goes into every medium- and maximum-security prison in the U.S. and to many minimum-security facilities and jails as well. PLN’s subscribers include prisoners and their family members, judges, attorneys, journalists, academics, prison and jail officials, activists and concerned citizens. Our websites receive over 150,000 unique visitors each month.

PLN’s website, www.prisonlegalnews.org, is the largest online resource for prison and jail news and case law; it includes all PLN back issues in .pdf format as they appeared when published, a searchable database with over 45,000 articles and 13,000 court rulings, plus a library of more than 7,600 publications and a brief bank with 11,200 pleadings. Our site receives over 100,000 visitors a month and is frequently used as a source of information by journalists, criminal justice activists and attorneys, among others.

In 2017 we launched another magazine, Criminal Legal News, to report on criminal law and procedure. Under the leadership of editor Richard Resch the magazine has quickly become established as an essential resource on criminal law, sentencing, policing and surveillance.

In addition to our print and online publications, PLN has engaged in extensive advocacy efforts involving the media, lawmakers and government agencies. HRDC staff regularly speak on the topic of prisoners’ rights at conferences, conventions and law schools. We do dozens of media interviews each year and provide background information on prison, jail and criminal justice issues to journalists and researchers. HRDC staff have testified before the U.S. Congress and state legislatures on prison-related topics, and have submitted comments to numerous public agencies including the Federal Communications Commission, the National Prison Rape Elimination Commission, the Civil Rights Commission, the U.S. Department of Justice and the Consumer Financial Protection Bureau.

Common Courage Press published PLN’s first book, The Celining of America: An Inside Look at the U.S. Prison Industry, in 1998. Edited by Daniel Burton-Rose, Dan Pens and myself, the book is an anthology of PLN articles. Celining of America lays out the reality and politics of the prison industrial complex in the mid-1990s; now in its fourth printing, the book received critical acclaim and helped boost PLN’s profile. Between 1998 and 2000, while incarcerated, I did a weekly radio show on KPFA’s Flashpoints program called “This Week Behind Bars.” The show aired on Fridays and consisted of news reports from PLN about what was happening in American prisons and jails. Over the past 30 years, HRDC staff have done hundreds of radio and media interviews on PLN’s behalf advocating for the rights of prisoners and for progressive criminal justice reform. Further, PLN is frequently quoted on criminal justice issues by other publications, ranging from The Associated Press and USA Today to CNN, The New York Times and the Wall Street Journal.


This trilogy of PLN anthologies, spanning a decade, did an impressive job of laying out the political landscape of the 1990s that cemented the most repressive policies of mass incarceration, the conveyor-belt judiciary that ensures poor people accused of crimes are more likely to wind up in prison than their wealthy counterparts accused of crimes, and the economic and political beneficiaries of these policies and who is harmed by them.

In addition to PLN’s monthly magazine, online resources and anthologies, our many other projects – including media and advocacy work – are detailed in our annual reports posted on our website. In 2013, we received the First Amendment Award from the Society of Professional Journalists. PLN remains unique in many respects. First, it is the only independent, uncensored nationally circulated magazine edited and produced largely by prisoners and former prisoners anywhere in the U.S., if not the world. It also is the only explicitly advocate publication that seeks to improve the lives of prisoners and their families. We don’t just report the news, we make the news and also seek to influence it. Second, it is one of the few publications that offers a class-based analysis of the criminal justice system. No other publication has the depth and breadth of coverage of detention facility
litigation and news. If you want to know about American prisons or jails, chances are somewhere in the past 30 years, we have reported on it.

Since its inception PLN has largely relied on donations from our subscribers and supporters. In recent years, advertising income has helped offset our costs and allowed us to expand the size of the magazine. PLN began distributing books with the release of our first anthology, *The Celling of America*, in 1998.

**PLN: Then and Now**

In 2009, we changed the name of our parent nonprofit organization to the Human Rights Defense Center (www.humanrightsdefensecenter.org), to better reflect our diverse activities. Those activities include book publishing. The first title produced by PLN Publishing was *The Prisoners’ Guerrilla Handbook to Correspondence Programs in the U.S. and Canada*, third edition. Written by Missouri prisoner Jon Marc Taylor and edited by PLN staff member Susan Schwartzkopf (now HRDC’s chief finance officer), it reflected our desire to publish and distribute self-help, non-fiction reference books that prisoners can use to help themselves. Our next title, *The Habeas Citebook*, by federal prisoner Brandon Sample (now a federal criminal defense lawyer), was published in 2011 with a second edition published in 2016. In 2015, we produced our third book, the *Disciplinary Self-Help Litigation Manual*, second edition, by Dan Manville. In 2020, we published *The Habeas Citebook: Prosecutorial Misconduct* by former HRDC staff attorney Alissa Hull.

We started HRDC’s litigation project in 2010. We also added a part-time staff attorney position and hired Dan Manville as our first general counsel. When the position became a full-time job, Lance Weber joined us as our general counsel and litigation director. He was followed by Sabarish Neelakanta, and our current general counsel and litigation director is Dan Marshall. HRDC has a national litigation capability and regularly litigates and wins civil rights, free speech, wrongful death, consumer protection and public records lawsuits around the country.

In March 2010, we closed our Seattle office and moved all HRDC/PLN operations to Brattleboro, Vermont, where I had been living following my release from prison. I became HRDC’s executive director in addition to editing *PLN*. In 2013, we relocated our office to Florida for what should be our final move, and in 2014 we reopened our Seattle office, staffed now by our public records manager Kathrine Brown.

Since our inception, *PLN* has been involved in advocacy campaigns. In the 1990s, we successfully led the struggle for Washington state prisoners to keep family visits, law libraries and weight lifting. Nationally we are one of the few opponents of the private prison industry. In 2011, we co-founded the Campaign for Prison Phone Justice (www.prisonphonejustice.org and www.phonejustice.org) to lower the cost of prison and jail phone calls. We successfully lobbied the Federal Communications Commission to cap the cost of interstate prison phone rates, and the FCC is currently considering similar reforms for in-state rates. We were able to prevent the state of Vermont from enacting a civil commitment statute for sex offenders and successfully advocated to amend a Vermont law to allow attorney fees for prevailing

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What Have We Accomplished?

A question I have been asked is whether PLN is “successful.” Success is a relative term. When a French journalist asked Mao Tse-Tung in the 1960s if he thought the 1789 French Revolution had been successful, Mao reportedly replied, “It’s too soon to tell.” So too with PLN.

The prison and jail population in the U.S. more than doubled to 2.5 million people just in the time we have been publishing. By any objective standard, prison conditions, overcrowding, impunity and brutality are now far worse than at any time in the past 60 years. Draconian laws criminalize more behavior and impose harsher punishments in worse conditions of confinement than at any other point in modern world history. While some lip service has been paid about changing this state of affairs, no one in a position of power is even talking about the brutal conditions American prisoners are subjected to on a daily basis in the U.S., or providing any type of accountability or oversight of the criminal justice system, or repealing the thousands of harsh laws that have led the U.S. to become the world’s leading carceral state. The idea of American prisoners having enforceable rights as to the conditions of their captivity is anathema to the American ruling class. By contrast, primates used in medical experiments have far more enforceable rights for humane conditions of captivity than do American prisoners.

The legal rights of American prisoners are diminishing daily under coordinated attacks by conservative courts, yellow journalism and reactionary politicians. The corporate media and lawmakers alike thrive on a daily diet of sensationalized crime and prisoner bashing, while prisons and jails consume ever-increasing portions of government budgets to the detriment of everything else – such as education, affordable housing and social services. The COVID pandemic has given sharp illustration to the utter contempt politicians and the government hold for the lives of American prisoners. As tens of thousands of prisoners have been infected and hundreds if not thousands have died, prisoner releases have been few and far between. By contrast, the Islamic Republic of Iran, no bastion of human rights, furloughed nearly 30% of its prison population to deal with COVID among the remaining prisoners.

30 Years of PLN (cont.)

In my capacity as a former volunteer inmate of the Florida prison and jail system, I have been asked by a number ofPLN subscribers how my Prison Profiteering campaign to oppose the longstanding practice of financially exploiting prisoners and their families, and accomplish.

PLN has grown from being an all-volunteer project to having 15 full-time employees in three offices (Lake Worth, Florida; Seattle, Washington and Washington, D.C.). The magazine has expanded from 10 to 72 pages, and from 75 prospective subscribers to about 9,000 nationwide. Since the very beginning, the only thing that has held us back in terms of what can accomplish has been a lack of funding; the more money we have had, the more we have been able to do with respect to prisoners’ rights and criminal justice reform. As our budget went from $600 a year to $1.5 million a year, so did what we were able to do and accomplish.

Continued advocacy on behalf of prisoners and their families on all fronts, and ensuring the ability of prisoners to receive their PLN subscriptions, are daily struggles for us. Expanding PLN’s bookstore list, publishing more self-help books, further increasing PLN’s size to provide more news and information for our readers, and expanding our circulation are all goals for the immediate future. Going forward, PLN will still be here, giving a voice to the voiceless and publishing the best news and analysis on criminal justice-related issues that we can.

A free press doesn’t come cheap. Neither does free speech. From the very first issue to this day, PLN has been censored in prisons and jails across the country. In some cases, we have been able to resolve censorship issues administratively. In cases where that was not possible, we filed suit and addressed the matter in court. The article following this cover story provides a summary of PLN’s extensive litigation history. Whether as a reflection of the fascistic times or a comment on PLN’s effectiveness, we are currently facing more attempts at censorship than at any time in the past 30 years. PLN is the most censored publication in America.

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.
PLN has dully chronicled each spiral in this downward cycle of repression, neglect, indifference and violence. We have provided a critique and analysis of the growth of the prison industrial complex and have exposed the daily human rights abuses that are the grim reality of the American gulag. While some people purported to be shocked when the American military torture chambers in Iraq were first exposed by the photos taken at Abu Ghraib, we could sadly point out that PLN had been reporting similar incidents in American prisons since 1990, and still do. Americans had long been subjected to what the Iraqis were getting. We were not surprised when it turned out many of the military guards torturing Iraqi prisoners were prison guards in civilian life who had been sued for beating and torturing American prisoners.

Even if we haven’t ended the evils of our time, we have struggled against them and did the best we could under the circumstances. That we have managed to publish PLN at all given the relentless opposition by prison and jail officials is a remarkable success. When I started PLN in my prison cell at Clallam Bay, I never thought I would be writing this retrospective 30 years later in the same magazine. In this sense I believe PLN has been successful.

But not all is gloom and doom. PLN has helped stop some of the abuses and also borne witness to what is happening and documented it for future generations. Recent years have seen an increase in interest and support for criminal justice and human rights issues in the United States; many of PLN’s critiques of prison slave labor and other issues have been picked up and adopted by labor groups and even some elements of the corporate media. Our censorship litigation has helped secure the First Amendment rights of hundreds of thousands of prisoners and publishers alike in many states, and our public records cases have helped ensure government transparency. We have done this with remarkably little in the way of funding and resources.

Ultimately, I believe that HRDC and PLN’s success will be measured by its usefulness to the prisoners, activists, journalists, attorneys and citizens who are working to make a difference for the better. We have tried our best to provide timely, accurate, helpful information that people can use in their daily struggle for justice.

The main obstacles that PLN faces are those faced by most alternative media: a lack of sufficient funds and the corresponding inability to reach more people with our message. Absent large-scale funding from outside sources to do outreach work, this will continue to be a problem. The other issues facing PLN are censorship by government officials, prisoner illiteracy – various studies have found that 40% to 70% of the prison population is functionally illiterate – and political apathy. Despite these difficulties, PLN has persevered and steadily grown. The need that led to PLN’s creation has only increased.

Mainstream media coverage of prison and criminal justice issues is often abysmal. Input from prisoners or activists is rarely sought. Since its inception, PLN has ensured that the voices of class-conscious prisoners and former prisoners are heard. We are proud of the fact that over the years many stories originally broken or developed by PLN have been picked up by other news sources, including the corporate media. Sadly, the independent prisoner press is
lacked a viable, vibrant media no longer exists.

We are, however, heartened that a number of well-funded nonprofit news organizations have taken an interest in criminal justice news coverage. This includes The Marshall Project, The Intercept, ProPublica, The Appeal, Truthout and others who generously allow PLN to reprint some of their news coverage. This is a vast improvement. As I look back at the past 30 years of PLN issues, which have all blended into one big issue in my mind, it is worth noting that through the entire 1990s, 120 issues, PLN did very few reprints simply because there was so little to reprint. It was all pro police state, all the time as Bill Clinton doubled the American prison population in the span of a decade and everyone in the corporate media and positions of wealth and political power, including nearly all of the mainstream civil rights organizations, thought this was a great idea.

After 30 years of publishing, it must be emphasized that PLN has always been very much a cooperative effort. PLN has had editors who bore the brunt of prison officials’ displeasure for speaking truth to power, but the reality is that PLN would never have been possible were it not for the many volunteers and supporters who have so generously donated their time, energy, skills, labor, advice and money. Prisoners’ rights and human rights have never been very popular causes in this country, and in today’s political climate it takes extraordinary courage and commitment to support a project like PLN.

Critical to our success has been PLN’s readers and subscribers. At the end of the day we serve the people who subscribe to our magazines and purchase our books. Our advertisers have enabled us to grow and bring our readers even more news and information and kept subscription prices low even as printing and postage costs have gone up. In 1990, a 12-issue subscription to PLN at 10 pages per issue cost $10. Thirty years later, prisoner subscribers can receive a year’s worth of 72-page PLNs for $30. The best deal in America!

Our supporters who have donated money above and beyond the cost of a subscription have long made possible the advocacy we do on behalf of prisoners. This includes the censorship litigation, our campaigns to end private prisons, prison slavery and seeking phone justice for prisoners and their families. Nowhere does your donation get more criminal justice bang for the buck than at HRDC.

**A Collective Effort**

We would like to thank all those people who have served on our board of directors over the years, first as Prisoners’ Legal News and now as the Human Rights Defense Center, PLN’s parent organization. Our current and former board members include Dan Axtell, Rick Best, Bell Chevigny, Scott Dionne, Howard Friedman, Mike Godwin, Judy Greene, Tara Herivel, Sandy Judd, Ed Mead, Janie Pulsifer, Sheila Rule, Ellen Spertus, Peter Sussman, Silja J.A. Talvi, Bill Trine, Michael Avery, Ethan Zuckerman and Rollin Wright.

We also want to give a collective shout out to all the attorneys who have co-counseled, advised and represented PLN on matters as diverse as internet law, public records requests, wrongful death cases and First Amendment censorship litigation; the columnists, contributing writers and investigative reporters who have supplied articles; our designers and layout artists; our donors; and our employees and volunteers.

Ultimately, the people who have contributed articles, subscribed and donated their time, energy and money are those who have made PLN possible. Without all of these contributions to PLN’s collective effort – and there are far too many to name here – we would have met the fate of the vast majority of alternative publications: PLN would have quickly folded. Instead, we have lasted 30 years and look forward to another 30 years of publishing and advocacy.

**Spread the word.**

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**Thirty Years of HRDC Litigation Around the Country**

*by Paul Wright*

Since the very first day we published *Prison Legal News* in May 1990, American prisoners and jails around the country have attempted to censor, block, crush and otherwise ensure we do not publish or, if we do, that prisoners cannot receive our publications. Since my release from prison in 2003, I frequently speak at law schools and legal events about the First Amendment, free speech and attempts by prisons and jails to silence prisoners and intimidate and exclude the media.

Someone once asked me how I became interested in the First Amendment. First, because I was interested in reading about topics prison officials did not want me to read about, namely political struggle and Marxism and then later because prison officials did not want me to write about corruption, racism and brutality within the Washington state prison system and later national prisons and jails. Before going to prison, I had never given much thought to the political act of reading and had never written anything for publication and probably like most Americans, did not think I had anything to say that anyone else would want to hear about. Prison changed both of those things for me.

Initially the successful *pro se* lawsuits that I won had to do with being denied access to law books, legislative guides and books on Marxism. The next ones were being infracted and punished for having in my possession the books on Marxism that the mailroom had actually delivered to me. Then came the retaliation suit over seeking enforcement of a prison overcrowding consent decree.

When the first issues of PLN were censored by Washington state prison officials, Ed Mead and I began preparing a civil rights suit to challenge it. When the ban was lifted after our first three issues, we...
focused on publishing. When we did not fold after a few years but instead continued
publishing, the censorship efforts began in earnest and have continued since.

HRDC is the only publisher in America that routinely steps up to defend both its
right to reach prisoners and prisoners right to receive books and magazines. We also file
public records cases to obtain documents the government wants to conceal, and we have
since expanded to file wrongful death and consumer class action lawsuits on behalf
of prisoners and arrestees. HRDC is remarkably successful in its litigation; we
win around 98% of the cases we file, and we have dozens of consent decrees and
injunctions in our favor around the country.

The last time we did a litigation summary for our 25th anniversary in 2015,
the summary was around 10,000 words in length, or 10 pages. We are now filing
an average of 10 to 15 cases a year around the country. Pretty soon we will not have
enough pages in the magazine to “summarize” our litigation, and these are just the
wins!

Every case filed is reported on the PLN and HRDC website, along with its
disposition. Here is the state by state summary, which is current as this issue of PLN
goes to press. One attorney general referred to us as the “PLN litigation juggernaut.”
The saddest commentary is government officials around the country have spent so
much time and energy and money trying to censor our publications and keep prisoners
ignorant of their rights and the news.

This is why we ask prisoners to notify us immediately if any HRDC publications
are censored or withheld from delivery. The censorship cases have involved the censorship
of PLN and the books we distribute, and our subscription information packs. Many of the cases remain pending.

Censorship Litigation

Alabama: In PLN v. Haley, we successfully sued the state prison system in 2000
over a ban on gift publications. We settled with a consent decree.

Arizona: In PLN v. Ryan, we are currently suing the state prison system over its censorship of PLN, claiming that it is a
“sexually explicit” publication because we report court rulings dealing with the rape
of prisoners. We also successfully sued the Pinal county jail in PLN v. Babean in 2013.

Arkansas: PLN has sued jails in Baxter and Union counties. We lost the Baxter
county case at trial and are currently appealing to the Eighth Circuit. Union remains
pending while we await a ruling in the other case.

California: The California Department of Correction and Rehabilitation
remains under a consent decree since 2005 over its delivery of books and magazines. PLN v. Newsom. We have successfully sued

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30 Years of HRDC Litigation (cont.)

jails in Ventura, Placer, Tehama, San Diego, Sacramento, Tulare and Napa counties.

Colorado: In 2020, we sued the Adams county jail over a publication ban. HRDC v. Bd of Commissioners for Adams County. We have previously sued the Bureau of Prisons ADX “supermax” prison for censoring PLN twice. Both times the BOP mooted the case and began delivering the magazines. PLN v. Hoo and PLN v. FBOP.

Florida: Between 2003 and 2005, and from 2009 to the present, the Florida DOC has censored PLN and CLN, claiming that our advertising content poses a threat to prison security. The first case was dismissed as moot when the DOC changed its policy on the morning of trial. The second case resulted in the censorship being upheld, while we won on due process. Both decisions were upheld on appeal. PLN v. Crosby and PLN v. Jones.

Georgia: We have successfully sued the Fulton and Walton county jails over publication bans. PLN v. Freeman and PLN v. Chapman.

Illinois: We are currently suing the Illinois DOC. We have successfully sued jails in Cook, Kankakee and Kane counties. HRDC v. Baldwin, PLN v. Cook County, PLN v. Kane and PLN v. County of Kankakee.

Indiana: We successfully sued the GEO Group-run prison in New Castle. PLN v. GEO Group.

Kansas: We successfully sued the Kansas DOC in 2007 over its ban on gift publications. PLN v. Werboltz. We have successfully sued the Shawnee county jail. PLN v. BOC of Shawnee. We are currently suing the Johnson county jail. HRDC v. BOC Johnson County.

Kentucky: We successfully sued the Kentucky DOC over its ban on HRDC books. HRDC v. Ballard. We are currently suing the Henderson County jail. HRDC v. Henderson County.


Maryland: We have successfully sued the Montgomery county jail. HRDC v. Montgomery County. A censorship suit against Prince George’s county remains pending, HRDC v. Prince George’s County.

Massachusetts: In 2009, we settled a lawsuit against the state DOC over its ban on gift books. PLN v. Clarke.

Michigan: We are currently suing the Michigan DOC. HRDC v. Winn. We sued the MDOC in 1999 for censoring our book, The Celling of America. PLN v. Ransom. We have successfully sued the Livingston and Macomb county jails. PLN v. Bezoite and HRDC v. Wickersham.

Minnesota: HRDC recently filed suit against the Sherburne county jail, which remains pending, HRDC v. Sherburne County.

Mississippi: We successfully sued the Forrest county jail in 2018. HRDC v. Forrest County.

Nevada: We have had to sue the Nevada DOC twice, once in 2000 and again in 2013 for censoring our publications and not providing notice of the censorship. PLN v. Crawford and PLN v. Cox.

New Mexico: We have successfully sued the jails in Bernalillo, San Miguel, Santa Fe and the private Management and Training Corporation. HRDC v. BOCC San Miguel, HRDC v. BOCC Santa Fe, PLN v. County of Bernalillo and PLN v. MTC.

New York: In 2012, we successfully sued the NY DOC. PLN v. Lee.

North Carolina: We have successfully sued the jails in Mecklenburg and Columbus counties. HRDC v. Carmichael and HRDC v. Hatcher.

Ohio: We successfully sued the Greene County jail. HRDC v. Greene County.

Oklahoma: We have successfully sued jails in Pottawatomie, Pontotoc and Cleveland counties. PLN v. Pottawatomie County Public Safety Center Trust, PLN v. Lester and HRDC v. BOCC Pontotoc County.

Oregon: We have twice sued the Oregon DOC over its censorship of HRDC materials, in 1998 and again in 2003. PLN v. Cook and PLN v. Schumacher. We also successfully sued the jails in Umatilla and Columbia county. PLN v. Umatilla County and PLN v. Columbia County.

South Carolina: In 2011, we successfully sued the Berkeley county jail. PLN v. Dewitt.

Texas: In 2011, unsuccessfully sued the TDCJ over the censorship of books distributed by HRDC. PLN v. Livingston. We have successfully sued the jails in Dallas, Upshur, Comal and Galveston counties. PLN v. Lindsey, PLN v. Betterson, PLN v. Holder and PLN v. Galveston.

Utah: We have successfully sued the jail in Box Elder County. PLN v. Piper.

Virginia: We have successfully sued the Virginia DOC, which claimed PLN “cast law enforcement in a negative light.” PLN v. Johnson. We have successfully sued jails in Virginia Beach, the Northwestern Regional Jail Authority, and the Southwest Regional Jail Authority. PLN v. Stolle, HRDC v. SWRJA and PLN v. NRJA.

Wisconsin: In 2014, we successfully sued the Kenosha county jail. PLN v. Kenosha County.

Washington: Washington state is where prisoncrat pathology against HRDC runs the highest. In the 1990s, the following suits were filed and won against the state DOC for censoring PLN: Humanists of Washington v. Lehman, Mintken v. Walter, MacFarlane v. Spalding, Crofton v. Spalding. And then in 2007 we won PLN v. Lehman. We have successfully sued jails in Spokane and Lewis and Chelan counties. PLN v. Spokane County, PLN v. Chelan County and PLN v. Lewis County.

Public Records Litigation

The government thrives on secrecy and is loath to let the public know what happens in its prisons and jails. Over the past 30 years, HRDC has had extraordinary success litigating public records cases. PLN v. Washington DOC, where I sought the disciplinary records of prison doctors.
who killed and maimed their prisoner patients, resulted in the biggest payout in a state public records case in Washington history as of 2007 — $545,000 in fees and penalties. Likewise, HRDC’s 14-year-long legal battle with the federal BOP in PLN v. Lappin resulted in the biggest attorney fee payout in BOP history, of almost $500,000.

HRDC has successfully sued numerous federal agencies under the federal Freedom of Information Act for various records. This includes the BOP, ICE, Secret Service and Marshals Service.

We have successfully sued state prison systems for records in California, Mississippi, Illinois and Washington.

One of our most unique projects is suing private prison companies to subject them to state public records laws. To date, we have won these cases in Texas, New Mexico, Florida, Vermont and Tennessee. We have won rulings against GEO Group, CCA/CoreCivic and Corizon. We currently have public records lawsuits pending against GEO, Wellpath, Armor, MTC and Corizon.

**Wrongful Death Cases**

HRDC has recovered millions in damages for its clients who have been killed in prisons and jails across the United States. Due to our very limited resources, we have focused our efforts on cases where prisoners are killed or seriously injured. This has included failure to protect lawsuits against CCA/CoreCivic, where two of our clients were killed by rival gang members at a private prison in Arizona. We also sued the Washington DOC when our client died due to flesh-eating bacteria and CCA when our pregnant client was put in isolation after she went into labor and her baby died. We have won suicide cases against Community Education Centers and CCA in Tennessee and Pennsylvania. We are currently litigating a case against the Florida DOC and Corizon, in which prisoner Vincent Gaines was starved to death.

