



# Prison Legal News

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*Dedicated to Protecting Human Rights*

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## Centurion’s \$8 Million Track Record of Abuse and Neglect as New Mexico’s Correctional Medical Provider

by Sam Rutherford

The New Mexico Corrections Department (NMCD) has long outsourced its constitutional obligation to provide prisoners adequate medical care to private, for-profit corporations with little incentive to do so. Before November 2019, a \$41 million annual contract was held by Centurion Correctional Healthcare of New Mexico, LLC, which lost a battle to withhold documentation of legal settlements when *PLN*’s publisher prevailed in a suit for the records on September 16, 2024, as reported elsewhere in this issue. [See: *PLN*, Dec. 2024, p.19.]

Quickly growing since its 2011 founding, Centurion and related companies

contract with local, state and federal governments in 15 states at 325 lockups. When Centurion took over healthcare for NMCD in June 2016, predecessor Corizon Health had been sued by state prisoners more than 150 times during its nine-year tenure. Another 24 suits were filed during Centurion’s first year, as *PLN* reported. [See: *PLN*, Nov. 2018, p.60.]

As *PLN* also reported, the Human Rights Defense Center (HRDC), non-profit publisher of *PLN* and *Criminal Legal News*, filed a request pursuant to the New Mexico Inspection of Public Records Act in August 2020 that Centurion disclose all complaints and settlement agreements for cases in which the company paid more than \$1,000 to prisoners or their families, beginning in 2010. [See: *PLN*, Jan. 2022, p.34.] Centurion refused to disclose the requested records, so HRDC sued to obtain them and won.

When the requested records were finally released to HRDC, Centurion declared its intent to appeal the trial court’s ruling and threatened to “hold HRDC accountable” should it “share, publish, or report on these confidential settlement agreements, or their contents, during the pendency of this litigation.” But this is not the first time HRDC has successfully sued Centurion to obtain records related to the substandard and often fatal care it provides to prisoner-patients, and it is not the first time *PLN* has published the contents of such records. Nor is this the first time Centurion has attempted to silence its chief critic. In fact, Centurion sued HRDC in Florida’s Putnam County in 2022, asking the court to declare that HRDC cannot

legally seek records related to the type of care it provides to Florida prisoners. That case remains pending, as *PLN* reported. [See: *PLN*, Jan. 2024, p.1.]

The following synopsis of the settlement agreements Centurion has disclosed to date in the New Mexico public records case reveals an abysmal track record. During its brief 40-month tenure as NMCD medical contractor, Centurion paid out over \$8,396,751.00 to settle 47 claims—including 13 cases where prisoners died.

### Wrongful Death Settlements

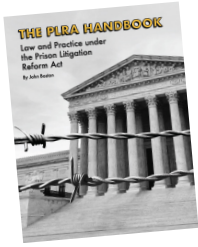
#### *Eugene Gonzales*

In 2019, 76-year-old Eugene Gonzales was confined in the geriatric unit of Central New Mexico Correctional Facility (CNMCF) in Los Lunas. Centurion medical staff were aware that he had high blood pressure and high cholesterol, was an insulin dependent diabetic and had an increased risk of heart disease. On June 3, 2019, he had a heart attack and sought help from the prison’s infirmary, where Centurion Nurse Elaine Jimenez was on duty. Although Gonzales was in extreme pain, clutching his chest and gasping for air, Jimenez told him to return to his cell and sign up for sick call the next day. The following morning, a fellow prisoner found Gonzales lethargic and in pain. Guards transported him by wheelchair to the infirmary, where a different nurse immediately called 911. But shortly after transport to a local hospital, Gonzales died of a massive heart attack.

