



Prison Legal News

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“Frozen in Solitude”: Heat-Sensitive Texas Prisoners Get More Than Air Conditioning Locked Inside Former Segregation Cells

by Matt Clarke

After the Texas Department of Criminal Justice (TDCJ) settled a lawsuit over life-threatening excessive heat at the Wallace Pack Unit in 2018, it realized it needed to apply the suit’s heat-sensitivity criteria systemwide – and found a quick solution.

For years, officials had been moving prisoners out of administrative segregation (ad seg) and super segregation (super seg) cells, slowly freeing thousands of beds in some of the prison system’s only air-conditioned cells. So TDCJ decided to begin moving all its heat sensitive prisoners – most of whom are elderly, infirm or taking psychotropic medications – into the former isolation cells.

But there is a cruelty baked into the architecture of ad seg and super seg, not to mention the attitudes of guards who work there. Those spaces were designed to hold very dangerous prisoners in extreme isolation; simply changing occupants does not change the fact that the isolation is much greater than it is for prisoners in general population, while also denying access to programs and activities such as education, library, recreation, law library and chapel services.

Simultaneously, housing elderly and infirm prisoners alongside young prisoners with mental illness – often in the same cells – is a recipe for violence, one that TDCJ apparently attempts to sweeten by keeping the temperatures in many of the cell blocks extremely low, below 60° F. Thus even the minimum-custody prisoners TDCJ deems “heat sensitive” become frozen in isolation while being exposed to a litany of dangers.

The Driving Problem is Potentially Deadly Heat

For decades, prisoners in southern states who challenged summer heat in their un-air-conditioned cells were told by judges that prisons would get air conditioning after the most poverty-stricken person outside of the prisons was provided air conditioning at government expense. In other words, air conditioning was seen as a luxury, not the solution to a deadly danger. But as unprecedented heat waves caused record numbers of deaths outside of prisons, attitudes about the dangers of excessive heat began to change.

The tidal shift in the federal courts’ attitudes about the dangers excessive heat poses

for prisoners came about after a suit filed by attorneys from the Texas Civil Rights Project and the Edwards Group in Austin on behalf of prisoners held at TDCJ’s Pack Unit, who were facing both contaminated water and scorching summer temperatures. Having trained lawyers who hired expert witnesses to testify about the danger and deaths caused by excessive heat made a huge difference. Likewise, a 2014 report from the University of Texas School of Law’s Human Rights Clinic that documented at least 14 heat-related TDCJ prisoner deaths between 2007 and 2013 helped drive home the seriousness of the problem.

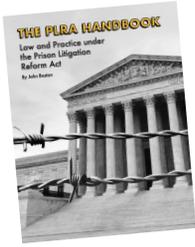
This new evidence of the deadly danger of heat in Texas prisons led the federal court for the Southern District of Texas to certify the Pack Unit prisoners’ lawsuit as a class action, and the U.S. Court of Appeals for the Fifth Circuit upheld that certification. *See: Yates v. Collier*, 868 F.3d 354 (5th Cir. 2017).

Court-Ordered Relief for Heat-Sensitive Prisoners

On July 19, 2017, the district court ordered TDCJ to provide relief to heat sensitive prisoners at the Pack Unit – those who “either have a physiological condition that places them at increased risk of heat-related illness, injury, or death (including, but not limited to, suffering from obesity, diabetes, hypertension, cardiovascular disease, psychiatric conditions, cirrhosis of the liver, chronic obstructive pulmonary disease, cystic fibrosis, asthma, sweat gland dysfunction, and thyroid dysfunction)”; or “are prescribed an anticonvulsant, anticholinergic, antipsychotic, antihistamine, antidepressant,

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The PLRA Handbook: Law and Practice under the Prison Litigation Reform Act

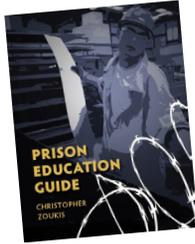
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The PLRA Handbook: Law and Practice under the Prison Litigation Reform Act is the best and most thorough guide to the PLRA provides a roadmap to all the complexities and absurdities it raises to keep prisoners from getting rulings and relief on the merits of their cases. The goal of this book is to provide the knowledge prisoners' lawyers – and prisoners, if they don't have a lawyer – need to quickly understand the relevant law and effectively argue their claims.



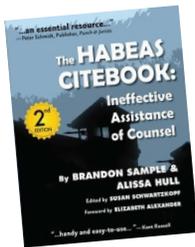
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Christopher Zoukis

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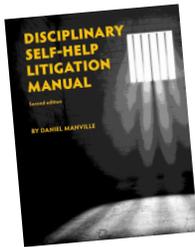
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Brandon Sample & Alissa Hull

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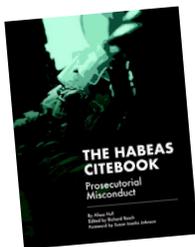
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"FROZEN IN SOLITUDE" cont'd

beta blocker, or diuretics"; or "are over the age of 65." In the settlement that followed, TDCJ agreed to incarcerate heat-sensitive Pack Unit prisoners in temperatures below 85° F. *See: Cole v. Collier*, 2018 U.S. Dist. LEXIS 97110.

This left TDCJ with a stark choice: It could air condition the prison, or it could move the Pack Unit's heat-sensitive prisoners – all of whom were minimum custody – into an air-conditioned prison, all of which were designated for higher custody levels. Perhaps that is what prompted TDCJ officials to look for another option, and they lit on the many air-conditioned ad seg and super seg cells already in place and going underused.

The Effect on Non-Pack Unit Prisoners

Soon after the *Cole* settlement was reached, TDCJ realized that there was no fundamental difference between the Pack Unit and the majority of its other prisons, which also lacked air conditioning. Although older and infirm prisoners were concentrated at the Pack Unit, there were many other prisons with large numbers of prisoners who met the criteria for the heat-sensitive subclass in the *Cole* case – except they were incarcerated somewhere other than the Pack Unit.

But Texas had just spent tens of millions of dollars litigating the lawsuit for over a decade and lost. So it needed to do something about those other heat-sensitive prisoners before they sued the prison system, using the *Cole* suit as a persuasive precedent. This led TDCJ to establish a "heat score" for each prisoner – ranging from zero to five – and begin transferring heat-sensitive prisoners to air-conditioned housing. However, the expansion of heat-sensitivity criteria to include all of TDCJ's more than 118,000 prisoners meant finding thousands of additional air-conditioned cells. The question was how to do so without breaking the budget. The answer was again found in those pre-existing and underutilized former super seg and ad seg cells.

Origins of Ad Seg and Super Seg

For decades, the legendary Alcatraz federal penitentiary in California was considered the most secure in the U.S. But it wasn't

secure enough for the federal Bureau of Prisons (BOP). The problem was not that prisoners could escape. "The Rock" was virtually escape-proof. Yet Alcatraz prisoners could still assault one another and prison staff. BOP wanted a prison that totally isolated prisoners from one another and staff. The idea echoed British Utilitarian John Stuart Mill's Panopticon, a 19th-century "innovative" prison in which prisoners were under observation at all times but could not interact or often even see other prisoners and prison staff. The concept had to be abandoned back then, though, as it drove the prisoners "quite mad."

Nevertheless, BOP pressed forward with design for the U.S. Penitentiary (USP) at Marion, Illinois, which replaced Alcatraz when it opened in 1963. But even USP Marion did not isolate prisoners sufficiently to provide total control. So in 1973, the prison opened its first "Control Unit" cells. These were designed to hold prisoners 23 hours a day, with only brief periods outside the cell for showers or isolated recreation in an enclosed "dog run."

When staff and prisoners continued to be assaulted and even killed in the Control Unit, BOP looked at California's Pelican Bay prison, which opened in 1989, and liked what it saw. Pelican Bay was built underground. Its rows of "boxcar cells" had no windows, just a solid door with a plexi-glass viewing portal. Showers were inside the cells. Recreation was held in other cells that had no furnishings – so most Pelican Bay prisoners refused the offer of recreation. Prisoners lived their lives in extreme isolation, both from one another and from staff. It was the first real super seg prison.

In 1994, BOP opened its own version of Pelican Bay, the Administrative Maximum Security penitentiary (ADX) in Florence, Colorado. The opening was accompanied by a great deal of publicity and bragging that it was the ultimate in prisons. The highest profile prisoners were incarcerated there – those involved in bombing the World Trade Center in 1993 and the federal building in Oklahoma City two years later. "Unabomber" Ted Kaczynski was held there, along with other terrorists.

By the mid-1990s, super segs were the rage among prison administrators. Nearly every prison system wanted at least one, and TDCJ was no exception. Its population had undergone explosive growth – mushrooming from 35,000 prisoners to over

"FROZEN IN SOLITUDE" cont'd

100,000 in less than a decade. Now TDCJ wanted super segs, but the state Legislature was wary of spending yet more money on prisons. That is when the concept of the Expansion Cellblock Building (ECB) emerged.

ECB is a super seg building with 11 pods, each containing 68 boxcar cells. Each ECB had its own medical and dental departments. There was also a small, rudimentary kitchen for reheating food, but no

dining facility. But there was no laundry, no library, no education department, no law library, no vocational education facility. The idea was to save money by building each ECB at an existing prison and use its laundry and other facilities to serve ECB prisoners. They, in turn, were locked inside their boxcar cells 23 hours a day. Outdoor recreation required just a small, isolated chain-link cage covered by sheet-metal awnings protruding from the ECB. Contact visitation was not allowed.

The Justification for Super Seg in Texas

In the early 1990s, TDCJ slowed down its suppression of gang activities. Prior to that, known gang members and affiliates had been placed in ad seg. The change was not due to a lack of ad seg cells, since each one of TDCJ's new maximum-security prisons built during the prison expansion of the late 1980s and early 1990s came with 504 air-conditioned ad seg cells.

Once the crackdown on gangs was lightened, gang membership exploded, and gang activities grew and diversified. "Traditional" Texas prison gangs were mostly interested in smuggling contraband such as drugs, tobacco and alcohol into the prisons. The newer "street gangs" added beating, robbery, extortion, murder and sexual enslavement of other prisoners to the mix. These new activities generated a great deal of unfavorable publicity for TDCJ and gave it a justification for housing gang members and affiliates in super seg.

TDCJ sold the state legislature on the idea that ECBs would provide much-needed super seg cells on the cheap. The Legislature bought the idea, and seven ECBs were constructed. They were easy to fill, since TDCJ had identified most of

the openly-operating gang members and their affiliates during the time of lax gang suppression. Now those gang members languished in isolation behind walls of concrete and steel where abuse could happen and no one would know.

Segregation Falls Out of Favor

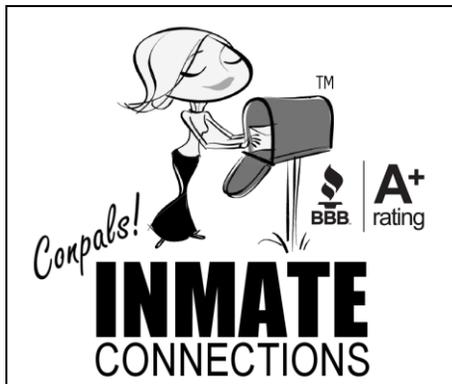
In 1998, renowned television journalist Ted Koppel took an interest in the nationwide growth of super seg and how it would affect the prisoners kept in such stringent isolation. He aired a five-episode, week-long series of *Nightline* reports on super seg from the prisons that allowed him to interview prisoners. Two of the episodes were recorded at the ECB at the Estelle Unit in Huntsville, Texas. Memorably, Koppel asked the warden what a prisoner had to do to be released from the ECB into general population; the response he received made it clear that no prisoners were ever going to be transferred out of the ECB into general population. ECB placement was for the duration of the prisoner's sentence.

The backlash against super segs generated by the *Nightline* series was swift and furious. Soon thereafter, reports were published on scientific studies showing that prolonged periods in super seg caused prisoners lasting psychological damage. There was public pressure to curtail or eliminate super seg. In Texas, this led to the establishment of programs designed to reintroduce ad seg and super seg prisoners into the general population. Between 2006 and July 2017, TDCJ's population in ad-seg and super-seg dropped from 9,542 to 3,857.

Initially, TDCJ placed medium- and close-custody prisoners into the former ad seg and super seg cells. But the requirement that it house heat sensitive prisoners in air conditioning added a new wrinkle to the issue of what to do with the surplus of air-conditioned ad seg and super seg cells.

Repurposing Super Seg and Ad Seg Cells

Air conditioning the entire prison system was beyond TDCJ's budget. It had already spent upwards of \$4 million to air condition the Pack Unit. Yet TDCJ had thousands of underutilized super seg and ad seg air-conditioned cells readily available. Further, many of the super seg cells had been converted to two-person occupancy, allowing even more prisoners to be housed in the existing ECBs, which TDCJ helpfully re-



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Cruelty in Architecture and Attitudes

The problem with using a super seg or even ad seg cell to house a minimum custody prisoner is that it is somewhat akin to using a tractor trailer to fetch the family groceries. It is capable of doing the job, but it was not designed for that purpose. So it will be difficult to use and will likely perform the job poorly. Just so with housing minimum custody prisoners – who are supposed to have the greatest degree of liberty available within the prison’s walls – in super seg cellblocks, which are designed to force prisoners to submit to absolute control.

Not only were ECBs built without the usual facilities that allow prisoners to attend programs, religious services, contact visitation or outdoor recreation (except in a small, covered cage) but they were also erected at locations along the outskirts of the prison complex or even physically separated from it by a road – thus making use of the main prison’s facilities difficult by requiring prisoners to be escorted. Given TDCJ’s ongoing and severe staffing shortage, this just isn’t done for the most part. Instead prisoners housed in ECBs simply have little or no access to academic and vocational education, programs, religious services, law libraries, outdoor recreation, craft shops and dining halls.

The prisons that received ECBs were not designed to hold another 800 prisoners. The ECBs strained the laundries and food services facilities when they had single-occupancy cells. Now, converted to double-occupancy, the strain on the original prisons’ resources grew. Clothing

was exchanged just thrice weekly instead of the previous six-days-a-week. Meals arrived hours late – and cold. Sack meals consisting of sandwiches often replaced hot meals. Soon, the conditions of confinement in the ECBs drove prisoners to file lawsuits and stage hunger strikes.

Even worse, the guards at ECBs were trained to handle very dangerous prisoners, and their first reaction to anything out of the ordinary was to lock all the prisoners in their cells, douse them with pepper spray or hit them with riot batons. Yet housing young psychiatrically needy patients with elderly, infirm prisoners proved volatile and led to predatory behavior, confrontations, and fights – which led to still more lockdowns and worse. Thus, minimum custody ECB prisoners spent a lot of time confined to their cells even when they or no one in their pod had misbehaved.

An added issue was the fact that some prisoners – especially those belonging to the street gangs – apparently employed a strategy: faking mental illness to gain air conditioning or access to a prison population they could easily dominate and exploit. This has created a dangerous environment for the very same elderly, infirm and/or mentally-ill prisoners TDCJ is supposedly protecting from the heat by housing them in super seg.

The ECBs have also traditionally been kept cold – very cold. The air conditioning is typically set below 60° F, and even lower temperatures are permitted in the winter. TDCJ may believe that supercooling young troublesome prisoners reduces their propensity for violence, but for many elderly and infirm prisoners whom TDCJ proclaimed to be heat sensitive, the frigid temperatures are pure torture. Even when issued a jacket or extra blanket, many ECB

prisoners shiver in the dayroom while longing for summer sunshine that would warm their joints and bones. But an ECB-housed prisoner is unlikely to see any sunshine, since most ECBs lack outside recreation open to the sky. Instead, the primary “recreation” is access to a dayroom where walking around for exercise is forbidden. Occasionally, ECB prisoners are allowed some time in a small outside cage under the building’s awnings with little chance of direct sunlight.

Court Challenges by Heat-Sensitive Prisoners to Conditions in ECBs

Effectively, minimum custody prisoners housed in super seg ECBs are being denied access to many options and programs available to other prisoners in their custody level, such as access to a chapel, library, law library, dining hall or large outside recreation yard. The vast majority also complains of excessive cold; of small amounts of cold food served on dirty, greasy trays or in paper sacks; of infestations of mice and roaches; and of not being allowed to opt out of what is supposedly treatment for a medical condition. Another complaint is that the air in the ECBs is polluted with smoke and pepper spray from other (higher-security) prisoners setting fires and engaging in serious misconduct. A common theme is that the heat-restricted prisoners, many of whom are elderly and infirm, are being housed with much younger prisoners in the ECB, often in the same cell, leading to predatory behavior by the younger prisoners.

These complaints have not been limited to the usual grumbling around the dayroom table; several prisoners have filed lawsuits challenging their placement in an ECB cell due to heat sensitivity, as well as the conditions of confinement they face there.

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The most comprehensive challenge to ECB conditions is found in a suit filed by prisoner Theodore Streater in 2019. Streater was transferred to the Smith Unit ECB due to alleged heat sensitivity. Once there he complained of poorly ventilated recirculated air that was tainted with smoke and pepper gas spray; of unsanitary and poor-quality food service and preparation; of an unsanitary and unsafe cell; and of his cell light being remotely switched off and on throughout the night. He also said he his placement in ECB forced him to endure medical treatment – air conditioning – for an alleged medical condition – heat sensitivity – against his will. There he was denied access to programming and benefits, and he was celled with a sexually assaultive mentally ill prisoner who had prior violent incidents. Streater said that TDCJ failed to process the grievances he filed about these conditions. So he filed suit *pro se* in federal court for the Northern District of Texas, alleging civil rights violations under 42 U.S.C. § 1983, as well as violations of the Americans with Disabilities Act (ADA),

42 U.S.C. ch. 126 § 12101, et seq., and the Rehabilitation Act of 1973 (RA), 29 U.S.C. § 701, et seq.

A magistrate judge recommended dismissal of most of the claims, finding that Streater had no constitutional right to a grievance process, no proof that ECB placement is medical treatment, no constitutional right to a particular medical classification, had not alleged an actual physical injury with respect to the cellmate who had repeatedly tried to hug him, and that the food and cell conditions were not below “minimal civilized measure of life’s necessities” and thus not constitutional violations. Further, the magistrate said that Streater had failed to show the named defendants were subjectively aware of any safety issues. On top of that, the food quality issues he raised were not constitutional violations but mere negligence, the magistrate said, citing *Flowers v. Dent*, 21 F.3d 1109 (5th Cir. 1994). And the constant illumination he complained of was reasonably related to a legitimate penological interest in good security, the magistrate added, citing *Havarria v. Stacks*, 102 F. App’x 433 (5th Cir. 2004).

Streater’s ADA and RA claims also

failed because he denied that he was sensitive to heat despite the fact that TDCJ classified him as heat sensitive. This made him a person who “has no impairment but is perceived by the [defendant] as having a substantially limiting impairment,” the magistrate said. However, Streater failed to allege facts that showed Defendants considered him disabled or denied him access to programs based on the perceived disability. Merely being housed in a location primarily used to house heat sensitive prisoners does not demonstrate that the defendants considered him disabled within the

meaning of the ADA and RA, the magistrate opined. A vague allegation that defendants “conspired” to discriminate against him based on his disability was also insufficient. The only claim not recommended for dismissal was one under the Religious Land Use and Institutionalized Persons Act (RLUIPA) against the warden of Smith Unit, for failing to provide Streater a pork-free diet as required by his religious beliefs. *See: Streater v. Davis*, 2020 U.S. Dist. LEXIS 260765 (N.D. Tex.).

The district court adopted most of the magistrate’s findings and recommendations, though it didn’t dismiss the ADA and RA claims against TDCJ for failing to afford Streater the same programs and activities afforded non-disabled prisoners. It found that Streater had alleged he was disabled within the meaning of the ADA, including disabilities such as food allergies and medical conditions other than heat sensitivity. Therefore, it was premature to dismiss the ADA and RA claims against Defendants in their official capacity, which were essentially claims against TDCJ. *See: Streater v. Davis*, 2021 U.S. Dist. LEXIS 233222 (N.D. Tex.).

With that Streater folded, voluntarily dismissing his remaining claims – most likely to preserve his indigent status in federal court on appeal – on December 29, 2021. *See: Streater v. Davis*, USDC (N.D. Tex.), Case No. 5:19-cv-00263. However, his appeal was dismissed as frivolous by the Fifth Circuit on October 18, 2022. *See: Streater v. Davis*, 2022 U.S. App. LEXIS 28926 (5th Cir.).

While Streater’s suit was pending, prisoner Tony Orlando Myles was placed in the ECB at the Lewis Unit, after TDCJ determined he was heat sensitive. In 2020, he filed a *pro se* civil rights complaint over the poor quality of the food in the ECB, which included “cold food, nasty food and food with roaches all over the food.” However, the federal court for the Eastern District of Texas determined that he had named supervisory personnel as defendants without making a showing of each defendant’s personal involvement in the alleged denial of a constitutional right and dismissed the complaint on April 7, 2022. *See: Myles v Barlow*, 2022 U.S. Dist. LEXIS 64843 (E.D. Tex.).

William Boyd Pierce is an elderly prisoner who was transferred to the ECB at the Estelle Unit after TDCJ determined he was sensitive to heat. His principal complaint



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there was that it was too cold in the ECB, aggravating his arthritis and other medical conditions. All the named defendants were senior supervisory personnel of warden's rank or higher. The Southern District of Texas dismissed the complaint on March 23, 2020, after finding Pierce had failed to allege facts showing any defendant's personal involvement in the alleged violation of constitutional rights. Further, it held that the allegations fell short of a constitutional violation as he has no constitutional right to a particular housing within the prison and especially since prison staff had issued Pierce a jacket and extra blanket after he complained of the cold. *See: Pierce v. Collier*, 2020 U.S. Dist. LEXIS 49960 (S.D. Tex.). He, too, struck out on appeal at the Fifth Circuit. *See: Pierce v. Collier*, 851 F. App'x 530 (5th Cir. 2021).

Thus far, prisoners have been unsuccessful in challenging the use of ECBs to house heat sensitive prisoners. However, there are several lawsuits still pending and the very fact that so many prisoners are willing to pay over \$500 to file a lawsuit means that they take the issue very seriously. We can expect to see additional litigation on this issue in the future.

Hunger Strikes Over Conditions in Ad Seg and Super Seg

Some prisoners have litigated to bring attention to the inhumane conditions in ECBs and ad seg. Others have gone on hunger strike. On Christmas Day 2017, 45 segregation prisoners at the Allred Unit began a 10-day hunger strike protesting their lack of recreation and tiny portions of cold food. Prisoners in the Allred ECB still complain about those same issues five years on.

A wider hunger strike began among 72 segregated prisoners at several Texas prisons in January 2023. Fifteen days later, 19 were still refusing food. They were protesting conditions in segregation, the use of indefinite segregated confinement, and the lack of opportunities for physical exercise. At that time, over 500 Texas prisoners had been continuously confined in segregation for more than a decade.

The Cool Beds Non-Program

TDCJ administrators typically refer to the assignment of prisoners to air-conditioned housing based on their heat sensitivity as the "Cool Beds Program." Prison healthcare

providers state that it is a classification program, not a medical issue, and they have nothing to do with it. But the staff at TDCJ's Classification and Records Division deny that it is a program at all, stating instead that it is a classification "decision." Nonetheless, the person in charge of it bears the title, "Program Supervisor."

What actually happens is that a computer program overseen by the State Classification Committee periodically scans all TDCJ prisoner records, including medical records, and assigns each prisoner a heat score based upon his or her age, weight, medical and psychiatric infirmities, medical history and current medications – essentially using a modified form of the criteria for heat sensitivity from the Pack Unit lawsuit. The assigned heat scores range from P-0 (not sensitive to heat) to P-5 (extremely sensitive to heat). When TDCJ began housing heat sensitive prisoners in air conditioning, it began with those who had the highest heat scores. It has worked its way down to the P-2s and P-1s.

Of course, having a computer program not created or overseen by medical professionals and relying on it to make decisions based on a person's medical condition and



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**The Gib Lewis ECB: A Study
in Failures**

medications is asking for trouble. Many of the prisoners housed in the frozen isolation of the ECBs who do not typically have problems with heat have asked why they were chosen for the program when others from their former prisons who are older and obviously struggling with the summertime heat were not.

The likely answer is that the computer program assigning the heat scores has some built in assumptions that may not always be true. Further, there seems to be no consideration for those prisoners who are more sensitive to cold than to heat. Many elderly people suffer from low thyroid function, a condition that depresses the body's metabolism and makes it easy to become chilled and very difficult to warm back up. Yet it appears that the program does not scan for factors that would make a person sensitive to cold temperatures.

Perhaps the lack of understanding by courts and computer programs about prisoners who do not want air conditioning has its origins in the very different way prisoners and non-prisoners experience it. To a non-prisoner, a too-cold temperature is easily remedied by turning up the thermostat or grabbing a sweater. Those options are not available to the incarcerated, of course. What for a free person is a brief and minor annoyance can be sheer day-and-night misery for those behind bars.

Among TDCJ prisoners in the Cool Bed non-program, the ECB at the Lewis Unit in Woodville is known for its especially harsh conditions. There, a very rural location – which makes it difficult to find staff and less likely to receive oversight – combined with a culture of violence and oppression by both staff and prisoners has created a prison hellhole that is both miserable and deadly. As always, prisoners pay the price. And the price, in this case, is abuse that is sometimes fatal.

The guard culture at Lewis ECB is regularly reported to be openly violent and aggressive. One guard captain assigned there was overheard bragging to other guards about her "record-breaking" use of chemical agents. Guards have openly threatened prisoners with beatings for such offenses as "talking back" or not moving fast enough.

All ECBs have holding cages in various locations. These three-foot-by-four-foot cells have no furnishings, no toilet, no water. They are intended to briefly contain a high-security prisoner who is waiting to be processed into the ECB or waiting on a health care provider. At Lewis, though, they were used as housing, with prisoners living in holding cages for days and even weeks. This practice went on for years until *Reuters* and *Texas Public Radio* published articles about it in February 2023. The reaction to the bad publicity was swift, and the holding cages are no longer being used to abuse prisoners at the Lewis ECB. But no TDCJ staff was disciplined or fired for the abuse or the related contemporaneous practice of having incoming prisoners sleep on the floor of the intake area hallway without a mattress for days.

Even greater brutality resulted in the death of Jacinto De La Garza at the Lewis ECB on November 11, 2021. Del La Garza, 26, set a fire in his cell, probably to protest not being given sufficient out-of-cell time. Cody DeGlandon, an inexperienced guard, called for Sgt. Danna Warren to authorize opening Del La Garza's cell door. But Warren reportedly told him, "I don't care if he dies." And that is exactly what happened – Del La Garza remained in his cell for over a half an hour while the flames climbed halfway up the door. After about 45 minutes, a lieutenant arrived with a team of guards and told them to open the

cell door. Smoke billowed out while they retrieved Del La Garza's body. "One of his thick rubber shower shoes was melted onto his foot," according to prisoners who witnessed the events.

TDCJ investigators initially said Del La Garza died of a heart attack. They later amended the cause of death to smoke inhalation. The sergeant was fired, the lieutenant resigned, as did DeGlandon, who noted that he "spent a year in Iraq with the Army and everyone came back alive, and I spent two months in prisons and this happened."

The attitude displayed by Lewis staff in the Del La Garza and holding cell incidents is typical of the guard culture that has developed within the isolated and violent world of ECBs when they were used exclusively as super segs. Many of these guards are quick to use a baton or pepper spray, and they couldn't care less about the welfare of the prisoners housed there, many of whom are verbally or physically abusive to prison staff.

This attitude and short staffing have reportedly resulted in a virtual takeover of the Lewis ECB by street gangs, who enforce their own rules and openly deal and use drugs – even in the dayroom, right in front of surveillance cameras. Multiple prisoner deaths have been recorded and chalked up to homicide, suicide or drug overdose. For instance, in March 2023 alone, the ECB experienced three prisoner deaths. Two were being investigated as possibly involving drug overdoses, while the third was being looked into as a suicide or possible homicide.

On January 6, 2023, Lewis ECB prisoner Jason Mark Ryder killed his cellmate, Danny Luken, who was much smaller and much older. Ryder had reportedly threatened previously to kill any old man they put in the cell with him. Luken had been pleading for help from ECB staff for days to no avail.

On August 5, 2022, an unnamed Lewis ECB prisoner was murdered and his corpse hanged, in an apparent attempt to pass it off as a suicide – which succeeded, until puncture marks were found under the noose, and the cause of death was changed to homicide.

Unfortunately, the Lewis ECB is not alone at the bottom of the super seg barrel. Prisoners interviewed for this article who have been there and at the ECBs in the Allred Unit, Estelle Unit and Stiles Unit report that conditions are just as bad in all of them.

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Where Are We Now?

It is difficult to tell how effective the Cool Beds non-program has been, since it has not been in effect for very long and has yet to house all of the prisoners TDCJ deems heat sensitive. What is clear is that prisoners are still dying of excessive heat, and TDCJ is still paying awards and settlements in lawsuits brought by their survivors. That, as much as the Pack Unit lawsuit, motivated TDCJ to do something about its heat sensitive charges.

For instance, in March 2019, Texas paid \$253,000 to settle a lawsuit brought over the heat-related death of 36-year-old Quintero Devale Jones at the McConnell Unit. The plaintiffs were represented by Scott Medlock of the Edwards Law Group, the same firm that represented the Pack Unit plaintiffs. *See: Jones v. Livingston*, (U.S.D.C. S.D. Tex), Case No. 4:17-cv-00335.

A report in the *Journal of the American Medical Association* found that 13% of Texas prisoner deaths during the warm months in 2001 through 2019 were attributable to excessive heat. That was 30 times greater than the percentage of heat-related deaths in the overall U.S. population during those same months.

But Texas is not prepared to throw in the towel. When a medical examiner gave a preliminary autopsy report blaming “environmental hyperthermia” for the December 2018 death of Michael Unit prisoner Robert Earl Robinson, 54, TDCJ fought back, claiming hyperthermia was impossible because Robinson was housed in an air-conditioned cell. However, the final autopsy report also listed the cause of death as hyperthermia. It occurred during a statewide heat wave when the high temperature hit 103° F around the prison. Nonetheless, TDCJ left Robinson’s name off its list of self-reported heat-related prisoner deaths in 2018.

Conclusion

The problem of dangerous heat in Texas prisons will likely not be solved until the state bites the bullet and air conditions all its prison units. The use of former ad seg and super seg cells to house heat sensitive prisoners is hopefully just a stop-gap measure. Still Texas needs to do more to treat those minimum-custody prisoners now stuck in the former segregation housing at the custody level they have earned. Otherwise, horror stories will continue to emerge from the ECBs and ad seg buildings.

Some easily-implemented, low-cost remedies include setting the “cool beds” air conditioning temperature at 75° F, which is the recommended temperature for all public buildings – and 15 degrees warmer than the frigid ECBs. Also, only prisoners of similar age and custody level should be housed in the same pod. Cell door tracks could be modified to allow a padlock to be used by minimum custody prisoners to control the opening and closing of their own cells during the day. Or prisoners could simply be allowed to opt out of the cool beds scheme. And why can’t minimum-custody cool bed prisoners eat in the regular prison dining hall? Whether TDCJ will implement any of these reforms remains to be seen.

The stakes are high. According to the *Texas Tribune*, 41 TDCJ prisoners have died since 2023’s heat wave began. Over a dozen were under 40. Yet TDCJ insists that no Texas prisoner has died from excessive heat in over a decade.

Sources: *Houston Chronicle*, *Houston Public Media*, *JAMA Network*, *KFDM*, *Texas Public Radio*, Texas A&M University, *Texas Tribune*

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From the Editor

By Paul Wright

As summer winds down our cover story reports on the impact of extreme heat on Texas prisons; in the next few months we will report more on what the heat did this summer in American prisons. For decades now *Prison Legal News* has been the only publication highlighting and reporting on the intersection between the environment and mass incarceration as part of our Prison Ecology project. As this issue of *PLN* is in production news reports show Hurricane Hilary bearing down on the Southwest US with projections of flooding and massive rainfall. Those same reports are silent about government plans to evacuate or protect prisoners or what steps will be taken to minimize the impact on prisoners.

I have previously noted the cascading effect multiple bad policy decisions have had: first lock up more people and a higher percentage of a nation's population than has ever been done in human history; then build hundreds of prisons in remote, rural areas far from population centers to serve as something of a half assed jobs program for poor, rural white communities; make sure a lot of these prisons are not just in the middle of nowhere but also on abandoned mines, toxic waste dumps, flood plains, seismic zones, deforested woodlands, sensitive environmental areas, etc. Then act really surprised when it is difficult to staff the prisons because no one with anything going for them wants to live in the middle of nowhere and then realize that prisons collapsing as mines settle, jails exploding as methane leaks into them, elevated cancer rates from ash fields and uranium tailings, flooding, and wild fires means there is a reason not to build expensive buildings in these areas. And of course, none of this is insured because who would insure such bad building decisions?

