This issue is dedicated to the memory of Bruce Johnson 1950–2024

Prison Legal News

PUBLISHED BY THE HUMAN RIGHTS DEFENSE CENTER

VOL. 35 No 9
ISSN 1075-7678

Dedicated to Protecting Human Rights

September 2024

Turn Key Health Clinics: Another Private Jail Medical Provider Leaving a Trail of Death and Misery

by David M. Reutter

Jails face a monumental task in the provision of medical care. Those who've just been arrested are often experiencing withdrawal from drugs or alcohol. Other pre-existing medical conditions are routine and routinely severe. Then there are the mentally ill, who land in jail because communities lack resources to treat their conditions—even though jails and guards also lack training and expertise to provide adequate care. Into the breach step privately contracted providers, promising to fill the need. But their results belie that promise, demonstrating only that profit comes before service.

How else to explain the marketing materials distributed to prospective customers by jail healthcare contractor Turn Key Health Clinics LLC? In those, the firm bragged that after taking over healthcare at Oklahoma's Tulsa County Jail in 2016, emergency transfers to hospitals fell by an eyepopping 77% in just a few months. The number of days detainees spent hospitalized also cratered by 35%. Did they suddenly get healthier? Or were they simply denied care?

The answer seems obvious, yet jails continue to turn to private providers like Turn Key. For one, it comes with a staff of credentialed personnel already employed, so sheriffs don't have to vet and hire their own. The second benefit is financial: a promise to define costs so that they fit into a municipal budget, with the contractor often bearing the brunt of legal liability, too.

Over the course of more than three decades of publishing, *PLN* has regularly reported on profiteering private medical companies that "specialize" in providing care in prisons and jails. Jail populations are vastly more transient than prison populations, and detainees often require more immediate assessment and care. So hiring a private company with experienced professionals might result in efficient delivery of adequate care. But that outcome is more often the exception rather than the rule.

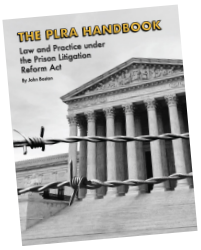
Lapses begin during jail booking, which takes place in a high-activity area where arrestees are processed into the lockup even as other detainees are processed for release. The booking process is usually completed by a guard who records the reason for arrest and screens the arrestee with a health form that asks routine medical questions. Red flags are then forwarded to the medical department. But depending upon the size of the jail and available staff, the detainee may or may not be seen immediately by a medical professional for further assessment. In some cases, screening by a medical professional may not occur until days after intake, endangering pre-existing care or that which is emergently needed.

Once the booking screening process is complete, detainees are placed in a holding cell. Amid the hustle and bustle of the jail, guards often do no more than make periodic wellness checks via video or walkthrough. "It is a very, very hectic and busy place," said Rhett Burnett, Turn Key Health Clinics' director of client relations, describing conditions inside Oklahoma's Cleveland County Jail, where the firm holds the medical care contract. Detainees report that as long as they are still breathing and not hanging from a bed sheet, the response to most any inquiry is, "We will get to you."

The next move for most detainees is to a classification cell, where they are assigned a security level and await transfer to join others of similar classification in the jail's general population. Problematic cases are often diverted into isolation or in a medical cell.

Jail officials, for the most part, leave provision of medical care to their medical contractors. As *PLN* has reported, the law immunizes guards from an allegation of unconstitutional deliberate indifference to a detainee's medical needs so long as they are relying upon the advice of a medical professional—even in circumstances where

INSIDE

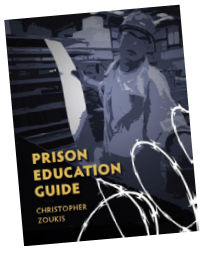


The PLRA Handbook: Law and Practice under the Prison Litigation Reform Act

John Boston ☐ ***Prisoners $84.95*** ☐ ***Lawyers/Entities $224.95***

ISBN-13: 979-8-9854138-0-9 • Paperback, 576 pages

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.

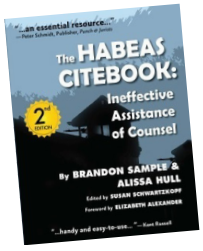


Prison Education Guide ***$24.95***

Christopher Zoukis

ISBN: 978-0-9819385-3-0 • Paperback, 269 pages

Prison Education Guide is the most comprehensive guide to correspondence programs for prisoners available today. This exceptional book provides the reader with step by step instructions to find the right educational program, enroll in courses, and complete classes to meet their academic goals. This book is an invaluable reentry tool for prisoners who seek to further their education while incarcerated and to help them prepare for life and work following their release.

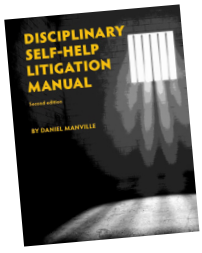


The Habeas Citebook: Ineffective Assistance of Counsel, Second Edition ***$49.95***

Brandon Sample & Alissa Hull

ISBN: 978-0-9819385-4-7 • Paperback, 275 pages

The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an invaluable resource that identifies hundreds of cases where the federal courts have granted habeas relief to prisoners whose attorneys provided ineffective assistance of counsel.

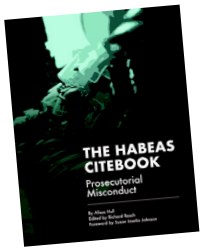


Disciplinary Self-Help Litigation Manual, Second Edition ***$49.95***

Dan Manville

ISBN: 978-0-9819385-2-3 • Paperback, 355 pages

The Disciplinary Self-Help Litigation Manual, Second Edition, by Dan Manville, is the third in a series of books by Prison Legal News Publishing. It is designed to inform prisoners of their rights when faced with the consequences of a disciplinary hearing. This authoritative and comprehensive work educates prisoners about their rights throughout this process and helps guide them at all stages, from administrative hearing through litigation. The Manual is an invaluable how-to guide that offers step-by-step information for both state and federal prisoners, and includes a 50-state analysis of relevant case law and an extensive case law citation index.



The Habeas Citebook: Prosecutorial Misconduct ***$59.95***

Alissa Hull

ISBN-13: 978-0-9819385-5-4 • Paperback, 300 pages

The Habeas Citebook: Prosecutorial Misconduct is the second in PLN Publishing's citebook series. It's designed to help pro se prisoner litigants identify and raise viable claims for potential habeas corpus relief based on prosecutorial misconduct in their cases. This invaluable title contains several hundred case citations from all 50 states and on the federal level, saving readers many hours of research in identifying winning arguments to successfully challenge their convictions.

☐ The PLRA Handbook
☐ Prison Education Guide
☐ The Habeas Citebook
☐ Disciplinary Self-Help Litigation Manual
☐ The Habeas Citebook: Prosecutorial Misconduct

Order by mail, phone, or online. Amount enclosed _____

By: ☐ check ☐ credit card ☐ money order

Name _____

DOC/BOP Number _____

Institution/Agency _____

Address _____

City _____ State _____ Zip _____

Human Rights Defense Center
Dedicated to Protecting Human Rights

PO Box 1151 • Lake Worth Beach, FL 33460 • Phone # 561-360-2523
WWW.PRISONLEGALNEWS.ORG • WWW.CRIMINALLEGALNEWS.ORG

Prison Legal News
a publication of the
Human Rights Defense Center
www.humanrightsdefensecenter.org

EDITOR
Paul Wright

MANAGING EDITOR
Chuck Sharman

ASSISTANT EDITOR
Jordan Arizmendi

COLUMNISTS
Michael Cohen, Mumia Abu-Jamal

CONTRIBUTING WRITERS
Anthony W. Accurso, Douglas Ankney, Casey Bastian, Matthew Clarke, Jo Ellen Nott

ADVERTISING COORDINATOR
Patricia Lamarca

HRDC LITIGATION PROJECT
Jonathan Picard—*Litigation Director*
Andrew Free—*Staff Attorney*

***PLN* is a monthly publication.**

A one year subscription is $36 for prisoners and individuals, and $96 for lawyers, institutions and foreign subscribers. Prisoner donations of less than $36 will be pro-rated at $3.00/issue. Do not send less than $20.00 at a time. *PLN* accepts credit card orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without an SASE. *PLN* is a section 501 (c)(3) non-profit organization. Donations are tax deductible. Send contributions to:

Prison Legal News
PO Box 1151
Lake Worth Beach, FL 33460
561-360-2523
info@prisonlegalnews.org
www.prisonlegalnews.org

PLN reports on legal cases and news stories related to prisoner rights and prison conditions of confinement. *PLN* welcomes all news clippings, legal summaries and leads on people to contact related to those issues.

Article submissions should be sent to - The Editor - at the above address. We cannot return submissions without an SASE. Check our website or send an SASE for writer guidelines.

Advertising offers are void where prohibited by law and constitutional detention facility rules.

PLN is indexed by the *Alternative Press Index, Criminal Justice Periodicals Index* and the *Department of Justice Index.*

the need for immediate care would be obvious to the average layperson. It is in this chaotic environment that a few companies have realized they can thrive, though they are almost always accused of denying care to maximize profit.

It's difficult to understand why a firm like Turn Key would want to undertake such an apparently thankless task. But with an estimated 60% of county jails contracting for medical and mental health services, the market value may total $4 billion annually. That has attracted a few firms which have grown large enough to dominate it—firms like Wellpath, YesCare (formerly Corizon Health) and Armor Health. But smaller firms like Turn Key prosper in gaps their larger competitors leave open.

Founded as ESW Correctional Care in 2009 in Oklahoma City, the firm now called Turn Key Health Clinics is a regional company that holds "correctional healthcare" contracts with 100 facilities in 10 states; all told it provides care for about 25,000 detainees. Turn Key was co-founded by Jon Echols, 44, a GOP Oklahoma state representative, and Trent Smith, 44, who gained statewide fame as a tight end on the University of Oklahoma's 2000 national championship football team. The firm began as a medical staffing company before morphing into a medical provider for jails. Currently, Turn Key employs about 800 staffers, many part-time or employed for short-term work.

"A Very Litigious Environment"

Turn Key may be a small company, but it is growing by following the same business model as its bigger peers—cutting costs with a smaller staff of lower-level professionals pressed into providing higher-level services, according to numerous lawsuits filed against the firm. The plaintiffs in those cases claim that the result for detainees is often denial or delay of services. For them the litigation represents lives lost, bodies maimed or careers cut short; for Turn Key, as for other carceral healthcare profiteers, it is just another cost of doing business.

Between 2015 and 2023, Turn Key faced 160 lawsuits, with about 30 still pending as of April 2023. The bulk of these cases, 80 in all, were filed in Arkansas, with another 71 filed in Oklahoma; many of the latter allege poor care provided at the Oklahoma County Jail, as *PLN* reported. [See: *PLN*, Mar. 2024, p.1.] Other cases were filed in Texas, Colorado and Montana. Turn Key Chief Administrative Officer Danny Honeycutt shrugged off the lengthy docket, saying that "[w]e live in a very litigious environment." He also noted that the number of suits is low compared to the firm's competitors, so "[i]f that's the barometer for assigning competency, you're going to see that Turn Key leads the nation in this industry."

That doesn't make Memphis attorney Brice Timmons feel better. "These lawsuits are the cost of doing business for companies," he said; rather than winning, the goal is often simply to wear down a plaintiff's resources and patience. Since "[t]he ability of these individuals or the families to continue dealing with protracted litigation diminishes every day," Timmons said that plaintiffs often accept settlements for "pennies on the dollar."

Of those 160 lawsuits filed against Turn Key, 30 involved deaths. The company won judgments in three of the fatality cases, agreed to settlements in three others, and 13 others were pending in April 2023. The remaining suits were dismissed, many never reaching a ruling on their merits before dying for failure to pay court fees or meet deadlines.

"It's not surprising to me that a lot of these cases get dismissed on technicalities because it's really challenging to navigate all those technicalities when you're fighting for yourself with no support while confined," said Emily Galvin Almanza, a co-founder of Partners for Justice, a New York-based nonprofit that supports public defenders and people facing criminal charges.

But Turn Key attorney Austin Key called the litigation facing the company frivolous. "Allegations do not equate to evidence, and we believe this is reflected in our litigation record," he said, adding that the firm is "proud of the exceptional care that is provided by our devoted health care providers."

Unsurprisingly, attorneys whose clients allege they were harmed by the company disagree. "The idea that a lot of frivolous cases are filed against Turn Key may be true in certain instances, but the big federal cases against Turn Key coming from reputable attorneys, those are not frivolous," said attorney Chris Hammons with Laird, Hammons, Laird in Oklahoma City. "Those

are allegations that are backed up by real evidence, real facts, and they are passing scrutiny with a federal judge."

Lawsuits may be an inaccurate barometer of a company's performance, since they tell only the story of cases that result in litigation. But the bar that detainees must hurdle in cases challenging jail healthcare is high, especially in Oklahoma. Federal courts there are part of the Tenth Circuit, which refused to extend from excessive force to provision of healthcare the Supreme Court's decision in *Kingsley v. Hendrickson*—that pretrial detainees, unlike prisoners, need prove only that a defendant jail official objectively showed deliberate indifference to their rights, without also showing subjective intent, as *PLN* reported. [See: *PLN*, Apr. 2022, p.56.]

"We're here to provide healthcare, and to assume that we would cut corners or that we would not provide a service that is needed would be to impugn the integrity of the medical professionals who are there to help," insisted Honeycutt.

However, legal complaints often illuminate what occurs behind the steel and concrete that shrouds jails from the public eye. Many of the cases against Turn Key betray disregard for the healthcare profession's basic vow to "do no harm." A former employee with extensive nursing experience resisted pressure from off-site managers who sought to impose cost reductions at an Oklahoma jail. Speaking anonymously for fear of retaliation, this employee said, "I would call [and tell] the physician, like, 'I really feel like this guy needs to go to the emergency room.' They would be like 'No,' and wouldn't listen to me. Then, I would just go above their head and be like . . . 'I'm setting eyes on the person. I'm telling you, from my viewpoint, this guy needs to go to the emergency room, or this girl needs to go to the emergency room.' And then that's when they'd be like, 'Well, if that's what you feel like needs to be done. Let's do it.'"

Examining the "Exceptional Care" Given James Buchanan

Such persistence by jail medical caregivers is the exception, though. In September 2016, James Buchanan "suffered multisystem trauma after being hit by a car" while riding his bicycle in Muskogee, Oklahoma. At booking into county jail on November 3, 2016—on charges unrelated to his biking accident—a medical questionnaire noted that the crash left him with broken ribs, a collapsed lung, burnt fingers and a neck problem. He also reported taking anti-inflammatory muscle relaxers.

The following day, Buchanan was seen at "sick call" and requested transfer to a hospital due to severe pain. Turn Key providers asked him to sign a medical release form for his prior medical records, but those were not sought until 10 days later. Meanwhile nurse Delana Myers told Buchanan to lie down, and she gave him Naproxen for pain; Dr. William Cooper, now Turn Key's Chief Medical Officer (CMO), approved the prescription.

Buchanan was again placed on sick call for shoulder pain on November 6, 2016, but he was not seen. The next day he was moved to a jail general population pod, though by that point he had lost use of his left arm. About three days later, he began losing range of motion and feeling in his right arm. Every time a nurse or guard came by the

thin mat where he lay on the dayroom floor, he informed them of his condition and his pain, requesting to see a doctor.

During the night shift on November 11, 2016, Buchanan complained to Nurse Rosemary Kotas of decreased range of motion in his upper and lower extremities, tingling in his legs and constant pain. Dr. Cooper was called again and told that Buchanan was complaining he could not walk. Dr. Cooper scheduled an appointment to see Buchanan on November 14, 2016. But before that, on November 12 or 13, 2016, Buchanan lost feeling in his legs.

On the evening of November 14, 2016, other detainees carried him to the dinner table. When he urinated on himself, a guard ordered Buchanan to get up and take a shower. After the guard then saw on video that Buchanan had been carried to the table, Nurse Kotas was called. She arrived around 8:10 p.m. and found Buchanan had an elevated heart rate and high blood pressure. Once more Dr. Cooper was called, and he ordered transport to a hospital.

Buchanan was subsequently diagnosed with quadriplegia and a cervical epidermal abscess. An extended hospitalization and multiple surgeries followed. Physical and occupational therapy and intravenous antibiotics helped Buchanan to recover significantly from his symptoms. He then sued Muskogee County and Turn Key, but the U.S. District Court for the Eastern District of Oklahoma granted Defendants' motion for summary judgment. Buchanan appealed.

The U.S. Court of Appeals for the Tenth Circuit noted that the district court had accepted Dr. Cooper's argument that he "could only make treatment decisions based on the information available to him, which was limited"—even though an expert, Dr. Wilcox, opined that Buchanan's worsening pain and inability to move his lower extremities were "red-flag warnings." The Court said that Dr. Cooper need not be aware that Buchanan suffered a specific ailment but "rather that he was aware [that Buchanan] faced a substantial risk of harm to [his] health and safety."

Given this, the Court continued, a reasonable jury could conclude that Dr. Cooper was deliberately indifferent to Buchanan's serious medical need by delaying his care, since he could have sent "Buchanan to the hospital or, since Dr. Cooper was on-call, [come] to the jail to evaluate him." Thus that part of the lower court's ruling was reversed on October 24, 2023. *See: Buchanan v. Turn Key Health Clinics, LLC*, 2023 U.S. App. Lexis 28156 (10th Cir. 2023).

The parties notified the district court that they had reached a settlement on August 9, 2024, but as with many settlements involving private contractors, details remain secret. Buchanan is represented by Tulsa attorneys Donald Smolen of Smolen Law and Daniel E. Smolen, Byron D. Helm and Robert M. Blakemore of Smolen & Roytman, PLLC. *See: Buchanan v. Cooper*, USDC (E.D. Okla.), Case No. 6:18-cv-00171.

Withdrawal Deaths and Amy Lynn Cross

When on-call doctors rely second-hand on observations of a nurse onsite at a jail, that's a problem, one that lies at the rotten heart of the privatized jail medical industry. Honeycutt may speak of Turn Key's medical "providers," but the reality is not always plural. When Turn Key obtained the medical care contract for Oklahoma's Cleveland County Jail in 2009, the agreement called for just one nurse for the jail's 250 detainees. By 2023, Turn Key was still contractually required to provide only one nurse, though the jail's population had doubled to 500 detainees. Granted, hourly reports show that two nurses and a medical assistant are on duty most weekdays; but weeknights and weekends—peak times for jail bookings—are staffed with a single license practical nurse.

"That's a very minimum level of care," declared Richard Forbus, a former jail commander and spokesman for the National Commission on Correctional Health Care. He called that level of staffing "very, very low for the acuity of care you have with people that are in a jail typically." When that minimum level of care meets the corporate imperative to control costs—not to mention the total disregard shown by some individual care providers toward their patients—the result is a deadly mix.

Alcohol withdrawal has long been a problem among those placed under arrest, but opioid withdrawal has recently raised its ugly head. Both are deadly if left untreated. Seemingly any competent medical provider should make such an urgent care need a priority. Withdrawal treatment, however, costs money. Turn Key has a protocol for withdrawal, which leaves decisions in the hands of its medical professionals. Often, though, these "health care professionals" deem the detainee a faker and ignore the withdrawal symptoms.

At Colorado's Weld County Jail, Amy Lynn Cross reported her drug use to Turn Key Registered Nurse Beatriz Ortiz during booking on drug-related charges on

Mourning Our Losses

MOURNING OUR LOSSES (MOL) IS SEEKING MEMORIALS, WRITING, AND ART

MOL was launched by a group of educators, artists, and organizers committed to the release of incarcerated people. In 2020, we began publishing memorials to honor the lives of our siblings dying from COVID-19 in jails, prisons, and detention centers. We continue to grow this platform for grief, healing, and reflection for all those affected by the death of a loved one due to poor conditions, negligence, violence, and mental health crises inside - the byproducts of mass incarceration.

We are driven by our prison experiences. Our crowd-sourced memorial site depends on our ties to you, our siblings inside. Our goal is to inform conversations about the dangers of mass incarceration by sharing stories of those we've lost. We teach the public that we're people – not numbers or "inmates." We don't use dehumanizing language in memorials, nor do we talk about the crime for which a person was convicted.

You can help by submitting a memorial for a loved one who died while incarcerated or related writing/photos/artwork (which we may not be able to return safely). When you submit, please include the name the person went by and your name (or if you want to be anonymous). Let us know if it's ok to edit errors, and if we can contact you to follow up. Write us at:

Mourning Our Losses
P.O. Box 162690
Atlanta, GA 30321

September 3, 2021. Specifically, Cross said she was a frequent user of opiates, benzodiazepines and IV drugs. She reported using methamphetamine and Xanax off and on for the previous two weeks and said that she also took fentanyl pills—"too many daily." Cross said she had suffered withdrawal symptoms and had mental health issues.

Otriz noted that Cross appeared to be under the influence of fentanyl and was irritable. She ordered withdrawal protocols and medications. Cross was placed in a medical cell the next day as she began experiencing serious withdrawal symptoms. At 4:49 and 8:00 p.m. on September 4, 2021, guards called and asked nurses to provide Cross care because she was exhibiting worrisome symptoms.

Nurses Kristen Miller, Jane Shoenecker, Kyrie Kuhn, Brittanie Flores and Kat Gigliotti responded to the first emergency call. Cross was found to have a pulse of 152, elevated blood pressure and respirations, plus a low oxygen level. As recorded in her medical records, Cross was sweaty, animated, jerky, refusing to cooperate; but she also requested to go to a hospital.

Cross, according to a civil rights complaint later filed on her behalf, was "exhibiting textbook signs and symptoms of methamphetamine toxicity, overdose, and cardiac distress." But Miller sent Cross back to her cell. Cross herself then requested to go on suicide watch to ensure guards monitored her condition.

LPN Erica Alcarez was informed by Miller at shift change that Cross was coded for an "unknown issue." Around 6:30 p.m. that same day, Alcarez found Cross lying on the floor of her cell, breathing rapidly and foaming at the mouth. Ortiz arrived, and the nurses came to the incredible conclusion that Cross was "gathering spit in her mouth and making bubbles," and "refusing to speak to medical and closing her eyes tightly." Alcarez later recalled for investigators that Miller said Cross "is acting a fool," adding "we are not sending her out" and citing the demand of Nurse Practitioner Terry Sipola. The nurses also told Cross that she could not have withdrawal medications without providing a urine sample.

During an 8:00 p.m. emergency examination, nurses found Cross with brown mucus all over her face from foaming at the mouth. She was not verbal, but they said that she "was grunting or mumbling like she understood and was trying to respond"—even as her fingers turned blue. Guard Kendra Betz repeatedly called for medical attention, climbing the jail's chain of security command because she could not tolerate "the lack of attention from medical staff." But Betz was told only to document the situation and chose one of three options: trust medical staff; call them again to the pod; or call a "Code Five" medical emergency. However, medical staff prohibited the last option, ordering instead that direct calls be made to them.

When Betz called nurses at 11:15, Alcarez found Cross' breathing was shallow, her blood pressure low, and her extremities had changed color. Yet rather than calling an ambulance, Alcarez called Ortiz. By the time she arrived, Cross had no pulse. Still the two nurses waited another four minutes to call a Code Five medical emergency and six minutes before calling for an ambulance. When paramedics arrived, Alcarez and Ortiz told them that Cross "did not have any complaints throughout the day prior to this"—ignoring events of the day and evening. They also said that her medical problems did not begin until 20 minutes before paramedics arrived.

Cross, a 41-year-old mother of three, was declared dead at 12:01 a.m. on November 5, 2021. An autopsy revealed a bag of methamphetamine that was secreted in her body had broken, releasing a toxic level of the drug into her system. Jennifer Bauder, as personal representative of Cross' Estate, sued Turn Key, Ortiz, Alcarez, Miller, Sipola, the Sheriff and Weld County, alleging in the complaint that Cross exhibited classic symptoms of drug toxicity and withdrawal that went untreated.

The case remains pending, and *PLN* will update developments as they are available. Bauder is represented by attorneys Anna C. Holland-Edwards, Erica T. Grossman and Rachel C. Kennedy of Holland Holland Edwards & Grossman PC in Denver. *See: Est. of Cross v. Turn Key Health Clinics LLC*, USDC (D. Colo.), Case No. 1:22-cv-03143. Turn Key, meanwhile, lost its contract at the jail in December 2023.

More Suits in Arkansas

The family of Eusebio Castillo Rodriguez, who died from alcohol withdrawal that went untreated for five days, sued Turn Key and officials at Arkansas' Union County Jail in January 2023. Rodriguez was arrested for DUI and released on April 27, 2022, only to end up back in the lockup on June 8, 2022, when a court employee mistranslated what the Spanish-speaker said and provoked the judge. Rodriguez's daughter, Amanda Castillo, informed jailers of her dad's diabetes and hypertension when she dropped off his medications. But he got no medical screening for 26 hours—and then was left in a

general population area without medication by staffers who decided that he was drunk.

When Castillo called on June 10, 2022, she noticed her father's severe alcohol withdrawal symptoms and urged jailers to treat him. They didn't. But they moved him from his cell on June 12, 2022, because his pained moaning was keeping other detainees awake. Early that same morning, he was finally moved to the jail medical unit while staff secured a release order. Once that arrived, and Rodriguez was legally no longer their problem, a deputy attempted to wrestle him into a Sheriff's vehicle for transport to a hospital. Eventually he gave up and called an ambulance. Meanwhile jailers gave the runaround to Castillo and her dad's domestic partner, Cary Rios, insisting that he'd been released and had left the jail on his own. By the time they confessed what had happened and his family found him, Rodriguez was being transported to a Little Rock medical center, where he died days later.

With the aid of Little Rock attorneys Angela Schnuerle of Galvis Law and Michael D. O'Quinn, Castillo and Rios filed suit against Turn Key, along with Sheriff Ricky Roberts and his jailers, as well as the Association of Arkansas Counties Risk Management Fund (AACRMF). The attorneys called in a prison and jail medicine specialist, Dr. Thomas Fowlkes, who decried the way jailers "intended for Mr. Rodriguez to be merely dumped off at the hospital with no apparent concern for his wellbeing and without taking any responsibility for the serious medical condition which developed directly as a result of their lack of medical care." As for Turn Key's protocols and treatment, Fowkles found both "far below the standard of care."

The case remains pending against all defendants except AACRMF, which the federal court for the Western District of Arkansas dismissed on July 26, 2024, reasoning that the jail was not a "medical provider" under state law so its insurer was not obliged to cover a malpractice claim. *See: Est. of Rodriguez v. Union Cty.*, 2024 U.S. Dist. LEXIS 132769 (W.D. Ark.).

At Arkansas' Sebastian County Jail, Larry Eugene Price, Jr., a mentally ill pretrial detainee, came under Turn Key's care while awaiting his day in court. As *PLN* reported, the 6'2", 185-pound Price was placed in solitary confinement and languished there for a year, his mental illness untreated as he slowly starved to death. When a guard found the unresponsive Price lying in a pool of standing water and urine on August 29, 2021, the detainee weighed just 90 pounds. Paramedics wheeled his dead body out of the jail, and an autopsy found Price died of acute dehydration and malnutrition. [See: *PLN*, Oct. 2023, p.14.]

A suit was filed on behalf of his estate in federal court for the Western District of Arkansas, which largely granted its motion to compel Turn Key to disclose documents and emails relevant to Price's death on April 5, 2024, awarding $15,892.50 on May 9, 2024, to the Estate's attorneys, Edwin Budge, Erik Heipt and Hank Balson of Budge & Heipt PLLC in Seattle. The case remains pending, and *PLN* will update developments as they are available. *See: Est. of Price v. Turn Key Health Clinics, LLC*, 2024 U.S. Dist. LEXIS 63366 (W.D. Ark.); and 2024 U.S. Dist. LEXIS 84695 (W.D. Ark.).

Still More Suits in Oklahoma

Turn Key faced more lawsuits in Oklahoma for deaths from untreated withdrawal effects. In one, the firm paid an undisclosed settlement on top of $12.5 million paid by Garfield County for the 2016 death of Anthony Huff, 58. As *PLN* reported, he was denied care for hallucinations and put in a restraint chair for over 55 hours following an arrest for public intoxication, after which—in a rare display of justice—jail administrator Jennifer Shay Niles and former guard Shawn Caleb Galusha were sentenced to 55 hours in jail for second-degree manslaughter. [See: *PLN*, Sep. 2019, p.46; and Oct. 2020, p.26.]

At the Creek County Jail, Ronald Garland, 56, also ended up in a restraint chair in the days before his death from untreated intoxication in 2017. A suit filed by his mother, Janice Bush, was settled in June 2021 by the County and Turn Key for a total of $770,000, though Turn Key's share was not disclosed. The payout included $415,043.60 in costs and fees for Plaintiff's attorneys from Bryan & Terrill Law PLLC in Tulsa. *See: Bush v. Bowling*, USDC (N.D. Okla.), Case No. 4:19-cv-00098.

Another Oklahoma detainee, Michelle Caddell, allegedly died as the result of Turn Key's failure to provide adequate medical care at the Tulsa County Jail. Cadell began complaining of vaginal discharge on June 22, 2019, adding pain complaints on July 5, 6, and 7 of that year. After Turn Key's Dr. Gary Myers evaluated Caddell on August 5, 2019, he ordered blood work which revealed an elevated white blood cell count indicating something was wrong. Myers determined all was normal, though, and no follow-up was required. Lab cultures came back on August 15, 2022, also showing factors indicating disease. But Caddell was given only Ibuprofen, the private medical provider's wonder drug.

Caddell continued to complain of pain and excessive vaginal bleeding. Myers said her frequent sick calls "do not fulfill medical logic." A test on September 23, 2019, showed abnormal uterine bleeding and a sharp drop in hemoglobin levels from six weeks earlier. An obstetrician opined on September 27, 2019, that Caddell had invasive cervical cancer. A pap smear was ordered but never conducted as Caddell went without treatment from October 3 to October 30, 2019—when excessive bleeding finally resulted in transport to a hospital. It was then confirmed that she had stage three cervical cancer. In a typical move to avoid the costs of medical care, Caddell was released from custody to die.

Her estate sued the County and Turn Key, and the federal court for the Northern District of Oklahoma granted Defendants summary judgment; however, the Tenth Circuit reversed that on January 20, 2023. "Treatment with Tylenol and accusing Ms. Caddell of fabrication was not only woefully inadequate but also plainly inconsistent with the symptoms presented," the Court

wrote. "More to the point, Dr. Myers entirely failed to monitor her afterwards to determine if his treatment plan, if it even can be described as such, was working." *See: Lucas v. Turn Key Health Clinics*, 58 F.4th 1127 (10th Cir. 2023).

Back at the district court, amazingly, Defendants asked for sanctions. Why? Because Plaintiff failed to recite *all* treatment that Cadell received. Denying that request on March 4, 2024, the district court said that "Plaintiff was required only to show that Dr. Myers failed to provide proper treatment or failed to provide access to someone capable of properly treating her"—and requiring more "is not necessary—indeed, it is not appropriate." *See: Lucas v. Turn Key Health Clinics, LLC*, 2024 U.S. Dist. LEXIS 36929 (N.D. Okla.).

The parties are currently scheduled for a settlement conference in October 2024, and *PLN* will update developments as they are available. Caddell's estate is represented by attorneys with Smollen Law, PLLC, along with another Tulsa attorney, Laura L. Hamilton. *See: Lucas v. Turn Key Health Clinics, LLC*, USDC (N.D. Okla.), Case No. 4:20-cv-00601.

Still another lawsuit against Turn Key alleged that while detained at Oklahoma's Canadian County Jail in 2020, Lesley Hendrix, 27, was not treated when a rash developed on her legs. Hendrix had been jailed for four years on murder charges stemming from the death of a child she was babysitting. A week after trying to get Turn Key to treat her ailment, "Hendrix collapsed and was found down," according to a complaint later filed by her widowed husband, Danny Yelton. He alleged that Hendrix was in "severe septic shock, caused by necrotizing fasciitis," a flesh-eating disease. She died the next morning on October 12, 2020. The case is still pending, and *PLN* will update developments as they are available. Yelton is represented by Tulsa attorneys A. Laurie Koller and Eric A. Mareshie. *See: Yelton v. Bd. of Cty. Comms. Canadian Cty.*, USDC (W.D. Okla.), Case No. 5:21-cv-01001.

In yet another case, Michael Edwin Smith, 50, blamed Turn Key when he left Muskogee County Jail on a stretcher, permanently paralyzed just two weeks after a March 2016 arrest on suspicion of scamming a Walmart out of merchandise. His federal civil rights lawsuit alleged that Turn Key staff failed to act when he complained of severe back and chest pain, though he had been diagnosed prior to his arrest with pelvic cancer and was due to begin chemotherapy.

"I kept telling them I was going paralyzed. The doctor laughed at me and told me I was the boy who cried wolf," Smith said. "They told me I was going to be on lockdown until I walked." Smith lay in his own feces and urine in an isolation cell for a week because he was unable to walk, bathe, or use the bathroom on his own. He died from his cancer in October 2017, so he didn't live to see his case settled in December 2019. *PLN* has requested those details and will provide an update when they are available. *See: Myers v. Muskogee Cty. Bd. of Cty. Comms.*, USDC (E.D. Okla.), Case No. 6:17-cv-00090.

Service to be Proud Of

Despite its legal record Turn Key continues to cast blame upon the people to whom it is accused of denying care, saluting the brave face its medical professionals present in the face of such rebellious and devious detainees.

