Dade Correctional Institution employs one teacher for a population of 1,500 men – and just 16 prisoners have earned GED diplomas there over the past four years.

Union Correctional Institution, a North Florida prison with a capacity of nearly 2,200, graduated only nine prisoners during that time.

Century Correctional Institution in the Panhandle went years on end without awarding a single educational certificate.

Prisons have instead emphasized warehousing, creating an environment where prisoner idleness, surging staff turnover and a lack of incentives for good behavior have engendered violence.

“Education is so important in terms of trying to break cycles like poverty and jail sentences,” said Larry Ahern, a former Republican state representative from Pinellas County. “You can’t keep putting people behind bars and not do anything to help them on the inside.”

Nearly 55,000 offenders across Florida will walk out of state prisons during the next five years. Many will be worse off than when they went in.

The nation’s third largest prison system offers virtually no meaningful education to prisoners, despite overwhelming evidence that it is the strongest antidote to recidivism.

The Sarasota Herald-Tribune and parent company GateHouse Media spent six months examining the lack of educational opportunities within the Florida Department of Corrections.

Reporters filed a dozen public records requests with the agency for information on educational awards, violence and staffing during the past decade, then used those records to analyze programming in every Florida prison. Journalists scoured case files and zig-zagged across the state visiting prisons and interviewing more than 100 people, including prisoners, lawmakers, justice officials and educators.

Among the findings:

- Officials at the highest ranks of the prison system acknowledge the impact of education on reducing reoffender rates. Yet one in three state prisoners reads below a sixth grade level, two in three lack a high school diploma and fewer are earning basic educational credits. During the past eight years, the number of prisoners who completed GEDs in Florida prisons dropped by more than 60 percent.
- The department has shifted its focus to vocation, emphasizing industrial training for mechanics, plumbers and electricians. But many of the certificates are effectively useless. Prisoners who graduated from carpentry classes say they can hardly swing a hammer and cannot find work in their trades upon release.
- Tough-on-crime policies dating back to the 1990s have dismantled prison education. The state gutted prisoner work programs, raid ed the budget for education to cover shortfalls, and redirected hundreds of millions of dollars generated from prisoners and their families into the state’s general fund – money once reserved for prisoner programming.
- The prison system is struggling to hire and retain staff. Several of Florida’s largest state prisons have no academic teachers – the top facility to prepare prisoners for release went nine months without one. That’s because few want the job. The position requires a bachelor’s degree, despite a starting wage of less than $16 an hour. Competing public schools can offer safer working conditions and better pay.
- As education evaporates – and prisoners are left with more free time – institutions are getting more dangerous. Prison assaults doubled during the past decade, while prisoner-on-staff violence swelled even more. The prisons where the
Please Help Support the Human Rights Defense Center!

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 our 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)!

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- We prevailed in a lawsuit against the Palm Beach County Sheriff’s Office in Florida for holding juvenile offenders in solitary confinement and denying them educational programs. The case settled in November 2018, and resulted in a number of reforms at the jail.

- HRDC filed First Amendment censorship lawsuits against the Michigan DOC, the Marshall County Jail in Tennessee and the Forrest County Jail in Mississippi; we also settled a censorship case against the Cook County Jail in Chicago, and a federal court ruled in our favor on liability in a suit against the Southwest Virginia Regional Jail Authority in Virginia.

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All contributions to HRDC/PLN are greatly appreciated! For those who make a donation of $75 or more, we are pleased to offer the following gifts as a way of thanking you for your generosity!

All donations, regardless of amount, will help further our criminal justice reform and prisoners’ rights efforts.

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In recognition of your support, we are providing the PLN hemp tote bag when making a donation of at least $75. Handmade in Vermont using hemp fiber. Carry books and groceries stylishly and help end the war on drugs!

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To show our appreciation for your support, we are providing the following selection of books for you to choose from when making a donation of $100. Donations of $100 or more can choose one free title. Each $100 donation entitles you to another free title; i.e., donate $500 and you get five books! $1,000 and you get everything on the page! Please circle the books you want and send the corresponding donation amount.

**Gift Option 3**

As a thank you gift for your support, we are providing the entire PLN anthology of critically acclaimed books on mass imprisonment signed by editor Paul Wright! (The Celling of Amerika, Prison Nation and Prison Profiteers) plus the PLN hemp tote bag to carry the books in when making a donation of $250 or more.
most prisoners graduated also were among the safest.

“Right now, we’re in a ‘punish and contain’ model,” said Michelle Jacobs, law professor and assistant director at the University of Florida’s Criminal Justice Center. “We’ve taken away all of the things – like education – that poor people need to sustain themselves and not reoffend. Without education, you’re pretty much ensuring they will come back.”

Although the state is not required to provide education services for prisoners, many prison officials acknowledge the importance. Several wardens told a state Senate panel earlier this year that the state will either “pay now or pay later,” pointing to the financial strain when repeat offenders circle through the system.

Corrections Secretary Mark Inch, named head of the agency as Governor Ron DeSantis prepared to take office in January, denied interview requests from the Herald-Tribune. But in an 11-page statement emailed to the newspaper in July, he touted the existing programming, vowed to make prisoner education more of a priority and pointed out a recent state funding increase to hire instructors.

“When I was appointed by Gov. DeSantis in January, I immediately recognized the need for additional educational and vocational programming,” Inch said in the statement. “We appreciate the support of the Legislature for adding 20 additional teaching positions for the upcoming fiscal year. These positions will allow us to expand prisoner programming and increase the quality of teacher-led instruction.

“Providing programming to prisoners and offenders is one of the strongest components in reducing recidivism and is also critical to the safe operation of our institutions.”

But prisoners and prison educators say the additional funding is not enough. They want more of the $2.4 billion it costs to run the Department of Corrections directed to prisoner programming. Even tough-on-crime states like Alabama and Texas have been more proactive.

“It keeps me focused. It keeps me motivated. It keeps the hope alive that I can better myself,” said Roger Cassidy, a prisoner at the Tomoka Correctional Insti-

Jason Fronczek spent more than four years in state prison for burglarizing a neighbor’s house in 2005.

During his time behind bars, the 46-year-old Navy veteran enrolled in a faith-based education program and worked as a teacher’s assistant.

Fronczek already had a GED, but many others at the institution could not read.

“It was something to see them struggle through it and just learn,” he said. “You could see the hope in their eyes.”

Prison education inspired Fronczek to continue with school upon his release. He enrolled in community college, transferred to the University of Central Florida and earned his bachelor’s degree. He’s now in the master’s program – on track to graduate next spring. He has not reoffended.

“When employers look at your record, and you have a felony, they’re less likely to hire you,” Fronczek said. “The only way to turn that around is education… it empowers people to do the right things.”

Growing up in a single-parent household in the projects, Brian Graham never thought he would attend college. As a teenager, the Daytona Beach native became rebellious and began stealing cars. He’s been shot twice.

Sentenced for a string of burglaries in 2012, he has a criminal history that includes grand theft of a motor vehicle, driving with a suspended license and battery. He left two children at home when he was given 17 years.

But in prison, education helped the 32-year-old find his way.

Graham finished his GED behind bars, obtained a masonry certification and enrolled in the Stetson University program at Tomoka Correctional, where he is taking college courses.

“I’m trying to squeeze the most out of this,” he said, “so I make sure I never come back.”

Experts point to prisoners like Fronczek and Graham as examples of the power of education in prison.
A study by Rand Corp. in 2013 found prisoners who participated in educational programming had 43 percent lower odds of reoffending.

But in Florida, programs such as the one at the Tomoka prison only reach a sliver of the general population. Prisoners within 50 months of release get first dibs on academic programming. Prisoners serving life may never get in.

The prison system is “not designed to help you,” said Lenord Williams, who was released from Martin Correctional Institution in Indiantown during April. “There is no hope in this place. I received no education – nothing to really help a person.”

The number of prisoners who earned a GED in Florida prisons slid from nearly 3,000 in 2010 to just more than 1,100 last year.

Those annual graduates equate to about one percent of the state prison system’s total population of more than 95,000.

Prison officials attributed the decline to national GED testing requirements, which became more stringent in 2014.

But Georgia, with about half as many prisoners as Florida, confers nearly three times as many GEDs. And unlike its southern neighbor, the Peach State has seen a rise in the number of prisoners earning GEDs in recent years.

Even Texas does it better, awarding more than three times the number of prison GEDs than Florida last year, with a prison population some 50 percent larger.

“The drop in GEDs is such a perfect indicator for how bad things have gotten,” said Karen Smith, secretary for the Gainesville chapter of Incarcerated Workers Organizing Committee. “It’s a problem for every prisoner. These people are going to be coming home – living next to you in your communities.”

Florida prisons have handed out even fewer high school diplomas – 800 during the past six years.

More than a third of prisoners read below a sixth grade level. Those familiar with the problems say basic literacy courses are needed most.

“We have a bunch of prisoners who read at a third grade level or are effectively illiterate,” said Senator Jeff Brandes, R-St. Petersburg, who has championed criminal justice reform. “The system is so broken…. We don’t educate them or transition them back into society.”

Ron McAndrew, a former warden at Florida State Prison in Raiford, said he would read letters aloud to a prisoner who was illiterate. One day, he had to read a letter telling the prisoner that his mother had died.

“Don’t you think the literacy program would have helped that guy?” McAndrew said. “It is so easy, so cheap, so good.”

Florida prisons administer the Adult Basic Education test to offenders when they arrive and again periodically to prisoners enrolled in education. While roughly half of program participants made progress last year, they represent just a small fraction of prisoners.

In 2018, only three percent of the overall prison population showed any improvement in math and reading.

Of those enrolled in education programs, just a quarter made learning gains on the Adult Basic Education test and less than half made strides on the GED.

Agency statistics often paint a different picture. In 2004, the prison system reported 87 percent of prisoners completed a 100-hour life skills re-entry course proven to reduce recidivism.

The numbers were seen as a major improvement, until nonpartisan government accountability analysts pointed out that the DOC had eliminated teachers for the course and instead gave prisoners a workbook and showed them a video.

“While the prisoners are given the workbooks to read, many are not literate,” the report noted.

The state has made a clear effort to shift its focus from general academics to industry training.

As GEDs and high school diplomas fell, prisons began handing out thousands of vocational awards for various occupations, granting 14 times as many industry certifications to prisoners as they did a decade earlier.

The idea was to better prepare prisoners for release by giving them skills to work in the trades, which are struggling to meet hiring demands tied to Florida’s construction boom.

But prisoners and employers told the Herald-Tribune the credentials are effectively worthless.

“I couldn’t build a cabinet to save my life,” said one former prisoner who graduated as a cabinet maker and became a teacher’s aide in the program. “But on paper, I’m certified.”

John Ramos, a prisoner at Polk Correctional Institution, said he spent his entire time in an automotive technology class doing workbook. Then the course abruptly
transitioned to marine technology – and the instructor quit.

“That class was a joke,” Ramos said. “The book we were given to study was [copyrighted] 15 years ago. We had no updated curriculum, and when the instructor brought this to the attention of [regional managers], they treated him like he was advocating for prisoners.”

David Reutter, a prisoner at Sumter Correctional Institution, said the largest motivator for prisoners to enroll was to escape the sweltering dorms.

“You can sit in the air conditioning all day,” he said.

The prison system offers industry certificates from six credentialing agencies, including the Occupational Safety and Health Administration, Florida Restaurant Association and the Florida Department of Environmental Protection.

But unlike industry certifications awarded at technical colleges, the prison programs do not have to be approved by the Florida Department of Education. Federal funding for vocational training flows through the DOE, but the agency does not control the curriculum, set requirements or establish hiring policies.

The DOE publishes its approved industry certifications each year. To make the list, programs must be nationally recognized and require at least 150 hours of instruction.

Some of the DOC’s programs meet those criteria, including construction-related programs through the National Center for Construction Education and Research.

But the majority of certificates offered through the prison system fall short of the DOE’s parameters.

A prison spokesman pointed to the manufacturing and safe food handling certifications offered to prisoners. But the manufacturing award can be obtained without taking any actual classes, while the SafeStaff Food Handler certification takes about 30 minutes online.

The Department of Education does not oversee any apprenticeship programs run through the prison system, which include classroom work and on-the-job instruction with a sponsored employer – the more traditional route for those interested in fields such as plumbing.

Many industry professionals scoff at the prison training. While they agree with the concept of teaching prisoners a trade, they say offenders cannot adequately learn a skill like plumbing or cabinetry without proper hands-on experience.

“Plumbing, AC or some of these other trades are such hands-on skills,” said Joel Sherman, a former criminal defense attorney who now runs a re-entry mentoring program in Tampa. “You have to be in a classroom where you can access certain things. They’re not going to bring 25 toilets in there. But you just can’t do it on a screen.”

Industry leaders who’ve worked with these graduating prisoners say they have to start from the beginning once released, whether they took a plumbing course behind bars or not.

Until a new reform this spring, Florida’s strict occupational licensing laws kept former prisoners from working in many of these trades altogether. That’s because for decades, “good moral character” clauses allowed various industry boards to deny felons of a license over their prior criminal record.

“The problem is that these are not programs approved by the Department of Education, so when they walk out, they can’t

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Craig A. Mrozowski was considered a model prisoner. He was a good cook and followed instructions, so despite his 30-year sentence for assault and kidnapping, the Florida Department of Corrections let him work a normal job during the day.

It was 1989, and Florida’s prisons were bursting at the seams. Work release centers, where prisoners work a job in the community and sleep in a low-security facility at night, had become an easy way to deal with overcrowding.

Mrozowski was on work release in Bradenton when he took a couple hostage. He shot the family dog, raped the woman and stole their car, driving to Tennessee.

Weeks later, another work release prisoner, Gilbert Diamond, was on his way to his job as a dishwasher when he broke into a home in West Bradenton, where he was accused of raping a woman. Diamond was acquitted by a jury on the rape charge. But a judge sentenced him to life in prison for the burglary, according to Herald-Tribune archives.

The two cases – just miles apart – sparked a national debate about the merits of such programs.

“Prisoner is accused; furor is reignited,” proclaimed the New York Times headline, reporting that Florida’s work release programs were “unleashing criminals on innocent people.” A Herald-Tribune clip dubbed it “Legalized Escapes.”

The state’s screening process was so lax that violent criminals were allowed to mingle with the public – a situation that inevitably led to the Bradenton rape, former Manatee County Sheriff Charlie Wells said.

“I swear to God, it was damn unbelievable,” Wells said.

The benefits of a well-managed work release system are well researched. Prisoners due for release are more likely to find a job, and the money they earn helps offset the cost of their incarceration.

But instead of reforming the screening process to ensure prisoners like Mrozowski weren’t allowed to participate, lawmakers essentially eliminated it altogether.

In the mid-1980s, nearly 13 percent of Florida prisoners participated in work release. Today, it’s just one percent.

The state’s nonpartisan policy analyst urged lawmakers for an “aggressive increase” in access to the program in 2007. But the state continued its cuts, and the number of prisoners at work release centers is just half what it was when the report came out.

Last year alone, budget cuts meant prisoners months away from release were forced to quit their jobs to be bused back to prison.

As Florida’s work release program withered, lawmakers eliminated one of the biggest incentives for prisoners to participate in educational programs – the possibility of a sentence reduction.

When President Bill Clinton signed his crime bill in 1994, states that instituted so-called “Truth in Sentencing” policies became eligible for new federal grants. At the time, Florida’s prisons had become so crowded that nine out of 10 prisoners were released early simply to clear up space in a cell.

The new federal offer got the attention of Florida lawmakers, who responded by eliminating the possibility of parole in 1994, while passing a law the following year requiring prisoners to serve at least 85 percent of their sentence.

No other state made such drastic changes.

The legislation qualified Florida for $237 million in federal earmarks to build new prisons – and Florida now leads the nation when it comes to prisoners serving their full sentence.

Proponents for the tough-on-crime policies argue that they’ve reduced crime
by keeping repeat offenders behind bars. But with no chance of getting a reduced sentence, prisoners have less incentive to participate in education.

Florida shaves just 60 days off of a prisoner’s sentence for earning a GED, high school diploma or technical training certificate. Prisoners can also build up credit for good behavior. But the 85 percent rule limits how many of those actual days a prisoner can actually use.

Some call it the biggest impediment to prison education in Florida.

“Prisons are hard enough to run with a ton of incentives and programs,” said Len Engel, the director of policy and campaigns for the Boston-based Crime and Justice Institute. “When [prisoners] know they’re serving five more years no matter what, it doesn’t matter if they do something bad.”

Prior to 2003, proceeds from commissary sales and phone calls went into an “Inmate Welfare Trust Fund” that was supposed to be used for chapels, education and wellness programs. The account generated millions annually, providing a steady stream of revenue to pay for teachers and courses.

But too often, the money went to softball gear, televisions, junk food and weightlifting equipment. One former legislator said wardens even purchased pornography to placate prisoners.

“The department used these activities to keep prisoners occupied because it did not have enough work and education programs,” a 1996 state-issued report on the fund stated.

Lawmakers and prison officials sparred annually over how much autonomy wardens should have over the money, which came almost entirely from prisoners and their family members.

Frustrated with the lack of control, Victor Crist, a former Republican state senator from Tampa, sponsored a bill in 2003 redirecting the revenue back into the state’s general coffers. Crist said his intent was to give lawmakers line-item control over how the money was spent — and eliminate purchases such as X-rated films.

“They were showing porno in the prisons,” Crist said. “We just wanted to fix the problem.”

But as the state struggled to meet federal standards, the funds never found their way back into educational programming.

An analysis by the Florida Senate in 2016 determined that the trust fund would have accrued roughly $45.5 million each year — or more than $227 million over the previous five years. That’s nearly equivalent to the total amount allocated toward prisoner education during that time.

From 2010 to 2013, commissary revenue would’ve surpassed the amount legislators spent on these programs by more than $26 million.

Florida is one of just a handful of states without an inmate welfare trust fund, according to a 2013 survey of the Association of State Correctional Administrators. That speaks volumes to Paul Wright, a former prisoner and founder of Prison Legal News, a magazine focused on criminal justice issues.

“Florida “doesn’t even pretend to have a prisoner trust fund,” Wright said. “Florida is just kind of out there when it comes to its punitive measures against prisoners.”

Crist said lawmakers should now re-establish the fund with strict parameters.

“Reallocate it back to the programs,
Wasted Minds (cont.)

so they have their own independent funding source,” he said. “That’s the way it was intended to work.”

The additional funds could have softened the impact of budget cuts.

The DOC uses just 3.4 percent of its $2.4 billion budget on education. In June 2017, budget cuts forced the prison system to reduce the number of sites operating the online high school program.

And programming took the brunt of the hit last year when lawmakers under-funded the DOC by $50 million because of health care cost increases.

The state inked a $375 million deal with health care provider Centurion of Florida – the only company to enter into negotiations. The provider is owned by Centene, a major donor to former Governor Rick Scott, and their contract included a lucrative 11.5 percent administrative fee, an incentive that previous contractors had not received.

To cover the new costs, the DOC took $28 million from programs focused on mental health, substance abuse and re-entry.

Long-time DOC critics are particularly disturbed by the trend, given the troubled history of the agency.

“There has been a real dial back,” said David Richardson, a former Democratic state representative from Miami Beach, who would often arrive unannounced at prisons across the state during his time in office. “And that’s concerning knowing that education is important to rehabilitation.”

... even prisons officials who want to offer more educational programs say they are constrained. There are not enough teachers to lead the courses.

Several state prisons have no full-time educators on staff. The largest re-entry center, which has a mission of preparing prisoners for release, went about nine months without a GED teacher.

The number of academic, special needs or vocational teachers on the payrolls declined 21 percent during the past decade, according to a GateHouse Media review.

Those do not count “vocational instructors” at prisons, which include such employees as food service coordinators, who help oversee prisoners working in the kitchen and are not budgeted under prisoner programming. The number of these “vocational instructors” fell 16 percent.

The prison teaching position requires a bachelor’s degree, despite an average salary of about $36,000 – or just more than $17 per hour. The job also demands additional certifications annually, which the teachers have to pay for, wardens said.

For comparison, teachers at Sarasota County Public Schools average $59,880.

Prison teachers’ starting pay is $15.67 per hour, just $1.41 per hour more than the average for a full-time worker at Walmart. They earn less than the agency’s probation officers, inspectors, administration and health care workers.

Because of that, the staff is rife with turnover. Of the 205 teachers on the books in 2017, more than 40 percent were gone the next year.

Fewer than 10 academic teachers remain from a decade ago.

“There is nothing we can do to retain our staff if we’re not at least competitive with our surrounding agencies,” Dade C.I.
But the teaching payroll never recovered.

With traditional schools, experts say teacher turnover of around 25 percent is considered alarming. That also marks the DOC’s agency-wide turnover rate. The shuffling of the prison teaching staff was much higher.

The biggest losses came at Lancaster Correctional Institution, down from 25 teachers a decade ago to eight. Hamilton Correctional Institution cut its teaching payroll in half to just five teachers during that time, while Taylor Correctional is down from seven teachers to just one.

Brevard Correctional – which gave out more GEDs than any other facility a decade ago and employed 21 teachers at the time – closed in 2011 for cost savings. Another 16 teaching jobs were lost when Indian River shuttered the following year.

A prisons spokesman said employees at these sites were offered positions at neighboring institutions. The closings were part of a larger consolidation that eliminated 11 facilities and saved more than $130 million.

But the teaching payroll never recovered.

Paul Fillmore was a clerk with the prison system's central office when officials learned of his background in web design. They decided to have him teach a course at Wakulla Correctional Institution in the Panhandle.

With little budget for the program, the prison shipped 20 computers from another facility where a similar graphic design class had shut down. But nobody had the passwords, so instructors couldn’t use them. Fillmore, who never taught before, said he was left to set up the classroom and curriculum on his own.

Many students lacked the basic computer skills needed for such a class. Others had no idea what program the prison had placed them in and had no specific desire to learn web design.

“It was just horrible,” Fillmore said. “There were a lot of challenges in leadership.... It was a lot of work for someone like me who didn’t know how to set up a classroom. It was definitely more stressful than it should’ve been.”

Many facilities are using prisoners to lead classes and teach their peers, which has garnered mixed reviews from students.

Even then, wardens said they need teachers on staff to oversee the programs and develop course plans.

There are more than 470 state prisoners for each teacher employed by the department.

And for every teacher on the books, there are some 85 corrections officers.

Florida’s approach has turned prisons into violent warehouses, where assaults are skyrocketing and the diminished staff faces increased danger.

Without educational opportunities, prisoners have more free time and less incentive for good behavior. Coupled with the staffing woes, prisons are seeing a surge in violence.

Assaults more than doubled during the past decade, with 5,763 reported incidents of prisoner violence just last year.

Prisoner on staff assaults, which can include anything from spitting to stabbing, swelled at an ever higher rate. Brutality against corrections staffers grew 130 percent during the past four years alone.

During that time, use of force by correctional officers spiked another 85 percent, according to prison records.

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Experts draw a clear correlation between the rise in violence and absence of education.

“If an inmate is busy, or occupied with something that interests them, they’re not going to get in trouble,” said Brandes, the state senator from St. Petersburg. “So how do we keep them occupied? Either through education or work.”

Prisoners themselves point to education as a reason to stay out of trouble.

“It keeps you hungry,” said Jared Dougherty, who graduated in May from the Second Chance Pell program at the Columbia Correctional Institution Annex in Lake City. “The more you learn, the better you feel about yourself…. This really opens so many more doors.”

During the past three years, the Baker and Gadsden re-entry centers gave out more educational certifications per capita than any other correctional institutions in Florida by far, graduating hundreds from educational programs each year, despite a total prisoner capacity of 432.

The two facilities were also among the safest.

Just three institutions had fewer assaults per capita than Baker, while Gadsden had the state’s sixth fewest with just 8.5 assaults per 1,000 prisoners during the past three years, according to a GateHouse Media analysis.

Baker and Gadsden are re-entry centers, reserved mostly for prisoners preparing for life after prison, so those offenders may be less prone to violence anyway, knowing an assault could jeopardize their release. But experts say education was a factor too.

In the Panhandle, Santa Rosa Correctional Institution averaged a whopping 224 assaults per 1,000 prisoners over the past three years – topping the state.

Just four traditional Florida prisons gave out fewer total educational credits than Santa Rosa during that time.

A prison spokeswoman said Santa Rosa C.I. houses mental health prisoners and prisoners with some of the highest custody levels in the state – and that those with a history of violence cannot be placed in general population situations, such as a classroom. She said because each prison is so different, comparing these facilities to one another is flawed.

But the trend was even stronger among women’s prisons.

During the past three years, the Homestead and Hernando correctional institutions gave out more high school diplomas and GEDs per capita than other women’s prisons, including Lowell Correctional in Ocala, the Lowell Annex and the Florida Women’s Reception Center. Homestead and Hernando also had fewer assaults than those other facilities.

Education “makes prisoners safer,” said Andrew Eisen, a history professor at Stetson University who helped bring college classes to Tomoka C.I. in Daytona Beach. “If prisoners have things to do during the day, it can enrich their own human capacity.”

“Institutional Racism”
Fewer Black Prisoners Graduate from Prison Education Programs

Racial bias poisons every step of Florida’s criminal justice system.

Police target black drivers for pretextual traffic stops, leading to a disproportionate number booked for drugs and other nonviolent offenses. Prosecutors aggressively seek sentence enhancements and additional time for priors. Judges are more likely to sign off on longer prison terms than whites for the same crimes under similar circumstances.

It’s no different behind bars.

Although a disproportionate number of state prisoners are black, white prisoners are nearly 40 percent more likely to graduate from some form of educational programming while incarcerated, according to a GateHouse Media analysis of public prison data.

Without equal access to education, black prisoners have fewer opportunities to turn their lives around – making it harder for them to find jobs upon release – and increasing the likelihood that they will spiral back into the criminal justice system as repeat offenders.
“I can think of no reason why that would be happening but institutional racism,” said Derek Byrd, a Sarasota criminal defense attorney. “There should be no reason for it. It’s disappointing.”

There are more than 45,000 black prisoners in Florida prisons – 47 percent of the system’s total population and the largest racial cohort.

But while black prisoners outnumber whites by about 6,700 in Florida prisons, there were 6,600 more white prisoners who earned GEDs, high school diplomas or vocational training certificates during the past decade.

Experts attribute the disparities to longer prison sentences, cultural differences and prejudicial policies.

The implications intensify in a state where tens of thousands of prisoners compete for GED programs that graduated just 1,100 last year.

“It’s perverse,” said Michelle Jacobs, law professor and assistant director at the University of Florida’s Criminal Justice Center. “It gets back to the issue of whether these bodies that are locked up are worth anything to us as a society.”

During the past five years, 116 prisoners earned a GED or high school diploma at Walton Correctional Institution in the Panhandle.

Just 28 were black.

Avon Park Correctional Institution in Central Florida helped another 77 prisoners with high school equivalency during that same time.

A mere 22 were black.

At Hamilton Correctional Institution in Jasper, more than 100 prisoners graduated from GED or high school programs.

Only 31 were black.

“These tangible skills can alter the arc of a person’s life,” said Gordon Weekes, executive chief assistant public defender in Broward County. “There’s no rational reason a program that addresses education, substance abuse or any other form of betterment should have disparate impacts based on race.... It’s very troubling, and it needs to be addressed immediately.”

The Sarasota Herald-Tribune and GateHouse Media spent six months investigating the educational shortfalls for state prisoners and the impact on recidivism.

A study by Rand Corp. in 2013 found prisoners who participated in educational programming were 43 percent less likely to reoffend. But in Florida, these courses only reach a small number. State prisons are granting GEDs and high school diplomas to fewer prisoners than in the past.

Experts say the state’s approach contributes to the over-representation of black men in prison. By allowing more classroom seats to go to whites, prison educators are putting minorities at further disadvantage, all but assuring they’ll return – and exacerbating the disparities in the system.

“The layers all work together,” said Deborrah Brodsky, director of the Project on Accountable Justice at Florida State University. “Who’s watching the ship? It should matter to all Floridians because, in this case, it directly impacts public safety.”

“It’s about meeting the promise of corrections,” she said. “This has been a department of warehousing for too long ... the whole process needs to be looked at.”

A prisons spokeswoman said the agency does not discriminate against any age, race or religion.

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.
program opportunities,” the agency said in an email statement. “Multiple factors affect whether students graduate from programs. Access to educational programs is needs-based. Prisoners with lower skill and/or education levels are prioritized above prisoners who have higher skill and/or education levels.

“With limited program seats, FDC targets prisoners closer to release to ensure that those most in need are afforded the opportunity to participate in programs.”

In December 2016, the Herald-Tribune published “Bias on the bench.” The four-part series showed how judges throughout Florida sentence black defendants to harsher punishments than whites charged with the same crimes under similar circumstances, using millions of records in two state databases that track offenders.

In some communities, black defendants convicted of crimes such as felony drug possession or armed robbery face up to triple the time in prison.

The ripple effect can be seen behind bars.

With invariably longer sentences, education is out of reach for many black prisoners.

Although prison officials say there is no restriction based on sentence length, prisoners within 50 months of release get first consideration for academic program placement.

That means white prisoners – serving shorter sentences on average throughout Florida – can skip to the front of the line.

Several prisoners and former prison employees said they do not believe wardens are picking who gets education based on skin color – or blatantly prohibiting black offenders from participating.

“That surprises me a lot,” said Laura Bedard, a former warden and deputy secretary of the DOC, who is now chief of corrections with the Seminole County Sheriff’s Office. “Regardless of race, all prisoners have the opportunity.”

But giving priority to prisoners closer to release allows bias to seep through.