In the states of the former confederacy, like Texas, Florida, etc. these policy decisions are further compounded by decisions to inflict pain and suffering on prisoners by deciding not to air condition the prisons. In addition to increasing the misery and the death rate for the prisoners, it also likely compounds the difficulty of hiring guards to work in the prisons, it also increases the wear on buildings and makes their usable life spans much shorter. In many states, pris-

ons are drawing from the same job applicant pool as low wage employers like Walmart. But at least Walmart is air conditioned.

Since Hurricane Katrina hit New Orleans in 2005, we have almost two decades of experience with catastrophic weather events on prison and jail populations yet the governmental response tends to be the same: lock everything down and hope for the best. That is the universal response whether the state is Oregon, California, New York, Florida, Texas or others. One observation after 33 years of reporting on prisons and jails is that prison and jail officials do not seem to be very good at doing anything besides locking people in cages and keeping them there. They do poorly with medical care, education, rehabilitation, management, etc. So expecting them to do any better with disaster management and planning is likely a big stretch as well and not a big surprise that they do not excel at it.

It is still early in the presidential election season and the Republican primary sees Florida Governor Ron DeSantis vying for votes by attempting to be the most fascistic of the Republican candidates. As this issue of *PLN* goes to press Florida is preparing to execute its 6th prisoner so far in 2023. As we saw with President Trump's massacre of federal death row prisoners in 2020, and Arkansas death row prisoners in 1992 when Bill Clinton was running for president, it is not good to be on death row when politicians are running for office or reelection and killing prisoners is viewed as a great vote getting strategy.

DeSantis has taken some criticism for saying that "slavery was a good thing" because the Florida education department now mandates that students be taught "how slaves developed skills which, in some instances, could be applied for their personal benefit." DeSantis has doubled down on this in his campaign and while some media elements are critical, what is amazingly hypocriti-

cal is that when government and prison officials say the same thing about prison slavery and enslaving prisoners and paying them little or nothing for their forced labor (and Florida prisoners have no legal means of earning money unless paid nominal slave wages by the PRIDE prison industries boondoggle) the media pretty much nods along in acceptance. While no one, except apparently Desantis and his flunkies, thinks of chattel slavery as a jobs program, plenty seem to think of prison slavery as just that.

Slavers have always tried to have a narrative about how great slavery is for the enslaved. Little has changed in the past 500 years. What is more interesting is how little attention Desantis's record as a prosecutor at the Guantanamo Bay concentration camp in Cuba as a Navy lawyer has garnered. The torture and abuse of prisoners there is well documented. So what role did he play in it? Except for the whistleblowers exposing torture like Chelsea Manning, John Kiriakou, Julian Assange, who have gone to prison; all the actual torturers and their commanders have had long and lucrative public careers.

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Four Hawaii Prison Guards Sentenced for Beating Prisoner – But One Wins Back-Pay

by David M. Reutter

On January 17, 2023, the last of four former Hawaii prison guards convicted of beating a state prisoner was sentenced to federal prison. The sentences ranged from one to 12 years. Three of the guards – Jason Tagaloa, 31, Craig Pinkney, 38, and Jonathan Taum, 50 – were convicted by a federal jury in July 2022 of assaulting the prisoner in June 2015 at the Hawaii Community Correctional Center; they also were convicted of trying to cover up the crime by submitting false reports between June 2015 and December 2016.

The prisoner, Chawn Kaili, suffered a broken jaw, nose, and eye socket from the two-minute beating in a prison recreation yard. Surveillance video captured Kaili being escorted across the recreation yard by one guard, who was then joined by the other three. Though the prisoner was nonviolent, they took him to the ground and beat him.

Tagaloa “delivered the most vicious punches and kicks to the victim’s head,” prosecutors said. Pinkney held the pris-

oner down as Tagaloa delivered the beating. Prosecutors said Taum supervised the beating and orchestrated the conspiracy to cover it up.

The fourth guard, Jordan DeMattos, 31, pleaded guilty in December 2020 and testified against the others during their three-week trial. All four guards were terminated by the state Department of Corrections (DOC) in 2016. They were then indicted in June 2020 in federal court for the District of Hawaii.

Taum was sentenced to 12 years in prison on November 15, 2022. Tagaloa was sentenced to eight years on December 5, 2022. Pinkney was sentenced to five years on January 5, 2023. In addition to their prison terms, all three former guards were ordered to serve three years of supervised release and pay a \$300 special assessment. *See: United States v. Tagaloa*, USDC (D.Haw.), Case No. 1:20-cr-00044.

DeMattos was sentenced to one year in prison on January 17, 2023, followed

by two years of supervised release; he, too, was ordered to pay a special assessment of \$300. *See: United States v. Demattos*, USDC (D.Haw.), Case No. 1:20-cr-00121.

Incredibly, after Taum was sentenced, the state Labor Relations Board on February 21, 2023, ordered DOC to reinstate him with six years of back pay, plus a \$10,000 penalty, after finding the training officer who prepared a use-of-force report for his dismissal lied about her credentials in a bid for promotion. J. Marte Martinez is on leave, charged with perjury, tampering with a government record and unsworn falsification to authorities. Her trial has been pushed back from June 2023 to January 2024. Meanwhile, state Attorney General Anne E. Lopez has promised to appeal the Labor Board ruling. 🗞️

Additional sources: *Honolulu Civil Beat*, *KHNL*, *New York Times*



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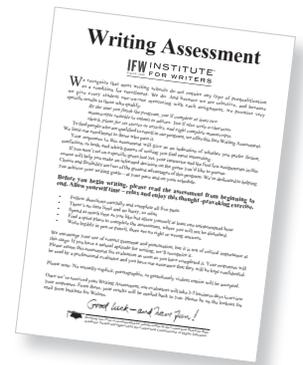
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Sheriffs Offered Caribbean Cruises and Florida Retreats As Part Of Jail Telecom Contracts

by Hayden Betts

*This article originally appeared in **The Appeal** on October 17, 2022. It is used here with permission. See the original with supporting documents at: <https://theappeal.org/smart-communications-cruises-trips-florida/>*

Members of five sheriff's offices across the country were offered cruises from "Tampa Bay to the Caribbean" as part of jail telecommunications contracts with the vendor Smart Communications, according to documents obtained by The Appeal.

Smart Communications is a for-profit company that sells communications services including phone, video call, and email-like messages to people incarcerated in publicly funded prisons and jails. It contracts with the public agencies that operate those facilities, often sheriff's offices, to secure the exclusive right to operate within them. Its Florida-based CEO and founder, Jon Logan, is already controversial among critics of the criminal legal system—Logan has faced scrutiny for posting lavish images of himself on Instagram on board his yacht, driving luxury cars, and wearing expensive suits, among other high-end pursuits funded by selling expensive communications services to incarcerated people. In the Fairfax County Adult Detention Center, Smart Communications charges people \$3.00 for a 30-minute video call, \$.50 per electronic message, and \$1.00 per electronic image.

Activists and families of incarcerated people have long criticized Smart Communications' digitized mail services—which scan hard copies of prison mail, create searchable databases of imprisoned people's communications, and prevent imprisoned people from receiving original versions of items like birthday cards or drawings from children—as invasive and lacking humanity.

But some of the company's other offerings are sure to irritate legal reformers: trips to Florida and cruises that set sail from Tampa Bay. The sheriff's offices of Washoe County, Nevada; Fairfax County, Virginia; Webb County, Texas; Brazos County, Texas; and Dawson County, Georgia—five counties for which The Appeal was able to obtain contract data—gave Smart Communications contracts to operate

telecommunications services in jails. As part of the bidding process, Smart Communications' proposals promised "complimentary rooms" for sheriff's department staff on an "Annual Technology Training Summit Cruise" that "sails out of Tampa Bay to the Caribbean" each year. The documents say the cruise provides sheriff's office staff with "accredited workshops and training classes."

In a 2021 email obtained by The Appeal, a Smart Communications employee offered employees of the Dawson County Sheriff's Office a free trip to the company's annual training summit in Tampa, Florida from April 6 to 8 of that year. That event, however, did not appear to include a cruise ship.

Representatives for the Fairfax County, Washoe County, Dawson County and Brazos County Sheriff's Offices said that members of their departments have not attended and will not be granted permission to attend any Smart Communications cruises, despite their contracts allowing them to do so. The Webb County Sheriff's office did not respond to multiple requests for comment.

In some cases, contracts included language explicitly verifying an office's right to complimentary tickets to the cruise as described in Smart Communications' vendor proposal. The Fairfax County Sheriff's contract, for example, reads: "Customer shall have the capability to send up to 8 individuals... to attend the Annual Training Summit." A proposal from Smart Communications stated that the complimentary tickets were at least an \$84,000 value.

In other cases, the right to attend the training cruise was not explicitly stated in the contract. The Washoe County contract mentions that Smart Communications will "Provide initial and on-going training for... staff."

In at least one case, Smart Communications' cruises even drew scrutiny from a rival prison telecom provider. In an email obtained via a public records request, Bill Pope of NCIC, a different firm that operates phones in prisons, contested Washoe County's award of its telecom contract to Smart Communications. Pope complained

to a county employee that he was told that he was not allowed to give out free binders to county staff, as they would be considered "gratuities."

"In Smart Communications' RFP response... cruises valued up to \$105,000 have been offered to Washoe County employees and family members," Pope wrote. "Would this not also be considered a gratuity?"

The offices mentioned in this story may not represent all sheriffs entitled to Smart Communications' trips. The company contracts with at least 100 government agencies according to its website. Of that number, The Appeal reached out to 26 of those agencies. The Appeal was able to obtain documentation for five government counties.

The jails in those five counties—the Fairfax County Adult Detention Center, the Washoe County Detention Facility, the Brazos County Detention Center, the Webb County Jail, and the Dawson County Detention Center—incarcerated approximately 3,000 people in 2018, according to federal data. According to a report from the Ella Baker Center for Human Rights, more than one in three families of incarcerated people go into debt to pay for calls and visits to prisons.

Asked to comment on Smart Communications' promises of Caribbean cruises in its vendor proposals and telecom contracts, elected officials and activists were alarmed.

Virginia State Delegate Patrick Hope, who represents Virginia's 47th District, which includes the Fairfax County Sheriff's office, told The Appeal that "[c]omplimentary Caribbean cruises are not complementary. These so-called 'training summit cruises' are paid for through a mark-up in the jail contract. This is a gross mishandling of funds that ... come mostly from low-income families... It may be legal but it's a loophole in the law that should be closed."

Bianca Tylek, Executive Director of Worth Rises, a nonprofit with a long history of activism on prison telecom issues, told The Appeal that the offers of cruises are troublesome.

"In some senses this is not surprising," she said. "For many sheriffs, kickbacks are almost an accepted part of practice. Kickbacks from these companies are like legal bribery. But there's something particularly grotesque about the idea of offering vacations on the backs of people who are incarcerated and suffering."

In response to an inquiry from The Appeal, Logan, Smart Communications' CEO, stated that the technology summit cruises have never occurred.

"There has never been a technology summit cruise," he said via email. "So, I'm not sure what you could write about something that has never happened?" Asked why cruises are mentioned in proposals to government agencies if the "cruise has never happened or is not going to happen," Logan did not respond directly.

He added instead that the company has "never done a summit cruise. We do however have technology summits all the time that we provide to agencies, both customers and non-customers of Smart Communications... We view this as a win-win to inform agency leaders on new technologies and also learn what pain points they have so we can help innovate new technologies."

Logan added that The Appeal was "welcome to come visit me at our headquarters in Florida and join a technology summit and be part of the future of incarceration innovation and reform with us."

Smart Communications' offer of Caribbean cruises is one of the most lurid examples of a decades old phenomenon of prison and jail telecom providers offering kickbacks as part of government contracts.

Wanda Bertram, a spokesperson for the Prison Policy Initiative, told The Appeal that the company's actions are indicative of a larger trend within the prison contractor industry.

"Smart Communications is the most shameless actor in an industry full of companies that have become increasingly more creative in the kickbacks they offer to jails," she wrote.

Shawn Weneta of the Virginia ACLU took care to point out that culpability for the system as it exists lies not just with unscrupulous companies, but also with the public officials who continue to contract with them. Speaking about the Fairfax County Sheriff's decision to work with Smart Communications, he alleges, "There's a reason why phone calls in prisons and jails

are so expensive." He added: "And it's not because the vendors who win contracts are providing the best service and rates to poor families. It's because the phone provider has to provide sheriffs and their staff with Caribbean cruises."

Smart Communications is far from the most significant player in prison telecommunications in the United States. It operates in 115 facilities compared to the thousands that for-profit behemoths like GTL and Securus, which offer multiple services including phones, video visits, tablets, and email for incarcerated people, operate in.

In the last few years, several major cities have made prison calls free. Last year, Connecticut became the first state to make calls free entirely. Currently, the FCC can cap the cost of interstate calls, which it has restricted to a maximum of 21 cents per minute, but cannot regulate in-state calls, video, or messaging, which constitute a majority of prison and jail communication. In March a bill advanced out of the U.S. Senate's Commerce, Science, and Transportation Committee that would allow the FCC to address these issues. The Senate

has yet to hold a full vote on the measure.

While the cruises may not actually take place, Logan made it clear that Smart Communications regularly holds training summits. Invitations include all-expense paid offers to attend these summits. These events, Logan assured The Appeal, happen regularly.

An invitation sent to a member of the Fairfax County Sheriff's office includes a picture of a jet ski. Smart Communications' Logan said in a statement that receiving complimentary invitations to such training events are "in no way contingent on doing business with Smart Communications."

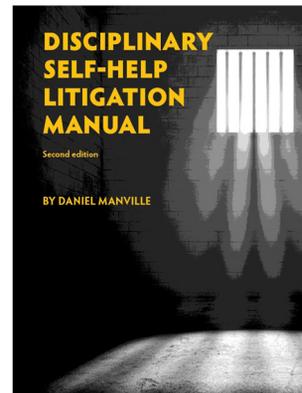
In 2021, a representative for Smart Communications emailed the Dawson County Sheriff's Office in Georgia to offer a "complimentary training event (... including travel, hotel accommodations, meals & excursions) held at our headquarters in Tampa Florida April 6th-8th!" At the end of the message, the company noted that attendees will be "Living the resort life."

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\$1 Million Settlement Reached After Detainee's Suicide in Washington Jail

by David M. Reutter

In November 2022, a \$1 million settlement was reached in a lawsuit filed by the estate of a 23-year-old indigenous woman who committed suicide at Washington's Fork City Jail in 2019. Kimberly Bender took her own life following weeks of alleged sexual harassment by guard John Russell Gray.

The October 2021 federal civil rights complaint alleged that Bender, a Quileute tribal member, had a history of criminal offenses as well as mental health issues, including depression and past suicide attempts. Jail officials knew or should have known that history, the complaint continued, because Bender was in and out of the jail between July and December 2019.

The complaint alleged that while Bender was locked up in July 2019, Gray sexually harassed her with verbal comments, as well as committing sexual misconduct towards two other prisoners – all part of a quartet of victims he was convicted of sexually assaulting, receiving a 20-month prison term in May 2021.

The jail had hired Gray in April 2019, after he was removed in 2018 from Clallam

Bay Corrections Center (CBCC) by the state Department of Corrections for making inappropriate sexual comments during Prison Rape Elimination Act training.

Bender was released from the jail on October 10, 2019. But she was rearrested on November 5, 2019. She made suicidal comments four days later, and she was taken to an emergency room after cutting her arms on November 15, 2019. Her after-care instructions indicated a need to watch for suicidal gestures and attempts. Instead, the jail identified Bender as "low risk for suicide" and "moderate risk for self-harm."

While at the hospital, Bender had told a tribal police officer that Gray made "sexually inappropriate comments and engaged in sexually inappropriate conduct to her," the complaint recalled. Gray "lurked near her cell," the suit continued, and "prevented her from getting rest and sleep." Based upon those complaints, Gray was placed on administrative leave on November 8, 2019. He was subsequently fired in July 2020 and returned to work at CBCC until his arrest.

But Bender's claims could never be further substantiated because she hanged herself in her cell on December 7, 2019. Her estate, represented by attorneys with Rush, Hannula, Harkins & Kyler in Tacoma, filed a federal civil rights complaint alleging violations of the Fourteenth Amendment and state law negligence. It also alleged that a jail health counselor did not believe Bender was suicidal or making suicidal plans.

Of the \$1 million settlement, \$400,000 in fees and \$57,718.32 in costs went to the estate's attorneys; \$7,500 went to the guardian ad litem representing Bender's minor son and \$4,310 for the related fee; and \$530,471.68 went to the claimants, with \$79,570.75 for Bender's mother and \$450,900.93 for Bender's son in a structured settlement that will pay a total of \$1,229,338.54 between July 1, 2034, and January 19, 2046. See: *Gray v. City of Forks*, USDC (W.D.Wash.), Case No. 3:21-cv-05778. 📄

Additional source: *Seattle Times*

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Arkansas Parole Board Denies Release to Sex Offender For Failure to Find Appropriate Housing

by David M. Reutter

On February 2, 2023, the U.S. District Court for the Eastern District of Arkansas dismissed a state prisoner's habeas corpus petition challenging denial of his parole because he did not have approved sex offender housing. While bad news for him, the decision is instructive for any prisoner facing housing restrictions when paroled or on probation.

Charles Isaac Wilson, Jr., is serving a 40-year sentence for a 2010 conviction for delivery of cocaine. In November 2021, the state Parole Board recommended he be transferred from the state Department of Corrections (DOC) to supervision of the state Division of Community Correction (ACC). But that transfer hit a snag because Wilson was convicted in 1983 of rape, which classifies him as a Level 3 sex offender. A transfer to ACC required Wilson to (1) register as a sex offender and (2) stay away from schools and parks.

According to DOC Director Dexter Payne, none of ACC's approved transitional housing facilities had an available bed for

a Level 3 sex offender at that time. There were no family members or friends willing to provide housing for Wilson. He provided two parolee plans to for living arrangements outside transitional housing, but they were rejected.

Wilson then filed his habeas corpus petition, attacking the Parole Board's discretionary decision to deny him release based on the failure to find transitional housing. But the district court found Wilson had no protected liberty interest in the *possibility* of parole, so it dismissed the petition. It also refused to provide a certificate of appealability that would excuse Richardson from paying filing fees to an appellate court, further dimming his prospects. *See: Wilson v. Payne*, 2023 U.S. Dist. LEXIS 18142 (E.D. Ark.).

Housing restrictions keep many sex offenders in prison long after they are eligible for release. Worse, prison rules compelling work for just pennies an hour then force these people into slave labor. But a recent Illinois Supreme Court ruling points to a legal theory that may assist prisoners with

such housing restrictions. In *People v. Kastman*, 2022 IL 127681, that court cited state law to support a finding that the director of the state DOC had authority under the state's Sexually Dangerous Persons Act "to contribute financial assistance to cover the treatment costs and living expenses of a sexually dangerous person on conditional release."

The lesson of *Kastman* is that state laws and rules may already impose duties or obligations for prison officials to assist in providing housing when state law also imposes restrictions on where an offender can live while on conditional release. Reform advocates should also continue to push for laws to ease the burden on this group of people. One place from which it seems prisoners cannot expect much help is the courts; confronted in 2022 with the case of a New York prisoner kept incarcerated and forced to work for low prison wages well past his release eligibility, most justices on the U.S. Supreme Court simply shrugged. [See: *PLN*, July 2022, p.38.]

The Lecturer at the Lockup: Maine Prisoner Is First to Teach College Courses from His Cell

Professor Leo Hylton's class is like almost every other at Colby College in Maine. Students form a circle with their chairs around their professor. His course on prison abolition – the movement to end incarceration – is offered through the school's anthropology department. But there is one thing that sets it apart from any other undergrad class. Experts on prison education say Hylton's class is the first of its kind because he co-teaches the course via Zoom from his prison cell.

Arranging a class to be taught by a prisoner was practically impossible in Maine. Randall Liberty, the sheriff who arrested Hylton 14 years ago, had an instrumental role in clearing the hurdles after he became Commissioner of the state Department of Corrections. First, he granted Hylton permission to earn an associate degree, then a bachelor's, and finally a master's degree.

Hylton had the opportunity to meet his

students in person, an experience he treasures by keeping a cherry-flavored seltzer from the visit. The 6-foot-5, 275-pound prisoner was escorted by armed guards to the college campus in March 2023. A month later, those same students journeyed to the Maine State Prison and saw their professor's home on a tour of the facility.

Hylton has contributed 30 columns to *Mainer* magazine, as well as an autobiographical article regarding trauma. He also contributes often to the journal *Religion*. His sister said, "Leo has worked diligently to rise from a truly dark place. He's now a light in this world again."

Despite his benevolent nature, it is that darkness from which he rose that many people are unable to ignore. In 2008, Hylton and his foster brother stole a car and drove to the home of former Maine lawmaker William Guerrette, from whom they had previously tried to steal a safe. When the lawmaker's handgun

malfunctioned, Hylton beat him with a machete, resulting in life-long injuries. When Guerrette's 10-year-old daughter appeared, Hylton proceeded to slice her to such a degree that when the first officer arrived, he believed her to be dead. The girl required several major surgeries and therapy to relearn how to perform basic tasks after the vicious attack.

Hylton was eventually sentenced to 40 years in prison. There is no parole in Maine, so he won't be released until 2050. State politicians have been trying to bring back parole, for which Hylton advocates as a pathway for all who use their time in prison to better themselves. During his incarceration, Hylton educated himself and improved his relationship with society and with his faith. He and others like him certainly deserve the second chance that parole provides.

Sources: *Mother Jones*; *Maine Wire*

Unyielding Pursuit of Justice or Unfulfilled Promises: Doubts Surround California Habeas Attorney

In a quest to exonerate Abel Soto, his family and friends hired Aaron Spolin, a Los Angeles lawyer who advertises himself as “California’s top-ranked habeas attorney.” Soto and his supporters believe he was wrongfully convicted of a 2003 murder, when he was 19 years old. By 2019, he had spent over a dozen years behind bars when they decided to invest their hopes and \$21,500 to get Spolin to prove Soto’s innocence.

But rather than meticulously investigating the case and presenting compelling evidence, Spolin’s efforts seemed hasty and ineffective, they said. The petition he filed named eight people who could corroborate Soto’s alibi, placing him elsewhere at the time of the murder. But none of them was interviewed, and no sworn declarations were taken and submitted to the court. The petition was swiftly rejected.

Spolin jumped into his business with a heavy marketing effort in 2019, when California passed AB 2942, expanding review of sentence lengths, and SB 1437, ordering resentencing for anyone convicted under the state’s felony murder statute who did not directly participate in the killing. Then 33, the attorney promoted himself to prisoners and their families via direct mail, also buying up websites with search terms they might use. The resume of a former office manager claimed Spolin’s firm signed up to 2,000 clients, at fees running from \$14,000 to over \$40,000.

But a review by the *Los Angeles Times* found Spolin’s filings often missed key elements, like sworn declarations from potential alibi witnesses that would have

been crucial in establishing Soto’s whereabouts on the day of the crime. In other cases, Spolin argued for new trials without retaining expert witnesses to bolster his claims. Top habeas experts contend that such comprehensive evidence is essential to sway judges to grant evidentiary hearings.

Spolin maintained that his unconventional approach would eventually force judges to lower the bar for such hearings and allow witnesses to testify openly in court. However, this strategy was not always conveyed explicitly to his clients, they claim.

“That would’ve been a red flag for me,” insisted Rossia Ivey, who charged part of Spolin’s hefty fee on a credit card, trying to overturn the murder conviction of her brother, Alex Ivey, based on review of a video not seen at his trial.

Alameda County Superior Court Judge Morris Jacobson rejected the petition Spolin filed for Ivey in 2021 because it “include[d] no exhibits or declarations from a video expert alleging what forensic video techniques would uncover in the video in question.” Rossia Ivey said that her family “definitely would not have paid \$28,000 for that.”

Another unsatisfied client, mail carrier Angelia Spikes, put in overtime to hire Spolin to free her brother. But like the petition drafted for Soto, the one for Demond Spikes merely mentioned that an alibi witness existed, without naming him or giving any other details. That petition was also rejected.

“I would never have given \$20,000 for that. Hell no,” Angelia Spikes said.

“It Needs to Stop Now”

Spolin stuck to his guns, claiming his unusual strategy was part of a brave crusade for change, not unlike the fight for gay marriage. What’s especially surprising about his large client list is that California anticipated a rush of petitions when it passed the laws, so both included funds for public defenders to work cases that would be filed. One, Deputy Los Angeles County Public Defender Karen Nash, said that Spolin “is getting rich off the most vulnerable people” with “false hope that could really hurt them.”

“It needs to stop now,” she said.

The quality of his firm’s filings may have suffered by delegating them to contract lawyers with little to no prior experience in appellate law – including some in the Philippines earning just \$10 an hour. The lone Spolin case reported by *PLN* was a loss at the U.S. Court of Appeals for the Ninth Circuit in 2022. [See: *PLN*, Dec. 27, 2022, online.]

Soto’s family was fortunate to cross paths with a volunteer working to exonerate another man convicted in the same shooting case. Discovering deficiencies in the habeas petition prepared by Spolin, Jessica Jacobs Dirschel stepped in to provide guidance to Soto’s family on how to seek a refund. Ultimately, they managed to get most of their money back, according to a family friend who also worked on the case, Requel Decker.

“We gave it back because we did not want to trouble with these people who clearly seemed troublesome,” Spolin said.

Soto’s new attorneys, led by retired public defender Ellen J. Eggers, have presented new exonerating evidence in his case, including a recorded interview with a key trial witness that a diligent habeas attorney should have turned up, she says.

George Cardona, Chief Trial Counsel for the state bar, “has assigned an entire team of prosecutors and investigators to the matter” of the accusations against Spolin, according to one of the bar’s prosecutors, Akili Nickson. *PLN* reported Cardona’s successful effort to shut down an unlicensed legal service operated by a former prisoner. [See: *PLN*, Sep. 2022, p.61.]

Los Angeles County District Attorney George Gascón said that none of the petitions Spolin’s firm filed for resentencing has succeeded there. Of the “hundreds” of other petitions Spolin filed for commutations from Gov. Gavin Newsom (D), the *Los Angeles Times* found none had been granted.

“A lot of us don’t know the law, a lot of us are vulnerable,” said Stephanie Charles, who paid Spolin’s \$19,000 fee to free her brother from a prison sentence he is serving for a 2002 conviction for robbery and attempted carjacking. “We just want someone to help us solve the problem and not take advantage of us,” she said. 🗨️

Source: *Los Angeles Times*

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After \$300,000 Settlement for Detainee's Death, Texas County Looks to Replace Jail

Using detainees' money to push forward with plans to replace Texas' Nueces County Jail, Sheriff J.C. Hooper tapped a commissary fund in April 2023 to spend up to \$220,770 for an outside consultant to prepare a study for a new lockup, after the current one failed its last two state inspections.

The cost of the study is not much less than what the county paid the family of a jail detainee who died during a violent cell extraction by jailers in March 2018. Daniel Emilio Carrillo, 27, was being held at the jail when he experienced a "prolonged psychiatric event," according to a complaint later filed on his behalf.

He was booked into the jail on a probation violation on February 12, 2018; the underlying charge was burglary of a habitation – Carrillo was foraging for metal at a relative's abandoned house. During the three weeks he spent at the jail, his mental health deteriorated as he experienced withdrawal from Xanax, which he used to treat his anxiety. One jailer described him as having an "altered state of mind." In a phone call to his father, Carrillo said he thought the guards were setting him up to fight with other detainees.

Carrillo, who was morbidly obese, had a history of substance abuse and mental illness, including schizophrenia, bipolar disorder and depression. His obesity was a serious medical condition associated with an increased risk of heart disease, stroke and cardiac arrest.

He was seen nude and crying in his cell on March 3 and 4, 2018; he began having a

mental breakdown, speaking nonsense and at one point using his mattress to block the view into his cell. Jailers responded to Carrillo's mental health crisis by yelling at him and taunting him; one reportedly threatened to "beat his ass."

Then, on March 5, 2018, without consulting medical or mental health staff, four guards – later joined by another jailer and a supervisor, Lt. Thomas Lowke – performed a cell extraction. During that process Carrillo was Tasered and severely beaten, suffering a broken nose. The six guards pinned him to the floor, putting pressure on his obese body while he was handcuffed behind his back.

Carrillo stopped breathing and became unresponsive; it was only then that the jailers sought medical assistance. When nurses arrived, they found Carrillo had defecated and urinated on himself and his lips were blue. According to a prisoner who witnessed Carrillo's body being removed, his "face looked like it got hit by a truck and it was covered in blood." Sadly, Carrillo was due in court for a probation revocation hearing less than 12 hours after he died. Lt. Lowke, it was later learned, had not yet taken a use-of-force training course. The medical examiner determined the cause of death was homicide.

For such a cascade of errors, Carrillo's parents filed a wrongful death suit in federal court for the Southern District of Texas. The complaint noted "the purported rationale for the [cell] extraction that was provided to State investigators was to move [Carrillo] 'closer' to medical personnel," even

though no medical staffers were informed or summoned prior to or during the cell extraction – and despite the fact that while in his cell he did not pose a threat to others.

The complaint also noted that use of a Taser greatly increased Carrillo's risk of sudden cardiac arrest, citing a May 2012 article in *Circulation*, a journal of the American Heart Association. Additionally, Carrillo's parents alleged violations of American Correctional Association (ACA) standards, Texas Commission on Law Enforcement training, the state Department of Criminal Justice's use-of-force plan and the American Bar Association's standards for treatment of prisoners. Claims of excessive use-of-force, supervisory liability, municipal liability and inadequate medical care were raised, plus a claim under the Texas Tort Claims Act.

The case settled for \$300,000, including attorney fees, on January 12, 2021. The Carrillos were represented by Corpus Christi attorney John T. Flood. See: *Carrillo v. Buendia*, U.S.D.C. (S.D. Tex.), Case No. 2:20-cv-00028.

This was not the first jail death caused by guards purportedly trying to "help" a detainee. Sheriff Hooper also didn't explain how a new jail would improve survival chances for others like Carrillo, though he made reference to court delays that had left at least one detainee "in this jail almost six years, in a county jail, waiting for his day in court" because he was unable to post bail. ❏

Additional sources: *Corpus Christi Caller-Times*, *KIII*

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A History of Success in Wisconsin

Appeals:	Homicide overturned, 2014
Postconviction:	37.5-year sentence vacated, 2015
Habeas:	Homicide overturned, 2020
Civil Rights:	\$2.4 mil on guard's sex assault, 2019

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LGBTQ+ Detainees at Rikers Island Suffer Under Mayor Adams

by Kevin W. Bliss

On June 8, 2023, the New York City Council passed legislation to ensure transgender, gender-nonconforming, non-binary and intersex (TGNCNBI) detainees and prisoners at city lockups are provided with services designed to make their reentry into society easier and more successful.

But nothing comes for free, including these policy changes, which resulted from a five-month investigation by *New York* magazine that revealed Mayor Eric Adams (D), a former captain in the city police department, pushed out leaders in the city Department of Correction (DOC) who were supportive of sexual minority detainees, drafting a policy directive to assign more TGNCNBI detainees at the city's Rikers Island jail complex into housing that aligned with their gender identity. That has now been discarded.

But the new legislation is the first passed of three proposals to reverse that reversal. Both of the remaining pending bills will also protect incarcerated TGNCNBI people, who experience some of the highest rates of sexual violence.

Under former Mayor Bill DeBlasio (D), a transgender housing unit was opened at Rikers Island in 2015. Three years later DeBlasio directed DOC to house detainees in units consistent with their gender identity, since "[i]t's the city's responsibility to protect the rights and safety of all New Yorkers, and that means protecting transgender individuals in city jails as well."

In spring 2019, DOC launched a new LGBTQ+ Initiatives Unit to ensure protection of the rights of sexual minorities. Then-DOC Commissioner Vincent Schiraldi hired Elizabeth Munsky to head the unit. She was backed by two service coordinators, Kels Savage and Robin Robinson. Between them were years of experience in dealing with gender violence, LGBTQ+ youth and advocacy programs.

Suddenly, sexual minority detainees had access to resource fairs, re-entry services and legal advocacy. Incidents of gender identity violence at the jail declined. Preferred housing requests got more consideration.