His family filed suit in federal court against Centurion and Jimenez, making

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

**John Boston**



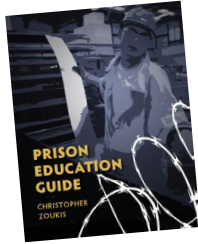
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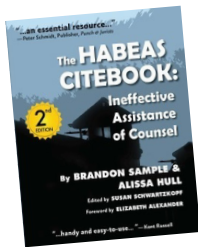
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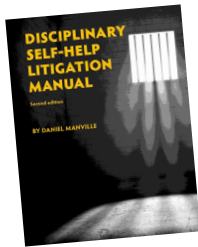
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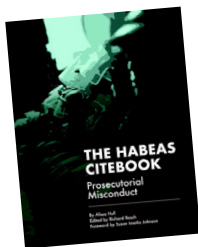
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## CENTURION cont'd

constitutional and state law claims. On December 14, 2022, Centurion settled for \$1.75 million. Gonzales' estate was represented by Albuquerque attorneys Matthew E. Coyte of Coyte Law P.C. and Steven R. Allen of New Mexico Prison and Jail Project. See: *Baker v. Jimenez*, USDC (D.N.M.), Case No. 2:22-cv-00071. According to the New Mexico Board of Nursing, Jimenez holds an active RN license and was never disciplined for professional misconduct.

### David Vigil

Arriving at CNMCF from a county jail on April 28, 2017, David Vigil complained of daily headaches and reported blurred/double vision and hearing loss, weakness in his legs, tingling or numbness and back pain. Centurion staff knew or should have known that he had a history of a seizure disorder, Hepatitis C, poly-substance abuse, depression, Hypertension, epilepsy, Insulin-dependent Diabetes Mellitus, Cerebrovascular Accident and diabetic neuropathy in both feet. He was also suffering from acute opiate withdrawal and had been prescribed Fluoxetine and Mirtazapine for anxiety and depression and Oxcarbazepine for epilepsy.

Vigil was frail and barely able to walk when first seen by Centurion staff. Yet he was referred to a psychiatrist, not a medical doctor, and advised to continue his current medications. His condition deteriorated rapidly; he lost 15 pounds in one week. On May 15, 2017, he complained of extreme neck pain and requested stronger medications. After Centurion Dr. Barry J. Beaven administered three doses of Narcan, the prisoner went into cardiac arrest. He was transported to a hospital, where he was diagnosed with a large epidural abscess that spanned the entire cervical spine. Despite efforts to eradicate this infection, Vigil never recovered. He was transferred to hospice care on July 7, 2017, and died that same day.

The prisoner's family sued Centurion in state court for failing to properly diagnose and treat his infection. The suit claimed that Centurion should have known that Vigil's history of drug abuse and compromised immune system put him at high risk of developing serious infections. The suit also alleged that Dr. Beaven negligently administered excessive doses of Narcan.

Centurion settled the case for \$717,000 on April 15, 2019, also paying one-third of mediation fees. Plaintiffs were represented by Albuquerque attorneys Terry R. Guebert, Elizabeth M. Piazza and Laura E. Horton of Guebert Bruckner Gentile P.C., as well as Parrish Collins of Collins & Collins, P.C. See: *Vigil v. Centurion Corr. Healthcare of N.M., LLC*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2018-00033. According to the New Mexico Medical Board, Dr. Beaven's license to practice medicine lapsed on July 1, 2024; no public disciplinary actions were listed.

### Gary Sugamosto

Gary Sugamosto, 69, was found by other prisoners at Lea County Correctional Facility (LCCF) in Hobbs around 11:00 a.m. on November 29, 2017, lying on his cell floor in his own feces. Guards ignored their pleas for help, so the prisoners lifted Sugamosto off the floor and cleaned him up in the shower. They then returned him to his bunk and continued pleading for assistance. Early the next day, around 12:30 a.m. on November 30, 2017, he was finally taken to the prison infirmary. But Centurion medical records did not indicate what treatment he received, if any, before he was returned to his cell around 2:00 a.m., barely able to walk. About 3:45 p.m. that afternoon, medical staff noted that Sugamosto was nauseous, vomiting and had suffered diarrhea for two days. He was transported to a hospital and diagnosed with septic shock. He died the next day on December 1, 2017.