"When you go to work and somebody spits on you and calls you every name in the book and you still provide care to them, that's very impressive to me," said Dr. Cooper, Turn Key's CMO. "You talk about there are some bad outcomes, but so many lives are saved every day in this business and that makes me very proud."

Judge Robert McAdoo in Oklahoma's Ouachita County disagreed with Dr. Cooper's rhetoric and acted to terminate Turn Key's contract there in June 2023 due to a "lack of service." According to Judge McAdoo, Turn Key was "not doing what they said they would do. It's a mutual agreement, and that's why we are terminating." A local doctor, as well as physician assistants and nurse practitioners agreed to accept a replacement contract.

Such shuffling of medical providers reveals another aspect of privatized jail and prison care: It is a cyclical business, not in the typical sense that it has seasonal peaks and troughs, but because jails often cycle their healthcare contracts between companies. When one profiteer is dumped, another steps up to bid for the contract; only rarely do state or county officials reassume control of the service.

"We just decided it was time to look at who else was out there just because of some of the issues [that] we got with the current vendor," said Sheriff Lou Vallario, after Turn Key purchased the contract to provide healthcare at Colorado's Garfield County Jail from Correctional Health Partners LLC (CHP).

CHP was on the hot seat following the April 2021 death of detainee Oscar Canas, 19, who was over-administered detoxification drugs. Turn Key subsequently acquired CHP in July 2022, but Sheriff Vallario defended the decision to effectively facilitate that acquisition because Turn Key "picked up where that contract left off from the original." What he didn't say was that such a revolving door might allow companies like Turn Key to earn a profit despite shoddy care.

Settlement of a suit filed on behalf of Canas' estate by attorneys Stephanie M. Frisinger and David G. Maxted of Maxted Law LLC in Denver was reportedly nearing completion in August 2024, and *PLN* will update developments as they are available. *See: Portillo v. Vallario*, USDC (D. Colo.), Case No. 1:23-cv-00942.

As summed up by David Fathi, Director of the National Prison Project of the American Civil Liberties Union, "The fundamental problem with private health care in prisons and jails is that the usual mechanisms of market discipline that we count on in the rest of the world—the idea that if a company gives bad service, if it injures or kills people, it'll eventually lose customers and go out of business—that market discipline doesn't exist."

Turn Key is just another small company vying for a bigger bite of the prison industrial complex, clamoring with a few others around a trough full of nearly half a million U.S. jail detainees. Most of them are impoverished, but they are not the "customers" in this perverted marketplace. Who is? The taxpayers stuck with the tabs for these healthcare contracts and legal payouts when detainees are harmed by substandard care. Only when those taxpayers demand better will companies like Turn Key improve.

Additional sources: *Camden (Ark.) News, KNWA/KFTA, KOKH, KWTV, Glenwood Springs Post Independent, Newsweek, Oklahoma City Journal Record, Oklahoma Watch, Oklahoman, Sacramento Bee,* Sustainable Journalism Foundation, The Marshall Project, *Yukon Progress News*

From the Editor

by Paul Wright

America is going on its fourth decade of experimenting with private, for profit health services for prisoners. Regardless of the company and the location the outcomes are all the same: a lot of misery, pain and death imposed by a business model of ruthless capitalism where success is defined as getting as much money out of the government and then providing as little actual care as possible.

PLN has been reporting on the private prison medical industry since we started publishing in 1990 and the industry has slowly grown over the decades with the attendant tales of corruption, death and misery. With the exception of the Virginia Department of Corrections, no prison system has retaken its medical health care system once they privatize it. Instead, we see a revolving door of murderous, corporate health care providers driven by greed and avarice, replacing the prior corporate provider until they too are replaced. The staff often do not change, it is only their employer that changes.

It is hard to believe that *Prison Legal News* has been publishing for almost 35 years now. One of the bad things about being around as long as we have is that many of our friends and supporters are dying. This issue of *PLN* is dedicated to the memory of Bruce Johnson, a long time partner at the Seattle law firm of Davis Wright Tremaine who represented *PLN* for almost 30 years in public records and censorship cases around the country. The saddest duty I have as editor is writing the obituaries for our friends.

Among the projects we are working on are the third editions of *Protecting Your Health and Safety* and *The Habeas Citebook: Ineffective Assistance of Counsel*. We hope to have both books available by the end of the year and will announce their availability as soon as we have them.

We are seeing a serious increase in the censorship of books and magazines with prisons and jails using the excuse of mail digitization to ban all publications. We are currently litigating such publication bans in Missouri and are about to file one in New Mexico. We just resolved a censorship case against the North Carolina Department of Adult Correction which had been censoring our publications for several years.

If any HRDC publications are censored, please contact us and let us know as prison and jail officials frequently neglect to inform us of the censorship.

Enjoy this issue of PLN and please encourage others to subscribe.

Bruce Johnson 1950–2024

by Paul Wright

On August 20, 2024, the free speech rights of all Americans suffered a devastating loss. Bruce Johnson, 74, was a long-time partner at the Seattle law firm of Davis Wright Tremaine. He spent his entire, nearly half century career as a lawyer there. Over the course of his career Bruce became one of the preeminent specialists and defenders of the First Amendment and the free speech rights of publishers and media around the country. He was widely recognized as the nation's most knowledgeable lawyer when it came to commercial speech and anti SLAPP (Strategic Lawsuits Against Public Participation) laws. More on that later.

Bruce represented media clients across the country and they included the biggest print and broadcasting companies, including *60 Minutes*, the *Seattle Times*, *Boston Globe*, *New York Times* and many, many others. Those were the big ones and with his passing the cases he litigated on behalf of those clients will likely be the ones that he is remembered by.

One of Bruce's smaller pro bono media clients, for almost 30 years, was *Prison Legal News* which later became the Human Rights Defense Center. Prisoners and the publishers who seek to communicate with them and anyone who values transparency in the criminal justice system owes Bruce a huge debt of gratitude.

In 1996 I read an article about Bruce's First Amendment work on behalf of media organizations noting he was already considered one of the best First Amendment lawyers in the country. The Washington DOC had denied a public record request I had filed seeking information about the state's prison industries program. I wrote Bruce from my prison cell and asked if he would represent *PLN* in a public records lawsuit to seek these records. He sent me a brief note saying he would be glad to and soon enough a young attorney named David Bowman showed up at the prison I was at saying he would be handling the case. He did, we won, got the records and published the story. My next public records request involved water and safety records at McNeil Island where I was imprisoned at the time and wondering why the tap water we were drinking was brown and why the DOC was refusing to provide the records. The DOC denied my records request. I wrote Bruce for help. He sent a young lawyer named Shelly Hall to help and we filed suit, got the records and published a story.

The third time I asked Bruce for help was when the Washington DOC refused to provide the records of prison doctors it had disciplined for killing or maiming the prisoners in its care. That was in 2000 and eventually that case went to the state supreme court where we won 6-3 that the records needed to be disclosed. In addition to the records the Washington DOC was also ordered to pay $550,000 in fees and penalties for withholding the documents. At the time it was the largest public records award in Washington history.

For many years I only communicated with Bruce by letter when I was in prison. Then for a while once I was out of prison by e mail and phone. It took several years for us to connect in person. I was thinking he was like Charlie in Charlies' Angels: just a voice on the phone or letters in the mail.

Over the years Bruce helped HRDC with many censorship and free speech cases besides the public records cases. And this expanded to include the entire country. We

successfully sued prisons and jails in New Mexico, Arkansas, Kentucky and many other places thanks to the help from Bruce and Davis Wright Tremaine. Each case we won expanded the rights of prisoners and publishers alike.

Any time we had a problem in a state where we needed counsel and I did not know anyone I could simply email Bruce and ask him if he knew anyone there. He always responded with an introduction to his "good friend", all of whom turned out to actually be his really good friends and really good lawyers as well.

As I got to know Bruce over the years I was always impressed by his vast knowledge of the law and his skills as a negotiator and litigator. In addition to being a great lawyer, Bruce was also a wonderful, witty person and a really nice guy. Originally from Ohio, Bruce was a pragmatic Midwesterner. One thing I learned from him when doing settlement meetings and mediations was always stay as close as possible to where you needed to be at the next day and plan on spending the night because you don't really know how long it is going to last.

For readers who appreciate the advocacy and investigation that HRDC has undertaken over the years on behalf of prisoners and their families, Bruce is one of the reasons we have been able to do so. For around 20 years now HRDC has advocated before various federal regulatory agencies on behalf of criminal justice impacted populations being victimized by assorted government and corporate players. Twice now, Viapath, FKA Global Tel Link, has seen fit to send me cease and desist letters complaining about letters I submitted on HRDC's behalf to the Federal Communications Commission noting the company exploits prisoners and their families and relevant to the discussion, also employs criminal bribery to secure monopoly contracts. Both times Bruce immediately responded and noted that I/HRDC have a constitutional right to petition the government for the redress of grievances and those statements are fully immunized. And besides, they were all true. We have not heard from GTL in a while now.

In 2022 Centurion Health, one of the biggest private equity owned prison health care providers, filed a SLAPP lawsuit against HRDC seeking declaratory relief to prevent us from filing requests for public records related to how they treat and kill the Florida prisoners in their care. This was the first SLAPP suit HRDC had ever been hit with. But I knew who to call. Within minutes of being served with the complaint I emailed it to Bruce and asked him if he could help. Within the hour a team of lawyers from Davis Wright Tremaine was preparing our defense. Which was not what Centurion, then owned by Centene, the 26th biggest corporation in America, expected was going to happen.

As a friend, colleague and client I will miss Bruce a lot. The First Amendment and free speech has lost a great defender and I think everyone in America, especially those of us with something unpopular to say, or who want to hear unpopular news or ideas or who just want to know what the government is doing, has suffered a loss. Everyone at HRDC sends Bruce's family and colleagues our deepest condolences. This issue of *Prison Legal News* is dedicated to Bruce's memory.

Fifth Circuit Calls Denial of Texas Prisoner's *In Forma Pauperis* Request "Arbitrary or Erroneous"

When Texas prisoner Larry Donnell Gibbs filed suit in federal court in 2021 against officials with the state Department of Criminal Justice (TDCJ), he paid the filing fee and did not ask to proceed *in forma pauperis* (IFP). As a *pro se* plaintiff, though, Gibbs had no outside counsel to ensure his complaint was served on some Defendants no longer employed at the Estelle Unit. So Gibbs eventually moved for IFP status, which would entitle him to have U.S. Marshals effect service under Fed.R.Civ.P. 4(c)(3). When that motion was denied by the federal court for the Eastern District of Texas, he appealed to the U.S. Court of Appeals for the Fifth Circuit. On February 6, 2024, that Court found the lower court's decision "arbitrary or erroneous."

Gibbs, 37, alleged that after being repeatedly stabbed by another prisoner in March 2020, two guards—identified as Jackson and Moton—left him to bleed for 45 minutes before rendering assistance. Further, after he filed grievances about this allegedly "negligent response" to his stabbing, three other guards—Jared Oneal, John L. Ruffin and Joe Thomas—twice used or authorized excessive force against him, he said. Those beatings caused "bleeding in his brain which led to a seizure" and paralysis, he claimed, leaving him confined to a wheelchair.

In support of his IFP motion, Gibbs submitted to the district court a copy of his prison trust account, showing a balance of $140.43. A magistrate judge denied his request, finding that 1) his motion was moot because he had already paid the filing fee; 2) the funds in his account were "sufficient" to effect service; and 3) he had not provided needed addresses for Defendants. Gibbs moved for reconsideration, and he then filed an appeal after the district court denied the motion in September 2022.

The Fifth Circuit began its review by noting that paying the filing fee did not moot Gibbs' subsequent IFP motion because "a person not a pauper at the commencement of a suit may become one during or prior to its prosecution," as held in *Flowers v. Turbine Support Div.*, 507 F.2d 1242 (5th Cir. 1975).

Further, finding Gibbs' prison account balance "sufficient" to serve Defendants was arbitrary, the Court said; as Gibbs' motion for reconsideration stated, it would cost him $450 to effect service without IFP status. Lastly, the Court added, whether Gibbs provided service addresses for Defendants was immaterial, since a determination on a request for IFP status "must be based solely upon economic criteria," per *Watson v. Ault*, 525 F.2d 886 (5th Cir. 1976).

Based on these finding, the Court determined that Gibbs had been prejudiced by denial of his IFP motion, so the district court's judgment was reversed and the case remanded for Gibbs to proceed IFP. *See: Gibbs v. Jackson*, 92 F. 4th 566 (5th Cir. 2024).

The case then returned to the district court, where Gibbs filed for an emergency injunction on April 15, 2024, seeking to prevent TDCJ from double-celling him, since the earlier stabbing had left him with PTSD and too "jumpy" to sleep in a shared cell. No action had been taken on the request four months later, but *PLN* will update developments as they are available. *See: Gibbs v. Jackson*, USDC (E.D. Tex.), Case No. 1:21-cv-00484.

Washington Prison Trade Training Program Boosts Employment Income Upon Release

When Brittany Wright, 30, got out of a Washington prison in June 2023, she was confident that it would be easier than her last release 10 years earlier. Back then, she had found it almost impossible to find a job or a place to live. But when she stepped out of prison a decade later, Brittany had to wait just a single day before reporting to work at Kiewit, a Seattle construction and engineering firm. By January 2024, Wright was banking $31 an hour on a light rail expansion project for Sound Transit.

Credit for the difference goes to Trades Related Apprenticeship Coaching (TRAC), a 16-week state program designed to reduce recidivism by ensuring prisoners getting out have a job. Research conducted by the nonprofit Prison Policy Initiative has pegged the unemployment rate for the formerly incarcerated at a sky-high 27%, and those lucky enough to find work earn about half the salary of their non-incarcerated peers—even less if the releasee is a minority.

TRAC teaches entry-level skills needed to become a trade union apprentice. The union then helps the former prisoner find work after completing roughly 6,000 hours of paid on-the-job training. The boost to earning potential is huge: Apprentice ironworkers in Western Washington start at $32 an hour, rising to more than $100,000 a year as journeymen.

There are still challenges, though. Washington releases prisoners into the county where they were convicted, so a job that requires crossing county lines requires special permission or else it may have to be turned down. Washington is one of several states, including Colorado, Iowa and Ohio, to set up apprenticeship programs like TRAC with trade unions.

Source: *Open Campus Media*

Florida Prisoner Whose Case Ended LWOP for Juveniles Released

On February 13, 2024, a judge in Florida's Duval County amended state prisoner Terrence Graham's sentence, paving the way for the 37-year-old's release later that same month. Sentenced to life without parole (LWOP) in 2006 for crimes committed when he was 16 and 17—one an armed burglary, the other a home invasion robbery—the Jacksonville native didn't know then that his case would make legal history with a precedent-setting decision from the Supreme Court of the U.S. (SCOTUS).

His sentence was extremely harsh: His attorney asked for five years, while prosecutors wanted 30. The judge sided with them and handed down the maximum. Bryan S. Gowdy, Graham's lawyer on appeal, was so shocked when he got the case—a juvenile given LWOP for a non-homicide crime—that he took it all the way to SCOTUS, arguing that it amounted to cruel and unusual punishment in violation of the Eighth Amendment. He was supported by numerous amicus briefs saying that kids are different, and they can change. In its May 2010 decision in *Graham v. Florida*, the high Court agreed, ending LWOP for juveniles not convicted of homicide, as *PLN* reported. [See: *PLN*, Dec. 2010, p. 42.]

But the decision did not provide immediate relief for Graham. In 2012, he was resentenced to a 25-year prison term by the same judge he originally had. The state legislature later passed a law allowing prisoners sentenced as teens to have a chance for review after 15, 20 or 25 years served, depending on their crimes. But that came too late to help Graham.

Remaining in prison over a decade more, he earned his GED, took college classes and strengthened his faith. He also co-founded Plead the 8th, a nonprofit devoted to keeping children from incarceration in Florida's adult prison system.

After his release from the state prison in Raiford at the end of February 2024, Graham entered the transitional program at Prisoners of Christ (POC), where he is on community control for two years. POC finds jobs, housing and provides behavioral therapy for prisoners reentering society. Graham will still be on probation for five years, with a list of related requirements, one of them financial: He has $11,000 in fees and fines to pay before he can get off probation.

In a March 2024 interview just weeks after his release, Graham was asked if he had any conclusions about his newly found freedom and replied: "It's all been good. I've been eating prison food with no seasoning for 20 years. So to come out here to taste my mom's home-cooked spaghetti and lasagna, I can't even decide which one is the best. There's a whole lot of food I haven't tried yet. But I will let you know."

Sources: *Florida Times-Union, Slate, WJXT*

Missouri DOC Chief Held in Contempt of Court for Keeping Exonerated Prisoner Locked Up

On August 7, 2024, the head of Missouri's Department of Corrections (DOC) was held in contempt by a state court judge for refusing to release Howard Roberts, 82, after the prisoner's conviction was overturned. State Attorney General Andrew Bailey (R) had ordered Roberts kept behind bars at South Central Correctional Center in Licking. But in his contempt order, Senior Circuit Judge David C. Jones gave DOC Acting Director Trevor Foley until August 14, 2024, to release the prisoner or face fines of $1,000 per day.

Roberts was convicted of financial exploitation of an older or disabled person in 2016. Because the property at issue was worth $50,000 or more, he was found guilty of a felony and given a 20-year sentence. During a hearing in November 2023, attorney Jonathan Sternberg argued that Roberts received ineffective assistance of counsel during his 2018 trial. In June 2024, Judge Jones agreed that Roberts' trial attorney failed to have records and testimony introduced which could have convinced the jury that he was operating a legitimate business with the funds he had received, and that he was innocent. Despite this, Bailey instructed DOC to keep Roberts incarcerated. The dustup marked the third time this year that Bailey has stepped between an exonerated prisoner and freedom.

The law that led to Roberts' exoneration, SB 53 § 547.031, lets prosecutors move to vacate a judgement any time they have information that a convicted prisoner may be innocent or may have been erroneously convicted. Prior to Roberts, the most recent Missouri prisoner impacted by it was one on death row—Marcellus Williams, who has both a September 2024 execution date and a hearing the month before on new evidence that may exonerate him.

Christopher Dunn and Sandra Hemme

On July 22, 2024, state court Judge Jason Sengheiser overturned the conviction of Christopher Dunn, 52, after he spent over 30 years in prison for the 1990 murder of 15-year-old Ricco Rogers—a crime that Dunn always claimed he did not commit. He was serving life without parole before Bell's boss, St. Louis Circuit Attorney Gabe Gore, filed a motion asserting Dunn's actual innocence based on new evidence.

Despite Bailey's opposition, a three-day hearing was held in May 2024, at the end of which Judge Sengheiser concluded that no reasonable juror would convict Dunn, given the new evidence. Bailey appealed that decision to the state Supreme Court, which stayed Dunn's release just hours before he was set to walk free on July 24, 2024. But the high Court lifted that stay a week later on July 31, 2024, and Dunn went home.

Dunn's case mirrors that of Sandra Hemme, 64, who was freed on July 19, 2024, after serving 43 years of a life sentence for a murder she didn't commit. Despite a judge's finding of her "actual innocence" and an order for her release, Bailey fought to keep Hemme imprisoned, too, until state court Judge Ryan Horsman threatened contempt. Hemme was released in time to reunite with her terminally ill father in his final days.

Lamar Johnson and Kevin Strickland

Bailey also opposed an SB 53 hearing for Lamar Johnson, who served 28 years of a life sentence without the possibility of parole for the 1995 murder of Markus Boyd. The hearing was requested by former St. Louis Circuit Attorney Kimberly Gardner, whom Gore replaced after Bailey demanded her resignation. Citing "constitutional error" and "clear and convincing evidence of actual innocence" due to false eyewitness testimony and prosecutorial misconduct, state court Judge David Mason exonerated Johnson in February 2023.

The first prisoner freed under SB 53, Kevin Strickland, 62, spent more than 40 years in prison for three Kansas City killings before Jackson County Prosecutor Jean Peters Baker, convinced by a case review, sought an evidentiary hearing under the newly enacted law. State court Judge James Welsh then ruled that Strickland, who had also maintained his innocence, had been wrongfully convicted in 1979. He was released on November 23, 2021.

It remains to be seen how many more exonerations Bailey will attempt to block, keeping innocent people unjustly imprisoned as he campaigns for re-election against civil rights attorney Elad Gross (D).

Sources: *AP News, CBS, CNN, Kansas City Star, KOMO, KRCG, St. Louis Post Dispatch, Missouri Net, NPR News*

Environmental Impact Statement Released for Controversial Proposed BOP Lockup in Kentucky

On July 10, 2024, the Federal Bureau of Prisons (BOP) released the final environmental impact statement (EIS) for a proposed new lockup to be constructed in Kentucky, moving the project closer to construction than it has ever been in more than 20 years since it was first proposed.

A pet project of Rep. Hal Rogers (R) from Kentucky's Fifth U.S. Congressional District, the prison was tabled in June 2019 after activist groups sued on behalf of 1,408 future prisoners who would allegedly be incarcerated atop "a toxic strip mine site"—until BOP revived the plan in December 2022, as *PLN* reported. [See: *PLN*, Apr. 2023, p.33.]

Shifting federal government priorities have also affected the project, making strange political bedfellows of former Pres. Donald J. Trump (R) and Pres. Joseph R. Biden, Jr. (D) after both called for defunding the project in budget proposals—which Rogers was able to thwart. Though the EIS showed that construction will disrupt streams, wetlands and wildlife habitat around the 500-acre site near Roxanna, it nevertheless called the former coal-mining site the least affected location in Letcher County.

Opponents say the most troubling consequence is storm water runoff that not only threatens to pollute drinking water but also increases flooding risks. Letcher County was one of 13 counties devastated by a 2022 flood that killed 45 people and destroyed over 9,000 homes. The economic impact is also questionable given that BOP plans to fill the new prison's 300-350 jobs with existing employees. The agency said it eventually hoped to recruit local residents for up to 60% of staff; however, research by the Kentucky Center for Economic Growth shows that similar federal prisons in nearby counties have not boosted economic growth at all. *See: Final EIS, Proposed Development of a New Fed. Corr. Inst. and Fed. Prison Camp—Letcher County, Ky*, BOP (July 2024).

Additional sources: *Lexington Herald-Leader, Louisville Public Media, WFPL*

Texas Appeals Court Tosses Former Prisoner's Illegal Voting Conviction

On March 28, 2024, Texas' Second District Court of Appeals (COA2D) overturned Crystal Mason's illegal voting conviction, ruling that the state failed to present any evidence of criminal intent by the Black grandmother from Fort Worth to vote illegally in the 2016 election.

Mason's crime was casting a ballot while on a three-year period of supervised release from federal prison. Having completed her five-year prison term for tax evasion, she believed that she was eligible. Though her name was absent from voter rolls, she was allowed to cast a provisional ballot—one of 4,000 cast in Tarrant County that year—which was later discarded. She was then charged with voting illegally and convicted. COA2D affirmed that conviction, but the state Court of Criminal Appeals (CCA) found the applicable statute had been misconstrued and remanded the case, leading to Judge Wade Birdwell's decision to vacate Mason's conviction. *See: Mason v. State*, 687 S.W.3d 772 (Tex. App. 2024).

Texas election policing efforts have been led by Republican Attorney General Ken Paxton, who has faced his own criminal charges for felony securities fraud, as *PLN* reported. [See: *PLN*, Feb. 2021, p.56.] Mason's case focused media attention on Paxton's "crackdown," which voting rights advocates blamed for unfairly entrapping voters who made an innocent mistake. A 2021 study by the state chapter of the American Civil Liberties Union found that at least 72% of the cases his office brought had targeted Black and Latino former prisoners, especially women.

The following year, CCA told Paxton that his office had no power to bring such cases without the consent of local prosecutors, freeing another former prisoner arrested for illegally voting while on parole in the 2020 election. But Hervis Rogers, 60—who gained national attention for waiting seven hours to cast a ballot and then sat in jail once arrested because he couldn't afford bail—said that he would never vote again.

Mason vowed to continue working to prevent other former prisoners from enduring a similar ordeal. Alison Grinter Allen, Mason's Dallas defense attorney, said that her conviction "should never have happened," adding that "the harm that this political prosecution has done to shake Americans' confidence in their own franchise is incalculable." Meanwhile, Paxton cut a deal to have his charges dropped, avoiding a trial and more questions about his ethics.

Sources: *NPR News, Texas Standard, Texas Tribune*

TDCJ Denied Summary Judgment In Suit by Prisoner Who Missed Grievance Deadline Because Guard's Assault Left Him In a Coma

It's hard to tell who is slimier, a Texas Department of Criminal Justice (TDCJ) guard who allegedly beat a prisoner into a coma or prison officials who then attempted to dismiss the prisoner's legal claim because he was still comatose when the deadline to file a grievance passed. Given that, it's no surprise defendants also let a settlement conference deadline pass that was set by the U.S. District Court for the Southern District of Texas for June 11, 2024.

The prisoner, Candelario Hernandez, was confined at the Stevenson Unit on November 4, 2019, when he sought medical attention for an arm injury. Guard Aaron Kloesel was on duty at the medical unit and refused Hernandez entry, closing the door on him. But Hernandez blocked the door open with his foot, insisting that he was entitled to be seen by medical staff. Kloesel allegedly became enraged, grabbed Hernandez and threw him to the ground, smashing his head on the concrete floor; he then knelt on the prisoner's neck and handcuffed him, even as Hernandez went into a seizure from the traumatic injury.

Hernandez lost consciousness before being airlifted to a hospital. There he remained comatose for several weeks. When he finally regained consciousness, he was left with permanent cognitive disability, permanent memory and vision impairment and paralysis on the left side of his body so that he is unable to walk. But by then he also had missed TDCJ's 15-day deadline to file a grievance over the incident, Step 1 of the two-step process which Texas prisoners must complete to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e.

Nevertheless, with the aid attorney Susan E. Hutchison of Hutchison & Foreman, PLLC, in Fort Worth, Hernandez filed suit in the Court in May 2020 under 42 U.S.C. § 1983, accusing Kloesel and his TDCJ superiors of violating his Eighth and Fourteenth Amendment rights. TDCJ Defendants moved to dismiss the suit based on Hernandez's failure to exhaust his administrative remedies. The district court granted the motion in part, staying the case and ordering Hernandez to submit a grievance. *See*: *Hernandez v. Kloesel*, 2021 U.S. Dist. LEXIS 188076 (S.D. Tex.).

The next day, on September 30, 2021, Hernandez filed a Step 1 grievance with TDCJ officials. They denied it as untimely, and also his Step 2 appeal. The prisoner then returned to the Court, where TDCJ Defendants again moved for summary judgment, claiming that administrative remedies were available to Hernandez during the six-month period between his injuries and the date on which he filed suit. Hernandez replied that PLRA provides an exception to the exhaustion requirement for administrative remedies that are "unavailable" to him, which his injuries rendered TDCJ's grievance deadlines.

The Court began its analysis by noting that Hernandez was unable to timely file a Step 1 grievance due to the injuries Kloesel inflicted upon him. In fact, he was in a coma and completely non-responsive during the first 14 days following the assault. Even after he returned to a TDCJ medical facility, he remained unable to communicate until at least November 27, 2019, the Court noted—a full eight days after the Step 1 grievance deadline expired. So the prisoner's physical injury, the Court said, left him "unable to timely file his Step 1 grievance."

As to whether TDCJ would have considered an untimely grievance submitted by Hernandez—after he regained consciousness but prior to filing suit—TDCJ declared that reviewing officers have discretion to process untimely grievances. But the prisoner produced a copy of the TDCJ Offender Grievance Manual, which prohibits *any* exceptions to the 15-day filing deadline for a grievance related to excessive force claims. The Court said this presented a genuine issue of material fact that a jury must weigh.

Given these disputes, the Court reversed its earlier opinion and agreed that the grievance process may not have been available to Hernandez, after all. It then issued an order on February 26, 2023, denying Defendants' motion for summary judgment and sending the fact issue to trial for resolution. A request by Defendants to certify this question for an interlocutory appeal at the U.S. Court of Appeals for the Fifth Circuit was also denied on April 26, 2023. That sort of appeal, the district court said, is reserved for questions of pure law, while the "underlying question of whether the prison grievance procedure was available to Hernandez is a question of fact." *See*: *Hernandez v. Kloesel*, 2023 U.S. Dist. LEXIS 31669; and 2023 U.S. Dist. LEXIS 72485 (S.D. Tex.).

The case remains pending, and *PLN* will update developments as they are available. Kloesel no longer works for TDCJ; he quit after an internal investigation into the assault on Hernandez recommended that he be fired.

Additional source: *Houston Chronicle*

DOJ Sues Utah DOC, Alleging Discrimination Against Transgender Prisoner

On April 2, 2024, the U.S. Dept. of Justice sued the Utah Department of Corrections (DOC) for allegedly violating the rights of a transgender prisoner under the Americans with Disabilities Act (ADA), 42 U.S.C. ch. 126 §12101 et seq. The filing came just weeks after the Disability Rights Section of DOJ's Office of Civil Rights issued a letter to DOC Executive Director Brian Redd on March 12, 2024, conveying the findings of its investigation into ADA violations alleged by the unidentified prisoner, who claimed DOC subjected her to discrimination and denied her equal access to healthcare due to her gender dysphoria disability.

A serious medical condition, gender dysphoria can result in "serious adverse mental health outcomes" if left untreated—outcomes that include self-mutilation and attempted suicide. Due to the lack of adequate medical care, the prisoner had attempted self-surgery to remove her testicles in May 2023. DOJ alleged that she had repeatedly requested treatment for her medical condition but received no gender dysphoria care for over 15 months, contrary to DOC's own policy. When she was finally provided hormone therapy, prison officials "failed to take basic, necessary steps to ensure that the treatment was provided safely and effectively," DOJ found.

Unlike other medical requests, transgender treatment requests must go through DOC's gender dysphoria committee, resulting in lengthy delays. Worse, DOJ alleged, the committee "included members who expressed bias against individuals who are transgender and reluctance to prescribe medically appropriate treatment for gender dysphoria." Non-transgender prisoners, of course, did not face such hurdles and delays when seeking medical care.

DOJ further found that prison officials had ignored the prisoner's repeated grievances and ADA requests for reasonable accommodations for her gender dysphoria, including permission to wear female prison clothing, purchase gender-affirming garments and makeup from the commissary, be assigned to female housing units, and not be subjected to cross-gender pat searches. With respect to housing, DOC based its decisions solely on a prisoner's sex at commitment, according to a visual inspection of the genitals, and there was no provision to place transgender women in female housing units.

Based on these facts, DOJ's letter stated, it had determined that DOC discriminated against the prisoner due to her disability by failing to provide equal access to health care and refusing to reasonably modify its policies and procedures. Title II of the ADA "prohibits a public entity from imposing unnecessary eligibility criteria that screen out or tend to screen out individuals with particular disabilities from fully and equally enjoying" services provided—including healthcare, DOJ stated. *See: U.S. DOJ Letter of Findings and Conclusions to the Utah DOC* (Mar. 12, 2024).

To correct these violations, DOJ then filed its suit in federal court for the District of Utah to force DOC to revise its policies and practices to ensure that prisoners with gender dysphoria are afforded equal opportunity to participate in services, programs and activities available to other prisoners. The suit further seeks to mandate training for DOC staff on ADA requirements, and for the agency to designate employees to ensure ADA compliance. DOJ is also seeking compensatory damages for the complainant. *See: United States v. Utah*, USDC (D. Utah), Case No. 2:24-cv-00241.

Redd, who said he was "blindsided" by DOJ's letter, has not commented on the suit that followed. But Assistant Attorney General Kristen Clarke said that "[a]ll people with disabilities, including those who are incarcerated, are protected by the ADA and are entitled to reasonable modifications and equal access to medical care." That is a "basic right," she added, one which "extends to those with gender dysphoria."

Additional source: *Axios*

Former Ohio Deputy Prison Warden Gets Probation for Overtime Fraud

The former Deputy Warden of Ohio's Warren Correctional Institution was sentenced on March 20, 2024, to probation not exceeding five years, after pleading guilty to theft in office. Robert Welch, 57, admitted stealing over $19,000 in pay for overtime he never worked at the lockup.

Welch fraudulently punched in for more than 350 hours of overtime work with the state Department of Corrections and Rehabilitation (DRC) over a 10-month period beginning in April 2022. DRC investigators later learned from Sinclair Community College that the deputy warden spent some of those hours teaching classes as an adjunct instructor. The school didn't say what he taught, but presumably it wasn't a class in ethics.

He resigned from DRC in April 2023 after nearly 23 years, according to the agency's communications head, JoEllen Smith. At the time Welch earned $53.01 an hour, she said. His October 2023 indictment listed three felony counts, but charges for grand theft and tampering with records were dropped as part of his plea deal.

According to that, Welch agreed to repay the money he defrauded the state. He made out well in the deal; the charge to which he pleaded guilty carried a maximum penalty of 36 months in prison and a $10,000 fine.

Source: *Dayton Daily News*

First Circuit Affirms Qualified Immunity for Massachusetts Officials Who Held Prisoner in Solitary for Two Years Without Hearing

by Douglas Ankney

In a maddeningly byzantine decision on February 21, 2024, the U.S. Court of Appeals for the First Circuit dismissed a claim by Massachusetts prisoner Jwainus Perry that his due process rights were violated by state Department of Correction (DOC) officials, who held him in solitary confinement for almost two years in a Special Management Unit (SMU) at the notorious Souza-Baronowski Correctional Center between 2010 and 2012 "without affording him either notice of the factual basis for that confinement or an opportunity for rebuttal."