**Consumer Class Actions**

HRDC is currently litigating debit card cases against the companies Rapid Financial and NUMI and the banks that support them for taking money from prisoners and giving them fee laden debit cards against their will. We have litigated similar cases with success for the individual clients. HRDC is currently suing GTL and Securus in a national anti-trust class action suit over their practice of charging consumers $14.99 to accept a single collect call from a prisoner.

**Amicus Briefs**

Each year HRDC files or signs on to a number of amicus or “friend of the court” briefs in cases involving prisoner and arrestee and criminal defendant issues. Many of these cases are pending before the U.S. Supreme Court and state Supreme Courts as well as the state and federal appellate courts. HRDC is a renowned expert on prison and jail conditions and our views and expertise are frequently relied on by courts in these cases.

HRDC started its litigation project in 2009 and has been able to maintain a steady flow of cases around the country dedicated to fighting for prisoner rights and free speech and government transparency in particular. HRDC has a well-earned reputation of being a formidable courtroom adversary. We are grateful to the great lawyers who have been and are HRDC staff attorneys and to the many lawyers and firms that have represented HRDC and counseled with us over the years. We have been able to leverage our limited resources and get a lot more done this way.

It is also fair to say that but for the awesome support of the legal community across the U.S., PLN and HRDC would not exist today. If you are a prisoner reading this, there is a good chance that your ability to read this article was impacted by one of the cases above.

The sad and pathetic reality, though, is that the censorship of PLN and other HRDC publications continues unabated, and we need to fight hard and win every single case we bring just to maintain the status quo. Readers desiring more information about HRDC’s 30 years of litigation can find all the case documents and briefs, injunctions, consent decrees, etc., on both the PLN and HRDC websites.
From the Editor
by Paul Wright

Welcome to the 30th anniversary issue of Prison Legal News. As the cover story notes, this was slated to run in the May 2020 issue but that got pushed back due to the COVID-19 pandemic. Initially we had planned to skip it for this year given the pandemic itself but as COVID exposes the brutal nature of the American police state, we thought it more important than ever to mark our 30th anniversary. As noted in the ad in this issue of PLN, we will be doing a virtual event to celebrate our 30 years of publishing and advocacy on behalf of prisoners and their families around the country.

While we cannot do an in-person event this year as we had planned, a virtual event allows us to reach our supporters and lets more people know about the Human Rights Defense Center's history in ways that doing events tied to a city do not. Author and activist Victoria Law will be the master of ceremonies for the event and Yale Law Professor James Forman Jr. will be our keynote speaker. I will be speaking at the event as well. If you do not have Internet access to attend, please let friends and family who can know about it. Tickets are only $29.99 each, or $30 for 30 years!

When PLN started in 1990 I never thought that 30 years later it would still be publishing or that I would still be its editor. At many levels, things are far worse for prisoners than when we started publishing. Starting with the most obvious fact: the more than doubling of the prison and jail population from 1 million in 1990 to its current 2.5 million. Americans are surveilled, policed, caged and killed at much higher levels than ever before in American history. The recent Black Lives Matter protests indicate that perhaps Americans are getting tired of being slaughtered like animals by the police and caged in massive numbers. It remains to be seen if anything positive comes of the recent protests and uprisings and it is sad, but not unsurprising, that among the many calls for long overdue police reform, there is a deafening silence about the need and urgency for prison and jail reform. As we report in every issue of PLN, the police state killings don’t stop at the prison gate. If anything, they intensify and increase. And there is much that we don’t even know about.

Today HRDC is doing a lot more to help prisoners and their families. We are publishing two magazines, not just one. We publish and distribute books and we litigate and advocate on behalf of prisoners around the country. The biggest thing that has not changed between 1990 and today is the simplest: we need money to keep doing what we do.

There has been and is very little in the way of foundation funding for anything that smacks of improving conditions of confinement. We receive no government grants or funding except when we successfully sue the government. To keep the doors open and the computers running we continue to rely on subscriptions and advertising income, donations from our readers and wise use of limited resources on our part. If you are interested in criminal justice reform, no one gives you more bang for the buck than HRDC. We have a lean operation that is efficient and very cost effective for everything that we do.

If you can, please make a donation to support our work and let others know about us. We rely on individual donors like you, to keep everything going.

As readers noticed, for the past several months we were providing free subscriptions to PLN. Alas, the grant we received to pay for it has expired and we have not been able to find any other funders. I hope you will extend your subscription at the regular rates. We will save requests received after October 31 in the event donors wish to sponsor subscriptions. To ensure you receive a subscription, please subscribe at the regular rate.

To make it for 30 years, PLN has relied on the help and support of literally thousands of people: our writers, our volunteers, our employees, our advertisers, our board members, our donors and the dozens of lawyers that have represented PLN over the years to ensure that prisoners can actually receive the most censored publication in America. At every step of our existence, we would not be here if it were not for everyone pulling together to help. The most important people for any publication are its readers and subscribers. You are the ones who make it possible, and encourage us, to keep publishing. If you like PLN and find value in what we have to say, subscribe and encourage others to subscribe as well. No one else stands up for prisoners and their families like we do, as we have for the past 30 years.

Please encourage friends and family to attend our 30th anniversary event. Happy anniversary!

Fifth Circuit Reinstates Lawsuit Over Texas Jail Prisoner’s Death
by Matt Clarke

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

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

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

After denying it to police, Simpson admitted to a medic she was trying to kill herself. She was arrested for public intoxication and taken to the Young County Jail, where jailers only partially completed the book-in process before placing Simpson in a holding cell to “sleep it off” because they assumed she was drunk. Simpson’s husband called the jail three times, told jailers she had
been missing and was suicidal and asked them to get her help. They ignored him.

Hours later, Simpson was found half-naked and dead of “mixed-drug intoxication” on the floor of her holding cell. Her family filed a federal civil rights lawsuit against Young County and its sheriff’s department, alleging they deprived her of her civil rights.

The district court granted defendants’ motion for summary judgment and dismissed the case on two theories: Neither the jail’s “episodic acts or omissions” nor its “conditions of confinement” rendered it liable for Simpson’s death. The appeals court agreed with dismissal on the first theory but remanded the case for the district court to reconsider the plaintiffs’ other claims, ruling that they raised a question as to the possibility that the jail had created a de facto policy of not monitoring prisoners, this could have deprived Simpson of needed medical care.

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

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

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

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

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

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

Therefore, the court upheld the dismissal of the failure-to-train claim and reversed the dismissal of the failure-to-assess and failure-to-monitor claims and remanded the case for further proceedings. See: Sanchez v. Young County, 956 F.3d 785 (5th Cir. 2020).
Denied Medical Care During Pandemic, New Jersey Prisoner Treats Infected Wound With Bleach

by Dale Chappell

While the coronavirus runs rampant through the country’s prisons, medical treatment for even serious problems has taken a backseat, leaving prisoners to get creative and perform their own treatment. For one New Jersey prisoner, this meant cleaning his infected wound with bleach, his family says, making them concerned for his health.

The problem started with just a small scrape on his foot, probably caused by ill-fitting boots the prison forced him to wear, Patch.com reported on June 4, 2020. Maybe this wouldn’t be a problem for most people, but for this 36-year-old man housed at the Northern State Prison in Newark, a small cut on his foot could easily turn into a life-threatening dilemma: He’s a diabetic, and any wound to his feet puts him at risk for infection that could lead to amputation.

Soon, an ugly, open wound broke out and an infection went all the way to his knee. The prison gave him some antibiotic ointment and ibuprofen for pain, plus some oral antibiotics. This didn’t work, and he developed cellulitis and borderline septicemia, a systemic and life-threatening infection that is difficult to treat even in the hospital with IV antibiotics.

Finally, he was transferred to South Woods State Prison, where he received dialysis and was eventually eased off antibiotics. Things got better — until he was transferred to New Jersey State Prison in Trenton. That’s where his other leg swelled to the point it split open. Desperate, he cleaned his infected wound on May 28 with bleach, after a lack of medical attention at the prison.

Also desperate were his family members, who had pestered the New Jersey Department of Corrections (NJDOC) to do something for their loved one, Patch.com reports. “We are not in a Third World country here,” said his wife, Jessica Ambrose. “He’s supposed to have access to basic medical needs. This is neglect in the prison system.”

The NJDOC has blamed the COVID-19 pandemic for the lack of medical care. In a statement, a spokesperson for NJDOC said its health-care contractors “have suspended elective surgery and certain non-life-threatening treatments in light of the pandemic.”

The man was supposed to have an ultrasound to rule out a blood clot in his leg, “but that’s indefinitely postponed because of the coronavirus,” his wife said.

He also was denied early release under the governor’s executive order to release thousands of low-level prisoners to ease crowding in order to avoid exposure to COVID-19. The state approved his release residence in May, but days later the prison refused to release him, saying he was denied. So far, the state has released only a fraction of the approximately 3,000 eligible prisoners, according to the American Civil Liberties Union of New Jersey (ACLU).

And New Jersey had the worst fatality rate of any U.S. state prison system, the ACLU said in early June. Out of 14,800 prisoners, over 2,000 tested positive for COVID-19 and at least 45 have died. Of the NJDOC staff tested, 768 tested positive. [Editor’s note: As of October 8, 52 New Jersey prisoners had died, the eighth highest in the county but still the worst per capita fatality rate at 34 per 10,000 prisoners, according to data compiled by The Marshall Project.]

NJDOC said it has taken steps to reduce the risks by handing out face masks and by screening for fevers. A Patch.com reporter contacted the NJDOC on behalf of Ambrose’s husband and that night he was seen by a doctor. With outside help, the man finally received the help he needed, at least for a short time.

“On May 28, as Ambrose’s husband was disinfecting his wound with bleach inside his prison cell, a stirring rally to remember New Jersey inmates who died of the coronavirus took place in Trenton,” Patch.com reported. “More than 450 cars gathered from across the state at the Trenton War Memorial for a ‘Say Their Names funeral procession.’ Bearing photos of deceased loved ones, the vehicle cavalcade served as a grim reminder that social distancing is a near-impossible task when you’re trapped behind bars.”

Source: patch.com
ON APRIL 23, 2020, THE NINTH CIRCUIT COURT OF APPEALS REVERSED THE GRANT OF SUMMARY JUDGMENT TO DEFENDANTS IN A CIVIL RIGHTS ACTION ALLEGING THEY FAILED TO PROTECT A PRISONER FROM AN ATTACK FROM ANOTHER PRISONER.

Before the court was the appeal of Nevada prisoner Robert Wilk. He was attacked by prisoner Ysaquirle Nunley on February 11, 2014, at High Desert State Prison (HDSP). Nunley, on October 20, 2013, threatened to attack and kill Wilk, who immediately reported the threat.

HDSP’s units 7 and 8 were protective units that shared a common yard. Prisoners in the units were on different schedules to use the yard, but opportunities existed for prisoners of the two units to have contact. At the time of the threat, Wilk and Nunley were housed in Unit 7.

Wilk was placed in segregation after reporting the threat. On October 30 and again in November, he attended a classification meeting where Warden Dwight Neven, Associate Warden Jennifer Nash, and caseworker Cary Leavitt were either present or represented. Wilk was informed Nunley would be placed on his “enemy list” and told he was still in disciplinary segregation. Based on that, Wilk agreed to move to Unit 8. Nunley, however, had been returned to Unit 7 and was never placed on Wilk’s enemy list.

On the day of the attack, February 11, 2014, Nunley was released from his cell for a medical appointment. The defendants admitted he broke away from his unit. He then attacked Wilk with stones, gravel, and fists that resulted in Wilk sustaining a broken nose and damage to his eyes.

Leavitt concede being at the classification meetings with Wilk, but Nash and Neven denied they were there. Leavitt admitted he made “a clerical mistake regarding assigning Nunley to the enemy list,” but claimed it was not his job to do so. The district court found Nash and Neven had no subjective knowledge of the risk Nunley posed to Wilk. It further found Wilk failed to show “Leavitt was aware of an excessive or intolerable risk to Wilk’s health or safety.”

On appeal, the Ninth Circuit held that a jury could find Leavitt was subjectively aware of the substantial risk of harm to Wilk. It noted nothing in the circumstances had changed when Wilk’s was placed in Unit 8, and it was conceded that Units 7 and 8 allowed limited contact.

The court said Neven and Nash had knowledge of the risk because they were either present or represented at the classification meetings at issue. It further found a jury could conclude Neven was personally aware of the risk Nunley posed because of his role in supervising the enemy list revision process. It also found a jury could determine Nash was partially responsible for the failure to update Wilk’s enemy list because she acted immediately after the attack to update the list. Each of the defendants also misled Wilk by telling him Nunley had not been moved to Unit 7.

The Ninth Circuit said “[a]ny reasonable prison official in defendants’ position would know that the actions defendants took, or failed to take, violated the Eighth Amendment.” The district court’s order was reversed. On remand, the district court was ordered to allow Wilk to have another opportunity to obtain discovery materials such as his institutional file and records of housing classification meetings, which the defendants “resisted turning over.” Appointment of counsel was encouraged to assist in that process. See: Wilk v. Neven, 956 F.3d 1143 (9th Cir. 2020).
In March 2020, Florida-based GEO Group formally asked the government of Delaware County, Pennsylvania, to terminate a five-year, $264 million contract, which it signed in 2018 to manage the county’s George W. Hill Correctional Facility (GWH). The firm’s request to be relieved of its obligations by year’s-end followed a February 2020 vote by the County Council to study assuming control of the 1,883-bed prison.

Since it was built in 1996 – by Wackenhut Corrections Corp., which became GEO Group in 2004 – GWH has been privately managed. Providing the first private prison in Pennsylvania, the firm bragged of saving taxpayers $30 million in construction costs while providing services on par with those in publicly operated prisons. Instead, problems and scandal have plagued GWH.

During a six-year stretch under GEO Group’s management from 2002 to 2008, 12 prisoners died, spawning a number of wrongful death lawsuits that claimed rampant understaffing had created a dangerous environment for prisoners and guards. In 2008, Community Education Centers (CEC) took over the GWH contract.

“CEC was OK,” said a guard who requested anonymity out of fear of losing his job if he spoke openly. “They didn’t want to pay overtime, so they flooded us with hires.”

But even as staffing levels improved at Hill Correctional under CEC’s stewardship, there were still problems. Nine prisoners committed suicide between 2009 and 2016, including the May 25, 2016 suicide of Janene Wallace, whose estate later reached a wrongful death lawsuit against GEO Group, which was finally closed in 2016 (See PLN, September 2017, p.58).

“The GEO Group is a bed of snakes,” said Berl Goff, a former supervisor at Walnut Grove, who said the firm “came in and promised the world: an unlimited budget, new uniforms, and a $1.50-an-hour raise for all the officers.”

“But as soon as they got there,” he added, “they started cutting corners. We got to the point where they were intentionally running us at 15 percent beneath the minimum staffing levels to maximize profit margins.”

Back in Pennsylvania, over a five-week stretch in the summer of 2019 – after GEO Group had resumed operational control – GWH suffered five major incidents: a prisoner’s suicide, a guard’s beating and hospitalization, the overdoses of two prisoners in the jail’s work release program and a “full blown riot” that was quelled only after a Community Emergency Response Team armed with pepper balls managed to subdue 26 prisoners. (See PLN, January 2020, p.14)

In September 2019, the County Council took a significant step in trying to right the ship by abolishing the two-member Board of Prisons Inspectors, which was created in the 19th century, and replacing it with a seven-member Jail Oversight Board. Then, in November 2019, GEO Group’s Hill Correctional superintendent, John A. Reilly, retired one day after a Philadelphia Inquirer report disclosed his use of racial slurs toward jail employees had been covered up and that he kept a $750,000 account secret from the County Council.

But still the prison’s problems continued to mount.

In mid-December 2019, a female prisoner was sexually assaulted after guards were instructed to put male and female prisoners together because of overcrowding.

On December 25, 2019 – just hours after Austin Mulhern, 45, hanged himself in a cell and died – five female prisoners overdosed on heroin that was allegedly smuggled in by one’s teenage son during a visit. Four of the prisoners recovered after treatment at a hospital, but prisoner Fatima Muse, 27, died.

“The GEO Group dropped the ball on what transpired that horrifying week,” agreed a GWH guard. “They follow some crazy corporate mathematical equation where a Sergeant is equivalent to six guards; Lieutenant to nine; and Captain to twelve. So, with each one and six officers, they believe they have the manpower of 33 — when actually they have nine — who they treat like garbage.”

In December 2019, the newly elected Delaware County Council’s Democratic majority signaled its desire to end privatization at GWH.

“I want to make it abundantly clear — we stand absolutely behind the idea that profiteering on the incarceration of individuals is not something that should be happening in Delaware County,” said Councilman Kevin Madden, who added that having “the only privately-run for-profit prison in the state of Pennsylvania” was an “ignominy” and that it “needs to end.”

But transitioning GWH to public operation carries a learning curve for a county government that has always relied upon private companies to run the prison.

“The first step is really to make sure that we understand the implications … and that we have thought through all the steps necessary to safely transition to a public-run model,” said Madden. “During that time of the transition, it doesn’t take us off the hook of overseeing GEO and that doesn’t mean we can’t reform the way in which the prison is run.”

Fortunately for the county, it owns GWH, so GEO Group can’t do what it did when Colorado Gov. Jared Polis (D) expressed an interest in late 2019 in closing the Cheyenne Mountain Re-Entry Center that GEO Group both owns and runs. The firm responded with a January 7, 2020, statement giving the state Department of Corrections (DOC) just 60 days to remove its 600 prisoners from the facility.

“I knew that this certainly was going to
be a possibility,” admitted Colorado DOC Executive Director Dean Williams, who added that he thought his agency and GEO Group were “on track” and “would continue to work this situation out.”

As for what prompted the ultimatum from GEO Group, Williams said, “You’d have to ask them, but I’m sure it was a corporate decision. That’s the deal that you make with a private prison corporation. You know if it starts to go south, you really don’t have long-term leverage to keep a prison going that they operate.”

With the war on illegal immigration peaking under the Trump administration, GEO Group could offer its Colorado cells to its biggest customer: the U.S. government. That revenue stream had been shut off by an Obama administration order to phase out private prisons. But when President Trump took office in early 2017, one of then-Attorney General Jeff Session’s first moves was to rescind the Obama order. GEO Group, which donated $170,000 to a Trump political action committee in 2016 and $250,000 to his inaugural bash, quickly signed over $774 million in contracts in 2017 to provide detention cells for federal Immigration and Customs Enforcement (ICE).

However, when GEO Group manages a prison it doesn’t own, like GWH, it has to take a different approach than it did with Colorado. Losing a contract worth $52.8 million annually, the firm has given itself a nine-month withdrawal window also to smooth operational transition of GWH to Delaware County.

“One of the things that’s going to happen to deprivatize the prison is to be able to move all of those employees back to the county payroll,” admitted County Councilwoman Christine Reuther, who added that this will also provide the employees with more generous benefits while at the same time improving conditions for prisoners.

“People are dying in that prison,” she said. “It’s not just an issue of deprivatizing the prison, there’s lives at stake right now.”

Sources: yc.com, The Philadelphia Inquirer, delcotimes.com, bizjournals.com

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ATTORNEY ADVERTISING
Coronavirus: A Second Wave of Infection
by Michael D. Cohen, M.D.

It may be useful to know some more about the words epidemiologists use to describe disease statistics. Incidence refers to the number of new infections. Prevalence or “active cases” refers to the number currently infected. Infection Rate refers to the number of cases per unit of population (for example, per million population). Other measures of prevalence may also be used as indicators of the severity of the epidemic in a city or state or correctional system, such as: number currently hospitalized; number newly hospitalized; number in ICU; number on ventilator; number died. Similarly, infection rate per 1,000 persons incarcerated in a state system may be used to compare the severity of the epidemic among systems with widely differing total numbers of people imprisoned.

Infection rates are increasing rapidly throughout the U.S. At press time, the Midwest had the most rapid increase in rate of infection (steepest upward angle of the rate graph) and a higher rate of infection than ever before. In the Northeast, the current rate as of October 13 was about 95 per million population. In the Midwest, the rate was about 240 per million population. By the time you read this article, the rates will most likely be substantially higher in all regions.

Infection rates are rising because people are not using the protective measures we know help prevent infection: avoid large groups; avoid indoor groups; people who are in contact with others should be wearing face masks; frequent hand washing and surface disinfection; and effective ventilation of indoor spaces. Additionally, testing, isolation of cases and quarantine of case contacts are still not being carried out as effectively as is necessary to control the epidemic.

The increases are driven in part by reopening of schools, colleges and universities; indoor dining at bars and restaurants, and cooler weather driving people indoors for family and group activities.

Midwestern states have been surprised by the extent of rural spread of the disease. Local hospitals have been overwhelmed and patients transferred to urban hospitals for care.

Rural America is where people have resisted safety measures the most, so it is not surprising at all that the epidemic is taking off in those regions now. CDC monitoring suggests that many cases are spreading within households. However, indoor and outdoor large group gatherings are still causing super-spreader events in which dozens of people are infected and spread the disease to their families, friends and co-workers.

Trump’s Treatment

Trump was found to be infected with COVID-19 and had symptoms including fever and shortness of breath. He was treated with oxygen and sent to Walter Reed Army Hospital for treatment. He was given several medicines, including dexamethasone; Remdesivir; and manufactured antibodies. All three were given early in his infection. His ability to produce his own antibodies had been suppressed by his use of a steroid and manufactured antibodies may have suppressed his own immune response to the infection. His ability to produce his own antibodies may not have developed sufficiently to protect him from re-infection.

As the manufactured antibodies he received as treatment disappear over the following 30 to 60 days, he may become susceptible to the virus.
to COVID again. This is the risk he now has from taking unapproved medicines and taking medicines for reasons other than those that were proven and approved.

Remdesivir was initially approved for use with COVID after a study showed fewer deaths among ICU patients treated with it. Interestingly, a larger, more recent international study has shown no effect on death from COVID among those treated with Remdesivir.

**Rapid Tests Have Less Accurate Results**

Rapid diagnostic tests can give results in as little as 15 minutes are being used at the White House, nursing homes, and colleges and universities. Rapid tests look for molecules that form part of the outer coat of the virus. These tests show a positive result when sufficient numbers of these molecules are present to cause a reaction with the test. However, early in the course of the infection, when viruses have not yet multiplied very much, there may be a negative result. In that case, the result is a false negative. The person has a negative test, but he is actually already infected and may be infectious to others.

Trump won't say when his first rapid test was positive (probably because it was before the first presidential candidate debate). Thereafter, the White House medical staff did a much more accurate (and slower) test for coronavirus RNA that was reported to be positive two days after the debate.

**Long Term Damage from COVID-19**

Evidence continues to accumulate that many patients who have recovered from acute COVID infection have suffered long-term organ damage. Recently an elite college athlete was found to have suffered heart muscle damage from COVID infection, likely ending his promising career. A recent *New York Times* article reported on brain damage that has had lasting effects on memory and other higher functions. Loss of smell and/or taste also may persist after recovery from the acute infection. Persistent lung, liver and kidney damage have also occurred. Others have reported fatigue, "brain fog," irregular body temperature, rashes, and insomnia persisting after COVID. People who experienced prolonged ICU and ventilator treatment may have PTSD, depression and persistent anxiety, including nightmares, fear of being alone, and fear of going to sleep, for example.

It is still unknown how frequent such injuries are or whether they are permanent. Recovery may occur very slowly. Doctors working with post-COVID patients suggest patients don't try to resume normal activities right away; rather, increase activities slowly. These recommendations are similar to those given to people who have suffered a concussion: Too much activity can make symptoms worse and slow recovery.

Michael Cohen was the Medical Director for the New York state juvenile justice system for 20 years and previously provided medical care for incarcerated adults at the New York City Rikers Island jail and at Greene CF in Coxsackie, N.Y. For 10 years, he participated in a support group for people with diabetes at Great Meadow CF in Comstock, N.Y. With the group, he co-authored the Prisoner Diabetes Handbook published by Southern Poverty Law Center and distributed by Prison Legal News. Heal the sick. Raise the fallen. Free the prisoners.
**Former Sheriff Joe Arpaio Loses Another Arizona Republican Primary**

*by Matt Clarke*

The once self-styled “Toughest Sheriff in America” has lost a bid to reclaim the office of Maricopa County sheriff. He was defeated in the Arizona Republican primary on August 4, 2020.

The controversial Joe Arpaio earlier lost his office in the 2016 election cycle. He then tried for the U.S. Senate, but came in third in the 2018 Republican primary behind Martha McSally and Kelli Ward.

Arpaio, 88, was the sheriff in the county encompassing Phoenix, Arizona’s largest city, for 24 years. His focus was more on celebrity than equitable law enforcement. He was known for a disdain for civil rights—especially the civil rights of minorities.

He instituted attention-grabbing policies, such as erecting a tent city at the county’s jail to house prisoners in substandard, sweltering conditions while working in chain gangs and wearing pink-colored, jail-issued underwear.

Arpaio also instituted a policy of racially profiling Hispanics to enforce immigration laws. After he ignored a federal judge’s order to have his department stop racially profiling, Arpaio was convicted of criminal contempt.

Arpaio was an early and ardent Trump supporter and, in 2017, that paid off as President Trump issued his first presidential pardon—for the criminal contempt.

Arpaio used reality-star showmanship and high-profile crackdowns on undocumented workers with the press in attendance.