Sugamosto's estate sued Centurion, its behavioral health subsidiary, MHM Health Professionals, LLC, and several employees. On May 17, 2022, Centurion settled its part of the case for \$650,000. The settlement did not resolve companion claims against The Geo Group, Inc., LCCF's operator, and several guards. The estate is represented by attorneys Dennis K. Wallin and Alisa C. Lauer of Spencer Law Firm, LLC in Albuquerque. See: *Hunt v. The Geo Group, Inc.*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2019-02969.

Centurion Dr. Jose Andrade-Barraza and Nurse Practitioner (NP) Kontasha Wise were named in the complaint. According to the state Medical Board, Dr. Andrade-Barraza holds an active medical license. He was previously reprimanded by the Board in September 2021 for the injudicious prescribing of medicine to family

members. See: *In re Andrade-Barraza, M.D.*, N.M. Med. Bd., Case No. 2012-016. According to the state Board of Nursing, Wise has active RN and APRN-CNP licenses with no disciplinary history.

**Keith Richard Kosirog**

A pretrial detainee transferred to CNMCF from Quay County Jail in Tucumcari on August 3, 2018, Keith Richard Kosirog was a combat veteran of the United States Marine Corps with a long history of mental health problems, including Post-Traumatic Stress Disorder, Bipolar Disorder, Delusional Disorder and Alcoholic Abuse Disorder. Kosirog had also made suicide attempts but was receiving treatment through the Veterans Affairs hospital in Albuquerque prior to incarceration.

When arrested on July 26, 2018, the 39-year-old reported that terrorists were threatening him. But those threats could not be corroborated, so he was transferred to CNMCF for “safe keeping” while awaiting competency evaluation because of the

apparent delusions. At intake, Centurion licensed social worker Marcia Esquibel noted his existing mental health issues and previous suicide attempts. Esquibel also noted that Kosirog was taking a 5-mg. daily dose of Haloperidol, 600 mg. of Lithium and 25 mg. of Lamictal twice daily. She recommended that Kosirog be placed on “one-on-one watch” and be seen by a mental health care provider.

But Kosirog was instead thrown in segregation, where he did not receive any additional supervision or treatment for over two months. Meanwhile he continued to deteriorate, showing signs of depression, anxiety and delusional/paranoid thinking. When finally seen by Centurion psychiatrist Dr. Anne Ortiz on October 5, 2018, she noted his critical mental health condition but also reduced his medications. Dr. Ortiz added a recommendation that he “continue” therapy, though he had not received any since his arrest. Meanwhile, his mental state continued a spiral downward, and his physical condition deteriorated. In fact, he lost over 30 pounds during his confinement. On December 2, 2018, a nurse and guard found Kosirog had fatally hanged

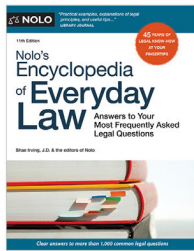
himself from his cell window grate with yellow fabric. No one had checked on him in nearly two hours.

The detainee’s family sued the Quay County Jail, CNMCF and Centurion for failing to properly treat and supervise him. On November 11, 2019, Centurion settled the case for \$500,000. The estate was represented by attorneys with Collins & Collins and Guebert Bruckner Gentile. See: *Hetes v. Cen. N.M. Corr. Fac.*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2019-00113. The current status of Dr. Ortiz’s medical license was unclear.