Perry filed his claim in April 2014, after which the federal court for the District of Massachusetts granted Defendants summary judgment. A panel of the First Circuit affirmed that decision in 2018, agreeing that they were entitled to qualified immunity (QI) because the law was not clearly established, at the time of the alleged violation, that prolonged SMU confinement was a deprivation of a liberty interest protected by the Due Process Clause. Four years later, the full Court sitting *en banc* vacated that decision and granted Perry's motion for rehearing—only to reach the same conclusion again another two years after that.

Attempting this time to provide a framework for determining when confinement in segregation triggers due process protections, the Court began with a "two-step approach" to analyze the QI claim, as laid out in *Stamps v. Town of Framingham*, 813 F.3d 27 (1st Cir. 2016). The first step: Look for "a genuine issue of disputed fact" which might support Plaintiff's claimed violation of his constitutional rights; and, if one is found, take a second step to determine whether the right "was clearly established at the time of the defendant's alleged violation."

But the Court said that the first step could not be completed without taking a detour to determine whether a liberty interest protected by the Due Process Clause was possibly violated by Defendants. Since Perry's was a conditions-of-confinement claim, no liberty interest was threatened unless an "atypical and significant hardship" was imposed on him "in relation to the ordinary incidents of prison life," the Court said, quoting *Sandin v. Conner*, 515 U.S. 472 (1995).

Having determined that, the Court said it was obliged to continue its detour to examine those "ordinary incidents of prison life," in order to establish a baseline beyond which SMU confinement constitutes a 'significant and atypical hardship.' Citing *Skinner v. Cunningham*, 430 F.3d 483 (1st Cir. 2005), the Court said that solitary confinement exceeding 30 days may cross this threshold if it is "irrational," "inessential" or "excessive" in length. "This is not to say," the Court allowed, "that confinement beyond thirty days creates a *per se* due process violation."

So it took a another step to ask whether "'few' members of the general prison population have experienced similar durations of such confinement," quoting *Shoats v. Horn,* 213 F.3d 140 (3d Cir. 2000). Even if that's so, however, it only "secure[s] a procedural opportunity to challenge" the confinement, "not to bar the confinement's use for any length of time or purpose."

Which still doesn't mean the challenge to the confinement is dead, the Court continued; as a third-step "matter of procedure and burden allocation," the prisoner may show his confinement's duration was an "atypical and significant hardship" even without "[an] empirical showing as to the frequency with which the prison system at issue imposes solitary confinement of comparable length," per *Colon v. Howard*, 215 F.3d 227 (2d Cir. 2000).

So the Court took a fourth-step look at "the state's own regulations," which are "not the source of any liberty interest themselves" but "can inform the inquiry into whether the solitary confinement at issue persisted long enough" to exceed the "reasonable 'expectations' that the state's own laws and policies have generated about what an inmate reasonably should understand to constitute the basic experience of prison life," quoting *LeChance v. Commissioner of Correction*, 978 N.E.2d 1199 (Mass. 2012).

Applying this to Perry's case, the Court concluded that the length of his SMU confinement subjected him to an 'atypical and significant hardship.' Moreover, Defendants deprived Perry of his due-process rights—in the language of *Hewitt*, they gave him no "notice of the factual basis" for the confinement nor "an opportunity to present [his] views" to the official charged with the decision to put him there.

But after all that, the Court also concluded that it wasn't clearly established at the time of Perry's solitary confinement that prolonging it would constitute an 'atypical and significant hardship'; therefore, Defendants were entitled to QI. Accordingly, the district court's dismissal of his complaint was affirmed. Before the Court, Perry was represented by attorneys with Garmey Law in Portland, Maine, and the Roderick and Solange MacArthur Justice Center in Chicago. *See: Perry v. Spencer*, 94 F.4th 136 (1st Cir. 2024).

German High Court Finds Low Prisoner Wages Unconstitutional

Quietly, the Second Senate of Germany's Federal Constitutional Court made history on June 20, 2023, in a ruling that found laws capping compensation that prisoners receive for work in two German states violate the Basic Law for the Federal Republic of Germany, the country's constitution. The Court held that the portions of the Bavarian Prison Act and the Prison Act of North-Rhine Westphalia setting prisoner remuneration for work while incarcerated in those states are incompatible with the "social reintegration" of prisoners, which prison programs are required to seek under the Basic Law.

Two unnamed German prisoners confined in Bavaria and North-Rhine Westphalia filed suit in their respective state courts challenging the amount they were compensated for their work while confined. One worked in the prison print shop and the other as a cable cutter. In both states, penal codes set prisoner compensation at just 9% of Germany's "basic wage," which is calculated from the average wage of all German citizens under the pension insurance scheme, similar to Social Security in the U.S. That amounts to a daily wage of about €12.00 ($13.10 USD), or €1.50 ($1.65 USD) hourly. Both prisoners' cases were dismissed by the state courts as unfounded and eventually made their way to the Federal Constitutional Court.

As the Court explained, Germany's Basic Law states that the purpose of criminal detention is the social reintegration of prisoners. "The constitutional requirement for resocialization obliges the legislature to develop an effective and coherent resocialization concept based on the latest scientific findings and to implement this with sufficiently specific prison regulations," the Court wrote. In the context of prisoner pay for work, the state legislatures must enact laws that "show prisoners the value of regular work for a future independent and crime-free life in the form of a tangible advantage."

However, the Court noted, remuneration need not be solely monetary. State legislatures may, for example, enact laws that compensate prisoners in part by reducing their sentences or providing other meaningful benefits aimed at resocialization. Yet "even if the recognition is not only in money but also in the form of non-monetary benefits," the Court continued, "it must have the character of a countervalue for the work performed, which is also immediately recognizable for the prisoners." That is, whatever compensatory measures state legislatures choose must ensure that prisoners "see gainful employment as meaningful in order to provide a livelihood, [and not to] hinder their willingness to do regular work and thus their resocialization."

With these basic principles in mind, the Court determined that the Bavaria and North Rhine-Westphalia penal codes related to prisoner remuneration violate the Basic Law's requirement of resocialization. Paying prisoners only 9% of Germany's basic wage is entirely inconsistent with the concept of resocialization because it does not adequately value a prisoner's labor, especially when considering other laws that encourage or require prisoners to financially compensate crime victims, to provide support for their children, and also contribute to other costs of incarceration. The Court therefore ordered both states to enact new laws consistent with its decision and based on current, scientific research that adequately compensates a prisoner's labor by no later than June 30, 2025. This compensation may be both monetary and non-monetary, so long as whatever compensation is awarded adequately values a prisoner's labors based on current social science. The Court also determined that the changes need not apply retroactively. *See: BVerfG, Judgment of the 2nd Senate of 20 June 2023*, 2 BvR 166/16 and 2 BvR 1683/17.

Additional Source: The Federal Constitutional Court, Press Release No. 56/2023 (June 2023)

Georgia Prison Education Program Shuttered

Georgia State University announced on March 21, 2024, that it was pulling the plug on its eight-year-old Prison Education Program (PEP), in which 60 prisoners at two state prisons and one federal lockup were working toward college associate degrees.

PEP alumni include nine men at Walker State Prison who earned associate degrees in May 2023, GSU's first class to graduate behind bars. Three more incarcerated students graduated in December 2023 at Phillips State Prison. Another 19 prisoners at the U.S. Penitentiary in Atlanta enrolled in PEP classes in September 2023.

The university claims to have a "teachout plan" to help all 60 remaining prisoner students finish their degrees, potentially involving a takeover of the program by the University of West Georgia. Details remain unclear, however.

Ironically, it was expansion of Pell Grant availability to all incarcerated students nationwide that GSU blamed for the shutdown. Offering federal financial aid for low-income students, Pell Grants became available to prisoners in July 2023 after a ban lasting nearly 30 years, as *PLN* reported. [See: *PLN*, May 2022, p.44.] GSU said that the "complex requirements" and "administrative demands" of obtaining Pell Grant approvals were too burdensome.

But Ruth Delaney, who provides technical assistance for the nonprofit Vera Institute to prison education programs, was disappointed by the shutdown, noting that "many of the services, reporting and processes that the Pell Grant students require are standard practices that the university already has in place to serve its non-incarcerated students."

The state's largest university, GSU faces budget shortfalls, with a $24.4 million cut in fiscal year 2024 and another anticipated next year. The university estimated that PEP cost around $180,000 annually on top of funds raised though a nonprofit arm to cover those costs.

Source: *Georgia Recorder*

Former Warden Added to Suit Over Brutal Killing of Disabled Virginia Prisoner

by Douglas Ankney

In an amended complaint filed in federal court for the Western District of Virginia on January 19, 2024, the former warden of Marion Correctional Treatment Center (MCTC) was added to the list of Defendants being sued by the surviving sister of an intellectually disabled prisoner fatally beaten by guards.

The filing by Kymberly Hobbs came three months after a grand jury refused to indict MCTC guards Joshua Caleb Jackson, William Zachary Montgomery, Samuel Dale Osbourne, Gregory Scott Plummer and Sgt. Anthony Raymond Kelly for killing her brother, Charles James Givens, 52, on February 5, 2022.

Givens was incarcerated for fatally shooting home health nurse Misty Leann Garrett, 22, in 2010. Due to his intellectual disability—he had the mental capacity of a child aged 7 or 8, the result of a childhood tumble down the stairs—he was housed at MCTC with other "prisoners with mental-health issues and/or limited intellectual development," the complaint continued. He also suffered from Crohn's disease, one of the "complex medical reasons" that the complaint faults for Givens' soiling himself.

But Defendant MCTC guards said that he "defecated on himself intentionally," Hobbs' complaint recalled; and because of Givens' "inability to promptly decipher and follow [their] commands," they allegedly "retaliated against and abused him in a variety of demeaning ways." In MCTC's medical unit in October 2018, guards removed all toilet paper from Givens' cell. Instead of reprimanding them, a supervisor notified of this mistreatment allegedly joined in the retaliation and transferred Givens to "the hole"—solitary confinement.

Documented Physical Abuse

Between October 14, 2014, and his death, "there are over a dozen times when documents indicate" Givens was physically abused, Hobbs alleged. Givens complained that Sgt. R. Johnson beat him that month in the shower, which conveniently had no surveillance cameras; prisoners called this "being taken to the office." Records from the hospital and MCTC medical personnel reveal that Givens was beaten in the shower by guards with bars of soap, leaving him with bruised hips and bruised, discolored fingers. After he was scalded in the shower by guards in April 2018, a nurse photographed the injuries, including blisters on his penis.

Givens was hospitalized for hypothermia at least five times in the year before his death because, after soiling himself, guards allegedly showered him with cold water in the winter and left him in a cell with opened windows he couldn't close. Hospital records revealed his body temperature was as low as 87°F upon admittance. Medical records also noted that he was treated for lacerations to his face and a black eye, after he said a guard kicked him in the head.

On the morning of Givens' death, according to the Hobbs' complaint, Jackson, Montgomery, Plummer and Osbourne escorted him to the shower room after he defecated on himself. While Jackson and Montgomery dumped cold water on Givens, Plummer snapped a wet towel at the prisoner's genitals. Kelly stayed in the hallway, stepping inside several times to violently punch Givens in the ribs and torso. The four chided Osbourne for not participating.

Surveillance video showed the guards returning a "slumped over" Givens to his cell after the beating. His request for medical attention was denied. An hour later he was dead. The beating was observed by a prisoner who later reported details, but when Virginia State Police (VSP) Special Agent Heath Seagle attempted to interview him, the witness refused to discuss it. After Seagle left, Warden Jeffrey Artrip reportedly chided the witness, "Why didn't you tell him that you didn't see anything?"

When Artrip notified Hobbs of Givens' death, he attributed it to natural causes. But another prisoner told a relative about Givens' beating, and that relative then informed Hobbs. The prisoner witness was subsequently charged with institutional offenses that VSP later said were bogus and intended to impede the investigation. Meanwhile, the first prisoner witness was abruptly transferred to Bland Correctional Center, where he provided VSP details of the assault that were confirmed by an autopsy finding that Givens died from blunt force trauma to the torso that cracked his ribs, lacerated his spleen and caused massive internal bleeding. In a subsequent polygraph examination at VSP Headquarters in Wytheville, Examiner Travis Sykes reported that the witness "achieved the second highest truthfulness score ever obtained at that facility."

Legal Challenge Survives a Dismissal Motion

Hobbs filed her complaint pursuant to 42 U.S.C. § 1983 accusing the guards of killing Givens; her amended complaint added Artrip and guard Cpt. Travis S. Poston as additional Defendants, who allegedly knew of their subordinates' abusive behavior but failed to discipline them, train them or intervene when they attacked the prisoner. On May 19, 2023, the Court agreed that Osbourne "had a duty under Virginia law to protect Givens" and denied a motion to dismiss him from Hobbs's state-law claim for gross negligence, by his failure to intervene in the savage beating. *See: Hobbs v. Kelly*, 2023 U.S. Dist. LEXIS 88046 (W.D. Va.).

Kelly is no longer employed by the state Department of Corrections (DOC), though spokesperson Carla Miles refused to say whether he was fired. Jackson was promoted to caseworker. Plummer, Montgomery and Osborne remain on suspension. Artrip is now Warden of Wallens Ridge State Prison. Though none of the Defendants was criminally charged, the FBI opened an investigation, according to Hobbs. Tellingly, DOC also refuses "to turn over dozens of pages of documents" in response to an *AP News* public records request about "uncomfortably cold temperatures at the prison, non-functioning or poorly functioning heating systems, as well as windows left open during cold months."

Hobbs is represented by attorneys with the Krudys Law Firm PLC in Richmond and the Jackson Law Group PLLC in Wytheville, as well as C. Paul Stanley III, another Wytheville attorney. The case is scheduled for trial in March 2025, and *PLN* will update developments as they are available. See: *Hobbs v. Kelly*, USDC (W.D. Va.), Case No. 1:23-cv-00003.

Additional sources: *NPR News, Richmond Times-Dispatch*

"We Killed Him": Alabama Jailers Cut Plea Deals After Detainee Freezes to Death

On July 31, 2024, a former guard at Alabama's Walker County Jail agreed to plead guilty to federal charges filed after a detainee was left naked on his cell floor for two weeks and froze to death in the winter of 2023—in a concrete bunker known as the "freezer" because guards manipulated fans to vent cold air from outside. A second guard then entered a plea agreement the following month in the death of the detainee, Tony Mitchell.

Mitchell, 33, died of hypothermia on January 26, 2023, after arriving at a hospital with a body temperature of just 72 degrees Fahrenheit. In the first plea agreement filed in federal court for the Northern District of Alabama, former guard Joshua Conner Jones confessed to one count of conspiracy to deprive Mitchell's civil rights. Fellow guard Karen Kim Elsie Kelly agreed to plead guilty to the same charge on August 13, 2024.

When he was arrested on January 12, 2023, Mitchell—who had a history of drug addiction—had painted his face black. A cousin had reported that he was rambling about portals to heaven and hell in his home, and deputies performing a welfare check said that he fired a handgun at them before fleeing into the woods in the cold. After they got him to the jail, guards put him in a suicide smock, though he had not threatened to kill himself.

As Jones' plea agreement noted, Mitchell "was almost always naked, wet, cold, and covered in feces while lying on the cement floor without a mat or blanket." By his second week in the lockup, he was "largely listless and mostly unresponsive to questions." The hospital doctor on duty when Mitchell died wrote, "I am not sure what circumstances the patient was held in incarceration, but it is difficult to understand a rectal temperature of 72°F. while someone is incarcerated in jail." County Coroner Joey Vick ruled the death a homicide on March 4, 2024, noting the cause was "medical neglect".

In her plea agreement, Kelly said that it was unidentified command staffers who ordered Mitchell kept on suicide watch, after a jail nurse "ceded her authority" to them. Kelly, who was nightshift supervisor for seven of the 15 nights that Mitchell was in the jail, said she was cowed by the supervisors, who "berated" her when she ordered the cell cleaned of feces and rotting food; another reportedly prevented her from providing the detainee a floor mat, nor could she give him a towel on "rare" occasions he was allowed to shower. The supervisors called Mitchell "combative," Kelly recalled, but she saw no sign of that. *See: United States v. Kelly*, USDC (N.D. Ala.), Case No. 6:24-cr-00311.

Jones' plea agreement also said that jailers lied to healthcare staff that Mitchell was too combative to be medically evaluated until the day he was found unresponsive. When questioned about the circumstances of Mitchell's confinement, they replied that "he gets what he gets since he shot at cops." Jones admitted that he and five co-conspirators were liable for the death, saying: "[C]ollectively we did it. We killed him." His plea agreement did not name the alleged co-conspirators, but their mention indicated that more charges may follow. Jones also agreed to plead guilty to depriving the civil rights of another unnamed detainee whom he assaulted. *See: United States v. Jones*, USDC (N.D. Ala.), Case No. 6:24-cr-00298.

Kelly filed suit in the same Court in February 2023, accusing Sheriff Nick Smith of firing her in retaliation after she leaked word of surveillance video showing Mitchell's death, which ultimately sparked an FBI investigation. A separate lawsuit filed that same month by Mitchell's mother, Margaret Mitchell, accuses Sheriff Smith and 13 jailers of "one of the most appalling cases of jail abuse the country has seen," pointing to the surveillance video that showed guards "clowning" while Mitchell lay naked and dying in his cell. Two nurses named as Defendants blamed guards for a delay in summoning an ambulance; they are reportedly cooperating with the FBI investigation, for which both suits have been stayed. *PLN* will update developments as they are available. Mitchell is represented by attorneys Jon C. Goldfarb, Christina M. Malmat and L. William Smith with Wiggins Childs Pantazis Fisher & Goldbarb in Birmimgham. *See: Mitchell v. Smith*, USDC (N.D. Ala.), Case No. 2:23-cv-00182.

Additional sources: *NBC News, WBRC, WTVM*

New York City Mayor Blocks Solitary Confinement Ban After Council Overrides His Veto

New York City Mayor Eric Adams (D) declared a state of emergency on July 28, 2024, issuing an executive order blocking a new law banning solitary confinement in city jails just one day before it was slated to take effect. The move is the latest in a see-saw battle between Adams and City Council, which voted 39-7 in December 2023 to pass Bill 549-A. Adams vetoed the bill on January 19, 2024, but Council voted 42-9 to override that veto on January 30, 2024, creating Local Law 42—which Adams' order has now blocked.

Adams, a former captain with the city police department (NYPD), argued that the legislation was unnecessary because city jails—including the notorious Rikers Island complex—had discontinued use of solitary and replaced it with "punitive segregation." However, a report by Columbia University's Center for Justice found that detainees were still being held in the equivalent of solitary for lengthy periods of time.

The mayor also claimed the ban would "make staff in our jails and those in our custody less safe by impairing our ability to hold those who commit violent acts accountable." Unsurprisingly, the bill was also opposed by the Correction Officers' Benevolent Association (COBA), the union representing jail guards. But Adams also got support from a surprising source: Steve J. Martin, the Monitor appointed by the federal court for the Southern District of New York in a long-running case over jail conditions, told U.S. District Judge Laura T. Swain on July 17, 2024, that there is "no question that situations arise in correctional settings where an immediate risk of harm must be addressed regardless of arbitrarily imposed limitations." *See: Nunez v. City of N.Y.*, USDC (S.D.N.Y.), Case No. 1:11-cv-05845.

In passing the law and overriding Adams' first veto of it, Council member Adrienne Adams (D), who is no relation to the mayor, said that solitary confinement "is almost exclusively inflicted on Black and Latino people who are simply awaiting their day in court and don't have the money to [post bail and] avoid pretrial detention." Also voting to override Adams' veto was first-term Council member Yusef Salaam (D), one of the "Central Park Five" whose wrongful conviction for a high-profile 1989 rape cost the city a $41 million settlement, as *PLN* reported. [See: *PLN*, Mar. 2016, p.58.]

The deaths of several detainees held in isolation in city jails sparked the measure, which added § 9-167 to the city's administrative code. Instead of solitary, detainees could be placed in "de-escalation confinement" for up to four hours, or up to 12 hours total in a seven-day period, so long as they were checked every 15 minutes and allowed to make phone calls. Placement in a restrictive housing unit (RHU) was allowed for security reasons, but only after a hearing with due process protections, including the ability to present evidence and be represented by an advocate, as well as conduct witness cross-examinations. No RHU placement could last over 30 days, nor more than 60 days within a 12-month period, and never in solitary confinement cells. Detainees committing violent "grade 1" offenses could be temporarily placed in RHU before a hearing for up to five days. Importantly, the law also required that all detainees "have access to at least 14 out-of-cell hours" each day, except while in de-escalation confinement or during emergency lockdowns. It further limited the use of restraints unless "necessary to prevent an imminent risk of self-injury or injury to other persons." Detailed reports on use of RHU were also to be provided to City Council every three months.

Adams' order was to last 30 days, though he was expected to extend it for additional 30-day periods. Council Member Tiffany Cabán (D-Astoria) said that when she was a public defender, clients who ended up in "the box" were "guaranteed trauma," despite "evidence and research show[ing] that it does not work and causes immense harm." As for Adams' order, she said, "We are all less safe because of his actions."

Additional sources: *New York Times, Queens Chronicle, Reuters News*

Former Detainee Sues "Disgusting" Atlanta Jail Where He Was Stabbed 13 Times

A lawsuit filed in Georgia's Fulton County on May 1, 2024, blames poor conditions at the county jail for an assault by fellow detainees on Michael Horton, in which he was stabbed 13 times. As *PLN* reported, the jail recorded 10 detainee deaths in 2023, which Sheriff Pat Labatt blamed on "dangerous overcrowding" and "crumbling walls" in the lockup; at least one of those deaths was attributed to a bedbug infestation that forced Labatt to transfer some 600 detainees—but not before one of them, detainee LaShawn Thompson, 35, was "eaten alive." His death cost the county a $4 million settlement in August 2023, the same month that former Pres. Donald J. Trump (R) called the jail "disgusting" during a brief visit to be booked on state charges related to his alleged interference in the 2020 election. [See: *PLN*, Feb. 2024, p.12.]

Horton was booked into the jail in March 2023 on charges of assault and possession of a weapon by a felon. Before he posted a $5,000 bond and was released two months later, he was the victim of the stabbing attack—one of 922 assaults recorded in the first 10 months of the year, including 337 fights and 293 stabbings, with 1,186 shanks confiscated by guards. Horton's complaint notes both overcrowding and understaffing at the jail, where broken locks allow detainees to roam freely, crafting homemade weapons from parts of the crumbling building and hiding them in the holes left behind. He accuses Labatt and the County of negligence in failing to protect him from the attack, for which he seeks both compensatory and punitive damages. Horton is represented by Atlanta attorney Tyrone J. Walls. *See: Horton v. Fulton Cty.*, Ga. Super. (Fulton Cty.), Case No. 24-EV-003756.

Additional source: *Atlanta Journal-Constitution*

Solitary Confinement Prompts Lawsuit in Massachusetts, Hunger Strike in Maine

A suit filed by six Massachusetts prisoners on July 1, 2024, alleges that conditions in what the state Department of Corrections (DOC) calls a "Secure Adjustment Unit" (SAU) are no different from solitary confinement—something state legislators outlawed in 2018. DOC also pledged to end the practice back in June 2021, as *PLN* reported. [See: *PLN*, Dec. 2021, p.49.]

Prisoners Tykorie Evelyn, Jerome Meade, Emmitt Perry, Peter Bousleiman, Emmanuel Biaggi and Charles Miles filed the putative class-action in Suffolk County Superior Court, accusing DOC Acting Commissioner Shawn Jenkins and other officials of violating the state's 2018 Criminal Justice Reform Act.

That law limits reasons for placement in segregated housing and mandates placement reviews every 90 days. It also requires "the same access to visitation, telephone calls, canteen, property, programming, reading and writing materials, and good time credit as those in general population at the same facility consistent with the security of the unit," the suit recalls.

Plaintiff Perry was held in a "Department Disciplinary Unit" (DDU) at the Massachusetts Correctional Institution (MCI) in Cedar Junction, the complaint notes, where he made similar allegations in an earlier suit that prompted DOC to abandon DDUs in June 2023. But other named plaintiffs remain in a "Behavioral Adjustment Unit" (BAU), where solitary conditions allegedly persist, as in SAUs.

Plaintiffs are represented by attorneys James R. Pingeon and Rachel C. Talamo of Prisoners Legal Services of Massachusetts in Boston, along with Boston College Law School Civil Rights Clinic Director Reena Parikh and attorneys from Holland & Knight in Portland and Boston. *See: Evelyn v. Jenkins*, Mass. Super. (Suffolk Cty.), Case No. 2484CV01746.

More "Solitary-Not-Solitary" in Maine

The allegations of doublespeak in Massachusetts echo in nearby Maine, where the state DOC has also changed what isolation is called. In protest, prisoners initiated a hunger strike in C-pod, a higher-security section of Maine State Prison (MSP), on March 28, 2024, noting that no matter what it's called, they get just one to two hours out of their cells daily in a "close custody unit" (CCU)—where placement is subject to a troubling lack of review. Prisoner Nicholas Gladu described the mental anguish of prolonged isolation, leaving him talking to himself as violent thoughts escalate. He called being locked in a cement cube for 22 hours a day "crazy-making."

"I've seen peopleliterally unravel before my eyes and the scary thing is how many guys I'm seeing get released into the state from this pod," Gladu said. "It's mind boggling, and it's a guarantee to come right back."

DOC spokesman Samuel Prawer pushed back against their claims, insisting that "out-of-cell recreation and social time [are] available on a daily basis," plus "additional time for those attending medical appointments, or pursuing work or programming, such as education." Prisoners in CCU "also have access to visits, telephones, mail, and text messaging on tablets, so long as the tablets are not misused," he added.

It was unclear how long the hunger strike lasted, but it was clearly a desperate effort to prompt change, after letters and grievances failed. Jan Collins of Maine Prisoner Advocacy Coalition said that Gladu's complaint is not isolated. Nor was this strike the first, she added, pointing to prior strikes in 2014 and 2021.

The month after the latest strike, DOC Director Randall Liberty admitted on April 5, 2024, that not all CCU prisoners were getting the daily 2-1/2 hours out of cell that they were due. But he shrugged it off, blaming staffing shortages. Prawler fell in line, calling "solitary confinement" inaccurate to describe CCU "because it implies an absence of social contact."

After state lawmakers failed to agree on a definition in 2022, state Rep. Grayson Lookner (D-Portland) introduced LD 1086 in 2023. Though his "ultimate goal" is to "limit and prohibit the use of solitary confinement," he said, "first we have to define it." His bill remains stalled.

Additional sources: *Bolts Magazine, Maine Morning Star, Rhode Island Current*

RECLAIM Your FUTURE azexpunge.org

EVER BUSTED FOR MARIJUANA IN ARIZONA?

YOUR CONVICTION COULD BE KEEPING YOU IN PRISON LONGER THAN YOU HAVE TO BE.

Now that recreational use of marijuana is legal in Arizona, the qualified attorneys from the Reclaim Your Future campaign can help you expunge certain past marijuana convictions* for **FREE.**

WHAT DOES EXPUNGEMENT MEAN?

It means that qualifying marijuana-related records are sealed and no longer available to the public. Expungement also eliminates some of the consequences of a marijuana offense. For example, the offense can **no longer be used as a prior offense to enhance a sentence** or to prove someone is a **repeat offender.**

What offenses qualify?*

Possessing, consuming or transporting:
- 2.5 ounces (70 grams) or less of marijuana

Possessing, transporting or cultivating:
- 6 marijuana plants or less at the individual's primary residence for personal use

Possessing, using or transporting:
Paraphernalia related to the consumption of marijuana

¿Qué delitos cumplen los requitos?

Poseer, consumir o transportar:
- 2.5 onzas (70 gramos) o menos de marihuana

Poseer, transportar o cultivar:
- 6 plantas o menos en la residencia principal del individuo con fines de uso personal

Poseer, usar o transportar:
- Parafernalia relacionada con el de marihuana consumo

*Federal and tribal offenses are not eligible for expungement. *Los delitos federales y tribales no son elegibles para eliminación.*

Write Us or Call!

RECLAIM YOUR FUTURE / RECLAMA TU FUTURO
4001 N. 3RD ST., SUITE 401
PHOENIX, AZ 85012
info@azexpunge.org | (800) 722-4026

Legal services provided by the Arizona Justice Project, DNA People's Legal Services, and their partners.
Reclaim Your Future is funded by the Arizona Department of Health Services.

SE HABLA ESPAÑOL. SERVICIOS LEGALES GRATUITOS.

NaphCare Settles One Suit At Oregon Jail, Loses Motion to Dismiss Second

On August 2, 2024, after losing a motion to dismiss a lawsuit filed by a Jeffrey Simms-Belaire, a former detainee at Oregon's Washington County Jail (WCJ), private jail medical contractor NaphCare, Inc. secured an agreement with a settlement of $78,325.50 to drop his civil rights claims against a nurse practitioner (NP) employed by the firm. The move came just months after the company advised the federal court for the District of Oregon on March 28, 2024, that it had settled claims in another suit filed by Tammy Thomsen over the death of her husband at WCJ.

In both cases, no settlement details were docketed with the Court, but *PLN* has requested documentation, since NaphCare was acting as a public instrumentality. Meanwhile remaining claims are proceeding against the firm and the County that were filed by Simms-Belaire, a paraplegic with no feeling in his legs and feet who is now an Oregon state prisoner.

After an October 2017 arrest in Kansas, Simms-Belaire was extradited to Oregon and booked into WCJ to await trial. The detainee used a wheelchair and medical shoes issued at the Kansas jail to protect his feet from rubbing against it, since he suffers from a condition that causes his toes to point downward. During intake into WCJ, he informed staff about his medical needs but did not receive footwear to accommodate his condition. Over the seven months he spent at the jail, he repeatedly requested the shoes, eventually receiving surgical shoes that were open-toed and provided little help. Meanwhile, his ankle developed open sores.

Simms-Belaire discussed his need for proper footwear with NaphCare NP Martha Rojo, who noted his ankle wound but did not order shoes to prevent further injuries. The wound had not healed when treatment for it was discontinued on April 27, 2018. Simms-Belaire was transferred the following month to a state lockup, where he received treatment for his ankle injury—which by then had progressed to a stage IV ulcer.

After he filed suit in the Court against Washington County, Rojo and NaphCare, Defendants moved for summary judgment and sought to exclude Simms-Belaire's expert witnesses. But the Court largely denied their motions on January 25, 2024. Plaintiff had argued that jail staff intentionally discriminated against him based on his disability, in violation of the Americans with Disabilities Act (ADA), 42 U.S.C. cg.126 §12101 et seq. The Court found that he had provided adequate notice of his need under ADA with his requests for protective shoes—and his "need for a footwear accommodation was obvious" due to his medical condition, the Court said. The County also had an "affirmative duty" to investigate his need for an ADA accommodation, yet it took two months before he received footwear—which failed to protect his feet or ankles. Summary judgment was therefore denied as to the ADA discrimination claim.

Simms-Belaire had also argued that denial of medical care violated the ADA. Though the Court noted that the ADA does not generally provide a cause of action "for challenging the medical treatment of … underlying disabilities," his objection to discontinuation of wound care for his ankle after April 27, 2018, stated a claim. Accordingly, summary judgment was granted to Defendants dismissing claims for denial of medical treatment before that date, but all later claims were sustained.

Importantly, Simms-Belaire's § 1983 claim against Rojo was also allowed to proceed. The Court found genuine issues of material fact as to whether she was deliberately indifferent to his serious medical needs. His claim against the county for allegedly failing to ensure that she and other staffers were properly trained—an unconstitutional custom or practice claim permitted by *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978)—was also allowed to proceed; as the Court noted, there was evidence that the jail's ADA coordinators, as well as NaphCare staff, lacked knowledge about the ADA and accommodations for disabilities. An argument that one of Simms-Belaire's expert witnesses should be excluded because she had never worked in a correctional setting was also rejected; the Court found "her lack of specific experience in, or familiarity with, providing care in correctional settings goes to the weight of her testimony, not to its admissibility." *See: Simms-Belaire v. Wash. Cty.*, 2024 U.S. Dist. LEXIS 13342 (D. Or.).

That was apparently enough to get NaphCare to the settlement table, where the firm agreed to the settlement on July 26, 2024. The payout included fees and costs for his attorney, as well. Early the following month, the parties then stipulated to Rojo's dismissal. *See: Simms-Belaire v. Wash. Cty.*, 2024 U.S. Dist. LEXIS 137192 (D. Or.). The case remains active against the County defendants and NaphCare, and *PLN* will update developments as they are available. Simms-Belaire is represented by Portland attorney Lynn S. Walsh. *See: Simms-Belaire v. Wash. Cty.*, USDC (D. Ore.), Case No. 3:20-cv-00338.

Another Jail Death, Another Private Settlement

Simms-Belaire was more fortunate than Dale Thomsen, 58, a WCJ detainee who died on his third day incarcerated there in June 2017. As *PLN* reported, wife Tammy Thomsen called the jail to warn that he was an alcoholic who drank four to six pints of beer daily. After he died, she sued the County and NaphCare, demanding 10

years' worth of documents from the latter that the firm fought releasing; the Court eventually ordered release of documents from the year the suit was filed, as *PLN* reported. [See: *PLN*, July 2020, p.48.]