Despite outspending his primary opponent, Maricopa County Sheriff Jerry Sheridan, 15 to 1 and having nearly 100% name recognition, Arpaio was defeated in the August Republican primary by about 6,300 of the over 420,000 votes cast.

“They were tired of me and tired of my office,” said Arpaio, who said it would be his last election bid. “I guess I lost by 1 percent, but I’m still the longest-serving sheriff in the history of Maricopa County. Nobody is going to beat that one.”

Ironically, Sheridan, Arpaio’s former chief deputy who bested Arpaio in the 2016 primary and went on to win election, was convicted of civil contempt of court and referred by the federal judge for criminal contempt prosecution for the same reasons as Arpaio. However, the statute of limitations prevented federal prosecutors from charging Sheridan with criminal contempt of court.

Under Arpaio, the Maricopa County Sheriff’s Department ran up a $147 million bill for legal costs—over $6 million for each year he was in office—and failed to investigate over 400 sex crime complaints. Thus, his tenure was expensive and inefficient, among its many other faults.

Sources: fox10phoenix.com, theguardian.com

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**Eleventh Circuit Vacates COVID-19 Injunction Against Miami Jail**

*by David M. Reutter*

Just because prisoners get sick with COVID-19 in a jail too crowded to practice safe social distancing does not make jail officials liable because so long as they say they are doing “their best,” they can’t be guilty of “deliberate indifference” to the problem.

That was the June 15, 2020, finding by the Eleventh Circuit U.S. Court of Appeals, which vacated a preliminary injunction requiring officials at Miami’s Metro West Detention Center (Metro West), the largest jail in Florida and one of three jails run by Miami-Dade Corrections and Rehabilitation Department (MDCRD), to employ numerous safety requirements to prevent the spread of COVID-19.

*PLN* previously reported on a U.S. District Court’s grant of the preliminary injunction, as well as the Eleventh Circuit’s May 5, 2020, stay of that order. [See *PLN*, June 2020, page 28]. That stay was set to expire June 15, 2020, the same day the Eleventh Circuit issued its ruling.

On June 16, 2020, MDCRD reported that 592 prisoners and 123 employees at Metro West had tested positive for COVID-19. One inmate had died and 30 remained in medical isolation, while 82 employees had returned to work.

That was four days after the lead plaintiff in the original suit, 43-year-old quadriplegic Anthony Swain, was released with an ankle monitor from Metro West to his parents’ home. He had tested positive for the disease on May 10, 2020, after complaining of shortness of breath for several weeks. The last $15,000 payment for his $650,000 release bond was donated by former NFL quarterback and racial justice advocate Colin Kaepernick.

Swain and six other Metro West detainees filed their class action on April 5, 2020. The federal district court for the Southern District of Florida on April 29, 2020, issued a preliminary injunction that required Metro West to provide detainees with masks, an individual supply of soap, enforce 6 feet of spacing between detainees, test all detainees for COVID-19, waive medical co-pays and grievance charges, and provide disinfecting supplies. It also imposed stringent reporting requirements.

On appeal, the Eleventh Circuit vacated the injunction, saying the prisoners in the class had failed to show that defendants at MDCRD were “deliberately indifferent” to their COVID-19 risk. The district court had affirmatively answered that question based on two considerations: “(1) the increase in...”
Nebraska Department of Correctional Services (NDCS) was forced to declare an overcrowding emergency on July 1, 2020. Capacity in the state’s 10 prisons was at 151%, exceeding the 2015 mandated 140% threshold.

In an effort to help reduce population, parole board chairwoman Roslyn Cotton said that the parole board was accelerating the number of reviews being held. She said that from January to May the board conducted 2,700 hearings and released 1,546 parolees.

NDCS Director Scott Frakes assured the public he would not jeopardize their safety. He said they did not plan on releasing any prisoner who did not meet parole requirements. “There’s been speculation that this certification will result in the automatic release of numerous inmates in an effort to reduce the number of people housed,” he said. “This is not correct.”

Frakes said Nebraska could not reduce overall population by selecting from a large pool of low-level, non-violent prisoners whose primary offense was a drug charge for release. Only 14% of the 821 parole-eligible prisoners in the state had drugs as a primary offense. All others had at some primary offense precluding them from the desired category.

Frakes believes the only possible answer for the state is to build a new prison. “Nebraska needs a new prison,” he said. “In order to give taxpayers the best value for their dollars, we need to build for the future.”

Petto said building new prisons just perpetuated the problem. “Again and again what we seem to hear is no expectations that this will reduce overcrowding and that the only solution is building a quarter of a million dollars’ worth of a prison,” he said.

“Trying to build new prisons to keep up with the rising prison population has not worked at any time in the last 40 years.”

As PLN has observed, building prisons to deal with crime is like building cemeteries to deal with a pandemic.

The ACLU said Nebraska needed to address overcrowding in a new way. Petto suggested starting by addressing Nebraska’s mandatory minimum sentencing scheme and creating stronger, more functional reentry program as a means of lowering capacity.

Source: krvn.com
Fourth Circuit: Opening of Detainee’s Legal Mail Outside His Presence Violates Right to Free Speech

by David M. Reutter

That a guard told Haze, “Sue me,” when he complained about showing the defendants were not merely negligent. The court further said “the infringement of Haze’s First Amendment rights itself constitutes an injury.” Finally, it found the right at issue was clearly established, precluding a qualified immunity defense.

The court, however, found qualified immunity applied to the Fourth Amendment claim because neither it nor the United States Supreme Court have considered the question of whether an incarcerated person has a reasonable expectation of privacy in their legal mail. Finally, as Haze failed to raise arguments related to the access to the courts and effective assistance of counsel claims in his informal brief, those issues were forfeited on appeal. The district court’s order was reversed in part and affirmed in part. See: Haze v. Harrison, 961 F.3d. 654 (4th Cir. 2020).

Federal Judge Rules Prisoners Eligible for $1,200 Stimulus Checks; Application Deadline Extended to Nov. 21 for Online Filing

by Derek Gilna

In a clear victory for prisoners and their families, a federal judge recently ordered the U.S. Treasury Department and the Internal Revenue Service (IRS) to make federal stimulus payments previously denied to people in prison and jail.

The same court has also laid out detailed guidelines for the government to follow to ensure that the incarcerated are not misinformed about their right to the stimulus.

It also forced the IRS to extend its paper-filing deadline to receive stimulus requests, since most people behind bars don’t have access to a computer and can’t take advantage of a later deadline previously granted to online filers. Prisoners and detainees originally had until October 15, 2020 to file by mail but that was extended until October 30. The deadline to file online, using the portal at irs.gov, is November 21.

In her original September 24 order, Judge Phyllis J. Hamilton of the 9th Circuit U.S. District Court certified a nationwide class of incarcerated individuals denied federal stimulus payments and granted them a preliminary injunction against the IRS and Treasury, stopping the agencies from blocking such payments and expediting previously denied payments.

Although many federal and state statutes bar current prisoners from enjoying certain government benefits, Judge Hamilton noted that the Coronavirus Aid, Relief, and Economic Security (CARES) Act – passed by Congress in April 2020 as the COVID-19 pandemic derailed the global economy – does not. As a result, she said, the IRS administrative action blocking the payments did not comply with the requirements of the Administrative Procedure Act by giving the public or affected individuals proper “notice and comment,” thereby rendering the agency action unenforceable.

The court then granted an injunction against the IRS, noting that the plaintiff members of the class were likely to prevail at trial.

The CARES Act provides one-time payments of $1,200 to individuals, $2,400 to married couples filing jointly and $500 for each child under age 17 at the end of 2019. The payments are technically a credit to filers’ 2020 income tax liability. Eligible filers include individuals earning less than $75,000 annually, or $112,500 for heads of households or $150,000 for married couples filing jointly.

The IRS sent payments first to people who had filed an income tax return for 2018 or 2019. By April 10, 2020, nearly 85,000 payments totaling about $100 million had
been made to incarcerated people, according to the Treasury Inspector General for Tax Administration (TIGTA).

Then, on May 6, 2020, the IRS announced that the payments to incarcerated people had been made in error and directed those who had received them to pay them back. The agency also advised officials in prisons and jails to intercept and return any payments sent to prisoners and detainees. That’s when prisoners began signing on to online systems for them to do so. The deadline was later extended to November 21, but for online filers only. However, most prisoners lack computer access, throwing them under the earlier deadline to make a paper filing. In a follow-up ruling in early October, Judge Hamilton directed the IRS to extend that deadline another 15 days to October 30.

Now “we need to get the word out,” said Nina Olson, the executive director of the Center for Taxpayer Rights. “It is very important people not hesitate to file.”

The judge’s latest ruling ordered the IRS immediately to instruct employees staffing the agency’s hotline to cease telling the incarcerated they were ineligible for a stimulus payment. She also told the IRS to retract its instruction to intercept and return payments with a new letter to officials at prisons and jails — and the letter must affirmatively state that incarcerated people are permitted to file for and receive stimulus payments.

These extra steps the judge found necessary to enforce her original order directing the IRS by October 24, 2020, to “consider advance refund payments to those who are entitled to such payment based on information available in the IRS’s records (i.e., 2018 or 2019 tax returns), but from whom benefits have thus far been withheld, intercepted, or returned on the sole basis of their incarcerated status.”

That order set the same deadline for the agency to revive claims filed either through the “non-filer” online portal or otherwise that were previously denied solely on the basis of the claimant’s incarcerated status. The judge gave the agency until November 8, 2020, to “file a declaration confirming these steps have been implemented, including data regarding the number and amount of benefits that have been disbursed.”

The national prisoner class is represented by the San Francisco law firm of Leff-Cabraser. For specific information on how prisoners can get their stimulus check, visit this website: https://www.leffcabraser.com/cares-act-relief/

CALIFORNIA PRISON GUARDS KEEP JOBS AFTER AIDING ATTACKS ON SEX OFFENDERS

by Jayson Hawkins

A series of assaults by a group of prisoners on convicted sex offenders was carried out with the consent and assistance of 10 officers at an unnamed California correctional facility. After an investigation, the prison’s warden determined that the actions of six of the guards involved were egregious enough for them to be fired, yet only four were let go before attorneys for the California Department of Corrections and Rehabilitation (CDCR) halted the proceedings.

The attorneys argued that the allegations against the officers were substantiated only by the testimony of prisoners and that evidence of that sort would not hold up before the State Personnel Board.

A parallel investigation by the state Office of the Inspector General (OIG), which is tasked with overseeing the conduct of corrections department employees, concluded on January 10, 2020 that the evidence in this particular case was adequate to pursue the termination of the six guards identified by the warden. Inspector General Roy Wesley, however, expressed concern that it might set a dangerous precedent when it came to firing officers based solely on the word of prisoners.

Dana Simas, a spokesperson for CDCR, disagreed with the assertion that the department was dismissive of prisoner testimony: “We take all allegations of staff misconduct very seriously and are committed to providing thorough and fair investigations.”

The OIG’s report determined that assaults had taken place over several months in 2017 and were enabled by the guards opening cell doors to give a group of prisoners access to the sex offenders. Those convicted of sex crimes are often housed separately for their protection.

The administration was made aware of the employees’ role in the assaults when one of the prisoners perpetrating the violence stepped forward. For reasons that are unclear, he had grown concerned that, according to the report, “other inmates would attack him, and he knew there was a variety of weapons in the housing unit.”

The prisoner backed up his statement by revealing where the weapons were hidden in a wall cavity for plumbing pipes. Only guards had the keys to gain access to that area, and four additional prisoners verified that the weapons stashed there had been used in the assaults.

The OIG agreed with the warden’s assessment that six of the officers involved should have been fired. Two were terminated due to unrelated cases, one resigned because of an unrelated case, and another resigned rather than be let go due to a role in the prisoner attacks.

“The department thoroughly weighed all of the evidence in the case against the two remaining officers before the decision to not sustain misconduct allegations was made,” said Simas.

The OIG pointed out that, in the past, judges had only thrown out cases that hinged on prisoner testimony if those prisoners had specific credibility issues.

Source: sacbee.com

TEXAS: PRISON AIR CONDITIONING NEEDS REVISITING

by Ed Lyon

In 1855, young General Philip H. Sheridan was a second lieutenant at Fort Clark, located in present-day Kinney County, Texas. When someone asked him how he liked the state, he replied “If I owned Texas and Hell, I would rent out Texas and live in Hell.”

There are, without a doubt, many tens of thousands of former and current Texas prisoners who would gladly room with the General in his preferred lodgings after spending one summer in a typical Texas prison.

Texas currently operates 102 prisons across a state covering more land than some European countries. It is smack in the geographic center of the traditionally hottest states in the country from California on the West coast to Georgia and the Carolinas in the East. Some of the commonalities these states share is a lack of air conditioning in their prisons, excessive summer heat and, from Texas to points east, those states are known as the Bible Belt.

One would think that a state with such a reference would practice forgiveness, love and compassion. Texas seems to be mired firmly in the Old Testament’s “eye for an eye and tooth for a tooth,” strict retributive doctrine where penology is concerned. Year after year, blisteringly hot summer after blisteringly hot summer, Texas prisoners suffer and die in red brick and concrete behemoths. They are actually lucky compared to prisoners living in tin buildings and dorms where temperatures have been known to approach 150 degrees at times, a full 15 degrees hotter than those recorded at Palestine, Texas’ Coffield Unit in 1998.

Some lawsuits challenging the lack of air conditioning in the hellishly hot Bible Belt states have succeeded, only to be struck down on appeal. The first of these suits to win and survive on appeal was the
one brought by attorney Jeff Edwards and the Texas Civil Rights Project on behalf of prisoners at the Wallace Pack Unit. It was the first case where highly educated, credentialed and experienced experts testified to the adverse effects of excessive heat on people and the ineffectual measures taken to mitigate it by prisoncrats presented an unshakable, irreversible platform to support a judgment that even the ultraconservative U.S. Fifth Circuit Court of Appeals affirmed on review. See: Yates v. Collier, 868 F.3d 354 (5th Cir. 2017).

Among the many problems excessive heat aggravates are medical conditions. At this time, a pandemic is spanning the globe, taking millions of lives and leaving many survivors with permanent lung and organ damage. Elderly persons are at an elevated risk of contracting the COVID-19 virus. When COVID-19 was declared a national emergency in March, the Texas Department of Criminal Justice’s (TDCJ) census was at 138,500 prisoners, 79,552 of whom were eligible for parole release. [PLN, July 2020, p. 23]

On average, 20 percent of U.S. prisoners are elderly. [PLN, November 2019, p. 54] By the numbers, this means that 27,700 of TDCJ’s total census are elderly and 15,910 of its parole-eligible population are elderly and at an elevated risk of COVID-19 contagion.

Yet, according to a July 16, 2020 census report by the Dallas Morning News, TDCJ still has 126,000 prisoners, down by a paltry 12,500. Age and parole status at release times were not stated. Release procedures have been streamlined and simplified during the pandemic with releasees leaving from their assigned units instead of being bused to the Huntsville Unit or a designated regional release center. More prisoners could easily and quickly be released without straining the system.

Treating COVID-19 — with so many patients requiring intensive medical care and ventilator treatment — in many cases is proving to be a budget buster, especially in prisons. This does not even take into account the after-care expenses for many COVID-19 survivors.

Air conditioning prison units would be cheap by any comparison. It cost Texas over $7 million to fight the Pack lawsuit when it would have cost only $4 million to air condition the prison and be done with it. [PLN, February 2019, p. 45]

Experts have pointed out that excessive heat makes it more difficult for a person to fend off a virus like COVID-19, exponentially more so to deal with COVID-19 once a person contracts it. Dr. Catherine Toms pointed out, “When you have an infection [like COVID-19], that also makes you vulnerable to heat-related illnesses.”

The best way to deal with the ongoing pandemic is releasing the many parole-eligible prisoners that TDCJ’s has barely made a dent in so far. Depopulating would allow for plenty of social distancing and more effective mitigation measures. Further, air conditioning units would assist in air circulation and cooler temperatures to help keep COVID-19 at bay and mitigate it in afflicted prisoners.

So far, Texas, its parole board and prison system chooses to do neither. If the predicted, even more virulent second wave of COVID-19 arrives in tandem with the flu season, Texas may well find many of its 126,000 prisoners sitting on death row. [Source: dallasnews.com, workers.com]

The Habeas Citebook (2nd edition) by Brandon Sample and Alissa Hull

The second edition of The Habeas Citebook is now available! Published by Prison Legal News, it is designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief.

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When Joshua Martz tested positive for COVID-19 this summer in a Montana jail, guards moved him and nine other inmates with the disease into a pod so cramped that some slept on mattresses on the floor.

Martz, 44, said he suffered through symptoms that included achy joints, a sore throat, fever and an unbearable headache. Jail officials largely avoided interacting with the COVID patients other than by handing out over-the-counter painkillers and cough syrup, he said. Inmates sanitized their hands with a spray bottle containing a blue liquid that Martz suspected was also used to mop the floors. A shivering inmate was denied a request for an extra blanket, so Martz gave him his own.

“None of us expected to be treated like we were in a hospital, like we’re a paying customer. That’s just not how it’s going to be,” said Martz, who has since been released on bail while his case is pending in court. “But we also thought we should have been treated with respect.”

The overcrowded Cascade County Detention Center in Great Falls, where Martz was held, is one of three Montana jails experiencing COVID outbreaks. In the Great Falls jail alone, 140 cases have been confirmed among inmates and guards since spring, with 60 active cases as of mid-September.

By contrast, the Montana state prison system has the second-lowest infection rate in the nation, according to the COVID Prison Project. No confirmed coronavirus cases have been reported at the men’s prison out of 595 inmates tested. The women’s prison had just one confirmed case out of 305 inmates tested, according to Montana Department of Corrections data.

One reason for the high COVID count in jails and the low count in prisons is that Montana for months halted “county intakes,” or the transfer of people from county jails to the state prison system after conviction. Sheriffs in charge of the county jails blame their outbreaks on overcrowding partly caused by that state policy.

Restricting transfers into state prisons is a practice that’s also been instituted elsewhere in the U.S. as a measure to prevent the spread of the coronavirus. California, Texas and New Jersey are among the states that suspended inmate intakes from county jails in the spring.

But it’s also shifted the problem. Space was already a rare commodity in these local jails, and some sheriffs see the halting of transfers as giving the prisons room to improve the health and safety of their inmates at the expense of those in jail, who often haven’t been convicted.

The Cascade County jail was built to hold a maximum of 372 inmates, but the population has regularly exceeded that since the pandemic began, including dozens of Montana Department of Corrections inmates awaiting transfer.

“I’m getting criticized from various judges and citizens saying, ‘Why aren’t you quarantining everybody appropriately and why aren’t you social-distancing them?’” Cascade County Sheriff Jesse Slaughter said. “The truth is, if I didn’t have 40 DOC inmates in my facility I could better do that.”

Unlike convicted offenders in state prisons, most jail inmates are only accused of a crime. They include a disproportionately high number of poor people who cannot afford to post bail to secure their release before trial or the resolution of their cases. If they do post bail or are released after spending time in jail with a COVID outbreak, they risk bringing the disease home with them.

Andrew Harris, a professor of criminology and justice studies at the University of Massachusetts Lowell, said he finds it troubling that more attention is not paid to the conditions that lead to COVID outbreaks in jails.

“Jails are part of our communities,” Harris said. “We have people who work in these jails who go back to their families every night, we have people who go in and out of these jails on very short notice, and we have to think about jail populations as community members first and foremost.”

Some states have tried other ways to ensure county inmates don’t bring COVID-19 into prisons. In Colorado, for example, officials lifted their suspension on county intakes and are transferring inmates first to a single prison in Canon City, Department of Corrections spokesperson Annie Skinner said. There, inmates are tested and quarantined in single cells for 14 days before being relocated to other state facilities.

Outbreaks are also occurring in county jails in states that never stopped transferring inmates to state prison. Several jails in Missouri have experienced significant outbreaks, with Greene County reporting in mid-August that 83 inmates and 29 staffers had tested positive. Missouri Department of Corrections spokesperson Karen Pojmann said the state never opted to stop transfers from county jails, likely because of a robust screening and quarantine procedure implemented early in the pandemic.

At least 1,590 inmates and 440 staff members have tested positive for COVID-19 in Missouri’s 22 prison facilities since March, according to state data. The COVID Prison Project ranks Missouri’s case rate 25th among the states — better than some states that halted inmate transfers, including Colorado, Texas and California.

The halting of transfers was a critical part of the response by officials in California, whose prisons have been among the hardest hit by COVID-19. An outbreak at San Quentin State Prison this summer helped spur Democratic Gov. Gavin Newsom to order the early release of 10,000 inmates from prisons statewide.

Stefano Bertozzi, dean emeritus at the University of California-Berkeley School of Public Health, visited San Quentin before the outbreak, and afterward helped pen an urgent memo outlining immediate actions needed to avert disaster. He recommended halting all intakes at the prison and slashing its population of 3,547 inmates in half. At that point, the California Department of Corrections and Rehabilitation was already more than two months into an intake freeze.

Overcrowding has long been an issue for criminal justice reform advocates. But for Bertozzi, the term “overcrowding” needs to be redefined in the context of COVID-19, with an emphasis on exposure risk. Three inmates sharing a cell designed for two is a bad way to live, he said, “especially for the guy who’s on the floor.” But if those cells...
November 2020

Some California county jails struggled. In July, inmates in Tulare County’s facility, where 22 cases had been reported, filed a class action suit against Sheriff Mike Boudreaux alleging he’d failed to provide face masks and other safeguards. U.S. District Court Judge Dale Drozd ruled in favor of the inmates in early September, directing Boudreaux to implement official policies requiring face coverings and social distancing.

Montana Department of Corrections Director Reginald Michael acknowledged to state lawmakers in August that halting county(intakes places a strain on counties but said it was “the right thing to do.”

This is one of the reasons why I think our prisons are not inundated with the virus spread,” he told the Law and Justice Interim Committee.

Committee Chairman Rep. Barry Usher, a Republican, gave Michael his endorsement: “Sounds like you guys are doing a good job keeping it controlled and out of our prison systems, and everybody in Montana appreciates that.”

Since then, Montana officials have transferred up to 25 inmates a week, but they continue to block transfers from the three counties with outbreaks: Cascade, Yellowstone and Big Horn.

Martz dreaded the thought of COVID-19 following him out of jail. So much so that, after his release in early September, he walked to an RV park, where his wife met him with a tent.

Despite having tested negative for the virus prior to his release, he self-quarantined for a week before going home. The hardest part, he said, was not being able to immediately hug his 5-year-old stepdaughter. It “sucked,” but it’s what he felt he had to do.

“If somebody’s grandpa or grandmother had gotten it because I was careless and they ended up dying because of it, I’d feel horrible,” said Martz, who has returned home. “That’d be a horrible thing to do.”

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November 2020
Denial of Recruitment of Counsel for Wisconsin Prisoner Affirmed by Seventh Circuit

by David M. Reutter

The Seventh Circuit Court of Appeals affirmed a district court’s order denying a prisoner’s motion for recruitment of counsel.

This was the second appeal brought by Wisconsin prisoner Randy McCaa. His civil rights action alleged that the defendants were deliberately indifferent to his threats to commit suicide or harm himself in other ways. The first appeal came after the district court granted the defendants’ motion for summary judgment.

The Seventh Circuit found the district court’s denial of McCaa’s fourth motion for recruitment failed to sufficiently address McCaa’s ability to present his case himself. It remanded for reconsideration of the recruitment of counsel, but it did not require such appointment. [See PLN, December 2018, p.56.]

On remand, the district court again denied McCaa’s motion to recruit counsel. In this second appeal, McCaa asserted the district refused to comply with the Seventh Circuit’s mandate. The Seventh Circuit disagreed.

It noted that on remand the district court “took a fresh look at the issue” and reached the same conclusion in “a detailed and persuasive opinion” that explained why the court believed “this was not an appropriate case for attempting recruitment of counsel.”

Two reasons were given for that conclusion. First, McCaa failed to renew his own efforts to recruit counsel. Second, McCaa’s ability to “send and receive correspondence, make copies, write motions and briefs, and perform legal research” suggested he could adequately litigate his case.

Because the record supported the second finding, the Seventh Circuit did not address the first. In the first appeal, the Seventh Circuit was greatly concerned with McCaa’s fifth-grade reading level. Since then, he earned a GED and reached a ninth-grade reading level.

The court further said a “decision to try to recruit counsel can and should be informed by the realities of recruiting counsel in the district.” The district court said “it is incredibly difficult to convince local lawyers to take” prisoner cases. The Seventh Circuit recognized it has an easier time at recruitment because appeals have “paper records and limited scope.” District court cases, on the other hand, “are often longer-term and more expensive commitments.” These factors said this put district courts “in the business of rationing a limited supply of free lawyer time.”

It was found that the district court’s detailed order considered all factors surrounding McCaa’s ability or inability to litigate his case. The Seventh Circuit found no abuse of discretion in the court’s finding that recruitment of counsel was not appropriate in McCaa’s case. It is well settled that there is no right to court-appointed counsel in federal civil litigation. See: McCaa v. Hamilton, 959 F.3d 842 (7th Cir. 2020).