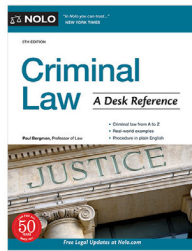
**Sheila T. Waterman Montoya**

Forty-two-year-old Sheila T. Waterman Montoya had been a NMCD prisoner since 2015 when, in early 2016, she reported severe, debilitating headaches that progressed to left-side weakness and neck pain. Her incarceration overlapped the transition from Corizon Health to Centurion, but neither medical staff provided treatment even after she was ultimately diagnosed with breast cancer. A hospital evaluated her in March 2016, and a radiologist found that the cancer had spread to her skin and

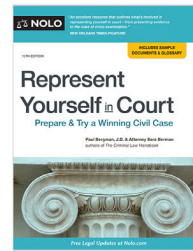
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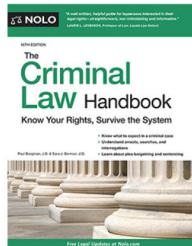
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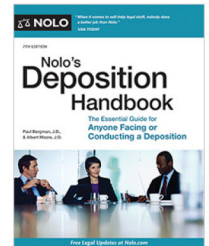
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lymph nodes. The radiologist wrote that prompt chemotherapy was required or “we will have a big problem on our hands.” A subsequent X-ray in April 2016 revealed that the prisoner had an enlarged heart and bilateral pleural effusions.

On April 28, 2016, Waterman Montoya was finally seen by an oncologist at the University of New Mexico (UNM) Hospital. Intake paperwork noted that she was a prisoner experiencing “delay in care up until now.” The hospital placed a catheter in her chest and began weekly doses of chemotherapy. Her condition improved significantly. However, in late June 2016, she developed a rash surrounding the catheter because prison medical staff failed to properly clean it. Despite obvious signs of infection, nothing was done and her condition worsened. On July 7, 2016, she was returned to the hospital, where doctors removed the catheter due to “gross signs of infection.” Admitted to ICU, Waterman Montoya died on July 20, 2016, of septicemia, a life-threatening infection that causes shock and organ failure.

Her family sued both Corizon Health and Centurion in state court, claiming that her death was entirely preventable had her catheter been clean or had she been transported to the hospital at the first sign of infection. Though she had cancer and delayed diagnosis, the suit pointed out that she was responding well to chemotherapy, and her prognosis was favorable. On January 25, 2019, Centurion settled the suit for \$400,000, plus one-half of mediation fees. The estate was represented by attorney Marc W. Edwards of Edwards Law Firm, P.A., in Santa Fe. *See: Montoya v. Corizon Health, Inc.*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2017-02838. The prison medical personnel blamed for Waterman Montoya’s inadequate medical care were not named in the complaint, so *PLN* was unable to research their license status.

#### **Daniel Peralta**

A NMCD prisoner from his 2013 sentencing until his release on May 23, 2017, Daniel Peralta was incarcerated briefly at CNMCF before transfer to LCCF and then, for the last two months of his sentence, to the Penitentiary of New Mexico (PNM) in Santa Fe. Identified as a “chronic care patient” because he tested positive for Hep-C and exhibited signs of hypertension, he was under the care of Drs. David

Birnbaum and Bruce Boynton, along with Physician Assistant (PA) Sidney England and NP Kim Janetzky, as they all moved from Corizon Health to Centurion with the NMCD contract.

Though Hep-C patients are prone to kidney disease, there are simple, routine blood tests to detect it early. Medical staff ordered these tests for Peralta over the course of his incarceration. The results indicated kidney damage. But that was not communicated to him. As he repeatedly reported symptoms that corresponded to kidney disease, Birnbaum, Boynton, England and Janetzky documented his complaints but did not intervene.

On October 20, 2016, Peralta was transported to a hospital with sepsis secondary to cellulitis. He remained there four days until the infection cleared. Hospital doctors also noted an unresolved kidney injury which required follow-up care, but the prisoner received none when returned to LCCF. Peralta’s condition continued to worsen, and after release from prison he went to an emergency room, where he was diagnosed with end-stage kidney failure. He began receiving dialysis three times per week and died waiting for a kidney transplant on August 5, 2020. He was 34.