If four white prisoners serving two years and one black prisoner with six years left all apply for a GED course at the same time, the four white prisoners will all likely get in before the black prisoner.

During the past decade, more than 57 percent of prisoners to earn education behind bars had a sentence length of five years or less, according to a GateHouse Media analysis.

Conversely, just 6.6 percent were serving sentences longer than 20 years.

“There’s a real need for education in prison,” said LaShanna Tyson, a former state prisoner who now volunteers to help women offenders learn life skills. “In 13 years, I could have earned two doctorate degrees.”

“Educating the mind is the only way to take you out of that place you’ve always known,” she said. “And for me, that was the projects. That was my life growing up. Education is the key to getting out of that.”

Mitchell Brown, a former prisoner who was incarcerated in Florida for more than 36 years, said culture was a major factor for the disparities.

He said black prisoners were more likely to band together, while whites were more likely to stay isolated.

Experts point to prison violence and gang affiliation – which can preclude prisoners from academic participation – as other reasons fewer minorities are getting help.

The largest gangs within Florida’s prisons are primarily populated by black and Hispanic prisoners, with the Latin Kings, Bloods, Crips and Gangster Disciples having the strongest membership, according to an Office of Inspector General report from 2013.

Prisoners known to be involved in gang activity are not allowed to participate in education.

But prisoners and advocates say even prisoners who have long since disassociated

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themselves from gang life still struggle to get in. And once a prisoner has been flagged as a gangster, it is nearly impossible for them to shake free of the label, said Bedard, the former DOC deputy secretary.

Prisoners would need to remove tattoos, snitch on another gang member or cooperate with law enforcement. Few if any would take those drastic and dangerous steps, Bedard said.

Ricky Dixon, the DOC’s deputy secretary of institutions, denied in March 2019 that the agency forbids former gang members from access to education.

“Behavior associated with a certain gang may prevent them getting access,” Dixon said before a crowd at Stetson University, “but not the membership itself.”

But Denise Rock, executive director of the prisoner advocacy nonprofit Florida Cares, said she often works with middle-aged prisoners who’ve not been involved in gang activity for years but still cannot enroll in classes due to their outdated classification.

“They never get out of that system,” Rock said.

The prejudice in prison education mirrors other betterment programs offered throughout the criminal justice system. A Herald-Tribune investigation in 2017 found more of the beds in substance abuse programs offered to offenders in lieu of prison are reserved for whites.

In Manatee County – once the epicenter of the opioid crisis – blacks represented 23 percent of all felony drug convictions in 2016 but just three percent of rehab admissions, prison records show.

Black offenders also are less likely to be given second-chance opportunities like drug court, a rigorous program that enables defendants to get help with their addictions and keep clean records.

Instead, black offenders face harsh penalties and prolonged punishments – like drug-free zone enhancements – just for living closer to churches and parks.

But some experts say the bias in prison education may be the most detrimental of all.

Many black offenders already face an academic disadvantage from their schooling as youth. Without the tools to improve their lives as adults, they’re more likely to revert to old criminal habits – leading to longer sentences down the line and feeding the vicious cycle of incarceration.

“It’s a human right to have education,” said Keri Watson, who heads the Florida Prison Education Project at the University of Central Florida. “Incarceration is about dehumanization. The really important thing to me is for people to get to feel their humanity.”

“A Pathway”
Higher Education Offers Solutions to Mass Incarceration

In a small room without windows, tucked behind concrete walls and razor fencing, men in prison blue huddle around the glow of a projector.

They are graphing quadratic functions. All have regrettable pasts; one is finishing a 25-year sentence for second-degree murder. But on this day, their focus is algebra.

The instructor is out because of a family emergency. But with graduation just a few months away, the students don’t want to fall
Johnny Yates lost control of his life to drugs.

He dropped out of high school in the 11th grade when he had his first child and moved from one low-paying job to another. “I never thought I would do anything,” Yates said.

He is now serving a 10-year sentence at Columbia Correctional for kidnapping, grand theft auto, possession of meth and aggravated assault.

When he first got to prison, his only thought was his next high – and returning to the same old life.

Now, he’s a college graduate with a 4.0 GPA.

Yates earned his GED in prison, and then enrolled in Florida Gateway College through the Second Chance Pell program. He graduated with honors in May.

“At first, I thought it was a joke,” he said. “This is not what I expected in prison. But why not? I have the time.”

With an associate’s degree in science, Yates plans to work in a water treatment plant upon his scheduled release in 2022.

“For me, this is everything,” he said. “It’s a great thing for guys getting off the street ... I wish we had more programs like this.”

Florida Gateway runs the only Second Chance Pell program in Florida – one of about 65 across the country.

A 2015 Obama administration initiative restored only a fraction of the Pell funding for incarcerated students. Unlike the previous program, individual students cannot qualify – it’s up to the schools to open a classroom behind bars.

Florida Gateway was the only college in Florida to apply.

“The biggest challenge is that the state made it clear, because of current laws, that we would only be able to do this if it was self-sustaining,” said Barrett, president of Florida Gateway.

Current state rules prevent the college from dedicating any other public resources. All of the textbooks, class material, adjunct professors and even a part-time administration are funded through the federal grant – about $375,000 as of March 2019.

“There’s been a lot of pressure to expand it,” Barrett said. “But I can’t do it.”

Just five minutes away from Florida Gateway’s campus – in an area known as the “prison triangle” – Columbia Correctional has the largest average daily prison population in the state, with about 3,200 prisoners, the assistant warden said.

A dorm for men in the college program is sequestered from other prisoners. The students live with 48 guys in a group bunk, rather than the typical two to a cell.

Students start at 8 a.m., with three to four classes a day – and four to five days of classwork a week.

There are three classrooms – one used for substance abuse programming – and a computer lab. The students even have an emotional support dog.

Nearly 50 students have graduated from the program so far. All have either obtained an associate of science degree in water quality, or a general associate of arts degree, which allows them to transfer to four-year state schools. The average GPA is nearly 3.8, and all but three graduated with summa cum laude and magna cum laude honors.

“These people will be getting out in less than five years,” Barrett said. “They have to start thinking about a pathway. And we know the days of just releasing people and saying ‘you’re on your own’ don’t work.”

When Andrew Eisen and Pamela Cappas-Toro moved to Florida, the married couple knew they wanted to start a prison education program inspired by their time at the University of Illinois.
It took more than three years, but they’re now offering credit-bearing classes through what they consider a “satellite campus” at Tomoka Correctional Institution in Daytona Beach. More than 35 Stetson professors have given lectures there on their various areas of expertise — everything from music to the environment to Python computer programming.

“We quickly noticed there was no prisoner education,” Cappas-Toro said.

Students incarcerated at Tomoka have spent more than a year researching the history of slaves at nearby Spring Garden Plantation. Off the St. Johns River, the park is a local tourism destination, once host to a skiing elephant show and now home to a popular pancake restaurant. But hidden from the public eye is the site’s dark past that includes a deadly pre-Civil War revolt.

As part of the history project, prisoners dug into records that date back to the early 1800s, including photos and records of old Spanish land grants.

“We’re putting together history of this area nobody has been able to tell,” one of the students said.

They’re now working to redo signs on the site to incorporate the full story.

Stetson is the only four-year university in Florida offering prisoners for-credit courses. Educators would like to expand the program, but they’re at full capacity with courses. Educators would like to expand the program, but they’re at full capacity with courses.

About 70 miles away at the Central Florida Reception Center near Orlando, faculty from the University of Central Florida also teach courses to prisoners.

Inside the prison classroom, there is duct tape on the chairs and desks — so prisoners cannot take them apart. Pens with any type of springs are prohibited, for fear those too could be turned into weapons. Corrections officers usually stay in the room. Loudspeakers blast institutional announcements.

But beyond the distractions of incarceration, educators say the students are among the most dedicated.

“They really are some of the best students I’ve ever had,” said Keri Watson, who heads UCF’s Florida Prison Education Project. “They’re really eager. They’re really involved. They’re just great students. They have a different kind of mindset going into it.”

The courses at the Central Florida Reception Center are not credit-bearing. Because Stetson is private, the university can waive tuition for prisoners. UCF, a state school, cannot.

“Florida has the third-largest prison system in the U.S. and up until a few years ago, we had no higher education,” said Watson, who also taught prisoners while at Auburn University. “I figure if Alabama can do it, Florida can.”

The Vera Institute of Justice, a New York-based human rights organization, found in January 2019 that prisoners who took postsecondary education courses while incarcerated were less likely to reoffend and more likely to obtain higher earning jobs.

Experts say increasing access to these programs could offer a solution to the prison crisis.

“Those of us who teach just have a faith and confidence people will live better lives if they have more control over their minds,” said Rebecca Ginsburg, associate professor and director of the Education Justice Project at the University of Illinois. “It’s about becoming better people.”

These articles were originally published on July 10, 2019 as part of the “Wasted Minds” investigation, on gatehousenews.com. Reprinted with permission, with minor edits. The online articles include photos, graphics and videos. Copyright, GateHouse Media, LLC 2019.

EDITOR’S NOTE: Reporting for this story was supported by a grant from the Education Writers Association.

HOW WE DID IT: Reporters filed 12 public records requests with the Florida Department of Corrections for data on educational awards, violence, transfers and staffing during the past decade. The agency returned dozens of Excel spreadsheets and PDF files in varying formats. Journalists then converted the PDFs, reformatted all of the data to match and ran pivot tables on the spreadsheets, using the results to build a table of programming in every Florida prison. Journalists also pored through criminal cases and crossed Florida to visit prisons and interview sources. Anyone with questions about the reporting process or data analysis can contact Josh Salman at jsalman@gatehousemedia.com.

“Wasted Minds” Team: Ryan McKinnon — Reporter, Sarasota Herald-Tribune; Josh Salman — Reporter and Editor, GateHouse Media; Thomas Bender — Photo and Video, Sarasota Herald-Tribune; Jennifer F.A. Borresen — Data Visualizations Editor, Gate-
From the Editor
by Paul Wright

In 1994, President Clinton ended Pell grant eligibility for prisoners in legislation spearheaded by then-senator, and now presidential candidate, Joe Biden. That pretty much signaled the end of what little higher education existed in U.S. prisons, as state legislatures quickly followed suit to terminate whatever modest state funding had been available for prison college programs. The days of prisoners being able to earn degrees, with a few exceptions, became a thing of the past.

But even basic education like GEDs and vocational certificates became harder to obtain as well. Not surprisingly, with the exception of Texas, states in the Deep South, which already had the highest levels of illiteracy outside of prison, quickly raced to the bottom and have remained there ever since. As this issue’s cover story about the dearth of education in Florida’s medieval prison system shows, very little educational opportunities exist for prisoners in that state. Alas, Florida prisoners will not be able to read about it, both due to high levels of illiteracy resulting from a lack of educational programs and also because the Florida DOC continues to censor all issues of Prison Legal News statewide.

This issue of PLN is dedicated to the memory of John Perotti, 63, a long-time prisoner rights activist from Ohio who wrote for us in our earlier years. John died on July 20, 2019 of organ failure caused by gastrointestinal hemorrhaging while in the state prison at Youngstown, Ohio. He was a skilled jailhouse lawyer and advocate who spent most of his adult life in prison and on parole. John was a long-term pen pal and friend, and will be sorely missed.

The latest book from PLN Publishing is now available. The Habeas Citebook: Prosecutorial Misconduct, by former HRDC staff attorney Alissa Hull, has arrived and is ready for shipping. It’s a concise guide to state and federal cases where criminal defendants obtained reversals of their convictions due to prosecutorial misconduct, and would make a great holiday gift and addition to any criminal defense library. Order now to get it before the holidays!

By now, subscribers should have received HRDC’s annual fundraiser. If you have not yet donated, please do so. We rely on donations from individuals like you to do advocacy work on prisoners’ rights issues and criminal justice reform above and beyond publishing magazines and books. If you think litigation and advocacy to ensure prisoners can read books and publications, seeking lower phone rates for prisoners and their families, ending the economic exploitation of people enmeshed in the criminal justice system, more transparency in the justice system, seeking to hold prisoncrats accountable for the prisoners they kill and mistreat, and disseminating information about how the carceral system in America really operates and functions, then please make a contribution. Virtually all of our donations and funding comes from individuals – people like you, who are reading this.

Every little bit helps. If you can become a sustaining donor for even $10 a month, that makes a big difference in the activities we are able to undertake. Ask your friends and family to donate, as well as your social networks. HRDC is a very lean operation; every penny you donate will go toward criminal justice reform and actually getting things accomplished. Unlike many organizations, HRDC has concrete metrics. I am proud to be the founder and director of an organization that can point to our accomplishments. Each month I can note that we published two magazines and mailed them to thousands of subscribers around the country; we published a daily electronic newsletter that was sent to thousands of subscribers; we posted hundreds of articles on our social media accounts that were read by tens of thousands of people; over 200,000 people visited at least one website operated by HRDC; we filed at least one lawsuit somewhere around the country; we conducted at least four radio shows; we were quoted or cited by the mainstream media; we distributed at least 500 books, mostly to prisoners; we obtained at least one significant ruling in one of our lawsuits; and much more.

I started HRDC in 1990 in a maximum-security prison cell in Washington state with $300 to last six months, which was enough to mail six issues of 10-page, hand-typed copies of Prison Legal News to 75 prospective subscribers. We have grown to be a 16-person organization with the ability to advocate, publish and litigate nationally thanks to the ongoing support we have received over the past 29 years from people like you, who believe in justice and realize that your donation will go further and accomplish more with HRDC than anywhere else.

Every donation we receive gets invested back into HRDC. Help us keep fighting...
and winning the good fight, and donate now and encourage others to donate as well. If you are reading someone else’s copy of PLN or CLN, order your own subscription if you can afford to, as the more subscribers we have the lower our per-issue costs, and the more people will learn about the issues we report on. Enjoy this issue of PLN, and happy holidays.

Class Action Certified in Pennsylvania Jail Gender Discrimination Suit

by David M. Reutter and Matt Clarke

A civil rights case alleging Berks County, Pennsylvania denied equal protection to female prisoners classified as trustees has been certified as a class action. After issuing a preliminary injunction to two different prisoners, the federal district court found that piecemeal injunctions for short-term prisoners was not the answer.

The complaint challenged the disparity in treatment of female and male prisoners classified as having trustee status at the Berks County Prison. Prisoners with that status are allowed to work in the community and charged $50 per week for the privilege of doing so. That is the only similarity in the conditions of male and female trustees.

Male trustees are housed in a separate Community Reentry Center “with, among other benefits, dorm-style unlocked cells attached to community day rooms, thirteen hours of daily recreation time, unlimited access to toilets/showers, meals served in a community day room, less risk of lockdown” and several reentry programs.

Female trustees, by contrast, are held at the main jail with “locked cells, no more than six hours of daily recreation, limited access to toilets/showers, meals served in [the] cell, more lockdowns, and fewer” reentry programs, the district court found.

The court rejected the county’s argument that costs and staffing issues justified the disparate treatment. It held the women trustees were entitled to equal protection and similar housing conditions, and noted the county may have to make structural adjustments to allow women to be housed in one of the four wings at the Community Reentry Center.

“Bucks County does not adequately justify its reasons for this substantially different treatment of the lowest risk [trustees] working in our community on work release based on chromosomes,” the district court wrote.

On January 15, 2019, the court entered a preliminary injunction that required Bucks County to provide trustee Theresa V. Victory with similar privileges to those afforded male trustees. Days later, her sentence came to an end; she had also alleged that guards retaliated against her for filing grievances over the disparate treatment of female trustees.

The district court entered a similar order in May 2019 for trustee Alice Velazquez-Diaz. Then, on July 11, 2019, it certified the case as a class action.

Earlier that week, the court issued a contempt order against Berks County for failing to submit a plan to meet all of the injunction requirements. That order required the county to pay Velazquez-Diaz $500 in damages plus $6,751 in attorney fees due to her efforts to enforce the injunction.

The defendants appealed the class certification order to the Third Circuit and their appeal remains pending. Meanwhile, in August 2019, the district court granted the plaintiffs’ motion for a preliminary injunction to compel the county to implement an equal protection plan for all class members. That order was stayed pending the outcome of the appeal, however.

Victory, who later married and changed her surname to Bohning, said she is “continuing to fight this issue in federal court and am so happy that now more women have decided to pursue legal action to hold the prison accountable for the sexual discrimination that happens behind closed doors.”

The 15 class members, designated as all current and future female trustees denied assignment to the Community Reentry Center and denied access to the privileges, services and programs available to male trustees, are represented by the Pennsylvania Institutional Law Project. See: Victory v. Berks County, U.S.D.C. (E.D. Penn.), Case No. 5:18-cv-05170-MAK.

Additional source: readingeagle.com

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December 2019
HRDC Files Suit Against Michigan DOC Over Systemic, Statewide Censorship

On August 22, 2019, the Human Rights Defense Center (HRDC), PLNs parent non-profit organization, filed suit in federal court in the Eastern District of Michigan after its publications mailed to state prisoners were censored by prison officials.

The 36-page complaint, which names Michigan Department of Corrections (MDOC) director Heidi Washington and wardens at the Michigan Reformatory and the Saginaw, Ionia and Lakeland correctional facilities, states: “Defendants have adopted and implemented mail policies and practices prohibiting delivery of written speech from HRDC while failing to provide due process notice of and an opportunity to challenge that censorship.”

For the past 29 years, HRDC has published Prison Legal News. More recently it began publishing Criminal Legal News, which reports on issues related to criminal law, policing, sentencing, and prosecutorial and judicial misconduct. HRDC also distributes a number of book titles, mostly self-help books of interest to prisoners, such as Protecting Your Health and Safety.

“Prison Legal News and Criminal Legal News pose no threat to any legitimate penological interests,” HRDC stated in its complaint. “However, in numerous instances prison officials erroneously rejected issues of Prison Legal News and Criminal Legal News, on the grounds that content of the magazines’ articles posed a threat to the security, good order, or discipline of the facility, facilitated or encouraged criminal activity, or interfered with the rehabilitation of prisoners.”

Between August 2016 and July 2019, prison officials censored 29 of 36 monthly issues of PLN at least one Michigan correctional facility, and the complaint included specific examples of censorship at more than 20 prisons statewide.

“This was not a case of a few ‘bad apples’ in the prison mailroom, or isolated incidents of censorship by prison staff,” noted HRDC executive director Paul Wright. “This was deliberate, systemic, ongoing censorship by government officials in violation of our First Amendment rights as a publisher and advocacy organization.”

The MDOC also censored books sent to prisoners. In many cases, HRDC received no notice of the censorship in violation of prison policies; further, “Even when notice is sent to a sender, MDOC does not provide a process to challenge censorship decisions,” the lawsuit explained. When publications were rejected for being a “threat to security,” no specific threats, or portions of the publications that allegedly constituted security threats, were identified.

A letter sent to MDOC director Washington in June 2018 over the improper and unjustified censorship of HRDC’s publications was ignored.

“In adopting and implementing the above censorship policies and practices, Defendants have knowingly violated, continue to violate, and are reasonably expected to violate in the future, HRDC’s constitutional rights,” the complaint stated.

“HRDC’s magazines and books educate prisoners about their constitutional rights,” said then-HRDC general counsel Sabarish Neelakanta. “Banning such protected speech from reaching this vulnerable population is an affront to the First Amendment and the principles afforded to publishers seeking to communicate with prisoners.”

HRDC filed a motion for a preliminary injunction in conjunction with its complaint, asking the federal district court to enjoin the defendants from “(1) censoring written materials mailed by HRDC to prisoners in Defendants’ prisons and (2) denying HRDC notice and an opportunity to challenge any such censorship decisions.”

HRDC is raising claims under the First and Fourteenth Amendments, and seeks declaratory and injunctive relief; compensatory, punitive and nominal damages; and attorneys’ fees and costs. The defendants filed a motion to dismiss on October 18, 2019, which remains pending.

HRDC is represented pro bono by attorneys James E. Stewart, Andrew M. Pawels and Rian C. Dawson with the Detroit law firm of Honigman, LLP; by Dan Manville, director of the Civil Rights Clinic at the Michigan State University College of Law; and by HRDC general counsel Dan Marshall and staff attorney Masimba Mutamba. See: Human Rights Defense Center v. Winn, U.S.D.C. (E.D. Mich.), Case No. 2:19-cv-12470-TLL-PTM. 


Local Taxpayers Face Higher Taxes, Crime Rates Due to Death Penalty Trials

Taxpayers in Texas counties where death penalty cases are held get hit with a double whammy: Not only do they face higher property taxes to pay for the trials, they also have to deal with increased crime rates after public safety spending is reduced to offset those costs.

A study conducted by researchers at West Virginia University found that Texas counties bear additional judicial expenses averaging $1.4 million over the two years leading up to the conclusion of a death penalty trial – the cost of which is covered by an average increase in property taxes of two percent a year while the case is pending.

However, the same counties also reduce public safety spending an average of $2.8 million for the two years leading up to a death penalty trial, in order to offset its costs – resulting in an increase in crime rates in the counties where such trials are held.

As an example, the study cited an eight percent hike in property taxes in Jasper County, Texas to fund a death penalty trial for John William King, the last of three white supremacists convicted of capital murder for the grisly 1998 dragging death of an African-American neighbor, 49-year-old James Byrd, Jr. King was executed in April 2019 at age 44.

The study also pointed to reduced public safety spending in another Texas county during a death penalty trial that caused property crime rates to climb about 1.5 percent over the period during which the trial proceeded.
Capital murder trials are more expensive than other types of trials, requiring at least two attorneys on each side, extensive investigations, lengthy jury selection and numerous expert witnesses, along with additional security measures. While the state of Texas covers some of the expenses, such as automatic appeals and housing prisoners sentenced to death, the bulk of the costs fall on the county where the trial is held—which then gets passed on to local taxpayers.

By shifting more expenses to the state, “counties would no longer face stark tradeoffs in trials, taxes, and public expenditures,” suggested Alex Lundberg, a professor of economics at West Virginia University who conducted the study.

The National Right to Counsel Committee also supports statewide cost sharing of capital murder trials in order to provide effective representation to indigent defendants. Over 50 percent of indigent defense expenses incurred in all types of trials fall on the counties where they are held.

“A shift in the financial burden from counties to the state may improve the quality of indigent defense, which is frequently poor,” Professor Lundberg agreed.

Given the way death penalty trials are currently conducted in Texas, taxpayers face both higher taxes and higher crime rates in order to fund a small number of executions, the study concluded.

In Utah, a 2012 analysis conducted for the state legislature estimated the cost of a capital murder trial was $1.6 million higher than the cost of a murder trial seeking a sentence of life without parole. A statewide cost-sharing arrangement was set up that required each county to pay $300,000 to establish a capital murder trial fund.

Five of the state’s 29 counties opted out of the fund, including Weber County, which is Utah’s fourth-largest by population and includes the city of Ogden. With two capital murder trials pending as of April 2019, and a third capital murder conviction under judicial review, the county is facing legal bills so large that it may have to cut its budget for parks and roads, according to County Commissioner Greg Froerer, a former member of the state legislature who sponsored a failed measure to abolish the state’s death penalty.

“That was one of my concerns and major issues is the cost involved,” Froerer said, “and the results usually aren’t very productive in solving the issues for society or the victim’s family.”

In fact, a 2018 study reported by the Salt Lake Tribune found that state and county taxpayers in Utah had spent about $40 million over the prior 20 years to prosecute 165 capital murder cases, only two of which resulted in death sentences.

In an attempt to stem the flow of red ink, Weber County has placed a $100,000 cap on each of a pair of defense attorney’s contracts in the capital murder trials of Miller Costello and Brenda Emile for killing their three-year-old daughter. The county has spent another $370,000 on legal costs since the 2011 reversal of Douglas Lovell’s capital murder conviction.

Lovell, now 61, was charged with the 1985 murder of Joyce Yost to prevent her from testifying against him in his pending trial for raping her. In 1993, Lovell agreed to plead guilty to a non-capital homicide charge in exchange for leading authorities to Yost’s body. But the body was never found, so Lovell was sentenced to death. He then attempted to withdraw his guilty plea, which the state Supreme Court ultimately allowed him to do in 2011.

In 2015, Lovell was retried and convicted of capital murder in Yost’s killing. The case went to automatic appeal, where the county capped fees for defense attorney Samuel Newton at $15,000. Newton publicly criticized that limit, and the county terminated its contract with him. Now Lovell is defended by a new lawyer who is seeking to overturn his conviction based on the failure of the trial attorney, Sean Young, to call 16 of 18 potential witnesses whose testimony could have mitigated Lovell’s death sentence. Young has since been suspended from practicing law for mishandling cases, included Lovell’s.

And as the appeals progress, so do the costs that local taxpayers must pay.

Sources: deathpenaltyinfo.org, standard.net
A **federal civil rights lawsuit filed** in April 2019 against Orange County, California Sheriff Don Barnes was granted class-action status in September 2019 to include all detainees at the Orange County Jail (OCJ) whose telephone conversations with their attorneys were illegally recorded by GTL, the jail’s phone contractor. [See: PLN, May 2019, p.14].

Among the named plaintiffs are three criminal defense attorneys: Stephen Bartol, Walter Cole and Ronald McGregor. They all claim that their phone conversations with clients at the jail were illegally monitored and recorded by OCJ staff.

Sheriff Barnes admitted that contract-ed staff had improperly monitored 58 such calls, a number he later amended to 347. But the plaintiffs claim the number of phone calls illegally monitored and recorded was actually “in the hundreds of thousands,” based on the sheriff’s own estimate of 60,000 annual bookings at OCJ. The jail system has an average daily population of 5,400 detainees.

The plaintiffs in the case are represented by attorneys Joel Garson, Richard Herman and Nicholas Kohan. It was Garson who uncovered the illegal phone monitoring and recording activity at the jail when he discovered his trial strategy had been revealed to prosecutors during a criminal proceeding for his client, OCJ prisoner Josh Waring, son of Real Housewives of Orange County cast member Lauri Peterson.

The lawsuit also alleges other egregious civil rights violations, including claims that one prisoner, Mark Moon, was placed in solitary confinement for five years, and another detainee, Jonathan Tieu, part of a group of prisoners who escaped in January 2016, was held in lockdown for 23 hours a day.

Yet another named plaintiff – Johnny Martinez, believed now to lead the Mexican Mafia in Orange County – said his religious rights were violated because the only priest available to hear his confession at the jail was also employed as a deputy.

In September 2019, the suit was amended and refilled to include the wrongful deaths of three newborn infants at OCJ, allegedly caused by the negligence of jailers and medical personnel.

The first infant death occurred in March 2016. After prisoner Sandra Quirones’ water broke, she was made to wait two hours before a pair of guards took her in a van to a local hospital, reportedly stopping along the way at a Starbucks for a coffee break, according to the amended complaint. The baby died at the hospital.

Another prisoner, Ciera Stoetling, gave birth at the jail in May 2018 without an attending doctor because it was the weekend and there was no physician at the medical unit. Nurses allegedly refused to transfer Stoetling to a hospital due to a staff shortage there. Instead, they told her she would have to wait until Monday before a doctor could attend the birth. The child – who couldn’t wait that long – was born and died at the jail.

Orange County prosecutors called both deaths “natural” and declined to file charges against OCJ medical staff or jailers.

The third infant death occurred in July 2019 at a hospital, where the mother, identified only as Jane Doe, had been taken. Though the woman was returned to OCJ, her name was not listed in the jail’s records. Attorneys who added the unknown prisoner to the class-action suit after learning of her infant’s death believe she is being “hidden in the system” by OCJ staff, who are keeping her name out of the facility’s computerized records.

“It’s crazy stuff, just unbelievable,” said Herman, one of the plaintiffs’ attorneys who is also a veteran jail observer, formerly appointed by a federal judge to monitor OCJ.

Josh Waring’s case has received media attention both because of his famous actress mother and due to the illegal phone eavesdropping scheme uncovered by his attorney, Garson. For that claim alone the suit seeks $500 million in damages. The 30-year-old Waring, who is charged with the 2016 shooting death of a fellow resident at his Santa Ana sober-living home, also claims that he has been denied access to religious services and his grievances filed at the jail were mishandled.

Further, Waring said that in retaliation for making complaints he was stripped of his designation as a vulnerable prisoner and placed in the general population at OCJ. It was there that he was allegedly targeted and shot by deputies with pepper ball guns in June 2018, in retaliation for exposing the call-recording scheme. Deputies Ever Zeyala and Ryan Hansen were investigated by the sheriff’s department but no charges were filed against them.

Waring also claimed that his attempt to adjust the television set in the day room was used by deputies as a pretext to place him in solitary confinement for 10 days, during which time he was denied access to his anti-seizure medication and also “green-lighted” for being attacked by other prisoners. He
Braun said an investigation is ongoing.

Sheriff’s department spokeswoman Carrie staples, stitches and butterfly bandages. to Waring’s face and chest that required 20

October 9, 2019. The attack resulted in wounds returned from making a phone call on Oc-
tober 9, 2019. The attack resulted in wounds returning – an estimated total of 1,000 pounds – and
responded to his repeated cries of “I can’t breathe” with a terse command to “stop resisting.”

At a November 2019 hearing, Nich-
ols also told Judge Fish that she had just received police reports on the then-16-
month-old pepper ball incident – reports that Orange County officials said did not exist when Garson had subpoenaed them earlier. The county’s Custodian of Records was called to testify at a follow-up hearing.

While federal district judge James Selna accepted the amended lawsuit, he said he would allow only a few of the original causes of action in the case to proceed. See: Moon v. County of Orange, U.S.D.C. (C.D. Cal.), Case No. 8:19-cv-00258-JVS-KES.

Surveillance video at the jail also features prominently in a separate lawsuit against the Orange County Sheriff’s De-
partment that alleges seven guards killed a prisoner.