DOJ Finds Frequent Use of Excessive Force in Alabama Prisons

by David M. Reutter

The U.S. Department of Justice (DOJ) issued a report that found the Alabama Department of Corrections (ADOC) violates prisoners’ Eighth Amendment rights by frequently using excessive force. The report found overcrowding and understaffing are major contributors to the improper use of force.

The DOJ’s July 23, 2020, report is the second one it has issued that found systematic constitutional violations exist in ADOC prisons. In April 2019, the DOJ issued notice that it had reason to believe that ADOC violates prisoners’ Eighth Amendment rights by “failing to protect them from prisoner-on-prisoner violence and prisoner-on-prisoner sexual abuse, and by failing to provide safe and sanitary conditions.” That report found the “serious deficiencies in staffing and supervision, and overcrowding, contribute to and exacerbate these constitutional violations.” [See PLN, September 2019, p. 44.]

DOJ’s latest investigation was extensive. It interviewed 55 staff members and 270 prisoners during on-site visits at four prisons, conducted over 800 telephone interviews with prisoners and family members, and received and reviewed over 400 letters from prisoners. It also received hundreds of emails from prisoners and family members.

ADOC houses about 16,600 prisoners at 13 prisons. The report “identified frequent uses of excessive force in 12 of the 13 Alabama prisons” DOJ reviewed.

As it reported in the April 2019 report, DOJ found “severe overcrowding and understaffing present in Alabama’s contrive the patterns or practices of use of excessive force.” The overcrowding “increases tensions and escalates episodes of violence between prisoners’ which lead to uses of force.” Understaffing prevents guards from “us[ing] a show of force and command[ing] a presence to discourage fighting among prisoners or to quickly end fighting through sheer force of their numbers.”
The report detailed 10 incidents since 2017 where guards used excessive force on prisoners who were either restrained or compliant. In each case, the prisoner suffered severe injuries. ADOC records showed that only in one case were the guards prosecuted and in another a sergeant was terminated. It was unclear whether any action was taken in the other cases, even where it was concluded by ADOC that the use of force was excessive or unnecessary.

The report detailed five cases of guards unlawfully using force as punishment or retribution.

Two examples of guards inappropriately using chemical spray were detailed. The DOJ noted the number of examples it detailed was not indicative of the depth of the problem or number of cases. It was merely trying to detail the egregious use of excessive force.

The investigators further found that the ADOC lacks accountability in reviewing uses of force. “While ADOC’s use of force regulation is relatively robust, it is not effectively implemented or consistently enforced by correctional supervisors,” the report stated. “It is often ignored by correctional officers.”

All too often, a use-of-force investigation is handled on the institution’s level, which limits any action taken to administrative sanctions or discipline rather than review by ADOC’s Intelligence and Intelligence & Division.

Guards often fail to report or accurately document the use of force. Some instances were only uncovered after reviewing video. “We also found evidence that following a use of force, officers sometimes placed prisoners in segregation for extended periods, so that any injuries can heal unobserved and undocumented,” the report stated. It also found the Intelligence & Division did not open a use of force investigation when a case was referred to it by a warden.

The DOJ found “ADOC rarely suspends or dismisses correctional officers for uses of excessive force where such action would be warranted.” Over a two-year period, “ADOC considered suspending or dismissing only one employee for excessive force.”

The DOJ further determined that use of force investigations are inadequate. It found Intelligence & Division closed a significant number of cases early, it sometimes takes few steps to interview potential witnesses as part of its investigation, and when it conducts an investigation, there is often minimal documentation. DOJ found Intelligence & Division’s review standard problematic. Its reviews for “potential criminal liability and requires proof beyond a reasonable doubt in order to refer a use of excessive force for criminal prosecution.” That standard “limits the number of uses of force that are reviewed by outside prosecutors.”

The DOJ said that since its April 2019 notice of unconstitutional conditions within the ADOC, overcrowding has actually increased. Staffing levels are below 50% and some prisons are well below that number. ADOC needs to hire about 2,000 guards to adequately staff its men’s prisons, the DOJ said.

The report outlined remedial measures required to meet the state’s constitutional obligations, and said a lawsuit may be filed if the deficiencies were not cured. See: Investigation of Alabama’s State Prison’s for Men, U.S. Department of Justice. Additional source: nytimes.com

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Third Circuit: District Court Erred in Ruling Against Pennsylvania Prisoner’s Civil Rights Complaint

by David M. Reutter

The Third Circuit Court of Appeals held on April 27, 2020 that a district court erred when ruling against a Pennsylvania prisoner’s civil rights complaint and allowed the case to proceed.

Prisoner Casey Dooley, pro se, filed a civil rights action in state court that the defendants removed to federal court. His complaint alleged an Eighth Amendment violation resulting from the Pennsylvania Department of Corrections’ (PDOC) refusal to assign him the mental health classification associated with the greatest mental health resources.

Dooley argued that because the jury found him guilty but mentally ill (GBMI), he should be designated as a D Stability Code under PDOC’s regulations. Under that regulation, prisoners who have been found GBMI are to be assigned the D Stability Code. During the grievance process, PDOC officials denied relief because the trial court documents allegedly no longer identified him as GMBI. They argued the judge determined after an evaluation that Dooley was not GMBI. Dooley countered that the sentencing court noted he “needs some psychiatric assistance.”

In his complaint, Dooley alleged the failure to designate him as a D Stability Code caused him to “suffer” agonizing mental health pain and trauma and serious depression, lack of sleep, paranoia throughout the day, nightmares, and physical abuse because of his mental illness. The district court dismissed the complaint for failure to state a cause of action and held the action frivolous, counting as a strike under Section 1915.

The Third Circuit agreed that Dooley’s complaint, as pleaded, failed to state a cause of action. It found that he failed to “specifically allege personal involvement by any of the defendants.” Yet, a complaint is “not automatically frivolous . . . because it fails to state a claim.”

The court found Dooley “advanced a valid legal theory, particularly given our liberal pro se pleading standards.” If he can plead that the defendants “were actually aware or knew of a substantial risk of serious harm” in failing to designate as a D Stability Code or failed to take action to treat his serious medical need, a claim could be stated.

The Third Circuit noted that it has previously held that “outright refusal to grant the leave without any justifying reason [i.e., inequity or futility] . . . is not an exercise of discretion; it is merely an abuse of discretion.” It found an amendment would not have been clearly futile and leave to amend should have been granted.

The court turned to the strike question. It noted that 28 U.S.C. § 1915(g) prohibits a prisoner who has on three or more occasions brought an action or appeal in federal court that was dismissed as “frivolous, malicious, or fails to state a claim” from proceeding informa pauperis unless the prisoner is under imminent danger of serious physical injury. Such dismissals are deemed strikes.

The Third Circuit held that the designation of a dismissal counting a strike is for a future court, not the dismissing court, to make. The issue was not ripe for adjudication. As such, the district court lacked determination to declare the dismissal as a strike.

The district court’s order was vacated and the matter remanded for further proceedings. See: Dooley v. Wetzel, 957 F.3d 366 (3d Cir. 2020).

Two-Thirds of Nevada Prisoners Confined in Arizona Private Prison Test Positive for COVID-19

by Mark Wilson

We said since day one, prisons, especially private prisons shielded from transparency and oversight, are a hot spot for COVID-19 transmission.

That’s what the American Civil Liberties Union (ACLU) of Nevada said in a July 2020 statement criticizing the “outrageous and disturbing” infection of 69.7 percent of Nevada prisoners confined within an Arizona prison operated by Tennessee-based CoreCivic, one of the largest private prison firms in the country.

The novel coronavirus that causes the disease ravaged Arizona like a wildfire in the summer of 2020, with one in five Arizonans testing positive. On a single day, July 18, 2020, the state reported 147 new deaths to COVID-19, versus just nine deaths in Nevada the same day. Arizona has no statewide mask mandate like Nevada’s to combat the pandemic.

Thanks, in part, to a comprehensive testing initiative, just 18 (less than 0.15%) of Nevada’s 12,000-plus state prisoners, as well as 54 guards, had tested positive for COVID-19 by July 2020. But a group of 99 prisoners that the Nevada Department of Corrections (NOOC) sent to CoreCivic’s 1,926-bed Saguaro Correctional Center, in Eloy, Arizona, was not so lucky.

As of July 16, 2020, four CoreCivic staff members and 69 of the Nevada prisoners had tested positive at the facility, which houses primarily Hawaiian prisoners. The outbreak among Nevada prisoners was first reported in Hawaiian media and later confirmed by NDOC officials on July 18, 2020.

“At the time of testing, none of the offenders exhibited any symptoms of COVID-19 and they currently remain asymptomatic,” said Dr. Michael Minev, NDOC’s medical director, who also said that no one in the group had required hospitalization.

He added that the infected Nevada prisoners “are housed together in the same unit, with offenders who tested positive in separate cells than those who tested negative.”

“Nevada offenders do not have any contact with offenders from other states,” he concluded.

Hawaiian corrections officials beg to differ. Quoting Hawaii Department of Public Safety spokeswoman Toni Schwartz, the Honolulu Star-Advertiser reported that...
28 Hawaiian prisoners may have had contact with the infected Nevada prisoners from a group of 80 Hawaiian prisoners in quarantine at Saguaro.

NDOC officials promised that the infected prisoners would be retested by Saguaro staff every 21 days until all test negative for the virus.

“They will remain under medical observation twice daily,” said Minev.

As of August 11, 2020, just 13 of the original 69 infected prisoners still tested positive for the disease. The remaining 56 Nevada prisoners who were originally infected – as well as the other 30 from the state who did not test positive in the previous month – all tested negative.

“CoreCivic is working with NDOC medical and programming staff to monitor, assess, and treat Nevada offenders in their custody,” said NDOC Director Charles Daniels. “Their plans now align with our security and medical-related protocols and procedures.”

But the number of positive tests among CoreCivic guards at Saguaro shot up in August to 15, though 13 had already recovered and were cleared to return to work. And one of the Nevada prisoners at Saguaro went on record to claim there are more symptomatic cases of the disease among the group than CoreCivic will admit.

“There are [a] few inmates who have complained that it feels like there’s fluid on their lungs, and they’re having trouble breathing,” Rickie Slaughter told the Nevada Independent. “There are quite a few inmates suffering from fatigue and different spine aches or abdominal tenderness in their stomach.”

CoreCivic claims that it is taking precautions to prevent the spread of COVID-19. Yet other CoreCivic facilities in Eloy that house ICE detainees have seen major outbreaks. As of July 13, 2020, positive tests for the disease had been recorded for 250 detainees and 128 guards — more than 40 percent of the staff — at the Eloy Detention Center, according to The Arizona Republic.

According to Slaughter, “The running joke amongst [Saguaro guards] and inmates was that, ‘Well ... just about everybody’s got it now. As long as nobody dies, we’re alright.’

“I believe their goal was to keep this prison as one of the few CoreCivic prisons in Arizona as being characterized as having zero COVID cases so that they can continue to take in more contracts and money from other states,” he said. “Because obviously no state really wants to send inmates to a prison that has COVID cases.”

During the 2019 legislative session, Nevada lawmakers passed a law prohibiting the state from using private prisons. But the ban does not take effect until mid-2022. Nevertheless, NDOC plans to return the Nevada prisoners from Saguaro later this year, if not sooner. Facing a $1.2 billion budget shortfall, Nevada lawmakers are debating a proposal to accelerate that timeline in order to save an estimated $1.5 million in fees it will owe CoreCivic under its contract, currently not set to expire until mid-2021.

The ACLU of Nevada cheered the expedited return proposal.

“We will reach out to the dozens of Nevada families with impacted loved ones and fight for fair medical conditions so they can recover and swiftly return to Nevada,” the group said. 

Source: thenevadaindependent.com
New Jersey Guard Acquitted in Sex Scandal

**by David M. Reutter**

A New Jersey prison guard was acquitted on charges of official misconduct and conspiracy to commit sexual assault. It is the second acquittal for guard Brian Y. Ambroise, who worked at Edna Mahan Correctional Facility, New Jersey’s only women’s prison.

The March 13, 2020, verdict by a Hunterdon County Superior Court jury resolves all of the criminal charges against Ambroise. He was charged in two other cases alleging he sexually assaulted prisoners. Prosecutors dropped charges in one case against Ambroise, 36, and in November 2018 a jury acquitted Ambroise in the second case.

The latest acquittal came in a case alleging Ambroise allowed two female prisoners into an area of the prison where guard Ronald Coleman allegedly sexually assaulted them. Coleman, 40, was scheduled to go to trial in May 2020 on charges that he sexually assaulted two women prisoners on separate occasions in 2015 and 2016.

Ambroise is the only guard to be acquitted in a sexual abuse scandal at the prison. It was uncovered as the result of a 2017 *NJ Advance Media* investigation that found a pattern of sexual exploitation and assault at the prison. Guards Thomas Seguine, Ahnwar Dixon, Joel Herscap, and Joel Mercado took plea deals while guard Jason Mays was convicted at trial. Mays was sentenced to 16 years in prison. [See *PLN*, April 2019, p. 40]. Herscap and Seguine received three-year-prison terms. [See *PLN*, Dec. 2018, p. 44].

A class action lawsuit filed in July 2018 by Marianne Brown alleged she was subjected to sexual abuse while at the prison and that sexual harassment and assaults at the prison date back to 1997. It further alleged prison staff attempted to cover up at least 10 incidents of employee misconduct. [See: *PLN*, April 2019, p. 40].

Ambroise was “ecstatic” about the jury’s verdict, said his attorney, James Wronko. He said Ambroise looks forward to returning to work as a prison guard and that he may have to sue to receive earnings for nearly three and a half years of unpaid leave. “That’s a lot of lost wages,” he said.

A New Jersey Department of Corrections spokeswoman said Ambroise will have to go through an internal review process before he can return to work. In such cases, as *PLN* has reported, guards are typically returned to work and often promoted to supervisory positions as time passes. See: *Owens v. Ambroise*, Case No. 3:17-cv-07159, USDC (D.N.J.).

Additional source: correctionsone.com

Washington Prisoner’s State Public Records Act Lawsuit Results in His Freedom and $111,194 Award

**by Matt Clarke**

On January 17, 2020, a Washington judge awarded over $110,000 in penalties and attorney fees to a former state prisoner whom another state judge had already freed, all because Snohomish County officials’ clumsy handling of public records requests had threatened his rights, as well as those of 127 other county inmates seeking records.

Jimi Hamilton had already gained notoriety when he married a former jail guard in nearby Pierce County while awaiting sentencing for bank robbery in 2007. Then, while serving a 14-year term for that crime, Hamilton was charged with a second-degree assault that left another guard with broken bones in his cheek and jaw. A jury convicted him in October 2014, and since this was his “third strike” under state law, Hamilton was facing life in prison.

He got a temporary reprieve when a state appeals court tossed the conviction in 2017 for improper questioning at trial of the only expert witness called on Hamilton’s behalf. While awaiting a retrial in 2018, he made a public records request for video files from the county jail on the day of the alleged assault.

The county instructed him to complete and sign a form that said the request was being made pursuant to the “Jail Records Act.” But that is, in fact, a non-existent statute. And if Hamilton had signed it, he might have then forfeited his right to the material under the state’s actual Public Records Act.
Records Act (PRA).

Hamilton refused to sign the form and instead filed a complaint under the real PRA to compel Snohomish County to provide the video material. The county refused and stood by its demand for a signed request form. That’s when Seattle attorney William John Crittenden joined the fray, representing Hamilton.

Before King County Superior Court Judge Ken Schubert, he argued that the reference to the nonexistent law was intentionally misleading. The county replied that the term “Jail Records Act” should be understood as shorthand for the City and County Jail Act and that any misleading was unintentional. But the judge wasn’t buying it.

“The county acted in bad faith,” Schubert ruled.

By August 2019, the county’s website had been scrubbed of any reference to the nonexistent law.

“We learned our lesson,” said County Prosecutor Adam Cornell.

Yet the county still failed to provide Hamilton with all the requested records – because some had been destroyed. In November 2019, Superior Court Judge Eric Lucas dismissed Hamilton’s criminal charges after finding the state failed to preserve evidence useful to the defense. Hamilton was freed from jail.

Two months later, at the conclusion of his PRA case, Judge Schubert awarded him a penalty of $7 per day that each page of material was denied in all seven of Hamilton’s PRA requests – 60 pages, denied nearly 130 days, for a total of $55,034. It also granted attorney fees of $450 per hour for 124 hours for a total of $55,800, adding an additional award of $360.45 in costs.

Since Hamilton’s case, the county has found not only the improperly handled PRA requests for the other 127 prisoners but also 233 more. See: Hamilton v. Snohomish County, Case No. 18-2-575598-SEA, King Co. Sup. Ct., Wash. Additional source: heraldnet.com

North Carolina Temporarily Closes Three Prisons for Lack of Guards; Final One Reopens During COVID-19 Pandemic

by Ed Lyon

The North Carolina Department of Public Safety’s (DPS) Division of Adult Correction and Juvenile Justice (DACJJ) has been in a severe crisis mode regarding prison guard understaffing. The August 2019 vacancy rate was 21 percent, causing prisons to be unable to safely.

DPS and DACJJ administrators decided to close three of their minimum-security facilities, on a temporary basis, to allow them to operate their remaining prisons at a constitutionally acceptable level. Yet prisoner Scott Whitmeyer was stabbed to death on the evening of September 28, 2019. He was assigned to Whiteville's Columbus Correctional Institution and was living in a dormitory within the medium-security prison.

Republican state Senator Bob Steinburg questioned the closing of the three prisons. One of them is in Steinburg’s district and another is not far away, which would no doubt cause an economic slowdown for his constituents. Steinburg issued a statement saying that “Secretary Moose and senior staff at the Division of Adult Corrections have agreed to appear before the Senate Select Committee of Prison Safety so that other Senators may ask questions.”

There were multiple delays. However, by August 2020 all three prisons had been reopened. On August 10, State Treasurer Dale Folwell stated that more than 100 prisoners would be sent to the Tyrrell Prison Work Farm. “Not only will it help the economy of the area, but it will help alleviate the overcrowding in other prisons that could help prevent the spread of COVID-19 to inmates and employees of the prisons,” he said. He thanked Steinburg and other senators for pushing for the three prisons to be reopened.

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Second Circuit Reverses Summary Dismissal of Connecticut Prisoner’s Failure-to-Protect Lawsuit

by Matt Clarke

On April 15, 2020, the Second Circuit Court of Appeals reversed a district court’s granting of summary judgment to prison officials in a Connecticut prisoner’s lawsuit over their failure to protect him from retaliation by gang members after he assisted in an investigation.

Lloyd George Morgan, Jr., was transferred to the Osborn Correctional Institution after he cooperated with prison officials investigating gang activity at another prison. Upon his arrival at Osborn, he was immediately threatened and harassed for being a snitch and a homosexual.

Morgan sent an Inmate Request Form (IRF) to Unit Manager Captain K. Godding stating that he had worked with prison intelligence officials and had been called a snitch by Los Solidos gang member Gabriel Rodriguez, who had threatened to “beat [Morgan] really bad and snap [his] neck for being a ‘snitch’” and feared Rodriguez would harm him. He reiterated this to Godding verbally on at least three occasions, but Godding would not take him seriously and told him to “stop being a snitch” and “learn to fight like a man.”

Morgan then sent a similar IRF to Osborn Warden Carol Chapdelaine. He also spoke with Chapdelaine about the IRF when she toured his cell block.

On the evening of January 5, 2014, Morgan told guards Maritza Maldanado and Jeremy Lindsay, who were assigned to his cell block, that Rodriguez had threatened him, he feared for his safety, and was especially fearful of “recreation time.” Hours later, he was let out of his cell for recreation and went to the shower. Rodriguez and another prisoner were there and they beat and choked him. His screams for guards to help him were unheard or ignored.

Morgan reported the beating to Maldanado, but she was dismissive and refused to call an emergency code or lock down the cell block. An investigation resulted in Rodriguez being disciplined for the assault. Morgan brought a pro se federal civil rights action pursuant to 42 U.S.C. § 1983 with numerous claims against prison officials. Claims and defendants were dismissed until only Eight Amendment claims of deliberate indifference against Chapdelaine, Godding, Maldanado, and Lindsay remained, along with pendent state torts against all defendants.

The district court appointed Morgan counsel. Then defendants were granted summary judgment on the federal claims. The court also dismissed the state claims without prejudice. Morgan was represented on appeal by New Haven attorney Sherwin M. Yoder of Carmody Torrance Sandak & Hennessey LLP.

The Court of Appeals noted that the district court dismissed the claims against Chapdelaine and Godding based on Morgan’s failure to show their “personal involvement” in the alleged constitutional deprivations under the doctrine of supervisory liability.

However, Morgan did not seek to hold them responsible under that doctrine, but rather for actions they themselves committed. Since they acknowledged receiving IRFs that were “detailed and explicit regarding the threat Morgan believed Rodriguez posed,” there was a question of material fact as to whether they had actual knowledge of the risk rendering summary judgment inappropriate. Therefore, the court vacated the grant of summary judgment to Chapdelaine and Godding on the Eighth Amendment claims and affirmed summary judgment for all other defendants, remanding for further proceedings. See: Morgan v. Dzurenda, 956 F.3d 84 (2d Cir. 2020).

$225,000 Windfall in Lehigh County, Pa., But Officials Don’t Cut Jail Phone Costs

by David M. Reutter

Renegotiation of its jail telephone contract netted Pennsylvania’s Lehigh County an unbudgeted $225,000 windfall. Mark Pinsley, the county comptroller, urged county officials to put that “revenue back into efforts to aid those held in the county jail.”

Pinsley’s March 5, 2020, letter noted that research shows “that contact with families during incarceration is closely associated with a more successful reentry and a reduction in reoffending.” He noted that prisoners face “enormous social and economic challenges resulting from their time behind bars.”

Pinsley recommended “the county use these funds to either reduce the cost of calls or provide additional assistance.” The county also could “invest in preventive measures that reduce the likelihood of incarceration and violence in our communities. The scourge of violence, particularly which afflicts our inner-city communities has had a devastating impact on families and neighborhoods,” he wrote.

County Executive Phillips Armstrong and Director of General Services Rick Mochany said revenue the jail generates goes back into its operations. They also noted, without providing details, that they had bolstered efforts to reduce recidivism. Under the new contract, jail detainees still pay the same amount for calls. The cost ranges from 21 cents to 25 cents per minute for interstate calls and 19 cents for local calls.

“We’re doing everything he brought up, and we’re not charging more for calls,” Armstrong said.

According to a 2019 study by the Prison Policy Initiative, the national average cost of a 15-minute call from jail is $5.74. A jail in Arkansas had the highest cost at $24.82. These high costs put a burden on persons already facing financial difficulty — often a factor in the reason for the incarceration or the inability to post bond. Dallas County, Texas, set an example in February 2019. Its new phone call cut costs to 1 cent per minute, reducing the cost of a 15-minute call to $3.60.

Pinsley said Lehigh County has a “unique opportunity among the counties of Pennsylvania to set a precedent for investing in our incarcerated communities.” Instead, county officials elected to invest in the mass incarceration of the community.

Source: McCall.com
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By Alissa Hull
Edited by Richard Resch

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Private Prison Industry Ramped Up Campaign Contributions, Favoring Republicans

by Derek Gilna

The volatile 2020 presidential election campaign led private prison operators, dominated by CoreCivic and GEO Group, to open their wallets, with a vast percentage of their approximately $2 million in combined contributions going to the Republicans, according to the nonprofit Center for Responsive Politics.

With a sitting president who has campaigned against illegal immigration and in favor of strict enforcement of immigration laws, the industry clearly wants to maintain its profit stream from facilities holding immigration detainees.

However, whether or not President Donald Trump is reelected, or his Democratic challenger Joe Biden prevails [Editor’s note: This story is being written shortly before the election], the private prison concerns will not likely be going out of business any time soon, for a reason that transcends party politics: There is insufficient space in federal prisons or immigration-holding facilities to house all detainees. There also is no support in Congress for increasing bed space.

In a little-reported development, the Department of Justice quietly transferred the last immigration detainees from its prisons in 2018.

As a result, DOJ and immigration officials were left with no other option but to use private facilities to house them. Both major companies made about $1.3 billion from contracts with U.S. Immigration and Customs Enforcement in 2019 alone, representing 30 percent of their income.

Private prison companies’ stock initially rose upon President Trump’s election, but generally slumped thereafter. With the Democratic platform calling for the abolition of private prisons, and with the bipartisan interest in prison reform and reducing mass incarceration, the industry appeared to be hoping to at least maintain a status quo by favoring Trump and the GOP.

GEO Group spokesman Pablo Paez, when questioned about the preponderance of money flowing to Republicans, said it “should not be construed as an endorsement of all policies or positions adopted by any individual candidate.” He added that, “The services we provide today are in no way different from the high quality, professional services we provided for eight years under President Obama’s administration,” when detentions and deportation initially spiked, and then tapered off. Nonetheless, GEO Group’s founder and CEO gave over $500,000 to Republicans this past year, and only $10,000 to Democrats.

CoreCivic spokesman Ryan Gustin also denied party favoritism in its political contributions, stating that such assertions, “are misleading and portray our company in a false light.” Nonetheless, CoreCivic CEO Damon Hininger donated $26,300 to Republicans during this election season. People and groups linked to the company have given $228,000, mostly to the Republicans.