Peralta’s estate sued Corizon Health and Centurion, plus their employees, alleging that failure to provide prompt treatment for his Hep-C and related kidney disease caused his otherwise preventable death. On May 7, 2021, Centurion and MHM Health Professionals settled the case for \$300,000 in both cash and annuities, the latter to benefit Peralta’s two children when they reach the age of majority. The estate was represented by attorneys Paul J. Kennedy, Jessica M. Hernandez, Elizabeth A. Harrison and Henry A. Jones of Kennedy, Hernandez & Associates, P.C. in Albuquerque. *See: Ray v. Centurion Corr. Healthcare of N.M., LLC*, N.M. 2nd Jud. Dist. (Bernalillo Cty.), Case No. D-202-CV-2019-05726.

According to the state Medical Board, Dr. Birnbaum’s medical license is still valid and active, while Dr. Boynton’s lapsed in 2022. Both doctors listed business addresses outside New Mexico, Birnbaum’s in Oklahoma and Boynton’s in Texas. England surrendered his PA license in 2017 in lieu of a hearing after evidence established “incompetence to practice, interactions with patients that could adversely affect patient care, injudicious prescribing, failure to

comply with Board regulations, and conduct likely to cause harm,” according to an order filed in February 2018. *See: In re England, P.A.*, N.M. Med. Bd., Case No. 2017-041. None of this misconduct stemmed from England’s employment with Centurion, but it appears that he worked for the company while under investigation. He is eligible to restore his license with conditions but has not attempted to do so. According to the state Board of Nursing, Janetzky holds active RN and APRN-CNP licenses with no record of discipline.

#### **Jennifer Harris Hopkins**

Beginning in February 2016, Jennifer Harris Hopkins was confined at New Mexico Women’s Correctional Facility (NMWCF), then located in Grants. She had been diagnosed in 2008 with Celiac Disease, a serious autoimmune disorder that requires routine medical care and a specialized diet. But she did not receive treatment and experienced frequent vomiting, diarrhea, anal bleeding, anemia, intense abdominal pain, malnutrition and bloating to the point where she appeared pregnant. She submitted multiple kites and grievances raising these issues, begging medical staff: “HELP ME.” Her pleas went ignored.

Hopkins was taken to a hospital on several occasions for dehydration, vomiting, bleeding, bloating and extreme pain. Doctors there noted her diagnosis and that she had relatives who died from Celiac Disease. But after return to NMWCF, she did not receive proper care each time. Her condition continued to deteriorate; over the course of several months she lost over 30 pounds. She was disoriented and in extreme pain when she went into respiratory distress on September 7, 2016. But medical staff did not transport her to a hospital, sending her

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instead to CNMCF. Only then was she transferred to UNM Hospital, where she died on September 16, 2016, aged 38.

Her estate sued Corizon Health and Centurion, among others, alleging her wrongful death resulted from the refusal to properly treat her Celiac Disease. On July 30, 2018, Centurion settled its share of the claims for \$280,000. The estate was represented by Albuquerque attorneys Matthew L. Garcia and Jonathan J. Guss. *See: Korte v. Corizon Health, Inc.*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No D-101-CV-2018-01141. Again, the complaint did not name medical providers allegedly responsible, so *PLN* was unable to research their license status.

**Efrain Perez Martinez**

Efrain Perez Martinez, 39, was confined at PNM in September 2018, when he submitted a series of health services request forms complaining to Centurion staff that he suffered from intense heartburn, which was not ameliorated by over-the-counter medication. By the time he saw a PA on October 8, 2018, he had lost weight and was visibly ill—so lethargic that he could barely walk—yet the PA gave him only Tums. The prisoner's condition did not improve, his face still pale, his cheeks dramatically sunken, his body mass shrunken. By November 23, 2018, he was barely eating and vomiting whenever he did. He also experienced extreme chest pain, but his requests for help went ignored.