But when Adams was elected mayor, he replaced Schiraldi with Louis Molina, who shelved many of the new policies and programs. He also removed supportive staffers, inhibiting transfer requests for more secure housing. Access to gender housing information that had previously been granted to Munsky's unit was suddenly denied.

Savage resigned in protest in April 2022. Robinson followed her out the door the following June. "It's like they didn't hear what we were saying," Savage recalled.

"The priority is not the safety of all people in custody, especially with the LGBTQ+ community," Robinson added, "but to protect the image of Rikers Island, the [DOC]."

That leaves Munsky as the sole remaining staffer in DOC's LGBTQ+ unit. Over the past year, Rikers Island has suffered an increase in gender identity violence and violations of LGBTQ+ rights, advocates claim. 🗨️

Source: *The City*

Prison Education Guide

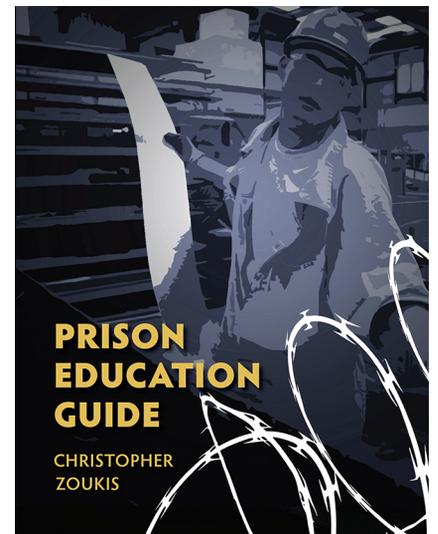
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Life Sentence for Alabama Jail Escapee After Suicide of Guard Lover Who Helped Him

On June 8, 2023, a judge in Alabama's Lauderdale County handed a life sentence without parole to a state prisoner for escaping the county lockup with his jail-guard lover, who then committed suicide as pursuing police closed in. Casey White, 39, pleaded guilty to felony escape in a deal with prosecutors, who dropped a capital murder charge that might have sent him to death row.

White was serving a 75-year prison sentence for attempted murder with the state Department of Corrections (DOC) when he was transferred to the Lauderdale County Detention Center in 2020 to face trial for a 2015 murder in the county. Not quite two years later, jail Assistant Director Vicky White, 56 – who was no relation – hurriedly arranged her own retirement and sold her home at a steep discount for cash to finance the prisoner's escape on April 29, 2022. Their getaway triggered a nearly two-week manhunt before cops

caught up with the couple near Evansville, Indiana, running their car off the road on May 9, 2022. Vicky White then fatally shot herself.

"You think you know someone," county Sheriff Rick Singleton said of his dead jailer, whose 17-year career was spotless. "And it turns out you really don't know them at all."

Casey White must still stand trial in August 2023 on his original charge for killing Connie Ridgeway, 59, at her apartment in August 2015. He sent a letter from his cell at DOC's William Donaldson Correctional Facility in June 2020, confessing to the murder and claiming he was paid to do it, though not naming by whom. No one else has been charged in that crime, but prosecutors announced they would not seek the death penalty for White in that case.

Though confessing to Ridgeway's murder brought Casey White to the jail where Vicky White worked, Sheriff Singleton insisted the two had no prior relationship.

However, Casey White reportedly began recanting his confession as soon as cops pulled him from the getaway car where his dead "wife" slumped in the passenger seat.

He also has the remainder of his original sentence to serve for a wild night across northern Alabama and southern Tennessee in December 2015 that included a home invasion, a pair of carjackings and several shootings, killing a dog and injuring a woman.

Hours before sentencing for his felony escape plea, White gave a TV interview and claimed that he murdered another woman and her baby girl in Evansville before his recapture. Law enforcement authorities dismissed the confession as a ploy to secure a prison transfer, saying no missing person reports in Evansville matched the timeline of White's escape. 🗞️

Sources: *AP News, Birmingham News, CBS News, CNN, Vice*

\$8.25 Million Verdict Against Former Colorado Sheriff for Detainee's Sexual Assault During Jail Transfer

by Matt Clarke

On October 4, 2022, a federal jury in Colorado awarded \$8.25 million to a woman taken by a former sheriff to his home and sexually assaulted as he was transporting her to another jail.

Peatinna Biggs, 46, who is developmentally disabled, was in custody of Sedgwick County when then-Sheriff Thomas Hanna decided to transport her to the Logan County Jail in August 2016. Before leaving the Sedgwick lockup, he had her change into street clothes. Then, using his personal pickup truck – in violation of department policy – he didn't take her directly to the other jail. Instead Hanna allegedly drove to his house and ordered Biggs to go inside.

There he allegedly offered her \$60 to have sex with him, and when she refused, he ordered her to undress, removed some of his own clothing and sexually assaulted her. He then threatened her, she said, vow-

ing she would go to prison for the rest of her life if she told anyone about the sexual assault. Then, at last, he took her to the Logan County Jail.

Sedgwick County Deputy Sheriff Larry Neugebauer witnessed as Hanna had Biggs change into street clothes, which was highly unusual for a prisoner transport. Neugebauer also spotted the Sheriff's pickup parked at Hanna's house, as Neugebauer was driving back from a lunch break at his own home.

Neugebauer reported his observations 12 days later to the Logan County District Attorney's Office, which opened an investigation. That led to criminal charges against Hanna for sexual assault on an at-risk adult, as well as sexual misconduct in a correctional setting, kidnapping and soliciting a prostitute. Hanna, then 45, was convicted of official misconduct in Logan County court on May 8, 2018. He had already been

Stop Prison Profiteering: Seeking Debit Card Plaintiffs

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removed from office in a recall election the year before.

Denver attorney Hollis Ann Whitson of Samuel & Whitson was appointed guardian ad litem for Biggs, when she was found to be legally incompetent. Aided by fellow Denver attorneys David N. Fisher and Jane H. Fisher-Byrialsen of Fisher & Byrialsen, she brought a federal civil rights action under 42 U.S.C. § 1983, accusing Hanna of violating Biggs' civil rights and seeking to extend supervisory liability to the Board of County Commissioners, as well as Neugebauer and his successor,

Carlton Britton, who assumed office when Neugebauer resigned in March 2017. However, all defendants except Hanna were dismissed from the lawsuit prior to trial. See: *Whitson v. Bd. of Cty. Comm'rs of the Cty. of Sedgwick*, 2020 U.S. Dist. LEXIS 269284 (D. Colo.).

Following two-days of proceedings, the jury then found Hanna liable for excessive use of force, cruel and unusual punishment and false imprisonment. For that, Biggs was awarded \$3.25 million in compensatory damages and \$5 million in punitive damages. See: *Whitson v. Bd. of Cty. Comm'rs of*

the Cty. of Sedgwick USDC (D.Colo.), Case No. 1:18-cv-02076.

While the judge was reading the verdict, Biggs was heard repeatedly saying, "Oh my God, I got my justice back, I got my justice back, they believed me."

Meanwhile, Sheriff Britton also resigned in April 2022. In an election held the following year, county voters hired his permanent replacement, current Sheriff Matthew Crowder (R). 🗳️

Additional source: *Denver Post, Julesburg Advocate*

Calls for California Sheriff's Department Oversight After Jail Deaths, \$30,000 Settlement for Botched Traffic Stop

By January 7, 2023, after the second death in the county jail in just over 10 weeks, a grassroots nonprofit calling for civilian oversight of the San Mateo County Sheriff's Department (SMSD) had rounded up support from the county Board of Supervisors as well as the councils of several cities and 16 of their current or former mayors, plus 23 other community organizations.

The announcement by Fixin' San Mateo County came after SMSD released nothing more than bare facts about the deaths of Maycarla Fernando Sulapas, 25, who died after a "medical emergency" on January 7, 2023, and Matthew Britton, 34, who was found dead in his cell on October 27, 2022, of what SMSD called "likely... natural causes."

The nonprofit's skepticism likely traces back at least to February 2021, when SMSD also offered no comment on a \$30,000 payment made to settle claims that deputies assaulted a local man whose domestic dispute ended in a botched traffic stop, after which he was manhandled and jailed on charges later dropped.

Michael Juricich was walking along a San Carlos street on December 1, 2018, when he passed a car driven by his domestic partner, Michelle Gore. She made an illegal U-turn and was pulled over by SMSD Dep. David Brandt. In its analysis of the lawsuit Juricich later filed, the federal court for the Northern District of California described what happened next:

"As Brandt was conducting the traffic stop, a pedestrian who would not normally be involved in a motor vehicle traffic stop

(Juricich) walked in front of a still moving patrol car to the driver's side next to traffic on a busy road, repeatedly states 'cite her,' fails to quickly comply with Brandt's order to get back on the sidewalk, tells Brandt that the driver of the pulled over car was 'cheating on me,' and responds angrily when Brandt touched him to get him to move back to the sidewalk."

At that point, Juricich turned and walked away. But Brandt radioed for him to be apprehended on suspicion of domestic violence. Two other deputies intercepted Juricich a short distance away. One, Michael H. Koehler, struck him in the face and forced him down, putting his knee on his head. The other, Lisandro Lopez, stood on Juricich's leg and pulled his arm backward, Juricich said, causing significant pain. Worse, the assault dislodged a colostomy bag that Juricich was wearing, and the deputies allegedly refused entreaties to let him reattach it.

Juricich and his damaged colostomy bag were booked into Redwood City Jail, where he remained about nine hours before he was released and charged with assault on a police officer – a charge that was later dropped. Juricich then filed suit in the Court in October 2019 against the county, SMSD and its deputies, accusing them of providing false information "so as to falsely inculpate [him]" and "cover-up Defendants' misconduct."

Juricich noted "numerous complaints ... concerning use of excessive force and other acts of misconduct" by SMSD deputies, indicating the agency had a "custom and

policy" to use or tolerate excessive force by its failure to train, supervise, discipline and investigate deputies accused of misconduct. Juricich also described the injuries he suffered as a result of the deputies' use of force, which included a black eye, bruised ribs and forearm, extreme pain, and permanent partial blindness in one eye.

His complaint claimed the deputies violated his rights under the Fourth and Fourteenth Amendments, extending liability to SMSD and the county for its "custom or policy" under *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). He also made claims related to interference with his use of the colostomy bag under the Americans with Disabilities Act (ADA), 42 U.S.C. ch.126 § 12101, et seq.

Granting the deputies qualified immunity, the Court dismissed all claims on January 29, 2021, except the ADA claims for Juricich's injury after his arrest and during his detention. See: *Juricich v. Cty. of San Mateo*, 2021 U.S. Dist. LEXIS 18764 (N.D. Cal.). The parties then reached their settlement agreement the following month, which included fees and costs for Juricich's San Francisco attorney, David M. Helbraun. See: *Juricich v. Cty. of San Mateo*, USDC (N.D. Cal.), Case No. 3:19-cv-06413.

Since then, Fixin' San Mateo County has been calling for an "independent review [to] be done immediately and without any influence" from county District Attorney Stephen Wagstaffe. 🗳️

Additional source: *The Almanac*

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Innovative Brazilian Prison Claims “Here the Man Enters, the Crime Stays Outside”

Though Brazil’s incarceration rate is just two-thirds that in the U.S., the South American country’s prisons offer plenty of misery to those incarcerated there. Which makes the boast of a Christian nonprofit running a few dozen Brazilian lockups all the more remarkable: Their prisoners don’t want to run away, they claim, so there is no need for armed guards – in fact prisoners have keys to their own cells.

According to a report by *al-Jazeera* on May 16, 2023, the facilities are managed by the Association for Protection and Assistance of Convicts (APAC), a Brazilian non-profit advocating for better treatment of prisoners. These prisoners are called “recovering persons” and referred to by their names, rather than a number. They have clean cells, fresh food and educational opportunities, along with keys to their own cells and responsibility for overseeing security and discipline.

A 2021 report by the Inter-American Commission on Human Rights found that most Brazilian prisoners were “often

held in overcrowded and structurally deficient prisons, maltreated, and frequently subjected to torture.” But new prisoners entering APAC’s Sao Joao del-Rei prison are greeted by a sign that reads, “Here the man enters, the crime stays outside” – an aspirational message setting the tone for what APAC officials want to be a transformative experience. Prisoners adhere to a structured routine with chores, activities, and studies throughout a long day that begins at 6:00 a.m. and doesn’t end until 10:00 p.m.

Brazil’s prison system houses over 800,000 prisoners in traditional penitentiaries where conditions are dangerous and dreary. To appreciate the difference, APAC accepts only prisoners who’ve done time in a regular prison. They can be returned there, too, if they fail to live up to APAC requirements. This probably makes APAC’s sample of the country’s prisoners self-selected for better behavior. But Antonio Fuzatto, president of APAC’s 400-bed prison in Sao Joao del-Rei, called the requirements an incentive for compliance.

Israel Domingos, a 34-year-old convicted of drug trafficking, originally envisioned escape from the APAC where he is held. But now he said his dream is to return after completing his sentence to work as a social worker. His story is not an isolated case; APAC reports a significantly lower five-year recidivism rate compared to the national average, 14% vs. 39%.

Despite its recognized success, further expansion of APAC has snagged on limited resources and concerns that local officials are corrupt. However, the methodology has garnered interest internationally, with countries like Germany and South Korea exploring it.

One critic of the APAC approach is Fernanda Prates, a law professor at Brazil’s Getulio Vargas Foundation, who worries that it ends up legitimizing a bloated and broken carceral system. She advocates for alternatives to incarceration, emphasizing the importance of social conditions and structural changes to address crime.

Another feature of the APAC sys-



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tem that would be controversial outside a heavily Catholic country like Brazil: The Christian beliefs in which the program is rooted, placing emphasis on individual moral responsibility and daily exercises in spirituality. Group prayer rituals and hymn-singing play a significant role in shaping the rehabilitation “journey.”

APAC says the effectiveness of its model lies in providing prisoners tools to rebuild their lives. Many, like Dilermando do Carmo Camara, who struggled with depression before entering the prison, credit APAC with the positive changes they have experienced during their time there. Another, Leonardo Henrique, said the dignity with which he has been treated at the APAC prison led him to renounce crime. He says his dream “is to work as a judicial assistant with a judge that doesn’t believe in recovery, to show him that yes, it does work.”

Source: *al-Jazeera*

If You Write to *Prison Legal News*

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

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

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

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

While we wish we could respond to everyone who contacts us, we are unable to do so; please do not be disappointed if you do not receive a reply.

Oregon Parole Hearing Exclusion Rule Invalidated

by David M. Reutter

The Oregon Court of Appeals on November 23, 2022, held that the state Board of Parole and Post-Prison Supervision exceeded its statutory authority when it adopted a rule that excludes prisoners convicted of aggravated murder – including those for whom an initial parole release date has been set – from personal review eligibility.

Before the Court was a petition filed by Oregon prisoner Jacob Barrett that challenged the validity of the Board’s new rule, OAR 255-040-0005(5). That rule provided, in relevant part, that “inmates sentenced for aggravated murder ... are not subject to personal reviews.”

The Court’s opinion began with background on aggravated murder sentencing. It noted that there are only three sentencing options for a conviction of aggravated murder: (1) life imprisonment; (2) life imprisonment without the possibility of release or parole; or (3) death.

If a defendant is sentenced to life imprisonment, the trial court will order imprisonment “for a minimum of 30 years without possibility of parole or release to post-prison supervision ... and without the possibility of release on work release or any form of temporary leave or employment at a forest or work camp.”

After completing that minimum three-decade period, the defendant may petition the Board for a “murder review” hearing to determine if the defendant “is likely to be rehabilitated within a reasonable period of time.” If the Board makes that finding, it enters an order converting the sentence to

“life imprisonment with the possibility of parole, release to post-prison supervision, or work release.”

The Board must then set a release date under the matrix system. Under that system, once the initial parole release date is set, the defendant is entitled to release on that date unless prior to it the board finds that one of the proscribed reasons to postpone the prisoner’s release exists. The relevant rules also provide for a “personal review” to adjust the initial release date.

But by taking it upon itself to set aside a class of prisoners – those guilty of aggravated murder – and making them ineligible for any parole review, the Board exceeded its statutory authority, the Court said.

Under ORS 144.122(1), a “prisoner may request that the parolee release date be reset to an earlier date” after “the initial parole date has been set under ORS 144.120 and after a minimum period of time established by” the Board.

As the Court explained in *State ex rel. Engweiler v. Felton*, 350 Or. 592 (2011), ORS 144.120 is the sole statutory authority applicable after a life sentence for aggravated murder has been converted.

Thus the Court declared OAR 255-040-005(5) invalid because it was unauthorized by statute. As a result, it said that aggravated murder defendants whose sentences are converted to allow parole must receive a personal review once they meet the criteria. See: *Barrett v. Bd. of Parole & Post-Prison Supervision*, 322 Ore. App. 751 (2022).

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U.S. Marshals Pull Out of Virginia Jail After Two Escapes in One Day

After two detainees escaped from Virginia's Piedmont Regional Jail (PRJ) on April 30, 2022, the U.S. Marshals Service (USMS) announced it was relocating its detainees while the jail "works to improve security measures." This is bad news for PRJ: It receives \$50 per day for up to 200 federal detainees held there, according to its most recent intergovernmental agreement. *See: USMS Agreement No. 83-03-0018.*

A PRJ statement read, "Based on the anticipated reduction, the PRJ Board is looking to make adjustments to the FY'24 budget to include the anticipated reduction in expenditures and revenues." How much of a reduction? According to Jail Authority Vice Chair Doug Stanley, federal detainees make up 42% of the jail's population. So that "anticipated reduction" for the jail translates to about \$2.7 million.

The escapes shone a bright light on PRJ's security failures. Cellmates Bruce Callahan and Alder Marin-Sotelo walked out an unsecured door – though not together. Marin-Sotelo, 26, got out around 1:40 a.m. and scaled two perimeter fences

before fleeing in a waiting red Ford Mustang. Callahan, 44, walked out near 11:00 p.m. the same day, also scaling fences to flee.

He remained at large over a week before he pulled a fire alarm on the nearby campus of Longwood University on May 8, 2023. He turned himself into responding police, who described him as "injured and in poor health." Callahan pleaded guilty to escape on May 31, 2023, and was sentenced on June 27, 2023, to 20 months in prison, followed by three years of supervised release. He was also ordered to pay a \$100 special assessment. *See: United States v. Callahan*, USDC (E.D. Va.), Case No. 3:23-cr-00065. He still faces trial on the federal drug distribution and firearms charges for which he was originally detained. *See: United States v. Callahan*, USDC (E.D.N.C.), Case No. 7:21-cr-00138.

Marin-Sotelo was found and taken into custody by cops in the southwest Mexican state of Guerrero on May 4, 2023. His getaway car, however, was not found, and he has not been returned to the U.S. He and his brother, Auturo, were being held for the

murder of a North Carolina sheriff's deputy who pulled over their car in August 2022. Their sister, Adriana, has been arrested on charges of abetting the escape.

A statement issued by PRJ after the escapes said, "Initial findings suggest that the inmates were able to breach an exterior door at the facility." Months earlier, Board meeting minutes of the PRJ Authority noted that replacing door locks was discussed. But jail officials stressed those were not the same doors that the detainees breached.

In a public meeting on May 17, 2023, jail officials admitted the escapes resulted from staff error. Jail Superintendent Jerry Townsend said there were five terminations and several demotions because of failures to adhere to policy. The day of the escapes, seven head counts were either missed or conducted improperly. Additionally, and most importantly, a guard had left the rear exit door unsecured. 🗨️

Additional sources: *CBS News, Charlotte Observer, Farmville Herald, WRAL, WRIC, WTVD, WWBT*

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BOP Guard, Nurse in Virginia Indicted in Prisoner's Death

On June 6, 2023, a federal grand jury in Virginia indicted two employees of the federal Bureau of Prisons (BOP) for allegedly showing deliberate indifference to a prisoner suffering a cardiac emergency that killed him in 2021.

Guard Lt. Shrona Covington, 47, and Registered Nurse Tonya Farley, 52, are accused of violating the civil rights of prisoner Wade Waters, 47, by willfully ignoring the medical emergency he suffered at the Federal Correctional Institution in Petersburg on January 9, 2021. Farley is also accused of lying in her official report, and both employees are charged with lying to investigators in an attempt to cover up their negligence.

Waters died the following day. The former businessman from Hattiesburg, Mississippi, was serving an 18-year sen-

tence handed down in 2021, after he pleaded guilty to conspiracy to commit health care fraud and money laundering.

The conviction stemmed from Waters' role in bilking a half-billion dollars from TRICARE – the government healthcare provider for U.S. military members – for expensive pain creams and weight-loss pills that were compounded with dubious and even legally controlled substances, like ketamine. Patients were prescribed the phony products, without necessarily needing them or even seeing a doctor, at exorbitant prices billed to the government – as high as \$11,000-14,000 for each tube of cream. The bogus prescriptions were then placed on automatic refill to keep the scheme going. U.S. Marines were also involved in the scam, accepting \$300 a month each, along with creams that were

supposed to relieve their pain and scarring (but didn't).

Waters was also ordered to pay \$287.7 million in restitution and a \$250,000 fine, plus forfeit over \$56.5 million in cash and other assets.

For their indifference to his fatal cardiac event, in violation of his civil rights, Covington and Farley face life in federal prison if convicted. The charges of lying to investigators carry an additional maximum prison term of five years. Farley's charge of filing a false report carries another maximum sentence of 20 years. A jury trial is currently set for January 2024 in Richmond. See: *United States v. Covington*, USDC (E.D.Va.), Case No. 3:23-cr-00068. 📰

Additional sources: *Hattiesburg American*, *Mississippi Clarion-Ledger*

Government Watchdog Adds BOP to List at "High Risk" of Mismanagement

by Kevin W. Bliss

In March 2023, the U.S. Government Accountability Office (GAO) released its bi-annual "high-risk list" of federal programs or operations that are susceptible to waste, fraud, abuse, or mismanagement. Added to the list this year was the federal Bureau of Prisons (BOP), mainly due to its inability to correct persistent staffing shortages.

GAO comptroller Gene Dodaro recently testified before the U.S. Senate Homeland Security and Governmental Affairs Committee that BOP staffing issues have adversely affected the safety of both prisoners and guards, as well as compromising efforts to evaluate BOP programs aimed at reducing recidivism and prison overcrowding. Staffing has consistently run at least 15% below authorized levels for some time, he noted. BOP has changed directors six times in as many years.

In March 2021, GAO labeled BOP management an "emerging high-risk." At that time, an audit was prepared with 50 recommendations provided to rectify critical issues. Thus far, only 22 of those recommendations have been addressed.

"Enhancing management of staff and resources, and improving the planning and

evaluation of inmate programs, would allow BOP to more effectively deliver services, enhance its emergency preparedness and safety, determine if its investments are facilitating inmates' successful reentry into the community, and effectively implement the First Step Act [FSA]," stated the GAO report. Simply getting measures in place that were authorized by FSA's passage nearly five years ago "could reduce the amount of time inmates serve in prison, the recidivism among federally incarcerated, and costs to the U.S taxpayer."

Current BOP director Colette Peters took over in August 2022. She said continuing staffing shortages remained one of her top priorities, along with improving employee wellness and agency accountability. "I regret our efforts since 2021 were not

sufficient to prevent this placement on the high-risk list," she stated in a press release. "However, I am confident the processes and procedures now in place will ensure future success. We have taken concrete steps that will not only meet but exceed the expectations of our external partners." 📰

Source: *Government Executive Magazine*

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Washington Supreme Court: Requiring Certificate of Merit for Medical Malpractice Suits Held Invalid

A Washington prisoner allegedly subjected to ruthless medical treatment by the state Department of Corrections (DOC) can take his claims to a jury, following a determination from the state Supreme Court on May 26, 2022, which invalidated a Washington law requiring a certificate of merit before his claims could proceed.

Timothy Martin was confined at Monroe Correctional Complex when he injured himself on his prison job in January 2012. Over a year later, in February 2013, he finally had surgery for an inguinal hernia. But his pain persisted. For that he got nothing more than a hot-water bottle – and even that took another seven months before it finally arrived in September 2013. The next year he got an ultrasound, but his request for a CT scan was denied as “medically unnecessary” because he could still walk. A follow-up with the surgeon in August 2014 resulted in injections for the pain, but those did not provide much relief.

Martin received only “intermittent”

medication for pain in 2015, according to the complaint he later filed. Another ultrasound and a CT scan in 2016 produced inconclusive results. Meanwhile, the prison doctor decided that Martin was faking his symptoms to get drugs. Yet he arranged another consult with the surgeon, who recommended exploratory surgery. But DOC denied that as “medically unnecessary,” too, since Martin was still able to walk without “intractable” pain. When his water bottle broke in 2017, he was denied a replacement for six months. At last he was approved for exploratory surgery, which happened in 2019. The surgeon then found three undissolved stitches from the surgery six years before. Once they were removed, Martin’s pain ebbed.

With the aid of Seattle attorneys Dan N. Fiorito III and Michael C. Kahrs, Martin filed suit against DOC and its medical personnel in state court, making state-law medical malpractice claims, as well as civil rights claims under 42 U.S.C. § 1983. De-

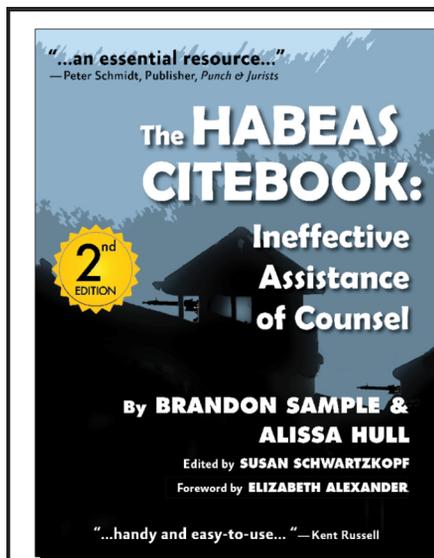
fendants removed the case to federal court for the Western District of Washington and filed for summary judgment, arguing that Martin’s claims were barred by the statute of limitations and because he had not filed a certificate of merit as required by RCW 7.70.150.

Passed in a 2006 medical malpractice overhaul, that law requires a plaintiff to obtain and file a certificate of merit from a healthcare provider, stating it is reasonably probable the defendant failed to follow accepted standards of care.

A federal magistrate recommended dismissal of claims that occurred before the three-year limitations period. As for RCW 7.70.150, the district court certified three questions to Washington’s Supreme Court.

The first was whether the certificate of merit requirement was facially invalid under the state constitution. In its decision, the Supreme Court answered “yes,” which obviated the need to answer the other two.

RCW 7.70.150 had previously been



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held unconstitutional by the Court as applied to a private defendant in *Putman v. Wenatchee Valley Medical Center, PS*, 166 Wn.2d 974, (Wash. 2009). There the certificate of merit requirement was found to violate plaintiffs' right of access to the courts and the separation of powers doctrine.

"Significantly," the Supreme Court wrote, "[that] analysis focused on the plaintiffs' rights." With respect to Martin's claim, the difference was the "application of sovereign immunity to RCW 7.70.150," since his suit was brought against state, not private defendants. DOC argued the legislature intended the law to apply to governmental

medical providers – an argument rejected by the Court, which found the precedent DOC relied on "focus[ed] on a different statute" and "presented different issues."

The Court held there was no indication the legislature intended that governmental defendants were the focus of RCW 7.70.150; rather, the law applied to both private and public medical providers. Therefore, its certificate of merit requirement was held facially invalid in all cases, including those against state defendants, based on the same analysis set forth in *Putman*. See: *Martin v. Dep't of Corr.*, 199 Wn.2d 557 (2022).

The case has now returned to the district court, which set trial for August 2024. The Washington State Association for Justice Foundation has filed an amicus brief in support of Martin. *PLN* will report additional developments as they are available. See: *Martin v. Dep't of Corr.*, USDC (W.D.Wash.), Case No. 2:20-cv-00311.

Most importantly now, based on the Supreme Court's ruling, Washington state prisoners no longer need to obtain certificates of merit before filing medical malpractice claims against prison medical providers. 📄

Four Deaths in Seven Weeks at Pennsylvania Prison

During the spring 2023, a troubling number of mysterious deaths took place in the State Correctional Institution (SCI) at Rockview, Pennsylvania. Richard Woods, 46, was found unresponsive in his cell on April 20, 2023. He was rushed to Mount Nittany Medical Center in State College, where he was declared dead hours later. A few weeks before that, on April 9, 2023, Jamie Houseknecht, 43, was also found unresponsive in his cell. He was later declared dead at the same hospital. Robert D. Williams, 40, and Andrew Yuhas, 61, were also found unresponsive in their cells and later declared dead on March 3 and 6, 2023, respectively.

Woods, who was serving a life sentence for a Philadelphia murder, had been at SCI-Rockview since 2003. Houseknecht was serving 12-24 years for a child rape in Berks County; he had been at the prison since 2010. Williams was serving a 2-to-10-year sentence for retaliating against a

witness or victim. He had been in custody of the state Department of Corrections (DOC) since 2010, and an inmate at SCI-Rockview since October 2021. Yuhas, who was serving 16-to-32 years for a rape in Luzerne County, arrived at the prison in March 2016.

The Centre County Coroner's Office had yet to determine the cause of death for any of the four prisoners at the end of April 2023. But the threats prisoners face include lethal contraband drugs. A spate of mysterious prison deaths may be linked to an illegal substance or drug that entered the prison population. In its special series "Criminal Justice Collaborative," *NPR* reported the staggering fact that the number of people who died of drug or alcohol intoxication grew more than 600% from 2001 to 2018 in state prisons.

University of Chicago Professor Harold Pollack blames the spike in overdose deaths to widespread drug use in prison,

noting that it is especially dangerous behind bars because "substances that come into the jail or prison don't exactly go through the FDA lab to know what's in there."

The *NPR* report warns that "people in prison often use drugs when they're alone and may be reluctant to call for help if there's a problem. Even if they do seek help, medical care is often scarce and subpar. And access to drugs is erratic, which leads to rapid changes in tolerance, putting users at higher risk for an overdose."

Wanda Bertram of Prison Policy Initiative claims that the increased number of prison deaths due to overdoses reflects U.S. persistence in incarcerating individuals with addiction problems and not providing them adequate treatment. 📄

Sources: *Centre Daily Times*, *NPR News*, *WBEZ*

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Two Dead and \$4.675 Million Paid After Deputies' Alleged Misconduct in California's Sonoma County

by Casey J. Bastian

A coroner's report on March 14, 2023, confirmed that an undocumented worker was fatally shot by a Sonoma County Sheriff's Department (SCSD) deputy after a foot chase the previous summer. Sebastopol attorney Izaak Schwaiger, who is representing the estate of the dead man, David Pelaez-Chavez, 35, cited SCSD's poor supervision, training and discipline of deputies – arguments he also used to secure nearly \$4.7 million in settlements for deputies' alleged use of excessive force against two other arrestees on their way to the county jail.

One settlement was reached on October 21, 2021, when the county agreed to pay \$875,000 to settle claims by a former Marine who said he was Tasered and beaten without provocation by deputies responding to a domestic disturbance at his home.

Fernando Del Valle was home in Boyes Hot Springs on September 24, 2016, when

an argument erupted with his intoxicated wife. As it escalated, Del Valle went to a bedroom, locked the door and tried to sleep, unaware that neighbors had already called the police.

When SCSD deputies Scott Thorne, Anthony Diehm and Beau Zastrow arrived, Del Valle's wife refused them entry. Deputy Thorne then forced open the door, grabbed Ms. Del Valle by the wrist and ordered her back inside. All of the deputies then entered the home.

When asked, Ms. Del Valle told deputies that Del Valle was in the house. Thorne and Zastrow approached the bedroom door and found it locked. Thorne ordered Del Valle to open it, and then kicked in the door when he was disregarded.

Thorne then yelled at Del Valle to "Stand up!" Del Valle responded, "Sir, I'm in my house. I was sleeping. I'm calling my lawyer." Thorne drew his service baton,

and Del Valle said, "Sir, I'm not being aggressive. I'm just lying here." Thorne told Del Valle, "Stand up or I'm going to fucking bust your knee." But Thorne put the baton away and got out his Taser.

Del Valle then received Taser darts in his "bare chest from point blank range." Thorne also "smashed his baton" across Del Valle's right shin. When Del Valle attempted to flee, he was "struck from behind," he said, "numerous times." Thorne then "attempted to choke Mr. Del Valle into unconsciousness" using the baton.

Del Valle was arrested on felony and misdemeanor charges of resisting arrest and battery on a police officer – lies later exposed with recordings that Del Valle made on his cell phone and footage from the deputies' own body cameras. Thorne took Del Valle to the hospital, but he would not remove the handcuffs, so medical staff could not evaluate Del Valle or provide treatment. Del Valle was then taken to the SCSD jail where he was thrown naked, "face-down" on a floor covered in "urine and feces" and left there for hours.