Regardless of the election outcome, the Department of Justice and Immigration and Customs Enforcement will still be required to honor the contracts signed by their departments, meaning that any serious reduction in private prison detentions will remain firmly in the future.

Sources: npr.org, wsj.com, foxbusiness.com, motherjones.com

Pennsylvania Prisoner Loses Part of Leg, Wins Appeal in Precedential Grievance Process Case

by David M. Reutter

On May 20, 2020, the U.S. Court of Appeals for the Third Circuit in Philadelphia, Pennsylvania, issued a precedent-setting ruling that clarified when a “misrepresentation” to a prisoner renders a grievance process “unavailable” as a matter of law under the federal Prison Litigation Reform Act (PLRA).

When the plaintiff in the case, Steven Patrick Hardy, entered the State Correctional Institute at Camp Hill in July 2017, he was in urgent need of medical care. Part of a leg amputated due to diabetes had developed an infected open wound as a result of an ill-fitting prosthesis. Because of his condition, he was sent directly to the prison infirmary rather than to a cellblock.

As a result, he did not receive the normal orientation given new prisoners, nor was he issued a copy of the Camp Hill Inmate Handbook. Nevertheless, staff assured him that a handbook copy would be waiting for him in his cellblock, so Hardy agreed to sign an acknowledgment he had received it. But, in fact, the handbook was not awaiting him when he finally arrived on the cellblock.

Hardy requested a copy from a guard, who said he “should have already gotten one” and that obtaining one was now “[his] problem.” He was twice denied access to the library, which was the best “place to get a handbook,” because the facility was full.

Meanwhile his leg wound festered, and his complaints to medical staff were answered with advice to file a grievance. Hardy did so, but without the handbook to guide him through the three-level grievance-review process, his complaint was rejected for not being “legible, understandable, and presented in a courteous manner.”
“Between December 27, 2017, and March 30, 2018, Hardy filed no less than twelve grievances seeking medical care for his worsening condition, all of which were denied on varying grounds,” the court found. “A few months after the last rejection, Hardy’s fears came to pass and medical staff found it necessary to amputate more of his leg.”

That was when Hardy filed his federal civil rights action. But the district court granted the state’s motion for summary judgment, finding that Hardy had failed to exhaust his administrative remedies as required by the PLRA and concluding that prison staff’s advice was not a “clear misrepresentation” that made the grievance process unavailable.

When he appealed, the Third Circuit noted that no other Court of Appeals had articulated a clear test to establish whether a grievance process is unavailable to a prisoner because a misrepresentation thwarted the use of that process.

In establishing a test for that purpose, the court first considered the meaning of “misrepresentation.”

Under *Ross v. Blake*, 136 S.Ct. 1850 (2016), the critical test “is not whether a misrepresentation is ‘clear’ but whether that misrepresentation amounts to ‘interference with an inmate’s pursuit of relief [that] renders the administrative process unavailable.’” The Third Circuit concluded that “it is imperative that prisons refrain from not only clear misrepresentations, but also misleading statements.”

The court then considered what a prisoner must show to establish that the misrepresentation thwarted his ability to take advantage of the grievance process, establishing a two-part test.

First, as an objective matter, the instruction must be of the sort that a reasonable prisoner would be “entitled to rely on” it even though it is “at odds with the wording” of the grievance process. It also must be so misleading to a reasonable prisoner that it interferes with his use of that process.

Second, as a subjective matter, the prisoner must persuade the court that he did in fact rely on the misrepresentation to his detriment, though this can be overcome with circumstantial evidence showing the prisoner actually knew how to navigate the grievance process.

The court then applied that test to Hardy’s case. It found the advice he received to file another grievance met both prongs. First, it had interfered with his ability to navigate the grievance process. Also, as a result of the misrepresentation, Hardy was never informed that there was more than one step to the process and that he needed to write “appeal” somewhere on the form to take the next step. There was no evidence that Hardy was ever informed of the appeal requirement.

As a result, the court found that the prison had “provided misleading instructions on which a reasonable inmate would rely.” The district court’s order was reversed, and Hardy’s complaint was remanded for reconsideration consistent with the newly established two-part test. See: *Hardy v. Shaikh*, 959 F.3d. 578 (3d Cir. 2020).
Florida Spent $1.7 Million, and Counting, to Impede Felon Voting Rights

by David M. Reutter

Florida’s legal battle to defend a 2019 law that requires felons to pay all “legal financial obligations” (LFOs) to be eligible to vote has cost taxpayers over $1.7 million, according to state records as of August 2020. [See PLN, July 2020, p.54.]

In November 2018, Florida voters overwhelmingly approved Amendment 4, which restored voting rights to felons, except those convicted of murder and sex offenses, “after they complete all terms of their sentences including parole and probation.”

Florida’s Republican Legislature responded to that public mandate by passing SB 7066. That law required felons to pay all court ordered fines, fees, costs and restitution associated with their convictions to be eligible to vote.

Legislators “knew going into the [2019] legislative session that they were going to be sued for it,” said Leah Aden of the NAACP Legal Defense Fund.

Gov. Ron DeSantis authorized $2.34 million in contracts with private law firms to represent the State in defending against that litigation, which resulted in a September 11, 2020, en banc decision from the Eleventh Circuit Court of Appeals that reversed the district court’s judgment that found SB 7066 was an unconstitutional poll tax. 2020 U.S. App. LEXIS 28851. [See PLN, October 2020, p. 46.]

A week before DeSantis signed SB 7066 into law, the Florida Department of State (DOS) entered into an $800,000 contract with the Hopping Green & Sams law firm “to provide litigation services in matters concerning the implementation of Amendment 4 and SB 7066.”

Less than a month later, DOS signed a $1.275 million contract with Holland & Knight “to provide litigation services and assistance with expedited discovery” in the voting rights litigation.

As of August 2020, Hopping Green & Sams was paid $572,135.65. Florida’s Department of Financial Services website also showed Holland & Knight was paid $1.1 million by August. The amount of costs incurred by taxpayers for executive branch staff-related costs and fees is unknown.

With the Eleventh Circuit’s September ruling, the only litigation possibility that remained was to seek review in the U.S. Supreme Court.

“I do think the governor will spend whatever it takes to prevent people from voting,” said Howard Simon, former executive director of the American Civil Liberties Union of Florida. “But if he’s going to prevent people from voting because they owe money, boy it would be nice if he spent a little bit of money creating some system telling people how much they have to pay.”

Source: sunsentinel.com

Investment Firm Buys Corizon

by Matt Clarke

On June 30, 2020, Flacks Group, a Miami-based global investment firm, announced that it had purchased Brentwood, Tennessee-based Corizon Health, one of the nation’s largest private providers of health care services in prisons and jails. The purchase price was not disclosed.

Flacks Group specializes in “operational-turn-around of under-utilized companies.”

In other words, it purchases companies that have good prospects, but are performing poorly and improves their performance. It has over 7,500 employees and manages in excess of $2.5 billion in assets. It had recently announced that it was looking for bargain-price purchases of companies that had been stressed by the pandemic.

Corizon employees number more than 5,000 and the company’s annual revenue is around $800 million. A Corizon spokesperson said the transaction was not related to the pandemic but caused by Corizon’s maturing debt. Corizon’s debt had reached $300 million before Blue Mountain Capital Management became its majority owner in 2017. In November 2018, Blue Mountain injected another $100 million into the company, reducing its debt load to less than $90 million.

Unmentioned in the press releases were Corizon’s numerous litigation issues and the collapse of its business. In 2018, Corizon contracted with 534 facilities in 27 states to provide prisoner health care. That meant about 15% of U.S. prisoners received their health care from Corizon. Currently, Corizon contracts with 149 facilities in 16 states, a severe contraction in business.

“Our debt was coming for maturity at the end of the second quarter,” Corizon Health CEO James Hyman said in a press release. “As we started to talk to people in the industry … we realized that we were going to face other types of investors that might be better than our previous investors. Our previous investors were basically banks and the private equity firms. They have a pretty clear mandate of rapid growth, rapid exit. … What we got [instead] was someone who could take a longer-term view … and they were willing to substantially reduce our debt burden.”

So, what caused the collapse of Corizon? It could be the numerous lawsuits the company lost for providing substandard health care as reported on page 20 of the March 2020 PLN. That article also mentioned several states that had fined Corizon millions of dollars for substandard perfor-

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mance and short-staffing. It is unlikely that facilities receiving such poor performance and possibly incurring liability themselves were eager to renew contracts with Corizon.

Between July 2015 and December 2018, Kansas fined Corizon $1 million for under performance and $6.4 million for understaffing in its prison system. Yet Corizon continued to short-staff and provide substandard health care.

“Corizon is simply writing off the liquidated damages they’re having to pay as the cost of doing business in [Kansas] without doing anything meaningful to improve,” said Eric Balaban, a senior staff attorney with the American Civil Liberties Union’s Nation Prison Project.

That seems to be Corizon’s business plan — write off the fines and court awards as business expenses but spend nothing to correct the problems. According to the American Civil Liberties Union, Corizon was sued for malpractice 660 times in the preceding five years. The most recent court award was $10 million in an Oregon federal lawsuit over Corizon employees ignoring a young woman’s pleas for medical attention while she died of heroin withdrawal. The contract non-performance fines and court awards may well explain Corizon’s debt problem and shrinking customer base.

“One can only hope that the Flacks Group promotes a business model that includes actually delivering the health-care services Corizon contracts to provide. If that happens, the buyout will be a boon for all. If not, prisoners will continue to suffer and die because of Corizon’s unethical practices.”

Sources: bizjournals.com, nashvillepost.com, corizonhealth.com, williamsonhomepage.com

$1.25 Million Settlement Against Tennessee County Over Sheriff’s Violations of Labor Law

by Douglas Ankney

On December 10, 2019, the U.S. District Court for the Western District of Tennessee approved a class action settlement in which Madison County agreed to pay $1.25 million over claims alleging that Sheriff John Mehr violated the Fair Labor Standards Act (“FLSA”).

Natasha Grayson, an employee of the Madison County Criminal Justice Complex (“MCCJC”), was the named plaintiff in the lawsuit, which was filed on July 2, 2019.

The suit named Madison County as the Defendant and sought to recover unpaid wages, overtime wages, liquefied damages, attorney’s fees, and statutory penalties under the FLSA on behalf of Grayson and other similarly situated current and former employees (Plaintiffs) of the Defendant. The suit alleged that Plaintiffs were hourly employees who worked eight-hour shifts, five days per week. But Defendant’s policies required Plaintiffs to arrive at the MCCJC and be ready for work 15 minutes before their shift began and to remain another 15 minutes after their shift ended. The Plaintiffs were not compensated for this time, and Defendant failed to log this time. Since this period of 30 minutes each day was in excess of their 40 hour each week, Plaintiffs alleged the FLSA required they be compensated for that time at a rate of one and one-half times their regular hourly rate.

Sheriff Mehr attempted to evade responsibility by claiming the practice of requiring employees to show up early and stay late was in place long before he became sheriff. But Madison County Commissioner Doug Stephenson said the sheriff “is a constitutional officer and he’s responsible for this department — even if he has decided to whitewash it and not take responsibility for his mismanagement.”

The Madison County Commission amended the settlement to provide that $1 million of the payout will come from the sheriff’s budget. Plaintiffs were represented by attorney Michael L. Weinman of Weinman & Associates. The court awarded $375,000 in attorney’s fees.

In a pending, unrelated suit, Mehr sued the Madison County Commission to get $2.8 million added to his $22.2 million budget. The Commission says Mehr doesn’t need the additional money because he created unnecessary high-paying jobs for his wife and others. See: Grayson v. Madison County, Case No. 1:19-cv-1136-STA-tmp, U.S.D.C. (W.D. Tenn.).

Additional source: jacksonsun.com

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Ankle Monitor Shortage at Chicago Jail Put Prisoner Releases During COVID in Limbo

by David M. Reutter

Chicago’s Cook County Jail expanded its electronic monitoring program (EM) and moved detainees to home confinement in response to COVID-19. As officials ran out of ankle monitors, at least 10 detainees who were ordered released on EM were held in jail when it was one of the country’s hot spots for the disease.

Civil rights groups had filed a federal lawsuit on April 9, 2020 that sought the release of medically vulnerable people from the jail during the pandemic. A federal judge ordered Sheriff Thomas Dart to increase testing and keep detainees apart from one another. Dart appealed, and his motion to stay was denied. [See: Mays v. Dart, Case No. 20 C 2134, U.S.D.C. (N.D. Ill.)]

Reduction of the jail population came through electronic monitoring releases. The jail population dropped from 5,604 on March 1 to 4,281 on May 29. That increased the EM population from 2,417 on March 1 to 3,205. It was a move Dart criticized due to a lack of resources.

“The surge in the need for devices caught sheriff officials off-guard. There were 10 detainees who could not be released on May 7 due to a shortage in ankle monitors, said Allison Peters’ assistant press secretary. As Population Falls”

“The surge in the need for devices caught sheriff officials off-guard. There were 10 detainees who could not be released on May 7 due to a shortage in ankle monitors, said Allison Peters’ assistant press secretary. As Population Falls”

The appeal was received.

“By ordering someone to electronic monitoring, it’s considered a release decision,” said Sharlyn Grace, executive director of the Chicago Community Bond Fund.

“But if there are no ankle shackles available, the person remains in jail. It’s a pretend decision with a de facto result of incarceration but without the court having to meet any of the standards required to justify someone’s pretrial incarceration.”

As of June 2, 2020, the EM population included “30 people charged with cannabis felony, 139 people charged with driving with a revoked or suspended license, 11 charged with misdemeanor theft, 180 with felony theft, 17 with criminal damage to property, and 150 with DUI,” The Appeal reported.

Sarah Staudt, senior policy analyst and staff attorney at the Chicago Appleseed Fund for Justice, said many of these people should not be on EM when stay-at-home orders are in place and crime rates have dropped significantly. “There’s very little reason to believe EM is effective, which means that nobody needs to be on the monitor,” she said.

Violence at New York City’s Rikers Island Jail Increasing Even as Population Falls

by Ed Lyon

For decades, New York City’s Rikers Island Jail Complex (RIJC) has been the largest urban lock-up in the United States. It has also been infamous as among the most violent jails regarding assaultive behavior by guards toward prisoners, even extending at times to citizens who visit prisoners. [PLN, February 2019, p. 34]

Despite the jail’s population being lower than any time since 1945, constant monitoring by federal authorities and agreements by city government to regulate the jail’s violent culture, use of force have risen since 2016 — from 390 incidents per month to 600, a whopping 54 percent increase. The numbers were reported on August 6, 2020 by a federal appointee who monitors the jail system.

Prior to 2015, New York City’s Legal Aid office, assisted by several private law firms, had prosecuted a class action civil rights lawsuit challenging confinement conditions at RIJC. When the Civil Rights Division of the United States Department of Justice (DOJ) joined the suit as plaintiff-intervenor, the city quickly entered into a settlement largely favoring the plaintiff class. [See: Nunez v. City of New York, Case No. 1:11-cv05845-LTS-JCF, U.S.D.C. (S.D. NY).

The original Nunez agreement allowed for thousands of wall-mounted video surveillance cameras as well as major policy revisions aimed at reducing uses of force by jailers. Another segment of the agreement allows for court-approved monitors to be physically present at RIJC to report on staff compliance and any noncompliance to the court and attorneys.

Because of some jailers’ determined resistance to court-approved reforms, coupled with the steady rise of violence against

Source: theappeal.org

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prisoners, federal intervention has shifted from the civil rights division to the DOJ’s prosecutorial arm, the United States Attorney for the Southern District of New York. U.S. Attorney Audrey Strauss stated the city and RIJC “have failed to fulfill [their] core obligations” outlined in the original settlement. Strauss and the city have signed onto a new, even more stringent agreement, which is pending court approval.

The Correction Officers’ Benevolent Association is a union that represents RIJC’s jailers and their interests. They stated the new agreement’s provisions “are straight out of the Legal Aid playbook, one-sided and only concerned with compromising the safety of our officers by treating them like the criminals they are charged to supervise.”

Legal Aid attorney Mary Lynne Werl was pleased with the latest agreement. She stated that after the court issues its approval, “we will vigorously enforce it.”

Four smaller jails are planned to replace Rikers. They are scheduled for completion by 2026.

Source: nytimes.com

Failed Michigan Jail Site to Host Innovation Center

by David M. Reutter

The University of Michigan (UM) is building a graduate campus on the grounds of the former site for a new Wayne County Jail (WCJ). The 190,000 square-foot research and graduate education building for UM students will focus on automotive mobility, artificial intelligence, sustainability, cybersecurity and financial education.

As PLN reported, construction was halted in 2013 on the WCJ after it was discovered the project was running tens of millions of dollars over its $300 million budget. [See: PLN, April 2016, p.58.]

At least $150 million in 2010 bond funds were spent on the half-built jail. Since construction was halted, taxpayers paid nearly $1.2 million per month in costs for debt financing, security, and other fees related to the site.

In early 2018, the site was sold to Dan Gilbert, who owns the Rock Ventures development company, for $21.8 million. His company demolished the half-built jail with plans to build a soccer stadium if Major League Soccer awarded Detroit an expansion team. Instead, teams were awarded to Cincinnati and Nashville.

UM announced in October 2019 plans to partner with Gilbert and billionaire real estate mogul and UM alum Stephen Ross to build the $300 million Detroit Center for Innovation on the former 15-acre jail site. The facility will serve up to 1,000 graduate and senior-level undergrads. It will focus on high-tech research, education and innovation, with the goal of supporting the economic development of Detroit and the state with “a pipeline of talent,” mlive.com reports.

The Center will also include incubator and startup services, collaboration space for established companies, residential units, a hotel and conference center and event space.

Source: mlive.com

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Second Circuit: Denial of Exercise Over Four Months Defeats Summary Judgment

by David M. Reutter

On June 18, 2020, the Second Circuit Court of Appeals reversed the grant of summary judgment to prison officials in a 42 U.S.C. § 1983 action alleging the officials’ failure to clear snow and ice from outdoor exercise yards for an entire winter violated the prisoner’s Eighth Amendment right to physical exercise.

Before the court was the appeal of New York prisoner Lionel McCray. Proceeding pro se, McCray alleged that while at Green Haven Correctional Facility (GHCF) in 2013-2014, he was on “keeplock” status, which allowed him out of his cell for one hour of daily exercise. GHCF had several outdoor exercise yards and one indoor gymnasium that was restricted to prisoners in other categories.

McCray alleged that in the winter of 2014, one or more of GHCF’s outdoor recreation yards was closed, which when combined with the prison’s maximum capacity population and the waist-high snow and ice accumulations that blocked access to exercise equipment, “prevented McCray from moving sufficiently freely to be able to exercise” for four months. McCray also alleged he was injured during a slip and fall on the ice.

After the district court granted the defendants’ motion for summary judgment, McCray appealed.

The Second District affirmed dismissal of the Eighth Amendment claim related to the slip and fall, finding McCray failed to make any claims of circumstances that would elevate GHCF’s “yard conditions beyond the typical level of danger presented by a slippery sidewalk or a wet floor.”

It reversed, however, judgment on the monetary claim on the denial of exercise claim. As McCray had been transferred to another prison, his declaratory and injunctive relief claims were moot.

On the merits, the Second Circuit agreed with the district court that denials of physical exercise for short periods are not unconstitutional, but it cited cases that periods of less than four months were viable. McCray’s claim that “more than 75 percent of yard space with snow and ice at waist high” prevented him from “any meaningful exercise opportunity for four months” was sufficient to state an Eighth Amendment claim.

In holding the defendants were not entitled to qualified immunity, the Second Circuit noted the district court improperly narrowed the level of specify for the right. “[T]he right to a meaningful opportunity for exercise is not confined to a particular season; though not constant, the right is ongoing,” wrote the court. Reasonable prison officials “understand that climatic features may necessitate responsive measures to ensure that the right … not be denied.”

The Second Circuit vacated summary judgment on McCray’s monetary damages claim as to the right to exercise and ordered reinstatement of his state law claims. See: McCray v. Lee, 963 F.3d 110 (2d Cir. 2020).


by Kevin Bliss

California’s Office of Inspector General released a 47-page report in August 2020, which stated that vague testing guidelines, faulty thermometers and inadequate training contributed to the COVID-19 outbreak in the state’s prisons, killing 54 prisoners and nine guards while infecting 9,500 others.

“Nine is an extraordinary number of staff deaths,” stated attorney Michael Bien. “I cannot recall anything like that in any year. Right now it is very dangerous for those in custody and those working there.”

The California Department of Corrections and Rehabilitation (Department) instituted mandatory screening for visitors and employees at all of its 35 prisons last March. One month later, the Office of the Inspector General examined the prisons and found that the directive that all the staff and visitors would be screened for COVID-19 was being inconsistently applied.

Some of the prisons screened incoming personnel in the parking lot before the person could even get out of their car. Others did not screen until the person was somewhere on prison grounds. “We found that this second approach increased the risk that staff or visitors may have walked into or through other work spaces without having been screened,” said the report. “By that point, although our staff were eventually screened, the screening failed to accomplish its purpose: our staff could have already infected departmental staff.”

A survey conducted for the report showed that 5% of prison employees statewide admitted that they were not screened. In addition, screeners said they had never received any formal training, compounding the risks of allowing the virus onto prison grounds.

In addition, investigations revealed malfunctioning thermometers, registering inaccurate temperatures — sometimes because of weak batteries.

Prison officials reported all information on prisoners who had tested positive for COVID-19 but not staff. They stated that release of this information violated employees’ right to privacy. The report noted that this withholding of information hindered the review board’s ability to fulfill its mission.

Corrections Secretary Ralph Diaz stated that the department was taking steps to address all of these situations. Nonetheless, the report criticized the Department for its initial improper handling of COVID-19 screening and for withholding information pertinent to the investigation.

Prison Law Office attorney Don Spec- ter called the inspector general’s findings disturbing. “Since staff are the main way the virus is able to enter the prison, the failure to properly screen and test staff to determine whether they are infected may have led to an increase in infections and illness among those incarcerated, other staff and members of the community,” he said.

As of October 8, 14,870 California prisoners had been infected with the coronavirus, according to data gathered by The Marshall Project. Sixty-nine had died along with 10 staff.
“By their very nature, prisons operate as controlled environments in which everyone’s movements and activities are closely monitored,” the Inspector General’s report said. “In 2020, the novel coronavirus disease, known as COVID-19, swept the world, growing to global pandemic proportions, and is now impacting congregate living situations, such as prisons, especially hard … The lives of all those who interact within the system—hundreds of thousands—are literally at stake.”

**Rikers Island Death Case Against City of New York Settles for $5.5 Million**

*by Derek Gilna*

A wrongful death action filed by the decedent’s estate of a Rikers Island prisoner against the City of New York, the New York City Health and Hospitals Corp., Prison Health Services, and individual prison guard defendants, has settled for $5.5 million.

Eva Luckey, a prisoner at Rikers Island, New York, jailed for petit larceny, died in April 2002, because of negligence on the part of jail staff to provide her with the prescription medication needed to control her asthma, and failed to perform CPR on her when she went into respiratory distress.

The December 2019 settlement ended a multiyear legal odyssey, which initially saw the medical providers found guilty of negligence for failure to prescribe needed medication, but also the dismissal of Section 1983 civil rights and negligence claims against other defendants. Luckey’s attorney, Richard Gross of the New York law firm of Rubert & Gross, P.C., appealed, and the court reinstated the dismissed counts, setting the stage for the settlement.

As noted by Prison Legal News in April 2015, the appellate court’s decision found that New York could be held liable for failure “to protect decedent from reasonably foreseeable harm in providing emergency medical assistance once she complained of difficulty breathing and otherwise exhibited signs of an asthma attack.” Luckey had been jailed after she could not post a $500 bond.

Expert medical testimony had noted that Luckey had been on prescription asthma medication for two weeks prior to her arrest, but that upon her admission she was only provided rescue medication by the jail.

Jail personnel and medical staff failed to note that she suffered from a low peak expiratory flow rate, which was a departure from good and accepted medical practice. It was established that there was a failure to properly train and supervise personnel, as well as the failure to promptly initiate CPR.

Luckey died from her asthma attack the day before she was scheduled for a court appearance. She had six children. See: Luckey v. City of New York, 177 A.D.3d 460 (N.Y. App. Div. 2019).

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**Is someone skimming money or otherwise charging you and your loved ones high fees to deposit money into your account?**

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

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

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

This effort is part of the Human Rights Defense Center’s *Stop Prison Profiteering* campaign, aimed at exposing business practices that result in money being diverted away from the friends and family members of prisoners.

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**Source:** latimes.com, California Office of Inspector General, Inconsistent Screening Practices May Have Increased the Risk of COVID-19 Within California’s Prison System, August 2020
Families of 4 Alabama Prisoners Who Committed Suicide File Federal Lawsuit Against Prison Officials

by Matt Clarke

On February 24, 2020, the families of four Alabama state prisoners who committed suicide as they languished in isolation cells in the Alabama Department of Corrections (DOC) filed a federal civil rights lawsuit against DOC officials, Wexford Health Sources and MHM Correctional Services, the DOC’s contract providers of medical and mental health services. They alleged that a lack of mental health treatment and use of untrained and unsupervised mental health workers in the DOC led to their family members’ deaths.