The case then proceeded, with Plaintiff marshalling expert witnesses to blame Defendants for failure to treat symptoms of alcohol withdrawal that eventually triggered her husband's fatal heart attack. NaphCare countered that Thomsen died of a heart attack—period; no one knew when he had his last drink, his symptoms didn't match those of alcohol withdrawal and there was no evidence he ever went through it, especially while in custody, the firm's attorneys insisted. Absent that, they argued, Plaintiff's experts were all at sea, their conclusions poorly supported by bad assumptions.

The Court took up the dispute on December 15, 2023, deciding that when Tammy Thomsen advised jailers of her husband's alcohol history, they were safe in assuming that he had consumed the reported amount in the previous day—and so were her experts. Moreover, some of his symptoms were in fact consistent with withdrawal, which even NaphCare admitted. And Thomsen's medical records were sufficient for the experts to opine about his withdrawal in the jail. Accordingly, Defendants' motion to exclude Plaintiff's experts was largely denied. *See: Thomsen v. NaphCare, Inc.*, 2023 U.S. Dist. LEXIS 223540 (D. Or.).

Again, NaphCare beat a hasty path to the settlement table, advising the Court in March 2024 that an agreement had been reached, though no details were disclosed. Thomsen then stipulated to dismissal of her claims. She was represented by Portland attorneys Dain J. Paulson, Tim Jones and Nadia H. Dahab, plus John M. Coletti III of Paulson Coletti Trial Attorneys PC in Lake Oswego. *See: Thomsen v. NaphCare, Inc.*, USDC (D. Ore.), Case No. 3:19-cv-00969.

After Thomsen's death and Simms-Belaire's injuries, WCJ dropped its contract with NaphCare in 2020, inking a new agreement with Correctional Health Partners—only to return to NaphCare two years later, signing a five-year, $40 million contract in June 2022.

Additional source: *The Oregonian*

Remedying Wrongs

by Kenneth Alyass

The administrative remedy process is a roadblock to challenging inhumane prison conditions. With the help of advocates, people in prison are fighting back.

As a way to challenge the inhumane conditions of their imprisonment, people behind bars have made remarkable use of the very legal system that criminalizes and incarcerates them. During the late twentieth century, that activism saw success in the court system in various ways, but these landmark cases and resulting litigation soon met with backlash from prison administrations and policymakers. Their response led to stringent restrictions that limited the ability of people in prison to access legal resources, work with lawyers, and file lawsuits.

One federal law passed in the mid-1990s institutionalized the mother of all bureaucratic stopgaps: the administrative remedy process. Today, in just about all carceral settings, an incarcerated person must navigate the complex process of administrative remedy to address harassment, poor conditions, and other deprivations. This process involves submitting formal complaints and exhausting appeals before it is permissible to seek judicial intervention.

Since 2020 a new organization, The Remedy Project, has been working to transform the possibilities of the administrative remedy process by wielding it as a tool to challenge the power of the carceral state. As the only organization focused primarily on helping incarcerated people to file administrative remedies, the project has built a coalition of college students and formerly incarcerated activists who use the grievance process to disrupt and expose dangerous conditions inside prisons today. I got involved with the organization last summer by volunteering my expertise on the history of U.S. policing and jailing. Since then, I have spent several months researching the history of administrative remedies, their role in the repression of the prisoners' rights movement, and their potential as a tool to undo some of the harms they and similar restrictions have caused.

To understand the importance of this work, it is necessary to address two key questions: Where did the administrative remedy process come from in the first place, and what did the landscape of incarcerated litigation look like before it?

From the Rise of the Jailhouse Lawyer to PLRA

Modern prison conditions litigation emerged from the 1964 case *Cooper v. Pate*. In that case, the Supreme Court determined that the Bill of Rights applied inside of prisons as much as it did outside. From that point on, prison litigation boomed and was matched by a growing prisoners' rights movement that occurred alongside the rapidly escalating war on crime. As historian Robert T. Chase writes, the prisoners' rights movement erupted in the courtroom and the prison courtyard "through peaceful work strikes, civil rights protests, and efforts to turn prison hostage situations into calls for media visibility to highlight the abusive conditions of mass incarceration." Incarcerated people asked the courts to reconsider how the state doled out punishment and attempted to remind the public of their humanity and constitutional rights. Chase explains that in this pivotal period, right before the apex of our current prison crisis, incarcerated people "anticipated the overcrowding of mass incarceration and tried to curb its growth while also furthering the cause of civil rights by overturning the legal tradition of prisoners as slaves of the state."

History shows how those early "jailhouse lawyers" and their allies were widely successful. The number of lawsuits filed by incarcerated people began to skyrocket, hitting a peak of nearly 30 filings per 1,000 incarcerated people in 1981. As the number of people incarcerated rose—and overcrowding in particular emerged as a major problem—the number of filings increased to a record high of 39,053 in 1995. During this boom in prison litigation, incarcerated litigants not only obtained relief, but they were also increasingly awarded significant settlements, costing prison administrators dearly.

That bubbling budgetary crisis made its way to the legislators who controlled the purse strings of the incipient modern carceral state. In the dawn of mass incarceration, as punitive crime control bills passed through Congress regularly and with ease, many lawmakers grew agitated at the burgeoning prisoners' rights movement. The wave of successful litigation contradicted policymakers' drive to control and punish because they relied on the social and legal incapacitation of criminalized individuals as a policy goal. Here were those supposedly repressed and contained individuals using the law and organizing together to undermine carceral prerogatives.

In response, lawmakers around the country—in the halls of Congress and the legislatures of states such as Michigan and California—cracked down on incarcerated peoples' rights and their ability to access legal resources. In particular, lawmakers sought to prevent incarcerated people from using the court system as a means of addressing civil rights violations and key constitutional questions pertaining to prison conditions. As one lawmaker put it on the floor of the Senate in 1995, Congress needed to step in to make sure that "prisons [remain] . . . prisons, not law firms."

That backlash to the prisoners' rights movement produced one of the most limiting and repressive laws in U.S. prison history. Senate majority leader Bob Dole, a Republican from Kansas, introduced the Prison Litigation Reform Act (PLRA) as an amendment to an appropriations bill in September of 1995. Senator Dole had heard about a precursor to the statute, a punitive and chilling law enacted in Arizona, from Grant Woods, the attorney general of Arizona and the chairman of Dole's presidential campaign in the state. Woods would go on to describe the PLRA as the "most significant piece of federal legislation offered in a decade to correct the massive abuse of our legal system by prisoners." Woods claimed that incarcerated people file lawsuits in federal courts because "it's free and they have nothing better to do." The bill, he claimed, would force potential plaintiffs to "decide if it's worth their money and time" to file a suit.

Senator Dole crafted this law as a continuation of a spree of punitive policies created in the 1980s and '90s—legislation that only intensified trends such as overcrowding and staffing shortages in prisons. In 1984, for example, the Reagan administration abolished federal parole

during the middle of the newly expanded war on drugs. Millions more people—and for much longer than ever before—began to spend long sentences in cramped and under-maintained facilities. While Dole and other carceral types saw the rise of prison litigation as the result of scheming incarcerated people who, in his words on the Senate floor, filed suit for issues such as "being served creamy peanut butter instead of the chunky variety they had ordered," the real reason was that minimum sentencing guidelines and the newly expanded drug war drove millions into cramped and under-maintained cells, creating overcrowding, staffing shortages, and conditions of general misery inside institutions.

Signed into law in 1996 by President Bill Clinton, the PLRA erected a number of limitations on the ability of incarcerated individuals to use the law to address their complaints and obtain relief. It prevented compensation for mental or emotional damages unless a physical injury was visibly present. It placed a cap on the amount of fees that an attorney was able to collect from their client, effectively making it costlier in terms of resources and labor for lawyers to assist those behind bars. One rule severely restricted the use of consent decrees between those incarcerated and prison officials. The PLRA also gave courts disciplinary abilities, such as being able to revoke good time credits if they thought that an incarcerated person had filed too many "frivolous" lawsuits.

The section that had the most chilling effect, however, was the exhaustion requirement. It requires that an incarcerated litigant exhausts all available administrative remedies before they can file a suit in federal court. Out of this requirement, the federal Bureau of Prisons—and in time, analogs in all fifty states—created a bureaucratic nightmare that has effectively served as one of the largest barriers in challenging human rights violations in federal prisons: the administrative remedy program.

Modern Remedy Systems

An administrative remedy is the formal process through which incarcerated people can convey grievances regarding prison conditions, treatment by staff, and violations of their rights. It typically involves several lengthy steps, theoretically designed to reduce the need for litigation by ameliorating a person's poor conditions of confinement or treatment outside of a court. In practice, the administrative remedy limits the access that people behind bars have to self-advocacy and relief.

Here's how it works. An incarcerated person must first attempt to resolve the issue informally by discussing it with staff or submitting a written request to the appropriate authorities within the prison. Then, if the issue remains unresolved or if the person is dissatisfied with the outcome, they can then file a formal grievance using specific forms provided by the prison. Upon receiving a formal grievance, prison officials are supposed to review the complaint and investigate the matter. They could gather evidence, interview witnesses, and consider relevant policies and regulations. However, staff members often ignore that procedure entirely or work to deliberately hinder and suppress it. Once any investigation is complete, the original complainant will receive a written response detailing the findings and any actions taken to address the grievance. If they disagree with the outcome of the process, they may have the option to appeal the decision to higher levels within the BOP.

A major critique of the administrative remedy process is that, in most cases, it serves as a way for the BOP and prison and jail administrators to deny or filibuster responding to issues. The process is entirely wrapped within the bureaucracy of the prison and shielded from the public eye. As its creators intended, it is designed to strip incarcerated people of their ability to pursue a legal remedy to violations of their constitutional rights. Under this legal and bureaucratic regime, only the most egregious of violations make it to court—and even then, a plaintiff will face an uphill battle. The PLRA, and especially the administrative remedy program, has had an enormously chilling effect on prison litigation: Between 1995 and 2012, the number of suits filed annually declined sharply, despite a marked increase in the number of people behind bars. As a result, many incarcerated people have lost hope that appealing to the system that created their very conditions of confinement could ever work.

Knowing that the administrative remedy process is a tool intended to blunt incarcerated people's success in the legal realm raises the question: Should they and their allies in the abolitionist space try to use it anyway?

Birth of The Remedy Project

David Simpson, cofounder and codirector of The Remedy Project, discovered the administrative remedy process when he began serving a more than eleven-year sentence in federal prison for a crime he did not commit. During this period, David told me, he became an expert in filing administrative remedies, helping file grievances while overcoming bureaucratic hurdles and safeguarding himself and others from retaliation. David recognized that the extent to which prison authorities suppressed the administrative remedy process revealed their deepest fears—flaws in their system that advocates like him could leverage. These flaws included concerns about public scrutiny, job loss, federal probes, and potential lawsuits. In one success story, he managed to use administrative remedies to compel the entire staff at the federal facility where he was incarcerated to go through a retraining of sexual harassment policy.

David left prison in 2018, searching for ways to continue his advocacy work. At the Justice-in-Education Initiative at the Columbia Center for Justice, he met Anna Sugrue, then a junior at Barnard College and a founder of the Barnard Prison Abolition Collective. As they tell the story, the two took a class together and bonded over their shared interests. But then David missed a class. And then another. And then another. Their professor discovered that David had been abruptly reincarcerated for his advocacy work in his halfway

house. Over the course of the four months David spent reincarcerated at the Metropolitan Detention Center in Brooklyn, he and Anna spoke on the phone weekly, and he began to instruct her on how to use the administrative remedy process to free him.

Together, they launched what became The Remedy Project, a coalition of college students and formerly incarcerated advocates who, as they put it, "leverage the administrative remedy process from outside prison walls to force prison authorities, justice system stakeholders, and the public to reckon with the people they are harming and the inhumane conditions they allow to persist."

One of those being harmed was Corita Burnett, a Remedy Project client who suffered from medical neglect and inhumane living conditions. On January 11, 2021, Burnett asked for a new mattress from FCI Waseca Health Services, the entity in charge of addressing her medical needs while she was incarcerated. The eight-year-old mattress that she had been using had deteriorated to the point that it felt no different than sleeping directly on the metal bunk. Burnett has fibromyalgia, a chronic condition that causes pain and extreme fatigue. Sleep is difficult for her even under the best of conditions. After the prison ignored her first message, she sent another, only to receive a surprisingly quick message from the health services administrator: "We do not provide mattresses for medical reasons." He instructed her to ask the correctional officers who supervise her daily for a new mattress and maybe they would provide it. But as the Remedy Project learned when Burnett reached out to them, one of those officers told her that he "did not have enough mattresses to give out to everybody." Those same officers also ignored her requests to have medical staff examine her because of severe pain in her hips and legs.

In the past, Burnett may have been able to find a lawyer to file a request for an injunction. Perhaps even the threat of litigation could have compelled the staff to help her. But in the PLRA era, that option does not exist for her until she exhausts a burdensome series of administrative procedures. Her suffering is not an oversight nor an aberration. In fact, as the Remedy Project makes clear, "Corita's suffering was the intended result." The Remedy Project, with the aid of its student volunteers and formerly incarcerated advisors, assisted Burnett by helping file administrative remedies, as well as using public advocacy through social media and letter writing campaigns to shine a spotlight on her mistreatment, thus pressuring the prison administrators and staff to do something.

A properly and strategically filed remedy backed by outside advocacy can result in critical improvements in prison conditions. Prison administrators are loath to attract attention, hence the operation of all facilities like a black box. An administrative remedy backed by outside advocacy can be a way to shine a light into that box, drawing media attention and public scrutiny. Thus, the process holds the potential to turn the system on itself, despite its own limitations.

Today, the Remedy Project has hundreds of student organizers, volunteers, and supporters working in concert to center the voices and knowledge of the currently and formerly incarcerated to diminish carceral power, expose the fault lines of institutions, and improve their own conditions of confinement. An administrative remedy may not lead to freedom in most circumstances, and thus decarceration remains a key solution to the human rights crisis unfolding in U.S. prisons. But deployed strategically, it's one additional tool advocates can wield to weaken state power without resorting to reforms that only put more resources into the hands of prison administrators.

This essay originally appeared in Inquest on July 18, 2024, and it is used with permission. The original, along with photos, can be found at inquest.org.

Competency Evaluation Ordered for Condemned Utah Prisoner

by David M. Reutter

On February 13, 2024, the Third Judicial Circuit Court in and for Salt Lake County, Utah, ordered an examination to determine if death row prisoner Ralph Leroy Menzies, 65, is competent to be executed. Menzies' attorneys argued that he suffers from dementia.

After Maurine Hunsaker's body was found tied to a tree in Big Cottonwood Canyon in 1986, Menzies was convicted two years later of kidnapping her from a convenience store and murdering her. Fast-forward 36 years, and as his execution neared, Menzies' attorneys filed a petition that included a written evaluation from Dr. Lynette M. Abrams-Silva, who opined "that Menzies suffers from vascular dementia and lacks the ability to form a rational understanding of the reasons why the State seeks to execute him," as the Court recalled. Though prosecutors disagreed that Menzies is incompetent to be executed, they did not object to "further inquiry into Menzies' mental health" in order to develop "a complete and accurate record, analysis, and determination" of his competency for execution.

Accordingly, the Court stayed proceedings leading to the execution, cancelled a hearing on the State's application for an execution warrant that was scheduled for February 23, 2024, and also appointed two independent examiners to evaluate Menzies' competency. The examiners were ordered to determine the prisoner's understanding of his impending execution, the nature of any mental disorder he may suffer and its relevancy to the competency question, as well as whether psychotropic medication would restore competency, along with any other factors that the examiners determined to be relevant. Their reports were due no later than 90 days from the Court's order, after which a hearing was tentatively scheduled for September 2024. See: *State v. Menzies,* Utah 3rd Jud. Dist. (W. Jordan Dep't), Case No. 031102598.

If he is executed, Menzies will die by firing squad, also the method used in the state's 2010 execution of double murderer Ronnie Lee Gardner, 49; the only Utah execution since occurred on August 8, 2024, when Taberone Dave Honie, 48, was killed by lethal injection for the 1998 rape and murder of his ex-girlfriend's mother, Claudia Benn. No execution date has been set for any of the other five men on the state's death row.

Additional source: *KSL*

Former Prisoners Can Become President, But Other Job Options Are Limited

The conviction on May 30, 2024, of former Pres. Donald J. Trump (R) on 34 felony charges in New York did not derail the current GOP nominee's campaign to return to the White House. But it would prevent him from holding many other jobs. His criminal record will not seriously crimp the style of Trump because he is a billionaire. But for millions of other Americans, it does.

There are over 19 million people with felony convictions in the U.S., almost all facing barriers to employment. As a result, criminal records frequently trap former prisoners in a cycle of poverty that returns them to crime. Statistics from Prison Policy Initiative reveal that nearly 40% of those in state prisons were unemployed *before* their arrest. The pre-incarceration jobless rate is even higher for Black prisoners (46%) and women prisoners (53%).

Once their sentences are served, over 600,000 prisoners are released each year, and almost all of them struggle to find employment, housing, healthcare and childcare. The jobless rate for those with criminal records is five times higher than the general population.

When they do find work, former prisoners are often relegated to low-paying jobs with little job security—especially in those states with restrictions on employment for those with felony convictions, many of them bewildering and illogical. In North Carolina, former prisoners must wait three years to work in pest control. In Florida, the wait to tend bar is five years. Virginia imposes mandatory license suspensions for healthcare workers convicted of felonies. In Mississippi, they are presumed to lack the "good moral character" required to sell cars.

Beyond outright disqualification, the discretion given to licensing agencies often discourages those with criminal records from even applying. In Texas, a plumber's apprentice with a criminal record must submit extensive additional paperwork. In New York, former prisoners need express permission from the Secretary of State to obtain a real estate license.

Studies prove that supporting released prisoners with cash, housing and job opportunities costs less than re-incarceration. Other worthwhile reforms include automatic record expungement for former prisoners meeting certain conditions, as well as expanding bond insurance and tax benefits for employers hiring those with criminal records. Trump's case spotlights the unequal impact of a criminal record and should prompt a re-evaluation of employment policies—especially automatic disqualification for occupational licensing.

Source: Prison Policy Initiative

Ohio Guard Drives Over Prisoner

Disturbing video from the body-worn camera of a guard at the Ohio Reformatory for Women captured him on March 14, 2024, as he drove a Utility Terrain Vehicle (UTV) at high speed across the grounds of the Maryville lockup and plowed into a group of prisoners, striking one and knocking her to the ground.

"Oh my god!" a second guard in the UTV could be heard exclaiming.

The state Department of Rehabilitation and Corrections (DRC) confirmed that the unnamed prisoner was treated at the prison infirmary before transport to a local hospital, from which she returned later that same day. The guard, later identified as Lt. Thierno Bah, was seen stopping the vehicle and exiting, repeating to the prisoner as she lay on the ground, "Sorry."

The incident is under internal investigation, DRC said. Investigators were also called from the Ohio Highway Patrol (OHP), but they recommended no charges because the prisoner did not appear to suffer "serious physical harm" as defined under state law. Moreover, OHP added, Bah could not be charged under state vehicle laws because the Ohio Supreme Court has said the sort of UTV he drove does not meet the statutory definition of a "motor vehicle."

The mixed-security prison, parts of which are 108 years old, holds 2,500 women with a staff of 500, though about 90 positions are vacant, according to local Pres. Tom Holden of the guards' union, the Ohio Civil Service Employee Association (OCSEA)—forcing remaining staffers to work 16-hour shifts that leave them "no good to these inmates if [they] can't be watchful for their safety." OCSEA manned picket lines at all state prisons on March 18, 2024, demanding improved pay and working conditions.

Sources: *Scioto Valley Guardian, Union County Daily Digital, WCMH*

You were sent to a group home as a boy. You were sexually and physically abused. They covered it up. Your life was ruined. It's not your fault. And there is hope and help.

Many sex abuse victims end up incarcerated. They wonder how they got there. What they don't know is child sex abuse has devastating lifetime impacts, often leading to a lifetime of depression, anxiety, drug addiction and alcoholism, failed attempts at relationships, and sometimes crime – all just to cope.

If this is your story, there is help. And we're here for you. We've won millions of dollars for victims just like you. Many of our clients get the lives they want and deserve. They receive the care they need to be freed of the shackles of their abuse and trauma. And their abusers are held accountable.

We encourage you to contact us and find out how we can help you. We're here for you. And remember, what happened to you is not your fault.

Were you sent to any of these hell holes, or <u>any other</u> abusive group home?

- **Kiwanis Vocational Home**
- **Secret Harbor**
- **J Bar D Ranch**
- **Echo Glen**
- **OK Boys Ranch**
- **Toutle River Boys Ranch**
- **Boys Village**
- **Penrith Farms**
- **Excelsior**
- **Jesse Dyslin Boys Ranch**
- **Green Hill**
- **Maple Lane**
- **Naselle Youth Camp**

DARRELL COCHRAN | PFAU COCHRAN VERTETIS AMALA ATTORNEYS AT LAW

DARRELL@PCVALAW.COM | 253-777-0798

DARRELLCOCHRANLAW.COM

D.C. Jail Watchdog Uncovers Alarming Solitary Confinement Practices

A report by the District of Columbia Council for Court Excellence (CCE) released on March 14, 2024, revealed troubling details about solitary confinement in the D.C. Jail, including overly long stays in isolation and refusal by the city Department of Corrections (DOC) to share data.

CCE found that the average detainee stay in restrictive housing was 49 days, exceeding United Nations guidelines against prolonging solitary confinement over 15 days. The report also revealed a lack of transparency from DOC, which denied basic data requests about demographics and mental health of those isolated, as well as use of restraints on them. The jail estimated that 35% of detainees have serious mental illness, making them particularly vulnerable in solitary to self-harm or sinking deeper into insanity. *See: More Data is Needed on the Use of Solitary Confinement in D.C.*, D.C. CCE (Mar. 2024).

Addressing DOC's request for $460 million to build a new jail, the D.C. council proposed building very limited facilities for solitary confinement so that guards would be forced to use other strategies to manage mentally ill detainees. Advocates also point out that most of those held at the jail are pre-trial detainees, making solitary confinement for punishment an unconstitutional violation of their Fourteenth Amendment rights.

In September 2023, D.C. Councilmember Brianne Nadeau (D-Ward 1) introduced the Eliminating Restrictive and Segregated Enclosures (ERASE) Act to ban "segregated confinement" at the jail, with limited exceptions for short-term placement in "safe cells" for suicide prevention. The bill would also address deplorable conditions at the 48-year-old jail.

In support of the proposed law, the D.C. chapter of the American Civil Liberties Union (ACLU) published its own white paper in November 2023, slamming DOC's use of solitary confinement for "exacerbat[ing] mental and physical ailments" of detainees and "significantly hamper[ing]" their "ability to reintegrate into society." The paper noted that 95% of those subjected to isolation while incarcerated will rejoin society, and releasing them more damaged than they were before incarceration only adds to challenges they face with joblessness and poverty. *See: Breaking Through Isolation—The Urgent Case for the ERASE Solitary Confinement Act in D.C. Jails*, ACLU (Nov. 2023).

In July 2024, the ERASE Act, DC B 25-0541, remained in the Council's Committee on the Judiciary and Public Safety.

Additional sources: *Bolts Magazine, Washington City Paper*

Baton Rouge Cops Indicted for Violent In-Custody Strip-Search

On June 26, 2024, a special grand jury in Louisiana's East Baton Rouge Parish indicted four officers with the Baton Rouge Police Department (BRPD) for their violent strip search of a suspect in custody. The September 2020 incident was recorded when a body-worn camera (BWC) activated without the knowledge of the four, Lt. Troy Lawrence, Sr. and Cpls. Douglas Chutz, Todd Thomas and Martele Jackson. A fifth cop, Cpl. Jesse Barcelona, was not indicted.

All five remain with BRPD, though all but Barcelona are on leave. An arrest warrant was issued for Jackson; Lawrence, Chutz and Thomas had been arrested in 2023. All four were members of BRPD's now-disbanded "street crimes unit" (SCU) when they responded with fellow cops and FBI agents to reports of a gun-waving crowd gathered outside a Chippewa St. home in September 2020. The group was actually filming a music video with Kentrell Gaulden, a rapper who performs as NBA YoungBoy.

Nevertheless, officers took several performers to BRPD's First Precinct for a strip-search. They then put them in a vehicle for transport to East Baton Rouge Parish Prison, when one began acting suspiciously, they said. They returned him to the First Precinct for another strip-search, this time beating him and shooting him with a Taser—which also activated Jackson's BWC. That, in turn, then captured both the assault and drugs which fell from the man's pockets.

When they realized that the incident had been filmed, the four reviewed the video and agreed it didn't look good. Jackson hid the BWC and reported it lost. Meanwhile, the office of District Attorney Hillar Moore failed to file charges against any of those who had been detained, so their case was dismissed in May 2023. An anonymous complaint about the incident then arrived at BRPD, sparking an investigation. Jackson quickly admitted lying about the missing BWC and turned whistle-blower on the rest.

SCU was disbanded by former BRPD Chief Murphy Paul in August 2023, the same month that he and Parish Mayor-President Sharon Weston Broom closed the "Brave Cave," a location outside the precinct where SCU suspects were held and interrogated. Moore was making headlines at the same time, as *PLN* reported, with a lawsuit he filed to thwart clemency hearings for the state's condemned prisoners that had been championed by outgoing Gov. Jon Bel Edwards (D). [See: *PLN*, Dec. 2023, p.48.]

It remains to be seen if Moore will cut plea deals with any of the accused officers. Paul has retired, so it will be up to new Chief Thomas Morse whether the four remain on leave as their cases proceed.

Sources: *US News, WAFB*

Multiple Abuse Allegations Against Texas Prison Guard Deemed "Unsubstantiated" by TDCJ

After Texas prisoner Wendy Morales accused Lane Murray Unit guard Nathaniel Aviles of groping her during an August 2023 cross-sex strip-search—itself a policy violation—the state Department of Criminal Justice (TDCJ) ruled her complaint "unsubstantiated." It was not the first complaint against Aviles, though; two years before, an unnamed prisoner accused him of forcing her to perform oral sex on him. But TDCJ's Office of the Inspector General (OIG) dropped its investigation in March 2022 when the prisoner declined to pursue her complaint.

Those two investigations of Aviles were among 600 based on prisoner allegations of sexual assault, abuse or harassment at Lane Murray Unit that were referred to OIG between 2018 and 2023. Marci Marie Simmons, a former prisoner held there during that period, said the guard "was, for lack of a better word, creepy."

"If he was making his rounds and we were changing clothes or going to the ladies room, using the toilet that's in our cell — most officers would glance in, make sure everything's okay, and keep walking — [but] he's going to stop," she recalled.

Aviles' lone disciplinary infraction was a warning for calling a prisoner "bitch" during a use of force. But that shows he lost control, said Julie Abbate, a former federal Department of Justice civil rights investigator who is now Policy Director for Just Detention International. Moreover, she added, two sexual assault allegations against the same guard should be sufficient to limit his interactions with women prisoners.

That didn't happen, though. Instead, prisoner Elizabeth Escalona said Aviles assaulted her during escort back from a February 2024 interview with OIG investigors looking into another guard who allegedly had an inappropriate relationship with her. That guard, who wasn't named, was walked off the job. Meanwhile, during Escalona's escort, Aviles tried to trip her, she said. When she squatted to avoid a fall, he allegedly picked her up and slammed her face-first to the ground, opening a wound around her eye that took three stitches to close. After TDCJ investigated, she was charged with falling on purpose and tripping Aviles, causing her own injuries by making him fall atop her.

"I don't understand how he didn't get arrested," Escalona said.

Neither did a half-dozen other prisoners who reportedly filed grievances against the guard. But then TDCJ said only one could be found. Prisoner Mona Nelson said two of those that were lost were probably hers, since she never got response from the prison. Not only did she witness the guard assault her fellow prisoners, she said, but she also heard that Aviles bragged to them how he can do whatever he wants to them.

Escalona said that there are still more prisoners targeted by the guard like she was, but they are "scared to step up." TDCJ insists that Aviles has done nothing wrong and that it has zero tolerance for sexual abuse of prisoners.

Source: *Texas Public Radio*

Missouri Prisoner's Excessive Force Claim Proceeds Against Guards After Court Excuses Missed Deadlines Under "Unavailable" Grievance Procedure

by David M. Reutter

On February 12, 2024, the U.S. District Court for the Eastern District of Missouri denied a motion to dismiss a prisoner's *pro se* lawsuit by Defendant officials with the state Department of Corrections (DOC), who argued that he failed to exhaust administrative remedies as required by the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e. The Court ruled that DOC officials failed to prove that Moreno Salinas' delay in completing the grievance process at Southeast Correctional Center (SECC) was his fault and not their own.

While imprisoned at SECC on January 28, 2021, Salinas alleged in his 42 U.S.C. § 1983 complaint, he was subjected to excessive force by guards Lt. Stephan V. Clark, Cole Hansens, Johnny Clubbs, Vanissa Lemons, Darrel Wilson, Tyler Womach and Jerry Walls, in violation of the Eighth Amendment ban on cruel and unusual punishment. During the PLRA screening process, the Court found that Salinas stated a plausible excessive force claim against the seven guards, plus a plausible failure to intervene claim against another guard named Rangdale and DOC Case Manager Brandi Merideth. Though the Court did not mention her by name, claims against Darcie Bolin, another Defendant DOC case manager, also survived.

After Salinas filed an amended complaint, Defendants moved to dismiss it, raising the affirmative defense that he failed to satisfy the PLRA exhaustion requirement. Specifically, they argued that he was untimely at each stage of prison grievance procedure, beginning with the first-step Informal Resolution Request (IRR); DOC policy provides a 15-day window to file it after an incident, but Salinas waited 21 days. However, Salinas responded, he spent a week after the alleged attack at an outside hospital, and upon his return to the prison, infirmary staff allegedly failed to respond to his requests for an IRR form. Though Defendants argued that this defense failed because Salinas couldn't name the infirmary staffers who allegedly stonewalled his IRR form request, the Court said it found no case law to support that argument, nor did Defendants cite any.

Defendants further noted that Salinas missed the seven-day deadline to file a formal grievance after his IRR was denied on March 17, 2021. But that same day, Salinas responded, he was transferred from the infirmary at SECC to one at another

prison. Defendants did not refute this. But they also pointed to the time between denial of the formal grievance and Salinas' filing of an appeal; that was done three weeks late, they said. Again the prisoner claimed this wasn't his fault, and SECC records showed that he signed an acknowledgement of the grievance response on the day that he received it—filing his grievance appeal the very next day.

Viewed in the light most favorable to the nonmoving party, the Court said, these facts defeated the motion to dismiss. Precedent from the U.S. Court of Appeals for the Eighth Circuit, the Court said, finds administrative remedies become "unavailable" to a prisoner—in the meaning of that term under PLRA—when his incapacity prevents timely filing of a grievance, and the system's rules do not allow late filing. Since that's what happened here, Defendants' motion to dismiss was denied. *See: Salinas v. Clark*, 2024 U.S. Dist. LEXIS 23682 (E.D. Mo.).

After that, the Court ordered pro bono counsel for Salinas on March 28, 2024, and St. Louis attorney Kevin F. Hormuth of UB Greenfelder LLP appeared for Plaintiff the following month. The case is now set for trial in October 2025, and *PLN* will update developments as they are available. *See: Salinas v. Clark*, USDC (E.D. Mo.), Case No. 1:22-cv-00159.

Pennsylvania Prisoner Smuggles Cellphones, Federal Prosecutor Breaches Plea Bargain

"Prosecutors must keep their promises," declared the U.S. Court of Appeals for the Third Circuit on March 8, 2024, "[a]nd if they do not, they must make things right quickly, clearly, and fully." But that's not what happened in the case of Pennsylvania prisoner Danny Cruz, the Court found.

As *PLN* reported, Cruz bribed a guard to smuggle cellphones into the Dauphin County Prison while held there awaiting trial for attempted murder between October 2015 and January 2016. That earned him an extra 51 months on his federal prison sentence, and guard Kyle Bower got four months—two months in prison and two more on home detention. [See: *PLN*, Apr. 2023, p.63]. However, the Court then vacated Cruz's sentence after finding prosecutors breached his plea agreement.

For bribing a public official, Cruz was charged with conspiracy to violate the Travel Act, 18 U.S.C. § 371. He pleaded guilty pursuant to an agreement in which the U.S. Attorney's Office promised to recommend a total offense level of 14 under sentencing guidelines. But in Cruz's presentence report, the Probation Office suggested a four-level enhancement.

Cruz objected, but the U.S. Attorney's Office supported the enhancement—though the prosecutor subsequently backtracked and took a neutral position. Nevertheless, the district court denied Cruz's motion to withdraw his plea and applied the four-level enhancement, less a three-level reduction for accepting responsibility for his crime. That yielded a final offense level of 15. Cruz was then sentenced to 51 months, the "top of the [guidelines] range," the Third Circuit recalled.

On appeal, the Court said that plea bargains are "contracts between prosecutors and defendants," though "not ordinary contracts," since the "stakes are not goods or money, but liberty and justice." The government argued that it merely provided "analysis" to the district court and wasn't advocating for a longer sentence. But the Court rejected that argument. It found that the prosecution breached Cruz's plea deal by endorsing the four-level enhancement in the presentencing report, which resulted in an offense level above 14. While some breaches of plea agreements may be curable, the Court allowed, the prosecutor failed to do so in this case.