After Del Valle filed his complaint, some of claims were dismissed by the federal court for the Northern District of California on October 13, 2017. *See: Del Valle v. Cty. of Sonoma*, 2017 U.S. Dist. LEXIS 232966 (N.D. Cal.).

On January 23, 2020, the U.S. Court of Appeals for the Ninth Circuit remanded the sole remaining excessive force claim against Thorne to the district court. *See: Del Valle v. Thorne*, 790 F. App'x 868 (9th Cir. 2020).

After that, the parties proceeded to reach their settlement agreement, which included costs and fees for Schwaiger. *See: Del Valle v. Cty. of Sonoma*, USDC (N.D. Cal.), Case No. 3:17-cv-03611.

\$3.8 Million Wrongful Death Settlement

Before that agreement was reached, county commissioners approved \$3.8 million on April 20, 2021, to settle another case Schwaiger brought against SCSD over the in-custody death of David Ward on November 27, 2019.

The coroner eventually determined that Ward, 52, died from heart failure and blunt-impact injuries, after SCSD deputies Tasered him and put him in a neck restraint following another chase, this one in a car – one that deputies suspected was stolen because Ward had filed a stolen-vehicle report and only then just recovered it.

When the vehicle was finally cornered, the driver's door jammed closed, so Dep. Charles Blount attempted to drag Ward through the window. But his legs were pinned beneath the steering column. A struggle ensued; Blount and Dep. Jason Lit-

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tle said that Ward bit them. They smashed his head against the car frame and Tasered him. He stopped breathing and died before they could get him out of the car.

After Schwaiger filed suit for Ward's family in the Court, the parties reached their settlement agreement, which the county approved. It included costs and fees for Schwaiger and fellow attorney for Plaintiffs, John H. Scott of San Francisco. See: *Est. of Ward v. Cty. of Sonoma*, USDC (N.D.Cal.), Case No. 4:20-cv-03400.

Meanwhile, Sheriff Mark Essick began the process to fire Blount, but he retired several months later before it was complete. Little spent some time on leave and returned to work. A county jury then

acquitted Blount of involuntary manslaughter in February 2022.

Assault charges were filed against Thorne for Tasing Del Valle, but a county jury deadlocked on those in March 2018. Before killing Fernando Del Valle, Thorne had previously been dismissed from the Richmond Police Department in 2002 for using excessive force that resulted in three complaints. He was also then hired and fired by the Los Angeles County Sheriff's Department, after "failure to perform job requirements."

County District Attorney Carla Rodriguez has announced no charges for Dep. Michael Dietrick, who fatally Tasered Pelaez-Chavez, SCSD's most recent victim.

The deputy reportedly fired after claiming Chavez bent over as if to catch his breath and picked up "something" that Dietrick thought might be a rock, which Chavez might throw at him.

That's a lot of conjecture, but the only one left alive to refute the deputy's self-defense claim is a fellow deputy who was on the scene. Schwaiger's court filing in the case even calls out SCSD deputies for their "code of silence." See: *Est. of Pelaez-Chavez v. Cty. of Sonoma*, USDC (N.D.Cal.), Case No. 4:22-cv-06715. 🗨️

Additional source: *KQED, Santa Rosa Press Democrat*

Congress Forces BOP to Upgrade Security Cameras

by Mark Wilson

"Broken prison camera systems are enabling corruption, misconduct and abuse" within America's 122 federal prisons, declared U.S. Senator Jon Ossoff (D-Ga.), when Pres. Joseph R. Biden, Jr. (D) signed Ossoff's bipartisan Prison Camera Reform Act of 2021 into law on January 10, 2023.

When he introduced the legislation, Ossoff said that federal prisons "must be cleaned up and held to the highest standards," so surveillance camera blind spots, lost footage and technical failures are simply unacceptable.

The federal Bureau of Prisons (BOP) has long been criticized for insufficient and malfunctioning security cameras. A 2016 report by the Justice Department's Office of the Inspector General found that BOP camera problems compromised investigations into staff misconduct and civil rights violations, as well as contraband smuggling, escapes and prisoner deaths.

Camera deficiencies took center stage in the suspicious 2019 suicide of billionaire financier and convicted child sex trafficker Jeffrey Epstein at the now-shuttered Metropolitan Correctional Center in New York City. In March 2022, *AP News* reported that a lack of cameras in critical areas also permitted prisoner sexual abuse by staff at the Federal Correctional Institution in Dublin, California, which was so pervasive that the lockup became known as the "rape club."

The legislation was sponsored by Ossoff, along with Senate Judiciary Committee

chair Dick Durbin (D-Ill.) and ranking member Chuck Grassley (R-Iowa), as well as U.S. Reps. Lucy McBath (D-Ga.) and Fred Keller (R-Pa.). It mandated that BOP evaluate its security camera, land-mobile radio and public address systems and submit an upgrade plan to the Senate and House Judiciary Committees within 90 days. BOP must also provide annual progress reports to those committees and complete implementation of its upgrade plan within three years. See: *Prison Camera Reform Act of 2021*, S. 2899 (117th), 2022.

In a statement, BOP claimed that it "appreciates the work and support of Senator Ossoff and other members of Congress, as well as the President of the United States." Shane Fausey, President of the Council of Prison Locals of the American Federation of Government Employees – the union

representing BOP guards – agreed that the upgrade will enhance "the level of safety in our nation's federal prisons." 🗨️

Additional source: *NBC News*



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Prisoner Health Update: Over-the-Counter Medications

by Eike Blohm, MD

Various medications are available to prisoners for purchase in commissaries and can be taken without instructions from medical staff. Yet taken incorrectly, these medications may have significant adverse effects or result in false positive drug tests, leading to loss of good time and potentially solitary confinement.

Acetaminophen

Acetaminophen (Tylenol[®]) is one of the most frequently used analgesics (pain reliever) in the U.S. It also has antipyretic (fever reducing) effects. Despite decades of use, it is still not entirely understood how it actually works. Likely, it modulates the sensation of pain in the brain rather than working at the site where the pain originates. A person can safely take 1,000 mg three times a day if the doses are spaced six-to-eight hours apart. In normal dosing, acetaminophen does not damage the liver and even people with cirrhosis (liver scarring) can safely take the medication. However, using more than 6,000 mg a day can lead to liver damage.

Non-steroidal Anti-inflammatory Drugs

In addition to treating pain and fever, NSAIDs also fight inflammation. The process of inflammation is integral to the body repairing damaged tissue (e.g., ankle sprain) and fighting infection (e.g., cellulitis). Unlike acetaminophen, NSAIDs actually address the source of the pain, at least in part. NSAIDs are a family of chemically different compounds; aspirin is a salicylic acid derivative, while ibuprofen is based on propionic acid. For that reason, one particular NSAID may work better for one person than another.

Most NSAIDs have a therapeutic ceiling, meaning that taking more does not provide any additional effect (though it increases toxicity). For ibuprofen (Motrin[®]), taking more than 400 mg will not provide additional pain relief. For inflammation the maximum effect is seen at 800 mg every six hours.

Adverse effects of NSAIDs are typically seen with long-term use (greater than one week). These drugs reduce blood flow to the kidneys and can thus cause kidney

damage. They also reduce the amount of mucus that the stomach makes to protect itself from its own acid, so use of NSAIDs can lead to gastritis and gastric ulcers. Lastly – and ironically – both NSAIDs and acetaminophen can cause a headache with chronic use, which will only go away once the medication is stopped.

Loperamide

Loperamide (Imodium[®]) is a medication that treats diarrhea. It is the only opioid sold over-the-counter in the U.S. because it is very poorly absorbed. The drug is recognized by P-glycoprotein pumps which – like a bilge pump on a boat – pump any absorbed loperamide right back into the intestine. However, if taken in excess it can overwhelm the pumps and lead to a positive drug test as well as heart arrhythmias.

Pepto Bismol

This well-known pink liquid is used for stomach upset and diarrhea. Its active ingredient – bismuth subsalicylate – is relatively benign, but can turn stool tar-black. This alone is not dangerous, but the appearance of black stool is often worrisome to patients as well as medical providers, since it is also seen with intestinal bleeding. Blood turns black as it is digested (melena). Thus, unless a medical provider tests the black stool to find it contains no blood, this benign discoloration may lead to invasive, unnecessary medical testing.

Tums

The carbonate anion of calcium carbonate absorbs stomach acid, converting it to water and carbon dioxide. The calcium will get absorbed, and in overuse (more than 15 tablets per day) can produce hypercalcemia (high blood calcium levels). This in turn causes abdominal pain – which may lead to more Tums use – and kidney stones. It can even lead to psychosis. In addition, the buffering of acid results in the body's pH rising and can result in milk-alkali-syndrome.

Vitamins

Vitamin D allows the body to absorb calcium. Taking large amounts of supplemental vitamin D results in hypercalcemia as discussed above.

Vitamin C is a water-soluble vitamin. This means that the body has no good place to store it, and taking more than 100% of the recommended daily amount (RDA) just results in the excess vitamin C being excreted in the urine. Since vitamin C is ascorbic acid, which lowers the pH of urine, it can predispose users to kidney stones. Contrary to popular belief, high doses of vitamin C do NOT help the body fight colds or COVID-19, as long as the person is not vitamin C deficient.

Vitamin B12 is also water soluble. It turns urine into a fluorescent yellow color, which is benign but might alarm some people.

Niacin, part of the vitamin-B complex, can produce a “flush reaction” in susceptible individuals. Even at normal doses it can cause a red rash that feels like a sunburn. This is benign and goes away in a few hours, but it is often confused with an allergy. A myth about niacin is that it helps “flush” drugs from the body to avoid detection in urine drug testing, which is untrue. 🚫

Disclaimer: This column aims to educate prisoners about common health concerns but does not constitute medical advice. It is no substitute for evaluation by a trained medical professional.

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San Diego County Pays \$4.35 Million After Jail Guards Failed to Stop Detainee From Blinding Herself

by David M. Reutter

The County of San Diego agreed on September 14, 2022, to pay \$4.35 million to settle a lawsuit alleging a guard at the county lockup stood by and failed to stop a detainee high on meth from clawing her eyes out.

Tanya Suarez was taken into custody on May 6, 2019, after police found her wandering outside a motel where she had taken drugs. Suarez, 23, a student at San Diego State University, had started experimenting with meth. On the evening of her arrest, that “experiment went terribly wrong,” according to the complaint later filed on her behalf.

After she was booked into the Las Colinas women’s jail, she began acting oddly and started clawing at her eyes. In a delusional hysteria, Suarez screamed at guards to shoot her. She also voiced suspicion that they and medical staff were going to torture her.

Guards tried to restrain her, handcuffing her and placing a spit sock over her head

– even clipping her nails so that it would be more difficult to harm herself, though one deputy admitted the attempt left her nails looking more ragged. A surveillance camera then captured the moment six minutes later when one of her eyeballs fell to the floor. Seconds later, her other eyeball was out. A guard watching outside the cell then allegedly walked away, and it was another five or 10 minutes before help arrived.

With the aid of San Diego attorney Danielle R. Pena of the PHG Law Group, Suarez – who is now totally blind – filed suit in federal court for the Southern District of California, accusing jailers of failing to protect her from a known risk that she might harm herself.

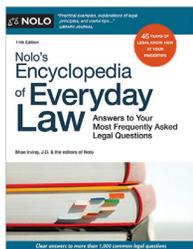
Defendants argued that Suarez never threatened any self-harm, so they couldn’t have known of her “intent to engage in enucleation,” the Court later recalled. Suarez countered that “a reasonable nurse in the same situation would have recognized Plaintiff’s behavior as self-harming and

identified Plaintiff as a detainee potentially at risk for self-harm.” Citing *Deloney v. Cty. of Fresno*, 2019 U.S. Dist. LEXIS 71089 (E.D. Cal.), the Court agreed that Suarez had adequately pleaded that “Defendants were aware of or should have been aware of ... suicidal ideations.”

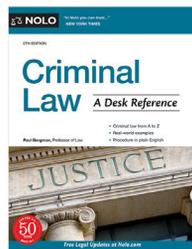
Defendant nurse Shannon Keene also argued she had qualified immunity from liability “because her alleged conduct did not violate clearly established law,” the Court noted. Suarez disagreed, insisting “it was clearly established that leaving Plaintiff alone and unrestrained in a jail cell, instead of ordering psychiatric services and monitoring, would violate Plaintiff’s Fourteenth Amendment right.”

Again the Court sided with Suarez. Pointing to *Castro v. Cty. of L.A.*, 833 F.3d 1060 (9th Cir. 2016), the Court said that what she alleged – that Keene and other defendants “failed to address Plaintiff’s serious medical needs in violation of her Fourteenth Amendment rights” – was

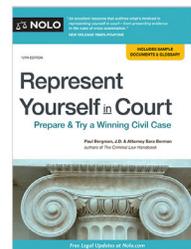
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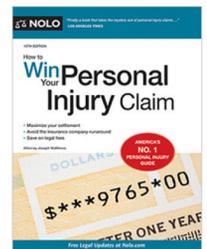
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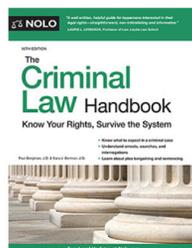
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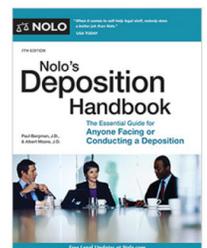
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sufficient, since her “right to be free from violations of this constitutional right was well-established by 2019.”

Thus the Court denied Defendants’ motion to dismiss on February 16, 2021. *See: Suarez v. Cty. of San Diego*, 2021 U.S. Dist. LEXIS 29065 (S.D. Cal.). The parties then proceeded to reach their settlement agreement, which included fees for Suarez’s

attorney. *See: Suarez v. Cty. of San Diego*, USDC (S.D. Cal.), Case No. 3:20-cv-00456.

While the settlement resolves Suarez’s claims, she remains completely blinded. Moreover, conditions within San Diego County jails continue to create a severe risk of harm or death for detainees. The county Sheriff’s Department says it has adopted measures to address the problems, but

deaths were at a record pace in late 2022, with 19 in just over nine months. This multi-million-dollar payout is just a needle in an enormous haystack of financial damages the county and its taxpayers have been forced to pay for jail officials’ neglect and misconduct. 🗞️

Additional source: *KPBS*

New York Prison System Found Liable for Failure to Protect Prisoner from Assault

On July 19, 2022, the New York Court of Claims found the state’s Department of Corrections and Community Supervision (DOCCS) partially liable for failing to protect a prisoner from being assaulted by another prisoner.

Jeremy Sanchez was incarcerated at Great Meadow Correctional Facility (GMCF) when he was viciously attacked by another prisoner. He filed a complaint in New York’s Court of Claims, arguing that prison officials were negligent in failing to prevent the attack.

At the time of the attack, Sanchez, a reported gang member, was housed in E-5 Company at GMCF. The E-Block unit, unlike others at that facility, had only one Console guard or “CO” instead of the usual two. The Console CO was responsible for remotely opening cell doors, ensuring they were closed after being opened, as well as activating gates that provided access to each company.

Open cell doors were indicated on a panel in the “bubble,” where the Console CO worked and could travel between E-Block’s four floors using an internal stairway. The standard practice was that cell doors must be kept closed and locked.

But Sanchez testified that on January 25, 2016, his cell door was remotely opened multiple times by the Console CO on duty, Richard Hammond. The last time his door opened, Sanchez exited and was told by a porter to pack his property because he was being moved. He then returned to his cell and began packing, but the door did not close or lock.

Meanwhile, Hammond left the bubble to go to another floor, leaving Sanchez’s cell door open. At the same time, the gate was also open to E-5 Company because it was “go back” time, when prisoner movement was underway.

As Sanchez was packing, he was attacked by a fellow prisoner, Johann (or Anthony) Garcia, reportedly a member of a rival gang. Sanchez spent 12 days at a hospital recovering from his injuries, which included a broken arm, puncture wounds from a homemade knife and the loss of vision in one eye.

At the time there was a known “turf war” between the gangs to which Sanchez and Garcia allegedly belonged. Nevertheless, Sanchez refused to cooperate with investigators and declined to prosecute his attacker.

Taking up his claim, the Court found the state “owes a duty of care to safeguard [prisoners], even from attacks by fellow [prisoners].” But to show negligence, there had to be a risk that was reasonably foreseeable, either by actual or constructive notice. Not every prisoner-on-prisoner assault involves negligence by prison staff, the Court allowed. But in this case, it said Sanchez met his burden of proof.

The Court of Claims found Sanchez and most of the other witnesses gave credible testimony; however, Hammond, the Console CO, “was a poor witness.” He “professed to have little memory of the incident,” and portions of his testimony “amounted to little more than surmise and speculation, sometimes was inconsistent and equivocal, and, in other places, was evasive and unworthy of credit,” the Court declared.

DOCCS procedures required that Sanchez be locked into his cell at the time the attack occurred, the Court observed. Because “GMCF staff failed to comply with and deviated from its own proper procedures,” the Court continued, the state breached its duty of care.

Accordingly, the state was held liable – but only 70% liable. Sanchez “cannot escape some measure of culpability for this

incident,” the Court wrote, because he failed to close his cell door and was inattentive while packing his property. Therefore, he was assigned 30% liability for his injury.

The Court of Claims rejected the state’s defense – that it was immune from prosecution because its employees were exercising a governmental function. Sanchez was attacked and injured not as a result of “discretionary determinations by DOCCS,” the Court noted, but rather because “the Defendant failed to adhere to its own procedures.”

Thus the Court ordered a trial on damages to be scheduled. *PLN* will update those developments as they are available. Sanchez was represented by New York City attorneys Edward Sivin with Sivin, Miller & Roche and Eylan Schulman of Schulman Trial, PLLC. *See: Sanchez v. State*, N.Y. Ct. of Claims, Claim No. 129610, UID 2016-015-176. 🗞️



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Prison Ministry Sues Indiana Jail Over Book Ban

Unshackled Hearts is a central Indiana prison ministry that says its mission is to bring spiritual “restoration and freedom” to incarcerated Hoosiers through bible study, positive communication, and heart healing. But it hit a wall at the Howard County Jail (HCJ) in Kokomo on January 1, 2023, when a new policy took effect. Now that all books are banned for jail detainees, Unshackled Hearts is suing the jail to reverse the policy.

To fulfill its mission, the group offers a bible to any prisoner in central Indiana who requests one. After that, group members maintain communication with prisoners through regular letters and emails. But the recent policy changes ended the practice of sending bibles to prisoners seeking spiritual redemption.

The jail’s book ban has just a few exceptions, too, including one for “the holy scripture” donated by a “verified religious organization.” The policy otherwise allows detainees to receive books sent only through a publisher and not distributors, such as Amazon.

Before the policy change, Unshackled Hearts would ship its reading material to prisoners using Amazon. Its lawsuit notes that a book delivered by Amazon is less likely to contain contraband than a book delivered by, say, a prisoner’s ex-wife. Also, Amazon offers free returns, so if the package is rejected by the facility or the prisoner has been released or transferred, no extra cost is tallied. The complaint asserts that such restrictions violate the First Amendment and Indiana’s Religious Freedom Restoration Act.

According to the complaint, the jail has offered an option to Unshackled Hearts: The group can donate books to be included on the jail’s book cart. Unshackled Hearts argues that a book cart is not a solution, since it provides no guarantee that a particular book gets to the prisoner who requested it.

The case is pending in federal court for the Southern District of Indiana, and *PLN* will update developments as they are available. Unshackled Hearts is represented by attorneys from the state chapter of the American Civil Liberties Union. *See: Unshackled Hearts, Inc. v. Howard Cty. Sheriff*, USDC (S.D. Ind.), Case No. 1:23-cv-01079. 📖

Additional sources: *Kokomo Tribune, Reason*

Insider Trading Charges Dropped Against JPay Founder

by Matt Clarke

On December 5, 2022, federal prosecutors moved to dismiss insider trading charges against JPay founder Ryan Shapiro, 45. For a hefty fee, the firm provides financial and communications services to people incarcerated in jail and prisons. JPay was acquired by Securus Technologies in April 2015. Both are now subsidiaries of Dallas-based Aventiv Technologies.

Shapiro was charged with financial securities crimes in a Boston federal court in January 2022, along with his friend, founder and manager of the hedge fund Sakal Capital Management, Kris Bortnovsky, then 40, and David Schottenstein, then 38, whom the *Miami Herald* called “a member of one

of America’s richest families.” [See: *PLN*, Mar. 2022, p.10.]

Schottenstein signed an affidavit swearing, under penalty of perjury, that he provided the other two men with insider information so they could illegally profit from the stock market. Schottenstein received the information from a relative, a member of the board of DSW and Green Growth Brands. The information included a pending merger not yet announced between Albertson’s and Rite-Aid, as well as a planned hostile takeover attempt by Green Growth Brands of marijuana distributor Aphria. Both the merger and takeover ultimately failed but not before their announcements briefly

boosted stock prices, allowing the trio to reap huge profits: \$121,000 for Shapiro, \$600,000 for Schottenstein and \$3.56 million for Bortnovsky. But a week before prosecutors moved to dismiss those charges in November 2022, Schottenstein withdrew from the cooperation agreement, saying that testifying against his friend, Shapiro, would likely “exacerbate” his own mental health issues.

Prosecutors said this “unexpected” development made it necessary to dismiss the cases against Shapiro and Bortnovsky. However, their investigation was ongoing, they said, leaving open the possibility of bringing charges again in the future.

Meanwhile, Schottenstein was sentenced in February 2023 to a year in prison. Shapiro “will, now that this ordeal of being a federal criminal defendant is over, do great things in his professional and personal life,” according to his attorney, Martin Weinberg. Perhaps that includes finding new ways to gouge excessive profits from prisoners and their families.

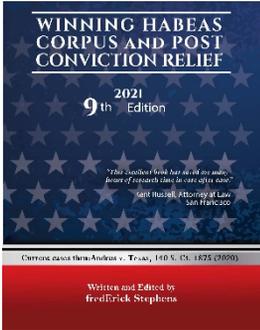
It is a pity that Shapiro has, for now, missed the opportunity to experience firsthand the financial stress JPay places on prisoners and their families by charging excessively high fees to transfer money into prison accounts and provide telecommunications services. 📖

Source: *Reuters*

9th Ed of Winning Habeas Corpus & Post Conviction Relief Case review to include Supreme Court thru Shoop v Hill S.Ct 504 (2019) Atty. Kent Russel writes: “Now that I’ve been turned on to Winning Habeas Corpus, I always make sure it’s close at hand” **Power packed 635 pages- NOT WHITE SPACE. Write your brief directly from the book, actual quotes of judge**

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Five Years After Limiting Personal Visits and Banning Mail, Drug Use Worse in Pennsylvania Prisons

As reported by the *Harrisburg Patriot News* on April 21, 2023, the Pennsylvania Department of Corrections (DOC) implemented a solution to the drug problem in state prisons in September 2018 that has proved cruel and ultimately ineffective. That year, a rash of illnesses befell prison staff, which DOC blamed on incoming prisoner mail soaked in K2 and fentanyl.

So DOC prohibited prisoners from receiving physical mail and contracted a mail scanning system. Now any mail sent to a prisoner in Pennsylvania is forwarded to a center in Florida where it is scanned and destroyed, sending the prisoner a facsimile – either by re-printing it or making the document available on an electronic tablet.

At the time of the changeover, Pennsylvania was desperate to end the rash of drug exposure incidents alarming prison staff. Although Keystone State cops never concluded that the illnesses were caused by drugs – nor was there any evidence they were smuggled through the mail – officials insisted that mail was the most likely source of entry.

However, medical experts said it was “effectively impossible to become ill from such incidental contact with K2, fentanyl or similar substances.” Ryan Marino, a toxicology expert, called it “not possible and not something that happens when prison staff have accidental contact with mail.” He added that symptoms reported by staffers were “usually the exact opposite of what opioids or fentanyl would do.”

Unsurprisingly, drug use in DOC lockups is no better than it was five years ago – in fact, it is now worse. After a slight decline in the immediate aftermath of the policy change, the number of positive drug tests rebounded quickly and is now higher than it was before.

One interesting metric is the number of prisoners in Pennsylvania who tested positive on random drug tests. In August 2018, when the crackdown was imposed, it was 1.0%. Fast forward to December 2022, and the number nearly tripled to 2.7%.

Five years after changing mail handling, Acting DOC Secretary Laurel Harry

said at a budget hearing, “We also know that [traffickers] will look for other avenues for drugs to enter our system, and that’s where [we] have to focus our efforts. But we don’t have to focus our efforts on the mail.” But as the *Harrisburg Patriot* pointed out, “if the mail scanning system has allowed the DOC to focus on drug interdiction elsewhere, as Harry stated, the department’s data hasn’t shown it.”

John Eckenrode, of the union representing Pennsylvania guards, believes that the incidence of staff smuggling is small. Instead he blames legal mail – which is exempt from scanning – as well as donated books, visitors, and drone drops.

Bret Grote, an attorney with the Abolitionist Law Center, calls the DOC change in prisoner mail handling a cynical “shock-and-awe campaign” without any empirical basis. He blames the policy change for spawning other mail-scanning schemes across the country. 🗞

Sources: NPR, PennLive, Harrisburg Patriot

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At Massive and Corrupt Philippine Prison, Contraband Includes Jacuzzis and Horses

by Kevin W. Bliss

In an article published on March 3, 2023, *ABS-CBN News* said that conditions at the Philippines' New Bilibid Prison (NBP) – one of the largest prisons in the world – were simply deplorable. Overcrowding and insufficient resources have resulted in abundant contraband, establishing a power hierarchy among prisoners and increasing the potential for corruption at all levels of the Philippine prison system, as well as fostering an unsanitary and violent environment that is killing many prisoners.

The murder of journalist Percival Mabasa at NBP on October 3, 2022, prompted an investigation and an institutional shake-down, during which tens of thousands of contraband items were collected, ranging from the usual weapons, alcohol and drugs, to more extravagant luxuries like air conditioning units and Jacuzzi tubs – even horses and pythons.

In November 2022, prison system chief Gerald Bantag was charged with ordering the hit on Mabasa. But widespread corruption has long persisted at NBP. One prisoner was able to bribe officials into

building a sound studio in his cell from which he recorded and sold 15,000 copies of an album of love songs. Mabasa's murder and Bantag's arrest have brought attention to this long history of abuses. Justice secretary Jesus Crispin Remulla said he planned to institute reforms to reduce overcrowding and combat the level of corruption, including bond reductions for the poor and raising indictment requirements necessary to charge a defendant with a crime.

On July 15, 2023, 25-year-old prisoner Michael Catarroja went missing at NBP. His decapitated body was found 10 days later floating in a prison septic tank – where body parts from an undetermined number of people were also found. Prison Superintendent Angelina Bautista said the bodies “have been chopped up,” so it wasn't possible to know if any belonged to Cararroja.

“We haven't identified yet if this is the missing PDL (person deprived of liberty),” she said, “because there are many missing PDLs here whom we don't know if they escaped or not.”

NBP holds about 29,000 prisoners in

a facility designed for 6,000. Cellblocks intended to house 10 prisoners now have 100, with only one guard to oversee them. This has left prisoners in charge, with many guards recruited to smuggle contraband for them.

Since guards pick and choose what rules they enforce and against whom, visitations may be cancelled without reason or warning. Attorneys are denied access to their clients. Care packages sent by families are ravaged and destroyed before they ever reach the prisoner.

An anonymous prison medical official blamed unsanitary and violent living conditions for an annual death toll he estimated at 5,200. Pres. Ferdinand Marcos, Jr. has released 4,000 prisoners since July 2022. But Human Rights Watch senior Asia division researcher Carlos Conde said more facilities and funding were needed. “We lack judges, we lack courts, the system is just broken,” he said. 🗞

Sources: *ABS-CBN News, CNN, Philippine News Agency*

FBI Crime Report Lacking Data from Police Agencies Serving 25 Percent of U.S. Population

In October 2022, the FBI released its 2021 report titled *Crime in the U.S.* Published annually for a century, it is considered the gold standard for data on criminal activity in the U.S. However, the new report – which covered 2021 – lost much of its value because a change in reporting methods caused participation to plummet, with just 63% of the nation's roughly 18,000 law enforcement agencies submitting any data *at all*.

The annual snapshot provided by the FBI's Uniform Crime Reporting Program has historically allowed law enforcement agencies at all levels – city, state and federal – to track the total number of crimes by category, such as car thefts, murders and robberies, as well as by geography, down to a specific zip code.

But when the FBI tried to modernize reporting in 2021, law enforcement agencies found they could suddenly submit data only through a new system. Since their participation is strictly voluntary, many agencies apparently let their reporting fall through the cracks.

The nonprofit Marshall Project has tracked participation in the program. It found that more than 6,000 of the nation's 18,000 law agencies – representing roughly one-quarter of the entire U.S. population – were missing from the FBI's most recent national crime data. Some police departments have started reporting data again to the FBI. However, police in New York City and Los Angeles – the two largest forces in the country – have yet to resume providing

data to the FBI. In two of the largest states, Florida and Pennsylvania, less than 10% of law enforcement agencies reported any data at all.

The incomplete participation has real-world consequences for policy makers, who are unable to trust conclusions that the incomplete numbers suggest. Hate crimes, for example, appeared to go down because of missing data from large jurisdictions. After a backlash over this, the FBI went to those thousands of police departments that failed to provide information and got more data. The result? A new report that revealed an almost 12% leap in hate crimes. 🗞

Additional Sources: *CNN, The Marshall Project*

Incarceration Increases Death Risk for Cancer Patients

P*B*S News Hour reported on March 7, 2023, that people with cancer who have been incarcerated are more likely to die than patients who were never in prison. The reporting was based on research from the SEICHE Center for Health and Justice at the Yale University School of Medicine published in September 2022.

Researchers examined the relationship between cancer survival and incarceration by analyzing 10 years of data from more than 216,000 adults in Connecticut who were diagnosed with invasive cancers. They found that the risk of death rose when the cancer diagnosis took place during incarceration or during the first year after release from incarceration.

According to the study, cancer accounts for nearly one-third of all deaths among incarcerated people. Worldwide, the death rate from cancer is about 16%, though in the U.S. it is 20%, according to the federal Centers for Disease Control and Prevention. There, the death rate from cancer is about 60% higher for those in prison.

Lack of adequate healthcare, according to the study, is a contributing factor to these

higher mortality rates. Healthcare in prison is deplorable. But after release it doesn't get much better, with many obstacles keeping a newly freed person from receiving crucial health care.

First, housing discrimination against many former prisoners is legal. But healthcare workers who feel threatened can also refuse to treat a former prisoner. If a doctor is found who will treat him or her, it may be difficult, if not impossible, to track down medical records from the prisons that detained them. Even in the best-case scenario, the study found, a former prisoner received cancer-related care at a much later date than someone who was never incarcerated.

Facing these high hurdles, released prisoners understandably focus on finding housing and employment before seeking medical care. Transportation must be secured before making a doctor's appointment. As re-entry creates delays, the delays pile up, and by the time the formerly incarcerated individual manages to get proper medical treatment, it is often too late.

As *PLN* has reported, California now offers Medi-Cal benefits to prisoners with

certain health conditions beginning 90 days before their release from the state Department of Corrections and Rehabilitation. The waiver to Medicaid rules, which otherwise bars benefits to people while incarcerated, was approved by the federal Centers for Medicare and Medicaid Services and took effect on January 23, 2023. [See: *PLN*, Apr. 2023, p.35.]

Additional source: *PBS News*

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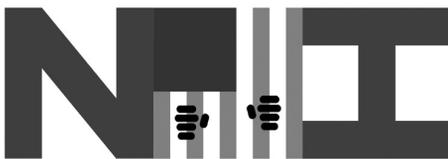
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Prison Legal News

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\$120,000 Paid to Muslim Detainees for Discrimination by Maryland Jail

by David M. Reutter

On March 31, 2023, the federal court for the District of Maryland granted dismissal to a suit by a former detainee at the Prince George's County lockup, after he and co-Plaintiffs accepted a settlement resolving their claims that the county Department of Corrections (DOC) operated under an "Islam-specific policy," singling out Muslim detainees for less-favorable treatment than that afforded to practitioners of other faiths.

While awaiting transfer to the state Department of Public Safety, Enrico Brown said that he and other Muslims detained at the Prince George's County Detention Center were prohibited from performing religious services, engaging in daily congregational prayers, wearing religious headwear or other clothing items, receiving certain mail and even accessing a Kosher meal.