Filed in April 2019 by attorney Cam-
eron Sehat on behalf of the estate of a man arrested for disturbing the peace while reportedly suffering an anxiety attack, the suit alleges that upon his arrival at the jail, Cristobal Solano, 33, was “sadistically tor-
tured” and finally killed by the jailers when they “violently pushed his face down onto a concrete bunk,” dropped his head on the floor, twisted his limbs, kneed him in the back, piled onto him with all their weight – an estimated total of 1,000 pounds – and responded to his repeated cries of “I can’t breathe” with a terse command to “stop resisting.”

In statements to the press, Sheriff Barnes said the “claims of inhumane treatment at Orange County jails are pat-
tently inaccurate,” adding that “many of the allegations in the lawsuit are rooted in
a perspective that is anti-incarceration.”

Sources: latimes.com, mynewsla.com, nbclos-
geles.com, ocregister.com, ocweekly.com, tmz.com, vicem.com
**Florida Victims’ Rights Law Creates Confusion, Limits Time for Appeals**

*by David M. Reutter*

A constitutional amendment passed by Florida voters in November 2018 requires that victims’ privacy must be protected, in order to prevent retaliation after the criminal (or alleged criminal) is released from prison or jail, whether after completion of a sentence or on bond. However, details regarding implementation of the law have proved difficult to figure out, leaving a hodgepodge of law enforcement practices around the state. Meanwhile, civil rights advocates say the law’s strict time limits to complete appeals in criminal cases increase the risk that an innocent person may be executed.

Known as “Marsy’s Law,” Amendment Six to Florida’s Constitution follows a nationwide trend championed by California tech billionaire Henry T. Nicholas III; the law is named for his sister Marsalee, a college student who was stalked and murdered by her ex-boyfriend in 1983. A week after her death, when the alleged killer was released on bond on a second-degree murder charge, he confronted Nicholas and his mother in a grocery store. [See: *PLN*, Feb. 2018, p.52].

Ironically, Nicholas has faced criminal charges himself; he was arrested in August 2018 after police officers found cocaine, heroin, ecstasy and meth in his Las Vegas hotel room. Nicholas and a co-defendant entered an Alford plea on October 2, 2019, and were sentenced to participate in substance abuse counseling. They will also make a $1 million donation to Las Vegas drug treatment programs and perform 250 hours of community service.

In Florida, state law already provided some protection for victims’ rights, including notice of case progress and the opportunity to have a voice during the prosecution and to seek restitution. As a result, Gainesville State Attorney Bill Cervone said he didn’t believe that Amendment Six was “productive or will accomplish anything for victims.” St. Petersburg State Attorney Bernie McCabe called the amendment “a solution looking for a problem.”

But their counterpart in Tampa, State Attorney Andrew Warren, said he hoped the new law would “encourage more victims to have confidence that we can prosecute the case without subjecting them to harassment or intimidation.”

The constitutional amendment passed despite opposition from the state bar association’s Criminal Section, whose president, Jacksonville defense attorney David Barksdale, worried it “erodes the core foundation of the criminal justice system: that a prosecution is between the state and an accused citizen, not a contest between two private citizens.”

He added, “Our Florida Constitution and law already do a great job of protecting crime victims.”

Yet the opposition was no match for the group funded by Nicholas, which spent $30 million to promote Amendment Six in Florida, assisted by proponents like Michael Liles, whose wife, Debbie, was murdered in 2017. Now executive director of the Jacksonville Justice Coalition, the 62-year-old said he was never notified of any of the nearly 20 hearings for his wife’s alleged killer, despite existing statutes that said he was entitled to be informed.

“The truth of the matter is no one is assuming the responsibility of that notification, so it doesn’t happen,” Liles said.

“If someone is released [on bail or otherwise] before first appearance, whose job is it to notify the victim?” countered West Palm Beach State Attorney Dave Aronberg. “We [state attorneys] don’t even have the case before first appearance. Is it the police’s job? Is it our job?”

The constitutional amendment answers none of these questions. Instead, it grants crime victims a broad right “to prevent the disclosure of information or records that could be used to locate or harass the victim or the victim’s family, or which could disclose confidential or privileged information of the victim.”

However, law enforcement officials wonder, for example, whether that means a victim has to request confidentiality or must consent to the disclosure of information. Does the defense have to file a motion in court to obtain the victim’s identity? Some law enforcement jurisdictions are not releasing any names of crime victims or the location of the crime, even when it is perpetrated against a business.

“Most circuits and counties across the state have been figuring out what to do locally and finding local solutions that they are comfortable with,” noted Cervone.

“Law enforcement agencies are applying Marsy’s Law in a variety of different ways, which makes it difficult,” agreed Carol LoCicero, board chair of the First Amendment Foundation of Florida.

LoCicero, a Tampa attorney who has represented news media organizations, said the change in the law has prompted some jurisdictions to withhold information about victims from the press, too.

“The very kind of routine information that we used to get about the basics of a crime so you could report ... so neighbors would understand what had happened in their neighborhoods and neighborhood businesses ... you’re not getting a lot of that now,” she noted.

“It would be helpful for agencies who are on the front line ... to have some guidance,” agreed David Marsey, general counsel of the Florida Police Chiefs Association.

“The consensus between the legal advisers is this is in a state of flux.”

Some jurisdictions are also applying the law retroactively, something state Senator Lauren Book filed a bill specifically to address, along with a slate of guidelines for implementing the law’s thornier provisions.

“I know what it’s like to be a victim of a violent crime and not have the same constitutional rights as my perpetrator,” Book said.

Her bill died without a committee hearing during the most recent legislative session, leaving questions about implementing Marsy’s Law unanswered.

A spokesperson for Florida Court Clerks & Comptrollers, Savannah Sullivan, said the group is trying “to determine a best practice that we can implement statewide. We’re still working on that.”

Meanwhile, Kylie Mason, press secretary for Florida Attorney General Ashley Moody, said her office had prepared a pamphlet listing crime victims’ rights, both those that are automatically granted and those that require specific requests.
including notice of all public proceedings in a criminal case, clemency, the expungement process and the defendant’s release or escape from custody.

Defense attorneys point to another provision of the law that places limits on appeals, requiring that they “must be complete within two years from the date of the appeal in non-capital cases and five years in capital cases,” unless a judge requests an extension with a specific explanation as to why the deadline could not be met.

Paul Hawkes, a former Florida appellate judge and lobbyist for Marsy’s law, said the provision limiting appeals “doesn't require completion [of an appeal]. It requires reporting and it requires reporting with thought that when there is reporting, people are more careful.”

Yet Frank Bankowitz, who has defended 20 Florida death row prisoners, said the law will “wreak havoc on the courts,” as just the process for an attorney to qualify to represent a prisoner in a capital case is already extensive, and the state currently lacks “enough qualified appellate attorneys to handle them.”

Florida voters narrowly adopted Marsy’s Law the day after the 29th person was exonerated and released from Florida’s death row. Of those 29 innocent prisoners, 15 were released at least five years after their convictions were appealed. Clemente Aguirres was the latest exoneree and it took 14 years before he was released. Had the new law been in effect at the time he was wrongfully convicted, he would have been executed.

Marie-Louise Samuels Parmer, a Tampa attorney with the Capital Collateral Regional Counsel, which represents death row prisoners, said the appellate time limits create “the substantial risk that an innocent person can be executed, or that an innocent person can spend the rest of their life in prison on a non-capital case.”

Florida was the sixth state to adopt some version of Marsy’s Law, though the statute in Montana was struck down by that state’s supreme court. Voters in South Dakota were forced to amend Marsy’s Law two years after it was adopted, when prosecutors and police complained about increased implementation costs and said it hindered criminal investigations.

**California Appellate Court Discusses Appointment of Counsel for Incarcerated Litigants**

By David M. Reutter

California’s Fifth Appellate District held on August 6, 2019 that trial courts are responsible for recognizing their discretionary duty to appoint counsel and experts to ensure indigent civil prisoner litigants are afforded meaningful access to the courts.

Before the Appellate District was an appeal brought by California prisoner Gregory Smith, who alleged medical malpractice claims against a doctor and nurse practitioner that occurred between August 2011 and December 2013 while he was held at the Pleasant Valley State Prison. Smith moved for appointment of counsel.

In denying his motion, the trial court said it had authority to appoint counsel to criminal defendants but lacked authority to appoint counsel in a civil case. Subsequent to that denial, as Smith predicted, he could not obtain a medical expert’s declaration to contradict the defendants’ expert opinion that the care he received met the applicable standard of care. That resulted in the trial court granting summary judgment to the defendants.

The Appellate District found that precedent cases had identified appointment of counsel as one of the discretionary measures available to a trial court to assure an indigent prisoner is provided meaningful access to the courts to prosecute a civil action.

In exercising discretion, a court must decide if the prisoner’s “access to the courts is impeded.” Courts must examine the totality of the circumstances, and should consider the factors set forth in federal rulings for determining whether exceptional circumstances exist in a particular case.

Where an indigent prisoner requests appointment of counsel, trial courts “must (1) recognize their discretionary authority to appoint counsel or implement other measures to afford the plaintiff meaningful access to the courts and (2) exercise that discretion in an informed manner.”

The Appellate District found Smith had alleged sufficient facts for the trial court to exercise its discretion and, the case was remanded to determine if Smith was indigent and “whether the lawsuit involved a bona fide threat to his personal or property interests.” If those two conditions are met, the trial court must determine what remedies are appropriate to protect Smith’s right to meaningful access to the courts, including “the appointment of counsel and the appointment of an expert under Evidence Code section 730.”

The trial court’s order denying Smith’s motion for appointment of counsel was vacated, and the court was instructed to “conditionally vacate its order granting the motion for summary judgment.” See: Smith v. Ogbuehi, 38 Cal.App.5th 453 (Cal. 5th App. Dist. 2019).
On August 13, 2019, the Seventh Circuit Court of Appeals, in a consolidated ruling, vacated the dismissals of two lawsuits based on the Prison Litigation Reform Act (PLRA).

The PLRA contains a “three strikes” provision that allows a district court to dismiss a prisoner’s pro se civil rights action upon a finding that he or she had three prior filings that were found to be frivolous, malicious or failed to state a claim for relief.

Here, the appellate court reviewed the “elaborate” and rather exhaustive form the district courts for the Northern District of Illinois require all in forma pauperis applicants to complete before proceeding with their suits, characterizing it as a “local rule imposing a requirement of form” that “cannot be ‘enforced in a way that causes a party to lose any right because of a nonwillful failure to comply.’” Among other things, the form requires litigants to list all of their prior cases, including those that resulted in PLRA strikes.

On October 20, 2017, Illinois state prisoner Fabian Greyer filed two civil rights actions. His only prior court filing was a habeas corpus petition. The district court ordered Greyer to explain why he did not list his habeas case and the contemporaneous suit as prior filings. Greyer responded that he was mentally ill, functionally illiterate and traded his food for legal help from other prisoners, and begged the court for assistance. The district court held his answer was “non-responsive” and dismissed his complaint with prejudice. No “explicit findings about whether Greyer’s omissions were either intentional or material, as required for a finding of fraud,” were made by the court.

On December 18, 2017, another Illinois prisoner, Michael Johnson, filed a civil rights lawsuit. He had an extensive litigation history and complied with the district court’s form as completely as he could, but forgot to list two of his prior filings and a third in which he was only mentioned. The court dismissed Johnson’s case with prejudice, again making “no findings why the omissions [in the form] were material.” The Seventh Circuit noted that while Johnson may be an experienced litigant, he was not very knowledgeable as he had not won any of his prior cases, though he had never incurred a PLRA strike, either.

Confiming that district courts have the inherent power to dismiss lawsuits that fail to comply with PLRA requirements, the Court of Appeals limited its review to areas involving clear error and abuse of discretion.

The Court wrote that the judiciary’s “sanctioning power is not unbounded,” and should “be exercised with restraint and discretion.” It added, “As we have stressed, in all but the most extreme situations courts should consider whether a lesser sanction than dismissal with prejudice would be appropriate... Most importantly, courts must make factual findings that adequately support any use of their inherent sanctioning powers.”

After determining that neither Greyer nor Johnson had misled or defrauded the district courts by their omissions on the forms, and that the omissions were not PLRA strikes and not intentional or material, the Seventh Circuit reversed the dismissals and remanded the cases to their respective district courts for further proceedings. See: Greyer v. Illinois Department of Corrections, 933 F.3d 871 (7th Cir. 2019).

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New York City’s Rikers Island Jail Expected to Close by 2026

by Chad Marks

The Rikers Island jail complex, one of the largest urban lockups in the United States, will soon be closing its doors if New York City Mayor Bill de Blasio has his way. Operating under a 2015 consent decree with the U.S. Department of Justice (DOJ), which found a consistent pattern of civil rights abuses at the jail, the facility’s population has shrunk to around 7,000 – one-third as many prisoners as the 21,000 housed there in 1991. [See: PLN, Nov. 2017, p.32].

“Closing Rikers Island is a key piece of creating a smaller, safer and fairer criminal justice system in New York City,” de Blasio said.

Along with gang activity, prisoner-on-staff assaults and excessive use of force by guards – a “deep-seated culture of violence,” as described in a 2014 report by the DOJ – the jail complex’s nine facilities have steadily deteriorated. One, the George Motchan Detention Center, was shuttered in June 2018. But closing the rest of Rikers Island comes with a hefty price tag.

Even without detailed cost estimates, the city says it needs to budget $8.7 billion for a replacement plan to construct smaller, 1,150-bed jails in each of four boroughs: Brooklyn, Queens and Manhattan, where existing detention centers are slated for renovation, and the Bronx, where a new facility is planned. The city’s fifth borough, Staten Island, has a relatively small jail population that can be housed in Brooklyn.

The smaller number of total beds –
4,600 – will also require reducing the total number of prisoners at Rikers by about 2,700, which the city claims can be accomplished though a combination of several measures that have already significantly decreased the Rikers Island population since de Blasio introduced the plan in 2016. Those measures include reducing arrests for low-level crimes, refocusing law enforcement efforts, expanding diversion programs for arrestees and fully implementing the city’s supervised release program.

“These reductions result from a paradigm shift in our approach to public safety, with New York City at the leading edge of what works,” said Elizabeth Glazer, director of the Mayor’s Office of Criminal Justice. “New Yorkers are committing fewer crimes, police are arresting less often, and our courts are releasing more people, resulting in a dramatic decrease in the numbers entering the jail system – all while New York City remains the safest big city in the United States.”

Although not part of the plan to replace Rikers Island, new legislation that took effect in October 2018 has also reduced the population at the jail by requiring the transfer of 16-year-old and 17-year-old prisoners to juvenile detention centers. All 18-year-old offenders will join them as the next phase of the law goes into effect in October 2019. State bail reforms are also expected to contribute to a drop in the demand for jail beds, since most of the prisoners held at Rikers are pretrial detainees.

The new borough-based jails will have designs that feature more sunlight for prisoners and better observation by guards, plus more space for programming. Areas for pregnant prisoners and those with complicated medical needs are included in the Queens facility design. The Bronx jail includes retail space and over 200 affordable apartments – a mixed use that will require partial rezoning of the site. The New York City Council anticipates that construction will be completed in 2026. Meanwhile, opponents to the plan, including No New Jails NYC, have been mobilizing.

“This is supposed to be about rehabilitation,” said Councilman Donovan Richards, who promised not to back the plan unless meaningful changes in programming are made available to prisoners.

In the Bronx, Councilwoman Diana Ayla said she supported the current proposal. But borough president Ruben Díaz, Jr. opposed the proposed location of the new jail.

In September 2019, the Rikers replacement plan was approved by the city’s Planning Commission with the support of a group of faith leaders who said any flaws in the proposal were outweighed by the fact that Rikers Island “robs the imprisoned of their dignity, denies them justice, and deprives them of mercy.”

On October 17, 2019, the City Council voted to approve the $8.7 billion land use plan to build four new borough-based jails upon the closure of Rikers.

“Today is a day that the history books will look back on as a good day for New York City,” stated Council Speaker Corey Johnson. “This is a step forward, this is progress, this is the right thing to do.”

However, protestors at the Council meeting decried the construction of the new facilities as a continuation of mass incarceration in the city, chanting, “No new jails.”

Sources: correctionsone.com, nytimes.com, ny.curbed.com, amny.com, nydailynews.com, CNN

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The Beatrice Six know something about lost time. The group of six defendants, outcasts from the small town of Beatrice, Nebraska, lost a combined 77 years of their lives in state prisons for a rape and murder they didn’t commit.

After they were cleared in 2009, they had to battle the county that prosecuted them for more than a decade before they finally obtained a $28.1 million jury award in 2016 in compensation for their wrongful convictions. [See: PLN, Jan. 2017, p.54]. Now they also face resentment over the payout from many of their neighbors in Gage County, whose 22,000 residents are staring at hefty tax increases due to the jury award.

In September 2018, the county raised the property tax rate to the maximum allowed under Nebraska’s constitution.

“They knew too much about it to be innocent,” insisted Karen Probst, whose family likely faces a $10,000 tax hike.

“This is not something you win at the lottery, something I’m inheriting from a rich relative,” countered Kathy Gonzales, one of the Beatrice Six. “Nobody wants this.”

The case dates to February 1985, when 68-year-old Helen Wilson was raped and murdered in her apartment. The official inquiry found another credible lead, but a murder they didn’t commit.

Andrews was later discredited when it was learned her work resulted in multiple wrongful convictions, police psychologist Wayne Price persuaded five of the six defendants – Gonzales, Thomas Winslow, Ada JoAnn Taylor, Debra Shelden and James Dean – that they had repressed their memories of the crime. Three succumbed to the psychological pressure and gave false confessions. All five took plea deals.

The sixth defendant, Joseph White, received a life sentence following a 1989 trial and maintained his innocence until his death in 2011 – not long after he filed a lawsuit seeking compensation on behalf of himself and his five co-defendants. He based his claim on DNA testing that implicated the original prime suspect, Bruce Allen Smith, who had died in a Nebraska prison on unrelated charges in 1992.

Gonzales sympathizes with those coping with financial strains as a result of the $28.1 million judgment. She has been struggling to make ends meet working at a grocery store in another town since her release from prison. She agreed it was unfair her former neighbors were being saddled with the bill due to the misconduct by police officials.

“But it wasn’t fair what they did to us, either,” she noted.

According to the National Registry of Exonerations (NRE), in 2018 alone, 151 people were released from prison after their cases were dismissed, having spent a combined total of 1,639 years behind bars – an average of 11 years each.

Stunningly, in 70 of those cases no crime was ever committed. That’s how Vincente Benavides was released from death row in April 2018 after serving 25 years for the rape, sodomy and murder of a 21-month-old girl. Experts eventually determined the child was never sexually abused and may well have died from injuries suffered when she was hit by a car.

Fully 70 percent of the 2018 exonerations involved misconduct by police, prosecutors or other government officials – including threats made to witnesses, false forensics reports and false confessions extorted by investigators.

Twenty percent of those who were wrongfully convicted – 31 people – were framed with drug charges after refusing to pay bribes to Chicago police officers. Sgt. Ronald Watts was convicted in that extortion scheme in 2017. As of April 2019, a total of 60 victims of Watts and another disgraced Chicago cop, Detective Reynaldo Guevara, had been exonerated.

Many other wrongful convictions resulted when overeager prosecutors relied on weak evidence or ignored exculpatory information. The longest-serving exoneree, 72-year-old Richard Phillips, spent over 45 years in a Michigan prison for a murder he didn’t commit, based on the false testimony of a witness who entered into a plea deal with prosecutors.

Thanks to Sgt. Watts, Illinois topped the NRE’s 2018 list, with California and Texas tied for second place with 16 exonerations each.

A joint project of the University of California/Irvine Newkirk Center for Science & Society, the University of Michigan Law School and the Michigan State University College of Law, the NRE now includes a total of 2,515 individuals who lost a combined 21,000 years of their lives due to wrongful convictions. Just 23 percent of the 2018 exonerations relied on DNA evidence; a more significant factor was the spread of Criminal Investigative Units (CIUs), according to NRE editor Barbara O’Brien.

“The proliferation of new CIUs gives us reason to think that the trend will continue,” she said, referring to a tripling over five years of CIU offices nationwide, to a total of 44 – though O’Brien added that that number represents a “tiny fraction” of all prosecutor’s offices.

The NRE also tracks compensation paid to exonerees, which now totals $2.2 billion. However, that number fails to capture the additional costs of wrongfully prosecuting and incarcerating thousands of innocent people – costs that are borne by taxpayers. Thirty-five states and the District of Columbia have statutory provisions to provide compensation to exonerees as of June 2019, when Indiana Governor Eric Holcomb signed a law that grants $50,000 for each year of wrongful imprisonment in that state.

“When I returned home after losing 17 years for a crime I didn’t commit, I had to rebuild my life with no support from the state that stole those years,” said Kristine Bunch, an Indianapolis woman who lost her young son in a fire for which she was wrongfully convicted of arson.

“There’s no way to pay back the years that we missed behind bars but providing
compensation will help many of Indiana's innocent get back on their feet after surviving terrible injustice,” agreed Roosevelt Glenn, who also spent 17 years in prison and another eight years on a sex offender registry for a rape he didn't commit.

In the case of the Beatrice Six, officials in Gage County, Nebraska declined an offer to settle the wrongful conviction lawsuit for half the amount of the jury award, deciding instead to continue with appeals. The case made it to the U.S. Supreme Court, which declined to hear the county's appeal in March 2019, thus leaving local taxpayers to foot the bill.

Several states have run into financial shortfalls for compensating the wrongfully convicted, including Michigan, where exonerees faced long waits when the state's compensation fund was exhausted. Payments in Illinois were likewise delayed as the legislature debated the state's budget—which gives new meaning to the phrase “Justice delayed is justice denied.”

Sources: nytimes.com, thecrimereport.org, reason.com, innocenceproject.org, omaha.com

Qualified Immunity Denied when Pretrial Detainees Deprived of Water at Illinois Jail

by David M. Reutter

On August 12, 2019, the Seventh Circuit Court of Appeals denied qualified immunity to officials at Illinois’ Lake County Adult Correctional Institution (LCACI) who deprived pretrial detainees of sufficient water and sanitation for three days.

The matter was before the appellate court after the defendants, Sheriff Mark Curran and Chief of Corrections David Wathan, appealed the district court’s denial of their motion to dismiss. The suit was filed by pretrial detainees at LCACI who claimed that from November 7 to 10, 2017, they became “sick, sleep deprived, and agitated” due to the continuous presence of excrement in their cells. Their complaint further alleged that it manifested.

The Seventh Circuit found the conditions described in the complaint were similar to cases it had considered previously, both in severity and duration. The plaintiffs alleged injuries in the form of “dehydration, migraine headaches, sickness, dizziness, constipation, and general malaise,” according to their complaint.

“All but the most plainly incompetent jail officials would be aware it is constitutionally unacceptable to fail to provide inmates with enough water for consumption and sanitation over a three-day period,” the appellate court wrote. Perhaps an official would be excused for miscalculating the amount of water needed ex ante, so long as he worked to fix the problem once it manifested.

Prisoners who complained about being provided insufficient amounts of water were punished: “If a person repeatedly asked for more water, he was put on lockdown,” the Court of Appeals wrote. In deciding whether the plaintiffs stated a constitutional deprivation, the Court held that the objective inquiry into the plaintiffs’ factual allegations was sufficient to show the defendants were not entitled to qualified immunity; accordingly, the district court’s order was affirmed. The case remains pending on remand. See: Hardeman v. Curran, 933 F.3d 816 (7th Cir. 2019).
Eighth Circuit Reverses Dismissal of Prisoner’s Suit Over Inadequate Shoes

by Chad Marks

Gerónimo DeLuna was housed at the Mower County jail in Minnesota when guards made him wear shoes that were too small for his feet. The improperly-sized footwear, according to DeLuna, resulted in a blister that caused a severe infection requiring multiple corrective surgeries over a 10-day period.

Along with the Minnesota Department of Human Services, DeLuna filed suit in federal court. He raised a claim of negligence, arguing the too-small shoes resulted in a Methicillin-Resistant Staphylococcus Aureus (MRSA) infection. He also cited inadequate medical care and failure to adequately train jail staff in providing suitable shoes, among other causes of action.

The defendants moved for summary judgment. The district court concluded that DeLuna failed to show the county had breached a duty of care, and failed to show how any such breach proximately caused his injuries. Further, the court concluded the county was entitled to vicarious official immunity. In particular, it found that providing prisoners with “suitable” shoes was a discretionary duty, and that the guards did not act willfully and maliciously when providing DeLuna with shoes that were too small for him.

DeLuna appealed to the Eighth Circuit, arguing the district court’s ruling was erroneous and that it should not have granted summary judgment to the defendants. The Court of Appeals agreed in an August 21, 2019 decision.

In siding with DeLuna, the appellate court cited Minnesota negligence law as well as Domagala v. Rolland, 805 N.W.2d 14 (Min. 2011), which held, “[G]eneral negligence law imposes a general duty of reasonable care when the defendant’s own conduct creates a foreseeable risk of injury to a foreseeable plaintiff.”

The Minnesota Supreme Court had emphasized the key is whether a defendant had “reasonable ground to anticipate that a particular act would or might result in any injury” to the plaintiff, even if the defendant “could not have anticipated the particular injury which did happen.”

The Eighth Circuit held there was a genuine issue of fact as to whether the county had breached its duty of care, stating, “The district court erred when it concluded to the contrary on the basis that DeLuna’s MRSA infection was not a foreseeable consequence of wearing too-small shoes.”

The proper question was whether some harm was foreseeable even if the ultimate injury that occurred was not.

The appellate court also concluded that DeLuna had presented a triable issue of fact as to whether the jail staff caused his MRSA infection.

The county’s argument that even if it were negligent it was entitled to vicarious official immunity was rejected by the Court of Appeals. Relying on Wiederholt v. City of Minneapolis, 581 N.W. 2d 312 (Minn. 1998), the Court held that vicarious official immunity does not apply to ministerial duties. Providing suitable shoes to detainees in a county jail setting is ministerial, the appellate court wrote. Accordingly, the summary judgment order was reversed; the district court judge recused himself following remand, and the case is pending. See: DeLuna v. Mower County, 936 F.3d 711 (8th Cir. 2019).

Four Ohio Prisoners Shackled to Table Stabbed by Fellow Prisoner

by Scott Grammer

On June 4, 2017 at the maximum-security Southern Ohio Correctional Facility (SOCF) in Lucasville, four prisoners who were playing cards while shackled to a table in a dayroom area were attacked and stabbed by another prisoner, convicted murderer Greg Reinke.

Surveillance video footage captured the 37-year-old Reinke – who was shackled at the ankles but whose hands were free, despite a long history of violence in custody – as he suddenly stood from a table near the four other prisoners and retrieved a seven-inch shiv. He then repeatedly stabbed the four, who were chained to their table and unable to flee.

“He was trying to kill us for sure,” said one of the victims, 29-year-old Shamieke D. Pugh.

Another prisoner eventually broke free and fought back; the attack lasted almost a full minute before a guard entered the area and began moving toward Reinke.

The injured prisoners were freed from the table about three minutes later. Reinke was searched and a second shiv was found.

Pugh, who was stabbed a dozen times, sustained injuries so severe that he required a two-week recovery at Ohio State University’s Wexner Medical Center. He was released from prison in 2019 after serving a five-year sentence for burglary, but still suffers from nerve damage in his arm, difficulty breathing and psychological anxiety. Moreover, he believes that prison guards helped orchestrate the attack – a claim that prison officials and the guards’ union have denied.

“An investigation was completed, and there was no wrongdoing found,” said union president Christopher Mabe. “Our correction officers followed proper procedure and protocol.”

However, the only investigation was one conducted by SOCF itself. The Correctional Institution Inspection Com-
mittee (CIIC), a state agency tasked with evaluating Ohio’s 30 state prisons, is so short-handed — its staff of five full-time employees in 2013 has now shriveled to one — that it uses interns to conduct inspections. [See: PLN, May 2019, p.20]. Five years ago, CIIC’s reports were posted online within a month of a prison inspection, but no reports have been posted since 2017.

After the attack on Pugh and the three other prisoners at SOCF, the facility no longer shackles multiple prisoners seated at tables. The investigation found no motive for the incident — not even racial bias, though Reinke is white and his four victims are black. Prison officials have also been unable to explain how Reinke was able to escape his handcuffs and carry two shivs out of his cell. An internal prison report quoted Reinke as saying he “just felt like killing someone” at the time. He was not initially charged because he was already serving a life sentence. An internal prison report quoted Reinke as saying he “just felt like killing someone” at the time. He was not initially charged because he was already serving a life sentence.

But eight months later, in February 2018, Reinke and another prisoner, 30-year-old Casey Pigge, attacked prison guard Matthew Mathias, stabbing him 32 times. Following that incident, newly-appointed Scioto County prosecutor Shane Tieman charged Reinke for both the assault on Mathias and the earlier one on Pugh and the other prisoners at SOCF.

“These victims deserve their day in court, too,” Tieman said.

In March 2019, Reinke pleaded guilty to both attacks, receiving 54 years for assaulting Pugh and 32 years for stabbing Mathias. Both terms were added to the life sentence he was already serving for aggravated murder in the 2004 shooting death of a customer who stepped outside a Cleveland restaurant to stop a robbery that Reinke was committing. In April 2019, Pigge also pleaded guilty to the attack on Mathias, receiving an additional 32 years added to his original sentence of 30 years to life.

“You know, there wasn’t this much drama when they was agging (sic) me on to kill inmates, you know,” Pigge told the court after his plea. “So it is what it is. There’s always two sides to a coin.”