"At a minimum, the prosecution must retract its erroneous position promptly and unequivocally," the Court said, and the defendant "must get the benefit of his [plea] bargain." Although the prosecutor took a neutral position on the enhancement after Cruz objected, that response was not unequivocal because it did not endorse a total offense level of 14 per the plea agreement. Nor did Cruz receive the benefit of the plea since he was sentenced based on a final offense level of 15.

The appellate court emphasized that Cruz had "immediately objected" to the violation of the terms of his plea agreement, and that the breach was not subject to harmless-error review. Since the government then failed to correct its breach, Cruz's sentence was vacated and the case remanded for resentencing before a different district court judge. *See: United States v. Cruz*, 95 F.4th 106 (3d Cir. 2024).

$1.1 Million Settlement for Colorado Prisoner Stabbed by Gang Members For Testifying About Prison Murder

by David M. Reutter

On February 1, 2024, an agreement was filed in the federal court for the District of Colorado by the state Department of Corrections (DOC), promising to pay $1.1 million to settle a lawsuit alleging it failed to protect prisoner John Standley Snorsky from assault by gang members. The settlement followed a Court order that Snorsky be placed in protective custody (PC).

As *PLN* reported, Snorsky reported that he was in fear for his life due to custody issues with other prisoners when he was transferred to Colorado State Penitentiary (CSP) in October 2016. The reason, as he informed prison officials, was that he had agreed to provide witness testimony at the trial of another CSP prisoner, Chad Wesley Merrill, for the fatal 2015 stabbing of Joshua Edmonds at Limon Correctional Facility, where all three were then held.

Because of publicity in that case, Snorsky argued that he was a well-known "snitch" and easily recognizable to violent prison gangs who targeted him. However, his request for PC placement was denied. Instead, he landed in the same unit with Merrill, who dutifully spread the word that Snorsky was a witness against him. Merrill recruited three more prisoners to attack Snorsky, and on February 22, 2017, Danny Samson, Jaray Trujillo, and Christopher Clark stabbed him 43 times. Not long after that, Merrill was one of four prisoners charged with the murder of yet another prisoner, Matthew Massaro, on July 14, 2018.

In September 2019, a month after filing for a preliminary injunction in the Court, Snorsky was transferred to Buena Vista Correctional Facility and placed in PC. But he was removed in July 2021 for allegedly "causing a disturbance" during a riot. Snorsky later testified this was "a trumped up charge" that was "retaliatory," as the Court recalled. Sent back to CSP, he was placed in a day hall, which has only eight prisoners in each unit.

Meanwhile, his original preliminary injunction motion was denied, but the Court appointed attorney Kevin Homiak to assist Snorsky before an April 2022 evidentiary hearing on a second motion. After finding that Snorsky was housed with gang members associated with Merrill, Trujillo, Samson, and Clark, the Court found a threat was indisputably present. In its May 2022 order, the Court agreed that Snorsky "is currently on multiple hit lists from the gangs associated with Merrill, Trujillo, Samson, and Clark." [See: *PLN*, December 2022, p.16.]

Snorsky's underlying civil rights action named 17 guards and other prison officials as defendants, blaming them for conditions of confinement so dangerous that they violated the Eighth Amendment ban on cruel and unusual punishment. The compensation provided in his settlement agreement with DOC included costs and fees for Snorsky's attorneys, Brian S. Osterman, Kevin D. Homiak, Kristen L. Ferries, Matthew V. Rotbart and Ryan W. Cooke with Wheeler Trigg O'Donnell LLP in Denver, as well as Erica T. Grossman of Holland Holland Edwards & Grossman P.C., also in Denver. *See: Snorsky v. Hagans,* USDC (D. Colo.), Case No. 1:18-cv-03025.

Second Circuit: New York Prisoner's Prior Cases Not PLRA Strikes

by David M. Reutter

On March 14, 2024, the U.S. Court of Appeals for the Second Circuit held that a district court erred in dismissing a New York prisoner's civil rights action for violating the "three strikes" provision of the Prison Litigation and Reform Act (PLRA), 42 U.S.C. § 1997e. The Court's opinion is enlightening in several aspects, including whether claims barred under *Heck v. Humphrey*, 512 U.S. 477 (1994), count as "strikes."

New York prisoner Maurice Cotton filed at least nineteen different lawsuits during his incarceration and leading up to the filing of the case under review. Cotton, a prisoner at Green Haven Correctional Facility, filed a lawsuit on December 6, 2018, that alleged he was wrongfully denied a transfer to Sing Sing Correctional Facility where he could earn a master's degree at one of the college programs offered there. Cotton further alleged he was retaliated against for filing grievances related to the matter.

The U.S. District Court for the Western District of New York reviewed Cotton's motion to proceed *in forma pauperis* (IFP). Under 28 U.S.C. § 1915(g), as amended by PLRA, IFP status is unavailable to any plaintiff with three previous federal actions that were dismissed as frivolous or malicious or for failure to state a claim. The district court found that Cotton had collected three prior "strikes" and therefore denied him IFP status, dismissing his claim when he then failed to pay the filing fee. Cotton appealed.

On review at the Second Circuit, attorneys with the office of New York Attorney General Letitia James (D) conceded error in that two of the lawsuits did not count as strikes under the PLRA. While that concession was sufficient to reverse the district court's decision, the Court elected to review those cases and a third that the district court had ruled strikes.

The first strike was a "mixed dismissal," wherein failure was found to state a federal claim and the district court declined to hear pendent state claims. But in *Escalera v. Samaritan Vill.*, 938 F.3d 380 (2d Cir. 2019), the Court held that a mixed dismissal of state and federal claims was not a strike when the state-law claims were dismissed not on the merits but for lack of subject matter jurisdiction.

As to the second strike, that case was dismissed without prejudice for Cotton to amend. The Court said that meant it was therefore not a strike "because the suit continues" and "the court's action falls outside of Section 1915(g)," per *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721 (2020).

Finally, the Court turned to the suit that implicated the holding in *Heck*—that a §1983 prisoner-plaintiff may not seek damages for an alleged violation of his constitutional rights which would also cast doubt on the validity of his conviction or sentence, unless that conviction or sentence has been invalidated. The Second Circuit noted a circuit split on whether *Heck* dismissals count as a strike: the Third, Fifth, Tenth, and D.C Circuits agree that *Heck* dismissals always count as strikes, while the Seventh Circuit held the issue is one of timing and jurisdiction, and the Ninth Circuit said a *Heck* claim does not accrue until the underlying claim has been successfully challenged. The Second Circuit agreed that "*Heck* dismissals do not categorically count as a strike."

Rather, it said that "whether a *Heck* dismissal qualifies as a strike depends on the circumstances"—whether dismissal "turned on the merits or whether it was simply a matter of sequencing and timing." So if dismissal was due to an inability to challenge an underlying conviction, a strike would ensue. On the other hand, where the *Heck* issue is still remediable, a strike is not incurred. Thus the district court's denial of the IFP motion was vacated and the case remanded for further proceedings.

Before the Court, Cotton was represented by attorneys Rona Roper and Gregory Dubinski of Howell Shuster & Goldberg LLP in New York City. *See: Cotton v. Noeth*, 96 F.4th 249 (2d Cir. 2024).

BOP Cuts Ties With American Correctional Association

On March 31, 2024, the Federal Bureau of Prisons (BOP) let its contract expire with the American Correctional Association (ACA), which provided accreditations for all BOP prisons, training centers and its Central Office Headquarters.

BOP opted not to renew the $2.75 million annual contract after a scathing report from the Office of Inspector General (OIG) of its parent agency, the federal Department of Justice; in its November 2023 assessment, OIG slammed ACA for sham investigations that merely rubber-stamped BOP's own evaluations, as *PLN* reported. [See: *PLN*, July 2024, p.18.]

Audits and oversight are crucial to identifying and rectifying facility needs. By not providing accurate evaluations and accreditation of the country's 122 facilities, housing approximately 160,000 federal prisoners, ACA did nothing to help BOP grapple with desperately needed repairs that are estimated at an astonishing $2 *billion*.

One month before the contract expired, U.S. Sens. Elizabeth Warren (D-Mass.), Ed Markey (D-Mass.) and Jeff Merkley (D-Ore.) urged BOP to cut ties with ACA, citing concerns over its independence and impartiality. Nearly half of ACA revenues come from accreditation-related fees, with another 25% provided by private prison companies.

BOP then announced it would explore alternative ways to improve correctional standards for the well-being of those incarcerated as well as staff. But until a replacement accreditation agency is identified, they will have to rely on BOP to self-police, something shortcomings uncovered by OIG provide little confidence the agency can do.

Source: *Forbes*

Washington Parole Board Failed to Meaningfully Apply Presumption of Release for Prisoner Sentenced to LWOP as Juvenile

On April 11, 2024, the Washington Court of Appeals refused to reconsider an earlier finding that the state's Indeterminate Sentence Review Board (ISRB) failed to meaningfully apply the statutory presumption that prisoners sentenced as adults for crimes committed as juveniles should be released at their first parole hearing.

In 1997, Donald Lambert pleaded guilty to aggravated first-degree murder which was committed when he was 15 years old. He was sentenced to life in prison without the possibility of parole (LWOP). However, a later statutory amendment mandated that juvenile defendants sentenced to life as adults for first degree murder must receive an indeterminate term of 25 years to life. Lambert was resentenced in 2014, and his 25-year minimum term expired in March 2023.

Lambert was entitled to a release hearing 180 days before the minimum term expired. In preparation for the hearing, he was evaluated by psychologist Dr. Lisa Robtoy. She chronicled Lambert's tragic childhood: raised by a drug-addicted mother, growing up in abject poverty, surrounded by crime. She also noted that Lambert joined the Sureño gang shortly after entering prison and was involved in numerous fights, including stabbing another prisoner in 2007.

But all that happened during his first 10 years of incarceration. As Lambert matured, he quit the Sureño gang in 2010, investing his time in rehabilitative programs and working in the prison. He got into a final fight that year with three gang members who jumped him, kicking one in the jaw. But Dr. Robtoy blamed the scuffle on a poor housing decision by Department of Corrections (DOC) staff, who left Lambert housed with members of his former gang.

She also noted that Lambert had extensive community support and that DOC staff stated he did not need to complete any additional programs. Dr. Robtoy therefore stated her "clinical opinion that Mr. Lambert has addressed his criminogenic needs," so he "would be able to continue living a prosocial life in less restricted environments, to include the community."

ISRB held a release hearing for Lambert, issuing two decisions. The first found Lambert ineligible for release, based mostly on his criminal history and prison assaults from 2007 and 2010. A second decision amended the first with reference to Dr. Robtoy's report; but again ISRB found Lambert was not entitled to release because he "is more likely than not to commit a new crime[.]" Lambert then filed a personal restraint petition challenging the decision.

Resolution of the petition turned on several points, the first that sentencing juvenile offenders to LWOP violates the Eighth Amendment's prohibition against cruel and unusual punishment, as held in *Miller v. Alabama*, 567 U.S. 460 (2012). Second, in recognizing this, the state Legislature had created a statutory scheme providing "a process of redemption for juvenile offenders" that created a presumption of release after 25 years for prisoners like Lambert.

Lambert argued that ISRB failed to meaningfully apply this presumption and paid only lip service to significant evidence of his rehabilitation, in particular Dr. Robtoy's favorable report and recommendation. The Court agreed.

First, it faulted ISRB for failing to be "forward looking," focusing on static factors like Lambert's criminal conviction rather than dynamic factors like changes he made since dropping out of the Sureño gang—changes for which ISRB gave him no credit.

Second, ISRB's decision was based almost entirely on "embellishments or misstatements of the true facts" about Lambert's prison conduct, the Court continued. ISRB penalized him for the 2010 fight while failing to acknowledge that DOC was at least partly to blame for leaving him housed with former fellow gang members.

Finally, ISRB failed to meaningfully consider Dr. Robtoy's favorable recommendation, the Court said. While not required to follow it, ISRB cannot simply ignore the report, either, especially when Dr. Robtoy "determined that Lambert had an adjusted low risk to reoffend"—something ISRB utterly failed to acknowledge.

On February 20, 2024, the Court therefore determined that ISRB misapplied the statutory presumption of release and granted Lambert's petition, ordering a new hearing where Dr. Robtoy's recommendation must also be considered. A motion for reconsideration by ISRB was then also denied by the Court. Lambert was represented by attorney Robert C. Boruchowitz, Professor and Director of the Defender Initiative at Seattle University School of Law. *See*: *In re Pers. Restraint of Lambert*, 29 Wn. App. 2d 878 (2024); and 2024 Wash. App. LEXIS 713 (Ct. App.).

$700,000 Settlement in BOP Prisoner's Death After Court Refuses to Extend *Bivens*

by David M. Reutter

On February 6, 2024, the U.S. Department of Justice agreed to pay $700,000 to settle a Federal Tort Claims Act (FTCA) complaint in the death of a prisoner held by the federal Bureau of Prisons (BOP) at the Federal Correctional Institution (FCI) in Coleman, Florida. Following that, Robert Conyers, Jr., father of Davon Gillians, dropped an appeal he had filed to dismissal of a separate federal civil rights suit filed against the prison's warden and six guards, alleging that Gillians died due to use of excessive force.

Gillians, 22, had less than a year left on a 46-month sentence—for a 2018 conviction in South Carolina for being a felon in possession of a gun—when two BOP guards named Ayers and Morey handcuffed the prisoner behind his back and removed him from his cell on May 16, 2021. Though Gillians offered no resistance, Ayers allegedly punched and choked him into brief unconsciousness. The guards then forcibly picked Gillians off the floor, moved him to a solitary confinement cell and strapped him into a restraint chair.

There he remained for "24-28 hours," according to the complaint his dad later filed, "without being provided food, water, or medication" for his sickle cell disease. On May 18, 2021, Ayers, Morey and three more guards named Kitchen, Bostic and Kirkenhall removed Gillians from the restraint chair and placed him in a cell with a prisoner known as "Cleveland." The complaint alleged that BOP was restricted from double-celling Gillians due to "his mental health issues and propensity for violence." Unsurprisingly, a fight between the two prisoners immediately ensued. But guards allegedly stood by watching "as a punitive measure" to ensure that Gillians "would be injured." After several minutes of fighting, guards "used large amounts of pepper spray in an attempt to extract" Gillians and Cleveland from the cell.

Once Gillians was removed from the cell, guards moved him back to solitary confinement and strapped him into the restraint chair again. There he was allegedly denied "food, water, or medical attention despite his deteriorating medical condition." Other prisoners reportedly heard Gillians plead for food and cry that he could not feel his legs, observing as he urinated on himself and repeatedly voiced concern that he was going to die. In the early morning hours of May 19, 2021, Gillians was rushed to a hospital where he was pronounced dead.

Conyers filed suit for his son's Estate in February 2022 in federal court for the Middle District of Florida, accusing the guards and FCI-Coleman Warden Brian Antonelli of violating the prisoner's civil rights and causing his death. But federal law provides no cause of action for damages against the United States, except in very limited circumstances provided under *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1972).

A magistrate judge reported that the circumstances of Gillians' death created a new circumstance that would require an extension of the government's liability under *Bivens*—a judicial process which the current Supreme Court of the U.S. has all but shut down. The judge therefore recommended dismissal of Conyers' claims on July 20, 2023. The district court then adopted that report and recommendation just over a month later, on August 28, 2023. *See: Conyers v. Ayers*, 2023 U.S. Dist. LEXIS 125307 (M.D. Fla.); and 2023 U.S. Dist. LEXIS 151551 (M.D. Fla.).

Plaintiff appealed to the U.S. Court of Appeals for the Eleventh Circuit. Meanwhile, the government proceeded to rule on Conyers' FTCA claim. The South Carolina Court of Common Pleas, Ninth Judicial Circuit, approved the $700,000 settlement resolving that claim in February 2024. The court's order noted that the payout included $158,156.77 in fees and costs for Conyers' attorneys from Charleston's Peper Law Firm as well as Stewart, Tilghman, Fox, Bianchi & Cain PA in Miami. Another $100,000 went to the Estate for the survival action, while the remaining $441,843.23 was split between Gillians' parents for his wrongful death. See: *Conyers v. United States*, S.C. Comm. Pleas (9th Jud. Cir.), Case No. 2024-CP-10-0284.

"What these defendants did to our client is unconscionable and cannot be tolerated in a civil society," declared Conyers' attorney, Mark A. Peper. He also expressed pleasure that "none of the guards involved remains employed at FCI-Coleman."

Additional sources: *Charleston Post-Courier, The State, WCBD, WCIV*

Telecom Firms Shift Revenue Streams in Response to Prison Phone Reforms

As the Federal Trade Commission (FTC) held an information-gathering hearing on April 24, 2024, about a proposed rule regarding so-called "junk fees," prisoners are set to get left behind. The problem mushroomed once more governments moved to make prison and jail phone calls free, and sometimes other communication services, too. Connecticut's Department of Corrections (DOC) was the first to do so in 2022; three other state prison systems soon followed, most recently in Minnesota. Several jails have implemented free phone-call policies, too, with more considering the idea.

Historically, prison telecom companies reaped enormous profits by charging prisoners and their families exorbitant phone rates, up to $1.00 per minute. The industry generates annual revenue estimated at $1 billion. The two leading prison telecom firms, which together control around 90% of the captive carceral market, are ViaPath (formerly Global Tel*Link), owned by private equity firm American Securities, and Securus, a subsidiary of Aventiv Technologies, which is owned by Platinum Equity, another private equity company.

As *PLN* reported, the Federal Communication Commission (FCC) imposed rate caps on prison and jail calls in May 2021, after more than a decade of advocacy by organizations such as the Human Rights Defense Center (HRDC), publisher of *PLN*. [See: *PLN*, Sep. 2021, p.12.] Since then, prison telecom companies are increasingly shifting their revenue streams to areas that are unregulated.

Minnesota implemented free calls in state prisons in July 2023, also prohibiting its DOC from accepting "commission" kickbacks on phone calls, video calling and e-messaging services. Prior to those reforms the state's prison system received a 40% commission on phone revenue, amounting to $1.3 million a year. ViaPath, DOC's telecom vendor, has since shifted to other ways to generate revenue that still provide commission payments to the prison system. Annual revenues from these non-call services already approach $3 million.

In Minnesota, the company's expanded revenue stream includes money transfer services used to fund prisoners' trust accounts and fee-based music downloads, games, movies, e-books and photo sharing, all provided on electronic tablets—and all carrying fees not regulated by the FCC or state. Prisoners currently pay between $1.06 and $1.99 for a single song under DOC's contract with JPay, another Aventiv subsidiary; the contract includes a 5% kickback on most noncommunication services. DOC received $274,365 in commissions in 2023, including $160,000 for money transfer fees, $48,500 from music purchases and $31,000 from photo-sharing services. Agency spokesperson Aaron Swanum said, "We have not had any discussions about commissions related to non-communication services."

Revenue that DOC receives is expected to soar under a new contract with ViaPath

to supply prisoner tablets, providing a 20% kickback, according to the Minnesota Office of the Ombuds for Corrections. Costs will rise for prisoners, too; the fee for downloading a single song, for example, will increase up to $2.36. This revenue-shifting by prison telecoms will likely expand as more states provide no-cost phone calls and other communication services to prisoners, and as fee-based digital tablet services expand in lockups nationwide.

"It really appears that in a lot of places, the majority of revenue that companies are bringing in is from nonphone products," said Wanda Bertram, with the nonprofit Prison Policy Initiative (PPI). The companies are "starting to boost their money streams in places that aren't regulated," agreed HRDC Executive Director Paul Wright.

In 2023, the administration of Pres. Joseph R. Biden, Jr. announced a federal initiative to address so-called "junk fees," those that simply increase the cost of a service while providing no benefit to consumers. In prisons and jails, these fees include charges related to money transfers, debit release cards and tablet-based services. The FTC's new rule, proposed on October 11, 2023, would "provide more transparency about junk fees but little actual relief," according to PPI. That's because it does not ban junk fees but only makes consumers more aware of them. For prisoners, who have zero options when fee-based services are provided under monopoly contracts, such transparency is of extremely limited value. Yet the proposed rule, which is still gathering public comments, has already drawn heavyweight opposition from the U.S. Chamber of Commerce for its "hidden costs." *See: 16 CFR Part 464*, FTC (Oct. 2023)

"Unlike on the outside, people in prison and jail can't use a different business if they think a company is [charging] excessive fees," PPI noted. In a comment filed with the FTC, the organization recommended that fees providing little or no value to consumers, or which exceed the cost of providing a good or service, should be prohibited.

Additional source: *Jacobin*

Watchdog Faults BOP for Averaging 43 Prisoner Deaths a Year—More Than 23 by Suicide

by David M. Reutter

A report issued by the federal Department of Justice Office of the Inspector General (OIG) on February 15, 2024, identified "operational and managerial deficiencies" in the federal Bureau of Prisons (BOP) which "created unsafe conditions" blamed for many of 344 prisoner deaths that BOP tallied from 2014 through 2021. Suicides accounted for just over half of those.

BOP came under scrutiny for the most high-profile deaths: The 2018 murder of mobster James "Whitey" Bulger at the U.S. Penitentiary (USP) in Hazelton, West Virginia; the 2019 suicide of billionaire pedophile Jeffrey Epstein at the Metropolitan Correctional Center (MCC) in Manhattan; and a string of homicides at USP Thomson in Illinois. Spurred by concerns from Congress and advocacy groups, OIG initiated its investigation.

What it found were 187 deaths by suicide, 89 homicides, 56 called accidental and the other 12 attributed to unknown factors. The majority of those who died were White (242), with 224 of all deaths occurring at medium or high security prisons. Of the homicides, 54 occurred in general population and 59 in high security level prisons. The suicide rate in general population (100) was higher than the rate in restrictive housing units (86), but security level had the most impact, with 59 suicides in high security, 19 in medium security and 8 in low security. Tellingly, just three of the 187 prisoners who committed suicide were receiving BOP's highest level of mental health care.

OIG found that "recurring policy violations and operational failures" contributed to the suicides. Staff failure to complete suicide assessments "prevented some institutions from adequately identifying and pro-actively addressing inmate suicide risks." Instances of inappropriate mental health care level assignments were also identified. More than half the suicides occurred while the prisoner was single-celled. Guards also failed to make required wellness checks and were deficient in communicating with each other to coordinate efforts.

BOP was further faulted for not adequately documenting deaths nor enacting proactive measures to reduce them. Operational challenges continued to exist, OIG found, noting that "nearly one-third" of the deaths listed "contraband drugs or weapons" as a contributing factor, including 70 overdose deaths. Staffing shortages, outdated security camera systems, staff failure to follow BOP policies and procedures and "an ineffective, untimely staff disciplinary process" also contributed to many deaths.

The report made 12 recommendations, including better staff training and cut-down tools for prisoners who hang themselves. *See: Evaluation of Issues Surrounding Inmate Deaths in Federal Bureau of Prisons Institutions*, U.S. Dep't of Justice (OIG), Report No. 24-041, February 2024.

Mom of Murdered California Prisoner Defeats Motion to Dismiss Lawsuit by Guard Who Posted Pics of Corpse Online

by David M. Reutter

On March 28, 2024, the U.S. District Court for the Eastern District of California largely denied a motion to dismiss a civil rights action filed by the surviving mother of a murdered state prisoner whose corpse was photographed by a guard and posted online. The complaint accused Sgt. Joseph Burnes and other state Department of Corrections and Rehabilitation (CDCR) guards of snapping pictures of Luis Romero's remains and posting them on the internet.

Romero was brutally murdered at Corcoran State Prison on March 9, 2019, by cellmate Jaime Osuna. After killing him, Osuna used "what appeared to be a razor wrapped in string to remove Romero's right ear," according to the complaint filed by the dead man's mother, Dora Solares. But that was only the beginning of the heinous mutilation of her son's corpse. As the complaint continued, Osuna "forcibly detached his eyes, removed portions of his ribs and lungs, and decapitated him," before he finally "used Romero's blood to write 'hahahahaha' on the walls." When guards found him, Osuna was "wearing a necklace made of Romero's body parts."

Immediately after the murder was discovered, Burnes and other guards allegedly took unauthorized pictures of the scene with their cellphone cameras. The guards subsequently showed the pictures to other prisoners and shared them with other guards and civilians. Solares claimed that she was traumatized after seeing the photos posted "to online media platforms." Her civil rights complaint alleged a Fourteenth Amendment violation for emotional, mental, and physical pain as a result of the public posting of the pictures; it named 17 defendants, but only Burnes was served summons.

He then moved to dismiss the suit, claiming qualified immunity (QI). Taking up that claim, the Court said that due process "prevents the government"—or a government actor like Burnes—"from engaging in conduct that 'shocks the conscience,' or interferes with rights 'implicit in the concept of ordered liberty,'" pointing to *U.S. v. Salerno,* 481 U.S. 739 (1987). The standard of what "shocks the conscience" includes "the common law right to non-interference with a family's remembrance of a decedent," the Court said, calling that right "so ingrained in our traditions that it is constitutionally protected" by substantive due process, also citing for support *Marsh v. Cnty. of San Diego*, 680 F.3d 1148 (9th Cir. 2012).

While taking and possessing the photographs may shock the conscience, the Court continued, the right is clearly violated by any attempt to publish or actual publication of them—something Burnes denied doing. But that was beside the point, the Court said; "the relevant question is not whether *the publication* of the photographs caused Plaintiff's damages, but rather, whether *Burnes' conduct* caused the deprivation of the Plaintiff's rights." So Burnes' conduct when he took and shared photos of Romero's remains constituted unconstitutional conduct that allowed Plaintiff state a claim.

"Whether Plaintiff can *prove* causation," or that Burnes' conduct "shocks the conscience," the Court said were questions "for a later time." At this stage of the proceeding, it was enough to determine that the right at issue was clearly established at the time of the events in question, which was sufficient to deny Burnes QI. The court dismissed with prejudice a state-law claim asserting that autopsy photographs cannot be published under California statute; since the photographs in question were not from an autopsy, no cause of action under that law ensued. Thus the motion to dismiss was only partly denied and largely granted. *See: Solares v. Burns*, 2024 U.S. Dist. LEXIS 56694 (E.D. Cal.).

The case remains active, and *PLN* will update developments as they are available. Solares is represented in her suit by Los Angeles attorney Erin Darling and Encino attorney Justin E. Sterling. *See: Solares v.*

Burns [Burnes], USDC (E.D. Cal.), Case No. 1:21-cv-01349. As *PLN* reported, the attorneys are representing Solares in a separate lawsuit filed in the Court against Burnes and other CDCR officials, including former CDCR Secretary Ralph Diaz, seeking damages for causing Romero's death. [See: *PLN*, Oct. 2020, p.42.] Developments in that suit will also be updated as they are available. *See: Solares v. Diaz*, USDC (E.D. Cal.), Case No. 1:20-cv-00323.

Osuna, 36, is facing a murder charge for the killing in King County. He is still serving a term of life without parole, plus seven years to life, plus another 20 years, for the gruesome 2011 murder of Yvette Pena, a down-at-the-heels mother of six, at a Bakersfield motel.

Additional source: *KGET*

Georgia Prison Warden Fired, Seven Guards Arrested in Prisoner's Massive Drug Operation

The Georgia Department of Corrections (DOC) took the extraordinary step of firing a prison warden on July 1, 2024. Warden Ralph Shropshire was walked off the job after just 16 months at Valdosta State Prison (VSP). During that time, five of his guards were among seven employed by DOC or a local county who were arrested in "Operation Skyhawk"—a spectacular FBI sting that shut down a multi-state drug trafficking operation and netted 150 arrests, along with 87 drones, 273 illegal cellphones and $7 million in drugs.

Shropshire was let go for "unprofessional conduct," DOC said. However, no charges were filed against the former warden, who was an 18-year veteran employee. Also during his short tenure, five prisoners died by suicide or homicide at the lockup. Shropshire was brought on while VSP was still reeling from the sentencing of four guards for beating a handcuffed prisoner and then lying about it in an attempted coverup; each of them got four years in federal prison in September 2022, as *PLN* reported. [See: *PLN*, Apr. 2023, p.57.]

The VSP guards named after the recent bust included LaShonda Ty'Asia Mannings. She was booked into the Lowndes County Jail on February 7, 2024, for allegedly having sex with VSP prisoner Kydetrius Thomas, 27, who is the reputed kingpin of the activity targeted by the FBI. Mannings was also charged with procuring pills for Thomas and exchanging 400 text messages with him via his contraband cellphone.

Four other VSP guards were also charged with helping Thomas run the drug trafficking ring from his cell, including Amber Nicole Peak. She allegedly took money from him to bond fellow guard Alexandria Shadae Walker out of jail on December 1, 2023. Walker was released to await trial on charges that she acted as lookout for a drone drop the prisoner arranged. But she was then reincarcerated in February 2024 after FBI wiretaps installed at the prison allegedly captured her tipping off Thomas about details of the investigation.

In addition, VSP guards Tequa Kionte Alexander and Shambria D. Jackson were named in the indictment, accused with the others of smuggling drug-soaked paper, pills and tobacco, handling financial transactions and storing packages for Thomas' operation. A sixth DOC guard arrested in the scheme, who worked at Rutledge State Prison, was not named. Nor was seventh guard arrested in Operation Skyhawk, who worked at the Grady County Jail.

Additional sources: *Atlanta Journal-Constitution, WALB, WTXL*

Trial Rescheduled for Ohio Prisoner Accused of Murdering Fellow Prisoner

Trial didn't start as scheduled on July 26, 2024, for Southern Ohio Correctional Facility (SOCF) prisoner Austin Burke, 25, who is accused of murdering fellow prisoner Ruben Melendez, 65, in August 2023. That's because Burke was handed a new indictment on July 3, 2024, accusing him of assaulting two SOCF guards with a shank the previous May.

Burke was described as part of the Cincinnati White Boyz, a smaller rival group to the Aryan Brotherhood (AB) prison gang. Melendez was reportedly a member of the Mexican Mafia, with which AB is sometimes allied. The fight between the two prisoners, which surveillance video showed the older man may have sparked, left him with a fatal head injury. Burke then landed in "Extreme Restricted Housing," where he will remain for over 10 years, according to a letter he sent to *PLN*.

In his letter, Burke also questioned why SOCF guards left the two to interact. Neither had previously been charged with fighting. Burke is serving a life term for the August 2017 robbery and murder of Brandon Sample, who at 22 was four years older than Burke at the time.

Melendez was also serving a life sentence for a murder committed when he was 18, the brutal 1976 slaying of Tony Calistro, 24, in an Arizona park. For that, Melendez was originally sentenced to death, along with his cousin and co-defendant, Joe Cota Morales, who was 10 years older; however, the Arizona Supreme Court tossed both sentences. On retrial, Morales was acquitted, but Melendez was sentenced to life. He was reportedly considered part of a Security Threat Group when the Ohio Department of Rehabilitation and Corrections accepted his transfer to SOCF from the Arizona Department of Corrections, Rehabilitation and Re-entry.

Burke's trial for Melendez's murder is now scheduled for October 21, 2024. He is represented by attorneys Edwin M. Bibler and Joel M. Spitzer of Spitzer Law Offices in Powell and Marion. *See: State v. Burke*, Ohio Comm. Pleas (Scioto Cty.), Case No. 23CR000636.

Additional sources: *Portsmouth Daily Times, Warren Tribune Chronicle*

Tenth Circuit Affirms Former Oklahoma Jail Captain's 46-Month Sentence For Brutalizing Detainees

by David M. Reutter

On February 28, 2024, the U.S. Court of Appeals for the Tenth Circuit affirmed a 46-month sentence handed to former Kay Correctional Detention Center (KCDC) guard Matthew Ware for depriving detainees of their civil rights when he subjected them to cruel brutality at the Oklahoma lockup.

As *PLN* reported, Ware, 55, was sentenced in February 2023 after a jury in federal court for the Western District of Oklahoma found him guilty in April 2022 on three counts of deprivation of rights under color of law, which had been handed down in his November 2021 indictment. [See: *PLN*, Feb. 2023, p.55.]

His conviction on the first two counts stemmed from an incident on May 18, 2017, when Ware, then a KCDC Lieutenant, ordered subordinate guards to move pretrial detainees D'Angelo Wilson and Marcus Miller to an area of the jail housing avowed white supremacist detainees. Both Wilson and Miller are Black, and Ware knew the move placed them in danger of assault. Worse, over those guards' protests, he then ordered them to open the doors of all detainees in the cell block. White supremacist detainees rushed into Wilson and Miller's cell and attacked them. Wilson required seven stitches to close a cut on his face.

Ware's conviction on the third count traced to January 31, 2018, when the guard, by then acting Captain, ordered Christopher Davis placed on a bench in a cruciform position, after the detainee sent a note criticizing how Ware ran the jail. Subordinate guards were also instructed to restrain Davis' wrists to the far side of the bench, stretching his arms painfully. Davis was left in that position for 30 minutes as punishment for his note, causing physical injuries.

The jury also found Ware guilty of two counts of deliberate indifference to a prisoner's substantial risk of serious harm and one count of violating a prisoner's right to be free from excessive force. When the district court imposed sentence, Ware appealed.

He argued error in failing to place "more weight" on his lack of criminal history and low likelihood of recidivism. Though the district court acknowledged these factors, it found Ware's "breathtaking cruelty" weightier, especially because he was "a law enforcement officer in a management position." That court also said that factors of "greater prominence" concerned "the nature and circumstances of the offenses committed by a law enforcement officer," as well as "the need to promote respect for the law, and the need for adequate deterrence."