Brown's handwritten complaint was filed *pro se* with the Court in July 2019, a year and a half after attorneys with the Council on American-Islamic Relations (CAIR) in Washington, DC, filed suit on behalf of another group of jail detainees making similar claims. Those lawyers then took on Brown's case and filed an amended complaint for him in 2020. As the group argued, the jail didn't allow Muslims to congregate in small groups for prayer, a

privilege it extended to Christians. There was also no rule against gathering in small groups for sports or non-religious activities.

After DOC agreed to amend its policy in 2020, it moved to dismiss Brown's complaint. One defendant, a chaplain named Romero, alternatively moved for summary judgment.

When the Court ruled on March 31, 2022, it first addressed the issue of whether Brown had to prove a physical injury or the commission of a sexual act to sue under the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e. That law bars a prisoner from bringing an action "for mental or emotional injury" without first making such a showing. But Brown alleged violations of his First and Fourteenth Amendment rights, the Court noted, and he sought nominal and punitive damages. As violation of these rights is not mental or emotional injury, Brown did not need physical injury or commission of a sex act, the Court declared.

Next, the Court held that Brown's claim for monetary damages was not mooted by his transfer to state prison. It also said that monetary damages were available under the Religious Land Use and Institutional Persons Act (RLUIPA), noting that Brown did not sue defendants in their individual capacity; that is barred

by *Sossaman v. Texas*, 563 U.S. 277 (2011), which held that monetary damages are not available in a RLUIPA lawsuit against a sovereign, meaning a state and its officials.

However, the Court continued, *Sossaman*, "does not stand for the general proposition that money damages are categorically unavailable under RLUIPA, particularly when they are sought against a governmental entity, such as a county, that is subordinate to a sovereign state." A sister law, the Religious Freedom Restoration Act, provides for the award of "appropriate relief," the Court noted, which may include money damages, per *Tanzin v. Tanvir*, 141 S. Ct. 486 (2020). As there is no case law to the contrary, the Court denied the County's motion to dismiss the RLUIPA damage claim.

The Court also found evidence showing Romero could authorize Kosher meals for Brown but refused to do so. Therefore Romero's motion for summary judgment was denied, and Defendants were ordered to file answers to the Complaint. *See: Brown v. Prince George's Cty.*, 2022 U.S. Dist. LEXIS 62327 (D. Md.).

The parties then proceeded to reach their settlement agreement, which included payment of \$120,000 to Brown, his attorneys and co-Plaintiffs from CAIR's other suit: Kenneth Snowden, Duran Carrington, Michael Harris, David Francis, Darnell Munden and Kevin Stewart. *See: Brown v. Prince George's Cty.*, USDC (D. Md.), Case No. 8:19-cv-1988; and *Snowden v. Prince George's Cty.*, USDC (D. Md.), Case No. 8:18-cv-00160.

CAIR file a third case against the jail over the job application for chaplain, a position the county contracts to a private group, Prison Ministry of America (PMA). When a local imam named Edrees Bridges contacted the jail about its open chaplain slot, he was directed to PMA, only to find the group would require him to sign a statement of his faith that "Jesus Christ, God's son, was conceived by the Holy Spirit" and that the Bible is "God's authoritative and inspired word." That case is still pending, and *PLN* will update developments as they are available. *See: Bridges v. Prince George's Cty.*, USDC (D. Md.), Case No. 8:21-cv-01319. 🗞️

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Oregon Will Hold Release Hearings for 73 Prisoners Sentenced to LWOP as Juveniles

by Mark Wilson

On October 6, 2022, the Oregon Supreme Court denied a petition for review from prosecutors seeking to stop the Governor and Board of Parole and Post-Prison Supervision (BPPS) from granting early release hearings to 73 prisoners who were sentenced to life for offenses committed as juveniles. *See: Marteeny v. Brown*, 370 Or. 303 (2022).

That left to stand a decision by the Oregon Court of Appeals on August 10, 2022, which in turn reversed a lower court's order in favor of the prosecutors. Importantly, the Court made clear that prosecutors lack authority to bring suit on behalf of the state or its citizens.

As *PLN* has reported, the Oregon Legislature passed Senate Bill (SB) 1008 in 2019, eliminating life without parole (LWOP) sentences for juveniles and granting a release hearing after 15 years of confinement to those then imprisoned on an LWOP conviction for a crime committed as juveniles.

However, the legislation did not apply retroactively to prisoners who committed their offenses before January 1, 2020. So on October 20, 2021, then-Gov. Kate Brown (D) used her clemency power to grant SB 1008 release hearings to 73 prisoners left behind by the law.

Attorney Kevin Mannix, who authored Measure 11, Oregon's 1994 voter initiative that required adults and juveniles as young as 15 to serve harsh mandatory-minimum prison sentences, filed a mandamus action on behalf of Lane County District Attorney Patty Perlow, Linn County District Attorney Douglas Marteeny and four victims,

seeking to vacate Brown's clemency decisions. All but one of his arguments were rejected by Judge David Leith on March 1, 2022; however, that was enough to bring the 73 release hearings to a screeching halt. [See: *PLN*, July 2022, p.62.]

The Governor and BPPS turned to the Court of Appeals, which reversed the lower court's ruling. Noting that the two prosecutors purported to bring the action "on behalf of all Oregonians," the Court held that "the Attorney General *and only the Attorney General* speaks on behalf of the state with respect to matters concerning the state's legal interests." It also found that they lacked standing to bring the action in an individual capacity.

"Marteeny and Perlow's disagreement with the Attorney General's decision to defend the commutations here does not confer on them standing to assert a position contrary to the Attorney General's in mandamus," the Court explained.

Turning to the merits of the case, the Court concluded that the lower court erred in precluding BPPS from holding the release hearings.

"It would be within [the Governor's] power to decide to release the juvenile offenders immediately, if she chose that lesser punishment. However, here, she decided that the appropriate punishment was to commute the juvenile offenders' sentences to sentences that include *the right to a hearing after 15 years of imprisonment*," the Court explained. "She did not purport to leave to [BPPS] whether to commute the juvenile offenders' sentences; she completed the

commutation by providing the juvenile offenders with a new, less severe punishment; continued imprisonment, but with the right to a hearing. Relators provide no explanation and cite no authority for the proposition that she could not impose that particular lesser punishment ... and we perceive none."

The Court made clear what the suit was truly about. "Relators' fundamental complaint is that the legislature decided that ORS 144.397 should not apply to sentences imposed before January 1, 2020," it observed. "That is true. But the Governor's clemency power is not limited to legislatively approved sentences. The legislature's policy choice regarding retroactivity does not constrain the Governor's policy choice as to the appropriate sentence for the juvenile offenders."

Oregon Attorney General Ellen Rosenblum (D), who represented the Governor, applauded the decision, saying it "recognizes that the governor had the authority to commute the sentences as she did."

Naturally, the prosecutors were unhappy with the decision. "The court of appeals granted the governor unbridled authority to trample on the rights of victims and limit the authority of the 36 district attorneys to enforce those rights," Perlow declared. Marteeny suggested the public take action. "We are the masters of our destiny, and this outlines the significant need for a change to Oregon law," he said. *See: Marteeny v. Brown*, 321 Or App 250 (2022). 🗞

Additional sources: *Statesman Journal*, *The Guardian*



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Federal Watchdog Finds BOP Staffing, Maintenance in Crisis

The Department of Justice (DOJ) Office of the Inspector General (OIG) released a report in early May 2023, finding “four foundational, enterprise-wide challenges” confronting the federal Bureau of Prisons (BOP).

The first involves “weaknesses in the BOP’s internal audit function,” deficiencies “that undermine confidence in reports and ratings of institutional conditions.” The report also calls out BOP for “delays in [its] employee discipline process,” as well as the “inadequacy of BOP assessments of institution staffing level needs.” Adding fuel to the fire: BOP’s “inability to address its aging infrastructure,” reflected in a myriad of critically deferred maintenance needs for which the agency has low-balled appropriations requests.

OIG initiated its review after things got so bad in 2021 that BOP evacuated two lockups – the U.S. Penitentiary (USP) in Atlanta and the Metropolitan Correctional Center (MCC) in New York City. Widespread corruption among guards at USP-Atlanta was blamed for a massive problem with smuggled contraband, leading BOP to transfer out most prisoners by

August 2021 and re-open four months later as a minimum-security prison. Two months later, MCC was shuttered after two guards were charged with falsifying cell-checks to shop online or nap while billionaire child sex trafficker Jeffrey Epstein committed suicide two years before.

The report found that BOP auditors’ assessment of conditions at USP Atlanta “were in stark contrast to actual conditions there.” Part of the problem was blamed on announcing audit visits, so that prison officials had an opportunity to dress up their situation.

Also, as of September 2022, the report noted there was a significant pileup of unresolved employee misconduct cases, with just 60 Special Investigative Agents on board to handle 7,893 open cases. Worse still, “BOP had not yet imposed discipline in 2,279 other cases in which an investigation sustained an allegation of misconduct.”

Of particular concern was that BOP apparently had been operating in the dark when dealing with staffing levels. OIG “found that the BOP does not know whether the number of staff it represents as necessary to manage its institutions safely

and effectively is accurate.”

Finally, OIG found \$2 billion in unmet BOP repair and maintenance needs, but only \$200 million had been requested from lawmakers – who appropriated just \$59 million. “BOP’s inability to address backlogged major repair projects with available resources created particularly acute issues at numerous institutions,” the report noted – including MCC, where deferred maintenance played a critical role in the decision to close down the lockup. *See: Limited-Scope Review of the Federal Bureau of Prisons’ Strategies to Identify, Communicate, and Remedy Operational Issues*, DOJ/OIG 23-065 (May 2023).

“I need to hear the good, the bad and the ugly,” new BOP Director Colette Peters said. “We cannot have any surprises. We have to know what is happening inside our agency so we can help.” That’s a refreshing change in tone from her predecessor, former Director Michael Carvajal, whose written response to the report said its challenges were “long-established” before he came aboard in February 2020. 📖

Additional source: *Roll Call*

Senators Slam “Egregious” Prisoner Sexual Abuse by BOP Employees

by Mark Wilson

“I was sentenced and put in prison for choices I made,” said Briane Moore. “I was not sentenced to prison to be raped and abused.”

She was testifying at a hearing of the U.S. Senate Permanent Subcommittee on Investigations on December 9, 2022, about being repeatedly raped by a guard captain while incarcerated at a federal prison in West Virginia. As *PLN* has reported over and over again, Moore is far from alone.

The federal Bureau of Prisons (BOP) confines nearly 160,000 prisoners nationwide. About 7% – 11,200 – of them are women, held in 27 lockups. A scathing report released by the Committee during that December 2022 hearing revealed that BOP employees have sexually abused prisoners in at least two-thirds of those facilities since 2012. The investigation also found “egregious abuse” suffered by some

prisoners, lasting for months or even years.

It’s not just guards who show up to work looking for sex; some prisoners were abused by high-ranking BOP officials. The report also highlighted especially awful abuse at BOP facilities in New York and Florida, as well as California, where a scandal has turned the Federal Correctional Institution (FCI) in Dublin into the “Rape Club.” Eight staffers have been arrested so far, all but one of those convicted – including former Warden Ray Garcia and former Chaplain James T. Highhouse.

Both men have already been sentenced to federal prison terms. Garcia got 70 months on March 23, 2023. Highhouse got 84 months on August 31, 2022. Guard Enrique Chavez has also been sentenced, receiving a 20-month term on February 9, 2023.

Still awaiting sentencing are guards

Ross Klinger, Nakie Nunley and Andrew Jones, as well as guard Supervisor John Bellhouse. He was convicted by a jury on June 5, 2023. Nunley and Jones pleaded guilty on July 14, 2023. Klinger pleaded guilty in October 2022 and cooperated in the prosecution of his former co-workers. The last employee charged – so far – was guard Andrew Jones on April 13, 2023.

Garcia, who earned \$170,800 in 2020 as Warden, got an earful at his sentencing from federal Judge Yvonne Gonzalez, who said he “entered a cesspool and did nothing about it” but instead “just went along for the ride and enjoyed the cesspool.” Two of his victims are suing him. *See: M.R. v. Fed. Corr. Inst. Dublin*, USDC (N.D. Cal.), Case No. 4:22-cv-05137; and *R.R. v. Garcia*, USDC (D. Alas.), Case No. 3:23-cv-00140.

In addition, the former warden is named in three more suits filed against

Bellhouse by the former guard's victims. See: *M.S. v. Fed. Corr. Inst. Dublin*, USDC (N.D. Cal.), Case No. 4:22-cv-08924; *Preciado v. Bellhouse*, USDC (N.D. Cal.), Case No. 4:22-cv-09096; and *D.S. v. United States*, USDC (N.D. Cal.), Case No. 4:23-cv-02668.

Two of Klinger's victims have also filed suit, as well as four alleged victims of guard Sergio Saucedo, who was placed on leave in March 2022 but has not been charged. See: *D.V. v. United States*, USDC (N.D. Cal.), Case No. 4:23-cv-02135; *A.R. v. United States*, USDC (N.D. Cal.), Case No. 4:23-cv-02405; *C.C. v. United States*, USDC (N.D. Cal.), Case No. 4:23-cv-02206; *L.A. v. United States*, USDC (N.D. Cal.), Case No. 4:23-cv-03475; *Y.S. v. United States*, USDC (N.D. Cal.), Case No. 4:23-cv-03538; and *L.C. v. United States*, USDC (N.D. Cal.), Case No. 4:23-cv-03558.

San Diego attorney Jessica Pride, who is representing plaintiffs in most of these suits, applauded the convictions so far, saying "[m]y clients feel heard."

BOP "Management Failures" Blamed

The Senate investigation determined that "management failures enabled continued sexual abuse," and instead of holding employees accountable, BOP "failed to detect, prevent, and respond to sexual abuse of female prisoners in its custody."

BOP has a backlog of about 8,000 internal affairs cases – hundreds alleging sexual abuse – some pending for five years, investigators found. But delay was not the worst internal affairs problem. Several BOP employees in Florida who "admitted to sexual abuse of female detainees in graphic detail" were not prosecuted because the internal affairs office compelled them to sit for interviews under oath. These are commonly referred to as *Garrity* interviews, for the Supreme Court decision that any inculpatory statements made by a government employee forced to answer questions under oath cannot be used against him in a subsequent criminal prosecution. See: *Garrity v. New Jersey*, 385 U.S. 493 (1967). Investigators criticized this "perverse" outcome for leaving all of the admitted rapist employees not prosecuted.

The Justice Department's Office of the Inspector General (OIG) is responsible for criminal investigations of alleged misconduct by BOP employees. But "[d]ue to capacity constraints, OIG is only able to investigate a fraction of the allegations of criminal misconduct, including sexual abuse of female prisoners by employees," the report found. Inspector General Michael E. Horowitz told the Committee that his office hoped to devote more resources to these investigations.

Colette S. Peters, who was appointed BOP Director in August of 2022, told the Committee that stopping sexual miscon-

duct "is an issue of critical importance." Yet she was unable or unwilling to stop such chronic abuse at Oregon's Coffee Creek Correctional Facility during her decade as director of the state Department of Corrections. A former nurse at the prison, Tony D. Klein, was convicted on July 25, 2023, of depriving nine prisoners of their civil rights when he abused his position to rape them in 2017 and 2018. Klein was tried in federal court because local prosecutors refused to do so – even after the state made payouts in 2020 totaling over \$1.87 million to at least 11 women he victimized.

Speaking to Chairman Sen. Jon Ossoff, (D-Ga), and others on the Committee at the December 2022 hearing, Peters claimed that BOP was making reforms and adding more internal-affairs employees. The Committee's report, however, criticized BOP for beginning "to institute agency-wide changes" only after the shocking, longtime FCI-Dublin sexual abuse "came to light." See: *Sexual Abuse of Female Inmates in Federal Prisons*, Staff Report of the Permanent Subcommittee on Investigations, U.S. Senate (December 9, 2022).

"This situation is intolerable," Ossoff declared. "Sexual abuse of inmates is a gross abuse of human and constitutional rights and cannot be tolerated by the United States Congress." 🗣️

Additional source: *Washington Post*

Are Phone Companies Taking Money from You and Your Loved Ones?

HRDC and PLN are gathering information about the business practices of telephone companies that connect prisoners with their friends and family members on the outside.

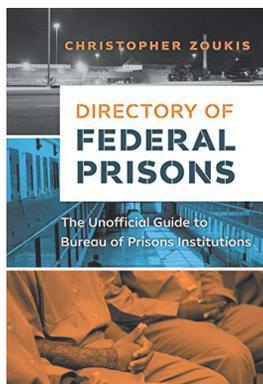
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Minnesota Supreme Court Denies Qualified Immunity for Delayed Transfer of Sex Offenders

by Mark Wilson

On February 1, 2023, the Minnesota Supreme Court held that civilly committed sex offenders have a clearly established right to transfer to Community Preparation Services (CPS) within a reasonable time. What is reasonable under any given circumstances, however, is a fact issue to be determined in the first instance by the trial court, the high court added.

Minnesota is one of 20 states allowing civil commitment of sex offenders. Along with a wave of “tough on crime” laws passed about the same time, the state opened its high-security Minnesota Sex Offender Program (MSOP) in 1994 in Moose Lake.

About 93% of MSOP’s 741 residents were civilly committed after completing a prison sentence for a sex offense. The rest have been locked up with no clear path to release even though they have never been charged with a sex offense. The state has the nation’s highest per-capita sex offender commitment rate and one of the lowest release rates. In fact, during MSOP’s first two decades of operations, *nobody* was released. Those committed are essentially confined for life – about six times more likely to die there than be released.

Those confined call MSOP a “shadow prison” hidden from public view. “This place is a secret – in a remote location, cut off from others,” said MSOP resident Duncan Brainard, 35, who was committed in 2010. “People don’t know this is happening in America.”

A Minnesota prosecutor may petition to civilly commit anyone allegedly likely to engage in harmful sexual acts or unable to control dangerous sexual impulses. A judge may order civil commitment if the State proves those allegations by clear and convincing evidence – a lower threshold than beyond a reasonable doubt.

“Anyone can file a petition for commitment,” noted Daniel Wilson, 36, who was committed after completing a three-and-a-half-year prison term for a fourth-degree sex crime. “You could make up something about your neighbor and file a petition, and there’s a chance they’d be committed.”

“The only way you can make the argument it’s OK to lock up nine to prevent one from committing a crime is that these people’s lives don’t matter, that they’re not really human citizens, that their liberties and freedoms are expendable,” said Eric Janus, former dean of William Mitchell Law School at St. Paul’s Hamline University, who authored *Failure to Protect: America’s Sexual Predator Laws and the Rise of the Preventive State*. “It’s kind of un-American to say, ‘We’re going to lock you up *before* the crime.’”

In response to a 2010 legislative audit, the Minnesota Department of Human Services (DHS), increased MSOP group therapy sessions from six to 10 hours a week. Fifteen residents were released outright and another 57 were discharged to housing under MSOP supervision.

In 2015, a federal judge ruled in a class-action suit that MSOP had become punitive rather than therapeutic and was, therefore, unconstitutional. The judge cited MSOP’s low release rate and lack of regular evaluations to review the basis of a resident’s commitment. The decision was short-lived, however; the U.S. Court of Appeals for the Eighth Circuit reversed and remanded the case to the district court, which then ruled in February 2022 that MSOP residents may continue to be detained but “politics or political pressures should not compromise Class Members’ rights to treatment and eventual reintegration into society.” The Eighth Circuit affirmed that ruling on July 13, 2023. *See: Karsjens v. Harpstead*, 2022 U.S. Dist.

LEXIS 31842 (D. Minn.); and 2023 U.S. App. LEXIS 17742 (8th Cir.).

Several studies show the recidivism rate for sex offenders released from programs like MSOP is under 5%. Of more than 150 people moved to less secure facilities or released outright from MSOP since 2016, state authorities are not aware of any who have committed another sex offense. In total, 204 MSOP residents have been referred to the less restrictive setting of Community Preparation Services (CPS). But DHS has insufficient CPS capacity to accommodate more. After repeatedly rejecting funding requests to increase CPS capacity, the legislature in 2020 finally granted \$1.8 million to add 20 CPS beds. Even so, at least 31 MSOP residents remained on the CPS waiting list for two years or longer.

Two of those residents sued in state court under 42 U.S.C. § 1983, alleging the overlong delay of their transfer deprived them of due process. The court agreed that Plaintiffs sufficiently alleged a due process violation but dismissed the suit, granting Defendants qualified immunity because it was not clearly established that Plaintiffs had a right to transfer to CPS within a reasonable time of a transfer order from the Minnesota Commitment Appeals Panel (CAP).

The Court of Appeals affirmed, but the Minnesota Supreme Court reversed, holding that MSOP residents have a clearly established right to CPS transfer within a reasonable time of issuance of the CAP transfer order. It remanded the case to the Court of Appeals, which in turn remanded it to the Ramsey County district court to determine the fact issue of what amount of time is reasonable in any given circumstance. *See: McDeid v. Johnston*, 984 N.W.2d 864 (Minn. 2023); and 2023 Minn. App. Unpub. LEXIS 554.

The case remains pending, and *PLN* will update developments as they are available. Plaintiffs are represented by attorneys from Dorsey & Whitney LLP and Stoel Rives LLP in Minneapolis. *See: McDeid v. Johnston*, Minn. 2nd Jud. Dist. (Cty. of Ramsey), Case No. 62-CV-19-8232. 📄

Additional source: *Minnesota Monthly*

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Former BOP Employees Guilty of Assaulting a Prisoner and Taking Bribes at Troubled Federal Prison in Massachusetts

On July 10, 2023, a sentence of 12-months plus one day was handed to a former guard at the Federal Medical Center (FMC) in Danvers, Massachusetts, for brutally assaulting a mentally ill prisoner who was restrained. Seth M. Bourget, 43, was also ordered to serve two years of supervised release and pay a \$100 special assessment.

The incident unfolded at the federal Bureau of Prisons (BOP) lockup four years earlier on July 18, 2019, when Bourget was accused of kneeling the unnamed prisoner and using a large shield to beat him. The prisoner, who was not only suffering severe mental illness but also handcuffed at the time, was left with a wound to the back of his head needing 12 staples to close.

Also charged with Bourget was fellow BOP guard Lt. Joseph M. Lavorato. The now-54-year-old was accused of falsifying his incident report and obstructing the subsequent investigation. But he was acquitted on both charges by a jury in federal court for the District of Massachusetts on April 7, 2022.

That same day, jurors also acquitted Bourget on one charge of deprivation of rights under color of law for allegedly kneeling the prisoner. But they hung on a

companion charge for beating him with the shield. Prosecutors then took their case to another jury, which returned a guilty verdict after a seven-day trial on December 21, 2022. Judge Denise J. Casper then handed down sentencing. *See: United States v. Bourget*, USDC (D. Mass.), Case No. 1:20-cr-10029.

“When members of law enforcement demonstrate such poor judgment and gross misconduct, they undermine the exceptional work the vast majority of their colleagues do every day,” said U.S. Attorney Rachael Rollins.

Bourget plans an appeal. Meanwhile, on July 24, 2023, another BOP employee at the prison agreed to plead guilty to taking \$140,000 in bribes from a prisoner with “ultra-high net worth.” Former counselor William S. Tidwell, 49, who handed out work and housing assignments, will accept charges in September 2023 of bribery in violation of official duties, making false statements to a bank and identity theft.

Prosecutors say that he took a \$25,000 wire transfer from the prisoner’s business associate in 2018, before inking a property management agreement the next year that eventually paid him another \$65,000. He also took a \$50,000 loan from the busi-

ness associate to buy a home, lying to a bank that it was a gift. *See: United States v. Tidwell*, USDC (D. Mass.), Case No. 1:23-cr-10193.

As if that weren’t enough, the prison got yet another black eye on May 23, 2023, when an investigation by *STAT* magazine found the medically vulnerable prisoners at FMC Devens were among the last held by BOP to get vaccinated for COVID-19. During the two months they waited after vaccines became available in December 2020, eight prisoners died from the disease. A BOP spokesperson said the prison’s first 600-dose vaccine allotment went entirely to staff but insisted this was “in-line with BOP guidance and strategy at the time, prioritizing staff vaccinations due to their daily travel between the community and the institution.”

“These findings are deeply concerning,” said U.S. Sen. Elizabeth Warren (D-Mass.), “especially if FMC Devens’s negligence contributed to higher COVID-19 infection rates and deaths that could have been prevented with a comprehensive testing and vaccination strategy.”

Additional sources: *Boston Globe*, *STAT*, *WBUR*

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Second Circuit Affirms \$600,000 Punitive Damage Award to New York Prisoner Brutally Beaten by Guards

by Kevin W. Bliss

On July 18, 2023, the U.S. Court of Appeals for the Second Circuit affirmed an earlier ruling for the federal court for the Southern District of New York by Judge Cathy Seibel, who decided that punitive damages awarded to state prisoner Nicolas Magalios for an unwarranted attack by guards at Fishkill Correctional Facility (FCF) were excessive. That left standing Seibel's decision handed down on February 10, 2022, granting remittitur to defendant officials with the state Department of Corrections (DOC) and reducing Magalios' punitive damages by \$400,000.

On September 3, 2017, Magalios was violently beaten by guards Matthew Peralta and Timothy Bailey as fellow guard Edward Blount looked on. Represented by attorney Edward Sivin of Sivin, Miller & Roche LLP in New York City, Magalios took the issue to the district court. After a four-day trial, the jury ruled in his favor on April 30, 2021, awarding \$50,000 in compensatory damages collectively from the three guards and \$950,000 in punitive damages – \$350,000 from Peralta, \$350,000 from Bailey and \$250,000 from Blount.

The following year, when Judge Seibel took up Defendants' motion for remittitur, she called what the guards did reprehensible. It was violently malicious, she said, and their obfuscation of facts on the witness stand was deceitful. But while calling it "one of the strongest cases for excessive force"

she had ever seen, Judge Seibel found the punitive award egregious.

Under generalized guidelines established by the U.S. Supreme Court for a jury awarding punitive damages, the award must be both reasonable and proportionate in amount to general damages awarded. Most courts have used a 4:1 ratio to determine "reasonableness" of punitive damages, and Seibel interpreted that to mean each defendant individually.

Remittitur allows the magistrate to offer a litigant the choice of a reduced punitive award or a new trial only on damages. Seibel offered Magalios a reduced award of \$600,000 – \$250,000 each from Peralta and Bailey and \$100,000 from Blount – and gave him until March 3, 2022, to accept it.

Seibel ended her ruling by asking whether Defendants would be responsible for award payment themselves or whether the state of New York would indemnify them – effectively shunting costs off to the state's taxpayers. She stated, "(A)ny fair-minded analysis of the situation would have to recognize that on the egregious facts here – where there is no arguable justification for the force used and no arguable construction of the verdict other than that Defendants lied at trial – the State's payment of punitive damages would entirely defeat their purpose." See: *Magalios v. Peralta*, 2022 U.S. Dist. LEXIS 24265 (S.D.N.Y.).

Plaintiff accepted the remittitur the fol-

lowing day, on February 11, 2022, but he and Defendants both appealed to the Second Circuit. Magalios objected to the remittitur. DOC objected to the judge's decision not to inform the jury of the prisoner's prior conviction for promoting prison contraband. Defendants also claimed Judge Seibel erred in advising a witness of her Fifth Amendment protection from self-incrimination, after which she refused to testify.

Taking up the case, the Second Circuit noted that Federal Rule of Civil Procedure 609 "creates a presumption that felony convictions committed within the past ten years are admissible as impeachment evidence in civil cases." However in this case, it said that admitting evidence of Magalios' prior conviction "risk[ed] confusing the jury because of the possible suggestion that it was known to Defendants and thus motivated the assault."

Defendants also objected to Judge Seibel's Fifth Amendment warning to Magalios' wife, whom they expected to recant testimony corroborating his version of events. As held in *Mitchell v. United States*, 526 U.S. 314 (1999), the Court noted, a witness cannot "testify voluntarily about a subject and then invoke the privilege against self-incrimination when questioned about details." But this case was different; the witness "did not waive her Fifth Amendment right by testifying at her deposition," the Court said, "because her risk of self-incrimination did not arise from the subject of her deposition testimony but rather from the proposed new trial testimony that her deposition testimony had been a lie."

As for Magalios' appeal to remittitur, the Court found Judge Seibel's "analysis was properly guided by the three factors announced in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996)." They are "(1) the 'degree of reprehensibility' of the defendants' conduct; (2) the 'disparity between the harm ... and the punitive damages award'; and (3) 'the difference between the remedy and the civil penalties authorized or imposed in comparable cases.'" Finding no error under either factor, the Court affirmed the lower court's decision. See: *Magalios v. Peralta*, 2023 U.S. App. LEXIS 18299 (2d Cir.).

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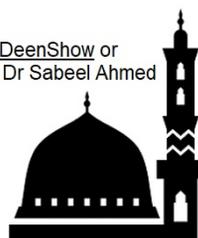
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Aramark Sparks Nevada Prison Hunger Strike

By Mark Wilson

Approximately 40 Nevada prisoners at a maximum-security lockup near Reno started a hunger strike on December 1, 2022, that lasted at least nine days. Top officials with the state Department of Corrections (DOC) claimed the strike at Ely State Prison was due to skimpy portions served by its new food vendor, Aramark Correctional Services.

While portion size may be the proverbial straw that broke the camel's back, prisoners say the strike was about much more. "Food, I think, is the thing that pushed it over the edge," said Jodi Hocking, executive director of Return Strong, a prisoners' rights group advocating for better prison conditions that supported the striking prisoners. "People feel like this is their only way to get anyone to listen, and we're going to do everything we can to elevate their voice."

One of those voices belongs to prisoner Sean Harvell, 35. He called his mother, Nina Fernandez, on the second day of the strike, telling her the protest was over unsafe and inhumane living conditions, physical abuse by prison staff, excessive lockdowns and unreasonably long solitary confinement sanctions, as well as the food concerns. "Mom, if I never make it out," he said, "just know I love you."

Prison officials denied knowing of any problem beyond inadequate food portions. "I'm unaware of rights being violated,"

claimed DOC Deputy Director Brian Williams. Yet soon after the protest began, acting DOC Director William Gittere announced a "significant change" in "administrative sanctions" policy beginning December 9, 2022.

Before the strike, prisoners could be punished with "concurrent" sanctions that simultaneously stripped them of multiple privileges, including phone time and commissary access; now, however, only a single sanction may be imposed at a time.

The strike was then voluntarily ended. It was known that the number of participating prisoners fluctuated daily. Some prisoners chose to receive food one day and then return to the strike the next. The prison made food available daily to all prisoners during the strike.

While the prison population likely welcomed the end of concurrent sanctions, it was not one of the six demands compiled by striking prisoners and shared by Return Strong. Among those six demands was a request to provide adequate and nutritious food.

Even the guards' union recognized that complaints about Aramark were valid. "The portion sizes have been changed," admitted Paul Lunkwitz, President of the Fraternal Order of Police Nevada C.O. Lodge 21. Another issue that is very real for prisoners in Nevada and across the nation is the inflated price of food bought from commis-

saries to supplement meager prison meals lacking in flavor and nutrition.

Prices are so high that some prisoners are simply skipping meals or passing on a bar of soap or a tube of toothpaste. Across the country, prisoners are paying a lot more for everyday items. Peanut butter costs 61 cents more this year in Wisconsin but the jar is two ounces smaller. A pouch of beans that cost \$1.21 in 2021 now costs \$1.51 in a New Jersey prison. A packet of Ramen in Illinois prisons costs almost 70% more.

According to results reported in the 2022 Fiscal Report by Aramark, the leading company in prison commissary goods, its shareholders are probably happier than the company's incarcerated consumers. Company revenue in the fourth quarter that year was 111% of pre-COVID levels, reaching a staggering \$4.4 billion – an increase of 24% compared to the same period a year earlier.

Aramark declined to comment on the Arizona strike. But Deputy DOC Director Williams claimed the prison system is "going to do what's in the best interest of the offenders." This apparently includes auditing portion sizes at all facilities and reviewing the contract with Aramark. DOC also claims to be reviewing additional unspecified complaints. 📰

Additional source: *NBC News*

"Be Christian or Be Penalized": After Fourth Circuit Revives Muslim Prisoner's Challenge, Virginia Jail Settles Suit for \$30,000

by Douglas Ankney

On May 22, 2023, a \$30,000 settlement was reached between officials with a Virginia jail and a Muslim prisoner who objected to its broadcasts of Christian religious programming, which he claimed violated the First Amendment prohibition against any government action "respecting establishment of religion."

The agreement between Middle River Regional Jail (MRRJ) Authority and the prisoner, David Nighthorse Firewalker-Fields, came on the heels of a decision in his favor by the U.S. Court of Appeals for

the Fourth Circuit on January 17, 2023. Declining to be "a court of 'first view' and not 'a court of review,'" the Court revived and remanded to the district court the question of whether the programming violated the Establishment Clause.