After that apparent reference to encouragement that Pigge may have received from prison staff to assault other prisoners, Pugh filed suit in April 2019 in federal district court against SOCF and its staff, claiming their negligence had allowed the stabbing by Reinke that nearly killed him. He and co-plaintiff Maurice D. Lee — a 27-year-old serving a 10-year sentence who was also a victim of Reinke’s attack — allege that guards failed to search Reinke before letting him into the recreation area.

“That’s what they wanted, they want people to fear Lucasville,” Pugh said. “I heard them say it all the time: They thought it was getting soft.”

His attorney, Solomon Radner, promised to seek monetary damages sufficient to make prison officials ensure that an attack like the one his client suffered “never happens again.”

“Because it’s not supposed to happen in the first place,” Radner added.

Both Reinke and Pigge have since been transferred to the Ohio State Penitentiary in Youngstown. The lawsuit filed by Pugh and Lee remains pending. See: Pugh v. Erdos, U.S.D.C. (S.D. Ohio), Case No. 1:19-cv-00245-MRB.

Sources: abc6onyourside.com, chillicothebeagazette.com, cincinatti.com, cleveland.com, dailymail.co.uk, dispatch.com

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New Book from Prison Legal News

Prison Education Guide
by Christopher Zoukis

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

This guide is the latest and best resource on the market for the incarcerated nontraditional student. It includes a detailed analysis of the quality, cost, and course offerings of all correspondence programs available to prisoners.

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A woman was booked into jail in Mineral County, Nevada on traffic violations, and died days later due to medical neglect.

Kelly Coltrain, 27, was visiting her family in July 2017 to celebrate a family reunion and her grandmother’s 75th birthday. After the celebrations, she was pulled over for speeding in Mineral County. Discovering that she had unresolved traffic violations in another county, deputies booked her into the Mineral County Jail (MCJ). Her bail was set at $1,750.

Coltrain initially refused to answer questions about her next of kin and medical conditions during the intake process. After learning the amount of her bail, she informed Sgt. Jim Holland that she was drug-dependent and had a history of seizures.

Despite a jail policy that required prisoners with a history of seizures to be reviewed by hospital staff prior to being admitted to the facility, MCJ placed Coltrain in a “max” cell where she was to be checked at least every 30 minutes. It was later determined that deputies rarely checked on her, instead preferring to watch her on video camera – which was also a violation of established jail policy.

Four hours after she was booked, Coltrain told MCJ staff that she needed to go to a hospital to address her withdrawal symptoms. Her request was denied by Deputy Ray Gulcynski, who told her, “Unfortunately, since you’re DTing, I’m not going to take you over to the hospital right now just to get your fix.”

Over the next few days, Coltrain ate little and slept often. She vomited in her cell on July 22, 2017 and was given fresh clothes and a mop by Sergeant Holland, who told her to clean up the mess. She did so without getting off her bunk. Later, Holland said he thought she was just being “lazy” and didn’t want to stand up to clean the floor.

Less than an hour later, Coltrain began convulsing. She stopped moving entirely and was unresponsive and cold to the touch. Twenty minutes later, he returned to check her pulse. He left her body locked in the cell until the next morning, when a forensic technician arrived to remove her body.

Following a wrongful death suit filed by Coltrain’s family, including her parents and grandmother, county officials agreed in February 2019 to a $2 million settlement plus four years of monitoring by the federal district court while the jail updates its policies and trains staff on how to identify and handle prisoners who are experiencing withdrawal symptoms.

Although the Nevada Division of Investigation found that MCJ employees had violated policies, and referred the case to the local district attorney’s office, no criminal charges were filed.

One of the lawyers representing the family said the case was “the worst I have ever seen in 33 years,” and that “Coltrain suffered a protracted, extensive, painful, unnecessary death as a result of defendants’ failures.” See: Coltrain v. Mineral County, U.S.D.C. (D. Nev.), Case No. 3:18-cv-00420-LRH-CBC.


$2 Million Settlement After Woman Dies While Jailed for Unpaid Traffic Tickets

by Anthony W. Accurso

Nearly 30 million criminal arrest and conviction records – those of anyone ever apprehended for a low-level crime in Pennsylvania – will automatically be expunged under a new law passed in June 2019 designed to help combat discrimination in employment, housing and education.

Under a change to the state’s “Clean Slate” law, cases eligible to be sealed include arrests at least 60 days old that did not result in convictions, convictions for nonviolent crimes committed more than a decade ago and recent misdemeanors that resulted in less than two years in prison.

Those cases will now be automatically expunged, meaning that the record – while still available to law enforcement agencies – will no longer be accessible by employers, landlords or schools that conduct background checks.

Previously, an individual with such a criminal record had to file a request to have it sealed. But as of June 2019, only a judge’s signature is required to verify that the case falls under one of the categories eligible for automatic expungement.

“Even though we don’t have caste and social class, we really do,” a Pennsylvania woman named Nicole told National Public Radio, explaining that while she had never been convicted of a crime, a string of arrests for low-level offenses had stunted her career dreams.

“Knowing that my background will be sealed ... it’s just like looking at a lens and it’s going to become clear,” she said.

“There’s no record too old or too minor to stop somebody from getting a job,” agreed Jamie Gullen, an attorney with Community Legal Services (CLS), a nonprofit that helped lawmakers draft the Clean Slate law.

Gullen said that two-thirds of her group’s clients need help due to the discrimination they face based on past arrests or convictions that are sometimes decades old.

“This [Clean Slate law] will help [them] find jobs and housing,” she added.

Arrests that did not result in convictions, like Nicole’s, plus convictions for summary offenses and most nonviolent misdemeanors – including drunk driving, shoplifting and prostitution – account for nearly 50 percent of Pennsylvania’s criminal cases, meaning that one-half of the state’s criminal records will be sealed under the new law. Gullen said it’s a necessary change because online “technology started making
these records more and more widely available, the commercial background-checking industry really exploded.”

Sharon Dietrich, the litigation director at CLS, said the law marked not only the first day in U.S. history when criminal records have been automatically sealed, but also that “it is quite possible that in the first week more cases will be sealed by automation than have ever been sealed in the entire history of the United States.”

The bill’s main sponsor, state Senator Scott Wagner, led a bipartisan majority of the state’s GOP-controlled legislature to adopt the legislation, supported by groups on both ends of the political spectrum – from the Center for American Progress, founded by former Clinton White House Chief of Staff John Podesta, to Americans for Prosperity, an organization supported in part by conservative billionaire Charles Koch.

Together their efforts were “just awesome in terms of putting policy ahead of partisan politics,” said Jenna Moll, deputy director of Justice Action Network, adding that she hoped “to replicate [this] in every state.”

Pennsylvania Governor Tom Wolf said he plans to have all applicable criminal records expunged within the next year under the new law, which he also called the first. The director of Justice Action Network, adding that she hoped “to replicate [this] in every state.”

Allison Clower, the state’s chief public defender, said the law marked not only new requirements for expungement, but by making the process it will help clear the records of many more people.

Eighteen prisoners filed suit against the New York State Department of Corrections and Community Supervision (DOCCS) on September 2, 2019, alleging denial of access to vital pain medication necessary for the treatment of their chronic medical conditions.

The DOCCS implemented a policy in 2017 that requires senior prison medical staff to sign off on commonly used prescriptions in an effort to better monitor and restrict those drugs.

DOCCS spokesman Thomas Mailey said the agency is “committed to battling the opioid epidemic and stemming the tide of addiction which has greatly affected incarcerated individuals in the Department’s custody.”

In their complaint, the prisoners allege that the added approval of the senior medical staff is rarely given, affecting hundreds of prisoners with legitimate medical needs.

Pain management is complicated, said NYU Langone Health clinical assistant professor Lipi Roy. Healthcare professionals must balance physical and emotional trauma with possible misuse or abuse, and their training does not deal with this topic sufficiently.

The two main drugs cited in the lawsuit were Ultram and Neurontin. Ultram uses an opioid painkiller while Neurontin contains gabapentin, which targets nerve pain and is believed to increase the “high” delivered by opioids. Gabapentin is not a federally controlled substance, but it is found more often in the bloodstream of opioid overusers, raising concerns.

Angel Hernandez, one of the incarcerated plaintiffs, has a degenerative spinal condition that causes pain, numbness and burning sensations. He stated that he used Ultram and Neurontin for years to manage the pain until both were cut off in 2017.

Wayne Stewart, another plaintiff, is paralyzed from the waist down from a 2003 shooting that left five bullets in his body, including his head. His morphine prescription was changed to a less potent opioid, Percocet. That medication was then discontinued for no apparent reason. He claims that he now lives with chronic, untreated pain.

According to the prisoners’ complaint, “The wholesale denial of these medications especially affects an already vulnerable population: one that includes patients with severe spinal and neurological issues, phantom pain from amputations, multiple sclerosis and serious, chronic pain.” PLN will report on future developments in this case. See: Allen v. New York State DOCCS, U.S.D.C. (S.D. NY), Case No. 7:19-cv-08173-UA.

Sources: sandiegouniontribune.com, nypost.com
Colorado Prisoner Receives $200,000 Settlement in Excessive Force Case

by Scott Grammer

On September 10, 2014, Colorado prisoner Shawn Lovett was serving a 30-year sentence at the Centennial Correctional Facility in Fremont County when he was moved from one part of the prison to another by guards Shannon Proud and Anthony Martinez. Video footage showed Martinez jerking Lovett's ankle chain, which sent him face-first into the concrete floor. Lovett, whose hands were cuffed behind his back, suffered a fractured skull. [See: PLN, Sept. 2017, p.63].

“It’s very disturbing,” said attorney Sarah Schielke, who represented Lovett. “It’s very disturbing to watch. Both Officer Proud and Officer Martinez are on the full weight of their bodies and their knees in his back. They are pushing into his neck and back and yelling at him to stop resisting.”

In 2016, Lovett filed suit against Martinez and Proud. According to his complaint, he sued for deliberate indifference to his “clearly established constitutional rights under the Eighth Amendment to the U.S. Constitution as demonstrated by their malicious assault and infliction of pain.” Also named as defendants were Dr. Richard Hodge and nurse Torri Arthur-Cain for “their willful failure to provide critical medical treatment.” Another defendant, Colorado DOC Deputy Executive Director Kellie Wasko, was sued “for her and the Colorado Department of Corrections’ continuing refusal to provide Plaintiff with the critical medical care that his untreated head, brain and vision injuries require,” while Warden Travis Trani and Captain Ronald Ortiz were named as defendants for their “failure to train, investigate, and supervise correctional officers ... and their promulgation of unconstitutional policies and practices regarding: appropriate methods for use of force, pressure point control tactics, use of universal restraints and spit masks, and for the failure to supervise and put an end to systematic and ongoing verbal and racial harassment of prison inmates....”

Martinez and Proud were criminally charged for assaulting Lovett. Proud was sentenced to six months of probation; he continues to work for the DOC. Martinez was fired, pleaded guilty and received a 30-day jail sentence.

Lovett’s complaint alleged that “Defendants Arthur-Cain and Dr. Hodge falsified medical records regarding Plaintiff’s need for medical care and to conceal the true extent of his injuries, and refused him any meaningful medical treatment at all for over three hours. During this time, Plaintiff was left in universal restraints and had a spit mask pulled over his head, causing his profuse ongoing bleeding to well up into his eye and face.” Lovett also claimed that Martinez was known to “relish opportunities to use force on inmates, [and] had been involved in an excessive number of use of force incidents.” He accused Proud of using racial epithets to refer to black prisoners.

On April 23, 2019, a non-confidential draft settlement was reached by the parties in which the State of Colorado agreed to pay $200,000 to Lovett and his attorneys. The defendants did not admit any liability. See: Lovett v. Martinez, U.S.D.C. (D. Colo.), Case No. 1:16-cv-00609-MEH-KLM. ❒

Fourth Circuit Agrees Virginia’s Death Row Conditions Violated Eighth Amendment

by Scott Grammer

Almost 120 years ago, the U.S. Supreme Court recognized the harm that solitary confinement causes. Prior to 2015, prisoners on Virginia’s death row were housed in solitary in 71-square-foot cells (about the size of a sub-compact car) for 23 to 24 hours per day. They were only allowed one 10-minute shower three days a week, and received just one hour of outdoor exercise yard was constructed. Prisoners were allowed more time for recreation, including indoor recreation with other prisoners. They were allowed showers every day, and contact visits with family members.

On February 21, 2018, U.S. District Court Judge Leonie M. Brinkema awarded summary judgment to plaintiffs Porter, Juniper and Lawlor sued in federal court raising Eighth Amendment claims. Shortly after the case was filed, prison officials changed the conditions on death row. A new exercise yard was constructed. Prisoners were provided more time for recreation, including outdoor recreation five days a week, in a parking-space sized steel and wire mesh cage.

In November 2014, condemned prisoners Thomas Porter, Anthony Juniper, Ricky Gray, Ivan Teleguz and Mark Lawlor sued in federal court raising Eighth Amendment claims. Shortly after the case was filed, prison officials changed the conditions on death row. A new exercise yard was constructed. Prisoners were provided more time for recreation, including outdoor recreation five days a week, in a parking-space sized steel and wire mesh cage.

On April 23, 2019, a non-confidential draft settlement was reached by the parties in which the State of Colorado agreed to pay $200,000 to Lovett and his attorneys. The defendants did not admit any liability. See: Lovett v. Martinez, U.S.D.C. (D. Colo.), Case No. 1:16-cv-00609-MEH-KLM. ❒

Additional sources: kdvr.com, chieftain.com, patch.com

On January 18, 2017, while Teleguz had his death sentence commuted in April 2017. The state appealed, arguing “that the district court erred (A) in awarding summary judgment to Plaintiffs on their Eighth Amendment claim and (B) in awarding Plaintiffs injunctive relief.” In a May 6, 2019 amended ruling, the Fourth Circuit Court of Appeals affirmed the district court’s order in a divided opinion.

Regarding the grant of summary judgment, the majority wrote, “In sum, the undisputed evidence established both that the challenged conditions of confinement on Virginia’s death row created a substantial risk of serious psychological and emotional harm and that State Defendants were deliberately indifferent to that risk of harm. [See: PLN, Sept. 2018, p.22].

The state appealed, arguing “that the district court erred (A) in awarding summary judgment to Plaintiffs on their Eighth Amendment claim and (B) in awarding Plaintiffs injunctive relief.” In a May 6, 2019 amended ruling, the Fourth Circuit Court of Appeals affirmed the district court’s order in a divided opinion.

In regard to injunctive relief, the appellate court stated: “The district court’s decision also is consistent with this Court’s admonition that ‘[a]n injunction should not be refused upon the mere ipse dixit [an unproven statement] of a defendant that, notwithstanding
his past misconduct, he is now repentant and will hereafter abide by the law.”

The Fourth Circuit added, “Given that State Defendants have shown no ‘repentan[ce]’—they continue to argue, as they are entitled, that the challenged conditions comply with the Eighth Amendment—State Defendants’ professed intent not to return to the challenged practices did not preclude the district court from exercising its discretion to award injunctive relief.” The Court of Appeals further noted that the district court “awarded Plaintiffs injunctive and declaratory relief, concluding that such relief was available under the Prison Litigation Reform Act (PLRA) and was necessary because there ‘exist[ed] some cognizable danger of recurrent violation.’” The appellate court upheld the district court’s interpretation of the PLRA.

In an 18-page dissent, Judge Paul V. Niemeyer, a George H.W. Bush appointee, said the district court should not have granted summary judgment because the death row conditions at issue no longer existed, and the appellate court should not have upheld the order for the same reason. He also rejected the majority’s interpretation of the PLRA, opining that “the district court’s judgment is especially misguided in the face of the strict standards that Congress imposed in the PLRA for this type of litigation.” See: Porter v. Clarke, 923 F.3d 348 (4th Cir. 2019), rehearing and rehearing en banc denied.

Additional sources: richmond.com, abajournal.com, law.justicia.com, deathpenaltyinfo.org

Prisoners at Indiana Jail Certified as a Class in Conditions of Confinement Suit

by Kevin Bliss

In June 2019, an Indiana federal district court held that a former jail detainee, Adam Bell, had presented sufficient evidence to fulfill the requirements to certify a class comprised of all current and future prisoners at the Henry County jail in a lawsuit alleging unconstitutional and inhumane conditions of confinement.

Bell filed the lawsuit while being held at the county jail, saying the facility was originally designed to house 76 prisoners but officials began adding additional bunks and mattresses to cells without required authorization, expanding the capacity to 116 beds.

He said the facility had been deemed overcrowded 100 percent of the time by the chief jail inspector of the Indiana Department of Correction. Prisoners had been forced to sleep on floors, in offices, in indoor recreation areas and near cellblock toilets. Bell also alleged that the facility was constantly understaffed, which, with the overcrowded conditions, had resulted in assaults, other violent incidents and “continuous tension and dangerous situations in the [cell] block.”

Henry County acknowledged the claims of additional beds added to the jail but denied that Bell’s claims accurately stated the facts. County officials said they did not have more prisoners than permanent bunks; they also denied all other allegations in the complaint, including claims that jail staff would not supply prisoners with proper grievance forms and refused to hear grievances except those submitted on approved forms.

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

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

Judge Barker noted that Bell was “strongly committed” to the case, and had promised to remain in contact with his attorney and make himself available for any depositions or trial. She therefore found Bell “adequately represented the interests of the class” and certified the case as a class action on June 25, 2019. A non-jury trial has been scheduled for December 2019.

The class members are jointly represented by attorney Joel E. Harvey and the Civil Liberties Union of Indiana. See: Bell v. Sheriff of Henry County, U.S.D.C. (S.D. Ind.), Case No. 1:19-cv-00557-SEB-MJD.

Additional source: city-countyobserver.com

Stop Prison Profiteering: Seeking Debit Card Plaintiffs

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

Please contact Kathy Moses at kmses@humanrightsdefensecenter.org, or call (561) 360-2523, or write to: HRDC, SPP Debit Cards, P.O. Box 1151, Lake Worth Beach, FL 33460.
Family Sues New Jersey Jail Over Prisoner Suicide

by Ed Lyon

Did you hear the one about the prisoner who allegedly hanged himself while restrained in a straitjacket? That isn’t an opening line for a sick joke; rather, it’s the contention of officials in Essex County, New Jersey when trying to explain the death of detainee Lucas Vieira.

Vieira, who struggled with substance abuse and mental illness and was being held for a probation violation due to a positive drug test, was found dead in his cell. He was in a straitjacket and on suicide watch at the time.

In 2017, WNYC News conducted an investigation into the high prisoner death rate in New Jersey county jails. In response, Governor Philip Murphy pledged to ramp up oversight of the troubled lock-ups.

That apparently did not happen. One of the new guidelines, published in December 2018, requires a morbidity report to be completed after all jail suicides. When WNYC News requested Vieira’s morbidity report from a jail records custodian under the state’s open records law on April 2, 2019, they were told no such document existed. A report was then generated two days later – eight months after Vieira’s death. Pursuant to New Jersey statutes, that particular record was required to be issued within three days after a prisoner dies.

The line in the report indicating the cause of death had been redacted; a footnote referenced an active criminal investigation by the county prosecutor’s office.

There is no indication when the investigation started, and New Jersey Department of Corrections (DOC) acting director Marcus Hicks was not available to answer questions. According to a DOC spokesperson, Hicks was preparing for legislative budget hearings and would address the DOC’s failure to enforce the three-day death reporting requirement on Essex County officials at a later time. According to jail spokesman Anthony Puglisi, “Whenever there is a suspected suicide, the Prosecutor’s Office conducts an investigation.”

Attorney Hillary Nappi is representing Vieira’s estate and his surviving family members in a wrongful death suit against the jail and its for-profit medical provider, CFG Health Systems. The complaint states that Vieira arrived at the facility on August 14, 2018, and his mental health and substance abuse histories were documented. He was later transferred to the medical unit on August 25 and put in a straitjacket and on suicide watch.

“Mr. Vieira was placed in a straitjacket, which is the extreme measure that should only be used with a prisoner if they are presenting a very clear-cut risk to themselves, or to correctional officers or other inmates,” Nappi stated. “And we know that Mr. Vieira was placed in a straitjacket ... he was the highest level risk ... he should have had constant supervision.”

Jail spokesman Puglisi declined to comment on the case due to the litigation, while CFG Health Systems refused to comment at all. They provided no explanation as to how Vieira had managed to hang himself. The suit remains pending. See: Estate of Vieira v. CFG Health Systems, LLC, U.S.D.C. (D. NJ), Case No. 2:19-cv-08452-MCA-JAD.

Additional sources: northjersey.com, wnyc.org

Companies Compete to Build New Alabama Prisons

by David M. Reutter

In the face of a looming federal lawsuit over conditions inside its prison system, Alabama is moving forward with a $900 million plan to build three new men’s facilities. Five companies have submitted a Statement of Qualifications (SOQ) to be considered for the project.

As PLN has reported, the U.S. Department of Justice (DOJ) issued a report in April 2019 that found Alabama prisoners are subject to high levels of violence and sexual assault. [See: PLN, Sept. 2019, p.44]. Under the terms of a separate federal lawsuit, the state Department of Corrections (DOC) has been ordered to add 2,000 guards as part of needed improvements in substandard mental health care. [See: PLN, May 2019, p.50].

DOC Commissioner Jeff Dunn has argued for years that the state’s prisons are too old, too dangerous and too small. Yet except for a small January 2019 hike in the pay for prison guards – which, at an average of $34,050 per year, is still among the lowest in the country – state legislators have balked at taking action, citing excessive costs or concerns about closing prisons in their districts.

In both 2018 and 2017, lawmakers voted against an $800 million plan to build four mega-prisons and close 14 of the state’s 16 maximum-security facilities. In 2017, the state House rejected another version of the prison plan that had been trimmed down to $550 million.

Under the current $900 million proposal, Governor Kay Ivey is seeking to construct three facilities that hold 3,000 to 4,000 prisoners each. Her administration is pursuing a “build-lease” arrangement in which the state will contract with private companies to build the facilities to the DOC’s specifications, then lease them. That plan does not require legislative approval.

The first step was to request SOQs, which by late August 2019 had been received from five bidders. The DOC did not release any information about the five companies other than their names, in order “to protect the integrity of the competitive selection process and to avoid inviting outside influence or legal challenges.”

Based on publicly available information, the firms bidding on the prison construction project include:

- GEO Group, based in Boca Raton, Florida, which with $2.47 billion in annual revenue is the nation’s largest private prison contractor;
- CoreCivic, based in Brentwood, Tennessee, the next-largest U.S. private prison company with annual revenue of $1.8 billion;
- Corvias LLC, based in Rhode Island, which collects about $10 million in annual revenue as a landlord to members of the U.S. military living in 26,000 rental houses and apartments on 13 bases in Maryland, Virginia and North Carolina. Substandard conditions in the company’s properties re-
Texas Counties Waste Millions by Jailing Defendants Charged with Citation-Eligible Misdemeanors

by Matt Clarke

In April 2019, social justice advocacy nonprofit Texas Appleseed released an analysis of jail bookings in a dozen of the most populous counties throughout Texas. The study examined the most serious charge that people faced when booked into jail, to determine the percentage of misdemeanor bookings. In all but one county, there were overwhelmingly more misdemeanor bookings than felony bookings. Further, thousands of people were jailed on fine-only charges eligible for citations – that is, ticketing offenses.

Texas has three classes of misdemeanors. Class A carries up to a year in jail and a $4,000 fine. Class B charges have a maximum of 180 days in jail and a fine of $2,000. Class C is fine-only, with a maximum of $500. All Class C misdemeanors, some Class B – such as possession of marijuana and petty theft – and a few Class A are subject to citations. That means booking into a jail is not required, but at the arresting officer’s discretion.

“Jail stays, even short ones, can cause sustained damage to people’s lives,” according to the analysis. “When people are booked into jail they may lose their employment, damaging their families’ economic stability. They may also lose their housing or even custody of their children. Services that they may be receiving for mental health treatment or addiction are interrupted. Their physical health may suffer as well, given the extraordinarily stressful environment and lack of access to regular medications. In short, jail does far more harm than good for people who are not dangerous.”

This is a strong argument for not jailing people for offenses subject to citations.

One study found that low-risk criminal defendants in Kentucky held at least two to three days in jail were nearly 40 percent more likely to commit a new crime before trial compared to those held less than 24 hours. The longer they were held, the more likely they were to commit a new crime – 74 percent more likely for those held over a month compared to those held less than a day. Thus, as a matter of public safety, counties should strive to avoid jail bookings when possible and shorten jail stays as much as possible.

At 69 percent, Travis and Galveston counties had the highest percentage of misdemeanor bookings, while Dallas County had the fewest at 42 percent. However, the Dallas City Marshal operates a detention facility for Class C misdemeanors, and people detained at that facility were not taken into account in the analysis by Texas Appleseed.

In Travis County, 35 percent of the bookings were for black arrestees even though black residents comprise about nine percent of the county’s population.

The most common misdemeanor charges were driving while intoxicated and possession of marijuana, either of which can be Class A or B. Each accounted for seven percent of all jail bookings. Misdemeanor theft accounted for another four percent, while assault/family violence and traffic violations were three percent each.

Eleven of the counties accounted for over 30,000 misdemeanor arrests in 2017 alone. Around a third were for Class A offenses, 42 percent for Class B and 19 percent for Class C. During a single year in those counties, more than 24,000 people booked for a Class B or C misdemeanor spent more than three days in jail. Over half were held over 10 days.

The aggregate number of days that misdemeanor defendants spent in jail in ten of the counties was 858,959. That came at an estimated cost of $51 million, using the Texas Association of Counties’ 2016 conservative jail cost estimate of $60 per day.

The analysis recommended that Texas counties stop booking people charged with Class C misdemeanors and other offenses eligible for citations, quickly release most arrestees on personal bonds after they are booked, implement diversion programs, and analyze local data to optimize jail use. State Rep. Senfronia Thompson introduced a bill, HB 482, that would prohibit law enforcement officers from arresting people charged with Class C misdemeanors absent a warrant. The bill was left pending in committee in April 2019.

Sources: texasappleseed.org, correctionsone.com, kut.org
Hickman’s Egg Farm Puts Prisoners to Work at High Cost to the Community, Residents Say

by Chad Marks

Since 1995, hundreds of Arizona prisoners have held part-time jobs at Hickman’s Family Farms near Arlington, part of an effort by the state Department of Corrections (DOC) to help them successfully reenter society after serving their sentences. But in October 2018, local residents joined with environmental activists to file a $264 million federal lawsuit alleging the egg farm operation in Arlington and nearby Tonopah produces enough ammonia and other noxious gasses to affect their health. Two other lawsuits have since been filed by prisoners who were injured on the job at the farm.

Billy Hickman, vice president of operations for the company, admitted to U.S. District Court Judge G. Murray Snow that the egg farm produces ammonia, about 1,000 pounds per day, but said he didn’t know it was polluting the air or even where the toxic gas was going.

“It seems like a rather cavalier attitude these people have, like, we’re sorry about your problem, but we’re making all this money,” stated Stephen Brittle with Don’t Waste Arizona. “But we have environmental laws to protect people from those kind of people.”

In September 2019, a federal lawsuit was filed by prisoner Mary Stinson after she lost part of a finger during her second week on the job operating machinery at the egg farm, for which she never received proper training.

“Figure it out – that’s pretty much what they tell you,” she said.

“They don’t do a lot of training,” agreed her attorney, Joel Robbins, who added he had been contacted by “multiple inmates” describing safety violations and injuries on the job at Hickman’s.

In October 2019, prisoner Michael Gerhart filed suit in Maricopa County Superior Court against Hickman’s and the DOC, claiming that he lost the use of his left hand after it was trapped in a machine with “no safety mechanism, guard, or emergency shut-off,” for which he had received no training “on the safe and proper way to use [the] machinery.”

Gerhart, who is serving time for drug-related charges, including one year for a marijuana violation, was not taken immediately to a hospital but instead returned to ASPC Lewis. As for the severity of Stinson’s injury while working at Hickman’s, the company’s chief financial officer, Jim Manos, insisted they did not provide “an unsafe environment.”

“It’s just the job,” he said.

Manos also disputed Stinson’s claim that she was insufficiently trained, saying “she should have never been working on the auger with it moving,” since “she was told not to” in a 10-minute training session the day before her December 2018 accident.

“It should have been fresh in her mind,” Manos argued.

“On the one hand,” Robbins said, “I really want Hickman’s to be able to use prisoners and get them the opportunity to work, but they just need to pay attention to the safety.”

After Stinson filed suit over his injury, the Arizona Department of Occupational Safety and Health (DOSH) was summoned to inspect the farm, according to spokesman Trevor Lakey. But DOSH does not track injuries of prisoners who work at Hickman’s, since they are paid just $4.25 an hour and are not legally considered “employees.”

Tucson attorney Stacy Scheff added the prisoners are also excluded from worker’s compensation coverage.

“The only way they can get reimbursed for their injuries is to sue civily,” she said.

Processing over 750,000 eggs per hour, Hickman’s says it’s the largest egg producer in the southwestern United States. With over four million chickens at the industrial-size farm flapping their wings, nearby residents say they have to contend with dust, flies and a sickening stench that permeates the air. Their lawsuit contends that the operation produces ammonia and other gasses, causing nausea and respiratory difficulties – what Stinson and other prisoner workers call “the Hickman cough.”

Land developers and business owners have joined the residents’ lawsuit, seeking a court ruling that the farm is a public and private nuisance.

“Hickman’s will prove it remains a good neighbor and faithful to our legal, zoning, and environmental responsibilities,” said Michael Manning, an attorney for the company.