The Tenth Circuit, however, found Ware's sentence fell within the Sentencing Guidelines and was presumptively reasonable. The district court had considered all

relevant factors, and the sentence it imposed was one of the "rationally available choices," the Court said. While the lower court had discretion to show lenience based on Ware's "community ties and lack of criminal history," the Court said that "it did not abuse its discretion by declining to do so."

The district court's judgment was therefore affirmed, including not only Ware's prison term but also a three-year term of supervised release and a $300 special assessment; a hearing on restitution was also vacated by the district court. *See: United States v. Ware*, 93 F.4th 1175 (10th Cir. 2024). Ware's claim that he was punished too harshly strains credulity; according to the federal Bureau of Prisons, he has already been assigned to its Kansas City Residential Reentry Management field office, preparing for release scheduled on February 19, 2025.

Alabama Court of Criminal Appeals Grants Credit to Prisoner's LWOP Sentence

by Douglas Ankney

On February 9, 2024, the Alabama Court of Criminal Appeals held that even though Henry Neal Ferguson III had been sentenced to life in state prison without the possibility of parole (LWOP), he was entitled to a sentence credit for the time he served in jail before sentencing.

The odd-sounding result—even with credit, Ferguson's sentence still has no end—sprang from a habeas corpus petition he filed against the state Department of Corrections (DOC) in St. Claire County Circuit Court in February 2023. That recalled the facts of his case, beginning with a May 1993 arrest for first degree assault that landed him in the Talladega County Jail (TCJ). He escaped the following month, and while on the run, a grand jury indicted him in February 1994 for attempted murder. Ferguson was captured and returned to TCJ in June 1994, and two months later he was convicted of attempted murder. The circuit court sentenced him to LWOP as a habitual felon in September 1994.

Ferguson argued in the habeas petition that he was due credit for the time spent in TCJ before sentencing—less those days he was on the run. The circuit court denied his petition, reasoning that his LWOP sentence would not be reduced by any credit. Ferguson appealed, contending that he was entitled to the jail credit based on Ala. Code § 15-18-5(a) and 6 (1975).

The Alabama Court of Criminal Appeals observed that the version of § 15-18-5 in effect when Ferguson was sentenced provided credit for the "actual time spent incarcerated pending trial," which must be "certified by the circuit clerk or district clerk on forms to be prescribed by the Board of Corrections." Since, "[a] defendant's sentence is to be determined by the law in effect at the time of the commission of the offense," according to *Moore v. State*, 40 So.3d 750 (Ala. Crim. App. 2009), and "there is no room for judicial construction of the statute and the clearly expressed intent of the legislature must be given effect," per *Lay v. State*, 82 So.3d 9 (Ala. Crim. App. 2011), the Court agreed with Ferguson that he was due a credit.

The "plain meaning" of the relevant statute, the Court opined, "requires [DOC] to certify '[t]he actual time [Ferguson] spent incarcerated pending trial.'" Although "this certification will not shorten Ferguson's prison sentence," the Court continued, it is required by statute and "based on the record before us, we cannot say that [DOC's] failure to make certification in Ferguson's case is harmless." In fact, the Court observed, failure to give Ferguson the jail credit could potentially affect his ability for various benefits within the prison system and his ability to receive a commuted sentence. Thus the Court concluded that the certification required by § 15-18-5 "is not conditioned on the possible release date of an inmate, and it is thus distinguishable from a mandatory provision."

The case was then remanded to the circuit court with instructions to hold an evidentiary hearing on Ferguson's claim for pretrial jail credit, requiring DOC to certify from his records the amount of jail time he served before conviction and sentencing. Ferguson is to be commended for successfully prosecuting his claim *pro se*. *See: Ferguson v. Ala. Dep't of Corr.*, 2024 Ala. Crim. App. LEXIS 5 (Ala. Crim. App.).

Montana Prison Warden Fired for Creating Hostile Workplace

Montana Women's Prison (MWP) Warden Jennie Hansen was fired on March 4, 2024, after an internal investigation determined she created a hostile workplace for prison employees. She had been on administrative leave since January 2024, while investigators with the state Department of Corrections (DOC) traced a series of "inappropriate" remarks and behavior with subordinates.

For some employees Hansen mimed the allegedly drunken behavior of another subordinate at an Oregon conference, accusing the unnamed employee of "walking around drunk among the homeless people" in Portland. Other comments betrayed a fascination with testicles: After asking whether a new lesbian employee might be male and being told no, she pretended to lift testicles in her own crotch and asked, "Are you sure?" The Warden told others during meetings that "the only person's balls that matter are mine." Employees reported steering clear of their boss and her volatile behavior so that their "head is not on the plate." *See: Admin. Investigation Report RE: Jennie Hansen*, Mont. DOC (Jan. 19, 2024).

Hansen had been employed by DOC since 2009, serving from 2017 until her termination as top official at MWP, whose 242 beds were nearly filled with 240 prisoners at the time. Associate Warden Alex Schroeckenstein was tapped to serve as Acting Warden while a search got underway for Hansen's permanent replacement.

Additional source: *Helena Independent Record*

Washington Court of Appeals: PLRA Dismissal of Prisoner's Federal Suit Is Not *Res Judicata* Barring State Tort Claims

On March 19, 2024, the Court of Appeals of Washington, Division II, held that a state prisoner's tort claims are not barred in state court even if federal claims arising from the same facts are dismissed in federal court; so long as dismissal was merely procedural and not based on the merits, the Court said, the claims were not barred by *res judicata*—the doctrine preventing courts from relitigating claims that have already been decided.

State Department of Corrections (DOC) prisoner Michael Denton filed suit *pro se* in federal court for the Western District of Washington in January 2018, accusing Washington State Penitentiary (WSP) officials under 42 U.S.C. § 1983 of violating his civil rights. By neglecting his medical and mental health treatment, he said that they left him at risk of self-harm and then punished him for his mental illness and retaliated when he filed grievances.

The district court appointed *pro bono* counsel from attorney Darryl Parker of Civil Rights Justice Center, PLLC, in Seattle. It then dismissed all Denton's claims as meritless except one—that DOC failed to protect him from self-harm. But that claim was dismissed, too, when the district court found Denton failed to complete the WSP grievance process, running afoul of the requirement to exhaust administrative remedies under the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e. Denton appealed, but the U.S. Court of Appeals for the Ninth Circuit affirmed the dismissal on March 30, 2023. *See: Denton v. Thrasher,* 2023 U.S. App. LEXIS 7543 (9th Cir.).

Meanwhile Parker also filed suit for Denton in state superior court for Thurston County in 2020, accusing the same Defendants of state-law torts arising from the same facts. After the federal court dismissed Denton's case, Defendants asked the state court to do the same, arguing that the claims were barred by *res judicata*.

Parker countered that dismissal of Denton's federal claims was procedural under PLRA, so it was not barred by *res judicata*, since the district court never adjudicated its merits. But the Superior Court disagreed and granted Defendants' motion to dismiss. On Denton's behalf, Parker timely appealed.

The Court of Appeals reversed the decision, agreeing that *res judicata* was no bar to claims whose merits were never decided. Because the federal court's dismissal of Denton's self-harm claim "was based entirely on exhaustion, it is not considered 'on the merits' and therefore did not have a *res judicata* effect," the Court said. It also rejected DOC's argument that the effect of the federal court dismissal was the same as one based on the merits since Denton was past the statutory time limit to file new claims. "[T]he question as to whether Denton has remaining administrative avenues has nothing to do with whether the district court's judgment was a final judgment for *res judicata* purposes," the Court declared.

Moreover, it allowed Denton's other claims to proceed in state court. True they "involve impropriety in the same setting under the same set of circumstances" as those claims that the federal court dismissed; however, the Court continued, judgment in Denton's favor on the state tort claims would not impair any of the DOC Defendants' rights or interests established when the federal court determined "that his claims against them were too general."

Finally the Court found no "concurrence of identity" in the causes of action that Denton raised in state and federal court because the two suits do not allege infringement of the same rights. His federal claims sought to "protect rights afforded by the constitution," the Court explained, "whereas tort liability arises from violations of duties of care." Just as ordinary medical malpractice does not rise to deliberate indifference that violates the Fourteenth Amendment because the plaintiff is a prisoner, "Denton's state tort claims do not automatically imply that his constitutional rights have been violated just because he was a prisoner and the defendants were state officials."

Accordingly, dismissal of Denton's state tort claims was reversed and his case remanded for further proceedings. Since the superior court had also denied Denton's request to file an amended complaint, the Court instructed it to consider that motion on remand. Given Denton's documented mental illness, Parker is to be commended for his efforts advancing the prisoner's claims; if they are even half-true, he has endured years of torment by his captors. *See: Denton v. State*, 2024 Wash. App. LEXIS 518 (Wash. Ct. App. 2024) (unpublished).

Texas Prisoner's Lawsuit Seeks Relief from Heat in Un-Air-Conditioned Prisons

by David M. Reutter

A suit filed by a Texas prisoner alleging that stifling heat in his cell threatens his life was allowed to proceed against Defendant officials with the state Department of Criminal Justice (TDCJ) on June 14, 2024, when the federal court for the Western District of Texas denied their motion to dismiss Bernie Tiede's complaint.

Tiede, 65, suffers from diabetes and hypertension, serious medical conditions which, combined with the heat inside his Estelle Unit cell, caused him to suffer something like a ministroke, he claimed. Of Texas' 100 state prisons, only about 30% are fully air conditioned. The remainder have partial or no air conditioning, leaving indoor temperatures to climb dangerously high—often exceeding 100 degrees Fahrenheit, advocates say.

Those from four advocacy groups—Texas Citizens United for Rehabilitation of Errants, Inc., Coalition for Texans with Disabilities, Inc., Texas Prisons Community Advocates, and Build Up, Inc.—joined Tiede in filing his amended complaint on May 7, 2024, seeking an injunction to force TDCJ Director Brian Collier to remedy the excessive heat conditions. The suit alleges that environmental conditions in Texas prisons without air conditioning violate the Eighth Amendment prohibition against cruel and unusual punishment.

At issue for the Court in this case was TDCJ's assertion that Tiede and co-Plaintiffs had not suffered a direct injury and so lacked standing to bring the suit. But the Court noted that advocate Plaintiffs represent an estimated 85,000 TDCJ prisoners whom they claim are "at risk of suffering from a number of heat-induced illnesses—including heat stroke, heat exhaustion, heat rash, nausea, and vomiting—due to unit temperatures that routinely exceed 100 degrees Fahrenheit in the summer."

Moreover, while Tiede has since been moved to an air-conditioned cell, he called that a "voluntary cessation" of Defendants' alleged unconstitutional behavior which "does not moot his request for relief"—because it could easily be resumed by TDCJ. The Court agreed, also rejecting Defendants' other arguments and denying their motion to dismiss. *See: Tiede v. Collier*, 2024 U.S. Dist. LEXIS 105904 (W.D.Tex.).

Tiede, a former mortician, is serving a 99-year term for the fatal 1996 shooting of Marjorie "Marge" Nugent, 81, his wealthy paramour who was 43 years his senior. Her corpse was found in her home food freezer nine months later by her son and granddaughter. The bizarre story was dramatized by filmmaker and native Texan Richard Linklater in his 2011 black comedy, *Bernie*, which also led to the discovery of new evidence that briefly freed Tiede in 2014. He was resentenced to his current term in 2016.

"Bernie and the tens of thousands of inmates remain at risk of death due to heat-related sickness and being subjected to this relentless, torturous condition," Linklater said.

TDCJ insists that there have been no heat related deaths in its prisons since 2011. But researchers at Brown University, Boston University and Harvard University concluded otherwise in a November 2022 report, finding that extreme heat possibly contributed to 13%, or 271, of the deaths that occurred in Texas prisons without air conditioning between 2001 and 2019. TDCJ recently created webpages to highlight its efforts to install more air conditioning and to explain steps taken to mitigate the effects of extreme temperatures on prisoners and staff, including providing fans and cooling towels and granting access to "cool down" areas.

The author of this article resides in a south Florida prison where the state Department of Corrections (DOC) allows prisoners to wear less clothing in summer months and provides ice water several times a day. DOC has also installed more fans in open-bay dorms, but in cells housing one or two prisoners—where tens of thousands of prisoners are confined—there is no relief after curfew or during other lockdowns from heat and humidity that is grueling.

Tiede originally filed his suit *pro se*, but he and fellow Plaintiffs are now represented by attorneys with O'Melveny & Myers, LLP and Winston & Strawn LLP, both in Houston; Edwards Law in Austin; the Law Office of Jodi Callaway Cole in Alpine; as well as Wheeler Trigg O'Donnell and Holland, Holland Edwards & Grossman, LLC, both in Denver. The case remains open, and *PLN* will update developments as they are available. *See: Tiede v. Collier*, USDC (W.D. Tex.), Case No. 1:23-cv-01004.

Additional source: *AP News*

HRDC 2024 ANNUAL FUNDRAISER

Please Help Support the Human Rights Defense Center!

HUMAN RIGHTS DEFENSE CENTER
Dedicated to Protecting Human Rights
www.HumanRightsDefenseCenter.org

The Human Rights Defense Center (HRDC), which publishes Prison Legal News and Criminal Legal News, cannot fund its operations through subscriptions and book sales alone. We rely on donations from supporters!

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

Where does your donation go? Here's some of what we have done in the past year:

- Thanks to HRDC's decades of advocacy the FCC has lowered prison and jail phone rates.
- We won censorship lawsuits against jails in California and Indiana ensuring prisoners can receive books and magazines in the mail.
- We filed lawsuits against the prison systems in New Mexico and continue litigating lawsuits against prison systems in Missouri and Illinois and won a landmark censorship lawsuits against the North Carolina prison system which had censored HRDC publications.
- We won public record lawsuits against private prison company, Centurion and various other state and federal agencies including the Drug Enforcement Agency (DEA).
- We advocated for lower prison phone rates before the Federal Communications Commission and the California Public Utilities Commission. We are also litigating an anti-trust lawsuit against Global Tel Link and Securus.
- We continue litigating three national class action lawsuits around fee laden debit cards in the criminal justice system. We have also advocated on this issue with various regulatory agencies. We won a major lawsuit against one debit card company.
- We need your help to keep doing this and a lot more!

We need your help to keep doing this and a lot more! Please send your donation to:

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

Or call HRDC's Office at 561-360-2523 and use your credit card to donate

Or visit our websites at prisonlegalnews.org or criminallegalnews.org and click on the "Donate" link.

HRDC Support Gifts

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

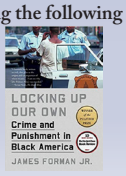
All donations, regardless of amount will help further our criminal justice reform and prisoners' rights efforts.

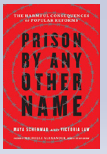
Gift Option 1

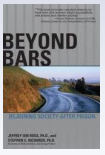
In recognition of your support, we are providing the PLN hemp tote bag when making a donation of at least $75. Carry books and groceries stylishly and help end the war on drugs!

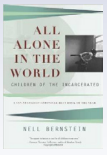
Gift Option 2

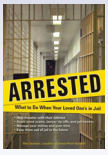
To show our appreciation for your support we are providing the following selection of books for you to choose from when making a donation of $100. Donations of $100 or more can choose one free title. Each $100 donation entitles you to another free title; i.e., donate $500 and you get five books! $1,000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

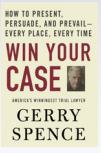






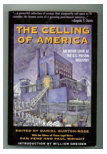


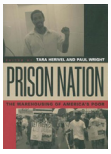


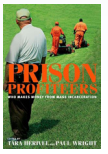


Gift Option 3

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







Oklahoma Lawmakers Sue for Pardon and Parole Board Texts After Condemned Prisoner Denied Clemency

On March 14, 2023, a dustup over a contentious clemency request for condemned Oklahoma prisoner Richard Glossip spilled into state court, where a judge refused to dismiss a suit filed by two state lawmakers to force release of public records from hardline conservative district attorney (D.A.) Jason Hicks.

At issue were communications between the District 6 chief prosecutor and the state Pardon and Parole Board (PPB) before Glossip's April 2023 clemency hearing. As *PLN* reported, PPB deadlocked on the request despite an extraordinary plea from state Attorney General Gentner Drummond (R), leaving Glossip facing a date with death until the Supreme Court of the U.S. granted a stay while it hears the prisoner's appeal. [See: *PLN*, Mar. 2023, p.61.]

The two lawmakers, Reps. Justin Humphrey (R-Lane) and Kevin McDugle (R-Broken Arrow), wanted to know what PBB heard from Hicks, who opposed Glossip's clemency. But the D.A. made them go to court to find out, claiming his texts to PBB members were personal and not public business—even though he requested and received an expense reimbursement to cover the mileage he drove to attend the hearing. Hicks tried to repay it after the lawsuit was filed, but the District Court for Stephens County then refused his motion to dismiss the suit. *See: McDugle v. Hicks*, Okla. Dist. (Stephens Cty.), Case No. CV-23-204R.

After that, Hicks released redacted copies of his communications—which showed he was not only critical of Glossip's clemency petition but also of the lawmakers who supported it. Humphrey responded that "[c]itizens shouldn't have to sue for access to public records," accusing Hicks of "continu[ing] to withhold information by redacting the records he produced." The lawmaker added that the "records show that some district attorneys are more interested in protecting their own than acknowledging how problems in the Glossip investigation undermined the integrity of his death sentence."

Executions Continue

Meanwhile, the state wasted no time in carrying out its first prisoner execution of the year, administering a lethal injection on April 4, 2024, to Michael DeWayne Smith, 41, a member of an Oklahoma City street gang convicted of two fatal shootings in 2002. Victims Janet Moore and Sharath Babu Pulluru were shot during gang-related incidents, though neither was Smith's original target, according to testimony at the 2003 trial. Despite denied requests for stays from state and federal courts, plus PBB's 4-1 decision against his clemency, Smith maintained his innocence until his death.

The state's next execution was carried out 84 days later on June 27, 2024, when prisoner Richard Norman Rojem Jr., 66, received another lethal injection for the 1984 murder and rape of his seven-year-old stepdaughter, Layla Dawn Cummings. Rojem also maintained his innocence through three separate condemnations—his first two death sentences were tossed for procedural errors—before exhausting appeals to his final 2007 sentence. He also told PBB that he did not kill the child, and his attorney argued in vain that the prosecution's evidence was circumstantial.

Drummond asked the state Court of Criminal Appeal to schedule executions at least 90 days apart to reduce stress on DOC staffers involved. Though Judge Gary Lumpkin told Drummond to "suck it up" at a March 2024 hearing, the Court ultimately agreed to the scheduling request "unless circumstances dictate modification."

The state has scheduled no more 2024 executions, despite an aggressive schedule set by the Court in 2021 that called for 58 to be conducted in three years. So far, only 13 of those dates with death have been kept.

Additional source: *KOSU, Oklahoma Watch*

Georgia Jail Detainee Released After 10-Year Wait for Trial

When he was freed on March 27, 2024, Maurice Jimmerson described how it felt to see his daughter, now 14, for the first time since she was three: "Blessed."

Jimmerson spent over a decade in jail before he was convicted. He was one of five people arrested on suspicion of a drive-by Albany shooting that killed Desmond Williams and William Davis, Jr., in 2013. Two co-defendants, Desmond Warren and Harrell Lorenzo Hicks, were tried and acquitted in June 2017. A third, Condell Benyard, was also acquitted at a July 2023 trial, after a seven-year wait. The fourth, Jawaski Kennedy, served time for related terrorism and assault convictions before he was paroled, only to be killed in another drive-by shooting in 2021.

Dougherty County District Attorney Gregory Edwards offered a list of excuses for the delay in Jimmerson's case, including a courthouse flood and the COVID-19 pandemic. After his first public defender quit, it took eight months to find a replacement. Attorney Andrew Fleischman then took up the case *pro bono*, securing a June 2023 trial that resulted in a hung jury. The attorney then negotiated Jimmerson's plea deal to assault and weapons charges, resulting in a 30-year probated sentence.

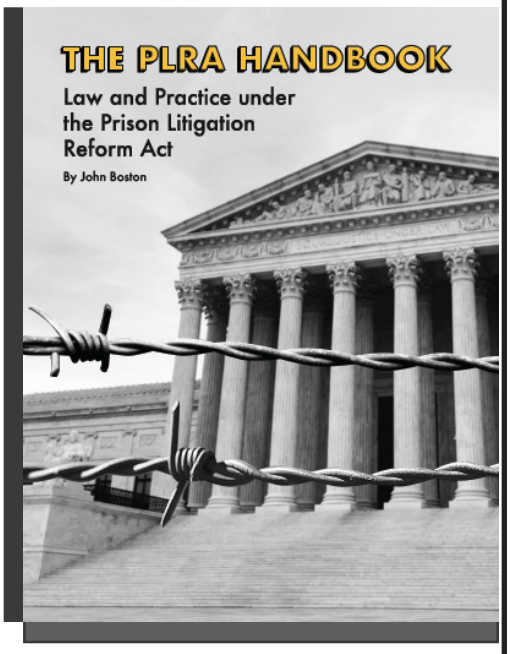
With credit for time served, Jimmerson was finally released after one of the nation's longest-ever pre-trial detentions. As *PLN* reported, Devalos Perkins pleaded guilty to manslaughter in December 2023, after 11 years awaiting trial in a North Carolina jail. [See: *PLN*, May 2024, p.59.]

Even when "getting hostages out of other countries like North Korea or Iran," Fleischman noted, "the average time is six years." And "[w]e talk about those countries having failed puppet justice systems with no expectation of due process," he said. "[Y]et we have Americans in this country waiting 10 years for an opportunity to force the state to prove its case."

He added, "[T]hat to me is outrageous."

Sources: *Daily Wire, Reason, WALB*

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.

Anyone involved in federal court prison and jail litigation needs *the PLRA Handbook* – lawyers, judges, court staff, academics, and especially, pro se litigants.

Although *the PLRA Handbook* is intended primarily for litigators contending with the barriers the PLRA throws up to obtaining justice for prisoners, it'll be of interest and informative for anyone wishing to learn how the PLRA has been applied by the courts and how it has impacted the administration of justice for prisoners. It is based primarily on an exhaustive review of PLRA case law and contains extensive citations. John Boston is best known to prisoners around the country as the author, with Daniel E. Manville, of the *Prisoners' Self-Help Litigation Manual* – commonly known as the "bible" for jailhouse lawyers and lawyers who litigate prison and jail cases. He is widely regarded as the foremost authority on the PLRA in the nation.

"If prisoners will review The PLRA Handbook prior to filing their lawsuits, it is likely that numerous cases that are routinely dismissed will survive dismissal for failure to exhaust."

— Daniel E. Manville, Director, Civil Rights Clinic

THE PLRA HANDBOOK

Paperback, 576 pages

Prisoners: $84.95

Professionals: $224.95

(includes shipping)

Order by mail, phone, or online. Amount enclosed _____

By: ☐ check ☐ credit card ☐ money order

Name _____

DOC/BOP Number _____

Institution/Agency _____

Address _____

City _____ State _____ Zip _____

Human Rights Defense Center PO Box 1151 • Lake Worth Beach, FL 33460 • Phone # 561-360-2523

Dedicated to Protecting Human Rights WWW.PRISONLEGALNEWS.ORG • WWW.CRIMINALLEGALNEWS.ORG

DOJ Declares Conditions at Three More Mississippi Prisons Unconstitutional

by David M. Reutter

On February 28, 2024, the U.S. Department of Justice (DOJ) issued a report finding that conditions at Central Mississippi Correctional Facility (CMCF), South Mississippi Correctional Institution (SMCI) and Wilkinson County Correctional Facility (WCCF) violate prisoners' Eighth and Fourteenth Amendment rights. The report required Mississippi officials to correct the unconstitutional conditions or face a federal lawsuit.

DOJ began an investigation in February 2020 at the three prisons, as well as Mississippi State Prison in Parchman. An April 2022 report declared that conditions found at the latter violated the Constitution, as *PLN* reported. [See: *PLN*, Nov. 2022, p.34.] In its most recent report, DOJ said that "[m]any of the conditions we found at Parchman" exist at CMCF, SMCI and WCCF.

The state Department of Corrections (DOC) failed to protect prisoners from violence at all three prisons, the report declared. CMCF and SMCI are DOC's largest prisons, holding up to 4,000 and 2,882 prisoners, respectively. WCCF, which is privately managed for DOC by Utah-based Management and Training Corporation (MTC), holds another 949. Together, the three prisons house one-third of DOC's prisoner population.

According to DOJ, each prison is "riddled with violence." But "[g]ross understaffing, poor supervision, and inadequate investigations" also combine to "create an environment where gang activity and dangerous contraband trafficking proliferate." Gangs not only run the prisons but staff members are even on gang payrolls to assist in their criminal activities. Weapons, drugs, cellphones and large amounts of cash are regularly confiscated during searches.

Staff vacancy rates up to 64% leave many areas unsupervised and guards fearful of entering units. As a result, hundreds of prisoners are held "in restrictive housing for prolonged periods in appalling conditions," the report stated, calling DOC's Restrictive Housing Units (RHUs) "unsanitary, hazardous and chaotic, with little supervision," the DOJ report stated. In fact, DOJ said, RHUs "are breeding grounds for suicide, self-inflicted injury, fires, and assaults."

DOC officials were well aware of the problems, yet their failure to "adopt sufficient large-scale reform to match the needs of the prison system evidences their deliberate indifference," the report stated. It concluded with needed corrective actions and warned that failure to do so would result in a civil rights action against DOC. *See: Investigation of Central Mississippi Correctional Facility, South Mississippi Correctional Institution, Wilkinson County Correctional Facility*, U.S. Dep't of Justice, Civil Rights Div. (Feb. 2024).

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.

Chicago Jailers Publicly Call Detainee Death a Medical Emergency, Privately Admit Guard Brutality

After Corey Ulmer, 41, died at Chicago's Cook County Jail on June 21, 2024, deputies of Sheriff Tom Dart informed the detainee's survivors that "he went to the hospital, and unfortunately he didn't make it," recalled Robert Robinson, the dead man's stepfather. Three days later a Sheriff's Department spokesman reiterated that Ulmer died of a "medical emergency."

But just two days after that, on June 26, 2024, an internal report by the sergeant in charge at the time documented a violent confrontation, during which Ulmer became "combative" and tried to "head butt" him; after that, guards beat Ulmer and body-slammed him before a nurse injected him with sedatives. Ulmer, who was bipolar, was sedated with his hands cuffed in front of him, according to the report by Sgt. Enrique Reyes, before the nurse was "unable to get vitals" from the detainee. Yet the following day, on June 27, 2024, Sheriff's Dart's spokesman still insisted that "Mr. Ulmer died after suffering a medical emergency."

Ulmer was incarcerated for violating the terms of his release on electronic monitoring to await trial for brandishing a pocketknife at a bus stop during a bipolar episode in January 2023. His attorney in that case, Jonathan S. Goldman, recalled that Ulmer "was a nice guy in a tight spot, and I felt for him." Jesse Guth, another attorney and former county prosecutor hired by Ulmer's family members after his death, said they were "shocked and outraged."

Robinson recalled that his stepson "was fine when I talked to him" two days before he died. "He wasn't delusional or anything. I don't know what happened." Meanwhile, 11 staffers have been reassigned at the jail. Results of an autopsy were still pending in early August 2024.

Regional Jail in Kentucky Settles DOJ Complaint, Agrees to Provide Treatment for Opioid Use Disorder

by Douglas Ankney

On November 29, 2023, the Big Sandy Regional Detention Center in Eastern Kentucky settled a complaint brought by the U.S. Department of Justice (DOJ) with an agreement to provide medication to prisoners suffering with opioid use disorder (OUD).

According to the agreement, DOJ received a complaint from a medical provider that the Jail refused to provide buprenorphine to a patient identified as "J.F."—despite the detainee's medical prescription for the drug. DOJ substantiated allegations that the Jail effectively banned medication for OUD, in violation of the Americans with Disabilities Act (ADA), 42 U.S.C. ch. 126 § 12101 et seq.

That law prohibits disability-based discrimination by any "public entity"—including denial of "services provided in connection with drug rehabilitation." OUD is considered a disability because those who suffer with it "have drug addiction—a physical or mental impairment that substantially limits one or more of their major life activities," as defined in 28 C.F.R. § 35.108. Methadone, naltrexone and buprenorphine are medications approved to treat OUD by the U.S. Food and Drug Administration (FDA).

Rather than litigate the matter, the Jail agreed not to "change or discontinue" any detainee's use of a medication for OUD without "an individualized determination by a qualified medical provider that the treatment is no longer medically appropriate." In addition, Jail officials agreed to use no "incentives, rewards, or punishments to encourage or discourage" taking medication for OUD and to deny no "health services, or services provided in connection with drug rehabilitation, to an individual on the basis of that individual's current illegal drug use."

The Jail also agreed to medically evaluate all those in custody for OUD and provide treatment with an FDA-approved medication when requested. Jail personnel must also receive training in Title II of ADA and notify DOJ within 14 days of any written or oral complaint that the Jail has engaged in disability discrimination with regard to OUD treatment.

Assistant U.S. Attorney Carrie Pond negotiated the settlement as part of DOJ's ongoing effort to combat OUD. *See: ADA Settlement Agreement Between the United States of America and Big Sandy Regional Jail*, DJ No. 204-30-103 (2023).

Second Former BOP Guard Sentenced in Smuggling Scheme at Brooklyn Lockup

Former federal Bureau of Prisons (BOP) guard Quandelle Joseph, 34, was sentenced on July 30, 2024, to 30 months in federal prison for a brazen smuggling scheme at the Metropolitan Detention Center in Brooklyn, New York. Former fellow guard Jeremy Monk, 36, was earlier sentenced for his role in the scheme on December 6, 2023, to a year of probation.

As *PLN* reported, Monk resigned in April 2022, three days after taking a $10,000 bribe to smuggle marijuana into the lockup and leaving it in a staff bathroom for unnamed detainees to retrieve; he later pleaded guilty in March 2023. [See: *PLN*, May 2023, p.63.] Joseph also resigned and eventually pleaded guilty in January 2024 to sneaking drugs, cigarettes and cellphones on multiple occasions to at least three detainees, beginning shortly after he was hired in May 2020. They then distributed the contraband inside the jail. Joseph also confessed to warning one detainee about an upcoming cell search in January 2021 in a text that read: "Tighten up search comin (sic) clean phones out call logs n text n try to stash it."

As *PLN* also reported, Joseph initially charged $8,000 for his smuggling services but eventually raised his fee to $12,000, according to his plea and interviews with detainees. Investigators first learned of Joseph's activities in December 2020 when staff searched the cell of a racketeering suspect after smelling marijuana. During the search, a cellphone was found, and on it was a video showing Joseph delivering a bedroll—though at the time he was supposed to be working elsewhere in the jail; that search resulted in the detainee's confession that he was trafficking contraband with the help of Joseph and Monk. [See: *PLN*, June 2023, p.63.]

In addition to his prison term, Joseph was ordered to serve three years of supervised release and pay a $100 special assessment; the federal court for the Eastern District of New York imposed no fine because of his "inability to pay." *See: United States v. Joseph*, USDC (E.D.N.Y.), Case No. 1:23-cr-00306. The same Court ordered Monk to serve three months of his probation on home confinement and then complete 50 hours of community service; he was also charged a $100 special assessment. *See: United States v. Monk*, USDC (E.D.N.Y.), Case No. 1:22-cr-00442.

California Supreme Court Refuses Challenge to LWOP Sentence Imposed for Crime Committed After Age 18

Under California Penal Code § 3051, prisoners who were 18 to 25 years old when they committed certain crimes are eligible for parole after serving 15, 20 or 25 years, even if sentenced to life without parole (LWOP)—unless they were over 18 at the time of their offense. On March 4, 2024, the state Supreme Court rejected a challenge to that exclusion filed by state prisoner Tony Hardin.

In 1989, when he was 25, Hardin killed neighbor Norma Barber while robbing her home and car. That earned him a 1990 conviction for first-degree murder with a "special circumstance" because it happened during a robbery, and he was sentenced to LWOP. When § 3501.1 was adopted in 2023, he remained ineligible for parole because of the age exclusion. Hardin, by then 59, filed an appeal, claiming violation of his right to equal protection under the law as provided by the Fourteenth Amendment.

The state Court of Appeal, Second Appellate District, ruled in his favor in October 2022, finding him eligible for an evidentiary hearing because "disparate treatment of offenders like Hardin cannot stand." The appellate court found young adults serving LWOP are similarly situated to other youthful offenders, including those serving parole-eligible life sentences, so excluding them had no rational basis. *See: People v. Hardin*, 84 Cal.App.5th 273 (Cal. App.2d Dist. 2022). The state appealed and California's Supreme Court reversed.

The high Court acknowledged that § 3051 treats LWOP-sentenced young adults differently from otherwise similar offenders. But that is just one part of a two-part analysis to evaluate equal protection claims, one that did not apply here since the law by design treats groups or classes of people differently. Rather, the Court said, "[t]he only pertinent inquiry is whether the challenged difference in treatment is adequately justified."

With respect to Hardin's challenge, the question was whether exclusion of LWOP-sentenced young adults in § 3501 has a rational basis. The Supreme Court found it does. Hardin argued that the "sole" purpose of the statute was to create a "meaningful opportunity" for parole consideration for youthful offenders regardless of the seriousness of their offense. But the Court found that was not the only purpose of the law; the legislature had other reasons related to "culpability and the appropriate level of punishment for certain very serious crimes." While providing parole opportunities for some offenders, state lawmakers intentionally excluded others due to the severity of their offense.