However, the Court said that a companion challenge failed under the Free Exercise Clause of the First Amendment, since the comparative lack of Muslim programming at the jail where Firewalker-Fields awaited transfer to the state Department of Corrections reflected re-

strictions "reasonably related to legitimate penological interests," as laid out in *Turner v. Safley*, 482 U.S. 78 (1987).

During nearly three months at MRRJ in 2017, Firewalker-Fields was unable to engage in Jumu'ah prayer services. One reason was his placement in maximum security. But also the jail "had never received Muslim volunteers or donations, so there was no faith class using the Quran as the central text," the Fourth Circuit later recalled.

After his grievance seeking the Friday services was denied, he filed suit *pro se* in

federal court for the Western District of Virginia under 42 U.S.C. §1983 and the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000 et seq., accusing the jail and Superintendent Jack Lee of violating the constitution by “authoriz[ing] Christian Faith Classes while not allowing or offering Islamic Faith Classes.”

Firewalker-Fields also complained that MRRJ broadcast Christian videos on every TV within the jail every Sunday. Unable to avoid the broadcast anywhere outside his cell, that amounted to an unreasonable ultimatum, he said: “Be Christian or be penalized.”

The district court dismissed his RLU-IPA claim because Firewalker-Fields by then had been transferred to DOC, and since the statute allows only equitable relief, that claim was moot. But it also dismissed his claim that the jail violated the Free Exercise Clause, finding the amount and scheduling of Muslim religious activity reasonably related to “security and resource efficiency,” and therefore permissible under *Turner*. That left only his claim that the jail violated the Establishment Clause. On

that claim, the district court also found for Defendants and granted them summary judgment.

On appeal, Plaintiff was appointed pro bono counsel from Ignacio M. Castellanos and Hannah Comeau, two members of the University of Virginia Law School’s Class of 2022. They offered options for the jail to accommodate more Muslim religious activity. But since none had been raised at the district court, the Fourth Circuit said it couldn’t consider them. So it affirmed dismissal of the Free Exercise claim.

Turning to the Establishment Clause claim, the Court said it had long relied on a three-pronged test for government endorsement of religion taken from *Lemon v. Kurtzman*, 403 U.S. 602 (1971). However, during the pendency of this appeal, the Supreme Court of the U.S. (SCOTUS) put an end to that test with its decision in *Kennedy v. Bremerton Sch. Dist.*, 142 S. Ct. 2407 (2022), holding that “the Establishment Clause must be interpreted by reference to historical practices and understandings.” The parties then submitted briefs on the impact of that decision on Firewalker-Fields’ case.

After that, the Fourth Circuit said it “must allow the district court to grapple with the history-and-tradition test in the first instance” and remanded the remaining claim. But it directed the district court to seek guidance from cases cited in *Kennedy*, including *Town of Greece v. Galloway*, 572 U.S. 565 (2014). In that ruling SCOTUS “began by defining a category of activity that was historically understood as acceptable under Establishment Clause principles: ‘legislative prayer,’” and it then moved on to determine whether the challenged practice “fit within the tradition.” So, the Court said, the lower court should “[i]dentify the relevant tradition, then determine whether the challenged practice is in or out.” See: *Firewalker-Fields v. Lee*, 58 F.4th 104 (4th Cir. 2023).

Back at the district court, Firewalker-Fields picked up appointed counsel from the Richmond firm of Maguire Woods LLP. The parties then proceeded to reach their settlement agreement. See: *Firewalker-Fields v. Lee*, USDC (W.D.Va.), Case No. 7:17-cv-00400. 📄

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\$50,002 Jury Award to Illinois Prisoner Retaliated Against for Daughter's Facebook Posts

by David M. Reutter

On March 30, 2023, a jury sitting in the U.S. District Court for the Central District of Illinois awarded \$50,002 in damages to state prisoner Larry 'Rocky' Harris on his claim that prison officials punished and transferred him to a less desirable lockup because of what his daughter posted on her Facebook account.

Harris, now 64, filed his *pro se* federal civil rights complaint on March 27, 2017, accusing Warden Victor Calloway at Danville Correctional Center (DCC) of throwing the prisoner in segregation in retaliation for Facebook posts made by Amanda Carrasco, Harris' daughter. In those posts she claimed that a DCC guard was stealing from prisoners' canteen orders, purposely overcharging them and stealing taxpayer's money.

As the prisoner's complaint later recalled, guard Lt. Charles Campbell wrote a disciplinary report after the posts were discovered, charging Harris with engaging in "Threats and Intimidation." The guard supported that charge by stating the Facebook posts created a "Hostile Work Environment." The DCC Adjustment Committee agreed and found Harris guilty. Among other sanctions, it ordered a disciplinary transfer to Big Muddy River Correctional Center.

On September 30, 2019, the district court took up the case, first agreeing with Defendants that Harris was in fact able to exert some control over Carrasco's Facebook account, since she redacted the guard's name from her post after speaking with her dad. But Harris could not act as an attorney

to protect Carrasco's free-speech rights, the Court said, nor was he attempting to protect his own; rather his claim was for retaliation, for which the Court granted Harris summary judgment and ordered a damages trial.

When that trial was finally held, the jury awarded Harris \$1.00 in nominal damages, plus punitive damages of \$50,000 against Calloway and \$1 against Campbell. Harris by then was represented by attorneys with Myer & Kiss LLC in Peoria. See: *Harris v. Calloway*, USDC (C.D. Ill.), Case No. 2:17-cv-02075.

In a letter to *PLN*, Harris said the Court issued its decision to "send a message" to wardens throughout the state Department of Corrections: "This practice [which was] used to silence the prisoner [will] no longer be tolerated." 📧

HRDC Granted Injunction to End Censorship in Arkansas Jail

by David M. Reutter

On March 31, 2023, the federal court for the Western District of Arkansas concluded that a "postcard-only" policy at the Baxter County Correctional Center (BCCC) constituted a de facto blanket ban on publications, in violation of the First Amendment rights of the Human Rights Defense Center (HRDC), publisher of *PLN*.

HRDC sued Baxter County in 2017 to enjoin the jail's policy prohibiting all detainee mail except for legal mail and postcards. When the nonprofit attempted to send copies of *PLN* or its sister publication, *Criminal Legal News (CLN)*, jail officials refused them—though they helpfully offered to deliver the issues if they were reprinted on postcards.

That "postcard-only" policy prevented HRDC from sending its publications and informational packets to anyone held at BCCC. After a three-day trial in April 2019, the district court found the policy was reasonably related to legitimate penological interests and did not violate HRDC's First Amendment rights. HRDC appealed.

On June 8, 2021, the U.S. Court of Appeals for the Eighth Circuit reversed. It remanded for the district court to more

broadly assess the second factor under *Turner v. Safely*, 482 U.S. 78 (1987), to determine "whether HRDC proved its assertion that the postcard-only policy results in 'a de facto total ban' on Jail inmates accessing HRDC's materials."

As the Court noted, the "unrebutted testimony at trial was that no publisher can send books into the Jail; that no magazines of any type are allowed in the Jail; and that the Jail does not accept books." A request for rehearing before the full Eighth Circuit *en banc* was denied on July 14, 2021. See: *Human Rights Def. Ctr. v. Baxter Cty. Ark.*, 999 F.3d 1160 (8th Cir. 2021); and 2021 U.S. App. LEXIS 20866 (8th Cir.).

On remand, the district court held a contested evidentiary hearing on September 19, 2022, at which new evidence was presented and the parties stipulated to admission of all evidence entered at the 2019 trial. The district court then examined the jail's policy both in 2017 and currently, to determine whether HRDC was or still is harmed.

It was "undisputed that donations [of reading material] directed to individual inmates were barred," the district court found, and "the jail did not accept donations in 2017." Thus "the County's 2017 policies

and practices de facto barred HRDC's publications in the Jail."

Analyzing this under the factors outlined in *Turner*, the district court drew a distinction between HRDC's right to send correspondence and its right to send publications. The nonprofit's "ability to send postcards and speak by telephone or during visitation provided adequate alternatives to letter writing." However, the "policy of rejecting publications for failure to be placed on postcards," the district court continued, "restricted far more First Amendment-protected activity than necessary to achieve the County's stated objectives."

It noted that in many jurisdictions, courts have upheld policies restricting books to those sent directly by publishers, "on the premise that publications sent directly by a publisher or distributor are unlikely to contain contraband . . . and pose little risk of drug smuggling." So the district court wasn't buying the Jail's suggestion that HRDC place the text of its publication on postcards; that not only amounted to overkill but also would lead to "an enormous influx in postcards," undermining the purpose of the postcard-only policy.

The district court further found that

the ability of third-party publishers to communicate by postcard, phone call or visitation did not provide an adequate alternative to books, magazines, and newspapers. “[E]xempting publications sent directly by publishers or distributors from the postcard-only policy would have had a *de minimus* impact on the [Jail] in 2017,” the district court found. Having concluded that HRDC’s First Amendment rights were violated under the 2017 policy, it awarded \$1.00 in nominal damages.

Turning to the current postcard-only policy, the district court noted that it was under review, but still in effect, leaving different materials treated unevenly. The Jail “accepts Bibles sent to individual detainees through the mail yet refuses all other publications sent in the same manner”; moreover, it made “no attempt to justify or explain this differential treatment.” Books are permitted solely in the Sheriff’s discretion, with no formal policies as to content admissibility. The Jail “itself provides inmates with an enormous amount of paper,” the district court observed, which refuted any argument concerning hazards from books.

The Jail’s “refusal to accept publications mailed directly by a neutral third-party publisher or distributor – with the exception of Bibles mailed by religious organizations – is not reasonable,” the district court concluded. The rejection of HRDC publications in 2017 and the continued policy preventing third-party publishers from sending publications to those incarcerated at the Jail was declared unconstitutional. As a result, the Jail was permanently enjoined “from enforcing any incoming mail policy that prohibits publications mailed by HRDC because the publication was not placed on postcards.” See: *Human Rights Def. Ctr. v. Baxter Cty.*, 2023 U.S. Dist. LEXIS 57360 (W.D. Ark.).

That decision arrived in Baxter County just over three weeks after another handed down in the same court in a similar case HRDC filed against Union County, Arkansas. There the jail also has a postcard-only policy, but it was modified in 2017 to allow detainee mail to be electronically scanned and made available on tablets.

Under the Eighth Circuit’s direction to examine such restrictions on a case-by-case basis, the district court empaneled a jury to determine whether Union County had enacted a *de facto* ban on publications. On March 8, 2023, that jury agreed with Defendant jailers that HRDC had other

means of communicating with jail detainees. HRDC then moved for judgment notwithstanding the verdict, but that motion was denied on May 1, 2023. See: *Hum. Rights Def. Ctr. v. Union Cty.*, 2023 U.S. Dist. LEXIS 75399 (W.D. Ark.).

That leaves two jails with postcard-only policies in the same federal judicial district under diametrically opposed orders. HRDC has appealed the Union County decision to the Eighth Circuit, while Baxter County has done the same for the decision there. *PLN* will update developments as they are available.

HRDC has published *PLN* since 1990 and *CLN* since 2017. It is represented in both cases by in-house counsel, including Litigation Director E.J. Hurst II, along with attorneys from James & Carter PLC in Little Rock and Davis Wright Tremaine LLP in Seattle. See: *Hum. Rights Def. Ctr. v. Union Cty.*, USCA (8th Cir.), Case No. 23-1677; and *Hum. Rights Def. Ctr. v. Baxter Cty.*, USCA (8th Cir.), Case No. 23-1888. 📰

Additional source: *KTLO, Ozark Radio News*

CLASS ACTION LAWSUIT CHALLENGING THE HIGH PRICES OF PHONE CALLS WITH INCARCERATED PEOPLE

Several family members of incarcerated individuals have filed an important class action lawsuit in Maryland. The lawsuit alleges that three large corporations – GTL, Securus, and 3CI – have overcharged thousands of families for making phone calls to incarcerated loved ones. Specifically, the lawsuit alleges that the three companies secretly fixed the prices of those phone calls and, as a result, charged family members a whopping \$14.99 or \$9.99 per call. The lawsuit seeks to recover money for those who overpaid for phone calls with incarcerated loved ones.

If you paid \$14.99 or \$9.99 for a phone call with an incarcerated individual, you may be eligible to participate in this ongoing lawsuit.

Notably, you would not have to pay any money or expenses to participate in this important lawsuit. The law firms litigating this case—including the Human Rights Defense Center—will only be compensated if the case is successful and that compensation will come solely from monies obtained from the defendants.

If you are interested in joining or learning more about this case, please contact the Human Rights Defense Center at (561)-360-2523 or info@humanrightsdefensecenter.org.

ADVERTISING MATERIAL

As e-Messaging Takes Off in U.S. Prisons, Complaints Over Service and Costs Multiply

by David M. Reutter

Historically, prisoners have been largely left out of the technology wave changing the way the rest of the world communicates and does business. It wasn't until March 2009 that the first phones for prisoner use were installed by the Texas Department Criminal Justice (TDCJ). Before then, prisoners were limited to legal calls. To use the phones, prisoners could not have any major disciplinary infractions. Gang-affiliated offenders or those on death row could not use them at all. Almost 15 years later, the Internet and cellphone have swept society, but many prisoners are still left with a wall phone – at exorbitant prices – or snail mail.

Of course most prisoners use their electronic devices to communicate with friends or family members, some they have been out of contact with for years or decades. In Florida from around 1999 to 2009, accepting a 15-minute collect call from a prisoner to someone in Michigan

cost around \$26. Intrastate prisoner calls were so cost prohibitive that many prisoners were told not to call anymore.

Since then prices for phone calls have decreased, squeezing earnings for the prison profiteers peddling communication services. But smart executives foresaw the future lay in selling electronic media and messaging to prisoners. This idea was anathema to many prison and jail administrators; security concerns mandate that prisoner communications be monitored to prevent and disrupt criminal activity. But the high profits corrupt staff and prisoners can earn from black market sales of cellphones are an obstacle to totally eliminating that market.

Not only have the new electronic messaging devices eased the cost of staying in touch, they also allow prisoners to do other tasks: legal research, online classes to earn degrees. Technology, when properly used, has its benefits.

But because prison officials regularly deal with prisoners who lack hope and incentive to act in responsible ways, prisons were slow to allow prisoners to possess any type of electronic devices. A 2016 report by Prison Policy Initiative (PPI) looked at e-messaging, which is often mistakenly called email, inside jails and prisons. Back then, “the technology was experimental, untested, and viewed skeptically by many correctional administrators,” PPI recalled in a March 2023 update. “Since then, though, it has become common inside prison walls.” In fact PPI found that “at least 43 state prison systems and the BOP offer some electronic messaging option.”

Unlike most email services in the wider world, e-messaging is not free for prisoners. It also takes a bit more effort, since e-messages do not just appear in an email inbox. Users both in and out of prison must log into the vendor's website to access

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messages. For prisoners, access initially involved logging into a shared kiosk to read messages. That has evolved into the distribution and use of electronic tablets. Some jurisdictions have communal tablets shared by a number of prisoners or detainees; others issue or sell individual tablets. In Florida, prisoners are issued a tablet at no cost. It is loaded with apps to access not only e-messaging but also podcasts, books, basic education, games, music, a calculator and a media store.

Two companies dominate the prison electronic media market. One, Securus Technologies, owns JPay – though in the last year, Securus has been moving to eliminate the JPay brand. It holds contracts in 22 states and controls about half the e-messaging market. The other major player is Global Tel*Link (GTL), recently rebranded as ViaPath, which provides e-messaging in 15 states, PPI reported. Together, these prison profiteers “dominate more than 81% of the prison e-messaging market.”

While prisoners are offered free tablets, there are costs for premium features. The music app requires purchasing songs for around \$2 each; albums average \$16. Prison-approved movie titles can be rented for 48 hours, if one can afford the \$4.99 to \$7.99 fee. A wide variety of podcasts can be streamed or downloaded for free, also free videos for various religious groups.

Replacing Physical Mail With e-Messages

In April 2021, Florida eliminated all incoming mail – except legal mail, books, and publications – and required letters and other mail items to be scanned and sent electronically to prisoners. “This has technological implications; for example, users are unable to store and save old messages in a conveniently accessible way,” PPI noted. “There are also important practical implications. For example, imagine if, instead of writing his ‘Letter from the Birmingham Jail’ on paper, Dr. Martin Luther King Jr., sent it via e-message. Under the terms of many contracts, the [prison] that he sent it from could attempt to assert ownership over the text, potentially stopping its spread and impact in the wider world.”

Because prisoners and their loved ones find it cheaper and faster to use, e-messaging has proved a boon for prison profiteers. For those jurisdictions that receive kickbacks, it provides additional rev-

enue, too. Pricing and features vary widely by jurisdiction, but PPI’s “rate survey found the cost to send an e-message ranges from being free in Connecticut to a high of 50¢ in Alaska and Arkansas, with prices most often between 27¢ to 30¢.”

“This wide range,” the report continued, “suggests that prices are not tied to the actual costs companies incur to transmit a message but rather set at the point that will maximize profits.”

Securus’ bulk-pricing scheme for Florida prisons pegs the cost of a single message at 39¢, with bulk rates available: 10 for \$4.40 or 25 for \$11, which is 44¢ each; 45 for \$18 (40¢ each); and 70 for \$25 (36¢ each). This scheme actually penalizes the mathematically challenged and those who cannot afford, or do not need, the largest packet. In most instances, the poorest people are most penalized by e-messaging pricing schemes.

“About half of the states that offer electronic messaging include bulk-pricing schemes, where customers pay a higher cost unless they prepay for larger blocks of messages they may never use, ultimately wasting their money,” stated the PPI report. “Second, it charges the poorest people in prison – people who can only afford a small number of messages at a given time – the most money.”

In addition to pricing variations, there are also jurisdictional variations in the number of characters allowed per e-message. PPI found a low limit of 500 in Kansas and a high of 20,000 in several other states; 2,000 was a popular limit.

For all of these unregulated problems, prisoners are enamored with their tablets. In an environment that equates to nothing more than human warehousing, it affords a way to constructively entertain or distract one’s mind. Prisoners have related to *PLN* that they love the convenience of sending a message electronically, not to mention reducing interactions with gang members who control phones.

But problems exist with the devices. Despite built-in security packages to prevent “jail-breaking” – freeing the tablet from its vendor’s software controls – the practice became so common in Florida that prison officials collected all tablets in 2021 and forced Securus to upgrade its software. The hack not only results in a black-market tablet but also allows a prisoner to re-sell it as his own, after which he reports it stolen.

Even if it really is stolen, the wait to obtain a new tablet is several months long.

Florida property room officials blame Securus, which has been slow to provide tablets for new admissions and for replacements. Local prison officials contribute to the frustration, using delays in issuing new tablets to prisoners who report theirs stolen as a sort of integrity test. “I don’t want to be the tablet police,” one property sergeant told me. “I have enough to worry about without that extra workload.”

Re-charging a tablet is a common problem. Charging stations in Florida prisons contain AC/DC converters and cables, but they are subject to theft by prisoners for their own tablets or cellphones. The theft occurs despite the stations being located inside the guards’ station. As the cords degrade from heavy usage and thefts occur, the number of working portals decreases. Over the last year, the two charging stations in my dorm went from about 150 portals servicing 152 prisoners to just six operable portals for that group of prisoners.

Overall, tablets and e-messaging are great for prisoners. These systems, however, are still under construction as profiteers refine their business model with this new technology, which exists primarily to maximize their profits and protect prison security. 🗨️

Additional sources: Prison Policy Initiative, *Texas Tribune*



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THE PLRA HANDBOOK

Law and Practice under the Prison Litigation Reform

By John Boston

Edited by Richard Resch

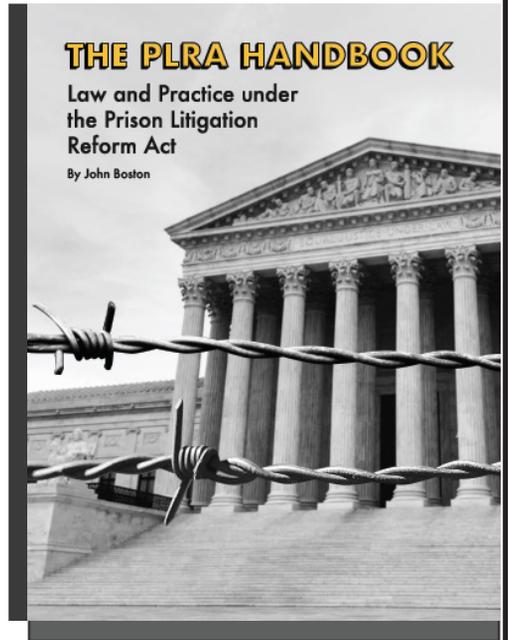
The PLRA Handbook is the best and most thorough guide to the PLRA in existence and provides an invaluable roadmap to all the complexities and absurdities it raises to keep prisoners from getting rulings and relief on the merits of their cases. The goal of this book is to provide the knowledge prisoners' lawyers – and prisoners, if they don't have a lawyer – need to quickly understand the relevant law and effectively argue their claims.

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California Guard Charged with Raping 22 Prisoners

A former guard at Central California Women's Facility in Chowchilla was arrested on May 24, 2023, and charged with raping 22 prisoners since 2014. The 96 counts handed Greg Rodriguez, 55, include sodomy, sexual battery and rape with threat to use authority, according to the office of Madera County District Attorney (DA) Sally O. Moreno.

In August 2022, as investigators closed in, Rodriguez retired after 12 years with the state Department of Corrections and Rehabilitation (CDCR). Prison officials stressed it was CDCR's own investigation that resulted in the charges, which allege 39 separate sexual assaults. If convicted on all counts, the former guard faces up to 300 years in prison.

"As stated when we brought this case to light, the department resolutely condemns any staff member — especially a peace officer who is entrusted to enforce the law — who violates their oath and shatters the trust of the public," a CDCR statement read.

Two lawsuits were filed in December 2022 on behalf of a pair of the guard's alleged victims in federal court for the

Central District of California. In those, Rocklin attorney Robert Chalfant accused Rodriguez of assaulting prisoners "Jane Doe" and "Jane Roe" in a Board of Parole Hearing office without surveillance cameras. That prompted Acting Warden Mike Pallares to refer Rodriguez to Moreno's office for prosecution. However, Pallares was also referred to the DA's Office, after similar allegations against him were made by at least two female co-workers, and CDCR moved him out of the prison at the end of January 2023.

Chalfant then filed suit in the same court on June 6, 2023, on behalf of two other prisoners whom Rodriguez allegedly abused. In those suits, he argues that CDCR failed to heed warnings about the errant guard and failed to protect his victims. See: *Jane Doe #2 v. Calif.*, USDC (E.D. Ca.), Case No. 1:23-cv-00869; and *Doe #3 v. Calif.*, USDC (E.D. Ca.), Case No. 1:23-cv-00868.

In addition to those suits, Woodland Hills attorney Joseph Virgilio has filed six more on behalf of another half-dozen of the guard's alleged victims. In those, Charlene Stith, Victoria Green, Tremaine Carroll,

Jonathan Robertson, Fancy Lipsey and Rayshawn Hart also claim Pallares failed to investigate complaints about Rodriguez and protect them from his predations. Carroll also claimed she was thrown into solitary confinement in retaliation for speaking to attorney Virgilio. See: *Stith v. Calif.*, USDC (E.D. Cal.), Case No. 1:23-cv-00947; *Green v. Calif.*, USDC (E.D. Cal.), Case No. 1:23-cv-00973; *Carroll v. Calif.*, USDC (E.D. Cal.), Case No. 1:23-cv-00974; *Robertson v. Calif.*, USDC (E.D. Cal.), Case No. 1:23-cv-00975; *Lipsey v. Calif.*, USDC (E.D. Cal.), Case No. 1:23-cv-00976; and *Hart v. Calif.*, USDC (E.D. Cal.), Case No. 1:23-cv-00977.

Rodriguez is awaiting trial at the Madera County Jail, with bond set at \$7.8 million. CDCR also said that no charges have yet been sustained against Pallares.

At the Federal Correctional Institution in Dublin, 125 miles northwest of Chowchilla, eight employees of the federal Bureau of Prisons have also been accused of sexually abusing imprisoned women. So far seven have been convicted, including former Warden Ray Garcia, at the lockup now known as the "Rape Club." 🗞️

Maryland Sheriff Charged with Illegally Procuring Machine Guns from ATF

by Kevin W. Bliss

On April 5, 2023, the Sheriff of Maryland's Frederick County was charged with using his office to order machine guns from the federal Bureau of Alcohol, Tobacco, and Firearms (ATF) that were supposed to be used for demonstration and evaluation — but which were later rented out for profit instead. Along with Sheriff Chuck Jenkins, 66, gun shop owner Robert Justin Krop, 36, was also charged with conspiracy and providing false statements to acquire machine guns.

Jenkins has been the county Sheriff for several terms. In 2013, he was lambasted when three of his off-duty deputies serving as movie theater security forcefully removed a 26-year-old man with Downs syndrome from a screening. The man collapsed during the altercation and later died. That incident followed on the heels of the fatal shooting

of a 19-year-old by two deputies performing a raid. Jenkins was also named in a racial profiling lawsuit, and he is a vocal proponent of the controversial 287(g)-program, under which local authorities detain suspected undocumented aliens for federal Immigration and Customs Enforcement.

Krop, 36, owns the Machine Gun Nest, selling firearms to local residents as well as law enforcement. The indictment charges him with requesting Jenkins to submit the necessary paperwork to obtain machine guns from the ATF for evaluation by the Sheriff's department. By law, the purchase, sale, transfer, or importation of any machine gun must be requested by an approved government agency. Thereafter, the process can be accomplished by a properly licensed gun shop certified to deal with law enforcement.

Prosecutors say the transactions became

illegal because the guns were never intended for evaluation for Frederick County law enforcement usage. At least one weapon, the FN M249 SAW, is suitable only for combat use. In addition, rental receipts show Krop made over \$100,000 by renting out the weapons between 2018 and 2019.

He and Sheriff Jenkins both remain free while awaiting trial. However, Jenkins was forced to surrender his weapon as a condition of his release. If convicted on charges of conspiracy, false statements in records maintained by a federal firearms licensee and false statements to federal law enforcement, they face up to five years in federal prison. Krop also faces up to 10 additional years for a charge of illegally possessing machine guns. 🗞️

Sources: *Maryland Matters*, *Washington Post*

Nevada Pays \$75,000 for Religious Discrimination Claims of Prisoners in Episcopal and The Way Faith Groups

by David M. Reutter

On March 6, 2023, the Nevada Department of Corrections (DOC) reached an agreement with a group of state prisoners to settle claims that a change in chapel schedule substantially burdened the exercise of their religion, in violation of the First and Fourteenth Amendments to the federal constitution, as well as the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc, et seq.

Under terms of the settlement, DOC paid \$75,000 to four of the prisoner-plaintiffs and agreed to schedule three weekly Episcopal religious services plus another three for The Way faith group. A picture of a wolf that was visible from the chapel was also removed from Lovelock Correctional Center (LCC).

The agreement resolved claims brought *pro se* in federal court for the District of Nevada by prisoners Norman Shaw, Joseph Cowart and Ansell Jordan, as well as former prisoners Charles Wirth and Brian Kamedula. They alleged that when Warden Renee Baker took over LCC on August 29, 2016, she sought to bring the chapel into strict compliance with DOC Administrative Regulation (AR) 810 to end alleged threats to prison safety and security caused by the “lack of supervision and increased foot traffic due to outcount religious services and services held outside the Chapel,” as the Court later recalled.

Under AR 810, DOC’s Religious Practice Manual governs chapel programs and activities. It defines “worship services” to mean “[a] weekly meeting time for each

Faith Group consisting of up to at least one (1) hour. There is no entitlement beyond one (1) hour per week.”

Resolving the matter became the responsibility of Associate Warden of Programs Tara Carpenter and Chaplain Scott Davis, upon his hiring at the end of 2017. Davis informed prisoner faith leaders of a chapel schedule change effective February 1, 2018, telling them: (1) they were entitled to only one hour per week of chapel services; (2) prayer and Bible studies are not chapel activities and can be performed in prisoners’ cells; (3) outcount services were eliminated; (4) no services would be scheduled before 8:00 a.m. or after 9:00 p.m.; and (5) culinary would no longer provide anything for religious services.

The schedule changes had a dramatic impact. Shaw and Kamedula claimed that for Episcopalian prisoners, it eliminated music practice, baptism and confirmation classes, weekly unction, “Preachers in Training” classes, and worship leader and Eucharistic training. Jordan claimed that For Nation of Islam prisoners, the weekly Jumu’ah prayer services and yearly 30-day Ramadan services were eliminated. Cowart and Wirth, respectively, claimed services for The Way and KAIROS were eliminated because they were not recognized religions. The prisoners’ grievances were denied and they sued.

Both sides moved for summary judgment. On August 12, 2022, the Court accepted a magistrate’s recommendation to deny that motion by Defendants. Though

it found the RLUIPA claims by Kamedula and Wirth were moot – because the law only allows injunctive relief, which their release from prison prohibited – the Court agreed with the magistrate and swatted away DOC’s attempt to refute Shaw’s argument, since “[w]hether Shaw could pray in his cell alone or could conduct other services outside the chapel is immaterial to whether Defendants substantially burdened his religious practice by changing the Chapel schedule and eliminating services.”

As to Jordan’s claim, though, the Court disagreed with the magistrate and found no admissible evidence to support Defendants’ contention that there is “considerable flexibility” in the time Jumu’ah prayer could take place. Jordan asserted that Jumu’ah prayer service must take place midday, so removing the Friday afternoon service from LCC’s chapel schedule substantially burdened his religious exercise, the Court determined.

The Court also noted that The Way is not a recognized Faith Group under prison policy; however, Defendants did not remove services for all non-recognized groups, so the claim survived. In denying summary judgment to Defendants, the Court found a genuine issue of material fact existed as to how Shaw, Jordan and Cowart could use alternative time slots in the chapel or even if giving them the ability to request additional time slots would nevertheless constitute a substantial burden on their religious exercise.

Moreover, Defendants’ actions were not the least restrictive means of further-

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ing any legitimate security interest, the Court found, as evidenced by the fact that LCC returned without incident to the pre-February 2018 schedule after Baker and Carpenter's departure from LCC. It also found Defendants were not entitled to qualified immunity, but it granted judgment to those whose only action was to deny the prisoners' grievances. For the rest, summary judgment was denied and trial

ordered on the prisoner's Equal Protection, Establishment Clause, Free Exercise, conspiracy and retaliation claims. *See: Shaw v. Davis*, 2022 U.S. Dist. LEXIS 144298 (D. Nev.).

Jordan then reached a settlement agreement on September 22, 2022. The remaining parties proceeded to reach their agreement, which included a \$22,500 payment for Shaw and \$17,500 each for

Kamedula, Wirth and Cowart. Thrice-weekly services were scheduled for both the Episcopal and The Way groups. Quarterly meetings were granted to KAIROS, plus a separate meeting with prison officials for Cowart to air his retaliation allegations. The Court retained jurisdiction for three years to enforce the agreement and its terms. *See: Shaw v. Davis*, USDC (D. Nev.), Case No. 3:18-cv-00551. 📄

California Supreme Court Remands Guards' Overturned Murder Convictions In Detainee Death At Santa Clara County Jail

On May 31, 2023, the Supreme Court of California vacated and remanded to the Court of Appeal a decision handed down in August 2022, overturning the second-degree murder convictions of three guards who fatally beat a mentally ill detainee in the Santa Clara County Jail.

Home to Silicon Valley, the county is one of the most prosperous on the planet – the median home price hit \$1.8 million in July 2023 – yet that concentration of wealth does not necessarily trickle down to the treatment of the mentally ill in its detention facilities nor does it guarantee well-managed and constitutional conditions of confinement.

When he died on August 26, 2015, Michael Tyree, 31, was being held at the jail on charges of petty theft and violating probation for misdemeanor drug possession. He was under the supervision of the county Superior Court's mental health court when he was picked up. But he was placed in the general jail population instead of the acute psychiatric ward – despite a booking classification that indicated he was at risk for suicide.

As *PLN* previously reported, Tyree died after a violent attack for which three guards got 15-years-to-life sentences in 2018. [See: *PLN*, Aug. 2018, p.62.] The guards – Jereh Lubrin, Matt Farris and Rafael Rodriguez – blamed an accidental fall for Tyree's extensive injuries to his spleen, small bowel, face, skull, liver, and front and back sides of his body. The jury didn't buy that and convicted the three after being instructed to consider two second-degree murder theories: 1) that the defendants acted with malice aforethought or 2) that a person in their position would have known that murder was a "natural and probable consequence" of the assault.