However, federal court records show that an expert hired by Hickman’s found ammonia emissions in Tonopah and Arlington exceeded federal standards by as much as 19 times.

If the egg farm loses the suit, it claims the savings to state taxpayers from its prisoner employment program, which it estimates at more than $5 million, will be threatened. Also threatened is regular work for about 80 former prisoners, as well as the below-minimum-wage jobs of some 300 DOC prisoners, according to Arizona Correctional Industries (ACI).

The farm has its own reentry and transition manager for its prisoner program, Aaron Cheatham, who said that by giving prisoners a stable residence and employment, Hickman’s is helping to combat recidivism.

“We want to put everyone we deal with back to work,” Cheatham stated.

Hickman’s program is currently expanding to include transitory housing at the farm with the construction of 40-prisoner housing units composed of 400-square-foot studios with a full-size bed and bath, a full kitchen and a 42-inch television.

“We have to create an economic engine to help these people build a better life,” said Clint Hickman, the farm’s vice president of sales and marketing, who is also a member of the Maricopa County Board of Supervisors.

And, of course, the company also benefits from low-cost prisoner labor.

Sources: phoenixnewtimes.com, azpbs.org, azcentral.com, glendalestar.com, fox10phoenix.com
The Habeas Citebook: Prosecutorial Misconduct

By Alissa Hull
Edited by Richard Resch

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

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

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

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Ninth Circuit: Prisoner’s Withdrawal of Consent for Magistrate Judge Improperly Denied

by Kevin Bliss

The Ninth Circuit Court of Appeals ruled on August 28, 2019 that a California prisoner’s motion to withdraw consent to have a magistrate judge hear his case was improperly denied, and that dismissal of a defendant and a deliberate indifference claim were erroneous.

Corey Dwayne Gilmore was at the Kern Valley State Prison in July 2010 when he was shot with a non-lethal “spunge round,” pepper sprayed and assaulted by guards. Specifically, he claimed that during an altercation involving other prisoners, he was shot in the leg close to his knee, then handcuffed and forced to walk, and the guards “repeatedly forced him into obstacles such as door frames and walls, breaking his glasses and injuring his face.” He was made to sit on hot pavement while medical treatment and decontamination from the pepper spray were delayed for 27 minutes.

Gilmore filed suit pro se in federal court against four guards involved in the incident: Chad Lockard, Cesar Lopez, John Hightower and J.J. Torres. His complaint raised claims of excessive use of force and delayed medical attention.

Gilmore consented to the jurisdiction of a magistrate judge on June 29, 2012, but the defendants did not. The case was later assigned to a district court judge for trial. The original magistrate judge retired and his replacement, Magistrate Stanley A. Boone, made a ruling on a pretrial motion that Gilmore claimed showed partiality to the defense. He moved to withdraw his consent for a magistrate judge on October 19, 2015. The defendants then agreed to a magistrate until after Gilmore filed a motion to withdraw consent; therefore, the district court erred in denying his motion.

The appellate court noted that “a party need not satisfy the good cause or extraordinary circumstances standard provided in [28 U.S.C.] § 636(c)(4) in order to withdraw magistrate judge consent before all parties have consented. Because the magistrate judge erroneously required such a showing by Gilmore, and because under the circumstances his motion to withdraw consent should have been granted, we conclude that the magistrate judge lacked jurisdiction to conduct the trial.”

The Court of Appeals also held that the 90-day period to substitute a defendant is activated when a suggestion of death is served on all parties and nonparty successors in the case. Torres’ successor was not served, thus the 90-day substitution period was not activated. Further, the Court noted it was not Gilmore’s responsibility to locate Torres’ successor, but that burden fell on the party who filed the original suggestion of death. Consequently, the district court had erred in dismissing Torres and the deliberate indifference claim.

The Ninth Circuit reversed the denial of Gilmore’s withdrawal of consent and the dismissal of Torres and the deliberate indifference claim, finding that Magistrate Boone did not have jurisdiction. Accordingly, the jury verdict also was reversed and the case remanded, where it remains pending.

Gilmore was represented on appeal by attorneys Douglas A. Smith and Maximillian W. Hirsch. See: Gilmore v. Lockard, 936 F.3d 857 (9th Cir. 2019).

Fourth Circuit Reverses Dismissal of Virginia Prisoner’s Hep C Lawsuit

by David M. Reutter

The Fourth Circuit Court of Appeals held on September 4, 2019 that prison officials responsible for a policy that prevented a Virginia prisoner from receiving treatment for the hepatitis C virus (HCV) could be found deliberately indifferent to his serious medical needs.

That ruling came in an appeal by prisoner Carl D. Gordon, after the district court granted summary judgment to Virginia Department of Corrections (VDOC) Health Services Director Fred Schilling and Chief Physician Mark Amonette. The court’s order was based on a finding that they had no personal involvement in decisions related to Gordon’s HCV treatment, and that his disease was adequately handled by prison medical staff.

At issue was the VDOC’s 2004 Treatment Guidelines, which excluded HCV-positive prisoners from receiving treatment if they were either “parole eligible” or had less “than 24 months remaining to serve after [undergoing] a liver biopsy.” Gordon, who had been in prison since 1980, was eligible for parole; thus, he was only eligible under the guidelines for a “chronic care clinic” that did not allow a “baseline workup, a liver biopsy, and [HCV] treatment.” In other words, medical staff would do nothing more than watch the disease progress.

That is what happened after Gordon was diagnosed with HCV in 2008. The Fourth Circuit wrote that the district court’s finding that he was never denied access to “acute medical care” was “inconsistent with the Eighth Amendment,” which prohibits...
prison officials from withholding “treatment from an inmate who suffers from a serious, chronic disease until the inmate’s condition significantly deteriorates.”

After a biannual visit and tests at the chronic care clinic in 2011 “reflected elevated levels of liver enzymes that could indicate liver damage,” Gordon began requesting treatment for HCV. Grievances that he filed between 2011 and 2015 were denied by Schilling.

In February 2014, Amonette suspended the 2004 guidelines. A year later the VDOC adopted a new policy that abandoned the HCV treatment exclusions. Under the revised guidelines, Gordon underwent testing that revealed he had developed stage 3 fibrosis, which is a “high” level of liver damage that represents the final stage before the onset of cirrhosis.

Gordon’s lawsuit alleged Schilling, a non-doctor, was personally involved in the denial of his HCV treatment because he was responsible for reviewing, revising and enforcing the 2004 Treatment Guidelines that excluded Gordon. He was also aware of the risks that Gordon could suffer serious liver damage as a result.

On appeal, the Fourth Circuit noted that Gordon’s grievances detailed those facts, and that Schilling acknowledged them and the fact that Gordon was not receiving HCV treatment. Therefore, the evidence showed Schilling was aware of a substantial risk of harm if Gordon’s medical condition went untreated.

While non-medical personnel can generally defer to the decisions of prison doctors, Schilling knew that the 2004 Treatment Guidelines, which he enforced, precluded any treatment for Gordon – so his suggestion that Gordon go to sick call was simply a “repeated[] passing of the buck,” the Court of Appeals wrote. Schilling was also aware that from February 2014 to February 2015, no HCV treatment was available. The Court found his failure to revise the Treatment Guidelines to remove the exclusion provisions constituted personal involvement, and he thus could be found deliberately indifferent to Gordon’s serious medical needs.

As for Amonette, his decision to suspend HCV treatment for a year without implementing an interim replacement policy could be found by a jury to constitute deliberate indifference to the substantial risk of harm from HCV, the Fourth Circuit noted, as that decision may have been “predicated on administrative convenience rather than medical judgment.” Accordingly, the district court’s summary judgment order was vacated and the case remanded, where Gordon’s motion to appoint counsel was granted on November 7, 2019. See: Gordon v. Schilling, 937 F.3d 348 (4th Cir. 2019).

Previously, in August 2018, another Virginia state prisoner, Elmo Augustus Reid, 62, held at the Buckingham Correctional Center, obtained HCV treatment after prevailing in a similar lawsuit. Reid was assisted by University of Virginia School of Law professor George Rutherford, who stated, “This individual lawsuit does not require treatment of other prisoners, but like many similar lawsuits around the country, it sets a precedent that supports further efforts to gain treatment.”

Until a class-action suit succeeds in Virginia, prisoners with HCV will have to litigate separate, individual cases seeking medical treatment. Additional source: law.virginia.edu

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On July 18, 2019, the Fourth Circuit Court of Appeals held that the Prison Litigation Reform Act (PLRA) does not prohibit a prisoner from being granted in forma pauperis status when appealing the dismissal of a case that resulted in his third strike under 28 U.S.C. § 1915(g).

South Carolina prisoner Therl Taylor filed three federal civil rights lawsuits against various government officials. His December 14, 2015 complaint alleged that employees of the South Carolina Department of Corrections and the City of Allendale denied him access to the prison’s mailroom services, interfering with his access to the courts. His June 20, 2016 suit claimed that prison staff violated his rights by transferring him to a new unit, and included general allegations of “corruption, drug smuggling, [and] high rates of violence.” His last civil rights action, filed on September 6, 2016, again alleged prison staff had improperly transferred him to another unit and confiscated his personal belongings.

“In a set of three orders issued on the same day, the district court dismissed each complaint for failure to state a claim and so assigned Taylor three ‘strikes’ under § 1915(g),” the Fourth Circuit stated in a consolidated appeal of Taylor’s lawsuits.

The appellate court conditionally granted in forma pauperis status, and appointed attorney Adam B. McCoy with the Wake Forest University School of Law to represent Taylor on the narrow issue of whether a trial court’s dismissal of a case “only qualifies as a strike for PLRA purposes if it occurred in a different lawsuit.”

The Court of Appeals had previously considered that issue in Henslee v. Keller, 681 F.3d 538 (4th Cir. 2012), and concluded that a prisoner could proceed in forma pauperis because “counting the district court’s dismissal as a third strike would effectively insulate the dismissal from appellate review.”

However, after Henslee was decided, the U.S. Supreme Court addressed a related issue in Coleman v. Tollefson, 135 S.Ct. 1759 (2015). Coleman had filed several additional lawsuits while his third strike was on appeal. The Coleman court held that a strike was final when issued, therefore a plaintiff could not proceed in forma pauperis in new lawsuits unless he fit the “life-in-danger” exception set forth in § 1915. Based on Coleman, the Fourth Circuit decided to revisit the issue of whether a third strike under the PLRA could prevent an in forma pauperis appeal in the same case.

The Court of Appeals noted that the Coleman court “found it unnecessary to decide the question we faced in Henslee and we face again today: that is, may a prisoner proceed in forma pauperis on appeal from the trial court’s dismissal of his third complaint?” In Coleman, the United States, appearing as amicus curiae for the defendant prison officials, “argued that § 1915(g) was best read to afford a prisoner in forma pauperis status on appeal from the third qualifying dismissal.”

The appellate court held that § 1915(g)’s use of the term “prior occasions” meant that the qualifying strikes could not have been from the same action – a position also advocated by the United States in Coleman. Further, Taylor’s inability to appeal at least two of his cases was due to the district court’s dismissal of all three on the same day.

Since Taylor had no control over the court’s case management schedule, it should not be held against him. Applying the substantial portion of the reasoning in Henslee not rejected by the Supreme Court in Coleman, the Fourth Circuit concluded “that a district court’s dismissal of a prisoner’s complaint does not, in an appeal of that dismissal, qualify as a ‘prior’ dismissal” for PLRA purposes. Therefore, Taylor was allowed to proceed in forma pauperis. One justice issued a lengthy dissenting opinion, arguing for a more restrictive interpretation of § 1915(g). See: Taylor v. Grubbs, 930 F.3d 611 (4th Cir. 2019).

Overzealous Prosecutors Seek to Lock Up Prisoners Released Under First Step Act

In December 2018, President Trump signed the First Step Act into law. Among other reforms, the legislation reduced some of the penalties for crack cocaine offenses. For many years, there were complaints that crack cocaine sentences were overly harsh and disproportionately affected black defendants.

Since the enactment of the First Step Act, more than 1,100 prisoners have been released under the provisions lessening sentences for crack cocaine. Monae Davis, 44, benefited from the new law: Six years were shaved off his 20-year prison term. That resulted in Davis being released and reunited with his family earlier than expected.

But his freedom might be short-lived. Prosecutors in the Western District of New York, with U.S. Attorney James P. Kennedy, Jr. at the helm, are trying to appeal his release.

In 2009, Davis entered into a plea agreement with the federal government and admitted that he was involved with 50 grams of crack cocaine, resulting in a 20-year sentence. If arrested today, the mandatory minimum for that crime would be five years.

Prosecutors are now saying the judge erred in releasing Davis under the First Step Act, and want him back in jail. They contend that in his plea deal, Davis admitted to being involved with at least 1.5 kilograms of crack but less than 4.5 kilos. The government claims his guidelines sentence was too high to qualify for a reduction. The judge went off the indictment, which charged a specific amount of 50 grams of cocaine, and, in doing so, found the sentence reduction was applicable.

Davis had already been locked up over 10 years for his non-violent drug crime. Yet federal prosecutors apparently feel a decade...
in prison is not enough. “The government’s position is that the text of the statute requires courts to look at the quantity of crack that was part of the actual crime,” said U.S. Department of Justice (DOJ) spokesman Wyn Hornbuckle. “This is a fairness issue.”

U.S. Attorney Kennedy added that asking for appellate review was “consistent with our mission of seeing to it that justice is done in each case.”

However, sending men and women to prison for decades for non-violent crimes isn’t justice, and lawmakers and the public seem to think the same — which is why there was overwhelming support for the First Step Act.

The law was a belated recognition that tough-on-crime policies that mandated extreme sentences which largely affected black defendants were inherently unjust. There is an inscription on the walls of the DOJ’s building in Washington, D.C. – the place that employs Kennedy – which states, “The United States wins its point whenever justice is done its citizens in the courts.”

After all, our criminal justice system is ultimately supposed to be about justice. There seems to be little justice in sending Monae Davis back to prison, but that is exactly what the government wants to do. “They’re prosecutors – it’s their job to make it hard on people,” Davis said. “Do I think it is right? No, it’s not fair.”

Federal prisoner Gregory Allen, like Davis, was released from prison under the First Step Act in February 2019. Florida prosecutors appealed his release. While the appeal was pending, Allen attended a ceremony celebrating the new law with President Trump. Two weeks later, the prosecutors dropped their appeal.

Was Allen special? Did the government realize that the First Step Act was a belated recognition that tough-on-crime policies that mandated extreme sentences which largely affected black defendants were inherently unjust. There is an inscription on the walls of the DOJ’s building in Washington, D.C. – the place that employs Kennedy – which states, “The United States wins its point whenever justice is done its citizens in the courts.”

“After all, our criminal justice system is ultimately supposed to be about justice. There seems to be little justice in sending Monae Davis back to prison, but that is exactly what the government wants to do. “They’re prosecutors – it’s their job to make it hard on people,” Davis said. “Do I think it is right? No, it’s not fair.”

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Was Allen special? Did the government realize that the First Step Act is in place — now it should be used to make real change and help families. And let’s not lose any time in making a Next Step Act, because everyone deserves a second chance.”

The Department of Justice “is pushing against the will of the people, the will of Congress, the will of the president,” added Holly Harris, director of Justice Action Network.

In theory, we live in a democratic nation. The application of prosecutorial power without justice is brutal, and there is nothing democratic about brutality. Real justice is rooted in fair laws, second chances and redemption. Federal prosecutors seeking to stop prisoners from being released under the First Step Act should take note.

Sources: reuters.com, washingtonpost.com, theappeal.org

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Prison Legal News 41 December 2019
Florida Prisoner Left a Quadriplegic After Brutal Beating by Guards

by David M. Reutter

On August 21, 2019, prison guards at the Lowell Correctional Institution (LCI) near Ocala, Florida allegedly beat Cheryl Weimar “to within an inch of her life” because the 51-year-old prisoner—who was left a quadriplegic following the attack—refused to clean a toilet, according to a federal lawsuit filed by her family. Since then, one of the guards involved has been arrested on unrelated charges and the state has moved to release Weimar in an apparent attempt to avoid paying some of her medical costs.

The lawsuit, filed on September 3, 2019, says Weimar complained of pain from a preexisting hip condition when ordered to clean toilets in her dormitory, and she requested a legally-mandated “reasonable accommodation.” Displeased with her refusal to comply, a guard called three others to enforce his command. The stress of the situation, Weimar said, caused “an adverse psychological episode,” so she declared a “psychological emergency.”

Under prison policy, at that point a medical professional should have been called to assess the situation. Instead, one of the guards reportedly threw Weimar to the ground, then all four piled on and “brutally beat her with blows to the head, neck, and back.” At least one of the guards “elbowed [her] in the back of her neck, causing her to suffer a broken neck,” the complaint states. They then dragged Weimar “like a rag doll” to an area outside camera view, allowing her head to “bounce along the ground” until they reached an unmonitored area where they continued the “malicious and sadistic beating.”

“She was telling them to please, please help her and so they threw a wheelchair at her to taunt her,” said Weimar’s attorney, Ryan Andrews. “They dragged her around for a while, and really messed her up. They either broke her neck when they slammed her, or what they did after, by dragging her around, caused further trauma to her neck and spine.”

The Florida Department of Corrections (FDOC) refused to allow Andrews to take pictures of his client’s injuries at a hospital. Along with filing the civil rights action, he claims evidence points to multiple prisoners who witnessed the attack but have been intimidated or threatened by guards to prevent their testimony. Andrews filed a motion to keep LCI staff away from Weimer while she was in the hospital, which the district court denied. He also requested that the court immediately allow her injuries to be photographed.

“It is imperative that we find out what happened here and that the public have access to the videotapes showing Cheryl beaten,” Andrews said. “Now a quadriplegic as a result of the beating, Cheryl will never get to walk in her garden and play with her cats, or swim in the ocean, things she once loved, all because she needed help with her disabilities. What happened behind the walls at Lowell is evil.”

The U.S. Department of Justice (DOJ) is also investigating allegations of sexual assault at LCI. [See: PLN, Jan. 2019, p.50]. Prisoners and their families have urged the DOJ to expand its investigation to include claims of physical violence, and Weimar's beating may help that effort. In October 2019, about 60 advocates and former prisoners upset over what happened to Weimar staged a protest outside LCI, which is one of the largest women's prisons in the U.S.

Meanwhile, the guards involved in Weimar's beating have remained on duty but were removed from contact with prisoners—mailroom duty is the FDOC’s customary assignment for staff during a pending investigation. The Florida Department of Law Enforcement is assisting in the investigation, in cooperation with FDOC’s Office of the Inspector General.

In October 2019, Andrews filed a motion to have Weimar transferred from the Florida Women's Reception Center, where she has been held since leaving LCI, to a long-term medical facility so she can receive adequate treatment. He claimed that FDOC officials had coerced Weimar into signing something – they didn't give her a copy – and he feared the state was trying to grant her a Conditional Medical Release (CMR) in order to avoid paying the cost of her long-term medical care.

“Everything about the way [FDOC] has acted since the moment this lady has been injured is gutless,” Andrews said.

State law allows the FDOC to recommend prisoners for CMR who are either “terminally ill” or “permanently incapacitated,” usually so sick and dying prisoners can be with their families. The case is then sent to the Commission on Offender Review, which according to a 2018 report has granted 66 of 125 recommended releases since the state legislature created CMR in 1992. Currently scheduled for release in 2021, Weimar is entitled to medical care while incarcerated, but once she is freed the FDOC would be relieved of half the burden, which Medicaid would pick up.

“If [FDOC] is trying to release her so they don't have to pay her medical bills, that's not what this law is for,” noted Tallahassee clemency and parole attorney Reggie Garcia.

In November 2019, the Miami Herald reported that one of the guards involved in Weimar’s beating, Lt. Keith Turner, 34, had previously been accused of several serious violations, including:

• a 2009 allegation that he harassed a prisoner for her religious beliefs;
• a 2012 allegation that while handcuffing a prisoner he taunted her to “go ahead and complain,” saying she would just “give [him] a reason” for treating her roughly;
• a 2014 allegation by a former LCI prisoner that he was one of a group of guards that regularly traded contraband such as cigarettes for oral sex from prisoners, and a separate allegation in 2015 that he had sex multiple times with a prisoner and groped another while making lewd comments;
• another 2015 allegation that he subjected prisoners to unwarranted violence, including pepper-spraying them and slaming their heads against walls;
• several 2018 allegations that he body-slammed one prisoner, dragged another across the compound and pepper-sprayed two others without provocation; and
• a 2019 allegation that he left a prisoner outside to suffer oppressive heat for over three hours.

“Everyone is afraid of retaliation from this [lieutenant] and now is keeping their mouth shut about this particular situation,” said the LCI employee who made the 2019 complaint.

FDOC reports do not indicate whether Turner was disciplined for any of the prior incidents, but officials at LCI promoted him.
to sergeant and then lieutenant. The process to fire him finally began in November 2019 – but only after he was arrested by the Marion County Sheriff’s Office (MCSO) and charged with sexual battery and child molestation for allegedly sexually assaulting a girl that began when she was six years old and continued for 10 years. MCSO investigators located a second child who reported that Turner had sexually assaulted her, too.

“The sheriff’s findings in this case against Mr. Turner are abhorrent and in complete contrast to the values and integrity held by our staff,” FDOC Secretary Mark Inch said in a statement. “We are moving forward with his immediate dismissal.”

“I’m not even sure these allegations will result in his termination,” Andrews scoffed. “The fact that [FDOC] is proud they have now fired this guy, they can save it. The fact that now they have some moral rectitude about needing to dismiss Turner is disgusting in light of the prior accusations against him for which they did nothing.”

The FDOC hasn’t identified any of the other guards involved in the attack on Weimar, though another guard, Ryan Dionne, has been named in court filings.

“We are going on two months since the beating on Aug. 21 [and] there haven’t even been names released,” said Debra Bennett, a former LCI prisoner who organized the protest outside the facility. “We’re not gonna let people forget what happened.”

“You’re either part of the solution or part of the problem,” added Janice Spears, a 49-year-old former LCI guard who joined the protest: “The officers that are in [LCI] – quit being the problem. Please, stop abusing these women.”

Weimar’s lawsuit remains pending. See: *Weimar v. Florida Department of Corrections*, U.S.D.C. (M.D. Flà.), Case No. 5:19-cv-00548-CEM-PRL.

Sources: miamiherald.com, tallahassee.com, lawandcrime.com, wcjb.com, abcactionnews.com, alligator.org

**Life Sentence for Joyriding Overturned in California**

by Scott Grammer

Kenneth Oliver, 52, was only 29 when he received a life sentence under California’s “three strikes” law for repeat felons. He was arrested while joyriding in a stolen car as a passenger, and a stolen handgun was later found in his hotel room. His previous convictions included armed robbery.

The three strikes law was amended in 2012 so that only a third strike for a serious or violent felony would trigger a life sentence, but Oliver was not eligible for resentencing. Why? While incarcerated he was found in possession of a book titled *Blood in My Eye* written by George Jackson, co-founder of the Black Guerilla Family, a prison and street gang. Of the 23 years that Oliver served in prison, he spent eight in solitary confinement for possessing that book.

“It’s almost impossible to believe that what happened to Ken happened here in California,” said Edward Johnson, the lead attorney for the pro bono legal team that represented Oliver. “You know, people think of this as an enlightened state and both the sentence and the time in [solitary] don’t square with that.”

Oliver was freed on June 3, 2019 after Los Angeles County prosecutors said they were dropping their objections to his release “in the interest of justice.” That action came after the California Department of Corrections and Rehabilitation expunged Oliver’s gang affiliation record and settled a lawsuit over his time in solitary for $125,000. See: *Oliver v. Beard*, U.S.D.C. (C.D. Cal.), Case No. 2:14-cv-01890-JVS-PJW.

Michael Romano, director and founder of the Three Strikes and Justice Advocacy projects at Stanford Law School, noted that Oliver’s sentence “was much longer than [for] rapists and murderers,” adding, “[t]here should be some proportionality.”

Oliver has plans to become a paralegal and is re-establishing contact with his three adult children. “I really haven’t wrapped my head around it fully,” he said shortly after his release.

Source: latimes.com

**Dictionary of the Law**

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Nebraska officials have prevented a couple from marrying for seven years. Both are state prisoners, and they have filed a lawsuit to force the prison system to let them wed.

Oddly enough, the controlling case is the much-maligned, over-three-decades-old U.S. Supreme Court decision in *Turner v. Safley*, 482 U.S. 78 (1987). Although the *Turner* court lowered the bar for prison officials to defend their policies against constitutional challenges, it also clearly upheld the fundamental right of prisoners to marry, which cannot be unilaterally denied by prison officials.

Nicolle Wetherell is serving a life sentence for first-degree murder. Her fiancé, Paul Gillpatrick, is serving 55 to 99 years for second-degree murder in a prison located about 50 miles from Wetherell’s. They met in 1998, prior to their incarcerations, and became engaged in 2012.

After Nebraska thwarted their attempts to marry, they filed a federal civil rights suit seeking to be wed via video conference, and to end the prison system’s policy that prohibits marriage between prisoners except in “special circumstances.”

In June 2019, U.S. District Court Judge Robert Rossiter held that Wetherell and Gillpatrick had a fundamental right to marry. The state has appealed, and the appeal remained pending as of October 2019. See: *Gillpatrick v. Frakes*, U.S.D.C. (D. Neb.), Case No. 4:18-cv-03011-RFR-CRZ.

Judge Rossiter cited as precedent a case with a quirky history that started at an infamous co-ed prison in Missouri and had been decided 32 years earlier — *Turner v. Safley*.

In 1982, the Renz Correctional Center held 138 women and 90 men. The women were primarily medium- and maximum-security prisoners — some convicted for killing an abusive boyfriend or husband — while the men were mostly minimum-security prisoners. Renz Superintendent William Turner had a strict “no touching” rule, and allowed male and female prisoners to interact for only an hour a day. His desperate attempts to keep the women from becoming pregnant eventually included a ban on correspondence between prisoners who were not immediate family members, and a practice of denying requests by prisoners to marry other prisoners.

Two years earlier, Pearl Jane “P.J.” Watson, who had received a 23-year sentence for killing a former boyfriend, met Leonard Safley, who was serving a short prison term for bad checks. Soon thereafter they had a “noisy lovers quarrel” and Safley was transferred to another facility.

They tried to circumvent the correspondence prohibition by sending letters through third parties. Sometimes it worked. They asked to be married, but their request was denied. So, aided by attorney Floyd Finch, Safley filed a federal civil rights suit against Turner challenging the restrictive mail policy and asserting a right to marry.

During a hearing at which Safley, Watson and a Methodist minister were present, Finch received the judge’s permission to have the minister marry the couple. The lawsuit continued as a class action and eventually ended up before the Supreme Court.

The Court ruled that prisoners have a fundamental right to marry. It upheld Turner’s mail policy, however, and set the standard for evaluating prison regulations that infringe on prisoners’ constitutional rights, requiring that they be “reasonably related to legitimate penological objectives” – much lower than the “strict scrutiny” standard the lower courts had previously applied.

This lower standard, which includes a four-part test, has made it difficult for prisoners to prevail when challenging prison regulations. But the Supreme Court’s decision as to prisoners’ right to marry means the Nebraska DOC’s current policy is “facially unconstitutional under *Turner v. Safley*,” according to Judge Rossiter.

Watson and Safley’s marriage only lasted a few years, and the Renz Correctional Center was destroyed by flooding in 1993 and never reopened. Yet prisoners nationwide remain saddled with the *Turner* standard that makes it harder to prove civil rights violations.

Sources: Newseum Institute, themarshall-project.org

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**Eighth Circuit Reverses District Court’s Order Requiring Halal Meals**

*by Chad Marks*

Abdulhakim Muhammad, a state prisoner in Arkansas, filed suit under the First and Fourteenth Amendments and the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000 cc-1 to 2000 cc-5. He argued that the Arkansas Department of Corrections (ADC) refused to provide him with a daily serving of halal meat in accordance with his Muslim religious beliefs.

The federal district court held a bench trial and granted an injunction in favor of Muhammad in May 2018. The court ordered prison officials to provide him with one serving of fish three or four days per week and one serving of halal or kosher beef, chicken or turkey the other three to four days a week.

The defendants appealed, arguing that Muhammad failed to exhaust his administrative remedies and that the district court erred on his RLUIPA and Free Exercise claims, as well as the scope of injunctive relief.

In an August 13, 2019 ruling, the Eighth Circuit agreed that Muhammad had failed to exhaust his administrative remedies. As a result, the appellate court did not reach the issue of whether the ADC had violated his rights under RLUIPA and the Free Exercise Clause.

The Court of Appeals cited 42 U.S.C. § 1997 e(a), which specifies that “[n]o action shall be brought with respect to prison conditions under ... any ... Federal law, by a prisoner confined in any ... correctional facility until such administrative remedies as are available are exhausted.” The U.S. Supreme Court has explained that the exhaustion requirement is “mandatory,” in *Woodford v. Ngo*, *by Matt Clarke*
Many “Violent Offenders” Actually Committed Non-Violent Crimes

**by Bill Barton**

The conservative Heritage Foundation said in December 2018 that “our federal prisons house thousands of low-level offenders and America must do better.”

According to a survey of laws in all 50 states by The Marshall Project, there are more than a dozen states where people can be charged and convicted as a violent criminal if they enter a dwelling that is not theirs. Burglary is deemed a violent crime.

In North Carolina, trafficking a stolen identity and selling drugs within 1,000 feet of a school or playground are both considered violent offenses. A July 2018 analysis by The Marshall Project found that a significant portion of prisoners—7,532 of approximately 35,700 total—were incarcerated for crimes deemed violent under North Carolina’s habitual violent offender law.