Moreover, there was a rational basis for that distinction, the Court said, since LWOP sentences are imposed only for the most serious crimes. Hardin had failed to show why § 3501's exclusion was irrational and thus unconstitutional. Equal protection, the Court ruled, does not require the legislature to evaluate criminal culpability in a particular way, even if other offenders not serving LWOP—but sentenced to the functional equivalent—remain eligible for parole.

Justices Liu and Evans issued a lengthy dissent, arguing that § 3501's exclusion of offenders serving LWOP violates equal protection and perpetuates racial bias, noting that LWOP sentences are rooted in a "superpredator" myth that relied on racial stereotypes. That's why 86% of the approximately 3,100 youthful prisoners serving LWOP in California are non-white, they said, and § 3501's exclusion of them "bears the taint of racial prejudice and perpetuates extreme racial disparities plaguing our juvenile and criminal justice systems."

Before the Court, Hardin was represented by Thousand Oaks attorney William L. Heyman, along with fellow attorneys from the University of Southern California Post-Conviction Justice Project and Munger, Tolles & Olson LLP in Washington, DC. *See: People v. Hardin*, 15 Cal.5th 834 (Cal. 2024).

Additional source: *CalMatters*

Missouri Sheriff Removed from Office for Using Detainee Labor on His Own Properties

by David M. Reutter

When Sheriff Scott Childers lost his re-election bid in Missouri's Ray County on August 6, 2024, he had already been out of office for five months. That's because the county court issued a Preliminary Order *in Quo Warranto* removing him from office on March 6, 2024. The unusual order came in response to a petition filed by Missouri Attorney General Andrew Bailey (R).

The removal petition alleged that Childers administered a work program at the county jail using detainees to labor on his own properties and those belonging to friends—including contributors to his political campaigns for Sheriff. It was further alleged that he left these detainees unsupervised and even allowed some conjugal visits, as well as car trips to shop at local stores, after which drugs, alcohol and cellphones flowed in and out of the jail.

The petition recalled that Childers was warned by judicial and elected officials that his program was illegal. But the warnings had no impact as Childers allegedly continued to release detainees for personally enriching work and even boasted about the program on social media.

In granting the petition, the Court "immediately enjoined" Childers from "engaging in any activity, or exercising any authority, as the Sheriff of Ray County" absent a separate order from the Court. Childers was barred from entering "the office of the sheriff, the Ray County Courthouse, or the Ray County Jail" unless authorized. The Court's order was held under seal until served on Childers to assure "the orderly execution and litigation" of the case was not "impeded or compromised." *See: State v. Childers,* Mo. Circ. (Ray Cty.), Case No. 2RY-CV00208.

Missouri State Highway Patrol and FBI agents were at the jail when the order was served on March 7, 2024, relocating detainees while a search was conducted. County Coroner Bart Wilhelm took over as interim Sheriff until the August 2024 election, when Childers lost to challenger Gary Blackwell. Meanwhile Childers filed a motion to dismiss the petition but ultimately settled with Bailey on August 19, 2024, by surrendering his law enforcement license.

Additional source: *KMBC*

CoreCivic's Successful Campaign for Mass Incarceration Continues in Tennessee

When he was picked to chair the Tennessee Republican Party's annual Statemen's Dinner on June 15, 2024—billed as "the largest political event of the year" in the Republican-dominated state—Damon Hininger, CEO of private prison operator CoreCivic, brought his firm into the spotlight at the GOP fundraising gala, tickets for which were priced at $300 each.

But the company is already among the state's top political spenders, lavishing $3.6 million since 2019 on lobbying and political donations to state lawmakers—mostly Republicans, who enjoy trifecta control of the state House, Senate and governor's office. They hold power over lucrative government contracts that are key to CoreCivic's business—operating prisons, jails and other detention facilities that brought in revenues of $1.9 billion in 2023. A hefty chunk of that gets invested back into the political process in order to secure more contracts and revenues.

Critics call this cycle anything but virtuous because it drives mass incarceration. Though CoreCivic counters that it merely provides prison cells the state would otherwise have to build, Hininger let the truth slip in an earnings call with investors on May 9, 2024, when he said that "adjustments to sentencing reform" by state lawmakers are expected to drive "pretty significant increases" in prison populations.

One of those bills under consideration is a "three-strikes" law that by itself is estimated to require a new prison for some 1,400 additional state prisoners, at a taxpayer cost of $384 million. The provision mirrors a disastrous California law that drove prison populations sky-high before voters abandoned its most draconian provisions, as *PLN* reported. [See: *PLN*, Apr. 2020, p.44.] Tennessee lawmakers have also moved to drastically restrict early prisoner release with passage of SB 2044, dutifully signed by Gov. Bill Lee (R) in May 2024.

CoreCivic can perhaps be excused for pushing its agenda so hard; after state lawmakers adopted a measure limiting the number of privately run prisons to just one, the firm successfully lobbied to insert a loophole for CoreCivic. It now has four prisons in the state, under contracts that annually generate about $200 million in total.

Gov. Lee collected $65,400 in CoreCivic donations during his successful campaigns in 2018 and 2022. He is term-limited from seeking a third, but one of those considering a run to replace him is Hininger. As for criticism that CoreCivic has faced for excessive violence and staff turnover, those probably didn't get addressed at Hininger' $300-a-plate fundraiser.

Additional sources: *Nashville Tennessean, Tennessee Outlook*

Nevada Supreme Court Holds That Violating Jail Phone Policy Does Not Waive Attorney-Client Privilege

by Douglas Ankney

When a jail is found to violate a detainee's Sixth Amendment expectation that communications with his attorney are privileged, courts often shrug it off as harmless; after all, the detainee won't raise the objection unless what was discussed could undermine his defense, and in that case courts are loathe to let the guilty go free.

But a nation of laws must abide by all of them, no matter the result. So it was a welcome surprise when the Supreme Court of Nevada on March 7, 2024, refused to take the easy way out and agree with a lower court that a detainee who violated jail phone policy to make a legal call had waived attorney-client privilege for it.

The Court's ruling came in an appeal by former Clark County Detention Center detainee Jamal Jacqkey Gibbs. In April 2021, he was 29 and at the Las Vegas apartment of his girlfriend when her daughter returned from a visit with the child's father, Jaylon Tiffith, 29. The mother then got in a fight with Tiffith's new girlfriend, who was also not named. Both Tiffith and Gibbs—recently released from state prison after completing a 10-year term for a 2008 gang shooting when he was 16—intervened; in the aftermath, Tiffith lay fatally shot.

Gibbs was charged with second-degree murder with a deadly weapon and convicted in the state's Eighth Judicial District Court for Clark County. While detained to await trial, he violated jail phone policy by using another detainee's phone access code to place a call. He violated policy again when the party receiving the call connected Gibbs with a defense investigator. During the ensuing conversation, Gibbs revealed that he was present at the scene of the shooting—something he had not admitted to police, hoping to mount a defense of mistaken-identity chalked up to the melee the two women had begun.

The call was recorded, and the State moved to admit the recording at Gibbs' trial. Gibbs objected, claiming it was protected by attorney-client privilege. The district court disagreed, reasoning that Gibbs waived the privilege when he violated jail phone policies prohibiting sharing phone access codes and using three-way calling. Gibbs' trial strategy then collapsed, and a jury convicted him. He appealed.

The Supreme Court began its review by noting that the privilege is codified in state law, NRS 49.095, which protects "confidential communications between a defendant and the defendant's attorney or a representative"—including a defense investigator. Protected communications must be made for "rendition of professional legal services, and be confidential," as held in *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.*, 399 P.3d 334 (Nev. 2017). Moreover, a defendant asserting the privilege "bears the burden of showing that the evidence is privileged and that the defendant has not waived that privilege," per *Canarelli v. Eighth Jud. Dist. Ct.*, 464 P.3d 114 (Nev. 2020).

The Court noted examples of communications that generally are not privileged

include those taking place "in the presence of a third party," according to *Nev. Tax Comm'n v. Hicks*, 310 P.2d 852 (Nev. 1957). However, after *Lisle v. State*, 941 P.2d 459 (Nev. 1997), using a third party merely to connect or disconnect a call does not act as a waiver. In Gibbs' case, a third party connected the call, but nothing in the record indicated whether the third party listened to or participated in the conversation, the Court said. Some telecommunication carriers allow hosts of three-way calling to disconnect and leave the remaining parties connected, but the district court failed to hold an evidentiary hearing to determine the conduct of the third party during the conversation.

Further, Gibbs' violation of jail phone policy by using another detainee's access code did not "inform the analysis of whether a defendant intended for an attorney-client conversation to be confidential or whether the privilege [wa]s waived," the Court said. Accordingly, Gibbs' conviction was reversed and his case remanded for a new trial. *See: Gibbs v. State*, 543 P.3d 1185 (Nev. 2024).

Additional source: *Las Vegas Review-Journal*

Hometown Prison Examines Its Texas Neighbors

Incarcerated readers of *PLN* will not soon get a chance to see *Hometown Prison*, a new documentary film released on February 27, 2024, which explores the relationship between some 80,000 people who make their home in Huntsville, Texas and the seven prisons there operated by the state Department of Criminal Justice (TDCJ). So here's what it shows.

Although thousands of prisoners fill the lockups—there is room for 13,697 between the Byrd, Ellis, Estelle, Goree, Holliday and Wynne Units, as well as the 175-year-old State Penitentiary—students at nearby Sam Houston State University admitted to filmmaker Richard Linklater that it's just something "everyone's aware of" but "no one wants to talk about it." Linklater, who spent his youth in Huntsville before finding Hollywood fame with films like *Dazed and Confused* and *Boyhood*, also talked to Dale Enderlin, a former teammate on the college baseball team, who recalled a 39-month prison stay when he routinely met men of color who had let themselves be coerced into false confessions.

Others interviewed included the manager at the bus station, who realized that he'd sold hundreds of thousands of one-way tickets out of town to men released onto Huntsville's streets from the prisons, usually with enough "gate money" to make the purchase but little else. Advocating on their behalf, Linklater's late mother became an activist. A civil rights lawyer she once dated, Bill Habern, recalled arriving in town in the 1970s and finding white supremacism like 1950s Mississippi. Huntsville's first Black prison warden, Ed Owens, remembered the night of a prisoner's execution, when the KKK demonstrated outside his home.

The cumulative effect of these interviews is massively depressing. Residents gaslight one another and themselves about the vast web of cells and razor wire in their midst. But Linklater found a few who couldn't escape thinking about it—current and former prisoners and guards, beaten down by a brutal system they feel powerless to change. *See: God Save Texas: Hometown Prison*, HBO Documentary Films (2024).

Additional source: *New Yorker*

Former D.C. Guard Gets 42-Month Sentence for Assaulting Handcuffed Prisoner

by Douglas Ankney

On June 28, 2024, former District of Columbia (D.C.) Department of Corrections (DOC) guard Marcus Bias, 28, was sentenced to 42 months in federal prison and 24 months of supervised release for assaulting a handcuffed prisoner. The sentence follows his guilty plea in March 2024 to one count of deprivation of rights under color of law.

Surveillance video captured the entire incident, which unfolded at the D.C. Jail on June 12, 2019. It began when a prisoner identified as "J.W." refused a guard's order to return to his cell from the dining hall and began using a phone there instead. Bias, who was then 23 and had been on the job 18 months, arrived with other members of an Emergency Response Team, pepper-spraying and handcuffing the prisoner. That's when Bias "intentionally and without provocation" pushed him head-first into a metal doorframe, "causing serious injuries" that required hospital treatment, court documents recalled.

DOC fired Bias after reviewing the video. But he wasn't charged and arrested until November 2022. Pastor Cheryl Mitchell Gaines wrote the federal court for the District of Columbia that her parishioner "was the youngest one there … and now he's the fall guy."

But D.C.'s U.S. Attorney, Matthew M. Graves, said that Bias violated his oath "when he pushed the head of a handcuffed inmate in his care into a metal doorframe." Assistant Attorney General Kristen Clarke of the Justice Department's Civil Rights Division agreed that those "held inside our jails and prisons should never be subject to [this] kind of violent and unjustified assault."

Bias faced a maximum penalty of 10 years in prison and three years of supervised release, plus a fine of up to $250,000. In addition to much-shorter terms of imprisonment and supervision, he was also assessed just $100. *See: United States v. Bias*, USDC (D.D.C.), Case No. 1:22-cr-00380. The victim has since died of unrelated causes.

Additional source: *Washington Post*

$60,000 Settlement for Kansas Prisoner's Excessive Force Claim, $578,000 for His Attorneys

by David M. Reutter

On March 26, 2024, the U.S. Court of Appeals for the Tenth Circuit affirmed a district court's award of more than $578,000 in attorneys' fees and costs made as part of a $60,000 offer of judgment to settle an excessive force claim by Kansas prisoner Samuel Lee Dartez, II. The appeal required the Court to decide how an offer of judgment affects statutory provisions allowing and limiting a fee award.

Dartez sued 15 Kansas Highway Patrol (KHP) officers in November 2015, alleging they used excessive force after his arrest one year earlier. To settle, KHP made a $60,000 offer of judgment to Dartez "plus reasonable attorneys' fees and costs allowed by law, if any." Because Dartez was incarcerated by the time he sued, his complaint was subject to the Prison Litigation Reform Act, 42 U.S.C. § 1997e—a statute that limits recovery of legal fees and costs. But the U.S. District Court for the District of Kansas assumed the offer of judgment trumped the statutes, and it awarded Dartez $576,242.28 in attorneys' fees and costs. Defendants appealed.

The Tenth Circuit began by first rejecting Defendants' "perfunctory" argument that Dartez was not entitled to an award of attorneys' fees for failure to prove an actual civil rights violation. The Court then quickly moved on to find ambiguity existed in the offer of judgment and the applicable statutes; the offer of judgment's provision of "reasonable attorneys' fees and costs allowed by law, if any" was susceptible to two different interpretations.

The Court was charged with interpreting that clause in light of 42 U.S.C. § 1988(b), which allows recovery of a reasonable amount of attorneys' fees, and PLRA, which caps attorneys' fees at 150% of the judgment, requires a prisoner to pay up to 25% of the recovery towards attorneys' fees, and caps hourly rates at 150% of the hourly rates for criminal defense attorneys under the Criminal Justice Act.

That cap could reasonably be waived by the offer of judgment, the Court wrote. But the core issue was whether the phrase "allowed by law" not only modified an award of costs but also the phrase "reasonable attorneys' fees." The Court said the last-antecedent rule required the modifier applied only to the award of costs, pointing to *Cyan v. Beaver Cnty. Emps. Ret. Fund*, 583 U.S. 416 (2018).

But even if that rule did not apply, the Court said, the district court had resolved the ambiguity by using two interpretive tools: Defendants' role in drafting the offer of judgment and the existence of extrinsic evidence. Reasonably interpreted language is construed against the drafter, the Court recalled, citing *Vasconcelo v. Miami Auto Max, Inc.*, 981 F.3d 934 (11th Cir.

2020). Additionally, defense counsel had expressed a willingness to pay attorneys' fees of $100,000 or more, which exceeded the statutory cap. Given that, the Tenth Circuit found no error in calculating the fee, agreeing that the offer of judgment included a payment *plus* attorneys' fees—thereby leaving Dartez with all $60,000 of Defendants' offer of judgment and negating any requirement that he pay part of it toward the fees.

Judge Allison H. Eid concurred, but said she would have reversed the district court's order for misapplying the last-antecedent rule—except that Defendants waived the issue on appeal. So even though she disagreed with both the district court and the Tenth Circuit's majority, the outcome would be the same. The district court's order was thus affirmed, awarding $576,242.28 in fees and $2,052.67 in costs to Dartez's attorneys, David G. Seely, Lyndon W. Vix and Ryan K. Myer with Fleeson, Gooing, Coulson & Kitch, LLC in Witchita. *See: Dartez v. Peters*, 97 F.4th 681 (10th Cir. 2024).

California Prisoner Wins Challenge to Overbroad CDCR Records Request Made Prior to Resentencing

Prisoners in custody of the California Department of Corrections and Rehabilitation (CDCR) who were serving a sentence with an enhancement for a prior prison term became entitled to resentencing when Pen. Code§ 1172.75 took effect in 2022, invalidating the enhancement. The new law required CDCR to notify the sentencing court and provide information to assist with a resentencing hearing. But on March 1, 2024, the state Court of Appeal, Fourth Appellate District, reigned in prosecutors' request for one state prisoner's records, calling foul on their failure to show "plausible justification" for each request.

Kevin Lunsted was serving a 17-year sentence, including a one-year enhancement for a prior prison term. After§ 1172.75 invalidated that enhancement, he became eligible for resentencing. To prepare for the resentencing hearing, the state issued CDCR a subpoena *duces tecum* (for production of records) for Lunsted's prison case file, known as a "c-file." He filed a motion to quash; while acknowledging the state had an interest in parts of his c-file, he contended the subpoena was overbroad because it included confidential medical and mental health records.

The state countered that the c-file reflected Lunsted's conduct in prison, which was "one of the most important factors a court must consider for the purposes of resentencing." The trial court agreed, denying the motion to quash and finding "good cause" for the subpoena.

Lunsted appealed this overreach, filing a petition for writ of mandate with the Court of Appeal. The Court initially issued a stay and then reversed the trial court's ruling, finding it had used an incorrect standard of review. As the Court explained, the state Supreme Court had already addressed the process for assessing good cause when considering a motion to quash a subpoena duces tecum in a criminal case: In *Facebook, Inc. v. Superior Court*, 471 P.3d 383 (Cal. 2020), the high court determined that trial courts are required to apply seven factors set forth in *City of Alhambra v. Superior Court*, 205 Cal.App.3d 1118 (Cal.App.2d Dist. 1988). Of relevance to Lunsted's case, those factors include whether the requesting party has stated a "plausible justification" for the records, and whether the requested material is "adequately described and not overly broad."

The Court found that "nothing in the record 'reflects that the [trial] court expressly considered and balanced' the seven required factors" when assessing the state's request; rather, the lower court considered only whether the c-file was likely to have information relevant to the resentencing hearing.

The Court also noted that *Facebook* applies to subpoenas issued by both the defense and prosecution in criminal cases, since "procedures governing criminal discovery were designed 'to be equal and reciprocal.'" The state's other arguments were rejected and the case remanded to the trial court for reconsideration of Lunsted's motion to quash under the correct legal standard. Before the Court, Lunsted was represented by Riverside County Public Defender (PD) Steven L. Harmon and Assistant PD William A. Meronek. See: *Lunsted v. Superior Court*, 100 Cal.App.5th 138 (Cal.App.4th Dist. 2024).

Aryan Warriors Leader Among Three Killed in Nevada Prison Riot

A fight at Nevada's Ely State Prison on July 31, 2024, left nine prisoners injured and three others dead—including Aryan Warriors (AW) gang leader Zackaria Luz, 43. No staffers were reported injured by the state Department of Corrections (DOC), which identified the other two killed as Connor Brown, 22, and Anthony Williams, 41.

Brown was serving a sentence up to 20 years handed down in 2021 for robbery. Williams, who was serving a 2019 life-without-parole sentence for murder with an "habitual criminal" enhancement, was an AW member, too, one of 22 sentenced in a massive racketeering case that also earned Luz up to 18 years in 2023.

At that time, Luz was already incarcerated on a drug-related conviction. Before that, he had earlier pleaded no contest to charges of participating in a December 2021 riot at Southern Desert Correctional Center. As *PLN* reported, that disturbance led to the resignations of Warden William Hutchings and former DOC Director Charles Daniels, plus charges against guard Quentin Murphy, 41, for allegedly knocking Luz into a wall; fellow guards Paul Bowerman, Timothy Smith and Brayan Lopez were also charged with using excessive force. [See: *PLN*, March 2023, p.12.]

Sources: *KLAS, Reno Gazette Journal*

Virginia Governor's Veto Exposes Prisoners Who Took Plea Bargains to Civil Rights Violations

by Matt Clarke

On March 20, 2024, Virginia Gov. Glenn Youngkin (R) vetoed SB 334, a bill passed by state lawmakers to prevent prosecutors and courts from requiring criminal defendants to waive their Fourth Amendment rights as a condition of a plea agreement or court order—waivers that can survive completion of their criminal sentences for decades.

Under the U.S. Constitution and Article I, Section 10 of the Virginia Constitution, citizens have a right not to be subjected to unreasonable search and seizure. But for many state prisoners, even after release, "You can be walking down the street, and a uniformed law enforcement officer can stop you, recognize you, and know you have a waiver, and then proceed to just search you without any cause," according to Rob Poggenklass, Executive Director of the advocacy group Justice Forward Virginia.

That leaves criminal defendants facing an "impossible choice," according to Lauren Whitley, Chief Public Defender for Fredericksburg, Spotsylvania, King George and Stafford Counties, where the waivers are standard conditions of most plea agreements—which most criminal cases are resolved with, like 95% of those in the U.S.

"It encourages bad policing," she said. "Fourth Amendment waivers give [police] free reign to do whatever they want. So there is no consequence for them acting inappropriately or unprofessionally."

Police even stop and search people without knowing whether they have a waiver; if the search turns up contraband, they can consult a database to see if a waiver is on file. That's where racial disparities usually appear. In the state capital of Richmond, for instance, 53% of residents are Black or Hispanic. Yet 98% of Richmond's plea waivers were signed by people of color, and Richmond police stop Blacks at five times the rate they stop Whites. In Lynchburg, the state's 12th-largest city, Blacks account for 28% of the population but 78% of plea waivers. Knowing that many people of color have signed waivers could work into police officers' calculation of whom to stop and search with flimsy cause.

Driving lawmakers' move to ban such orders and plea bargain conditions was not only racial disparity in their use—and extreme cases where defendants were required to sign away their rights for decades after their sentences expired—but also the fact that some Virginia prosecutors make the waiver a mandatory condition of all plea bargains; defendants who refuse to go along then face potentially longer sentences after a trial.

It is also a standard condition of parole that gives permission for a parole officer to search a parolee's person and residence for potential violations, such as possession of drugs or weapons. But Fourth Amendment waivers go far beyond that, permitting stops and searches by any law enforcement officer no matter how unreasonable the pretext. The length of waivers can also stretch over decades—even after a criminal sentence has been served.

The bill included exceptions for agreements requiring a waiver as a condition for participating in a specialty docket and for defendants charged with a sexual offense against a victim under 18. But even those exceptions were limited to the period of probation or post-release supervision.

With Youngkin's veto, waivers will continue to be the norm in Virginia. But a glimmer of hope was shone into the darkness by a state Court of Appeals decision on March 12, 2024, holding that such waivers do not extend to body cavity searches. *See: Hubbard v. Commonwealth*, 80 Va. App. 384 (2024).

Additional source: *Bolts Magazine*

$3.4 Million Settlement for Nevada Prisoner After 'Wait and See' Medical Care Became 'Deny and Delay'

by David M. Reutter

On March 21, 2024, the Nevada Board of Examiners (BOE)—a three-member panel composed of Gov. Joe Lombardo (R), Attorney General Aaron Ford (D) and Secretary of State Francisco "Cisco" Aguilar (D)—approved a $3.4 million settlement to resolve a state prisoner's civil rights action accusing state Department of Corrections (DOC) officials of violating the Eighth Amendment ban on cruel and unusual punishment with denial and delay of medical care.

After arriving at Southern Desert Correctional Center (SDCC) in late 2002, 60-year-old Lewis Stewart began to feel "discomfort in his lower abdominal and back area," according to the complaint he later filed. Repeatedly filing medical care requests, he was finally seen by prison healthcare providers, including Dr. Romeo Aranas and Dr. Francisco Sanchez.

As *PLN* reported, Stewart complained of problems urinating, indicating possible prostate problems; he "had to sit on the toilet to urinate," he said, and his "short and irregular urine flows were very painful." Aranas and Sanchez took his vitals and prodded the affected areas. But they examined him no further, administering only generic pain medication. For over a decade, that was all the treatment Stewart got—even as he passed 70 and began experiencing inflammation in his urethra, testicles and abdominal areas.

It wasn't until 2015 that Stewart secured a transfer to Warm Springs Correctional Center, hoping for better care. When he arrived after an eight-hour ride from SDCC looking "pale, flushed, sweating and unbalanced," alarmed medical staffers immediately recognized symptoms of an enlarged prostate. An emergency cauterization drained more than six liters —fourteen pounds — of fluid from his urinary tract. As a result of so many years of medical distress, Stewart suffered stage three kidney disease, erectile dysfunction and urine buildup, plus painful prostate surgery.

In the 42 U.S.C. § 1983 action that he filed in federal court for the District of Nevada, Stewart accused DOC and its medical staffers of deliberate indifference to his serious medical need. When the district court denied Defendants qualified immunity (QI), they appealed. But the U.S. Court of Appeals for the Ninth Circuit affirmed that decision, issuing an unusually severe condemnation of the treatment Stewart received. Though "[m]ere disagreement with a medical treatment plan is not deliberate indifference," allowed Circuit Judge Eugene E. Siler, Jr., "continuation of the same treatment in the face of obvious failure is." As he concluded for the Court, "At some point, 'wait and see' becomes 'deny and delay,'" and Defendants were denied QI. [See: *PLN*, Dec. 2022, p.28.]

On remand at the district court, Stewart's case proceeded to a six-day jury trial. At its conclusion on October 26, 2023, jurors returned a verdict in Stewart's favor, awarding him a total of $4.5 million, including $2,025,000 in compensatory damages and another $225,000 in punitive damages against each doctor. Defendants again turned to the Ninth Circuit. But the parties also began negotiating a settlement. They reached a tentative one on January 17, 2024, pending BOE approval. After that, they stipulated to dismissal of the case on April 12, 2024, also dismissing the appeal five days later.

The $3.4 million settlement included $1.7 million in fees and $259,411.91 in costs for Stewart's attorneys, Andre M. Lagomarsino, Cory Ford, Cristina A. Phipps and Taylor Jorgenson of Lagomarsino Law in Henderson, as well as Paul S. Padda of his eponymous Las Vegas firm. *See: Stewart v. Aranas,* USDC (D. Nev.), Case No. 3:17-cv-00132. Stewart, now 81, is no longer incarcerated, though he reportedly remains on parole.

Additional source: *Nevada Independent*

Montana Supreme Court Requires Sentence Credit for Time Served in Tribal Jail

On March 19, 2024, the Supreme Court of Montana held that time served in tribal jails prior to sentencing must be credited to that sentence. The case involved Malinda Crazymule. After pleading guilty to felony theft and criminal trespassing in 2016 in Sixteenth Judicial District Court, Rosebud County, she received a suspended sentence and was released on probation. Then on March 3, 2021, Bureau of Indian Affairs (BIA) tribal officers searched her home and found methamphetamine, which she admitted using. Her two grandchildren, who were also present, tested positive for methamphetamine exposure. They were removed from Crazymule's custody, and BIA officers charged her with endangering the welfare of children and drug abuse.

Crazymule was convicted of these offenses and confined to a tribal jail. On March 18, 2021, while serving that new sentence, the State petitioned to have her suspended sentence for felony theft revoked based on the tribal court convictions. The district court issued a warrant for Crazymule's arrest that same day. The warrant listed Crazymule's location as the tribal jail, but she was not transported to the Rosebud County Jail and served with a copy of the revocation petition and warrant until September 3, 2021. She ultimately pleaded guilty to the violations and was sentenced to four years in prison.

The district court gave her credit for time served from the date she arrived at the Rosebud County Jail, but refused to give credit for the time served in tribal jail between the time the revocation petition was filed and she was transported to Rosebud County to answer the charges. Crazymule appealed.

The Montana Supreme Court said that three statutes determined whether Crazymule was entitled to credit for time served in tribal custody once the revocation petition was filed. MCA § 46-18-203(7)(b), which provides that "[c]redit must be allowed for time served in a detention center or for home arrest time already served." Similarly, § 46-18-403(1), entitled "Credit for Incarceration Prior to Conviction," provides "credit for each day of incarceration prior to or after conviction[.]" Last, § 46-18-201(9) provides "credit for time served by the offender before trial or sentencing."

Relying on these statutes, the Court held previously that if "incarcerated on another matter or within another jurisdiction and an arrest warrant on a different charge is issued, the defendant must receive credit for time served 'for the different charge from service of the arrest warrant to sentencing, even if the defendant may also have been incarcerated on another matter,'" quoting *Killam v. Salmonsen*, 492 P.3d 512 (Mont. 2021). The Court then extended that holding to situations like Crazymule's.

Although she was not served with an arrest warrant until she completed her tribal sentence and was transported to the Rosebud County Jail, she "could do nothing to move forward on the revocation petition," the Court noted. In fact, the pending warrant acted as a detainer prohibiting her release from the tribal jail except into the custody of Rosebud County.

Therefore, the Court concluded, the district court erred by not crediting Crazymule with nearly six months she spent in tribal custody waiting to be transported to Rosebud. Instead, the Court noted, the district court "must allow credit for 'time served in a detention center,'" quoting § 46-18-203(7)(b). The district court's order was thus reversed and Crazymule's sentence remanded for correction. The prisoner was represented by Public Defender Chad Wright and Assistant Public Defender Kristina L. Neal. *See: State v. Crazymule,* 2024 MT 58

$2,000 Statutory Award Boosts Ohio Prisoner's Total Over $9,000 for Denied Public Records

by David M. Reutter

A $2,000 award of statutory damages by the Supreme Court of Ohio on March 31, 2024, brought the total recovered by Trumball Correctional Institution (TCI) prisoner Kimani Ware for denied public records to at least $9,025. As *PLN* reported, Ware's previous trip to the Court was unsuccessful, but in prior mandamus actions for denied public records—all proceeding *pro se*—the prisoner collected over $7,025. [See: *PLN*, July 18, 2024, online].

In this case, the Court found two violations of the state Public Records Act (PRA), R.C. 149.43. It declined to find any violation in four other requests that were denied. Ware submitted all six requests to TCI officials between May 29, 2021, and June 23, 2022, seeking records relating to (a) the number of prisoners infected by COVID-19 and (b) visitor policy during the pandemic, as well as (c) a legal mail log, (d) Ware's master and disciplinary files, (e) an informational handbook on religions and (f) a list of canteen items that increased in price.

When he didn't get any of the records, Ware filed a mandamus petition. Prison officials moved to dismiss it, arguing that he failed to notify them that the requests were being made under PRA. But the Court found no such requirement in PRA.

Turning to the merits of Ware's requests, the Court quickly dispensed with four requests. First, it noted an affidavit submitted by TCI Public Information Officer Glenn Booth, showing that Ware received records of COVID-19 infections electronically. Secondly, Booth also provided Ware a copy of the mail logbook, though one heavily redacted. As to requests for visitor policy and religious handbooks, the Court saw that these went to prison officials who were not record custodians; they then referred Ware to the proper authority, but he failed to pursue that avenue of relief. Finding that PRA was satisfied by the direction that Ware was provided, the Court said that holding otherwise could make a groundskeeper with no administrative authority liable for a denial of records.

Ware's claims relating to the master file, disciplinary records and commissary price increases were deemed to have merit, though. Prison officials contended that the first two were exempt from disclosure, yet they failed to provide a written "explanation, including legal authority, regarding why his request was being denied," the Court said. Officials also claimed that the canteen request was sent to the wrong person, but the canteen manager referred the request to Booth, who then forwarded it to another TCI official. Yet the records were still not provided to Ware.

Finding two violations of PRA, the court awarded $2,000 in statutory damages—$1,000 for each request that didn't produce records or a valid reason for denial. Prison officials asked the Court to declare Ware a "vexatious litigator," but they were denied; the Court noted that he obtained some relief with this mandamus and in five of 13 others filed with Court, plus three out of 15 cases filed in lower courts. Thus, no showing was made that Ware was "habitually, persistently, and without reasonable cause engage[d] in frivolous conduct," the Court determined. See: *Ware v. Ohio Dep't of Rehab. and Corr.,* 2024 Ohio Lexis 615.

One of Eight Prisoners Now Released is a Woman

by David Reutter

As resources are stretched by millions of people released annually from U.S. prisons and jails, advocates struggle to obtain accurate information about the scope of the need. The nonprofit Prison Policy Initiative (PPI) responded with a report on February 29, 2024, finding that a significant percentage of those released are women.

PPI used data from the federal Bureau of Justice Statistics (BJS) to create estimates of releases by sex. BJS's most recent *Annual Survey of Jails* from 2022 does not break down releases by state; that is done by the less frequent *Census of Jails*, the most recent from 2019

But data on releases by sex or gender identity is important because "the mass incarceration of women has been overlooked" despite growing twice as fast as men's incarceration, PPI said. Since over half of incarcerated women are mothers, and women are more likely their children's primary caregivers, "entire families are harmed when a woman is put in prison or jail."

Using BJS data, PPI was able to create "rough estimates" of prison releases by sex in 2022: About 51,228 from women's state prisons, plus another 3,951 from federal prisons for women. On top of that, PPI estimated 1,678,855 women were released that year from local jails. *See: How many women and men are released from each state's prisons and jails every year?* PPI (Feb. 2024).

That's over 1.7 million women released from incarceration every year—more than the total female population of 22 states. It is especially troubling given challenges women face in getting reproductive healthcare behind bars, as *PLN* has reported. [See: *PLN*, Jan. 2023, p.35.]