The conviction was overturned in August 2022, however, when the state Court of Appeal agreed with the guards' attorneys that the primary legal theory of "natural and probable consequences" had been invalidated by state legislation passed in 2018. It said the law should be applied retroactively and reversed the conviction.

The *Palo Alto Weekly* reported that "during the appeal the state Attorney General's Office argued that the jury was also instructed with a still-valid theory of second-degree murder liability — implied malice murder — and any error arising from the trial court's instructions on the natural and probable consequence theory was harmless." The Court of Appeal, however, went on to deny the Attorney General's petition for a rehearing. That led to the petition for the hearing before the state's highest court. Its decision was promised sometime after "consideration and disposition of a related issue in another case."

On October 12, 2022, the California Supreme Court granted the petition by state Attorney General Rob Bonta (D) seeking to reinstate the guards' overturned convictions. Defendant Farris then moved to dismiss the review on May 26, 2023. Five days later, the high Court issued its decision, pointing the Court of Appeal on remand to another supreme court decision about the natural and probable consequences theory, *In re Lopez*, 14 Cal. 5th 562 (2023). In that

case, the high court said what mattered was not the theory presented to the jury but whether jurors made findings to show they relied upon it, so the Court of Appeal should conduct its analysis in that fashion. *See: People v. Lubrin*, No. S276249, 2023 Cal. LEXIS 2976.

The Santa Clara County Sheriff's Office has been in the news for troubling issues in recent years. A federal judge found the jail was violating the civil rights of its prisoners in 2019; the former sheriff was found guilty of corruption and willful misconduct in 2021; even its social media presence called into question the department's professionalism, with a 2022 Valentine's Day tweet urging people with outstanding warrants to turn themselves in as a Valentine's Day gift to their significant other. The county has also taken financial hits for settlements in several cases, including \$3.6 million paid to settle an excessive use of force claim filed by Tyree's family in 2016. [See: *PLN*, Jan. 2018, p.26.] 📄

Additional sources: *CBS News*, *KRON*, *Palo Alto Weekly*

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Former Connecticut Prisoner's Challenge Proceeds Against "Pay-to-Stay" Fees

According to an analysis published by the nonprofit Brennan Center for Justice on April 19, 2023, the cost of locking up America's two million prisoners and detainees exceeds government agencies' ability to afford it. With the help of tough-on-crime lawmakers, that has created a financial hell for prisoners and their families with "pay-to-stay" fees in at least 43 states where they are forced to pay for their own incarceration.

Nearly 20 years after her release from a two-and-a-half-year imprisonment on a drug conviction, Teresa Beatty still owed \$83,762 to the state of Connecticut – which showed up in probate court when her mother died to demand satisfaction with a piece of Beatty's inheritance. The claim was quickly quashed because the state's "pay-to-stay" scheme includes a two-year period after release to make such claims, and the window had long ago closed in Beatty's case. However, she wanted to make sure it didn't happen again, so with the help of the state chapter of the American Civil Liberties Union, she filed suit in federal court for the District of Connecticut, claiming the law violated her Eighth Amendment guarantee of freedom from excessive fines.

On March 6, 2023, the Court ruled that the closure of the two-year window had barred the state from coming after Beatty for the money – meaning she suffered no actual injury for which she could sue Gov. Ned Lamont (D) or state Attorney General William Tong (D). However, it did not agree with them that Beatty had no right to challenge the pay-to-stay scheme. Rather, the Court said she could refile her claim, naming any state official who threatened to come after her for the money. *See: Beatty v. Tong*, 2023 U.S. Dist. LEXIS 36528 (D. Conn.).

Beatty then refiled her complaint on April 20, 2023, naming state Department of Corrections (DOC) Commissioner Angel Quiros, as well as Department of Administrative Services Commissioner Michelle Gilman. The case remains pending, and *PLN* will update developments as they are available. *See: Beatty v. Lamont*, USDC (D. Conn.), Case No. 3:22-cv-00380.

The Urban Institute estimates that the detention bill for state and local governments totaled \$82 billion in 2019 – a massive public safety price tag that represents about 67 cents for each of the

country's 332 million residents *every day*. But passing the cost along to those who are locked up is crippling for them and their families. According to a 2015 report, this happened to 63% of released prisoners, and 83% of the time it was a female family member who had to pay.

Some states have recently tried to reduce or even eliminate pay-to-stay laws, including Illinois and New Hampshire. On the flip side, a jail in Wisconsin charges its "guests" \$26 a day. Added to this, most every moment of comfort or connection for a prisoner has a price tag connected to a lucrative contract between jail or prison officials and a private contractor.

In Florida, when a mother sends her incarcerated son \$20 on the JPay messaging platform, she winds up paying \$24.95. The extra amount goes to JPay, which then kicks

back a portion to the state DOC. In Kentucky, a video call via Securus Technologies costs 40 cents per minute – for which there is no doubt plenty of demand, since the state DOC began limiting in-person visitation to just once a week on Saturday mornings as of August 1, 2023.

Price-gouging on commissary goods also hammers the finances of prisoners and their families. Florida prisons charge \$4.02 for four tampons. In Kentucky, a 4.6-ounce tube of Crest toothpaste that costs \$1.38 at the local Walmart is \$3.77 at the prison canteen. Inflation has given commissary distributors an excuse to charge even more. So while these companies earn record profits, prisoners are forced to skip meals, medicines and even toilet paper. 📰

Additional source: *AP News*

Alabama Denies Parole to 90% of Eligible Prisoners

According to an *AP News* report on January 18, 2023, the Alabama Board of Pardons and Parole (BOPP) denied parole in fiscal year 2022 to 90% of eligible prisoners — the highest rate of denial in state history. Leola Harris, 71, received one of those denials. In 2001 she was convicted of killing a homeless man found dead at her kitchen table. Harris testified at her trial that the man was a friend who would often come by the house at night. She denied killing him.

Harris is in a wheelchair now, with end stage renal disease and diabetes. She undergoes dialysis three times a week and cannot go to the bathroom without help. The circumstances of the crime have always been questionable, and she had no prior convictions. Harris has served 19 of her 35 years without causing any problems. When her BOPP hearing finally arrived, her application was supported by a former state Supreme Court Justice, a nurse and the state Department of Corrections.

After six minutes of consideration, BOPP denied the request. Her next chance at parole is five years from now. Harris was sent back to her cell, probably to die.

BOPP's three members granted parole to 409 prisoners in the year ended September 30, 2022. They denied 3,593.

The share of parole applications granted in Alabama has been declining for years. In 2019 it was 31%; in 2020 it was 20%; in 2021, it was 15%.

The turning point came after Jimmy O'Neal Spencer was released on parole in 2018. He then killed three people, including a seven-year-old and his grandmother. The horrific crime forced Gov. Kay Ivey (R) to sign legislation to reinvent the BOPP appointment process.

State Attorney General Steve Marshall (R) defended the miniscule parole rate in a statement: "By law, the paramount duty of the board is to ensure public safety — not to appease the anti-incarceration community."

Alabama's low parole rate is a concern for criminal justice reform advocates such as Redemption Earned and Alabama Appleseed Center for Law and Justice. John Archibald, Pulitzer Prize-winning Alabama journalist, also criticized the state's abysmal parole rate.

"In fact, it is harder and harder to get out of Alabama's prisons, even with the state's notorious prison overcrowding, as an unsafe, inhumane, unconstitutional torture trap that puts inmates in danger of assault, sexual abuse and death," he said. "The parole board is not just unmoved. It is immovable."

Evidence proves Archibald's point. During the current fiscal year that ends in September 2023, parole requests for 106 people older than 60 have gone before BOPP. The requests arrive on paper, where they remain even as they are considered,

since BOPP does not look anyone in the eyes. Only seven paroles were granted. The requests considered included 21 from people aged 70 or older. None was granted release.

Despite the dangerous and unconstitutional conditions of an Alabama prison

which almost always inflict violence, sexual abuse, or death, it is nearly impossible to get out of one. 🗞

Sources: *Birmingham News*, *WIAT*

No Summary Judgment for Private Transportation Company in Maryland Detainee's Suit Alleging "Horrific" 2,000-Mile Journey

by Keith Sanders

Over nine days in December 2015, during transport from Maryland to South Carolina to face charges he skipped child support payments, William Karn endured a grueling trek stretching more than 2,000 miles while shackled to a metal bench in a van owned and operated by Prisoner Transport Services (PTS) and Brevard Extraditions.

Karn, who was arrested in Maryland's Montgomery County on a warrant out of Horry County, South Carolina, spent much of that time in handcuffs so tight that he was left with injuries to his wrists, he said. He also alleged deplorable conditions inside the van, with discarded refuse, human waste and flies.

The trip could have been completed in eight hours, but it lasted many times that long, meandering across five states to pick up and drop off other detainees along the way. During one infrequent bathroom stop, Karn fell out and injured his shoulder. But transporting guards refused him medical attention he said. When a fight erupted in the van, all the detainees were sprayed with a chemical agent and not allowed to wash it off afterwards.

On September 16, 2016, Karn filed a federal civil rights action in the U.S. District Court for the District of Maryland.

Proceeding under 42 U.S.C. §1983, he accused PTS and Brevard of deprivation and negligence in violation of his rights under the Fourth, Eighth and Fourteenth Amendments. Defendants promptly filed for summary judgment.

On September 19, 2017, the Court dismissed all claims except one: a Fourteenth Amendment claim against "John Doe" defendants. Karn was allowed to engage in discovery in order to identify them and amend his complaint to add specific allegations against them.

That amended complaint then fleshed out claims of negligence, lack of training and negligent supervision against defendants PTS, Brevard and its employee James Lebron. The Court took testimony from an expert witness for Plaintiff to establish the standard of care he was due. After that, it employed the two-pronged test for deliberate indifference from *Farmer v. Brennan*, 511 U.S. 825 (1994): Was Karn deprived of a basic human need? And if so, did significant emotional or physical injury result?

The answer to both was "yes," based on alleged conditions in the van sufficiently horrific for U.S. District Judge George Hazel to rule on March 11, 2022 that the evidence "provides support for [Karn's] allegations that the van drove during the

night, [and] that there were few bathroom breaks." GPS data also supported Karn's claims that the guards drove at dangerously high speeds up to 97 mph, swerving erratically and causing detainees to be thrown against the wall and floor because there were no seatbelts on the van.

Consequently, the Court denied summary judgment to Defendants PTS, Brevard and Lebron, in his personal capacity, on Plaintiff's claims of unsanitary conditions, inadequate bathroom breaks, water and food, as well as unreasonable use of chemical agents and excessively tight restraints. The Court also denied summary judgment on Plaintiff's negligent supervision and training claims. *See: Karn v. PTS of Am., LLC*, 590 F. Supp. 3d 780 (D. Md. 2022).

The case is now assigned to Judge Lydia Kay Griggsby, who accepted the parties' most recent status report on May 2, 2023. As it laid out, they are headed to trial in April 2024. *PLN* will continue to report developments as they are available. Karn is represented by attorneys Jay P. Holland, Alyse L. Prawde and Timothy F. Malone of Joseph Greenwald and Laake PA in Greenbelt, with co-counsel from Rockville attorney Lawrence R. Holzman. *See: Karn v. PTS of Am., LLC*, USDC (D. Md.), Case No. 8:16-cv-03261. 🗞

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\$5,000 Settlement for Warrantless Search of *Pro Se* North Carolina Prisoner's Cellphone

by Matt Clarke

A North Carolina prisoner who alleged his constitutional rights were violated during his arrest and pretrial detention eventually filed five federal lawsuits. Three were dismissed by the federal court for the Eastern District of North Carolina. One is still pending. Another was settled on August 12, 2021, for a payment of \$5,000 to the prisoner, Cornelius Lamont Barnes, 42.

The complaints date back to September 5, 2018, when Barnes was arrested by U.S. Marshals in Virginia and returned to North Carolina to face rape charges. Kinston police took him to Lenoir County Jail (LCJ). While he was there, Kinston Detectives executed a search warrant at Barnes' residence on October 30, 2018, seizing a cellphone they found. They sent it to the State Bureau of Investigation lab, where a digital copy was made of its contents – despite the absence of a search warrant for the phone.

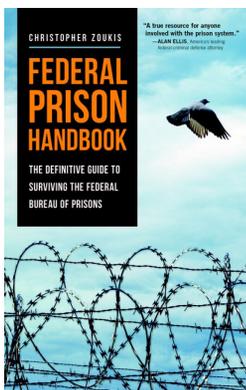
A CD with the copied information was given to Assistant District Attorney Tonya Montanye, who advised Barnes that she intended to use it in his criminal prosecution. On January 27, 2020, Barnes filed suit *pro se* in the Court pursuant to 42 U.S.C. § 1983, alleging the search of the phone violated his Fourth Amendment guarantee of freedom from unreasonable search and seizure. The City then settled the case for \$5,000. See: *Barnes v. Montanye*, USDC (E.D.N.C.), Case No. 5:20-ct-3033.

Meanwhile, on September 11, 2019, Barnes allegedly lured a female guard to his cell by asking her to pick up a grievance; when the guard arrived, she found him naked and masturbating. Barnes was disciplined for this with loss of privileges and some period of time in isolation – the parties disputed exactly how long. That

eventually prompted Barnes to file four more *pro se* suits in the Court.

The first accused defendant jailers of violating his Fourteenth Amendment due-process rights – Barnes was still an unconvicted pre-trial detainee at that point – by refusing to grant him a disciplinary hearing. The next accused jail staff of retaliating against him for his grievances and lawsuits. A third accused two jailers and a pair of their supervisors of imposing discipline without hearings on two more occasions. Another suit claimed that the discipline amounted to punishment, again in violation of his due-process rights.

On March 17, 2022, the Court dismissed Barnes' retaliation claims, saying that it wasn't unreasonable to conclude his punishment was appropriate discipline for masturbating in front of the guard. Six days later, on March 23, 2022, the Court also



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dismissed his claim that the discipline was so excessive that it violated his due-process protection from pretrial punishment. *See: Barnes v. Foster*, 2022 U.S. Dist. LEXIS 48138 (E.D.N.C.); and *Barnes v. Washington*, 2022 U.S. Dist. LEXIS 51554 (E.D.N.C.).

But that same day, Barnes' challenge to imposing discipline without a hearing was allowed to proceed against two guards who

wrote him up, while his claims against supervising guards were dismissed. *See: Barnes v. Avery*, 2022 U.S. Dist. LEXIS 51558 (E.D.N.C.). However, Barnes' other case challenging his discipline without a hearing did not survive. Quoting *Adams v. Rice*, 40 F.3d 72, 75 (4th Cir. 1994), the Court said "the Constitution creates no entitlement to grievance procedures or access to any such procedure voluntarily established by

a state." It dismissed the case on March 28, 2023. *See: Barnes v. Ingram*, 2023 U.S. Dist. LEXIS 53407 (E.D.N.C.).

That leaves one open claim at the Court for Barnes, who was convicted and sentenced as an habitual offender in November 2020 to 95 months. *PLN* will report updates to that case as they are available. *See: Barnes v. Avery*, USDC (E.D.N.C.), Case No. 5:20-ct-03270. 📖

Challenge Survives to Maryland County's Cash Bond Program

by David M. Reutter

Finding that changes in pretrial release procedures of Prince George's County "may or may not be ameliorative," the federal court for the District of Maryland on June 7, 2023, refused to dismiss a complaint filed by a group of pretrial detainees who claim the county's bond review process and pretrial release program are unconstitutional.

The suit was filed almost a year earlier in July 2022 against the county, its jail officials and 11 of its judges by a group of pretrial detainees. They alleged that during bond reviews in the county's district and circuit courts, judges "abdicated their constitutional duty" and unlawfully deferred to the county jail's pretrial services program to determine a defendant's level of supervision or release from jail.

Despite being entitled to release, many defendants often languish in jail for weeks or months while waiting for pretrial services to make a determination on their release eligibility, the lawsuit alleged. Plaintiffs called the process opaque, saying it was bogged down in backlogs. They sought class-action status.

Defendant county officials and judges moved for dismissal, asserting immunity and also arguing that a federal court had no jurisdiction over the issues. They further argued the lawsuit was "moot" because many plaintiffs had been released. Moreover, they said there could be no due process violation because a pretrial program is not required by the U.S. Constitution.

"Because the jail offers this alternative potential for release, it is confounding why plaintiffs would complain about it. The jail is under no obligation to offer the service," the County wrote in a footnote of its motion. "The familiar sayings of 'Don't bite the

hand that feeds you' and 'Be careful what you ask for' come to the forefront of one's mind in these circumstances."

The County also took issue with the work of volunteers from Courtwatch PG, who spent three years watching court proceedings and taking notes that went into a database. Calling the suit "vexatious" and the volunteers "at war with the system," the County said they had made "observations and impassioned complaints about them that have little or no legal import . . . and then ambushed both judiciary and County with this lawsuit."

"We're not the enemy; we're not trying to go to war. We come in peace," insisted Courtwatch PG Director Carmen Johnson. "We didn't ambush them on this. We've been doing accountability letters on pretrial for over a year."

On January 24, 2023, U.S. District Judge Peter J. Messitte weighed the merits of the motion to dismiss by county officials. He chastised them for not having a more efficient and transparent process for evaluating defendants for release from jail, saying "simple" changes could improve the system. Nevertheless he agreed with them that Plaintiffs had no cause of action for money damages, only equitable relief. He therefore dismissed claims by any plaintiffs who had been released. But claims of the remaining plaintiffs were allowed to proceed. *See: Frazier v. Prince George's Cty.*, 2023 U.S. Dist. LEXIS 12691 (D. Md.).

Plaintiffs appealed to the U.S. Court of Appeals for the Fourth Circuit. They also filed a motion for reconsideration with the Court, and so did the judges who were defendants, seeking to be fully dismissed from the case. The County also filed for dismissal, presenting its newly revised

pretrial release procedures. But the Court denied the motions.

Plaintiffs' argument for money damages was distinguishable from a settlement New York City entered with pretrial detainees at its Rikers Island jail complex, the Court said, because in that case jail officials ignored judicial orders. Here, though, orders by the defendant judges were faithfully executed.

But they could not be dismissed from the case yet, the Court continued, because Plaintiffs' attempts at class certification had been denied without prejudice to their right to try again. Therefore "it makes sense to keep the current roster of Judge Defendants in place," the Court said, since "all of [the judges] might be subject to such remedy as the Court might order." *See: Frazier v. Prince George's Cty.*, 2023 U.S. Dist. LEXIS 99937 (D. Md.).

Defendants moved to certify the case for partial appeal, but that was denied on August 9, 2023. *See: Butler v. Prince George's Cty.*, 2023 U.S. Dist. LEXIS 140292 (D. Md.).

Plaintiffs are represented by attorneys with Civil Rights Corps, Wilmer Cutler Pickering Hale and Dorr LLP and the Georgetown University Law School Center for Constitutional Advocacy and Protection, all in Washington, D.C. They worked closely with public defenders and Courtwatch PG in formulating the lawsuit. Both this case and Plaintiffs' appeal remain open, and *PLN* will update developments as they are available. *See: Butler v. Prince George's Cty.*, USDC (D. Md.), Case No. 8:22-cv-01768; and *Frazier v. Prince George's Cty.*, USCA (4th Cir.), Case No. 23-6359. 📖

Additional sources: *DCist*, *Washington Post*

Shocking Video Footage Reveals Rampant Violence and Neglect in Los Angeles County Jails

A collection of graphic videos reported by the *Los Angeles Times* on June 24, 2023, pulled back the curtain on rampant violence and chaos inside Los Angeles County jails. The footage, saved on a discarded thumb drive, portrays a shocking lack of supervision from jailers, as well as incidents of detainee-on-detainee violence and guards using excessive force.

Stabbings, fistfights and suicide attempts from the past six years play out on the videos, as well as disturbing incidents of neglect. In one, a woman gives birth while

restrained in a wheelchair, leaving jailers to collect her newborn from the floor where it fell. In other clips, detainees apparently desensitized to violence continue daily activities while brutal fights and beatings occur a few feet away.

Most of the footage came from Men's Central Jail, date-stamped between 2017 and 2021. The clips highlight slow or no response to violence by jailers, leaving vulnerable detainees unattended. One 20-minute video captured a prolonged attack by detainees on a fellow detainee while no guards intervened.

The absence of supervision – despite the presence of functioning cameras – raised concern about a lack of oversight for Michele Deitch, a senior lecturer in criminal justice at the University of Texas at Austin, who said the clips left her “utterly stunned.”

“There was absolutely no supervision,” Deitch said. “That that could be happening with cameras on and no one comes is mind-boggling.”

Trying to explain, the Los Angeles County Sheriff's Department (LASD) pointed to the timing of the incident, which fell between regular guard rounds. Video feeds were also not continuously monitored, thanks to a staffing shortage that still plagues the jail.

“We did not have the staff for that,” admitted Assistant Sheriff Sergio Aloma. “We now have monitors in some staff stations but still do not have the staff to

monitor them full-time.”

The thumb drive containing the videos was discovered by a detainee over a year ago in the trash at Men's Central Jail. Another detainee smuggled it out, after finding it held numerous reports, training materials, and a compilation of violent surveillance clips categorized as “training videos.”

The training value of such violent videos is dubious, but they expose a troubled and chaotic jail. While some progress has been made, federal lawsuits and other reports complain of ongoing problems with violence and terrible conditions of confinement in the jail system.

The same day the videos were reported, the county announced it was adding treatment beds to divert more mentally ill people from the jail system. Just a few weeks earlier, on May 16, 2023, a state court judge issued an injunction to stop county prosecutors from “[e]nforcing the secured money bail schedules against poor people who are detained in jail solely for the reason of their poverty,” calling the practice “a clear, pervasive, and serious constitutional violation.” See: *Urquidi v. Los Angeles*, Cal. Super. (Cty. of Los Angeles), Case No. 22STCP04044.

It remains to be seen whether these measures will meaningfully reduce violence plaguing the LASD jail system. 🗞️

Additional sources: *The Appeal*, *Los Angeles Times*

Oregon Governor Commutes All Death Sentences

by Mark Wilson

“I have long believed that justice is not advanced by taking a life, and the state should not be in the business of executing people – even if a terrible crime placed them in prison,” said outgoing Oregon Gov. Kate Brown (D) on December 14, 2022, in commuting the 17 remaining Oregon death sentences to life imprisonment without the possibility of parole (LWOP).

During the last 60 years, Oregon has executed only two prisoners. Both of them waived their appeals and asked to be executed in 1997, and the State obliged. Oregon

Governors have imposed a moratorium on capital punishment since 2011. During her first press conference after becoming governor in 2015, Brown announced that she was continuing the moratorium during her administration.

The Oregon Legislature enacted Senate Bill (SB) 1013, effective September 29, 2019, redefining Oregon law to prohibit the death penalty in all but three cases: the murder of a child under 14 years of age; the murder of a law enforcement official; and a prison murder committed by someone who

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has previously been convicted of murder. Most of those on Oregon's death row could not have been sentenced to death under the new definition. Yet, the legislature refused to apply the new law retroactively.

That did not sit well with the Oregon Supreme Court. In a decision on October 7, 2021, the Court vacated the death sentence of one of those prisoners, holding that after the 2019 reclassification, his death sentence for a jail murder violated the cruel and unusual punishment clause of Article I, section 16, of the Oregon Constitution. *See: State v. Bartol*, 368 Or 598, 496 P3d 1013 (2021). Although the ruling applied only to Bartol, all who read it were certain that the reasoning effectively invalidated every other Oregon death sentence as well.

That belief was further underscored just one month later, when the Supreme Court followed *Bartol* on November 12, 2021, vacating the death sentences of Dayton LeRoy Rogers, Oregon's only serial killer on death row for at least seven prostitute murders. *See: State v. Rogers*, 368 Or 695, 499 P.3d 45 (2021).

If *his* death sentences were invalid, surely every other death sentence was as well. But, of course, the State continued to fight on a case-by-case basis to maintain every other Oregon death sentence. Brown finally found the courage to end this ridiculous, expensive and losing battle during her final weeks in office.

"It was unacceptable to me that I would leave office without taking one final step to ensure that none of the individuals in Oregon with a death sentence would be executed by the State," Brown told legislative leadership in a letter dated January 9, 2023. "Unlike previous commutations I've granted to individuals who have demonstrated extraordinary growth and rehabilitation, these commutations were not based on any rehabilitative efforts by the individuals on death row. Instead, it reflects the recognition that the death penalty is both dysfunctional and immoral. It is an irreversible punishment that does not allow for correction."

Brown also granted the request of the Oregon Justice Resource Center (OJRC)

to order prison officials to immediately dismantle the state's death chamber located at the Oregon State Penitentiary.

Yet, her clemency decision created additional confusion and legal wrangling, as the Oregon Supreme Court had declared long ago that those prisoners who committed their offenses before November 1, 1989 – including many of those with commuted death sentences – may not be sentenced to LWOP because it was not a valid sentencing option in Oregon before then. Accordingly, the retroactive application thereof violates the *ex post facto* prohibitions of the United States and Oregon Constitutions. *See: State v. Wille*, 317 Or 487 (1993). Those prisoners are immediately entitled to a "rehabilitation hearing" before the Oregon Board of Parole and Post-Prison Supervision and release eligibility, upon proving by a preponderance of the evidence that they are capable of rehabilitation. 🗞️

Sources: *Seattle Times*

Voting Rights Restoration for Virginia Ex-Felons Once Again Subject to Governor's Whim

by Kevin W. Bliss

In a letter to Virginia lawmakers on March 22, 2023, Gov. Glenn Youngkin (R) took executive action to roll back voting rights restoration to ex-felons. It is the fourth time since 2013 that a governor has modified procedures. State Sen. Scott Surovell (D-Mount Vernon) said the move makes restoration "a secret process with secret criteria in the complete absolute discretion of the Governor," setting the state "back to 1902-era policy."

In 2013, former Gov. Bob McDonnell (R) announced that all nonviolent offenders would be granted voter rights restoration upon completion of their sentence, including any period of probation or parole. In 2016, his successor, former Gov. Terry McAuliffe (D), expanded that policy to include all ex-felons. And his successor, former Gov. Ralph Northam (D), expanded that again in 2021, scrapping the requirement to complete any probationary period after release from prison. It became almost automatic that an ex-offender had voting rights restored as soon as he or she was released from prison.

But while campaigning for office that year, Youngkin pointed to the moves to criticize his opponent, McAuliffe, who was running for office again. (Virginia does not allow governors to serve consecutive terms.)

Prisoner rights advocates criticized the new policy for reinstating a policy that will discriminate against Black Virginians. They also worry that it vests too much power in the Governor to decide restoration. Plus it revives an intrusive and discriminatory application asking such immaterial questions as how many children the individual has by different partners.

Automatic rights restoration is what politicians in many states have been trying to legislate for some time now. But, as Youngkin's policy change proves, unless the right is codified by law, it can easily be erased by subsequent executive action.

A lawsuit filed in federal court for the Eastern District of Virginia by attorneys Terry Frank, Charles H. Schmidt, Jr. and others with the Fair Election Center on

April 6, 2023, challenges Youngkin's "secretive and arbitrary voting rights restoration scheme for people with felony convictions." *See: Nolef Turns, Inc. v. Youngkin*, USDC (E.D. Va.), Case No. 3:23-cv-00232.

A separate suit filed by the American Civil Liberties Union on June 26, 2023, claims the governor's action runs afoul of the Readmission Act of 1870 that let Virginia, the former capital of the Confederacy, back into the United States. *See: King v. Youngkin*, USDC (E.D. Va.), Case No. 3:23-cv-00408.

One applicant who wished to remain anonymous to avoid reprisal bemoaned the governor's move for preventing her from participating in her state's government. "It makes me feel like I'm not a citizen," she said. "I did the time for the crime, but I still have lost my rights. I don't know if I'll ever get them back or not." 🗞️

Additional sources: *AP News*, *Bolts Magazine*

Solitary Confinement is a Catch-22 for Colorado Prisoners and a “Moral Injury” for Mental Health Workers

Responding to an open-records request, the Colorado Department of Corrections (DOC) revealed on April 11, 2023, that 1.7% of the state’s prison population was in solitary confinement for 22 hours a day or more.

A mentally ill woman held for DOC at the Delta County Jail (DCJ) was in that group. When she eats feces or attacks others at the jail, she is placed in solitary confinement, according to the *Colorado Sun*. “We have limited resources,” explained Joel Watts, a therapist at the jail. “If we don’t put them in isolation, they become a danger to themselves, to others and to staff.”

But throwing people like her in “the hole” presents a troubling ethical dilemma – “a Catch22,” Watts added. “In putting them in isolation, we know they’re going to get worse.”

Prisoners are sent to solitary confinement for several reasons: Acting violently towards the staff or other prisoners, being in a certain gang, receiving severe disciplinary infractions or needing to be placed in protective custody. Suffering from mental illness is another common reason,

when a prisoner poses such a risk that he or she is sent to solitary confinement. However, the negative psychological and physical effects brought on by the isolation will almost always worsen the mental sickness.

Prisons and jails – not medical facilities – hold the largest share of the nation’s mentally ill. Unlike those in a hospital setting, a mentally ill patient who becomes disruptive in prison can be dealt with only by being locked away in solitary confinement to protect others. In “Solitary Confinement and Mental Illness in U.S. Prisons: A Challenge for Medical Ethics”, Jeffrey L. Metzner, MD and Jamie Fellner, Esq. note that “prison officials have increasingly turned to solitary confinement as a way to manage difficult or dangerous prisoners.”

“Many of the prisoners subjected to isolation, which can extend for years, have serious mental illness, and the conditions of solitary confinement can exacerbate their symptoms or provoke recurrence,” they add. “Prison rules for isolated prisoners, however, greatly restrict the nature and

quantity of mental health services that they can receive.”

Moreover, the ethical dilemma that solitary confinement proposes to mental health workers such as Watts is an example of “moral injury,” a term coined by social justice and civil rights activist Staughton Lynd in his groundbreaking work, *Moral Injury and Nonviolent Resistance: Breaking the Cycle of Violence in the Military and Behind Bars*. It results when an individual is forced to violate his or her own personal principles or professional standards because of policy or law.

To reduce the moral injury clinicians like him face, Watts suggests a two-track approach when people are arrested: The first, incarceration, is solely for individuals who are not mentally ill and pose a public safety risk. The second is a restorative approach that focuses on rehab, inpatient and residential services, and dismissal of charges for mentally ill individuals who are in psychosis when they break the law. 📖

Additional sources: *Colorado Sun*, Solitary Watch

Doctor Convicted of Sexually Abusing USA Gymnasts Is Stabbed in Prison Cell

One of the more notorious prisoners at a federal lockup in Florida was stabbed by a fellow prisoner on July 9, 2023. Larry Nassar, 59, survived and was recovering from the assault by 49-year-old Shane McMillan. The incident was reportedly provoked by a comment Nassar made about the Wimbledon Women’s Tennis championship game they were watching at the Federal Correctional Institution in Coleman, Florida.

“I wish there was girls playing,” the disgraced physician allegedly said.

That was apparently enough to provoke the in-cell attack with a homemade weapon by McMillan. He is serving what was originally a 20-year term for a 2002 meth-trafficking conviction in Wyoming, though the sentence has since been more than doubled with additional convictions for punching out a BOP guard in Loui-

siana in 2006 and attempting to murder a fellow prisoner at the “supermax” lockup in Colorado in 2011.

Nassar, the former doctor for U.S. Women’s Gymnastics, pleaded guilty in 2017 to sexually abusing young athletes under his care. He also admitted possessing child pornography. He came to the prison in 2018 from the U.S. Penitentiary in Tucson, where he had been assaulted within hours of his arrival. He is serving a 40-year sentence with the federal Bureau of Prisons (BOP) in a unit housing other sex offenders.

The assault happened outside the view of surveillance cameras, but Joe Rojas, President of Local 506 of the American Federation of Government Employees, the union representing BOP guards, credited his members with preventing the situation from turning deadly.

“He is lucky to be alive, and the only reason he is alive, in my opinion, is because of the staff members who were there,” Rojas said.

BOP insisted that staffing was adequate at the time, though it also admitted that about one-third of guard slots are vacant at the prison.

“I’m not happy that this happened,” said Ashley Erickson, who was one of Nassar’s victims, adding that “I don’t think violence should be part of his sentence.”