Billy Lee Thornton, Ryan Rust, Matthew Holmes, and Paul Ford were DOC prisoners suffering from severe mental illness who were incarcerated in segregation cells prior to their suicides. During their incarceration, mental-health care for DOC prisoners was provided by MHM and Wexford (after mid-2018).

Prior to the four suicides, an Alabama federal court issued a remedial order and opinion in a civil rights lawsuit brought by the Southern Poverty Law Center over conditions in the DOC, calling the provision of mental health services “simply put ... horrendously inadequate” and in violation of the Eighth Amendment. Briggs v. Dunn, 257 F.Supp.3d 1171 (M.D. Ala. June 27, 2017).

With the assistance of Montgomery attorney Joseph Mitchell McGuire of McGuire & Associates and Chicago, Illinois attorneys Nicolette A. Ward and Antonio Romanucci of Romanucci & Baldwin, the families of the four prisoners filed a federal civil rights lawsuit alleging the DOC ignored the remedial court order and allowed understaffing, overcrowding, and the use of untrained and unlicensed mental health care providers to effectively deny the prisoners in isolation mental-health care.

“The Alabama corrections officials named as defendants along with the mental healthcare providers even failed to comply with remedial mental health procedures to which they consented and agreed to have memorialized in federal court orders,” McGuire said. “The defendants can no longer rely on excuses such as staffing shortages and poor administrative discipline. They must now be held accountable for the deaths of humans who suffered so greatly from the state’s failure to provide adequate mental health care, that suicide appeared to them to be the only option. Meanwhile, these state defendants effectively stood idle—indifferent to the mental health needs of these desperate inmates—and over and over again, suicide was indeed the tragic result.”

According to court documents, the DOC is overcrowded at 175% of design capacity and understaffed by as much as 68% at some prisons. MHM and Wexford mental health care staff also was understaffed despite the 25% increase in the mental health caseload between 2008 and 2016. Further, DOC officials denied requests to increase the number of approved mental health care positions.

As of September 2016, the DOC had only half of its security positions filled. This resulted in the cancellation of mental health appointments and group activities—especially for segregation prisoners. Further, a lack of proper training led to many prisoners with serious mental illness being improperly classified as not mentally ill during intake, leading to them being segregated and disciplined.

All four prisoners had histories of serious mental illness and multiple suicide attempts. None were given treatment prior to their successful suicide attempts. One can only hope this lawsuit helps prevent further tragedies. See: Head v. Dunn, Case No. 2:20-cv-00132-SMD, U.S.D.C. (N.D. Ala.).

Additional sources: montgomeryadviser.com, abcnews.go.com

ICE Detainees Pepper-Sprayed Over Hunger Strike

by Daniel A. Rosen

Immigrants in ICE custody in New Mexico were attacked with pepper spray on May 14, 2020, to end a days-long hunger strike. The detainees, housed at Torrance County Detention Facility, privately run by CoreCivic, were protesting the food quality and lack of protection from COVID-19.

“Suddenly they just started gassing us. You could just hear everyone screaming for help,” Yandy Bacallao, a 34-year-old Cuban asylum claimant, told Searchlight New Mexico.

A CoreCivic spokesman confirmed that the incident took place. Ryan Gustin said on the company’s behalf that officers pepper-sprayed “a group of detainees who became disruptive by refusing to comply with verbal directives provided by staff.” Gustin referred further questions to ICE, which had no response to requests for comment.

Torrance County Manager Wayne Johnson was skeptical of inmate accounts, saying he had no confirmation that the incident had even happened, but suspects “there’s more to it than what you’ve been told.”

The county recorded $90,000 in in-
come from CoreCivic last fiscal year, when the site started housing migrants, and expects annual revenue from the arrangement to climb to about $130,000 per year.

Bacallao and two other detainees provided additional details. After almost three dozen cases of the coronavirus were identified at the facility, the men began asking for community release while awaiting resolution of their cases, and about policies to control the virus.

The hunger strike over food conditions was already underway when COVID-19 cases started to rise, and detainees’ fears of the virus spread increased their determination to press their case.

Instead of answering the migrants’ inquiries, Bacallao says a prison official came into their dorm on May 14 to warn them that “it was going to get ugly,” unless the men ended their strike.

The migrants were told they could exit the dorm and a couple of them did before guards entered in gas masks and full riot gear, corralling the remaining men.

“It felt like I had been burned with gasoline,” said another Cuban asylum seeker. “I couldn’t breathe. I thought I was going to die.”

Bacallao said following the attack, the men were handcuffed and placed in holding cells, after nurses did a cursory check. Some were carried out on stretchers or in wheelchairs, one with a head wound, according to witnesses. Trying to wash out their eyes with water from the sink made the effects of the irritants worse, they said.

Said the Searchlight story: “Bacallao was briefly checked by a nurse before being placed in a holding cell with one other migrant. The two could barely see – pepper spray can cause temporary blindness – but they managed to navigate their way to a sink in the cell where they tried to wash themselves off. The water only made it worse. Bacallao stood still for an hour with his arms outstretched; it was too painful to let anything touch his skin.”

According to Gustin, the CoreCivic spokesman, medical staff reviewed everyone after the protest and “no injuries occurred.”

According to medical experts, chemical irritants like pepper spray are exceedingly problematic when respiratory diseases like COVID-19 are involved. Pepper spray worsens symptoms for those already infected, and induces coughing, increasing the spread of the disease.

ICE policy allows for the use of pepper spray to “gain control” of detainees, as long as detention facilities keep records of any such uses of force. ICE declined to share any records from the May 14 incident.

This is the third time Bacallao has sought political asylum in the United States, according to the article: “He first tried to flee Cuba about five years ago with about a dozen others on a makeshift boat a little smaller than two king-sized mattresses. They were headed toward Cancún, Mexico, and planned to make the rest of the journey by land. At the time, the United States was operating under the ‘wet foot, dry foot’ policy: Cuban migrants caught at sea were turned away, while those who arrived by land were allowed to stay… Bacallao wanted to join them. But after a week in the open water, his boat ran out of gas, and the crew jettisoned the motor to stay afloat. The craft drifted toward American waters, and after a few weeks, Bacallao was apprehended wet-footed and sent back home. [1]

Source: searchlightnm.org
Connecticut: Summary Judgment Denied in Deliberate Indifference Case Where Facial Lesion Turned Out To Be Skin Cancer

by Chad Marks

Jeffrey Bardo was a state of Connecticut prisoner at the Willard Cybulski Correctional Institution in Enfield when he submitted a medical request to have an odd spot on his face checked out.

Two days after Bardo submitted that request, on December 18, 2012, Dr. Michael Clements examined Bardo, diagnosing the spot as a “two-centimeter sebaceous cyst.”

On June 18, 2013, while at the Osborn Correctional Institution, Bardo complained again about a medical issue — a bump under the skin of his abdomen and an old scar on his face that would not go away, according to court records.

Two months later, Bardo was transferred to the Carl Robinson Correctional Institution, where he met with Dr. Carson Wright after complaining about the spot on his face and the lump on his stomach. Bardo suggested to the physician that he might have skin cancer, which Wright said was not the case. Bardo was eventually told that the spot was likely ringworm and prescribed an antifungal cream.

Upon his release from the Department of Corrections, Bardo went to meet with a primary care physician in 2015. After a biopsy, it was determined that the facial lesion was a basal cell carcinoma.

The cancerous cells required surgical removal.

In 2017, Bardo brought a civil rights action pursuant to 42 U.S.C. § 1983 against Dr. Wright, arguing that he had violated his Eighth Amendment rights and acted with deliberate indifference toward his facial lesion. In response, Dr. Wright moved for summary judgment.

After weighing the Eighth Amendment deliberate indifference accusations, the court found that the record taken in a light most favorable to Bardo permitted the inference that the risk of skin cancer was sufficiently obvious that Dr. Wright should have been aware of it.

Connecticut: Summary Judgment Denied in Deliberate Indifference Case Where Facial Lesion Turned Out To Be Skin Cancer

by Chad Marks

Eleventh Circuit: Florida’s Treatment Plan for Hepatitis C-Positive Prisoners Constitutional

by David M. Reutter

The Eleventh Circuit Court of Appeals held that the Florida Department of Corrections’ (FDC) treatment satisfies constitutional requirements even though it does not require that Hepatitis C (HCV)-positive prisoners be treated with expensive antiviral drugs during early stages of the disease.

The court’s August 31, 2020, opinion was issued in an appeal brought by FDC. The appeal challenged a district court’s order requiring FDC to treat all HCV-positive prisoners with direct acting antiviral (DAA) drugs within two years of their diagnosis.

HCV attacks the liver, causing scarring or fibrosis that is scored from F0 to F4. The district court, after a five-day hearing in October 2017, granted a preliminary injunction that required FDC to treat prisoners with F2 (moderate fibrosis), F3 (severe fibrosis), and F4 (cirrhosis) with DAAs. (See PLN, December 2017, p.24.)

The district court subsequently granted the prisoner class motion for summary judgment that included, but expanded upon, its preliminary injunction. The permanent injunction required FDC to treat prisoners with F0 (no fibrosis) and F1 (mild fibrosis) with DAAs within two years.

On appeal, FDC conceded that chronic HCV is a serious medical need. The Eleventh Circuit began its analysis by pointing to the “stringency of the deliberate indifference” standard to sustain an Eighth Amendment violation. It believed the district court lost track of that standard and “impermissibly evaluated” FDC’s “treatment plan against a negligence (or perhaps even more lenient) benchmark.” The proper standard required the prisoners to show FDC’s “approach to the treatment of F0- and F1-level inmates is so reckless — so conscience shocking — that it violates the Constitution.”

FDC’s plan for F0 and F1 level prisoners is to monitor their conditions and provide DAA treatment to those who have either (1) have an exacerbating illness, such as HIV, (2) exhibit signs of rapid fibrosis progression, or (3) advance to F2. The Eleventh Circuit said FDC was not denying care, it just was not providing “the particular course of treatment that they and their experts want — or as quickly as they want it.”

The court noted the experts differed

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Texas State Habeas Applications

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Texas Federal Appeals to the Fifth Circuit Court of Appeals

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on whether DAA treatment should be provided regardless of underlying condition or disease progression. As the F0 and F1-level prisoners are receiving medical care and “the adequacy treatment is the subject of genuine, good-faith disagreement between health care professionals,” the court said it was “hard-pressed” to find FDC acted recklessly and in a conscience shocking manner.

The district court’s order found FDC put forth no other reason for denying DAAs to F0 and F1-level prisoners other than cost, which it found is “per se deliberate indifference.” The Eleventh Circuit said “the Eighth Amendment does not prohibit prison officials from considering cost in determining what type (or level) of medical care inmates should receive.” Courts, comparatively, reviewing claims such as those at issue cannot consider cost “considerations off-limits” in determining whether prison officials acted recklessly and in a conscience shocking manner.” Prison officials, however, cannot plead poverty as an excuse for providing minimally adequate care, the court said. As FDC’s treatment plan provides minimally adequate care for F0 and F1-level prisoners, the issue of a cost “defense” never arises.

The district court’s order requiring DAA treatment for those prisoners was vacated. The other portions of the order were reversed for the district court to make specific findings that the relief ordered is narrowly tailored as required by the Prison Litigation Reform Act. See: Hoffer v. Secretary, Florida Department of Corrections, 973 F.3d 1263 (11th Cir. 2020).

Sixth Circuit Reverses and Allows Ohio Prisoner’s Civil Rights Lawsuit to Proceed

by David M. Reutter

The Sixth Circuit Court of Appeals reversed the grant of summary judgment to Ohio prison officials in a civil rights action alleging a prisoner’s rights were violated because he was denied a religious diet and fasting. The grant of judgment on his claims related to the wearing of dreadlocks and communing with others was affirmed.

The court’s July 7, 2020, opinion was issued in an appeal brought by prisoner Cecil Koger, who is a practicing Rastafarian. Between 2006 and 2018, Koger submitted numerous requests, appeals, and letters to the Ohio Department of Rehabilitation and Correction (ODRC) asking for religious accommodations and exemptions. All were denied. He filed suit on November 16, 2017, alleging violations of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment. The district court granted summary judgment to the defendants.

Koger was subjected to four forced cuttings of his dreadlocks. but that was not at issue. Instead, the issue was the validity of ODRC’s grooming policy, which went into effect on October 22, 2018. That policy was in response to a declaration in Glenn v. Ohio Dep’t of Rehab. & Corr., 2018 WL 2197884 (N.D. Ohio 2018), which challenged ODRC’s policy of categorically denying dreadlocks, that found ODRC’s grooming policy violated RLUIPA and enjoined its enforcement.

Koger argued his dreadlocks naturally grow thicker than the allowed half-inch under the new policy. “Koger, however, has not alleged or offered evidence demonstrating that his hair is unsearchable, naturally grows to be unsearchable, or that ODRC has or will deem it to be unsearchable,” the Sixth Circuit wrote in affirming judgment on the issue.

As to Koger’s claim that his religion requires an Ital diet and fasting, the court found there was no dispute those requests were grounded in seriously held religious belief. For years, Koger detailed his dietary needs and the fasting requirement to ODRC. The court found he sufficiently showed ODRC “burdened his religious practices of fasting and keeping an Ital diet.” It also concluded that Koger sufficiently alleged an equal protection claim because other religions’ fasting needs were accommodated but Koger’s was not because he practices Rastafarianism.

The district court’s order was affirmed in part and reversed in part. See: Koger v. Mohr, 964 F.3d 532 (6th Cir. 2020).

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Mental Health Crisis in California’s Lock-Ups Worsens With COVID-19

by Ed Lyon

The California Department of Corrections and Rehabilitation (CDCR) has been challenged regarding care for its mentally ill prisoners for decades. Rather than improve under a class action lawsuit dating back to 1990 (now Plata v. Newsom) and seeking constitutionally acceptable mental health care for prisoners, conditions continue to slide, exacerbated by the ongoing COVID-19 crisis.

Mental health problems are especially egregious at CDCR’s California Institute for Women (CIW) in Chino. This is a 1,398-bed prison, currently operating at a slight overcapacity with 1,500 prisoners. Although females currently make up only 4 percent of CDCR’s population, they represent a disproportionate 11 percent of the suicide rate.

Prior to COVID-19, a group of CIW prisoners receiving mental health treatment had dayroom access 23 hours a day. By mid-March, the women found themselves confined to their cells for 23 hours a day, sometimes longer. They stated that prison staff told them nothing about lockdown procedures, when they would be allowed recreation and phone calls to family members or even when they would be allowed to shower.

On April 6, 2020 three major events occurred at CIW. Staff there began wearing masks, the prison received its first positive result on a COVID-19 test and housing wings were quarantined as a result. No information about or reasons for these measures were shared with the prisoners.

Sudden deviations from routine operations are unsettling for prisoners not experiencing mental health problems. They can be, and frequently are, terrifying for prisoners suffering from mental illness. Newly isolated mental health patients responded with screaming and banging on doors for many hours before prison staff explained that the changes to their routines and circumstances were because of COVID-19.

Michael Bien is the lead attorney in the ongoing 30-year-old mental health class action lawsuit against CDCR. He acknowledged that because of COVID-19, “Rather than treating their mental health,” the pandemic has led the prison health care industry “to basically just [try] to keep people alive.”

As onerous as isolation is to a mentally healthy prisoner, it is exponentially worse for someone suffering mental illness. Once a prisoner becomes symptomatic with or tests positive for COVID-19 and remains asymptomatic, isolation is the next step. Once the infected person is removed from the housing area, the individual remains on medical restriction for 14 to 30 days.

Many CIW residents are refusing COVID-19 tests to avoid the specter of isolation. “People aren’t scared of COVID-19,” stated prisoner April Harris in a communiqué to The Washington Post. “They are scared of the treatment of isolation,” she added.

Suicide attempts appeared nearly immediately after the first COVID-19 case at CIW. The first was not successful. Another attempt followed soon after. During May 2020, a transgender man was isolated with COVID-19. He asked to see a mental health care provider. He tried to slit his wrist, then set his room on fire.

Counselor Bien with co-counsel are pushing the state through their lawsuit to reduce CDCR’s mentally ill prisoner population with an overall prisoner reduction.

Fourth Circuit Orders Sealing of North Carolina Court’s Order to “Protect Defendant from Harm”

by David M. Reutter

On June 17, 2020, the Fourth Circuit Court of Appeals ordered the sealing of a North Carolina federal district court’s order. That order denied a Defendant’s motion for resentencing because that order referred to “Defendant’s substantial assistance,” and there exists a compelling interest under the First Amendment “to protect Defendant from harm.”

“John Doe” moved a North Carolina federal district court in 2016 “for a sentence reduction under 18 U.S.C. § 3582(c)(2) and Guidelines Amendment 782, which lowered base offense levels for federal drug crimes.” Doe pleaded guilty in 2012 to conspiracy to distribute and possession with intent to distribute 28 grams or more of cocaine base and 500 grams or more of cocaine.

At sentencing, the government moved for a downward departure under U.S. Sentencing Guidelines § 5K1.1 in light of Doe’s substantial assistance to state authorities before he was federally indicted. As a result, the district court sentenced Doe to 252 months’ imprisonment, which was well below his 292 to 365 Guideline range.

In denying the motion for resentencing in July 2018, the district court referred to the government’s § 5K1.1 motion. Concerned about that reference, Doe in November 2018 moved to seal the district court’s order and remove it from online legal research services. He contended that the “district court’s reference to his cooperation threatened his safety because the order was available to other inmates through the prison law library,” wrote the Fourth Circuit. Doe appealed after the district court denied the motion in a text order issued in December 2018.

The Fourth Circuit noted it has held that the “First Amendment right applies to sentencing and plea hearings, as well as to documents filed in connection with those proceedings.” It concluded it did not need to decide if an order for sentence reduction is encompassed by the First Amendment, but it assumed it applied because “the Defendant’s compelling interests in sealing the district court’s order outweighs the public’s interest in accessing it either under common law or the more rigorous First Amendment standard.”
The order could be sealed “only if (1) closure serves a compelling interest; (2) there is a ‘substantial probability’ that, in the absence of closure, that compelling interest would be harmed; and (3) there are no alternatives to closure that would adequately protect the compelling interest.” In re Wash Post Co., 807 F.2d 383 (4th Cir. 1986).

The court found that precedent established that sealing is appropriate to protect the “physical and psychological well-being of individuals related to the litigation.” This “is even more elevated if judicial records suggest that the defendant may have cooperated with law enforcement.” It was noted that five other “sister circuits have held that protecting cooperating inmates serves a compelling interest under the First Amendment.”

The Fourth Circuit found the record demonstrated that Doe faced a heightened risk of being physically harmed. “To start, Defendant was involved with, and provided information about, members of an interstate drug-trafficking organization and individuals committing home invasion robberies,” the court wrote. “The information he provided was used in multiple investigations, as well as in federal sentencing.”

The court noted that Eastern District of North Carolina Standing Order No. 09-SO-02 (Feb. 12, 2012) requires the automatic sealing of motions related to a defendant’s substantial assistance.

Additionally, a 2016 report by the Committee on Court Administration and Case Management of the Judicial Conference of the United States presented “alarming findings” of 571 instances of harms or threats, including 31 murders, between spring 2012 and spring 2015. As a result, it recommended that “courts restructure their practices so that documents or transcripts that typically contain cooperation information” are automatically placed in a sealed compartment.

The Fourth Circuit found that sealing the order at issue “is the narrowest means of protecting the compelling interest in this case.” In ordering that relief, the court said its opinion does not require districts to implement automatic sealing procedures, but where a district has taken such “blanket measures, courts within the district should act consistently with the concerns underlying the policy.” See: United States v. Doe, 962 F.3d 139 (4th Cir. 2020).
Native Americans Protest Theft of Alcatraz Island

by Ed Lyon

The dubious history of agreement, contract and treaty breaking by the United States and its state governments was briefly addressed in the February 2019 issue of Criminal Legal News [p. 33]. The federal government has been in continuous violation of one of its treaties with Native Americans that it agreed to in 1868 called the Treaty of Fort Laramie for years. In essence, the U.S. government agreed that unused federal lands would be open for ownership claims by certain Native American tribes.

The Pacific island off the nation’s West coast across from San Francisco, California, where the Alcatraz prison was built originally belonged to the Ohlone tribe. In 1850, the federal government seized it for use as a military base. It eventually became a military prison before its 1934 transformation as the forerunner of today’s supermax prisons. It housed such notorious prisoners as Al Capone, along with 19 Hopi tribesmen charged for the “crime” of refusing to assimilate into Anglo culture.

Alcatraz, known as “The Rock,” was permanently shuttered in 1963. The federal government declared the defunct federal penitentiary “surplus property,” a legal precursor to inmates gaining access to contraband such as tools and knives.

On November 20, 1969, a large group of Native Americans calling themselves the Indians of All Tribes (IAT) repeated that page in history by entering and seizing Alcatraz Island, claiming what was, and is, rightfully theirs.

The 21-acre island soon sported a clinic, a media broadcasting station and a school for children, all assisted by donations from around the globe. Long-term dreams and plans included a cultural center, museum and university. As time passed, the occupiers grew weary, resolve faltered, college students left to return to their studies and the numbers of IAT continued dwindling.

On June 11, 1971, some 19 months later, federal officials removed the last members of the IAT occupiers from The Rock. It remains in the federal inventory to this day and is a popular tourist spot.

On the third Thursday of November 2019, a group of 4,500 IAT descendants with some of their original number, gathered at Alcatraz. They call that day “Unthanksgiving.” They now commemorate the 1969 reoccupation of their island and call attention to their ill treatment by the federal government on a yearly basis. They remain today, much as they were then, largely unheard, ignored and impoverished as a people.

Sources: cronkitenews.azpbs.org, mercurynews.com, vogue.com

Temporary Halt of Federal Prison Labor at National Parks, but New Policy Proposed To Resume It

by Jayson Hawkins

An internal investigation conducted by the inspector general’s office of the Department of the Interior found a surprising lack of procedures or policies governing the use of federal prisoners by the National Park Service (NPS).

According to the report: At one unnamed national park—the prisoners, whose criminal histories included firearms and drug related convictions—were found with contraband after they had been left working unsupervised in a park campground for about two hours. NPS employees were overseeing the work detail program without any formal training or guidance, which

A temporary halt on allowing prisoners to work in national parks effective April 2, 2020. Interior Secretary David Bernhardt responded to the report by putting a temporary hold on allowing prisoners to work in national parks effective April 2, 2020.

“I hereby order and direct NPS to immediately cease the use of prison labor,” stated Bernhardt. “Any agreements in place

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regarding the same are hereby rendered null and void.”

Bernhardt noted that NPS officials had known about the potential deficiencies that the absence of formal policies could create for over a year, but he was motivated to momentarily halt the prison work program only after the inspector general’s report pointed out “disturbing information regarding questionable practices” by NPS administrators.

The Inspector General report said: “We also found that prison work detail agreements differed from park to park, because they were coordinated and approved at the park level between the local NPS superintendent and the supporting prison facility. When we asked the NPS for documentation on these prison work details, the NPS identified five memoranda of understanding, three cooperative agreements, and three task agreements being used Service-wide. We also found that two national parks used prison work details without any written agreement in place at all.”

“The absence of NPS policies and oversight regarding prison work details at NPS properties creates risks to NPS employees, park visitors, and the prison community, and may expose the U.S. Department of the Interior to liability,” the report continued.

It was hoped that the recommendations from the inspector general’s report would “improve the safety and security of NPS employees and park visitors,” as well as enable the prison work details to proceed.

Bernhardt instructed officials in his department to develop a standardized federal protocol and policy within 60 days so that the NPS prison work program could be re-instituted. The coronavirus pandemic delayed the establishment of the new policy, but the NPS released a memorandum outlining it on July 9, 2020.

“The NPS has successfully utilized prison work details for decades,” it said. “Prison work details have served as a critical resource in wildland fire crews, and landscaping, maintenance and public work projects crews, across the National Park System. In addition to aiding the conservation mission of the NPS, these details have the added societal benefit of preparing prison laborers for post-incarceration life by teaching them important, marketable job skills.”

The new proposed policy, which applies to prisoners’ help in federal, state, tribal and privately run prisons, recommends that to avoid future problems Interior should “employ standardized agreement templates and language” between the NPS and prisons it works with. The memorandum outlined a series of requirements to improve “NPS employee training, the transportation of prisoners to and from NPS units, the oversight of work performed, and other important considerations necessary to facilitate these arrangements.

The memorandum lacked “the force and effect of law,” and as of press time the new proposed policy had not been fully implemented.

Sources: thehill.com, daoig.gov

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Corizon Health, Inc. agreed to pay $70,000 to settle a civil rights action alleging it failed to properly treat an Arizona prisoner’s wrist injury.

Eric Kevin Pesqueira incurred a wrist injury on October 17, 2013. He alleged it “was not promptly treated with medical devices or surgery.” When he had an outside evaluation, “he was told that his wrist was deformed with a limited range of motion that is likely permanent.” He was diagnosed in June 2014 with “SLAC wrist.”