News in Brief

Alabama: Mobile Metro Jail guard Robert Aaron Small was fired and arrested for assault on June 27, 2024, one day after he allegedly used excessive force against an unnamed detainee. *WKRG* in Mobile said that the guard had worked at the lockup since 2019. Mobile County Sheriff Paul Burch did not provide details of what happened but promised zero tolerance for "conduct unbecoming of our Corrections Officers towards any inmate."

Alabama: Three state Department of Corrections (DOC) guards were arrested in July 2024, beginning with St. Clair Correctional Facility guard Jasmine Miller, 34, who charged on July 1, 2024, with using her office for personal gain, the *Birmingham News* reported. Miller resigned from St. Clair Correctional Facility and was booked into St. Clair County Jail, from which she was released on a $1,500 bond. Two days later, on July 3, 2024, Fountain Correctional Facility guard Shaquasia Craig, 33, was arrested and fired after she was caught with 50 Black and Mild cigars and two bottles of Gatorade laced with alcohol, *WEAR* in Pensacola said. She was being held at Escambia County Jail on charges of promoting prison contraband. Then on July 31, 2024, Limestone Correctional Facility guard Monica Blakeney, 35, was arrested and charged with promoting prison contraband, *WAFF* in Huntsville said. She had earlier been found at work with methamphetamine, and she resigned after her arrest. She was booked into Limestone County Jail and released on a $5,000 bond..

Arizona: Former state DOC guard Ramon Godoy, 33, was indicted on July 17, 2024, for the alleged sexual assault of an unnamed subordinate guard at Lewis State Prison, the *Arizona Republic* reported. The incident occurred at the lockup on July 7, 2024, when Godoy ordered the subordinate to meet him in the prison gym, proceeding there to put her in a chokehold and sexually assault her, ignoring her cries of "No!" and "Stop!" The victim then contacted police, whose subsequent investigation led to Godoy's confession; he also admitted receiving previous complaints at work about groping and making sexual comments to fellow employees. It was unclear whether DOC knew of those or investigated them. It was also unclear when and how his employment ended. He was booked into the Maricopa County Jail on a $75,000 bond.

Arkansas: DOC prisoner Nathan Boursh, 42, was electrocuted while performing grounds work at Benton Work Release Unit on July 12, 2024, *KFSM* in Fort Smith reported. He was rushed to a local hospital and pronounced dead a short while later. The fatal accident occurred when Boursh, who was serving a six-year term for a 2020 drug possession conviction, reportedly used a metal pole found near a pond in an attempt to free a fishing lure wrapped around a power line.

California: The *Sacramento Bee* reported that one of two state prisoners on the run nearly 13 years was recaptured in New York City on May 20, 2024. Eduardo Hernandez, then 29, was just over six years into a 13-year sentence for carjacking in Los Angeles County when he "walked away" from Delta Conservation Camp in Suisun City in November 2011. The state Department of Corrections and Rehabilitation (CDCR) said that fellow escapee Jose Padilla was about six months into a four-year term for domestic abuse, also in L.A. County. He is still on the run. Another more recent escapee from the firefighting camp, James Xiong, 36, was recaptured on May 26, 2024, after a month on the run, *CBS News* reported. He was serving a six-year term for a 2015 robbery and carjacking conviction in Fresno County, plus another six-year term for a 2022 conviction for a Nevada County grand theft committed after he was paroled in 2019.

California: Prisoners blamed a week-long lockdown at San Quentin State Prison on undercooked boiled chicken served on July 3, 2024, *Business Insider* reported. A statement from California Correctional Healthcare Services confirmed that "a potential gastrointestinal illness" had resulted in reduced "programming and visitation," but no other details were provided. Chicken was served again on July 9, 2024, but prisoner Aaron Ramzy, 34, didn't eat it. "I was scared," he admitted.

California: The *Los Angeles Times* reported that former federal Bureau of Prisons (BOP) guard Darrell Wayne Smith, 55, was handed fresh charges on July 26, 2024, of sexually abusing prisoners at the Federal Correctional Institution (FCI) in Dublin—where so many staffers have been accused of sexual predation that the lockup became known as the "Rape Club". Smith's new 15-count indictment supersedes one issued before his May 2023 arrest at his new Florida home; he was the eighth prison staffer charged in the scandal, which has resulted in convictions and federal prison

sentences for the other seven—including former Warden Ray Garcia, as *PLN* reported. [See: *PLN*, Apr. 2024, p.60.] Victims called Smith "dirty Dick" and said he was the worst of the abusers, recalling how he often sat in the darkened prison and ate bananas while watching them undress.

Canada: Quebec's maximum-security Port Cartier Institution hastily evacuated all 223 prisoners and 70 guards on June 21, 2024, as wildfires closed within 11 kilometers (6.8 miles) of the prison, *CBC News* reported. Guards' union chief Mike Bolduc decried planning failures in the evacuation, blaming Correctional Service Canada (CSC) for a shortage of handcuffs that left prisoners in self-locking wrist fasteners some managed to break before arriving at prisons receiving them in Donnacona and Sainte-Anne-des-Plaines. But prison Executive Director Martin Foucher pushed back, insisting that the operation was "planned" and "very safe." About 1,000 residents evacuated from the village near the lockup were cleared to return on June 24, 2024; however, CSC did not say when Port Cartier prisoners would return.

Connecticut: State DOC guard Christopher Carlson, 33, was charged with third-degree assault on June 21, 2024, for allegedly striking an unnamed McDougall-Walker Correctional Institution prisoner ten months before. *WTNH* in New Haven said the incident unfolded in August 2023, when Carlson and fellow guards responded to a "code blue" fight between prisoners. After reviewing surveillance video, they identified one of the prisoners and attempted to move him to a Restrictive Housing Unit. That's when he said they threw him to the ground and someone punched him in the face; investigating state cops later identified that was Carlson. He has been on leave from the prison.

Florida: State DOC guard Rance Park, 37, was arrested at home by Lake City cops on July 7, 2024, after allegedly threatening his wife and her child with a gun, *WCJB* in Gainesville reported. A neighbor called 911 saying that Park accused the unnamed woman of "cheating" and struck her, threatening to kill her and the child before shooting at her. During the incident, he apparently took time to compose a Facebook post complaining that his sleep had been disturbed when the neighbor called police. He was booked into the Columbia County Jail and charged with attempted homicide, battery, aggravated assault and child abuse, plus a weapons violation and obstruction charges. A *LinkedIn* profile for Park says he is an Environmental Health and Safety Sergeant at Columbia Correctional Institution.

Georgia: A detainee held at the Washington County Jail escaped from a hospital where he'd been transferred for treatment on July 16, 2024—only to be found hours later hiding in a tree across the street. George Vincent, 49, was arrested on July 10, 2024, for attempting to smuggle weapons into Washington State Prison (WSP), *WMAZ* in Macon reported. He was transferred to Washington County Hospital for unspecified treatment, and when guards removed his restraints, Vincent made a break for it, according to County Sheriff Joel Cochran. A K-9 dog alerted his deputies to the tree where they found Vincent hiding. At the same hospital on April 23, 2024, WSP prisoner Jacob Henson, 31, was being treated for injuries sustained in a fight with a fellow prisoner when he wrestled a

pepper-spray canister from one guard and used it on another, who then fatally shot the prisoner. At the time, Henson was serving an eight-year prison term for a string of vehicle hijackings in July and August 2018, including three motorcycles, three ATVs, five trucks and a car—plus a child's dirt bike that he stole and wrecked while attempting to flee cops. A resident eventually captured him, holding him at gunpoint until police arrived, Cherokee County District Attorney Shannon Wallace said at the time.

Georgia: *AP News* reported that state prisoner Juan Carlos Ramirez Bibiano, 27, died on July 20, 2024, after guards left him in an outdoor cell without shade or water in 96-degree heat for five hours. Telfair State Prison Warden Andrew McFarlane had reportedly ordered guards to ensure prisoners were kept hydrated before they put Remirez Bibiano in an outdoor "rec cell" around 10:00 a.m. The temperature by that time was already 86 degrees Fahrenheit, and it climbed another 10 degrees higher still before nurses found the prisoner around 3:00 p.m. lying naked in a puddle of his own excrement and vomit. They recorded his internal body temperature at 107 degrees before emergency personnel transported him to a hospital, where he died later that night of heart and lung failure caused by exposure to excessive heat. His mother, Norma Bibiano, has reportedly retained Atlanta attorney Jeff Filipovits to file suit against DOC over her son's death.

Greece: Graffiti carved into the floor of a Corinth building over 1,600 years ago was likely left by prisoners, according to research published in the journal *Hesperia* on June 19, 2024. The study's author, University of Copenhagen archeologist Matthew Larsen, conceded it was a rare find—almost no jails survive from the Roman era, and little is known about what they looked like or how they operated—but he became convinced the site adjacent to the city's ancient forum once held prisoners, who left behind messages like "Lord, make them die an awful death" and "Godbearer, repay Marinos, the one who threw us in here and made us spend winter."

Louisiana: Former BOP guard Samantha Harp, 37, was found guilty by a jury on July 10, 2024, of smuggling contraband to a prisoner at FCI-Oakdale in March 2020 and lying about it to federal investigators. *KPLC* in Lake Charles said that the investigators found calls and texts she exchanged with the unnamed prisoner's outside contacts to arrange payment via CashApp, though the guard insisted she didn't even know what that was. She didn't convince them or a jury, so the now-fired guard faces up to five years in prison, three years of supervised release and a fine up to $250,000.

Louisiana: Beauregard Parish Jail guard Thomas Noble, 30, was fired and arrested on July 16, 2024, for using "unapproved control techniques" while handling an unnamed detainee, who was wearing restraints at the time. *KALB* in Alexandria said that Noble was charged with battery and malfeasance in office after the incident, which happened on July 8, 2024. Sheriff Mark Herford found it "very disappointing that one of our deputies would act in an inappropriate manner towards a restrained inmate." Days later, on July 20, 2024, Tangipahoa Parish Jail guard Jaden Lamark, 20, was fired and arrested for getting into a fight with detainee Sanchez Harold, 36, on July 4,

2024. *WDSU* in New Orleans said that Harold allegedly threw an unidentified liquid at the guard, who then entered the detainee's cell and beat him. Both were charged with battery. Sheriff Gerald Sticker also charged Lamark with malfeasance in office.

Maryland: She won't face any prison time, but former Department of Public Safety and Correctional Services (DPSCS) dietary officer Ajee X. Myers, 29, must toe the line while serving a three-year probated sentence for misconduct in office handed down on July 16, 2024, according to the *Baltimore Sun*, which noted one year of her probation will be supervised. As *PLN* reported, Myers confessed in January 2024 to having a months-long sexual affair with a prisoner at Maryland Correctional Institute for Women in Jessup, even threatening another prisoner she feared was a "romantic rival" for the unnamed woman's affections. [See: *PLN*, Apr. 2024, p.61.] At her sentencing in Anne Arrundel County Circuit Court, Judge Donna Schaefer refused to put the errant guard behind bars but warned Myers to "do what you're supposed to do, and you won't have to come back."

Michigan: Former Saginaw County Jail guard Angelina Young was charged with misdemeanor assault and battery on June 27, 2024, for shooting a fellow guard in the back with her Taser, *WJRT* in Flint reported. Young was fired after an investigation into the March 2024 incident, which unfolded inside the jail control booth. She claimed it was a joke, but surveillance video captured her unnamed victim as she fired the weapon at him and he fell from his chair to the floor. No serious injury resulted, but Undersheriff Mike Gomez said, "I was angry that that took place because they train [with the weapons]. They know these aren't toys." Young remains free on personal recognizance bond.

Mississippi: After two Claiborne County Detention Center detainees escaped on July 5, 2024, and *ABC News* requested copies of surveillance video recordings, a deputy of Sheriff Edward "Moose" Goods admitted that the surveillance system was broken and "had not been accessible for a few weeks." As a result, Chief Dep. Christy Sykes said, her office relied on "physical evidence and witness statements" to determine that Dezarrious Johnson, 18, and Tyrekennel Collins, 24, escaped through the ceiling and jumped from the roof. Both were apprehended the next day at an abandoned home; they are being held on murder charges from other counties.

Missouri: Scott County Sheriff Wes Drury fired an unnamed guard from the county jail on July 26, 2024, after an investigation into the escape of detainee Corvin Turner, 30. *KFVS* in Cape Girardeau reported that Turner "walked out of the jail" on July 3, 2024, and was not located and returned by Drury's deputies for seven days. Drury said that Turner's older brother, who was also detained at the lockup, was scheduled for release and blamed the younger Turner for taking part in a deception that led to his mistaken release in his brother's place. As *PLN* reported, the same sort of mix-up led to the accidental release of detainee Billy Partington from Pennsylvania's Luzerne County Prison in January 2024, though it was his younger brother, Drake Partington, who had posted bail. Although it took jailers three days to notice their mistake, County Manager Rommilda Crocamo was apparently forgiving, chalking it up to human error. [See: *PLN*, Apr. 2024, p.61.]

New Hampshire: It took nearly three years for *Valley News* to unearth details

reported on July 15, 2024, that state Rep. Jonathan Stone (R-Sullivan), 50, was fired from his job at Southern State Correctional Facility in neighboring Vermont in 2021 after subjecting minority co-workers to a schoolyard full of risible slurs, including "cunt," "faggot," "retards" and "wetback." Confronted by his DOC superiors after a gay employee quit in disgust, Stone shrugged: "You should see me when I really get going." The Sullivan County chair for the reelection campaign of former Pres. Donald J. Trump (R), Stone was fired from an earlier post at the Claremont Police Dept. in 2006, the records also revealed, after an investigation was opened into his allegedly inappropriate relationship with a teenage girl, to which Stone responded with threats to kill his chief, rape the chief's wife and children, and go on a mass shooting spree.

New Jersey: *New Jersey Advance Media* reported that former state DOC guard Efrin Wade, 36, pleaded guilty on July 17, 2024, to taking $14,000 in bribes from an undercover FBI informant to smuggle tobacco and cellphones into Essex County Correctional Facility in January and February 2023. As *PLN* reported, Wade and his girlfriend, Yairisa Lizardo, 29, were arrested in March 2023, after Wade was found at work with contraband cigarettes and cigars. [See: *PLN*, May 2023, p.63.] Her charges are still pending. He will be sentenced on November 19, 2024.

New York: Escaped Rikers Island detainee James Mossetty, 35, was recaptured on July 16, 2024, the *New York Times* reported. He escaped while awaiting transport to the lockup from New York City's Bellevue Hospital on June 26, 2024. But it was unclear how Mossetty, who had just undergone psychiatric treatment, was not handcuffed when he slipped away from guards and broke from a secure loading area, shedding his orange jail uniform as he ran across lanes of traffic on Franklin D. Roosevelt Drive and made his escape on a city bus. With a history of mental health problems—he once attempted suicide by drinking drain cleaner—Mossetty was homeless when jailed for a 2021 assault. He was out on $3,000 bail when he stiffed a taxi driver of a $36 fare in 2023, and responding cops found meth on him, sending him back to jail. Speaking of the city's beleaguered DOC, his brother said: "They've got to get it together."

New York: State Department of Corrections and Community Services (DOCCS) guard Melissa Dixon, 30, was fired and arrested on June 27, 2024, for allegedly taking bribes to smuggle drug paraphernalia and weapons to Riverview Correctional Facility prisoners, at least two of whom she was also having sex with, according to State Police. *WNY* in Watertown said that those were the conclusions from an investigation state cops began on May 22, 2024, on referral from DOCCS's own Office of Special Investigations.

New York: After a brief escape from the Chautauqua County Jail, detainee Eric Ryals, 36, was back in custody on July 11, 2024, the *Buffalo News* reported. He was being held on $100,000 bond after an arrest on an out-of-state warrant on June 22, 2024, which was triggered when cops received a report about an attempted armed robbery and caught up with Ryals after he fled into a nearby woods. The day of his escape, he somehow gained access to the roof, running from pursuing guards and jumping to the street below. After treatment at Erie County Medical Center-Jamestown, he was returned to the jail.

North Dakota: After Ward County Jail detainee Matthew Richards, 21, allegedly refused to return his lunch tray on July 6, 2024, he then assaulted responding guards, injuring two of them. *KFYR* in Bismark said that Richards hit one guard in the face with the tray and broke the nose of another who came to assist the first. In total Richards is accused of attacking four guards at the lockup, where he is being held after allegedly threatening neighbors and brandishing a gun at responding cops.

Ohio: Though former CoreCivic guard Ciara Golden, 31, pleaded guilty to attempting to smuggle marijuana into Northeast Ohio Correctional Center (NOCC), she avoided prison time at sentencing on July 16, 2024, *WKBN* in Youngstown reported. Citing concerns over who would care for her 7-year-old daughter, Mahoning County Common Pleas Court Judge Anthony D'Apolito sentenced her instead to probation for the foiled smuggling attempt at NOCC, which is operated under contract for the U.S. Marshals Service.

Ohio: Former Marion Correctional Institution prisoner Hiram Melendez, 61, had three years added to his sentence on July 17, 2024, for assaulting an unnamed guard at the prison in 2019. The *Marion Star* reported that he had been locked up since 1993 serving a 15-year-minimum term for

murder when he became enraged at the guard and struck her repeatedly with his fists. Quick intervention by another guard and other prisoners reportedly limited her injuries to facial bruising, for which she was treated at a hospital and released. He is now at Southern Ohio Correctional Facility, according to the state Department of Rehabilitation and Corrections (DRC).

Ohio: When an unnamed Cuyahoga County Jail guard opened the cell door for him to shower on July 24, 2024, detainee De'Lawnte Hardy, 24, reportedly ran from the cell. Fellow guards responded, and a struggle ensued, during which Hardy was pepper-sprayed and an unnamed guard suffered unspecified injuries, *WKYC* in Cleveland reported. Hardy allegedly shot his grandmother in the back of the head with her own gun at her home on June 28, 2024, before fleeing on his grandfather's bicycle. Beatrice Porter, 63, died of those injuries on July 4, 2024. That same day, when Hardy was tracked to a nearby residence by police, he attempted to flee on the bike, this time armed with the gun and two swords. In an exchange of gunfire with cops, he allegedly shot and killed Off. Jamison Ritter, 27. After his arrest, Hardy was held on a $5 million bond that was increased to $10 million before the altercation at the jail, after which his bond was revoked.

Ohio: *Advance Media Ohio* reported that an investigation by the state Highway Patrol led to the indictment on July 12, 2024, of DRC Special Operations Lt. David Pearson, 44. He faces a first-degree misdemeanor charge of negligent homicide in Pickaway County Common Pleas Court for the fatal shooting of Southern Ohio Correctional Facility guard Lt. Rodney Osborne, 43, on April 9, 2024. DRC Director Annette Chambers-Smith said that the death of the 13-year veteran guard was apparently "a tragic accident" which occurred during a training exercise at the Corrections Training Academy firing range. Pearson remains on administrative leave awaiting arraignment.

Oklahoma: State DOC guard Cpl. Andrew Freppon was killed on July 14, 2024, when the car he was driving to work at John Lilley Correctional Center was stuck on U.S. Highway 62 by a prison transport, which fellow Cpl. Robert Sumner was driving to Oklahoma University Medical Center to work a hospital shift, *KOKH* in Oklahoma City reported. Both guards had just graduated from the DOC academy in November 2023.

Pennsylvania: Lancaster County Prison detainee Jamail Robertson, 27, will have at least 2-1/2 years added to a 2022 robbery sentence he was serving after pleading guilty but mentally ill on June 27, 2024, to charges that he assaulted a jail guard, plus a local cop and a security guard at a hospital. *WGAL* in Lancaster said that was the first assault in the April 2023 incident; he also attacked a Lancaster cop who was transporting him, plus a guard upon his return to the lockup.

South Carolina: Former Turbeville Correctional Institution guard Kiefer Ren Gibson, 20, was charged on June 26, 2024, with criminal sexual conduct with an inmate, possession of marijuana with intent to distribute and criminal conspiracy, *WIS* in Columbia reported. Gibson was transferred to Kirkland Reception and Evaluation Center after she was caught trying to smuggle 174 grams of marijuana to the unnamed prisoner on October 12, 2023. By that point, DOC investigators learned, she had been carrying on a sexual affair with him for weeks—even tattooing his name on her body and confessing in texts that she might be pregnant.

South Carolina: Three guards at Berkeley County's Hill-Finklea Detention Center were arrested in the alleged sexual assaults of detainees and fellow employees, beginning on June 17, 2024. That day, according to *FITSNews*, agents of the state Law Enforcement Division (SLED) arrested Avery Richard Smith, 23, for allegedly forcing himself on an unnamed detainee nine days earlier and making her touch his genitals. He resigned two days later. The day after that, on June 20, 2024, his direct supervisors, Christoper Dozier III, 43, and Frankie Levar Snider, 45, were fired for failing to intervene when Smith assaulted two unnamed co-workers three weeks earlier. Dozier allegedly witnessed one incident and laughed about it. Both were charged with misconduct in office and freed from jail on $30,000 bonds. Smith remained behind bars. Sheriff Duane Lewis awarded him Deputy of the Year for 2023, even though SLED investigators traced complaints from co-workers about Smith's unwanted sexual advances back to September 2022. The credulous Sheriff then said, "I hope this does not impede the trust the public has with us."

South Carolina: Orangeburg/Calhoun Detention Center guard Tatyana Izlar, 26, was fired and arrested on July 11, 2024, after she admitted taking unspecified payments to smuggle contraband to unnamed detainees, *WCSC* in Charleston reported. Izlar is a Denmark citizen, and it was unclear how she got her job at the jail. Deputies of Sheriff Leroy Ravenell searched her car and found marijuana and a cellphone.

Spain: Released after 14 years from Madrid V Penitentiary Center, former prisoner Jose Perez did what many do in the 21st century: He left a review on Google. But he gave the lockup only one star, according to *The Mirror*, apparently because high walls and the guard staff foiled four escape-attempts he made while incarcerated. Perez even named an accomplice in those attempts, Johnny el Mazas, recalling how "the last time they caught us climbing the wall, the son of a bitch tower guard hit us so hard with his baton that we didn't sleep all night." Still, Perez rated the prison "good" because "drugs were easy to get in and there weren't many rapes." However, a three-meter-high wall "puts the inmates in danger because it's a risk," he said, adding: "That's why I give it a bad rating."

Texas: Hidalgo County Jail guard Sebastian Rodriguez, 19, was fired on June 27, 2024, after police in Pharr arrested him for an alleged off-duty sexual assault of a child, according to *KRGV* in Weslaco. The office of Sheriff J.E. "Eddie" Guerra said the former guard was released on $10,000 bond.

United Kingdom: The *Daily Mail* reported that former HMP Wandsworth guard Linda de Sousa Abreu, 31, was arrested while trying to board a flight to Spain from London's Heathrow Airport on June 28, 2024. That same day, Prison Service officials fired her and charged her with misconduct in office for having sex with a prisoner—while his cellmate made a video of them. As the clip circulated over social media, officials discovered that the guard and her husband, MMA fighter Nathan Richardson, 29, were making sexually explicit videos and selling access to them on an *OnlyFans* channel, where Abreu used the alias "Linda La Madre." Still lugging her packed suitcase, she made her initial court appearance on the charges on July 1, 2024, later pleading guilty on July 29, 2024. Her co-star in the explicit clip, prisoner Linton Weirich, 36, has a pregnant girlfriend at home, according to *LBC News*; he is serving a 54-month term for a home robbery worth £65,000 (about $83,295 USD).

Virginia: Eastern Shore Regional Jail guard Hector Luis Rosa, Jr., 28, was fired on July 8, 2024, and arrested the following day on a felony count of "object sexual penetration," another of "abduction with intent to defile" plus a misdemeanor sexual abuse count, *Shore Daily News* reported. He had worked at the lockup since 2018 but went on leave on April 5, 2024, when the allegations were filed with the office of Northampton County Sheriff David L. Doughty, Jr. State cops then investigated, leading to the charges. He was freed on a $3,500 secured bond.

Washington: Former state DOC guard Emmanuel Perez, 48, was convicted on June 25, 2024, of killing his civilian roommate, Terrance Moore, 35, in June 2021. The *Everett Herald* reported that jurors found Perez guilty of second-degree murder for the fatal shooting, which capped a 14-hour marathon of drinking and meth use by the two in their shared apartment. A 14-year DOC veteran, Perez worked at Monroe Correctional Institution at the time. He was placed on unpaid administrative leave after his arrest, and his current employment status was unclear.

Human Rights Defense Center Book Store

FREE SHIPPING on all book orders OVER $50 (effective 9-21-2022 until further notice). $6.00 S/H applies to all other book orders.

Prison Profiteers: Who Makes Money from Mass Incarceration, edited by Paul Wright and Tara Herivel, 323 pages. **$24.95**. This is the third book in a series of Prison Legal News anthologies that examines the reality of mass imprisonment in America. Prison Profiteers is unique from other books because it exposes and discusses who profits and benefits from mass imprisonment, rather than who is harmed by it and how. **1063**

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**

Prison Nation: The Warehousing of America's Poor, edited by Tara Herivel and Paul Wright, 332 pages. **$54.95**. PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. **1041**

The Celling of America, An Inside Look at the U.S. Prison Industry, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. **$24.95**. PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. **1001**

The Criminal Law Handbook: Know Your Rights, Survive the System, by Attorneys Paul Bergman & Sara J. Berman-Barrett, 16th Ed, Nolo Press, 648 pages. **$39.99**. Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy-to-understand question-and-answer format. **1038**

Represent Yourself in Court: How to Prepare & Try a Winning Case, by Attorneys Paul Bergman & Sara J. Berman-Barrett, 10th Ed, Nolo Press, 600 pages. **$39.99**. Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. **1037**

Writing to Win: The Legal Writer, by Steven D. Stark, Broadway Books/Random House, 303 pages. **$19.95**. Explains the writing of effective complaints, responses, briefs, motions and other legal papers. **1035**

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

Legal Research: How to Find and Understand the Law, 19th Ed., by Stephen Elias and Susan Levinkind, 368 pages. **$49.99**. Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. **1059**

All Alone in the World: Children of the Incarcerated, by Nell Bernstein, 303 pages. **$19.99**. A moving condemnation of the U.S. penal system and its effect on families" (Parents' Press), award-winning journalist Nell Bernstein takes an intimate look at parents and children—over two million of them - torn apart by our current incarceration policy. **2016**

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**

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**

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

The Merriam-Webster Dictionary, 2016 edition, 939 pages. **$9.95**. This paperback dictionary is a handy reference for the most common English words, with more than 75,000 entries. **2015**

Roget's Thesaurus, 709 pages. **$9.95**. Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. **1045**

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**

Win Your Case, by Gerry Spence, 287 pages. $21.95. Relying on the successful methods he has developed over more than 50 years, Spence, an attorney who has never lost a criminal case, describes how to win through a step-by-step process. **1092**

Blue Collar Resume, by Steven Provenzano, 210 pages. **$16.95**. The must have guide to expert resume writing for blue and gray-collar jobs. **1103**

Deposition Handbook, by Paul Bergman and Albert Moore, 7th Ed. Nolo Press, 440 pages. **$34.99**. How-to handbook for anyone who conducts a deposition or is going to be deposed. **1054**

Please Note: Book orders are mailed via the U.S. Postal Service with delivery confirmation. PLN does not assume responsibility to replace book orders once their delivery to the destination address (facility) is confirmed by the postal service. If you are incarcerated and placed a book order but did not receive it, please check with your facility's mailroom before checking with us. If books ordered from PLN are censored by corrections staff, please file a grievance or appeal the mail rejection, then send us a copy of the grievance and any response you received

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**

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

Disciplinary Self-Help Litigation Manual, by Daniel Manville, 355 pages. **$49.95**. By the co-author of the Prisoners' Self-Help Litigation Manual, this book provides detailed information about prisoners' rights in disciplinary hearings and how to enforce those rights in court. Includes state-by-state case law on prison disciplinary issues. This is the third book published by PLN Publishing. **2017**

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**

Everyday Letters for Busy People: Hundreds of Samples You Can Adapt at a Moment's Notice, by Debra May, 287 pages. **$21.99**. Here are hundreds of tips, techniques, and samples that will help you create the perfect letter. **1048**

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**

Locking Up Our Own, by James Forman Jr., 306 pages. **$19.95**. In Locking Up Our Own, he seeks to understand the war on crime that began in the 1970s and why it was supported by many African American leaders in the nation's urban centers. **2025**

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**

The Habeas Citebook: Prosecutorial Misconduct, by Alissa Hull, 300 pages. **$59.95**. This book is designed to help pro se litigants identify and raise viable claims for habeas corpus relief based on prosecutorial misconduct. Contains hundreds of useful case citations from all 50 states and on the federal level. **2023**

Arrest-Proof Yourself, Second Edition, by Dale C. Carson and Wes Denham, 376 pages. **$16.95**. What do you say if a cop pulls you s to search your car? What if he gets up in your face and uses a racial slur? What if there's a roach in the ashtray? And what if your hot-headed teenage son is at the wheel? If you read this book, you'll know exactly what to do and say. **1083**

Caught: The Prison State and the Lockdown of American Politics, by Marie Gottschalk, 496 pages. **$27.99**. This book examines why the carceral state, with its growing number of outcasts, remains so tenacious in the United States. **2005**

Encyclopedia of Everyday Law, by Shae Irving, J.D., 11th Ed. Nolo Press, 544 pages. **$34.99**. This is a helpful glossary of legal terms and an appendix on how to do your own legal research. **1102**

*** ALL BOOKS SOLD BY PLN ARE SOFTCOVER / PAPERBACK ***

To Pay by Credit Card, Go to Our Website: www.prisonlegalnews.org or Call Us at 561-360-2523

Subscription Rates

	1 Year	2 Years	3 Years	4 Years
Prisoners/Individuals	**$36**	**$72**	**$108**	**$144**
Professionals (attorneys, agencies, libraries)	**$96**	**$192**	**$288**	**$384**

Mail Payment and Order to:

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

Please Change my Address to what is entered below: ☐

Ship Order To:

Name: _____

DOC #: _____

Suite/Cell: _____

Agency/Inst: _____

Address: _____

City/State/Zip: _____

Subscription Bonuses

2 year subscription include 2 extra issues
3 year subscription include 4 extra issues
4 year subscription include 6 extra issues

(All subscription rates and bonus offers are valid as of *1/1/2022)*

Subscribe to Prison Legal News

6 month subscription (prisoners only) - $20 _____
1 yr subscription _____
2 yr subscriptions (2 bonus issues) _____
3 yr sub (4 bonus issues) _____
4 yr sub (6 bonus issues) _____
Single back issue or sample copy of PLN - $6.00 _____

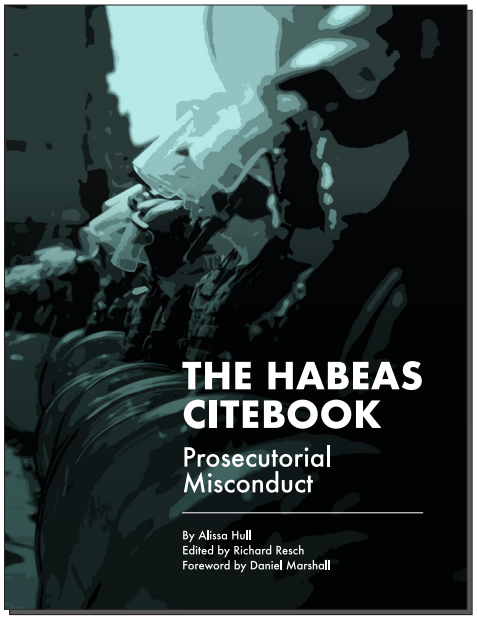
Book Orders

_____ _____ _____
_____ _____ _____
_____ _____ _____
_____ _____ _____
_____ _____ _____

Add $6.00 S/H to BOOK ORDERS under $50 _____
FL residents ONLY add 7% to Total Book Cost _____
TOTAL Amount Enclosed: _____

*** NO REFUNDS on PLN subscription or book orders after orders have been placed. ***
*** We are not responsible for incorrect addresses or address changes after orders have been placed. ***

Introducing the latest in the Citebook Series from Prison Legal News Publishing



The Habeas Citebook: Prosecutorial Misconduct

By Alissa Hull
Edited by Richard Resch

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

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

The Habeas Citebook: Prosecutorial Misconduct

Paperback, 300 pages

$59.95

(includes shipping)

Order by mail, phone, or online. Amount enclosed _____

By: ☐ check ☐ credit card ☐ money order

Name: _____

DOC/BOP Number: _____

Institution/Agency: _____

Address: _____

City: _____ State: _____ Zip: _____

Human Rights Defense Center
Dedicated to Protecting Human Rights
PO Box 1151 • Lake Worth Beach, FL 33460 • Phone # 561-360-2523
WWW.PRISONLEGALNEWS.ORG • WWW.CRIMINALLEGALNEWS.ORG

Prison Legal News
PO Box 1151
Lake Worth Beach FL 33460

Change Service Requested

Non-Profit Org.
U.S. Postage
PAID
Portland OR
Permit No. 3142

09/24 — **Subscription Renewal**
The above mailing address for *PLN* subscribers indicates how many issues remain on the subscription. For example, if it says "10 LEFT" just above the mailing address, there are 10 issues of *PLN* remaining on the subscription before it expires. IF IT SAYS "0 LEFT," THIS IS YOUR LAST ISSUE. Please renew at least 2 months before the subscription ends to avoid missing any issues.

Change of Address
If you move or are transferred, please notify *PLN* as soon as possible so your issues can be mailed to your new address! *PLN* only accepts responsibility for sending an issue to the address provided at the time an issue is mailed!