“When we sent him to prison, my goal wasn’t for him to just get beat up and stabbed and go through such a violence,” Erickson continued. “I just wanted for him to pay for his time for all the stuff that he did to us.” 📖

Sources: *Daily Beast*, *NBC News*, *WILX*

Exasperated Federal Judge Issues Permanent Injunction to Arizona DOC in Healthcare Class-Action

by Matt Clarke

On April 7, 2023, a visibly annoyed U.S. District Judge Roslyn Silver issued a highly-detailed permanent injunction (PI) specifying what must be done by the Arizona Department of Corrections, Rehabilitation, and Reentry (DCRR) to meet minimum constitutional standards in providing prisoner healthcare and mental health care, as well as conditions in isolation.

As *PLN* previously reported, the Court found in June 2022 that healthcare and mental health care in the prison system was “plainly grossly inadequate,” and the conditions in its restrictive housing units were unconstitutional. [See: *PLN*, Dec. 2022, p.1.]

Before issuing the PI, Judge Silver noted that she was forced to throw out a six-year-old settlement because DCRR showed little interest in making the improvements it agreed to, despite \$2.5 million in contempt-of-court fines.

“Given this history, the Court cannot impose an injunction that is even minutely ambiguous,” Silver wrote, “because Defendants have proven they will exploit any ambiguity to the maximum extent possible.”

The final PI includes “a specific number of key personnel that must be hired.” That number was determined by court-appointed experts Dr. Marc Stern, Dr. Bart Abplanalp and John McGrath. The court ordered DCRR to immediately hire the specified number of personnel, limiting the number of positions that could be filled with temporary hires to 15%.

The Court noted that it provided “significant detail regarding medical care, mental health care and the conditions imposed on [the subclass of prisoners in isolation] to remedy the egregious constitutional violations.”

“Moreover, the unusual scope of this injunction is informed by Defendants’ actions throughout the case,” the Court continued. “Despite their agreement and promise to the Court to do otherwise, Defendants have fought every aspect of this case at every turn.”

As Judge Silver noted, Defendants not only failed to perform obligations set forth in the previous agreement but also “kept inaccurate records and unreasonably misread the settlement’s requirements to their advantage.”

So the Court decided to impose “both quantitative and qualitative measures” on Defendants’ performance. It also appointed its own monitors to ensue Defendants’ compliance with the PI, which additionally provided for Plaintiffs’ attorneys to monitor compliance.

The PI is detailed in every aspect of medical and mental health care, including screening; staffing levels; timely provision of care and medications; mortality and suicide attempt reviews; electronic healthcare records; and treatment of specified diseases such as Hepatitis C and tuberculosis (TB). It also specifies relief for a large number of prisoners held in isolation, including provision of their medical and mental health care; guard staffing levels; daily hours out-of-cell and amount of out-of-cell activities;

electronic record-keeping; building maintenance; and provision of food, bedding and clothing. See: *Jensen v. Thornell*, 2023 U.S. Dist. LEXIS 61747 (D. Ariz.).

The Court followed up with an order on June 8, 2023, clarifying that its appointed experts would be paid by Defendants from sanctions imposed on them for previous contempt findings. See: *Jensen v. Thornell*, 2023 U.S. Dist. LEXIS 100268 (D. Ariz.).

After that, Judge Silver received an “Eyewitness Account from Subclass” in a letter from 19 state prisoners held at the Arizona State Prison Complex’s Kingman-Huachuca Unit, which is privately operated under contract by The GEO Group, Inc. While not responding directly to that letter, the Court noted that its PI specifically included private prisons contracted by DCCR. But since neither party had briefed the Court about conditions in those lockups, another order was issued on July 31, 2023, to provide that briefing that will “establish clear procedures and avoid future disputes regarding prisoners held at privately-run facilities.” See: *Jensen v. Thornell*, No. 2023 U.S. Dist. LEXIS 132549 (D. Ariz.).

It is clear that the Court has had enough of DCRR’s obstinance and intends to force a sea change in the Arizona prison system. Plaintiffs are represented by attorneys from Perkins Cole LLP in Phoenix; the state and national arms of the American Civil Liberties Union; and Prison Law Office in Berkeley, California. 🐾

Additional source: *US News*

News in Brief

Alabama: According to *WSFA* in Montgomery, a guard at the Montgomery County Detention Center was charged on July 18, 2023, with conspiracy to provide contraband to a prisoner as well as bribing a public official. Timothy Bernard Summerlin, 33, had worked at the lockup for roughly three and a half years before his arrest, which took place in a Walmart parking lot following a seven-month investigation conducted by the U.S. Marshals Service

and the Montgomery County Sheriff’s Office. Summerlin was then charged in federal court.

California: *KGET* in Bakersfield reported that a state prisoner was convicted of assaulting a Wasco State Prison (WSP) guard on June 7, 2023. Not quite two weeks later, farther north in California, a Solano County Jail (SCJ) prisoner pleaded guilty to assaulting another guard there, according to the *Vacaville Reporter*. For attacking

the unnamed WSP guard in July 2022, a Kern County jury convicted Jose Carrasco, 27. He was set for release in 2024 but now faces up to 10 more years of incarceration. The SCJ prisoner, Derek Edward Dunlap Jr., 32, admitted assaulting a guard there in 2020. His three-year sentence will run concurrently with a sentence of 25 years to life he received after pleading no contest to killing a homeless man, Alexander Lind, 28, in February 2018.

California: A former state prison guard was convicted on July 17, 2023, of lying to a federal grand jury that was investigating an assault on a prisoner. According to *Yahoo News*, the jury deadlocked on four other charges against Brenda Villa, including an accusation that she tried to get other guards at New Folsom to go along with the coverup. The assault she tried to hide happened on September 15, 2016, when prisoner Ronnie Price, 65, was tripped during escort by guard Arturo Pacheco, causing Price to fall and smash his face into the concrete floor. He was taken to the medical center where he eventually died of a pulmonary embolism. Pacheco pled guilty to two counts of deprivation of rights under color of law. A fellow guard involved, Ashely Marie Aurich, pled guilty to falsifying records. Pacheco was sentenced to 12 years and seven months in prison. Aurich was sentenced to 21 months in prison. [See: *PLN*, Jan. 2023, p.32.]

Villa has asked the judge to throw out her perjury conviction, as well as four other charges on which the jury failed to reach a verdict. Although she was not present at the actual beating, Villa was considered to have orchestrated the deception and could face up to five years in prison if Senior U.S. District Court Judge William B. Shubb denies the motion to dismiss charges.

Colorado: *KRDO* in Colorado Springs reported on June 28, 2023, that the state Department of Corrections (DOC) had quietly arrested three prisoners for the murder of a fourth – which was never announced. Before the fatal attack, prisoners were playing cards, watching TV, and drinking alcohol according to the arrest affidavit. Charles Porter then punched another prisoner, prompting Nicholas Hill and a fourth prisoner to come to the defense. Porter and prisoners Turell Lee and Justin Sanders then viciously kicked Hill, who was airlifted to a hospital where he was declared brain dead. Hill's father, Danny Cochran, blamed prison officials for staff shortages that contributed to his son's death. He said Hill had recently been moved to the State Penitentiary in Cañon City for his protection. Hill would have been released just a few months after his murder had he lived.

Florida: *WTVT* in Tampa reported that a state prison guard was charged with evidence tampering in a friend's road-rage incident. The victim in that incident spotted Derick Wilkerson, 31, as both were driving

in their Winter Haven neighborhood on July 17, 2023. When they got out of their vehicles, Wilkerson pointed a gun at the unnamed victim and threatened to kill him. Wilkerson then followed the victim back to his vehicle, raised the gun and fired it into the sky. At that moment, his friend, Polk Correctional Institution guard Stacy Newton, 31, arrived and told Wilkerson to leave. She then picked up his bullet casing and put it in her pocket. Security footage from a nearby residence captured the scene. Wilkerson and Newton both confessed to police. Wilkerson has an extensive rap sheet and has been charged with aggravated assault with a deadly weapon without intent to kill and improper exhibit of a firearm.

Georgia: The *Augusta Press* reported that a pregnant healthcare employee working for Wellpath, a medical services contractor for the state DOC, was arrested on June 23, 2023. Faatimah Maddox, 30, was caught having sex with a prisoner at Augusta State Medical Prison. The two were discovered when prisoner Joshua Demery came up missing during a headcount. Prison staff then found him alone with Maddox amid soiled sheets in a prison operating room. She confessed to having intercourse on several occasions with Demery. She was also four months pregnant and said he could be the father of her baby. Demery is serving life for shooting a woman in the face during a violent armed robbery. Maddox was arrested for sexual assault by a person with supervisory or disciplinary authority, a felony with a maximum 25-year prison sentence. She had worked as a surgical technician for various companies over the past several years.

Illinois: On July 18, 2023, former Pinckneyville Correctional Center guard Cord Williams, 35, pled guilty to violating a prisoner's civil rights by using excessive force under color of law and conspiracy to obstruct justice by falsifying incident reports. *KFVS* in Cape Girardeau, Missouri, reported that the charges resulted from an incident on April 24, 2022, when Williams and another guard, Christian Pyles, 25, beat a prisoner while he was fully restrained in handcuffs and leg irons. Another guard, Mark C. Maxwell, 52, was charged in the indictment on a separate civil rights violation for failing to intervene while he was acting lieutenant. Williams said he beat the prisoner for punching another guard on a previous occasion. The beating caused

severe injuries, including facial fractures, multiple lacerations, lung damage and a chipped tooth. The conspiracy count noted that the guards colluded to file false reports. The charges against Pyles and Maxwell remain pending.

Indiana: *WBIW* in Bedford reported that a prisoner went on a stabbing spree at a group therapy session on April 28, 2023, at the New Castle Correctional Facility, which is run by private prison titan Geo Group. During the session, one of the prisoner attendees, Ronald Earl Menzie, 46, produced a metal object and began stabbing the therapist in her neck and throat. The other prisoners tried to intervene, and one was stabbed in the chest. According to *The Star Press*, both victims were rushed to Indiana University's Ball Memorial Hospital in Muncie, where the therapist's wounds had to be stapled. She later said in an interview that Menzie was playing cards by himself and did not appear angry. One guard thought Menzie's weapon could have been produced with the metal shelving in his cell. The wounded prisoner reported that Menzie "thinks the correctional officer and the chow hall (are) trying to poison him through his food."

Indiana: An Indiana jail transport guard was killed in the van he was driving by a detainee passenger on July 10, 2023, *NBC News* reported. Marion County Sheriff's Deputy John Durm, 61, was escorting Orlando Mitchell, 34, to a hospital visit in Indianapolis, when the detainee assaulted Durm while the vehicle idled in the fortified entrance of the Adult Detention Center. Mitchell then stole the vehicle but crashed into a utility pole, and he was captured by other deputies. He was in custody to await trial for murdering his ex-girlfriend.

Indiana: *Northwest Indiana Times* reported that a body scan of an incoming detainee on May 17, 2023, revealed "what appeared to be a foreign object inside the anal cavity" – an 8.5-inch pair of scissors. The unnamed individual being booked into

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the LaPorte County Jail resisted the scan, the county sheriff's office reported. Cpt. Derek Allen commended scan operator Lt. Jeff Holt "for relying upon his training and experience, and successfully preventing a dangerous-edged object from making its way fully into the jail." The sheriff's office said the body scanner was an extremely valuable tool because it has led to the seizure of many contraband items including "tattooing equipment, drugs, paraphernalia and miscellaneous foreign objects."

Iowa: On June 29, 2023, Kevin M. Delveau, 32, a former jail guard with the Scott County Sheriff's Office, was sentenced to a suspended 10-year prison sentence and placed on three years of probation, the *Quad City Times* reported. His five-year career as a jailer had ended in October 2022, when Delveau arrived at the home of a woman with a protective order against him. The intoxicated guard demanded to be let inside, and when he was refused, he broke the door glass and forced his way into the home. According to court documents, once he found the woman inside the house, Delveau screamed obscenities and threatened her. Sheriff Tim Lane said that Delveau's county employment ended after he entered his guilty plea to second-degree burglary and domestic abuse.

Kentucky: Joshua Rogers, 22, a former guard at the Fayette County Detention Center, will have the opportunity to see what the facility looks like from the other side of the bars. According to *WLEX* in Lexington, Rogers was fired on June 27, 2022, the same day he was arrested for sexual assault against a prisoner. Court records detail that Rogers was charged with "deviate sexual intercourse with an inmate." Jamie Gray, who is transgender, alleged that Rogers forced her to perform oral sex on him. Rogers was also charged with third-degree sodomy. Rogers pleaded guilty, and sentencing was set for August 17, 2023. More victims have since come forward and filed a lawsuit against Rogers and the Lexington-Fayette government, alleging the jail was not properly staffed to prevent their sexual assault. In the suit filed in Fayette County Circuit Court on June 6, 2023, two other detainees, Jason Costick and Joey Bardelas, allege Rogers sexually assaulted them, too. Defendant jail officials removed the case to the federal court for the Eastern District of Kentucky on June 29, 2023. See: *Costick v. Lexington-Fayette*

Urban Cty. Gov't, USDC (E.D. Ky.), Case No. 5:23-cv-00198.

Maryland: Former Prince George's County DOC guard Danielle Dominique Smith, 34, pled guilty on July 14, 2023, to smuggling controlled substances into a county lockup. Smith had 12 years under her belt as a guard before love interrupted her career; *DC News Now* reported that she had developed a romance with a prisoner. Evidence of the relationship was taped on phone calls from June 2021 to March 2022, when the pair cleverly used the term "food products" to refer to the drugs. Smith conspired with her boyfriend and other prisoners to distribute Suboxone and K2 (synthetic marijuana). First, she attained the drugs from co-conspirators outside the facility, then she smuggled them on diet food trays specifically assigned to the prisoner. He then finished the transaction by delivering the drugs to other prisoners. During an intercepted phone call on March 2, 2022, Smith told her lover she was bringing the "meals." When she arrived at work, she was suspended. If the federal court accepts her plea agreement, Smith will be sentenced to six months of home detention.

Mississippi: According to *The Natchez Democrat*, on June 14, 2023, police arrested Douglas Mazique, 28, a guard at the Adams County Correctional Center, which is run by private prison giant CoreCivic for federal Immigration and Customs Enforcement. The arrest was not related to his employment as a guard; rather Mazique was charged with conspiracy to commit murder for a shooting spree on May 5, 2023, that took the lives of two 19-year-olds. More than 30 spent shells were recovered by detectives at the crime scene in front of a Cash Savers supermarket.

Mississippi: On July 19, 2023, an escapee from the Adams County Jail broke into an apartment and stole the keys to a BMW from the out-of-town occupant before crashing the vehicle into a bridal shop. Omari Jaiquan Smith, 22, was ejected from the vehicle in the crash and hospitalized. His brother, Kemari Smith, was arrested and charged with abetting the escape of his brother, who was being held on "lunacy" charges, according to *The Natchez Democrat*. Two weeks earlier, on July 6, 2023, another escape saga ended when the last of three teens who escaped the Henley-Young-Patton Juvenile Justice Center the previous June 27 was recaptured. Capitol Police in

Jackson picked up Tayshon Holmes, 17, and Jashon Jones, 15, the *Clarion-Ledger* reported. The other escapee, Robert Earl Smith, Jr., 16, was picked up the day before. For overpowering a guard to make their escape, the three face assault charges in addition to their original counts, which included armed robbery, auto theft and murder.

Missouri: On June 25, 2023, a guard at the St. Louis Justice Center was indicted for assaulting a handcuffed detainee who posed no threat to him, *KTTN* reported. Direll Alexander, 45, allegedly attacked the detainee, resulting in injuries on March 6, 2023. He pleaded not guilty to the charge in his first court appearance and faces up to 10 years in prison and a \$250,000 fine if convicted.

Montana: On June 30, 2023, the *Great Falls Electric* reported that a newbie guard at the Cascade County Jail was fired and arrested after only six months of employment. A Verizon Wireless employee found child pornography on Garret Pederson's phone when the former guard came in to buy a new one. Pederson, 21, allowed a detective from the Great Falls Police Department to examine the images on his device. The detective saw "hundreds" of photos in a hidden folder that "met the definition of a child engaged in sexual conduct, actual or simulated," according to *KRTV*. Court documents note that Pederson has no known criminal history. He has been charged with one felony count of sexual abuse of children.

Nebraska: A former unit administrator at the Community Corrections Center in Lincoln was sentenced in July 2023 to six months in jail and fined \$1,000 for inappropriate contact with a prisoner. The *Lincoln Journal Star* reported that Nikki Peterson, 33, pleaded no contest to the felony. The relationship was uncovered when a different prisoner alleged in April 2022 that Peterson was having a sexual affair with a prisoner and giving him money to rent an apartment when he was paroled. She had worked for the prison since November 2008 and was promoted to unit coordinator in November 2020. Peterson resigned after being arrested by the Nebraska State Patrol.

New Jersey: On June 16, 2023, Byad Lockett and Darryl Watson, two prisoners at the Essex County Correctional Facility, were convicted of attempted murder, second-degree aggravated assault, and weapon offenses, according to *North Jersey Media Group*. A third prisoner, Isaad Jackson, was

convicted on weapons charges, but the jury could not agree on other charges for him. The three men were part of a group of seven prisoners who brutally attacked detainee Jayshawn Boyd, 22, in September 2021. According to Boyd's attorney, he is a schizophrenic who had been arrested because of violent episodes with his family during psychotic breaks. He was awaiting trial on a simple assault charge when the seven men decided to take their pound of flesh. The prisoners were seen on surveillance footage kicking, punching, and stomping Boyd for two minutes. By the time they finished, Boyd's "limp body had been bloodied and beaten with a mop, a drink dispenser, a water jug and the microwave." Miraculously, Boyd survived the attack, but he spent a significant amount of time in a coma which left his lower extremities paralyzed. Prosecutors will seek sentences that run consecutively to the terms that Watson, Lockett and Jackson are already serving or facing.

New Mexico: Three unnamed jailers were on administrative leave from Albuquerque's Metropolitan Detention Center

pending an investigation into the fatal beating of a jail detainee, according to *KOB*. The victim, John Sanchez, 34, was arrested June 8, 2023, after police found him behind the wheel of a stolen SUV. Prosecutors dismissed auto theft charges the next day due to insufficient evidence. Sanchez was due to be released on Monday, June 12, 2023 — the same day he was taken to the hospital with his fatal injuries. Benny Jaramillo, Sanchez's father, said his son's life had been one of tragedy and struggle because of the death of his two-year-old daughter and his subsequent addiction to fentanyl. He believes his son was experiencing serious withdrawal while in jail and should not have been "with the public." Sanchez died on June 16, 2023, at the University of New Mexico Hospital after being taken off life support.

New Mexico: The *Santa Fe New Mexican* reported that a guard was fired from the San Miguel County Detention Center after showing up to work drunk on June 10, 2023 – and then offering whiskey to co-workers as he bragged about having sex with detainees. Richard Garduño, 30, left the jail that afternoon to buy some food, according to a fellow guard. Upon his return he offered another guard a shot of alcohol, which she declined. Garduño then described in graphic detail having sex with a prisoner. His fellow guards reported he

had been drinking on the job, giving alcohol to prisoners and that he ordered a female prisoner to perform sexual acts. Prosecutors charged the former guard with felony criminal sexual penetration by a person in a position of authority over a prisoner, bringing contraband into a prison and tampering with evidence. Garduño was released from custody on a \$30,000 bond and placed on house arrest.

New York: After Nusinaida Ramos, 34, was found fatally strangled in her Yonkers apartment in March 1997, police suspected her husband, former SingSing Correctional Facility guard Rafael Ramos, now 54. But back then Yonkers police were reluctant to move forward without a confession, according to the *Daily Mail*. It took prosecutors 26 years to come up with evidence to make a case against Ramos. They are now ordering him to submit a DNA sample. On the day that his wife was killed, Ramos and his girlfriend had picked up her children from her house. A family member reported that Ramos was "extremely angry" because his wife was seeking increased child support and considering a move to Florida. His bail has been set at \$750,000 cash, \$1 million bond or \$2 million partially secured bond

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that would require \$200,000 in cash. Ramos' lawyer, Lynda Visco, was fighting the request for a DNA sample from her client.

New York: On July 13, 2023, Saratoga County Jail guard Carlee Ringer, 26, was arrested for attempting to smuggle Suboxone to her boyfriend, detainee Wyatt Carpenter, 28, the *Ulster-Sullivan Daily Voice* reported. She was charged with felony criminal possession of a controlled substance and promoting prison contraband. He was charged with felony attempted promoting prison contraband. Nearby the day before, on July 12, 2023, Ulster County Jail (UCJ) guard Felicia Waithe was charged with felony bribery and promoting prison contraband for smuggling banned items to detainees there. The *Mid-Hudson News* also reported she faces misdemeanor official misconduct charges for having inappropriate romantic relationships with several detainees at UCJ and other area lockups.

Ohio: At his sentencing on June 9, 2023, a former guard who pleaded guilty to smuggling drugs into the Columbiana County Jail received no jail time, *WFMJ* reported. Keith McCoy, 53, was caught on October 7, 2021, as he tried to smuggle

methamphetamine, buprenorphine, fentanyl-related compound and a drug known as anilino-Nphenethyl-4-piperidine into the jail. [See: *PLN*, Nov. 2021, p.62.] In March 2023, McCoy pleaded guilty to illegal conveyance of drugs of abuse onto the grounds of a specified government facility, possession of fentanyl-related compound and two counts aggravated possession of drugs and misdemeanor possession of drugs. He was sentenced to three years' probation and 90 days of house arrest.

Pennsylvania: *CBS News* reported that Karen Langkamp, 59, is accused of flicking bodily fluids at a guard while she was being strip searched at the Butler County Prison. For allegedly "degrading an officer," Langkamp was charged with felony aggravated assault and arrested on July 4, 2023. She was released on bail and expected in court on August 21, 2023.

Pennsylvania: A state prison guard has been convicted on contraband and smuggling charges, and two more have been arrested at county lockups. On July 11, 2023, state DOC guard Kevin B. Hoch, 41, was sentenced to at least nine-and-a-half months in jail at the Centre County Correctional Center after pleading guilty the previous May to taking \$17,000 in bribes via Cash App in a scheme to smuggle

K-2-laced paper to an unnamed prisoner at the State Correctional Institution in Benner Township. The *Centre Daily Times* also reported that Hoch was fired, fined \$2,000 and ordered to provide community service. Three days later, on July 14, 2023, the *Harrisburg Patriot-News* reported that Savasia Caraballo, 32, was arrested and lost her job at the Dauphin County Prison when she admitted smuggling Suboxone in February 2023 to detainee Aric Kraft, with whom she was having an affair. Another guard, Joshua Markell, was arrested at the Bedford County Prison on June 8, 2023, after fellow guards saw him throw baggies with contraband tobacco and pills into a detainee's cell, *WTAF* reported. His bail was set at \$75,000.

South Carolina: On June 12, 2023, Daniel Allen Shannon, a South Carolina prisoner serving a life term without the possibility of parole, was sentenced to a second life term in federal court for using a cellphone to hire the murder of a man whom he suspected of robbing a drug ring he ran behind bars, *U.S. News* reported. Shannon arranged the killing of Cletis

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“Eddie” Baker, after hearing that Baker had stolen from one of his drug couriers. The drug house where Baker was shot was burned down after the killing, and the body was ditched miles away. Shannon’s drug ring was impressive and stretched through Lancaster and Kershaw counties. The judge made Shannon forfeit \$127,000 in cash.

South Carolina: Three South Carolina jail guards were arrested on smuggling charges in early July 2023. Joshua Rey, 23, a now-former guard at the Greenville County Detention Center (DC), was charged on July 9, 2023, with misconduct in office, distributing drugs, criminal conspiracy and furnishing contraband to detainees at the jail, according to *WHNS* in Greenville. The following day, on July 10, 2023, Chesterfield County DC guard Damarion McCaskill was arrested on charges of furnishing contraband cigarettes and cellphones to jail detainees, *WPDE* in Florence reported. Earlier that same week, on July 7, 2023, *WMBF* in Myrtle Beach reported that Florence County DC guard Ladayisha Bell, 30, was arrested for furnishing a detainee with a contraband cellphone, as well as trafficking fentanyl and meth.

Tennessee: Two detainees at the Henry County Corrections Facility got a brief taste of freedom after escaping on June 26, 2023, the *New York Post* reported. Hours later, Ronnie Sharp, 48, and Joshua Harris, 40, were recaptured. They managed to open their cell ceiling and crawl through a skylight onto the roof, jumping down to flee across a field. At that point the pair split up. Harris was apprehended eight miles away after someone saw him and called the police. Sharp was caught in another county 30 miles away the next day, after breaking into a home and biting the homeowner, who managed to put the fugitive in a chokehold. The state Bureau of Investigation said that a truck the two stole was found in Kentucky, where Sharp last lived.

Texas: Ashlee Denae Sroufe, 43, a guard at the Allred Unit, was jailed on charges of manufacture or delivery of a controlled substance on June 17, 2023, for allegedly delivering drugs and cellphones to prisoners, *KFDX/KJTL* in Wichita Falls reported. An undercover agent working with the Wichita Falls Police and the state Office of the Inspector General met with Sroufe in a parking lot on January 7, 2023, giving her 125 grams of meth and four

cellphones, which she then delivered to the prison. Sroufe’s bond was set at \$300,000.

Texas: A detainee was mistakenly released from the Jefferson County Correctional Facility (JCCF) on June 15, 2023, according to *KBMT* in Beaumont. Justin DeBourgeois, 25, had served about two years of a 13-year aggravated robbery sentence received in 2021, and he was supposed to be transferred to the state Department of Criminal Justice to finish his sentence after being temporarily detained at JCCF following an April 2023 arrest for possession of a controlled substance. In Jefferson County he was held until sentenced on June 14, 2023, to 180 days in jail; but with credit for time served, he was released the following day. Jefferson County deputies checked the Texas Crime Information Center and the National Crime Information Center and found no warrants or holds. Sheriff Zena Stephens blamed paperwork errors. Her office is now working with the Jasper County Sheriff’s Office to find DeBourgeois and return him to custody.

United Kingdom: A former prisoner was arrested on July 5, 2023, at the home of his lover – who was also his former prison warden. Stephanie Smithwhite, 42, and Curtis Warren, 60, met at HMP Frankland in England while Warren was serving a 13-year sentence for drug trafficking. He was the “UK’s Pablo Escobar,” and she was the warden. Smithwhite became obsessed with Warren. She got a tattoo of his name and read his autobiography, *Cocky*. She allegedly cut a hole in her pants so the two could enjoy intimate moments at the lockup. Investigators discovered they called each other 213 times in three months while Warren was imprisoned. During a search of Smithwhite’s home, love notes were discovered, as was a phone with only one number – which rang Warren’s contraband cellphone. In February 2020, Smithwhite admitted to two counts of misconduct in a public office and subsequently served two years in prison. Warren was arrested in breach of his Serious Crime Prevention Order after he was found living with Smithwhite at her home.

Virginia: According to *WRIC* in Richmond, a federal Bureau of Prisons lieutenant pleaded guilty on July 12, 2023, to violating a prisoner’s civil rights by showing deliberate indifference to his serious medical afflictions which resulted in his death. Michael Anderson, 52, was the

ranking guard at the Federal Correctional Institution in Petersburg on January 9, 2021, when a subordinate guard reported a medical emergency was underway for a prisoner, “W.W.,” 47. Anderson checked him and said he would get help, but never did. The next morning, when Anderson was told that W.W. had fallen over, he still failed to get help. W.W. then lay on the floor of his cell without attention from staff for at least two hours before he died. At Anderson’s sentencing on November 28, 2023, he faces up to life in prison. Two other prison staffers were previously charged with neglecting W.W., as well.

Washington: Two Washington guards were recently arrested for separate incidents of alleged sexual abuse. On June 22, 2023, Spokane County Jail guard Drew S. Seiffert, 32, was charged with first-degree custodial sexual misconduct with a detainee, according to the *Spokesman-Review*. Though the detainee admitted the December 2022 encounter was consensual, it is a crime in the state for guards to have sex with prisoners and detainees under their control. The other arrest was that of Whatcom County Jail guard Austin Case, 23, who was fired and jailed on five counts, including rape, on July 12, 2023. *KING* in Seattle reported that his two alleged victims were not incarcerated; rather, they accused Case of abusing his position or his gun to threaten and extort sex from them. He is free on \$250,000 bond to await trial.

Wisconsin: A pair of St. Croix County law enforcement officers fatally shot a state prison guard at his home on June 3, 2023, after a frantic call from his wife to report he was “out of control,” the *Hudson Star-Observer* reported. St. Croix County Sheriff’s Sgt. Chase Durand and New Richmond Police Officer Katie Chevrier were placed on administrative leave pending the outcome of an investigation and internal review. The dead guard, Tyler Abel, 42, had worked at the Minnesota Correctional Facility in Stillwater. When police arrived at his house, Abel reportedly came out waving his hunting rifle and threatening them. He was shot and killed shortly afterwards. Abel’s obituary described him as someone who “filled our world with endless energy, humor and love.” Minnesota DOC Commissioner Paul Schnell called Abel’s death “both tragic and troubling.” 📰

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Prison Education Guide, by Christopher Zoukis, PLN Publishing (2016), 269 pages. **\$24.95**. This book includes up-to-date information on pursuing educational coursework by correspondence, including high school, college, paralegal and religious studies. **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 prisoner Brandon Sample, which extensively covers ineffective assistance of counsel issues in federal habeas petitions. **2021**

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Protecting Your Health and Safety, by Robert E. Toone, Southern Poverty Law Center, 325 pages. **\$10.00**. This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how to enforce your rights, including through litigation. **1060**

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

Directory of Federal Prisons: The Unofficial Guide to Bureau of Prisons Institutions, by Christopher Zoukis, 764 pages. **\$99.95**. A comprehensive guidebook to Federal Bureau of Prisons facilities. This book delves into the shadowy world of American federal prisoners and their experiences at each prison, whether governmental or private. **2024**

Merriam-Webster's Dictionary of Law, 634 pages. **\$19.95**. Includes definitions for more than 10,000 legal words and phrases, plus pronunciations, supplementary notes and special sections on the judicial system, historic laws and selected important cases. Great reference for jailhouse lawyers who need to learn legal terminology. **2018**

The Best 500+ Non-Profit Organizations for Prisoners and Their Families, 5th edition, 170 pages. \$19.99. The only comprehensive, up-to-date book of non-profit organizations specifically for prisoners and their families. Cross referenced by state, organization name and subject area. Find what you want fast! **2020**

Criminal Law: A Desk Reference, by Paul Bergman, 5th Ed. Nolo Press, 456 pages. **\$44.99**. The book offers clear, plain English explanations of the law accompanied by real-world illustrations. **1101**

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Prisoners' Self-Help Litigation Manual, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 928 pages. **\$69.95.** The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Includes detailed instructions and thousands of case citations. Highly recommended! **1077**

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

Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A., by Mumia Abu-Jamal, 286 pages. **\$16.95.** In Jailhouse Lawyers, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned advocates who have learned to use the court system to represent other prisoners—many uneducated or illiterate—and in some cases, to win their freedom. **1073**

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The PLRA Handbook: Law and Practice under the Prison Litigation Reform Act, by John Boston, 576 pages. **Prisoners - \$84.95, Lawyers/Entities - \$224.95.** This book is the best and most thorough guide to the PLRA provides a roadmap to all the complexities and absurdities it raises to keep prisoners from getting rulings and relief on the merits of their cases. The goal of this book is to provide the knowledge prisoners' lawyers – and prisoners, if they don't have a lawyer – need to quickly understand the relevant law and effectively argue their claims. **2029**

Federal Prison Handbook, by Christopher Zoukis, 493 pages. **\$74.95.** This leading survival guide to the federal Bureau of Prisons teaches current and soon-to-be federal prisoners everything they need to know about BOP life, policies and operations. **2022**

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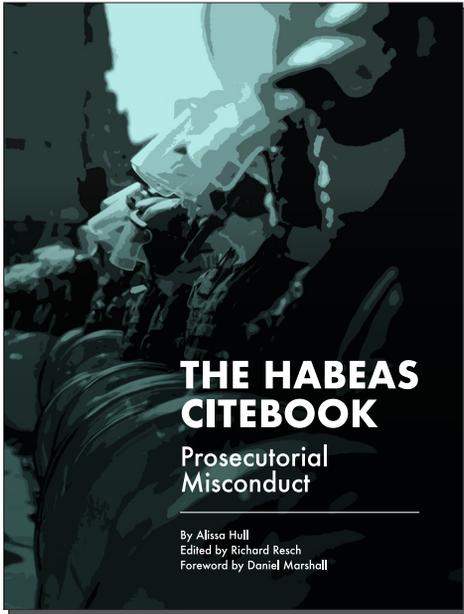
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The Habeas Citebook: Prosecutorial Misconduct

By Alissa Hull

Edited by Richard Resch

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