In May 2016, Pesqueira reinjured his wrist by falling from his bunk “due to the failure to properly treat his wrist.” Then, in September 2017 he fell while doing jumping exercises and reinjured his wrist. Pesqueira was seen by a Corizon doctor in August 2018, and it was found “the fracture healed with some displacement of the third finger and wrist, and arthritis of the wrist.” Pesquiera underwent two surgeries to repair his right third finger in September 2018.

Represented by attorneys from the Law Office of Stacy Scheff, a settlement demand of $220,000 was made on February 17, 2020. The parties agreed on March 23, 2020, to a settlement of $70,000. See: Pesqueira v. Corizon Health, Case No. 2:18-cv-4063-DWL (JZB), USDC (D. Arizona).
ON June 26, 2020, THE Sixth CircuIT Court of Appeals ruled in a case in which “a prisoner states an Eighth Amendment claim by alleging that, without provocation, a prison official threatened the prisoner’s life on multiple occasions and took concrete steps, such as aggressively brandishing a deadly weapon, to make those threats credible.”

Michigan prisoner Fletcher Darnell Small alleged in his 42 U.S.C. § 1983 complaint that on several occasions “Officer Brock brandished a knife, threatened to kill Small, and motioned in a manner suggesting how Brock would use the knife to kill Small.” Those actions allegedly caused Small to seek “treatment and counseling” for “paranoia, mental distress, [and] psychological distress.”

The district court dismissed the action for failure to state a claim. After it denied Small’s motion to alter or amend the judgment, Small, acting pro se, appealed.

The Sixth Circuit noted it had never addressed the circumstances as Small presented. “[A] prisoner has ‘the right to be free from the terror of instant and unexpected death at the whim of his jailors,” wrote the court. “A threat of loss, when made credible by the aggressive brandishing of a deadly weapon, is beyond the type of ‘unpleasant experience’ that prisoners must endure.”

Citing *Hudson v. McMillan*, 503 U.S. 1 (1992), the court found that neither the force threatened by Brock nor the resulting paranoia and psychological distress Small alleged was de minimis. It, however, said its holding did “not mean that Small’s right was clearly established for the purpose of qualified immunity.”

The Sixth Circuit noted that unlike other circuits, it has not yet adopted a rule that allows a court to sua sponte dismiss a prisoner or indigent plaintiff’s claim if it believes it is barred by qualified immunity. In finding the district court should make the qualified immunity decision in the first instance, the Sixth Circuit noted it has found that a clearly established right can be based on unanimous out-of-circuit precedent. *Brown v. Battle Creek Police Dep't.*, 844 F.3d 556 (6th Cir. 2016).

Finally, the Sixth Circuit’s order said Small may only be able to seek nominal damages for his psychological injuries, but he could pursue compensatory damages on the constitutional claim. He also can seek declaratory and injunctive relief. The district court’s order was vacated. See: *Small v. Brock*, 963 F.3d 539 (6th Cir. 2020).

The Federal Reporter is replete with examples of prisoners losing cases because they missed litigation deadlines and courts extended little forgiveness,” the Seventh Circuit Court of Appeals wrote on June 25, 2020, in vacating a federal district court’s grant of summary judgment of prison officials, Error was found in the granting of defendants’ motion to file a belated second motion arguing a prisoner failed to exhaust administrative remedies.

Western Illinois Correctional Center prisoner Carlos Bowman’s civil rights action arose from events that occurred on April 14, 2014, during a “tactical shakedown” at the prison. Bowman alleged guards beat and choked him and forced him and other prisoners to stand so close together that their hands were on or near each other’s genitals for hours.

Bowman timely pursued the two-stage prison grievance system. After those remedies were denied, he brought Eighth Amendment claims for excessive force and failing to intervene against multiple guards and supervisors. He proceed in the district court and on appeal pro se after making several requests for the appointment of counsel.

Early in the proceedings, the defendants flagged the exhaustion issue. In March 2016, the district court entered a scheduling order that required the defen-
HRDC Files Civil Rights Lawsuit Against Colorado Sheriff for Censorship of Prisoner Publications

by Derek Gilna

The Human Rights Defense Center (HRDC), parent company of Prison Legal News (PLN) and Criminal Legal News (CLN), on September 1, 2020, filed a federal civil rights case alleging violations of its federal civil rights statutes.

HRDC alleged in its complaint that Adams County, Colorado; its sheriff, Richard Reigenborn and the jail chief, Chris Laws, “since June 2019 … have refused to deliver dozens of HRDC’s mailings to incarcerated persons, directly violating HRDC’s First Amendment right to freedom of speech (and) its Fourteenth Amendment rights to notice and an opportunity to challenge censorship.”

Although the Jail has an official mail policy in place, its correctional officers arbitrarily enforce that policy,” it further alleged. “HRDC respectfully requests that the Court order the Jail and its employees to cease and desist from continuing their ongoing violation, under color of State law, of HRDC’s rights (and those of its would-be readers) …and to award HRDC damages for the injuries it has sustained as a result of Defendants’ unlawful conduct.”

PLN noted in its complaint that HRDC “has thousands of subscribers to its monthly magazines in the United States and abroad, including incarcerated persons, attorneys, judges, journalists, libraries, and members of the public (and) has sent its publications to prisoners and law librarians in more than 3,000 correctional facilities across the United States, including death row units and institutions within the Federal Bureau of Prisons, such as the federal Administrative Maximum Facility … in Florence, Colorado — the most secure prison in the United States.”

“Prison Legal News is distributed to prisons and jails within the correctional systems of all 50 states, including to dozens of incarcerated persons housed in facilities in the State of Colorado, it said. According to the defendant jail’s written policy, “The ONLY books that are allowed to be sent into the facility are paperback Bibles, Quran etc. or religious study guides,” and further bans “recreation (sic) and leisure” reading materials, and labels everything else as “contraband.”

HRDC is seeking compensatory and punitive damages, ‘and an award of costs, including reasonable attorneys’ fees, under 42 U.S.C. § 1988 and other applicable law.”

See: Human Rights Defense Center v. Board of County Commissioners for Adams County, Colorado, et. al., Case No. 1:20-cv-02665, USDC (D-Colo.).

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Please note that we are not seeking articles, editorials, poems or other written works; only photos and videos. They can be taken inside or outside of prison, but must relate to prisons, jails or criminal justice-related topics. By sending us multimedia content, you are granting us permission to post it on our website. Please send all submissions via email to: CONTENT@PRISONLEGALNEWS.ORG

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Captain Accused of Abusing Mentally Ill Prisoners Cleared in Internal Investigation

by Kevin Bliss

A captain with the St. Louis County Justice Services Center in Clayton, Missouri was under investigation for allegedly abusing prisoners with histories of mental health problems. The captain had been accused of assaulting a prisoner with a mental health issue on June 1, 2020 and then confining him to a restraint chair for 18 hours; as well as tasing a Black female prisoner while she was restrained in the infirmary on June 10.

The captain (whose name has been withheld since he has not been charged with a crime) has since been demoted to a lieutenant, but the Clayton Police Department and the Department of Corrections Internal Affairs have both concluded their investigation, finding no evidence of wrongdoing.

Clayton Police Corporal Jenny Schwartz said the only report in evidence about the ex-captain was filed on June 2, which said that a prisoner assaulted the ex-captain by spitting on him. She said the investigation concluded with an application for a warrant for the prisoner’s arrest being sent to prosecuting attorney Wesley Bell’s office.

St. Louis County NAACP Chapter President John Bowman said the ex-captain should be held accountable and is critical of the county for not doing enough. He said the ex-captain should be fired for his actions. Comparing the administration to a slave ship from 1619, Bowman said, “We’re dealing with two pandemics, COVID-19 and COVID-1619, we find ourselves to -

James Floyd, a 35-year-old Black male held at the federal Bureau of Prison’s (BOP) Metropolitan Detention Center (MDC) in Brooklyn, died after being pepper sprayed by guards June 3, 2020.

Floyd was serving a 12- to 15-year sentence for a Long Island home invasion committed in 2007. He was being held at the state-run Sing Sing Correctional Facility when he was transferred to MDC in relation to an ongoing case. Associated Press reporters Michael Sisak and Michael Balsamo said that court records showed that Floyd was not a defendant in any pending federal cases when transferred.

MDC was on lockdown due to protests over the death of George Floyd May 25 and internal aggravation concerning new coronavirus protective measures such as requiring all detainees and prisoners to wear personal protective masks all day. Floyd became aggressive and barricaded himself inside his cell, breaking out the cell door’s window with a piece of metal. In a statement released by the BOP, they said, “He [Floyd] became increasingly disruptive and potentially harmful to himself and others. Pepper spray was deployed and Floyd was removed from his cell.”

Medical staff later found Floyd unresponsive in his cell. They attempted to resuscitate and called for an ambulance. Floyd was pronounced dead at the hospital. The BOP stated that Floyd’s death was not related to the coronavirus. Floyd’s mother, Donna Mays, said Floyd suffered from asthma and diabetes. She said jail officials were aware of his condition. “They maced my son.” said Mays. “They murdered my son.”

BOP Director Michael Carvajal said the incident was being investigated by the Justice Department’s Inspector General, Michael Horowitz. The medical examiner’s office will perform an autopsy and notification has been given to the federal Bureau of Investigation and the U.S. Marshals Service for any possible criminal responsibility. Horowitz stated that he would issue a public report of his investigations, but only after those investigations were concluded.

Prisoner rights advocates state that pepper spray is more dangerous when used on people with respiratory problems. And, that its use in prisons lowers the bar when considering whether the use of force is necessary. They want to limit its use and find alternative means of deescalating volatile situations.

The BOP has issued more pepper spray to its guards since a prisoner ambushed and killed a Pennsylvania guard in 2010. Prior to that, all guards had for protection were keys, handcuffs and a radio. The BOP said guards were trained to use their pepper spray only if staff or prisoners were in immediate danger, and then only after attempting to diffuse the situation with verbal commands.

MDC had previously been in the news as the institution that housed the first death attributed to coronavirus in federal prisons.
Former Pennsylvania Prison All Solitary with Silence Mandatory

by Ed Lyon

To be penitent is generally defined to be sorry for the wrongs, sins, misdeeds or offenses a person has committed. The word penitent is actually the root of the word penitentiary, which is another word for prison — places of confinement where prisoners are involuntarily housed after being found guilty of wrongs, sins, misdeeds or offenses deemed to be criminal acts by the government.

The thought progression is that prisoners become penitent as a result of spending time in a penitentiary after being found guilty of committing crimes.

In early-1800s Pennsylvania, the Society of Friends or Quakers, strongly disagreed with then-existing prisons and penology concepts and practices. They envisioned a place of solitude where convicts would spend all day, every day, by themselves with nothing but a Holy Bible to read. In such circumstances of penitent meditation, the convicts would see the error of their ways and become redeemed, positively contributing members of society when released.

Construction on Eastern State Penitentiary began in 1821 and was completed in 1829. The cells were huge in comparison to most of today’s 6-by-9 footers, measuring a full 7 and a half by 12 feet. Since the only time a convict would leave his cell was for one hour of recreation each day, running water was piped into each cell for a sink and flush toilet. The White House did not even have flush toilets until 1833!

Each cell had its own skylight to allow Bible reading.

Recreation took place in small outside enclosures isolated from each other. Prisoners were fed in their cells. A closable slot in each door allowed food trays to be passed. Heat was piped to each cell during cold weather.

All talking was forbidden, with silence ruling. Prison guards walked their rounds with socks on the outside of their shoes to muffle their footsteps. Not only was this the nation’s first, true penitentiary; it was the forerunner of what is known today as administrative segregation — a practice being ruled on by more and more courts as cruel and unusual punishment.

African American Charles Williams was this penitentiary’s very first prisoner, admitted on October 25, 1829.

As great expectations and grand experiments sometimes go, the Eastern State Penitentiary went. By 1945, it was clear this was not the way to go in felony imprisonment, and the Pennsylvania Legislature recommended its closure. This process took 25 years with the doors closing in 1970. The facility briefly housed prisoners from a county prison until its final closure in 1971.

Certified as a historical site, the Eastern State Penitentiary is now a Philadelphia tourist attraction. It is open to the public for tours seven days a week.

Sources: easternstate.org, governing.com
Alabama Executes Non-Shooter in Police Killings

by David M. Reutter

The death penalty is advocated both for punishing the most atrocious cases of murder and for its alleged deterrent effect. Yet on March 5, 2020, Alabama executed a 44-year-old man, not for committing murder but instead because he did not "try to stop the gunman from" killing three Birmingham police officers.

“Nathaniel Woods is 100% innocent,” said his co-defendant, Kerry Spencer. “I know this to be fact because I’m the person that shot and killed all three of the officers.”

The story behind Woods’ execution involves corrupt police officers, police intimidation of witnesses, the ineffective assistance of trial counsel, and an Alabama law that allows a defendant to qualify for the death sentence as a result of his co-defendant’s murderous actions.

Early in this century, Woods and Spencer were in cahoots with Tyran “Bubba” Cooper. The three shared a Birmingham apartment from which they sold drugs. A “doorman” at the drug house testified at the 2005 trial that Woods and Spencer sold mostly crack cocaine, serving 100 to 150 people a day.

According to a 2012 affidavit from Cooper, back in 2002 he was paying $300 to $400 a week to police officers Carlos Owen and Harley Chisholm III “to protect my drug business and to make sure that no one else sold drugs in my area of Birmingham.”

Then in 2004, Cooper was charged with attempted murder. The officers decided to raise their price. Cooper had problems meeting that demand and began avoiding the officers. Whenever they came looking for him at the apartment, Woods got into arguments with them.

The officers went to the apartment to look for Cooper three times on June 17, 2004, the last a solo visit from Owen. The officer and Woods argued. Spencer said he and Woods then planned to wait until the officers went off-duty before heading out, in hopes of avoiding trouble.

The officers, however, had a different plan. They ran Woods’ name through a criminal database and learned he had an outstanding misdemeanor warrant. After a brief administrative delay, Owen and Harley, along with fellow officer Charles Robert Bennet and Sgt. Michael Collins, returned the same day to the apartment to serve the warrant.

Collins and Spencer gave differing accounts at trial of what happened next.

According to the sergeant, Woods surrendered to police and was standing upright and not yet handcuffed when Spencer fired on the four officers. Collins testified that he “knew it wasn’t Nathaniel” that fired the weapon, adding that Woods yelled, “I give up. I give up. Just don’t spray me with that mace.”

Spencer, however, said he awoke to a commotion in the apartment.

“When I woke up, I had the chopper on my lap,” he said, referring to the SKS automatic rifle police found outside the apartment after the shootings. “When I got up, I got up with the rifle. I’m in a crack house. We sell dope. This is what we do. You always have to have your gun on you at the ready if you’re inside that fucking apartment.”

Spencer saw police cars when he looked out the window, so he thought police were outside. When he exited the bedroom, he saw Woods holding his face in pain and thought he had been beaten by police. That’s when he said one of the officers pointed a weapon at him.

“When I looked to the side, there was two police officers trying to train their guns on me, so I opened fire with the fucking rifle,” Spencer said. “I wasn’t trying to get shot period. I got a rifle in my hand. They’re going to shoot me. You point a gun at me, bitch, I’m fixing to shoot.”

According to Attorney General Steve Marshall (R), Woods called to the police outside, “If you come in here, we’ll fuck you up,” adding as he tried to escape and saw Collins outside, “There’s someone else. We got another one right here.”

Spencer opened fire, hitting Collins in the thigh as he sought cover and called for back-up. When help arrived, Bennett was found outside the front door, shot in the head. Chisholm and Owen were found inside. Both had been shot in the back through their bulletproof vests. All three officers died.

Spencer was found hiding in a neighbor’s attic. Woods was apprehended while “sitting on a nearby porch, apparently ‘very relaxed’ and carrying two .22 caliber bullets in his pocket,” Marshall wrote in a letter to Gov. Kay Ivey (R).

“Although Woods was not the shooter, he was hardly an innocent bystander,” the Attorney General added.

Spencer disagreed.

“Nate is absolutely innocent. That man didn’t know I was going to shoot anybody just like I didn’t know I was going to shoot anybody that day, period,” he said. “Nate is a good guy. Nate ain’t no killer. The reason Nate was down there in the dope house with us is because he needed money.”

In fact, Spencer said, Woods was so soft-hearted that he had to be supervised because he would give drugs away for free.

Nevertheless, the jury in his 2005 trial found Woods guilty of four counts of capital murder: three counts of intentionally killing a police officer in the line of duty and one count of killing two or more people while pursuant to a scheme or course of conduct. The vote was 10-2 in favor of the death penalty.

But his post-conviction attorneys noted several problems with the case.

Woods’ girlfriend had testified that he made comments demonstrating hatred of police, but she then tried to recant at a pretrial hearing, saying “I made that up. I told y’all what you wanted to hear.” Woods’ appeal also alleged she was threatened with a parole violation if she refused to testify against him.

Cooper did not testify at trial, alleging police threatened him into silence. The trial court also refused to allow evidence of police misconduct to be presented at trial.

Leading up to trial, Woods was appointed – despite obvious conflict of interest – the same attorney as Spencer. That lawyer missed filing deadlines and prematurely presented claims, which barred their later consideration after supporting evidence was developed. On the eve of trial, an attorney with no experience in capital cases was assigned as Woods’ attorney.

The theme that Woods hated cops was used extensively during his appeals.
As evidence, the state presented a song he had “apparently written” with lyrics that expressed his lack of remorse. The song begins: "Seven execution-style murders. I have no remorse because I’m the fucking murderer."

While the jury bought the state’s argument, the lyrics actually come from the song High Powered on Dr. Dre’s 1992 album The Chronic.

Prosecutors knew Woods was not the shooter, and they offered him a plea deal for 20 to 25 years. His trial lawyer wrongly informed Woods that he could not be convicted of capital murder as an accomplice. After he was convicted and then appealed, the state argued there was no evidence that a plea offer was ever made. In fact, once he turned down the plea offer, prosecutors claimed at trial that Woods, who was Black, was the mastermind of the plot to kill the three white police officers.

“[Woods’] case has just been so mishandled that it’s just a shame that we’re at the point of executing a man who was not the triggerman, whose case has so many issues that no court has considered,” said J.D. Lloyd, Woods’ third appellate attorney.

As Woods’ execution date neared, advocates made efforts to stop the death warrant from being carried out. However, the Supreme Court denied his final appeal. Woods v. Stewart, 140 S. Ct. 67 (2019)

Martin Luther King, III, son of the slain civil rights icon, and Bart Starr, Jr., whose father was a legendary quarterback for the Green Bay Packers, each wrote letters to Gov. Ivey asking her to grant Woods clemency.

“Simply being in the wrong place where someone else shows up and then starts firing at police officers is not a reason to assign culpability to someone,” Starr wrote.

Ivey disagreed.

“Under Alabama law, someone who helps kill a police officer is just as guilty as the person who directly commits the crime,” she said. “Since 1983, Alabama has executed two individuals for being an accomplice to capital murder.”

In other words, that’s just how justice is administered in Alabama.

Sources: CNN, theroot.com, deathpenaltyinfo.org

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Former Angola Warden Burl Cain Appointed Head of Mississippi Prison System

by Matt Clarke

Former Louisiana State Penitentiary Warden Burl Cain’s 21-year tenure running the prison complex at Angola was both long and controversial. His critics accused him of religious bias, blatant racial prejudice and excessive use of solitary confinement. He is known for forcing his brand of Baptist faith on prisoners, while preventing those of other faiths from practicing their religion. His supporters counter that he took the most violent and infamous prison in America and changed its culture for the better. Many states, including Texas, were so pleased with his methods that they enacted a modified version of the Angola model in their own state prisons.

Mississippi Governor Tate Reeves is another supporter and in May 2020 he announced the appointment of Cain, 77, to the top position in the Mississippi Department of Corrections, an overcrowded and underfunded prison system that has seen dozens of prisoners die violently or due to inadequate health care over the past year, as PLN has previously reported. [PLN, June 2020, p. 1]

“We need a strong, experienced leader that Mississippians can trust, and I believe that person is Burl,” said Reeves. “I do not make this decision lightly. The safety and dignity of all within our system is at stake. Burl’s impressive decades-long career in corrections, leading prison facilities and ushering in progressive measures to improve conditions is exactly what we need.”

Progressives may balk at this characterization of Cain’s policies. His tenure at Angola was marked by his introduction of a Baptist theological seminary, favoring that denomination while allegedly suppressing other faiths, as well as racial prejudice and the overuse of punishment — especially solitary confinement. His style is authoritarian, not progressive, and he did not tolerate dissent of any kind — characterizing peaceful protest as “violence.”

“The prison operates with one authoritarian figure, the warden and the rule book,” said Cain. “And so if you’re going to be defiant and be belligerent and do a hunger strike, then you’re giving me an ultimatum. If you don’t give me what I want, I’m going to starve myself to death and not eat, therefore do what I say. So, therefore, that is absolutely contrary to the administration, the rule books, and so forth. He’s trying to give us ultimatums. Ultimatums is what they give you when they take hostages. Ultimatums are not what we do in prison... There is no peaceful demonstration.”

Cain’s resignation from Angola came amid an investigation of a land deal he made with the friends and family of an Angola prisoner. The Baton Rouge Advocate reported on the land deal in 2015. The reporting sparked a 2016 probe that found no improprieties and a 2017 legislative auditor’s report that found Cain had used 10 prison employees to perform services at his private residence.

Cain’s reputation for stabilizing Angola is widespread. The prison was known in the 1970s for violence and a thriving inmate slave trade. But several prison staff members told the Mississippi Free Press that many of the reforms Cain is credited with enacting were started under earlier administrations. Cain believes much of the positive change in the prison is due to the arrival of a New Orleans Baptist Seminary campus at Angola at his behest, the year he became warden.

Cain says he enforces a Christian culture among the prisoners, regardless of their faith. Critics say the culture he imposes is Southern Baptist and that he suppresses all other faiths. For instance, in 2007, the prison settled a lawsuit brought by a Mormon prisoner and the American Civil Liberties Union (ACLU) over Cain’s administration denying him access to Mormon publications. Two years later, the ACLU helped a Catholic prisoner and a Muslim prisoner file another lawsuit over denial of religious rights, including making Baptist services the only television available on Sunday mornings and denying Muslims religious literature and the right to meet for religious worship.

Cain also has a documented history of racist remarks. As far back as 1993, when he was a member of the Louisiana Civil Service Commission, he voiced fears that Asians living in Louisiana could take state jobs away from other residents because “they make real good grades,” as he opposed a waiver of the civil-service tests for college graduates with above-average grades. This “model minority myth” is unsubstantiated by research and harms Asians.

Cain was reprimanded by the commission’s director who told him he did not “care about the color of the skin or the slant of the eyes,” but about finding “the best person to work for the state of Louisiana.” But Cain shook it off, saying that Asians had put Americans out of business in the fishing industry and seemed to be given preference by the commission.

Cain’s alleged racism and religious bigotry influenced his treatment of prisoners who belonged to the Black Panther Party, which he referred to as a “religion.” Albert Woodfox spend 44 years and 10 months in solitary confinement — longer than any other prisoner in U.S. history — because of his party affiliation.

In a 2008 deposition, Cain admitted to keeping Woodfox, Robert King, and Herman Wallace — members of the Black Panther Party who became known as the “Angola Three” after being convicted of the 1973 murder of a prison guard—isolated based on flimsy evidence. When Woodfox’s attorney pointed out that Cain had admitted Woodfox did not cause much trouble, Cain compared him to a lion in a cage who causes little trouble because of the cage. Using that perspective, no segregated prisoner could ever be credited with good behavior.

Of course, there is ample, if limited, opportunity for a segregated prisoner to cause trouble.

Attorney Nicholas Trenticosta mentioned that after King was released from prison, he stayed out of trouble. That was deception, said Cain, who believed that King was only waiting for other members of the “Angola Three” to get out so they could reunite and return to their violent ways.

Cain also said that, even if he knew King was innocent of the guard’s murder, he would still keep him in isolation because he was “still trying to practice Black Pantherism,” and would try to organize younger prisoners, causing “chaos and conflict. He has to stay in a cell while he’s in Angola.”

Sources: djournal.com, mississippifreepress.org
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Prison Legal News
November 2020
Massachusetts Jail Phone Cost Reductions Under Attack
by Ed Lyon

At least two Massachusetts sheriffs offer rehabilitative programs to prisoners in their jails. Hampshire County Sheriff Nick Cocchi’s jail holds anger management, domestic violence classes and employment seminars while providing bus service to and from the jail for visitors. Worcester County Sheriff Lewis Evangelidis’ jail holds mental health, education, substance abuse and music programs.

These programs are funded through telephone revenue “commissions” paid to Cocchi by ICSolutions and to Evangelidis by Securus.

Phone rates in Cocchi’s jail are 12¢ per minute with “commissions” totaling about $820,000 annually. Phone rates in Evangelidis’ jail are $3 for the first minute and 15¢ per each subsequent minute, with “commissions” totaling about $300,000 annually.

Both sheriffs say they allow for free phone calls because of the pandemic. They are having to run three and four classes per program each week in order to meet distancing requirements, adding costs to keep them ongoing. They state phone “commissions” pay the costs for these programs.