In Minnesota, aiding an attempted suicide and marijuana possession (depending on the quantity) are classified as violent crimes. The July 2018 analysis found that about 3,092 prisoners out of 9,849 in Minnesota’s prison system were locked up for crimes that might not seem violent to an objective observer.

Other “violent” crimes in various jurisdictions include purse snatching, embezzlement, theft of drugs and, in New York, possession of a gun with bullets.

If those convicted of such offenses are ever re-arrested, they could be considered as having a violent criminal history, and therefore be denied bail or community supervision and instead sent to jail. Similarly, if they fail a drug test while under supervision, they may be returned to prison as a violent offender even though testing positive for drugs is not itself a violent offense.

Phillip Kopp, an assistant professor of criminal justice at California State University, Fullerton noted the justice system needs to reframe what is considered a violent offense.

“Burglary just means entering a structure with the ‘intent’ to commit some kind of crime therein—even if you step right back out and nothing else happens,” he said. “It’s just going inside: anything you do additionally, like robbery, would be charged as an additional offense.”

Minnesota’s classification of marijuana possession as a violent crime is puzzling and problematic, to say the least—particularly given the number of other states that are legalizing marijuana use.

If the U.S. is serious about criminal justice reform, rethinking the way that violent crime is defined would be a significant step in reducing mass incarceration. Over half of state prison populations are composed of violent offenders, thus how they are defined is an important component of our nation’s approach to crime and punishment.

Sources: vice.com, themarshallproject.org
Illinois Prisoner Wins Partial Victory on Appeal in Hernia Treatment Suit

by Ed Lyon

On July 26, 2019, a panel of the Seventh Circuit Court of Appeals affirmed in part and reversed in part a district court’s judgment as a matter of law against Illinois prisoner Gregory Wilson, who had filed suit against for-profit medical care provider Wexford Health Sources.

Wilson claimed that sometime in the 1990s he developed an inguinal hernia, which ebbed but recurred in 2011. He said the hernia was painful but medical staff consistently refused to listen to his complaints.

A successful surgical intervention was performed in September 2014. For the three years of pain and suffering he was forced to endure prior to the surgery, Wilson sued Wexford, doctors Imhotep Carter and Saleh Obaisi, and physician assistant (PA) LaTanya Williams for being deliberately indifferent to his serious medical needs contrary to the Eighth Amendment.

The district court dismissed Dr. Carter due to the statute of limitations prior to discovery. At a pre-trial hearing, the court excluded several hearsay reports and forbade any respondeat superior liability theories. After Wilson’s case went to a jury trial, the defendants moved for judgment as a matter of law. The district court granted their motion and dismissed the case prior to a jury verdict. Wilson appealed.

The appellate court affirmed the statute of limitations ruling, as Dr. Carter had left Wexford’s employ and the Stateville prison in May 2012, well over two years before Wilson filed suit on August 31, 2016. Even under a theory of an ongoing denial of care, Carter’s alleged ability to treat Wilson ceased when he left in 2012. The two state savings statute/tolling rules that Wilson argued on appeal, 735 ILCS 5/13-217 and 735 ICLS 5/13-216, were factually inapplicable to his claims.

The Court of Appeals also affirmed the district court’s dismissal of PA Williams. Even though Williams did not refer Wilson for surgery, she did recommend what the Court felt was a “reasonable treatment option.” Since Wilson had no medical experts testifying for him at trial, he was unable to meet the burden of showing “a serious deficit” in Williams’ treatment.

The district court’s dismissal of Dr. Obaisi turned on the issue of whether his medical notes concerning Wilson were as complete as they should have been. Between spring and summer 2012 and on December 3 of that year, Wilson sent letters to prison medical staff requesting treatment for his hernia and complaining of “serious pain.” On January 10, 2013, Dr. Obaisi saw Wilson but refused to discuss his hernia. The doctor died before trial, so his deposition testimony, where he swore to keeping diligent notes yet had no specific memory of that appointment, was admitted.

In February 2014, Dr. Obaisi had notated a grievance Wilson filed about his hernia. The appellate court concluded that “a reasonable jury could believe Wilson’s testimony over Dr. Obaisi’s insistence over the completeness of his notes.... If the jury further credited Wilson’s records and testimony about his later complaints, Dr. Obaisi not only knew about the hernia in January 2013, but he inexplicably never followed up on it despite his knowledge of ongoing and unaddressed pain.”

Finding no error with the district court’s pre-trial rulings, including as to respondeat superior liability, the judgment was affirmed except for the dismissal of Dr. Obaisi. The case currently remains pending on remand. See: Wilson v. Wexford Health Sources, 932 F.3d 513 (7th Cir. 2019).

Judicial Abuse and Law Enforcement Corruption on Trial in Meek Mill Case

by Kevin Bliss

A Pennsylvania appellate court granted Meek Mill (born Robert Rihmeek Williams) a new trial with a different judge following a motion alleging the police officer who testified against him, Reginald Graham, had perjured himself and the presiding judge, Genece Brinkley, exhibited extreme bias.

The case made national headlines after Mill’s probation was violated in November 2017 for popping a wheelie on his dirt bike and being involved in a scuffle at an airport. Judge Brinkley’s imposition of an excessive sentence of two to four years made him a symbol for the need for judicial reform.

Mill grew up in North Philadelphia where he became a local legend as a rapper. In 2007, he was arrested for possessing a firearm, assault on law enforcement and 17 other charges. He said that he left his cousin’s house to go to a store, and was armed for his protection. According to Mill, the police approached him and he immediately placed the gun on the ground and raised his hands. Nonetheless, the officers brutally assaulted him, cuffed him, took him back to his cousin’s house and used his head as a battering ram to open a door, he stated.

Conversely, Graham testified that he had seen Mill selling crack cocaine the previous day, which gave him the foundation for the raid. He said when the officers approached Mill, he pointed a gun at them threateningly.

Mill pleaded guilty to seven of the 19 charges. He was sentenced to 11 to 23 months in jail and 10 years’ probation. Mill continued rapping and made a career for himself, collaborating with such artists as Drake, John Legend and Mary J. Blige. He released his debut album, Dreams and Nightmares, in 2012.

Mill was doing a promo tour when Hurricane Sandy hit the Northeast coast. Changing his flight plan to accommodate the storm resulted in a technical probation violation. His managers estimated the violation cost him over $30 million in revenue. That was just the beginning of a series of judicial decisions affecting Mill’s career, culminating in the violation that resulted in a two-to-four year prison sentence.

Along with Judge Brinkley’s open
ridicule of Mill’s management team, Jay-Z’s Roc Nation, and her attempt to privately influence Mill into a remix of a Boyz II Men song, his defense team felt the judge was taking an unusual interest in the case and unsuccessfully asked that she recuse herself.

With supporters like Jay-Z, Michael Rubin, Robert Kraft and Clara Wu Tsai, a movement sympathetic to Mill began trending, called #FreeMeekMill. “I never really looked at it like a nightmare. I looked at it as real life for a black kid in America,” Mill said in an interview.

In August 2019, Amazon Prime released the docuseries “Free Meek.” Produced by Jay-Z and Rolling Stone reporter Paul Solotaroff, it chronicled Mill’s 10-year journey through the criminal justice system.

“This is a story in which there’s injustice in every crack and crevice,” said Solotaroff.

The series highlighted the relentless persistence of outside investigating team Quest Research and Investigations (QRI), founded by journalist Tyler Maroney and attorney Luke Brindle-Khym.

“We explicitly seek out cases that allow us to feel like we are contributing to the public good,” Maroney stated. “Doing investigations to exonerate the wrongly convicted, it’s part and parcel of a larger understanding of the criminal justice system.”

QRI first investigated Judge Brinkley and her professionalism. Although they found her personal life was filled with lawsuits against her as a landlord of several properties, QRI could find no evidence of wrongdoing in the handling of Mill’s case. They then focused on the original arrest. Ultimately, they learned that Graham, the officer who testified against Mills, was under investigation by internal affairs and the FBI for his actions in several arrests. He also had been placed on a “do not call” list by the district attorney’s office because his testimony was not deemed credible.

QRI interviewed other police officers who served with Graham and were able to get one, Jerold Gibson, to sign a sworn affidavit refuting everything Graham had testified to in Mill’s case.

Philadelphia DA Larry Krasner wrote that Mill “was unfairly treated in a case that exemplifies the destruction caused by excessive supervision, instances of corruption, and unfair processes in our criminal courts.”

Mill’s conviction was overturned in April 2018 after he had served five months in prison, and his case was assigned to a new judge. He pleaded guilty to a misdemeanor firearm charge in August 2019, resulting in no further time in jail or on probation; all the other charges were dismissed. Meanwhile, Judge Brinkley is reportedly under investigation by the FBI for failing to be impartial in Mill’s case, and Mill co-founded a criminal justice reform group called the REFORM Alliance, that focuses on probation and parole. [See: PLN, May 2019, p.56].

“What’s happening to Meek Mill is just one example of how our criminal justice system entraps and harasses hundreds of thousands of black people every day,” Jay-Z wrote in an editorial. The main difference in Mill’s case is that he had the money to hire attorneys and investigators – an indication that wealth trumps race in our justice system.

Sources: fastcompany.com, washingtonpost.com, esquire.com, newsweek.com, npr.org, reformalliance.com
BJS Report Finds Sex Offenders Among Former Prisoners Least Likely to Re-Offend

by Scott Grammer

In May 2019 the Bureau of Justice Statistics (BJS) issued a report, titled “Recidivism of Sex Offenders Released from State Prison: A 9-Year Follow-Up (2005-14),” that examined 67,966 former prisoners over a nine-year period after their release in 30 different states in 2005. The report explained that while sex offenders are more likely to be re-arrested for sex crimes than other ex-prisoners, they were less likely to be re-arrested overall.

“The median sentence length among prisoners released in 30 states in 2005 after serving time for rape or sexual assault (60 months) was longer than the median sentence length among all prisoners (36 months) or prisoners released after serving time for assault (36 months),” the report stated. “Twenty-seven percent of prisoners released after serving time for rape or sexual assault were serving a maximum sentence length of 10 years or more, compared to 10% of prisoners released after serving time for assault.”

The report also noted that “[a]n estimated 83% of the 401,288 prisoners released in 30 states in 2005 were arrested for a new crime within 9 years of release.... The percentage of released prisoners arrested within 9 years for any type of crime after serving time for rape or sexual assault was 67%. That was higher than for prisoners released after serving time for homicide (60%) and lower than for prisoners released after serving time for robbery (84%) or assault (83%). Sex offenders (67%) were also less likely to be arrested following release than prisoners released after serving time for property (88%), drug (84%), or public-order (82%) offenses. Among released prisoners who were arrested during the 9-year follow-up period, 96% of sex offenders and 99% of all offenders were arrested for an offense other than a probation or parole violation.”

The BJS further found that “[s]ex offenders had a lower cumulative arrest percentage than assault offenders. During year-1, 29% of sex offenders were arrested, compared to 43% of assault offenders. By the end of year-9, 67% of sex offenders had been arrested, compared to 83% of assault offenders. As with released prisoners as a whole, the longer sex offenders went without being arrested after release, the less likely they were to be arrested during the 9-year follow-up period.

“Younger sex offenders (those age 24 or younger at the time of release) were more likely to be arrested for rape or sexual assault following release than older sex offenders (age 40 or older at the time of release).” Predictably, the study found that “[f]ewer than 1% (324) of the 42,890 female prisoners released in 30 states in 2005 were serving time for rape or sexual assault.”

The 2019 report’s findings were consistent with those from a 2003 BJS report that examined sex offenders released in 1994, which found that violent sex offenders released from prison were less likely than non-sex offenders to be rearrested on any charge, and that approximately one in 20 released sex offenders was rearrested for a new sex crime. [See: PLN, July 2004, p.20].

However, a BJS press report announcing the release of the 2019 report was titled “Released sex offenders were three times as likely as other released prisoners to be re-arrested for a sex offense.” According to the press release, “Released sex offenders represented 5% of prisoners released in 2005 and 16% of post-release arrests for rape or sexual assault during the 9-year follow-up period.” While that was correct, it is also correct that drug offenders are more likely to be re-arrested for drug offenses, properly offenders are more likely to be re-arrested for property crimes, etc. Overall, sex offenders had one of the lowest re-offense rates.

Interestingly, the BJS report noted that only half of the sex offenders who were re-arrested were convicted — indicating that re-arrest data is a less reliable indicator of recidivism than conviction data.

Sources: thecrimereport.org, bjs.gov

FAMM, Washington Lawyers’ Committee, NACDL Launch Compassionate Release Clearinghouse

The First Step Act paves the way for a massive pro bono effort to represent sick, dying and elderly prisoners in court.

WASHINGTON — Thousands of sick, dying and elderly federal prisoners who are eligible for early release will now have access to free legal representation in court through the newly established Compassionate Release Clearinghouse. The clearinghouse, a collaborative pro bono effort between FAMM, the Washington Lawyers’ Committee for Civil Rights and Urban Affairs, and the National Association of Criminal Defense Lawyers (NACDL), is designed to match qualified prisoners with legal counsel should they need to fight a compassionate release denial or unanswered request in court.

“People who can barely make it out of their beds in the morning should not have to go into court alone against the largest law firm in the nation,” said Kevin Ring, president of FAMM. “Congress was clear that it wanted fundamental changes in compassionate release, yet we’ve seen prosecutors continue to fight requests from clearly deserving people, including individuals with terminal illnesses. It’s gratifying to know we will be able to help people in a tangible and meaningful way.”

The Compassionate Release Clearinghouse recruits, trains and provides resources to participating lawyers. The Clearinghouse’s design and implementation is being assisted by the Washington, D.C. law firm of Zuckerman Spaeder LLP through its partner Steve Salky.

“Sick and dying prisoners for years were unjustly denied release on compassionate release grounds by the Bureau of Prisons,” said Jonathan Smith, executive director of the Washington Lawyers’ Committee for Civil Rights and Urban Affairs. “Now, prisoners will be assisted by dedicated and high-quality lawyers in seeking
relief from the courts, evening the playing field, and allowing many of these prisoners to return home.”

The effort was made possible by the passage of the First Step Act, which addresses a well-documented, three-decades-long issue in which sick, elderly and dying prisoners have been routinely denied early release by the Bureau of Prisons (BOP). Until December 2018, there was no mechanism to challenge or appeal those decisions. Now, prisoners are allowed to appeal directly to a sentencing judge if their petitions are denied or unanswered.

Since the passage of the First Step Act, prisoners have been filing motions for release, and some have been challenged by federal prosecutors. The Compassionate Release Clearinghouse will make sure those prisoners have an attorney to fight for them in court.

“NACDL is proud to participate in this critically important effort,” said NACDL Executive Director Norman L. Reimer. “To make the promise of the First Step Act a reality for qualified sick, elderly and dying prisoners, the nation’s criminal defense bar is committed to recruiting pro bono attorneys to be champions for those in need. Additionally, NACDL’s First Step Implementation Task Force will aggregate resources to support attorneys who undertake this important work.”

The Clearinghouse started matching attorneys with prisoners in need in February 2019, and has matched more than 70 cases with pro bono attorneys. The Clearinghouse is actively recruiting additional attorneys and law firms to join in the effort.

FAMM is a national nonpartisan advocacy organization that promotes fair and effective criminal justice policies that safeguard taxpayer dollars and keep our communities safe. Founded in 1991, FAMM is helping transform America’s criminal justice system by uniting the voices of impacted families and individuals.

Founded in 1968, The Washington Lawyers’ Committee for Civil Rights and Urban Affairs works to create legal, economic and social equity through litigation, client and public education and public policy advocacy. While we fight discrimination against all people, we recognize the central role that current and historic race discrimination plays in sustaining inequity and recognize the critical importance of identifying, exposing, combating and dismantling the systems that sustain racial oppression. For more information, please visit www.washlaw.org or call 202.319.1000. Follow us on Twitter at @WashLaw4CR.

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Georgia federal district court has held that a policy limiting prisoners’ beard length to half an inch without religious exemptions violates the Religious Land Use and Institutionalized Persons Act (RLUIPA). The court ordered the Georgia Department of Corrections (GDOC) to allow eligible prisoners to grow a beard up to three inches long.

The ruling came after a bench trial in a civil rights action filed by state prisoner Lester James Smith, whom the court found had a “severe belief in the tenets of Islam, including the tenet that he not trim his beard and, if he must trim it, to maintain at least a fistful of beard hair.” His complaint alleged the GDOC denied his request for a religious accommodation because its policy prohibited prisoners from growing a beard longer than one-half inch for any reason. That policy was implemented following the Supreme Court’s ruling in Holt v. Hobbs, 135 S.Ct. 853 (2015) [PLN, Aug. 2015, p.50].

After a bench trial, the district court entered judgment on August 7, 2019. It found that the GDOC’s grooming policy was under-inclusive, as it prohibited a type of activity to further the prison system’s interests but did not prohibit analogous conduct that poses similar risks to the same alleged interests. Specifically, the GDOC allows female prisoners to grow their hair to any length while male prisoners can grow hair to only three inches and beards to half an inch. The court noted that 37 states, as well as the District of Columbia and federal Bureau of Prisons, allow prisoners to grow beards without any length restrictions, either by policy or through an exemption.

The GDOC argued that prisoners can hide contraband in beards, but the evidence showed that prisoners can hide contraband “everywhere.” The prison system’s expert, Ronald Angelone, disputed the GDOC’s position by testifying that contraband in a beard does not present different risks or dangers than contraband in clothes, saying, “[t]hey’re all the same.” The district court found the GDOC failed to meet its burden of proving beards pose a risk if they are searched in the same manner as three-inch hair. It also found a long beard could not be more dangerous than female prisoners’ hair, which can be grown to any length.

In reference to the GDOC’s alleged hygienic concerns, its policy requires prisoners to keep their facial hair “clean and neat,” the court wrote. “It is simply hard to fathom how 3 inches of hair covering the entire head is permissible, but 3 inches of hair at the bottom of the face is unworkable.” While prison officials also argued security concerns were implicated “by an untrimmed, belt-buckle-length beard,” the court noted that the “GDOC has not shown that it could not effectively implement a three-inch beard policy and still successfully identify inmates after they shave.” On that point, the court said prison officials could require prisoners to shave periodically to take a clean-shaven picture.

Accordingly, the district court granted judgment in Smith’s favor and ordered the GDOC to change its policy to allow prisoners to have a three-inch beard. Smith was represented by attorneys Mark Goldfeder and Sarah Shalf with the Emory University School of Law, and by Max Thelen with The Summerville Firm, LLC. The defendants have since appealed the court’s judgment. See: Smith v. Dozier, U.S.D.C. (M.D. Ga.), Case No. 5:12-cv-00026-WLS-CHW.

Colorado Prisoner Dies as Nurse Watches Videotape; $2.45 Million Settlement
by Ed Lyon

In September 2019, the final signature of an Arapahoe County, Colorado official was affixed to a $2.45 million settlement agreement in a civil rights lawsuit over the death of prisoner Jeffrey Scott Lillis. Lillis was 37 years old when he was booked into the Arapahoe County Detention Facility (ACDF) as a pretrial detainee in August 2014.

During the first part of December 2014, Lillis became ill and submitted a written request for medical care. His condition worsened so quickly that he presented himself to the nurse who was dispensing medications in the cellblock the next morning. Seeing his condition, the nurse ordered his transfer to the medical unit for observation. Lillis had a temperature of 102.9; he was coughing, congested, had a sore throat and said he ached all over his body. He received Tylenol, Mucinex and antihistamines. By evening, his temperature had dropped to 102.5 but he was experiencing weakness to his charted symptoms, along with disorientation and agitation, as well as hypoxia and sepsis.

The nurse phoned an on-call physician but told him only that Lillis had “blood-tinged sputum,” omitting the abnormal vital signs, high temperature and other serious symptoms. The doctor prescribed a codeine cough remedy the medical unit did not carry.

On the morning of December 14, 2014 – the last day of Lillis’ life – the nurse added “weakness” to his charted symptoms, along with an elevated pulse rate and low blood pressure, indicating advanced sepsis and that he had become hypovolemic (his heart was unable to pump sufficient blood to his body). He was told to rest and drink fluids. By that evening, Lillis was complaining of “liver pain” and was even more disoriented. The guards could tell his condition was worsening but the nurses would not notify or call a doctor for consultation.

Video footage showed Lillis collapsing on the floor at 7:30 p.m., and a jailer called
for a nurse. Instead of immediately attending to Lillis, the responding nurse had the guard rewind the video several times so she could review his fall for 10 minutes. A medical emergency was finally declared at 7:43 p.m. The defibrillator could not be found. When a suction machine – needed to clear the vomit from Lillis’ airway so he could breathe – was finally located and brought to the cell, it was discovered the suction tube and related components were missing.

The coroner determined that Lillis had “very severe pneumonia” and died from “sepsis due to severe lobar pneumonia.” The condition of his lungs indicated that he died an extremely painful death after days of suffering. [See: PLN, Sept. 2018, p.32].

Denver attorney Erica T. Grossman filed a wrongful death suit on behalf of Lillis’ estate and surviving family members. Among the defendants were for-profit medical providers Correct Care Solutions, LLC; Correctional Health Care Companies, LLC; Great Peak Healthcare Services, P.C.; Maxim Healthcare Services, Inc. and Correctional Healthcare Physicians, P.C. The $2.45 million settlement was reached on September 3, 2019. See: Estate of Jeffrey Scott Lillis v. Correct Care Solutions, LLC, U.S.D.C. (D. Col.), Case No. 1:16-cv-03038-KLM.

Additional source: denverpost.com

Project Hope Fights to End the Death Penalty ... from Death Row

by Bill Barton

The executive director of Project Hope to Abolish the Death Penalty, Esther Brown, is a former psychiatric social worker who has been called “the most loyal person I’ve ever met” by a prisoner on Alabama’s death row.

Brown, 85, has been the public face of the organization for 19 years, speaking at conferences, writing grant proposals, maintaining the website and keeping the books. She will soon be stepping down.

Anthony Tyson, the group’s chairman, said in a recent letter: “There are no rich people on death row. If you fit the bill they’re looking for and you are broke, then you receive the death penalty.”

Tyson and other prisoners on death row at the William C. Holman Correctional Facility comprise Project Hope. The nonprofit organization’s mission is “to work together with friends and other supporters to educate the public and to bring about the abolition of the death penalty in Alabama.”

Tyson teaches a law class, referred to as an “enlightenment group,” that provides information on how to navigate the state and federal appellate processes to a number of death row prisoners. Over the past 11 years, two of Tyson’s students, Montez Spradley and William Ziegler, have been freed, and several have succeeded in having their sentences reduced to life in prison.

Shortly after death-sentenced prisoners arrive at Holman, Project Hope’s members advise them to contact the Equal Justice Initiative, a nonprofit organization run by attorney Bryan Stevenson, to ask for help in obtaining an appellate lawyer. This step is critical.

“Alabama was the only state in the country that didn’t provide counsel for post-conviction proceedings until 2017 – and, even now, the quality of the representation remains uncertain,” The Nation stated in an April 22, 2019 article. “But perhaps the most egregious feature of Alabama’s death-penalty regime is the anemic trial representation it provides for poor defendants.”

“I think Alabama represents much of what is wrong with the death penalty throughout the United States,” said Robert Dunham, executive director of the Death Penalty Information Center.

One example of that wrongness was the September 1993 arrest and subsequent conviction of Gary Drinkard, who was charged with the murder of Dalton Pace. While Drinkard was held at the Morgan County jail, one of his attorneys assured him there was no evidence tying him to the killing, and that he’d be released quickly.

According to the National Registry of Exonerations, “Drinkard’s court-appointed lawyers, who had no experience, failed to call two critical witnesses: one who would have testified that Drinkard was at home at the time of the murder, and another who would have said that Drinkard had a back injury that would have made it impossible for him to commit the crime.”

Convicted and sentenced to death in 1995, Drinkard finally won his freedom in May 2001 after he was acquitted at a second trial with the assistance of Project Hope.

Sources: thenation.com, phadp.org, law.umich.edu

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Prison Legal News 51 December 2019
Ohio Mother Loses Children and Job Due to False Arrest  
by Ed Lyon

On April 11, 2019, Ohio police executed an arrest warrant for heroin trafficking in a Target parking lot in Hamilton County. Their target was Ashley Foster, who was in the lot not with a load of heroin but with her two sons—one of whom was only eight weeks old.

Because the warrant originated in another county, local cops never bothered to check its veracity or facts. The address the officers had on the warrant was not the same as Foster’s. She was held in jail incommunicado for five days, never even being told why she was arrested or the charges against her.

In the meantime, Ohio Family Services (OFS) had taken her children. Adding to her troubles, Foster was fired from her job while incarcerated.

Upon her arrival in Brown County, the warrant’s issuing jurisdiction, she was finally interviewed by an officer. It did not take long to determine she had been falsely arrested, as she was not the same person named in the warrant.

Released without so much as an apology, it was up to Foster to undo the catastrophic damage to her life that the incident had caused. Despite the fact of Foster’s false arrest, she still had to prove her fitness as a parent before her children were returned. Part of that process was to allow an OFS worker to audit her home. Whether Foster managed to get her job back was not reported.

From this snapshot of the damage Foster suffered from her brief stint in jail, a much broader picture emerges. People like her immediately lose the ability to care for their children and maintain their employment. Unable to effectively communicate with anyone outside of jail, pretrial detainees cannot effectively challenge their arrests. Data compiled on pretrial detention show positive correlations linking it to subsequent convictions with correspondingly longer sentences.

Data compilations from New York City reflect that non-felony conviction rates are 92 percent for defendants held in pretrial detention; for arrestees allowed to go free until trial, the conviction rate was 50 percent.

On the national level, a full 33 percent of all felony charges ended in dismissals. Pretrial detention should be used for defendants who are dangerous to others or to themselves. It must be used as intended, a tool to keep people safe—not as a coercive tool to impel defendants to plead guilty, sometimes to crimes they did not commit, just to regain their freedom.

While it is unknown how many cases of mistaken identity lead to wrongful arrests, it is not an uncommon occurrence. Given that around 10.5 million people are booked into local jails annually, even if a wrongful arrest occurred in just one of every 100,000 cases, that would still be over 100 innocent people jailed each year. And that doesn’t include wrongful convictions.

Sources: aclu.org, cincinnati.com

Pennsylvania Prisoner Acquitted of Murder After 13-Year Battle – by Defending Himself in Retrial  
by Kevin Bliss

Representing himself during a fourth trial on a murder charge, Hassan Bennett was acquitted and released following a 13-year legal fight—an extraordinary feat.

Bennett, 36, was serving a life sentence with parole for the ambush shooting death of a friend, Devon English. His defense was that former Philadelphia detective James Pitts coerced a witness, Corey Ford, and codefendant Lamont Dade to testify against him.

Pitts had since been accused in other cases of coercing witnesses, and his credibility was affected. The jury quickly found Bennett not guilty on May 6, 2019.

Bennett was accused of organizing the murder of 19-year-old English on September 22, 2006. The prosecution alleged that he enlisted then-16-year-old Dade into helping him get revenge for losing $20 in a dice game—that they ambushed English and Ford in a parking lot in West Philadelphia, and Dade shot English multiple times, killing him, while Bennett shot Ford in the legs and buttocks.

Bennett’s first trial ended in a mistrial in 2008, due to jury tampering; his second that same year resulted in a conviction and life sentence. Bennett appealed based on ineffective assistance of counsel. He went on to represent himself and, although his third trial ended in a hung jury, he was able to win a not-guilty verdict in his fourth trial, in which he testified that he was at home when he heard gunshots and went to investigate.

Bennett subpoenaed Ford and Dade, who both testified that Detective Pitts had coerced their original statements. He also cross-examined Pitts, attacking his credibility and reminding the jury that the prosecution had not called him as a witness. The detective’s previous witness coercion had resulted in the dismissal of Dwayne Thorpe’s conviction and life sentence in March 2019, a $750,000 settlement for Nafis Pinkney’s wrongful conviction in 2013, and several other internal affairs investigations and lawsuits.

Bennett, a high school graduate, said he taught himself the law. “I stayed in the law library. I read every book I got my hands on, whether it was law work or history. And I would practice and review other lawyers’ writings, then I would write,” he said.

He wore his prison uniform during his fourth and final trial.

“I feel the whole process of changing clothes and hiding your armband is all a sham, because everyone knows you’re locked up,” he stated. “I’m going to give you the bold truth. That’s what I did.”

“This is very rare,” said his standby lawyer, Ben Cooper. “Most pro se defendants don’t have success because of their lack of training and lack of experience. Hassan took it upon himself to learn the law, to learn the rules of evidence, to learn how to cross-examine witnesses.”

Cooper was so impressed that he offered Bennett a job as a legal worker.

Detective Pitts reportedly remains employed with the police department, though he has been assigned to a desk job.

Sources: philly.com, aabajournal.com
The New York City Council voted in April 2019 to stop testing probationers for marijuana use. The move was a step toward reducing re-incarceration of probationers and parolees, and may be a foreshadowing of the legalization of recreational marijuana in the state.

There are currently 4.5 million people on probation or parole in the U.S., nearly double the number in jails and prisons. Every year almost 350,000 people are locked up because they violated the terms of their community supervision. In Georgia, 67 percent of new prison intakes in 2015 were due to supervision violations; in Rhode Island, it was 64 percent in 2016.

But parole and probation supervision wasn’t supposed to be this way, argues Vincent Schiraldi, a former New York City probation commissioner who is now co-director of Columbia University’s Justice Lab. As incarceration rates increased, supervision became stricter — it changed from an act of mercy to a different form of punishment, he noted.