They claim to be severely underfunded by lawmakers and cannot continue rehabilitative programming without phone provider “commissions.” Nonetheless, the state legislature in October 2020 was considering Senate Bill 2846 (previously Senate Bill 1372) that would require prisons and jails to provide free phone calls to “prisoners and receiving parties.”

Executive Director Bianca Tylek of Worth Rises testified before the legislature that families accepting collect calls must first pay hefty security deposits, then 36¢ per minute.

Yearly deposits, fees and taxes total about $7.4 million annually with actual total minute amounts of $16.8 million. The three phone service providers in the state are GlobalTel*Link, ICSolutions and Securus.

She stressed that phone contact between prisoners and their families keeps their relationships strong and help prisoners to successfully reintegrate back into society after their release from jails or prisons. She further testified that phone rates were so onerous that families often found themselves juggling household expenses and utility and food bills in order to speak with their incarcerated loved ones.

The sheriffs countered that the programs in their jails are equally if not more important to societal reintegration, with particular attention to substance abuse classes. Cocchi stated that if phone revenues lost are not offset by legislative apportionments “those programs are getting cut.”

Staff attorney Bonnie Teneriello of Prisoners’ Legal Service of Massachusetts said it’s “heartless” for financially vulnerable relatives of prisoners to be required to pay for mental health and substance abuse programming.

“They’re asking poor people to pay for the costs of these needs, and let’s just be clear, why do people need substance abuse treatment? Why do they need mental health treatment? Look at the communities they come from. Look at the socioeconomic stressors. You’re going to ask these people to bear the costs of treatment for problems that society has created. That is unconscionable.”

At press time, there were indications that Senate Bill 2846 would be enacted.

Source: maslive.com

News in Brief

Alabama: The Birmingham News reported that an Alabama prison guard had been arrested for drug trafficking after a search of his vehicle when he arrived for work at the St. Clair County prison turned up 138 grams of methamphetamine and 16 grams of heroin. Ivan Caldwell, 26, was then booked into the county jail. He resigned in October 2019 from the state Department of Corrections (DOC), for which he had worked since 2017. DOC is “deeply committed to eliminating contraband” in its facilities, said the director of its Investigations and Intelligence Division, Aronaldo Mercado.

Arizona: A guard at Arizona’s Eyman state prison complex in Florence was arrested in October 2019 and charged with aggravated assault on a prisoner. Sgt. Jose Verdugo, 38, allegedly beat up the prisoner, whose name was not released, in August 2019, according to a report in the Arizona Republic. After he was booked into the Pinal County Jail, Verdugo resigned his position with the state Department of Corrections, which issued a statement insisting it “does not tolerate the unjustified use of force against an inmate.”

California: In an unusual turn of events, a prisoner serving a life term at California State Prison and Substance Abuse Treatment Facility in Corcoran published his confession to the brutal murder in January 2020 of two convicted child molesters with whom he was housed. Jonathan Watson, 41, sent a letter in February 2020 to the San Jose Mercury News, which detailed how he used a cane belonging to fellow prisoner David Babb, 48, and beat him to death, after becoming enraged that Babb was watching children’s TV programming in the prison common area. Using the same weapon, Watson then clubbed to death Graham De Luis Conti, 62. All three men were serving life sentences, Watson for first-degree murder and the other two for aggravated sexual assault of a child under 14. Watson’s letter claims he confessed to clinical staff he was on the verge of violence and asked them to move him from the housing unit, but the request was ignored.

California: Known as the voice of Charlie Brown in the Peanuts TV specials of the 1960s, Peter Robbins is also a former felon, according to an October 2019 report by Fox affiliate Fox 8 in Ohio. Now the 63-year-old actor, who was convicted of a felony under California’s two-strike law for criminal threats made to San Diego County Sheriff William Gore, among others, plans to write a book titled, Confessions of A Blockhead, about the bipolar disorder that fueled the manic behavior that eventually landed him at the California Institution for Men in Chino. From there, he was transferred to a state mental health hospital in Atascadero before being released to a sober-living home in northern San Diego County in October 2019 to complete the last year of his five-year prison sentence.
sentence. He advises anyone who “has bipolar disorder to take it seriously because your life can turn around in a span of a month.”

**Colorado:** Two Denver County Sheriffs Office deputies were fired in June 2020 after a reckless driving incident the preceding January, while carrying three prisoners in a transport van. According to a report by Denver TV station KDVR, Deputy Jason Martinez was riding shotgun in the van when Colorado State Police clocked Deputy James Grimes driving the van at 100 mph on I-25 in a construction zone with a 60-mph speed limit. When stopped, Grimes claimed he was speeding to a toilet so that one of the prisoners could relieve himself, denying eyewitness reports that he was drag-racing a pickup whose driver was charged with DUI. In 2010, Grimes was one of five guards at Denver’s Downtown Detention Center involved in a use-of-excessive-force incident that resulted in the death of Marvin Booker, a homeless street preacher. Denver paid Booker’s estate $6 million to settle a wrongful death lawsuit in 2014, but no deputy was charged by then-District Attorney Mitch Morrissey. According to attorney Mari Newman, all five continued to work in law enforcement until Grimes’ arrest and termination.

**Florida:** A demeaning Twitter post has stirred up controversy for the sheriffs office in Pasco County, Florida. According to an October 2019 report in *Orlando Weekly*, the image of a work crew from the county jail was accompanied by the caption, “Never give up on your dreams!” The sheriffs office said the men in the work crew were “volunteers” filling sandbags for use during Hurricane Dorian in August 2019. Sheriff Chris Nocco did not explain why he or his staff might consider that a dream task.

**Georgia:** Mia Martinez-Welch, 22, a former guard at Santa Rosa Correctional Institution in Milton, Florida, was sentenced in October 2019 to an 18-month prison term for smuggling tobacco, methamphetamine and other drugs to a prisoner under her watch, according to a report by Tampa cable TV station *Bay News 9*. The felony was revealed when her cellphone was found inside the prisoners cell in November 2018, and she was fired by the state Department of Corrections. Five other women who worked at the prison also were fired and charged with introducing contraband.

**Georgia:** According to an October 2019 report by TV station WMAZ in Macon, Georgia, federal Judge Tillman E. Self dismissed a clutch of lawsuits filed against the state Department of Corrections (DOC) by eight prisoners who claimed they were injured when the transport bus they were riding was commandeered by two other prisoners making an escape. The eight said DOC’s lax policies and procedures had contributed to the June 2017 incident in Putnam County. But Judge Self ruled the state was immune because any harm had not been directly caused by its employees. The escapees, Ricky Dubose and Donnie Rowe, overpowered two guards on the bus, shooting and killing them. Both prisoners were recaptured and charged with the murder of the guards, Curtis Billue and Christopher Monica.

**Illinois:** In June 2020, the Board of Commissioners of Gwinnett County, Georgia, voted to pay $202,500 to former detainee Shelby Clark for injuries she received at the County Jail in August 2018. The then-26-year-old, whose father claimed she is mentally ill, had been jailed on a battery charge when she was punched in the face by Deputy Aaron S. Masters, who allegedly lied about the incident in his official report, according to the *Atlanta Journal-Constitution* and TV station WSB. Masters, 27, was fired from the county sheriffs office and indicted by a federal grand jury in January 2020 for using excessive force in the incident. The jail’s Rapid Response Team, of which he was a part, was also being investigated by another federal grand jury for use of excessive force by holding inmates in “restraint chairs” that improperly immobilize them.

**Illinois:** Transgender prisoners held by the Illinois Department of Corrections (DOC) had been routinely mocked in social media posts made by about 25 DOC employees, resulting in an investigation of at least half of them and disciplinary action against some of those, according to an October 2019 report by *CNN*. A review of two private Facebook groups by Injustice Watch, a nonprofit journalism group, found posts by DOC guards, a counselor and a parole officer that referred to transgender prisoners as “it” and “a f***** joke.” The groups, “Behind the Walls – Illinois Dep’t of Corrections” and “Behind the Walls – Illinois Department of Corrections,” have over 4,000 members each. Many of the posts referenced Strawberry Hampton, a transgender prisoner who has sued DOC, alleging sexual and physical abuse by guards and retaliation for her complaints about them while held at Pinckneyville Correctional Center and Menard Correctional Center. A spokesman for the guards union, Anders Lindell, said that while his group doesn’t condone inmate abuse, every one of its members deserves “fair representation and due process.” Hampton’s attorney, Vanessa Del Valle, claimed the posts reflect the “horrid” way transgender women are treated by DOC. The agency has recently introduced mandatory training for its employees on transgender-related issues, according to acting DOC Director Rob Jeffreys.

**Kentucky:** In October 2019, a Sheriffs deputy employed at the McCraken County Jail in Paducah, Kentucky, was fired and charged along with two women and two prisoners in a scheme to smuggle tobacco, marijuana, prescription pills, cellphones and other contraband into the lockup. According to a report by TV station WPSC, the former guard, Raheem Tenner, 23, accepted bribes to smuggle the contraband from the women, Savannah Sutton, 19, and Ricosa Young, 27, to inmates Shawn Sutton and Epiionn Lee-McCampbell. Tenner was apprehended after a tip from fellow jailer David McKnight. Young and Savannah Sutton were then captured in the...
jail parking lot in a sting operation when they allegedly attempted to deliver more contraband.

**Louisiana:** According to an October 2019 report by New Orleans, Louisiana, TV station WWL, a pair of Orleans Parish Sheriff’s Office deputies lost their jobs the previous August after an investigation revealed they had engaged in sex with inmates outside the jail on a work-release program. The prisoners, who were not identified, were removed from the program and returned to jail. The deputies, Ariel Breaux and Quiera Joseph, were not charged because they were off-duty at the time of the incidents. Breaux resigned while under investigation. Joseph was fired after a disciplinary hearing. A third deputy, Oshen Heilman, was fired in an unrelated 2017 incident for having an ongoing relationship with an inmate. Because her actions happened on-duty, she was criminally charged, pleaded guilty and sentenced to three years of probation.

**Michigan:** The Michigan State Capitol has seen multiple protests in the past year. Last fall, a crowd of more than 100 rallied outside the capitol calling for prison reform and a reduction in the use of life sentences, according to a report by Lansing TV station WLNS in October 2019. Protestor Patrice Ferguson said she thought the life sentence that her husband received for a 1984 assault should have been considered complete after 20 years, not the 37-and-counting he has served. Another protestor, William Hawkins, said his father has served 30 years on a life sentence without any chance to prove he is not a threat. Breaux resigned while under investigation. Joseph was fired after a disciplinary hearing. A third deputy, Oshen Heilman, was fired in an unrelated 2017 incident for having an ongoing relationship with an inmate. Because her actions happened on-duty, she was criminally charged, pleaded guilty and sentenced to three years of probation.

**Missouri:** In January 2020, Michael Allen Byrd II, a former guard at the Daviess-DeKalb Regional Jail in Pattonsburg, Missouri, was sentenced to four years in state prison for a guilty plea he entered in July 2019 to a charge of sexual conduct with a Daviess County prisoner under his supervision, a felony under state law. Byrd had previously pleaded guilty to an identical charge with a Caldwell County prisoner in April 2019. The warrant for his arrest given to the DeKalb County Sheriff’s Office said he had coerced several women incarcerated at the jail to perform oral sex on him, according to a report by radio station KTTN in Trenton. His two four-year sentences will be served consecutively with the state Department of Corrections.

**Nebraska:** Christmas Eve church service attendance was cut short in December 2019 for off-duty guards at the Nebraska state prison in Lincoln, who rushed back to work when a disturbance erupted. According to a report in the *Omaha World-Herald*, the prison went on lockdown when a group of 14 prisoners in the Diagnostic and Evaluation Center disabled surveillance cameras, broke furniture and cracked a window after guards confiscated “food items” and “homemade alcohol” from them. The state Department of Correctional Services (DCS) said the lockdown had been lifted by the next morning, with the prison running “modified operations,” meaning prisoner movement was more closely controlled and some prisoners were confined to their cells. DCS Director Scott Frakes commended the swift response to the disturbance by guards from the Corrections Emergency Response Team.

**New Jersey:** A lawsuit filed in October 2019 by New Jersey prisoner Raymond Skelton seeks class-action status to extend to all of the 12,000-plus inmates held in the state’s six prisons by its Department of Corrections (DOC), according to a report in The *Press* of Atlantic City. The suit also demands that DOC cease substituting high-sugar and high-sodium processed food for more nutritious meals. Skelton, 69, is held at South Woods State Prison in Bridgeton. He suffers from diabetes, high blood pressure and high cholesterol, so he complains that his Eighth Amendment protection from cruel and unusual punishment has been violated by depriving of properly nutritious food, claiming that “virtually every” fruit and vegetable has been replaced with food paste, white flour and low-nutrition starches like potatoes and rice. In addition, he alleges that healthy meat and fish have been replaced with processed meat, and the commissary stocked with chips, cookies, pies and other “sodium bombs.” He also claims that prison staff have been ordered “to water down vegetables, hot cereals, mixed foods, sauces and liquid cheese products, and to load meal products with expired, old bread scraps and similar fillers.” As a result, he says, DOC’s menus no longer accurately portray the meals prisoners are served. His suit seeks injunctive relief in the form of a more nutritious menu, as well as compensatory and punitive damages.

**New York:** New York’s Museum of Modern Art (MoMA) held a VIP reception in October 2019 that was promptly crashed by over 200 prominent members of the art world, who gathered outside to demand the museum and its board member Larry Fink disinvest from private prison companies. The New Sanctuary Coalition, which released a statement on behalf of the protestors, gathered signatures of such luminaries as Cuban-born performance artist Tania Bruguera, German-born filmmaker Hito Stevrl and Princeton-based art critic Hal Foster. Board member Fink is CEO of BlackRock, the world’s largest investment firm with $6 trillion in assets, including the second-largest stakes in the country’s two largest private prison operators, Florida-based GEO Group and Tennessee-based CoreCivic. In January 2020, 37 artists connected to a MoMA PS1 exhibition on the Gulf War wrote the show’s curators to call on the museum to cut ties to Fink due to his profiting from “the suffering of others.”

**North Carolina:** According to a Janu-
ary 2020 report by TV station WNCT in Greenville, North Carolina, a former guard at the Craven County Confinement Facility has been charged with attempting to smuggle drugs into the jail. The guard, 28-year-old Terrance Tremayne Outlaw, was fired immediately; according to Sheriff Chip Hughes. Charged in the scheme with him were Joshua Joel Duncan, 27, an inmate at the jail who allegedly planned to deal the drugs there, and his girlfriend, 31-year-old Reba Louise Williams, who delivered the contraband to the ironically named Outlaw. No update on the charges was available, but Hughes gained notoriety in May 2020 when he publicly announced that his office would do nothing at churches that violated the 10-person limit on indoor gatherings announced by Gov. Roy Cooper (D) in response to the coronavirus pandemic.

Ohio: Less than a year after an Ohio deputy sheriff was lauded for nabbing a burglary suspect, he was fired after surveillance video caught him repeatedly punching and pepper-spraying a handcuffed detainee. According to a report in the Portsmouth Daily Press, Jeremy Mooney resigned from the Pike County Sheriff’s Office in November 2019 after he placed handcuffed detainee Thomas Friend in a restraint chair and punched him 11 times in the face before moving him and his chair to the parking lot, where he then pepper-sprayed Friend in the face. At the same time his firing was announced, Sheriff James E. Nelson said he had launched an investigation into a possible excessive-use-of-force charge. He also turned over surveillance video of the incident to County Prosecutor Rob Junk, who told ABC News he found it “disturbing.” All of this came just 11 months after the sheriff praised Mooney for recognizing a Lexus allegedly stolen by a burglary suspect. In that January 2019 incident, Mooney gave chase by car and on foot until he found the car thief, 25-year-old James Widdig, lying in the grass with a syringe. Widdig admitted he was high on drugs, but he denied the syringe was his.

Oklahoma: A former guard at the Oklahoma City Community Corrections Center, 26-year-old Amanda Oatis, has been charged with sexually assaulting at least six female prisoners at the jail, according to a January 2020 report by Oklahoma City TV station KFOR. The incidents, which allegedly occurred between July 2018 and Oatis’s firing from the state Department of Corrections (DOC) in February 2019, involved kissing inmates and touching their genitals. One inmate reported that Oatis performed oral sex on her three times and penetrated her with a finger seven times. DOC has also accused Oatis of providing alcohol and cellphones to one of her victims in the lockup.

Oklahoma: After violence erupted in Oklahoma City during racial protests sparked by the May 25, 2020, death of George Floyd – an unarmed Black man killed by Minneapolis police investigating a reportedly counterfeit $20 bill – four activists who were arrested were then released, using $1.4 million in bail funds posted by groups affiliated with Black Lives Matter (BLM), according to Associated Press re-
ports. A $750,000 bail was posted for Eric Christopher Ruffin, 26, who was charged under a state anti-terrorism law with inciting protesters via an enthusiastically-narrated Facebook video of a burning bail-bond business and a torched Oklahoma County Sheriff’s vehicle on May 30, 2020. The next day, Adam Warner Hayhurst, 19, Deshayla Dixon, 24, and James Lovell Holt, 31, were also arrested and released when BLM posted their bail – $300,000 each for Hayhurst and Dixon’s $50,000 for Holt. He was caught on video throwing rocks at the Oklahoma City National Memorial, for which Judge Ray C. Elliott imposed a daily curfew and an ankle monitor. Still jailed on terrorism charges was Israel Antonio Ortiz, 21, whose bail was set at $1 million.

**Pennsylvania:** Two prisoners died and seven others were hospitalized over a catastrophic Christmas week in 2019 at the George W. Hill Correctional Facility in Thornton, Pennsylvania, according to the Philadelphia *Inquirer*. The jail in Delaware County, which is run by Florida-based GEO Group, is the state’s last privately operated lockup. Late on Christmas night, prisoner Austin Peter Mulhern was found dead in his cell after hanging himself with a bedsheets. The 45-year-old security guard at Delaware County Community College was apparently serving a 20-day term handed down in August 2019 for a DUI conviction. The night before, three other inmates had been hospitalized for drug overdoses, and hours after Mulhern’s death, five more inmates were hospitalized from a mass overdose of heroin smuggled into the lockup by holiday visitors. One of those five hospitalized women apparently was Fatima Musa, 27, who then died on New Year’s Eve. She had been jailed after a trespassing summons from the State Police Gaming Enforcement triggered a violation of a probation sentence she had earlier received for nonviolent drug-related offenses.

**Pennsylvania:** As previously reported by *PLN*, Derrick Houlihan, a prisoner with a prosthetic leg, filed suit in federal court in February 2019 claiming his civil rights were violated by a savage beating he received at the hands of guard Alfred Gregory at Pennsylvania’s Montgomery County Correctional Center in December 2016 (See *PLN*, December 2019, p. 63). That case was dismissed in May 2019. But First Assistant District Attorney Edward F. McCann Jr., who called the guard’s behavior “unhinged,” filed criminal charges against Gregory and four other jail employees who allegedly stood by and watched. A jury acquitted all five men of aggravated assault in February 2019, but it hung on the questions of whether their actions qualified as simple assault or official oppression. After deliberating 14 hours in an October 2019 retrial, the jury again hung on two charges but returned verdicts on nine others, including guilty verdicts for 35-year-old Gregory on charges of simple assault and official oppression. Former guard Lt. Darrin Collins, 54, was found guilty of official oppression. The jury acquitted or hung on the remaining charges against the other three jailers.

**South Carolina:** South Carolina grand juries indicted 95 people in just a few months on charges of smuggling drugs and other contraband – especially cellphones – into state prisons, according to *The State*. In November 2019, indictments were handed down to 54 people on 194 charges related to a massive drug trafficking operation dubbed “Prison Empire” because it was run by state prisoners from their cells using contraband cellphones to coordinate with contacts outside. Of the defendants, 14 are former prisoners and 12 are current prisoners, most at high- or medium-security state prisons, though one is now incarcerated in a privately run Mississippi prison. In addition to tracking illegal drugs with a $20 million street value, investigators also seized over 40 firearms during the operation. A similar investigation conducted between November 2018 and September 2019 re-
sulted in indictments against an additional 38 defendants. The last three indictments in February 2020 went to a trio of people—a prisoner, a female friend outside and a prison maintenance worker—for conspiring to bring $350,000 worth of drugs, cellphones and other contraband into a state prison. Another scam run by prisoners with contraband cellphones did not involve drugs but instead lured Army personnel to send nude photos that were then used to extort money from them. According to state prisons director Bryan Stirling, “An illegal cell phone is the most dangerous weapon in our prisons today.”

Tennessee: All five guards charged in the vicious beating of a Tennessee prisoner that they then covered up have pleaded guilty to their roles in the February 2019 assault, which occurred in the mental health unit of the Northwest County Correctional Complex in Tiptonville, according to reports by the Associated Press and Knoxville TV station WVLT. Nathaniel Griffin, 29, pleaded guilty in August 2019 to violating the unnamed prisoner’s civil rights. Tanner Penwell, 22, pleaded guilty in the next month to using unlawful force. Carl Spurlin, Jr., 42, pleaded guilty in October 2019 to covering the surveillance camera during the attack. Cadie McAllister, 21, admitted intentionally failing to document the incident in the jail logbook. The last of the five, 33-year-old Jonathan York, pleaded guilty in June 2020 to taking part in the assault—he alone landed 30 punches on the inmate—and then lying about it. A supervisor identified in court documents as Cpl. T.M. allegedly told the guards to claim the inmate’s injuries were self-inflicted, but no additional information was available about him or her.

Texas: Prisoners at the Federal Correctional Complex in Beaumont, Texas, have been escaping and returning with contraband, including drugs, cellphones and even whiskey, according to an October 2019 report in Newsweek. That month, U.S. Marshals and deputies from the Jefferson County Sheriff’s Office spotted four prisoners making an escape through a neighboring ranch and then returning with contraband: Julian Lemus, 34, Robert Young, 45, Leo Martinez, 25, and Silvestre Rico, 35. Another prisoner, 41-year-old Anthony Stafford King, did the same the previous month. So did 25-year-old prisoner Joshua Hansen in January 2019. All six prisoners face additional charges. Two other escapees — Salvador Garcia, 59 and Victor Luis Pescador, 56 — did not return after fleeing the prison in June 2019. Both were serving 20-year terms for involvement with...
a Mexican drug cartel’s operations. Garcia was recaptured in Mexico in December 2019. Pescador’s status was not available.

**Texas:** A former Texas jail guard who lost his temper with a prisoner and then lost the fight with him gave up his jailer’s license in October 2019, thereby avoiding prosecution in the September 2018 incident. Bexar County Sheriff Javier Salazar 2019. Pescador's status was not available.

Jabar Ali Taylor, 20, without incident on July 26, 2020, at a hotel in Battle Creek. The pair had escaped 13 days earlier through a hole in the perimeter fence around the Bon Air Juvenile Correctional Center near Richmond after using a cord to choke a security guard unconscious. They then fled in a waiting getaway vehicle. A staff member at the center is one of three people charged with abetting the escape. Williams, of Washington, D.C., had been convicted of malicious wounding and robbery. Taylor, from Spotsylvania County, carries convictions for second-degree murder and aggravated malicious assault. Both were returned to Virginia on August 12, 2020. 

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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 death or self-defense cases or cases where the defendant had any involvement whatsoever in the crime. In cases involving sexual assault, a forensic component is required. Cases that meet this criteria may send a 2-4 page letter outlining the facts of the case, including the crime you were convicted of, the evidence against you and why you were arrested. You will receive a return letter of acknowledgement. Contact: Centurion, 1000 Herrontown Rd., Clock Bldg. 2nd Fl., Princeton, NJ 08540. www.centurion.org

**Innocence Project**

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

**Justice Denied**

Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, which includes all back issues of the Justice Denied magazine and a database of more than 4,500 wrongly convicted people.

Contact: Justice Denied, P.O. Box 66291, Seattle, WA 98166. www.justicenedied.org

**Just Detention International**

Primarily provides research, fact sheets and a program directory related to families of prisoners, parenting, children of prisoners, prison visitation, program directory related to families of prisoners, parenting, children of prisoners, prison visitation, incarceration. Publishes the CURE Newsletter, $2 annual membership for prisoners. Contact: CURE, P.O. Box 2310, Washington, DC 20013-2310 (202) 789-2126. www.curenational.org

**The Fortune Society**

Provides post-release services and programs for prisoners in the New York City area and occasionally publishes Fortune News, a free publication for imprisoned and released rape survivors and sexual violence against prisoners. Provides resources for imprisoned and released rape survivors and activists for almost every state. Contact: JDI, 3325 Wilshire Blvd. #340, Los Angeles, CA 90010 (213) 384-1400. www.justdetention.org

**November Coalition**

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

**Prison Activist Resource Center**

PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, ableism, 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
**Prison Education Guide**, by Christopher Zoukis, PLN Publishing (2016), 269 pages. $49.95. This book includes up-to-date information on pursuing educational coursework by correspondence, including high school, college, paralegal and religious studies.

**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.

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

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


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

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


**Legal Research: How to Find and Understand the Law**, 17th Ed., by Stephen Elias and Susan Levinland, 363 pages. **$49.99.** Comprehensive and easy to understand guide on researching the law. Explains cases, law, statutes and digests, etc. Includes practice exercises.

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

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

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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


**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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