In October 2018, Schiraldi told a New York Assembly Committee that there’s no public safety justification to test people on supervision for marijuana use. Research showed that drug testing increased the chance of jail time for violations, but did not actually reduce criminal activity. He told the Committee that when his office decided to stop testing for marijuana use by probationers, revocations were cut nearly in half.

“Probation and parole have become much larger than originally intended, with burdensome conditions that serve as trip wires to incarceration rather than as alternatives,” Schiraldi said. He was joined by four other former New York City probation commissioners in advocating for an end to marijuana testing.

“These reforms protect the civil liberties of New Yorkers and promote fair treatment. There is no reason to treat cannabis consumers as second class citizens,” added Erik Altieri, executive director of the National Organization for the Reform of Marijuana Laws (NORML).

“W e shouldn’t penalize those who privately use cannabis responsibly from gainful employment, nor should the courts seize upon this behavior as a justification to return someone to jail or prison.”

A new effort by criminal justice reformers who teamed up with Assemblyman Walter Mosley is pushing to end marijuana testing and restore the mercy aspect of supervision in New York statewide. In 2018, the Less is More Act (S.1343B) was introduced to do just that; it would cap jail sentences for violations at 30 days, and allow parolees to earn credits to reduce their parole terms.

Several police chiefs, sheriffs and prosecutors have signed on; the legislation is currently in committee.

Similar efforts are underway in Pennsylvania, in the wake of rapper Meek Mill’s harsh jail term for a probation violation based on a video of him popping a wheelie on a motorcycle. His group, the REFORM Alliance, is pushing for probation reforms. [See: PLN, May 2019, p.56]. Pennsylvania introduced a bill similar to the Less is More Act (SB 14) in January 2019.

“We all know that there’s no public safety value in violating people over low level marijuana offenses, especially today when the state has already legalized medical marijuana and is talking about legalizing recreational use,” said New York City Council chairman Donovan Richards, who introduced the bill ending marijuana testing for probationers.

Sources: reason.com, nydailynews.com, NORML
A Connecticut federal district court held on August 27, 2019 that a former death row prisoner who was kept in solitary confinement had been subjected to cruel and unusual punishment. The court issued injunctive relief and set a hearing for damages.

The ruling came in a civil rights action filed by Richard Reynolds, who had spent the last 23 years in solitary. "Reynolds committed a heinous crime – he murdered a law enforcement officer," the court wrote. It noted that he was sentenced to death and awaited execution for over two decades.

When Connecticut retroactively abolished the death penalty, Reynolds was resentenced in 2017 to life without the possibility of parole. Section 18-10b of the Connecticut General Statutes decrees that prisoners such as Reynolds would be classified as a “special circumstances high security” prisoner. Such prisoners are only allowed out of their cell for 15-minute periods to eat lunch and dinner and to take a shower. They receive two hours of outdoor recreation six days a week, plus two hours of weekly indoor recreation. Contact visits are prohibited and no interaction other than with clergy, staff and other special circumstances prisoners is allowed.

The district court agreed with Reynolds that his conditions of confinement were inhumane. It found an "overwhelming body of scientific research supports the conclusion that prolonged isolation presents dangerous risks to an inmate’s physical and mental health.” Dr. Stuart Grassian described the conditions of Reynolds’ confinement as “psychologically toxic, cruel, ineffective, and counter productive.”

The court also found the defendants that his conditions of confinement were inhumane. It found an "overwhelming body of scientific research supports the conclusion that prolonged isolation presents dangerous risks to an inmate’s physical and mental health.” Dr. Stuart Grassian described the conditions of Reynolds’ confinement as “psychologically toxic, cruel, ineffective, and counter productive.”

In addition to finding an Eighth Amendment violation, the district court found Reynolds had a liberty interest in avoiding solitary confinement and his due process rights were violated because he was not given notice or a hearing. The defendants “have never made an individualized determination finding that he presents a risk that requires indefinite placement in restrictive housing,” the court wrote. There was no rational basis for the differential treatment of Reynolds and two other prisoners who were removed from death row and placed in general population prior to the state’s repeal of the death penalty.

Finally, the district court found § 18-10b was an unconstitutional bill of attainder (a legislative act declaring someone guilty of a crime and imposing punishment, without a trial). The court noted the legislature had named Reynolds when debating that statute, and enacted it with the intent of punishing him and other former death row prisoners. Accordingly, the court granted Reynolds summary judgment, awarded declaratory and injunctive relief, and ordered a hearing on damages. The defendants have since filed an appeal, which remains pending. See: Reynolds v. Arnone, U.S.D.C. (D. Conn.), Case No. 3:13-cv-01465-SRU; 2019 U.S. Dist. LEXIS 145314.

Food Survey Reveals Washington State Prisoners’ Concerns and Complaints

by Matt Clarke

It might be classified as “better late than never,” but a March 2019 report on a food survey of prisoners at the Washington State Penitentiary (WSP), undertaken by the state’s Office of the Corrections Ombuds, cast light on the kinds of problems with prison food that led to protests in 2018 and early 2019.

The Washington Department of Corrections (DOC) has its self-funded industry program, Correctional Industries (CI), prepare three meals a day for state prisoners at a central facility. The food is transported, already portioned out in trays, and then reheated on site at the various prisons statewide. In recent years, CI stopped serving hot breakfasts and began giving prisoners cold, bagged breakfasts during their evening meal to be eaten the next morning.

The introduction of the bagged breakfast meals, known as “breakfast boats,” is believed to have been the cause of food strikes by over half the prisoners at WSP in April 2018 and nearly the entire population at the Coyote Ridge Corrections Center (CRCC) in February 2019. [See: PLN, Jan. 2019, p.50]. Since the protests, hot breakfasts have been reintroduced at WSP while hard-boiled eggs were added to morning meals at CRCC, in addition to other improvements.

The food survey consisted of six questions asking the three most and least favorite CI menu items, the most important food concern, one suggestion for improving the CI menu, what should be increased on the menu, and what nutrition-related topic prisoners would like to learn more about.

“The vast majority of respondents reported regularly feeling hungry after some meals, most especially after lunch. Lunch portions are reported to have been reduced since hot breakfasts were reintroduced in 2018,” according to the 47-page Ombuds report.

The reheating protocol was also roundly criticized as rendering meal items “hard, dry, and inedible.” Many survey respondents suggested that all menu items not be placed on the tray prior to reheating. They frequently cited the pre-CI method of serving prisoners from a large tray of food as much better than placing the items on a tray at a distant location and reheating it locally, which caused drying and crustiging on many menu items.

After the WSP food strike, oatmeal was temporarily served for breakfast from a large tray. Many respondents found that
method vastly superior to reheating individual portions.

Survey respondents also complained about the overuse of soy-based textured vegetable protein (TVP), and asked for more protein from unprocessed meat, egg and dairy sources. They expressed concerns about an unhealthy high ratio of carbohydrates to proteins.

The prisoners also had concerns about the quality of food ingredients and lack of freshness. They wanted less processed food, more variety in the meals and meal components, and asked for better recipes and improved flavor. Some were worried about ineffective monitoring of prison kitchen staff, resulting in improper food safety and sanitation. Prisoners in protective custody and other forms of administrative segregation believed their food was intentionally being contaminated by prisoners working in the kitchen.

The favorite menu items were pancake/waffle meals, followed by hamburger, chicken nuggets/tenders, tacos, and biscuits and gravy. The least favorite were yams/sweet potato, sausage, spaghetti, braised beef, meatloaf Salisbury patty, sweet and sour chicken, beef Stroganoff and fish patties.

Prisoner food reps complained that CI nixed reasonable suggestions as cost prohibitive and operated food service as a zero-sum game – that is, in order to give one thing, CI must take away another. That dovetailed with prisoners’ statements that lunches were reduced after hot breakfasts were reintroduced.

Inadequate portion size was the number one concern, with over four times the number of responses as the next highest concern (excess use of TVP). Incorrectly cooked or heated food, unhealthy food, poor food quality and inadequate protein were also cited as concerns. Some prisoners decried the disparity between the written menu and what they actually received, noting that items would often be watered down, substituted for lesser items or missing altogether. They also complained of leftover food being thrown away rather than served to prisoners, and about the prohibition against prisoners trading or giving away food items.

Some prisoners reported that alternative menu meals had even smaller portions than regular meals. It was also alleged that prisoners with food allergies, with the exception of tomato allergies, were told to simply not eat items containing ingredients to which they were allergic – yet no list of ingredients was available, and this reduced the already paltry amount of food available to those prisoners.

The number one topic of interest for additional nutritional information was protein, followed by the governor’s executive order on improving the health and productivity of state employees and access to healthy food in state facilities, caloric needs, fruit and vegetable needs, and carbohydrates.

In summary, most prisoners wanted larger portions of locally prepared food not adulterated with soy, corn meal and bread. Palatability, while desired, was not the primary concern; instead, the main concerns were the quantity, quality and preparation of the food. Whether CI or the DOC will act on those reasonable requests remains to be seen.

Sources: Washington State Office of the Corrections Ombuds, union-bulletin.com, seattletimes.com

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_by Brandon Sample and Alissa Hull_

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On August 21, 2019, the Eleventh Circuit Court of Appeals upheld a grant of summary judgment to officials who had banned a civil commitment detainee’s newsletter and placed page limits on the copying of a successor publication.

James Pesci is incarcerated at Florida’s Civil Commitment Center (FCCC), a for-profit facility initially run by the GEO Group that houses involuntarily committed sex offenders. For many years he published a monthly newsletter titled Duck Soup, which he envisioned as “the uncensored pulse of the compound.” It was dedicated to exposing “corruption at FCCC.”

His publication “frequently excoriated FCCC’s staff, sex offender treatment program, and conditions of confinement.” He called GEO a “criminal organization that has a chronic history of cover-ups, medical neglect, and psychological abuse,” and in one issue referred to FCCC residents as “coward[s]” for failing to hold “collective protests” and “demonstrations.”

According to FCCC director Timo-thy Budz, Duck Soup “became increasingly inflammatory” after a 2009 policy was implemented that required residents to supply their own paper to print copies of the newsletter. Afraid the publication would cause violence at the facility, Budz banned distribution or possession of Duck Soup in November 2010.

A change of guard came a few years later, and Budz was replaced by Dr. Donald Sawyer while GEO Group was replaced by Correct Care Solutions (now known as Wellpath). After Dr. Sawyer took over, Pesci started a new newsletter called The Instigator. Sawyer admitted that the replacement publication was “less inflammatory,” and Pesci was allowed to continue its distribution. Yet FCCC policy limits downloading the newsletter pursuant to a policy that restricts residents to printing 20 pages every other day using FCCC-supplied paper.

Pesci challenged the page-printing limitation in federal court, and subsequently amended his complaint to challenge the ban on Duck Soup. The Eleventh Circuit initially overturned a summary judgment order in favor of the defendants in 2013. [See: PLN, Sept. 2014, p.36].

Following remand, the district court again granted the defendants’ motion for summary judgment and Pesci appealed. The Eleventh Circuit found that he had failed to meet his “burden of showing that the ban on Duck Soup was not reasonably related to the FCCC’s interest in safety and security.”

According to the evidence in the case, “if left unchecked, Duck Soup would continue to publish content that Pesci’s own expert agreed could foment ‘hostility and tension’ in a facility full of violent sex offenders – including some with ‘psychopathic traits’ and ‘impulse disorders.’”

The Court of Appeals noted that “Pesci had a track record of publishing incendiary stories about FCCC staff members – accusing them by name of racism, voyeurism, medical negligence, physical abuse, and other bad acts – and he made clear in his own words that he had no intention of stopping.”

Officials did not have to “wait for a riot to break out before they can take steps to quell it,” the appellate court wrote. As such, the ban on Duck Soup was not a violation of Pesci’s First Amendment rights.

Likewise, the Eleventh Circuit found no constitutional violation in FCCC’s page-limit policy, which had a stated purpose of conserving paper and ink, and minimizing wear and tear on the library printers. It therefore was “reasonably related to the legitimate goal of conserving facility resources.” The district court’s order was affirmed. See: Pesci v. Budz, 935 F.3d 1159 (11th Cir. 2019), rehearing and rehearing en banc denied.

Summary Judgment Affirmed Against Publication in Civil Commitment Facility

by David M. Reutter

Kansas Federal Court Holds
U.S. Attorney’s Office in Contempt

by Matt Clarke

On August 13, 2019, federal judge Julie Robinson issued a 188-page order holding the U.S. Attorney’s Office in Kansas in contempt of court for its pattern of misrepresentation, obfuscation and lack of cooperation during a three-year probe previously reported in PLN. [See: PLN, May 2019, p.14; May 2017, p.36].

The investigation attempted to determine the extent to which federal prosecutors obtained and used video and audio recordings of privileged meetings and phone calls between prisoners and their lawyers at a private prison operated by CoreCivic in Leavenworth. The U.S. Attorney’s Office was ordered to pay the costs associated with delays in the case.

This is the latest scandal to hit the Kansas U.S. Attorney’s Office, which has been previously accused of routine prosecutorial misconduct and internal dysfunction. One prisoner has already been released due to the breach of attorney-client privilege, and about 110 similar petitions from federal defendants are pending.

The prosecutors’ use of the record-ings was revealed in 2016 during a court hearing associated with an investigation into drug trafficking at the CoreCivic-run prison. That is when former Assistant U.S. Attorney Erin Tomasic disclosed she was in possession of surveillance videos from over 100 cameras at the prison and audio recordings of more than 48,000 prisoner phone calls. They included video from inside five of the nine rooms used for attorney-client visits and audio of phone calls between attorneys and their clients. Federal prosecutors argued that the grand jury subpoena used to obtain the recordings had to be broad due to the large scope of the investigation.

During the probe, prosecutors first claimed they did not view or listen to any of the privileged communications. Then notes made by former Assistant U.S. Attorney Tanya Treadway turned up, which detailed communications between prisoner Michelle Reulet and her defense attorneys.

“The notes included discussions about defense strategy, plea negotiations, risk-benefit assessment of trial versus plea, and...
estimates of the sentence Reulet faced,” Judge Robinson wrote.

Before the notes were discovered, Treadway had testified that she never listened to any of the conversations between Reulet and her attorneys. But Melanie Morgan, one of Reulet’s lawyers, testified that Treadway seemed to know what Reulet wanted from a plea negotiation and offered her just that – an opportunity to be released from prison before her co-defendant husband, so she could regain custody of her child. Reulet’s sentence was later vacated.

Tomasic testified that the phone recordings were a lunchtime topic of discussion among prosecutors, and they came to a consensus that by allowing the recordings to be made, the prisoners and attorneys had waived privilege. Thus, she believed it was permissible to listen to them.

The government then tried to pin the blame on two “rouge” prosecutors, Treadway and Tomasic, now retired and fired, respectively. However, Judge Robinson held there was evidence of a “systematic practice of purposeful collection, retention and exploitation” of the privileged attorney-client phone calls. She also cited one prosecutor’s comment that “the culture at the Kansas City office was to treat the defense bar as an enemy.” Other employees described a “Lord-of-the-Flies” atmosphere where phone calls were recorded and emails printed and taken home because prosecution among prosecutors, and they came to a consensus that by allowing the recordings to be made, the prisoners and attorneys had waived privilege. Thus, she believed it was permissible to listen to them.

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Judge Robinson noted that the U.S. Attorney’s Office had ignored orders from the court and a special master to preserve evidence, and instead wiped a hard drive containing the videos. That will make it difficult for the prisoners challenging their client meetings were recorded and viewed by prosecutors. An appeal of the district court’s contempt order remains pending. See: United States v. Carter, U.S.D.C. (D. Kan.), Case No. 2:16-cr-20032-JAR. Additional sources: kansas.com, kansaspublicradio.org

**Texas Jail Administrator Fired for Tampering with Government Documents**

*by Matt Clarke*

The Hill County Sheriff’s Office in Texas fired the head of the county jail on June 19, 2019. Jail Captain Sherry “Diann” Hammer, 68, had been on administrative leave since March while Texas Ranger Jake Burson investigated allegations that she had ordered a jailer to shred the only copies of request forms – similar to grievances – submitted by a prisoner.

After she was told to shred the documents, the unidentified jailer realized the request forms should have been placed in the prisoner’s file.

The jailer took some sheets of paper out of the copier and shredded them instead. Then she turned the request forms over to Burson, who was investigating the jail following an unrelated prisoner-on-prisoner stabbing incident.

Burson interviewed the jailer on March 17, 2019. She said Captain Hammer told her “these are just a crazy man talking,” and the Texas Commission on Jail Standards would not like the prisoner’s comments in the request forms.

The next day, Burson interviewed Hammer. She told him she was only shredding paper she took with the documents, shred paper she took from the copier, then place the documents in her purse. He verified there were no other copies of the documents in the jail, then completed his report.

“In summary, Captain Hammer removed original government documents (inmate request forms) from her office and instead of placing the forms in the inmate’s file, she directed a subordinate to destroy the documents by shredding them,” Burson wrote. “Additionally, there were no copies of the documents retained anywhere else.”

On April 11, 2019, an arrest warrant was issued for Hammer charging her with tampering with government records, a Class A misdemeanor.

“There’s [sic] a lot of things that are going to come out of this case that will reveal that my client didn’t do anything wrong, a lot of politics and other things that are going on behind the scenes,” said Hammer’s attorney, Randall Moore. He also claimed the jailer who complained to Burson about the shredded documents is related to Hammer.

Sources: kwtx.com, correctionsreport.com, hillsbororeporter.com, newsmaven.io

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Prison Legal News 57 December 2019
Los Angeles County to Pay $53 Million for Strip Searches of Female Prisoners

by Chad Marks

In 2010, a class-action lawsuit was filed on behalf of female prisoners at the Century Regional Detention Facility (CRDF) in Los Angeles who were forced to undergo humiliating strip and visual body cavity searches.

The searches were conducted outdoors in a bus garage area, where the women were forced to disrobe in front of 40 other women; sometimes they were so close to each other that their bodies touched. Many were forced to stand in oil from buses that regularly idled in the garage. There was blood mixed in with the oil, left by previous female prisoners who were menstruating during the invasive searches.

 Guards would curse at the naked prisoners while ridiculing them and making jokes and other degrading comments. Prisoners who were menstruating were ordered to remove their pads and tampons; without being allowed to first wash their hands, guards would order the prisoners to use their fingers to open their mouths so they could be inspected.

Many of the women were exposed to cold outdoor temperatures, and sometimes the searches took place while it was raining. At times, men could observe the group searches. The lawsuit was certified as a class action in November 2016.

 County taxpayers will now pay a hefty price for the degrading strip searches. As part of a proposed settlement, Los Angeles County agreed to pay $53 million for strip searches that took place from March 2008 to January 2015. The district court is holding a hearing on the settlement in early December 2019; it had previously rejected a provision that required $3 million of the settlement funds to be used to develop gender-responsive policies and programs at CRDF. If the court approves the settlement agreement, notices will be sent to the class members in January 2020.

The nine named plaintiffs in the case will each receive $10,000 incentive awards, while other prisoners will receive payments based on the number of searches they experienced, the type of searches and whether the searches were conducted in cold weather.

However, no amount of money can justify the degrading strip and body cavity searches, which bordered on sexual assault. Currently, searches of detainees in the Los Angeles County jail system are supposed to be conducted using full body scanners.

The class members are represented by Barrett S. Litt and Lindsay Battles with Kaye McClane Bednarski & Litt, and by attorneys Donald Cook, Colleen Flynn and Cynthia Anderson-Barker. See: Amador v. Baca, U.S.D.C. (C.D. Cal.), Case No. 2:10-cv-01649-SVW-JEM.

Additional sources: latimes.com, lynwoodstripsearch.com

Medical, Mental Health Care Lacking at Florida Jail Despite 43 Years of Court Oversight

by David M. Reutter

Despite oversight by a federal court since 1976, the Broward County Jail (BCJ) in Florida does not provide adequate medical or mental health treatment to prisoners. Since 2018, at least ten detainees have died while in the jail’s custody.

BCJ reached a new settlement agreement in August 2018 to address what Dr. Kathryn Burns found to be a “dangerously substandard system” for mental health care. She made nine visits to BCJ in 2016 and 2017 to monitor the facility. [See: PLN, Aug. 2019, p.28]

Part of the move to upgrade care at the jail was switching private medical contractors. Armor Correctional Health Services had provided medical and mental health treatment at BCJ since 2004, but lost the contract to Correct Care Solutions (now known as Wellpath) in June 2018. Wellpath submitted its litigation history as part of its contract bid, but the Broward County Sheriff’s Office refused to release it pursuant to a public records request, citing an exemption under state law for “trade secrets.”

Unsurprisingly, there has been little change with the new for-profit medical provider.

“Recognizing that ten people have died in jail since 2018 and within a week we see two middle aged gentlemen die in the care and custody of the jail, it raised concerns,” said Assistant Public Defender Gordon Weekes, who wrote a letter to Sheriff Gregory Tony that said the two recent deaths “should sound the alarm.”

The June 2019 deaths of prisoners Craig Fahner, 41, and Joseph St. Fleur, 47, due to unknown medical causes, occurred shortly after a mentally ill prisoner cut off his penis and flushed it down the toilet while in segregation, and after a detainee gave birth in her cell.

“You’re talking about someone self-mutilating, you’re taking about someone being forced to deliver a baby without any care, and you’re talking about two deaths in a very short period of time. That’s troubling,” said Weekes.

BCJ officials dealt with mentally ill detainee Tammy Jackson by placing her in an isolation cell. Jackson, 34, was clearly pregnant; early in the morning on April 10, 2019, she began complaining to guards that she was having contractions. More than four hours later the guards spoke with the on-call doctor, who said “he would check when he arrived.” After he clocked in around 10 a.m., he learned that Jackson had already given birth alone in her cell.

“It is unconscionable that any woman, particularly a mentally ill woman, would be abandoned in her cell to deliver her own baby,” said Broward County public defender Howard Finkelstien. “Not only was Ms. Jackson’s health callously ignored, the life of her child was also put at grave risk.” He noted the baby was born at term and was not premature. Two Wellpath employees were reportedly fired.

Prior to that incident, in September 2018 a 32-year-old prisoner who was
housed in an isolation cell beat on his door and told a responding guard, “I have a real medical emergency. I just cut my penis off and flushed it down the toilet. I have no need for it anymore.” The detainee had been in isolation for five months before he committed the act of self-mutilation using a blade from a safety razor.

“I think any human being can imagine, you know, how disturbed you’d have to be to cut off any one of your body parts and flush them down the toilet,” said attorney Greg Lauer.

As for the two deaths in June 2019, BCJ officials said in a statement that one of the prisoners “had more than 20 mental health visits by mental health professionals,” and had “received approximately 30 routine and non-routine interactions with nursing staff and medical providers.”

“It’s not about the simply providing care, it’s about quality of care,” noted Lauer, who has represented the estates of five prisoners who died at BCJ. In regard to the new settlement agreement in federal court, he said, “I think this is going to get resolved, and I think it’s going to get better eventually for these inmates. It’s a slow process and you have to drag them [jail officials] kicking and screaming to get there.”

But after 43 years of litigation the Broward County Jail still is not there, and prisoners continue to die and suffer from inadequate medical and mental health care as a result.

Sources: miami.cbslocal.com, local10.com, wsvn.com, washingtonpost.com, sun-sentinel.com, floridabulldog.org

**Ninth Circuit Reverses Seizure of Funds from Federal Prisoner for Restitution**

*by Ed Lyon*

In a case decided on August 28, 2019, the Court of Appeals for the Ninth Circuit reversed a district court’s order allowing the federal Bureau of Prisons to seize $6,671.81 from prisoner Lonnie Eugene Lillard’s institutional trust account. The U.S. Attorney had initiated the seizure process pursuant to 18 U.S.C. § 3664(n), after learning of the deposit into Lillard’s account while he was in pretrial detention on a 2016 charge. The seizure was to be credited toward a restitution order in an earlier conviction that occurred in 1998.

Lillard argued that he intended to use the money to pay for legal help and phone calls to his family and friends, to help his 90-year-old father and 81-year-old mother, and to buy commissary items such as hygiene products.

The 1998 restitution order did not include a payment schedule, even though it found at the time that Lillard “[had] no income or assets or the likelihood of either in the immediate future.” The government’s argument was “that § 3664(n) applied ‘squarely’ to Lillard because he was in ‘federal custody’ while in pretrial detention,” which made the funds in his prison trust account subject to seizure under the statute.

The district court granted the seizure order and Lillard appealed. The Ninth Circuit appointed a federal defender from Washington state’s Western District as amicus counsel. The issues that counsel was directed to brief included “whether 18 U.S.C. § 3664(n) applies to (1) pretrial detention, and (2) detention or incarceration unrelated to the judgment imposing the restitution order.”

A ruling by the appellate court that pretrial detention was not a “period of incarceration” for purposes of § 3664(n) mooted the second issue. The Court of Appeals further explained that, “Applying the rule of lenity, we resolve any lingering ambiguity in the phrase ‘period of incarceration’ in Lillard’s favor.”

The government raised two primary objections. The first was that the case was moot because Lillard had since been convicted and sentenced on the 2016 charge and ordered to pay restitution in that case, so the funds could simply be seized again. The appellate court did not agree. The fact that Lillard received the funds during pretrial detention, and pretrial detention is not a “period of incarceration,” meant they were not subject to a second seizure. The court then pointed out it was debatable that the relatively small sum of money was a “substantial” amount, based on recent Fifth Circuit precedent that held “substantial resources” under § 3664(n) “refers narrowly to windfalls or sudden financial injections.”

The second objection was that the Court of Appeals should limit its review to plain error since Lillard had not objected based on his pretrial custody status. The Court overruled that objection because it was the government that introduced the custody issue in the lower court, properly making it germane for appellate review because once a claim is raised, the other party may address it – which the amicus counsel did. Further, “when this court is presented with a question that is purely one of law and where the opposing party will suffer no prejudice as a result of the failure to raise the issue in the trial court, this court is not limited to plain error review,” the Ninth Circuit noted.

The district court’s order approving the seizure of funds from Lillard’s trust account was reversed. Circuit Judge Mark J. Bennett dissented, arguing against the majority’s finding that pretrial detention is not considered a period of incarceration under § 3664(n). See: United States v. Lillard, 935 F.3d 827 (9th Cir. 2019).

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**Hepatitis & Liver Disease:**

*A Guide to Treating & Living with Hepatitis & Liver Disease*

Revised ed. By Dr. Melissa Palmer
See page 69 for more information.
A man sat in jail for nearly three months while the police tried twice at different labs to prove that jars of honey he had in his possession contained liquid methamphetamine. And even when they discovered it was in fact honey, they wouldn't let him go.

Leon Haughton, 46, a legal green-card holder from Jamaica who has lived in Maryland for nearly a decade, was arrested at the Baltimore/Washington International Airport on December 29, 2018 after his annual visit back home. U.S. Customs and Border Protection detained him after a drug-dog sniff alerted to possible drugs in his bag. Agents found bottles labeled “honey,” a field test falsely indicated it was meth and he was arrested.

Nineteen days later, the Maryland State Police lab confirmed what the label on the bottles stated: It was honey. Yet prosecutors didn’t drop the three felony drug charges for another six days.

Haughton then faced just a remaining misdemeanor charge, which wouldn’t have kept him in jail. He could have been released on his own recognizance.

Yet he remained in custody because the felony charges triggered an Immigration and Customs Enforcement (ICE) detainer, which meant he would be deported if he had been released. Though dropping the felony charges would have usually removed the detainer, the federal government shutdown in early 2019 was ongoing, and nobody was working at ICE who could remove the detainer. So Haughton stayed in jail.

At his third bail hearing on February 5, 2019, Anne Arundel County Judge Laura M. Robinson refused to release Haughton. “The ICE detainer is really prohibitive,” she said. “I’m kind of up against it on the ICE detainer.”

Haughton was finally released in March after the state dropped the misdemeanor charge. He had spent 82 days in jail from December 29, 2018 to March 21, 2019—all for some jars of honey.

A reason.com article said Haughton’s case demonstrated “a heap of inane government incompetence.” Why did it require multiple tests to prove the honey was not meth? Why did it take six days to drop all the charges once prosecutors learned it wasn’t meth? And why was a wrongful detainer kept in place during a government shutdown?

“It broke me right down,” Haughton said after his release. “Once I came out, all my insurances collapsed, my credit was destroyed,” he added. “I lost my job, everything. They just left me a mess.” Not to mention he was unable to be with his six children for almost three months.

“Lawsuits [are] going to be coming soon,” said Terry Morris, Haughton’s attorney. “There will be lawsuits imminent.”

Sources: reason.com, CNN

Criminal Justice Leaders Reject Attorney General’s “Tough on Crime” Attitude

by David M. Reutter

After U.S. Attorney General William Barr gave a speech condemning criminal justice reforms, 70 criminal justice leaders signed a statement rejecting his narrative. The signatories included current and former prosecutors, police chiefs, judges and assistant attorneys general.

Barr’s August 12, 2019 speech was presented at the Grand Lodge Fraternal Order of Police’s 64th National Biennial Conference in New Orleans. He commended police officers for their “special kind of bravery” in “fighting an unrelenting, never-ending fight against criminal predators in our society.”

Barr said progressive district attorneys who style themselves as “social justice” reformers — such as Larry Krasner in Philadelphia and Rachael Rollins in Boston — are “undercutting police, letting criminals off the hook, and refusing to enforce the law.” Jurisdictions with such prosecutors, he said, “are headed back to the days of revolving door justice.” That, he added, is a “development that is demoralizing to police and dangerous to public safety.”

Tough-on-crime policies that began during the Reagan administration caused a “steady and sharp drop in violent crime in 1992,” but crime rates started to rise during the Obama administration, Barr claimed. He called for a “full court press” against crime and criminals.

“Barr’s speech is not just an attack on reform of the criminal legal system. Instead, it reflects the Trump administration’s deeper antipathy to instilling greater accountability for our nation’s police forces,” remarked John Pfaff, a Fordham Law School professor.

Following Barr’s comments at the conference, 70 members of Fair and Just Prosecution (FJP) signed a letter to express their disagreement with his “deeply concerning remarks.” They said Barr used “rhetoric that harkens back to the parochial ‘tough on crime’ narrative of past decades that stoked fear and impeded progress.” The historic drop in crime rates over the last quarter century was “not due to a rise in incarceration,” they insisted. Rather, past policies had led the United States to become “home to five percent of the world’s population and 25 percent of the world’s prison population.”

The “facts support the different approaches and new thinking that AG Barr imprudently maligned,” which are “far more effective and humane ways to respond to mental illness and drug use than with handcuffs and jail cells.”

The 70 criminal justice leaders noted that “[d]ata-driven justice, the wise use of limited prosecutorial and law enforcement resources, fiscal responsibility, compassion and respect for human dignity all promote public safety.” Further, a new generation of prosecutors “are using their discretion to prioritize the most serious crimes and move conduct better addressed with public health responses out of the justice system.”

“We felt it was vitally important given the fear driven narrative of his remarks to make clear that current and former prosecutors, law enforcement leaders, and others don’t share his view,” said Miriam Krinsky, a former prosecutor and current executive director of FJP.

The letter-signers noted the First Step Act and other recent changes are moving the country down the “road to meaningful and lasting criminal justice reform,” and that “facts, data and lessons learned from the past” should drive new policies in the
Court Denies Arizona DOC’s Motion to Terminate Monitoring of Prisoners’ Out-of-Cell Time

by Douglas Ankney

On September 16, 2019, federal judge Roslyn O. Silver signed an order that denied, in part, a motion filed by the Arizona Department of Corrections (ADOC) to terminate monitoring of out-of-cell exercise time for prisoners housed in maximum-security units.

The ADOC moved to terminate its obligation to monitor Maximum Custody Performance Measures (MCPMs), which mandate a minimum amount of out-of-cell time for prisoners held in maximum-security units pursuant to a court-enforced Stipulation. Prison officials argued the Stipulation provided that after 24 months of monitoring, their duty to monitor would end if they were in compliance for 18 of those months.

However, the district court found the ADOC’s monitoring methods failed to satisfy the Stipulation. For example, the ADOC’s documentation showed that prisoners often refused their out-of-cell exercise time, and prison officials argued they only had a duty to offer the required amount of time, not to ensure that prisoners used it. But the prisoners presented evidence that the reasons they had “refused” out-of-cell time included:

• staff members asking prisoners if they wanted exercise while the prisoners were asleep and could not hear them;
• staff members whispering the offer and then documenting it as a refusal when the prisoners didn’t answer;
• prisoners were not provided adequate footwear or clothing to go outside on cold mornings;
• due to staff shortages, prisoners were left in showers for four hours or more after exercising, which discouraged them from going to exercise;
• the recreation cages contained feces and smelled of urine, which also discouraged prisoners from using exercise time; and
• staff shortages resulted in frequent cancellations of recreation.

The district court also faulted the ADOC’s “randomization method” used in monitoring. The Stipulation required prison officials to review files “for 10 randomly selected prisoners” from “each designated location” once a month. But the compliance data showed the ADOC “randomly selected” the same prisoners, month after month.

Additionally, the ADOC argued its obligation to monitor MCPMs at ASPC-Florence’s Central Unit (Main Yard) and ASPC-Perryville should be terminated because maximum-security prisoners were no longer housed at those facilities. The district court agreed on that issue, and thus granted the ADOC’s motion in part and denied it in part.

PLN has reported extensively on this case since it was filed in 2012. See: Parsons v. Ryan, U.S.D.C. (D. Ariz.), Case No. 2:12-cv-00601-ROS.
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Christopher Zoukis
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Arizona: Pima County jail guard Jason Hubert was back at work as of March 5, 2019, after being placed on administrative leave the previous month. On Valentine’s Day, prisoner David Ray Maxwell, 53, was being disruptive. Hubert attempted to calm him, but a scuffle ensued. According to TV station KGUN 9, Maxwell went for Hubert, who punched him; Maxwell then fell to the floor, hitting his head. Tucson Fire Department crews were dispatched to the jail and CPR was administered without success. Maxwell was pronounced dead. Hubert had worked for the Pima County Sheriff’s Office since 2007. Maxwell was awaiting a court hearing after rejecting a plea deal for the alleged shooting of his ex-girlfriend’s boyfriend and her daughter’s boyfriend on New Year’s Eve 2017.

Australia: Nurses at the 945-bed Fulham Correctional Centre had been in negotiations with private prison operator GEO Group Australia since October 2017. They wanted a 12.5 percent pay raise over four years, plus a $1,500 signing bonus in lieu of a 2018 pay raise and leave policies similar to other nurses in Victoria. GEO initially offered a 2.1 percent raise per year with no improvements in working conditions. By February 2019, the company was offering 9.9 percent. The nurses began “protected industrial action” on February 23, 2019, wearing red Australian Nursing and Midwifery Federation (ANMF) shirts instead of their uniforms. GEO threatened to dock their wages by 17 percent for every shift they wore the shirts. In early March, ANMF held a walk-out and community rally, joined by transit union members and an inflatable mascot, “Greedy the Fat Cat,” in front of the prison. On March 26, 2019, the nurses accepted an Enterprise Bargaining Agreement of an 11.9 percent wage increase and an annual leave clause that ensured a minimum of five weeks of leave, with 17.6 weeks after 10 years of service.

California: No information has been forthcoming about fights at USP Victorville on March 11, 2019 that prompted San Bernardino County firefighters to send five ambulances and two fire engines to a “mass casualty” incident. Six staff members and three prisoners were reportedly injured and four were hospitalized. It is unclear whether weapons were involved. Although the incident was “under investigation,” no findings have been released. Victorville has one maximum-security prison and two medium-security facilities. The federal Bureau of Prisons reported that the fights triggered “modified operations,” but “[a]t no time was the public in danger.”

California: Sandeep Singh, 41, was lucky. He had enough money to post bond and hire veteran defense attorney Kirk McAllister after a 14-year-old girl said he tried to kidnap her on June 26, 2018. The alleged victim gave a detailed description of his vehicle. “She had claimed to police that the car had stopped, he gets out of the car, he chases her,” McAllister said. Singh, in his distinct Sikh turban and bright yellow pickup truck, was spotted at a nearby shopping center parking lot. He was taken to the Stanislaus County jail with bail set at $200,000. Crime Stoppers alerts were circulated. However, McAllister obtained surveillance video from a nearby church that showed Singh’s pickup never even slowed down near the girl. Confronted with the video, she admitted that she made up the story. Had she been over 18, her false statement might have been pursued as a hate crime, but as a juvenile her court records are sealed. On February 6, 2019, Singh was found to be “factually innocent.”

Colorado: “The hunger strike is a message from these men to all of us outside the facility – and to our government – that the conditions inside GEO are not humane and that it’s not okay to keep people locked down for weeks on end with no communication,” said Danielle Jefferis, a civil rights attorney representing a detainee at The GEO Group’s Aurora ICE Processing Center, in March 2019. The protest was in response to an ongoing quarantine due to mumps and chicken pox exposure. The facility has been under continuous criticism throughout 2019. An annex was added in January, and the population has more than doubled to 1,232. Critics say the outdoor recreation space is just a large room with an open-air caged roof. In September 2019, pro- and anti-immigration groups held dueling demonstrations outside the detention center. Fox News contributor Michelle Malkin declared, “We stand with law enforcement and with immigration enforcement officials not only at this facility, but those across the country that have been demonized and smeared by people who do not believe in borders or sovereignty.”

Florida: In November 2018, the Gwinnett County Sheriff’s Office in Georgia called the St. Lucie County Sheriff’s Office in Florida. Gwinnett officials had monitored prisoner Dustin Shepard’s phone calls, and noted 242 calls with St. Lucie deputy Veronica O’Brien. Shepard had been transferred from St. Lucie to Gwinnett on felony charges. Forty of the calls were three-way with another St. Lucie deputy, Caitlyn Tighe. The calls revealed Tighe was in a relationship with St. Lucie jail prisoner Sean Zambrano. Tighe used a burner phone to have 226 calls in 34 days with Zambrano. An Internal Affairs Unit report detailed forty pages of interviews with St. Lucie jail staff. Several had suspected the relationships. O’Brien declared her love to Shepard, who she met “when he first started coming to jail” twelve years earlier. Tighe’s calls were often for phone sex; she knew, but didn’t report, that Zambrano was off his meds and that he had a “cutting device.” Tighe and O’Brien, who both worked in the jail’s medical unit, resigned in February 2019.

Florida: Javier Perdomo-Medina, 48, agreed to a plea deal on March 11, 2019 for the strangulation death of his Polk County jail cellmate, Joseph Dawes, in 2015. Circuit Judge Jalal Harb sentenced Perdomo-Medina to 40 years for second-degree murder plus five years, concurrent, for battery on a detained person. Perdomo-Medina had only been sharing the cell with Dawes for five minutes on September 8, 2015 when guards found Dawes’ body. He was airlifted to Lakeland Regional Health Center and died three days later. Perdomo-Medina claimed he was set up, but guards said Dawes had looked up when they brought Perdomo-Medina into the cell, and it was Perdomo-Medina’s sheet that was later found wrapped around Dawes’ neck. After Dawes’ body was discovered, Perdomo-Medina tried to drown himself by holding his head in the cell’s toilet and later jumping and attempting to land on his head while handcuffed. He was originally charged with first-degree murder, which carried a mandatory life sentence.

Florida: In September 2018, Kenneth J. Davis, 33, was found dead in his cell at the Blackwater River Correctional Facility, run by The GEO Group. Davis was serving 25 years for killing his ex-wife and her boyfriend with an explosive in 2015. Thomas H. Fletcher, 52, already serving a life sentence
for murdering a Broward County cocaine dealer during a 1994 attempted robbery, was indicted for first-degree premeditated murder in Davis’ death in March 2019. Fletcher entered a guilty plea in August and waived his right to a jury in the penalty phase. State Attorney Bill Eddins was seeking the death penalty. No information about Fletcher’s motive for killing Davis has been released; he has since been moved to the Florida State Prison in Raiford.

**Georgia:** On March 3, 2018, Shali Tilson was arrested on misdemeanor obstruction of justice and disorderly conduct charges, and booked into the Rockdale County jail. He exhibited signs of psychosis. Nine days later he was dead, due to blood clots in his lungs caused by severe dehydration, according to the Georgia Bureau of Investigation medical examiner. A grand jury report released in September 2019 found that “medical, mental health and jail staff, through complacency, reluctance, assumptions and lack of procedures, training, leadership and adherence to policy, failed to recognize and address the mental state and physical decline of Shali Tilson.” Tilson’s family filed a lawsuit against the sheriff and three jail employees in March 2019, and released video footage of Tilson’s last hours in solitary, naked and desperate, in September 2019. The video shows Tilson repeatedly pressing the intercom buzzer in his cell, which had “not worked for several years.” The grand jury report also revealed that a deputy admitted to falsifying a suicide watch log. No one had checked on Tilson for more than three hours before his death.

**Georgia:** Melissa Batten, a registered nurse for The GEO Group at the D. Ray James Correctional Institution in Folkston, served as lookout for prison guard Rebecca Fussell’s repeated sexual trysts with a male prisoner in a medical treatment room. The sex was observed by another employee, and an investigation ensued. GEO runs the facility for the Bureau of Prisons. A federal grand jury indicted the pair on February 7, 2019. Batten, 47, was charged with conspiracy and false statement for “facilitating the illicit trysts,” while Fussell, 48, was charged with conspiracy and sexual abuse of a ward. Bobby L. Christine, the U.S. Attorney for the Southern District of Georgia, was quick to point out that “Employees at prison facilities are expected to oversee safe and humane incarceration of the inmates, not prey upon them.”

**Illinois:** On April 20, 2018, staff at the Macon County jail in Decatur received a tip that drugs were circulating in the facility. Strip searches were initiated in the “Pod A” maximum-security area, around 2 p.m. Prisoner Romell Hill handed over heroin, cocaine, meth, “pink bath salts,” 10 morphine tablets, two ecstasy pills and seven muscle relaxer pills. Sergeant Roger Pope said Hill was taken to isolation and “began acting out by banging his head against the door. He appeared to be intoxicated and began breathing heavy.” Staff administered Narcan. Hill and three other prisoners were hospitalized; 14 of 17 prisoners had taken drugs that Hill smuggled into the jail in his rectum, which he was trading for cash and commissary items. Hill’s public defender arranged a plea deal for one count of bringing contraband into a penal institution, and 17 other charges were dropped. He was sentenced on February 14, 2019 to five years in prison plus $1,700 in fines and court costs.

**Kentucky:** Alicia Beller was charged with manslaughter, along with four other Boyd County deputies, in the death of Michael L. Moore, who was found dead in a restraint chair at the county jail on November 29, 2018 – 28 hours after he was booked for drug intoxication. An autopsy revealed Moore had three cracked ribs and died from internal bleeding. Testimony at a January 2019 hearing alleged the jailers threw Moore against a toilet. Video footage from the jail showed bullying behavior by the deputies, but the toilet incident was blocked by jailers standing between the camera and the bathroom. Kentucky State Police detective Jeff Kelly testified the video “shows a pattern of abuse from corrections staff.” Beller told Kelly that she heard a crack when Moore was in the restroom, and Brad Roberts, another of the accused deputies, told her they had been too rough. No one sought medical assistance for Moore. Beller’s charge was reduced to first-degree wanton endangerment in a May 2019 plea deal; she must complete a five-year diversion program, testify in trials against her former co-workers and can no longer work in corrections.

**Louisiana:** At the Elayn Hunt Correctional Center, ex-Master Sgt. Adrian Almodovar III, 39, pleaded guilty on February 8, 2019 in a Baton Rouge federal court to the willful deprivation of prisoners’ right to be free from cruel and unusual punishment. Two years earlier, Almodovar and members of his tactical team beat a handcuffed and shackled prisoner in his cell, during a transport and inside the medical unit. Almodovar admitted punching John Harold several times in the face, watching while other guards assaulted him, and punching prisoner Lonnie Bryant in the head later the same day. [See: PLN, July 2017, p.47]. Two other former Elayn Hunt guards, Lt. Eric Norwood and Capt. Charles Philson III, had already pleaded guilty for their roles in the beatings. Almodovar and Philson were sentenced on August 15, 2019 to 18 months in prison and 12 months of probation, respectively.

**Mississippi:** The Marshall County Correctional Facility, run by Management and Training Corporation (MTC), was placed on lockdown after a guard was attacked and a fire broke out on April 3, 2019. A number of videos, captured on contraband cell phones and emailed to local news outlets, showed a guard on the floor, bleeding from his head, as prisoners jeered. At least three other cell phones were visible. The guard was airtifted to Regional Medical Center in Memphis, Tennessee and released the next day, just after the guard was moved, a fire broke out. According to one prisoner, “If not for the fire sprinkler going off, I can assure you every inmate on the zone of delta 4 in Marshall County Correctional Facility would have died!” MTC’s director of corporate communications, Issa Arnita, acknowledged the attack on the guard in an email to reporters but did not mention the fire. State Rep. Bill Kinkade, who chairs the House Corrections Committee, promised to investigate the incidents.

**Missouri:** On September 30, 2018, an unnamed 29-year-old prisoner at the Boonville Correctional Center faced a medical emergency, requiring surgery to remove his spleen and appendix at University of Missouri Hospital. His stomach was lacerated, his spleen ruptured and he had bleeding in the abdomen. Darren Snellen with the MDOC investigated. A probable cause affidavit indicated that prisoners Derick Dwyer, 40, and Calyb Musgrave, 27, punched the victim in the ribs nearly every day that month, in the shower room. Their assaults culminated on September 28 when they forced a summer sausage up his rectum for 30 minutes. Video footage showed the pair laughing afterward. The victim has since been released from custody.
on supervised probation. On March 1, 2019, Dwyer and Musgrave were charged with assault causing serious injury, sodomy and as accessories to felony violence to a prisoner. The assault charge is a Class A felony, carrying a possible sentence of 10 to 30 years.

**New York:** Andy Aragon, 23, a Latin Kings gang member, was stabbed 75 times with homemade weapons at the Manhattan Detention Complex, also known as “the Tombs,” on October 22, 2018. He filed a lawsuit in March 2019 against the New York City DOC, accusing jailers of looking away as three members of the MS-13 gang, Luis “Inquieto” Rivas, 24, Dennis “Panda” Cabrera, 27, and Javier “Joker” Rodriguez, 33, plotted and executed the attack on his way back to his cell from the shower. Andrew Lauffer, Aragon’s attorney, denied his client was a member of the Latin Kings. Aragon has since been moved to the Brooklyn House of Detention. Authorities have phone records of Rivas complaining to his girlfriend in Spanish, 20 minutes before the attack, “Supposedly, the three of us have to do it, imagine, and that would be another case, son of a bitch. All because of the damn gang.” Phone calls at the jail are monitored, and Lauffer contends that guards should have prevented the stabbing.

**North Carolina:** The State Highway Patrol, the U.S. Marshals Service and the FBI assisted in a search for five prisoners who cut through the fence in the exercise yard at the Nash County Detention Facility and escaped on March 25, 2019. Four of the escapees were apprehended the next day. Raheem Horne, 25, and David Viverette, 28, were holed up at Hal Orr’s Inn in Rocky Mount, 15 miles away. According to the sheriff’s Facebook page, David Ruffin, 30, and Keonte Murphy, 23, were “captured in another county.” Initially, a $500 reward was offered for each of the escapees. Later, Crime Stoppers offered $1,500 for information on the fifth escapee, Laquaris Battle, 22. Battle remained at large until March 31, 2019, when Mia Evans’ car was pulled over in a pre-dawn traffic stop in Hardeeville, South Carolina. Authorities believe Evans and Battle were heading to Miami. Evans was charged with harboring a fugitive, while another passenger in the vehicle was arrested for cocaine possession. Battle was held in the Jasper County jail awaiting transport back to Nash County.

**Ohio:** State law requires jail time for corrections workers who bring contraband onto prison grounds, but it does not apply to staff at privately-run prisons in Ohio. Joshua Borders’ pregnant wife begged the judge, at his March 2019 sentencing hearing, to place him on probation. Borders, 24, was a guard at the North Central Correctional Complex in Marion, run by Management and Training Corporation (MTC). He was one of several ex-guards who tried to smuggle drugs into the facility. Borders was caught in November 2018 with packages containing 304 grams of tobacco and 21 grams of marijuana strapped to his abdomen. He told Marion County Common Pleas Judge Warren T. Edwards that he was paid $300 to deliver the contraband. Borders was sentenced to nine months in prison and a $600 fine. “You violated the public trust here and there’s a lot of controversy over private prisons,” Judge Edwards stated. “I don’t believe that the majority of prison guards ... would ever engage in the conduct you engaged in.”

**Oregon:** Jefferson County Sheriff’s Cpl. Anthony Hansen and deputies Michael Durkan and Cory Skidgel were acquitted on December 4, 2018 of criminally negligent homicide in connection with the April 2017 death of prisoner James Eugene Wippel. Crook County Circuit Court Judge Daina Vitolins found “No one was able to testify to that critical piece of evidence, when was it too late for medical treatment to save Mr. Wippel?” However, she added, “Their failure to obtain medical care was a gross deviation from the standard of care a reasonable person” would have been expected to exercise. On July 26, 2019, Hansen and Durkan filed a federal lawsuit alleging malicious prosecution, seeking $10 million in damages against the district attorneys who were appointed to take the case to trial. The deputies also contend they had previous encounters with two of the grand...
jurers while working for the Warm Springs Police Department, so those jurors should have been dismissed.

**Pennsylvania:** Derrick Houlihan filed a complaint on February 4, 2019 in the U.S. District Court for the Eastern District of Pennsylvania against Montgomery County, the Montgomery County Correctional Facility and guards who beat him in December 2016. He alleged violations of his Eighth and Fourteenth Amendment rights due to excessive use of force. Three days before he filed suit, the five guards who assaulted him were found not guilty of aggravating assault at a jury trial, despite video evidence. Defense attorney Charles Peruto said of Houlihan, "It was a guy who was nothing but trouble. When he was on the street, when he was in prison, he had no respect for authority, tried to incite a riot all the time, stabbed a prison guard in Philadelphia and he was absolute vermin, and the jury so found." In regard to the beating, Peruto added, "We bloodied him up so badly, that the jury looked at it and said, 'Are we going to trade this man for our prison guards, regardless of what they did?' Because obviously the video was bad, and the jury sided with the guards."

**Pennsylvania:** Convicted serial rapist Seth Mull was sentenced on April 5, 2019 to 72 years to life in prison. He was originally arrested in October 2017, after police were called to a Holiday Inn Express in Bethlehem. He had met the victim on a dating site and they agreed to have consensual sex, but Mull raped her and forced her to do cocaine and smoke crystal meth. She had to be taken to a hospital. More victims came forward, painting a picture of a vicious serial predator, beginning in his teens. Mull was convicted on 30 total counts, which included three counts of rape and five counts of trafficking. In August 2018, while at the Northampton County Prison awaiting trial, Mull began corresponding with a woman through letters and phone calls. She found him “friendly and supportive.” When the facility introduced electronic tablets in November 2018, Mull’s conversation with the woman changed—according to an arrest affidavit, it “became all about sex and having sex for money.” He was later charged with promoting prostitution while held at the jail.

**South Carolina:** March 2019 was a difficult month for the Lieber Correctional Institution (LCI). On March 14, 2019, guard Anthony J. Murgolo attempted to smuggle three packages wrapped in electrical tape containing marijuana, tobacco, cigar wraps, two tubes of glue, a dremel tool and head-phones. The packages were found in a search of a state-issued car that Murgolo drove onto the prison grounds. “I’m not going to lie to you. I brought that in. I needed the money,” he told an investigator, though it is unknown how much he was paid to bring in the items. He was charged with possession with intent to distribute marijuana, introduction of contraband to inmates and misconduct in office. Later in March, LCI guard Bertha Ann Shuler was stopped for a random contraband search. Rather than submit, she sped away with an investigator hanging onto her car. After her arrest, bond was set at $45,000; she was charged with...
failure to stop, assault and battery, resisting arrest and misconduct in office.

**Tennessee:** Video of a guard at the Metro-Davidson County Detention Facility pepper-spraying a prisoner was released in early February 2018. The facility is run by CoreCivic, formerly Corrections Corporation of America. The company fired guard Oluwatobi Ola for an “unnecessary” use of force against prisoner James Nelson, saying Ola was “not entirely truthful” about the 2017 incident. Ola was arrested on July 16, 2018. Nelson believed the guard was retaliating against him over a scabies lawsuit filed against CoreCivic. [See: *PLN*, March 2018, p.58]. Ola pleaded guilty to a misdemeanor assault charge, which was dismissed in January 2019 after he finished an eight-week anger management class. Nelson filed a pro se civil rights action against Ola and CoreCivic, though in Tennessee a guilty plea “is generally not conclusive on the issues in a subsequent civil action.” The suit was dismissed on June 28, 2019.

**Texas:** In 2017, Gabriel Robert Ortiz needed money, so he circulated word in the pod where he worked as a guard at the Bexar County jail that he could get prisoners cell phones for $700 each. A cooperating prisoner alerted investigators in April 2018, and recording equipment was put in his cell. A sting operation was set up and Ortiz was paid $2,400 for two one-ounce shipments of “meth” that he tucked into brisket tacos from Taco Cabana. In May 2018, Ortiz included another jailer, Ruben Hernandez, in the smuggling scheme. The two had been in the same Bexar County Sheriff’s Office class. Another shipment was arranged, and the pair split a payment of $2,000. Ortiz snuck in the tacos and Hernandez delivered the “meth.” Additionally, Hernandez told the cooperating prisoner that when he got out, they would assist him “in delivering drugs using their uniforms and badges to protect drug transactions.” Both guards were arrested, charged and took plea deals. Ortiz, 30, was sentenced to three years in federal prison in February 2019, while Hernandez, 27, received 18 months followed by three years of community supervision in April 2019.

**United Kingdom:** HMP Guys Marsh in Dorset has a drug problem: Twenty percent of random drug screens tested positive and half of those were for synthetic marijuana, known as “spice.” At least one prisoner a day required medical intervention due to “New Psychoactive Substances,” the official designation for spice. The drug is believed to be at the root of spiraling violence in UK prisons and some prisoner deaths. Drugs in jail can cost ten times the street value, so organized crime networks are getting creative. In March 2019, three dead rats were found stuffed with spice, tobacco, three phone sim cards, five cell phones with chargers, cannabis and rolling papers at HMP Guys Marsh. The rats were disemboweled, stuffed, meticulously stitched back up and then thrown over the prison walls. Although dead rats are a common sight in UK prisons, staff noticed the stitches and opened the rodents. Prison minister Rory Stewart said, “This find shows the extraordinary lengths to which criminals will go to smuggle drugs into prison, and underlines why our work to improve security is so important.”

**West Virginia:** In a surprising twist, there are two men named Jim Justice II in West Virginia. One was elected the 36th governor of the state in 2017. The other is 18 years younger, from the town of Nitro, and tried to forge a pardon letter for himself dated “FEBRUARY [sic] 25, 2019.”

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He signed it “Jim Justice” and sent it to the Putnam County probation office. The signature was a close likeness to the governor’s real signature. The letter sought to pardon the forger, and included numerous misspellings and grammatical errors. For example, it stated, “I ENCLOSING THIS LETTER THAT I THE SAID GOVERNOR JIM JUSTICE WILL AND HAS PARDON YOU OF ALL FELONIES AGAINST YOU....” In the letterhead, the name of the state was misspelled “WEST VIRGIMIA,” and Jeff Sandy was listed as the “CABNENT SECERTAR.” The Jim Justice who sent the fake letter was on parole after serving time for burglary; he now faces charges of forgery of a public record and forgery of official seals.

**Wisconsin:** Devine Jackson, 25, was a guard at the Kenosha County jail when she was arrested in April 2019 following a tip that she was “smuggling cocaine inside toothpaste tubes and passing it off” to prisoner Feeonquay Jenkins. Jenkins had been at the jail since 2017 on a variety of child sexual assault and felony bail jumping charges. He reportedly had over $10,000 in his commissary account. Despite confessing to the smuggling, the state dropped the charges against Jackson on September 30, 2019. “While it is clear to me that she was delivering drugs into the jail while working as a guard there, I cannot prosecute her for a drug offense if we don’t have the actual drugs that were involved,” said Assistant District Attorney Thomas Binger. New charges of second-degree sexual assault by correctional staff have been filed against Jackson, as the original investigation revealed she had sexual contact with another prisoner over a five-month period and deposited $160 into his commissary account.

### News In Brief (cont.)

**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

### Criminal Justice Resources

**Amnesty International**
Seeking to end war and torture. Publishes information and advice on torture, gun violence, counter-terrorism, refugees’ rights and other human rights issues. No legal services are provided. Reports on U.S. and other countries are available online at: www.amnesty.org.

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

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

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

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

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

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

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

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

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

**Prison Activity Resource Center**
PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a 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 Proﬁteers: Who Makes Money from Mass Incarceration**, edited by Paul Wright and Tara Herivel, 323 pages. $24.95. This is the third book in a series of Prison Legal News anthologies that examines the reality of mass imprisonment in America. *Prison Proﬁteers* is unique from other books because it exposes and discusses who proﬁts and beneﬁts from mass imprisonment, rather than who is harmed by it and how. 2019 |
| **The Habeas Citebook: Ineffective Assistance of Counsel, 2nd Ed. (2016)** by Brandon Sample, PLN Publishing, 275 pages. $49.95. This is an updated version of PLN’s second book, by former federal prosecutor Brandon Sample, which extensively covers ineffective assistance of counsel issues in federal habeas petitions. 2021 |
| **The Merriam-Webster Dictionary**, 2016 edition, 939 pages. $9.95. This paperback dictionary is a handy reference for the most common English words, with more than 75,000 entries. 2015 |
| **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 depoosed. 1054 |
| **Criminal Law in a Nutshell**, 5th edition, by Arnold H. Loewy, 387 pages. $49.95. Provides an overview of criminal law, including punishment, specﬁc crimes, defenses & burden of proof. 1086 |

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1031

Criminal Procedure: Constitutional Limitations, 8th ed., by Jerold H. Israel and Wayne Y. 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!  

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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.  

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Prison Stamp Exchange
GET CASH FOR YOUR STAMPS

70% FACE VALUE
NEW CONDITION: ALL Forever stamps in brand new post office fresh complete, unfolded, unbent, unsoiled, and undamaged condition.
$7.70 per book, $38.50 per roll.

50% FACE VALUE
USABLE CONDITION: ALL Forever stamps in partial books and rolls, or single stamps. Any books with minor bends, folds, or soiled appearance.
$0.27 per stamp, $5.50 per book.

2019 face value of a Forever stamp is $0.55 per stamp.

RECEIVE PAYMENT BY

CHECK

DO NOT Mail Your Stamps Without An ORDER FORM
*** Stamps received without an order form will be REJECTED and not exchanged. ***

To Request An ORDER FORM Write To: PSE Order Forms
6737 N. Milburn Ave. Ste 160-310 Fresno, CA 93722
Write a letter stating “Send me an order form.” Include your return address, inmate number and any special instructions. Once you receive an order form, fill it out and send with your stamps.

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