On November 26, 2018, Martinez collapsed in his housing unit and was transferred to the infirmary. He was vomiting yellow liquid and had not eaten in four days. Two days later, on November 28, 2018, he was taken to a hospital, where he died of infective endocarditis 45 days later, on January 11, 2019. His estate sued Centurion and several employees in both state and federal court, alleging that they ignored obvious signs he was suffering from a serious medical condition and that their failure to properly treat him lead to his otherwise preventable death.

The federal court for the District of New Mexico denied Defendants' motion to dismiss Plaintiff's Eighth and Fourteenth Amendment claims on June 16, 2023. *See: Mathis v. Centurion Corr. Healthcare of N.M., LLC*, 2023 U.S. Dist. LEXIS 104921 (D.N.M.). Centurion then settled both cases for \$275,000 on March 20, 2024. The estate was represented by attorneys with Collins & Collins and Guebert Gentile & Piazza, P.C. in Albuquerque. *See: Mathis v. Centurion Corr. Healthcare of N.M., LLC*, USDC (D.N.M.), Case No. 1:22-cv-00020; and N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2020-00488.

Centurion medical providers named in the suits were Dr. Gary French, PA Ellen Wittman, and Registered Nurse (RN) Erin Forsberg. According to the state Medical Board, Dr. French and PA Wittman have active medical licenses with no history of disciplinary action. The same is true of Forsberg's RN license, according to the state Board of Nursing.

**Ronny Pacheco**

On November 28, 2021, Ronny Pacheco fatally hanged himself while in non-medical segregation at Bernalillo County's Metropolitan Detention Center (MDC), where Centurion and its employees were responsible for medical and mental health treatment. Before his suicide, the 34-year-old had been screaming for someone to help him. But Centurion staff ignored his pleas—despite an intake screening form they completed just three days before that indicated he was at a high risk of suicide, not least due to his own admission that he was suicidal. His estate filed suit against Centurion and MHM Health Professionals, alleging that they failed to protect him from an obvious risk of suicide. On February 6, 2024, Centurion settled the case for \$221,000.

The complaint noted that in-custody deaths at MDC had skyrocketed under Centurion's watch: Eight prisoners died in just a five-month period in 2021, compared to 10 deaths during the preceding four years. On the day Pacheco died, so did another prisoner in medical observation. The complaint did not identify the prisoner nor a cause of death. But it blamed the spike in prisoner deaths on Centurion's inadequate staffing and poor training protocols. Pacheco's estate was represented by attorneys Laura Schauer Ives and Alyssa D. Quijano of Ives & Flores, PA in Albuquerque. *See: Salazar v. Centurion Detention Health Services, LLC*, N.M. 2nd Jud. Dist. (Bernalillo Cty.), Case No. D-202-CV-2021-06297.

Centurion medical staffers listed in the

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complaint were Dr. Pierre-Yves Rouzaud and Nurses Anthony Spencer and Alma Babbitt. The state Medical Board indicated that Dr. Rouzaud has an active medical license with no disciplinary history. The state Board of Nursing indicated that Spencer's nursing license is also active with no history of discipline. There is no record that Babbitt ever held a New Mexico nursing license.

### **Jonathan Andrew Garcia**

When Jonathan Andrew Garcia died of a heart attack at PNM on February 20, 2017, his chronic heart condition was well-known to NMCD and Centurion medical staff from diagnosis and treatment he received over the course of his imprisonment. In the days leading up to his death, Garcia experienced severe symptoms from his heart condition. But allegedly there was no medical staff available to evaluate him; he was also not getting his prescribed medications. Guards eventually decided to transport him to a local hospital, but he collapsed and died of a heart attack before he could make it out of the hospital parking lot. He had just turned 30.

Garcia's estate sued NMCD, Centurion and various employees in both state and federal court for failing to provide the prisoner access to medical care prior to his death. On August 17, 2023, Centurion settled the case for \$200,000. The estate was represented by attorney Joseph M. Romero of Albuquerque. *See: Grano v. N.M.*, USDC (D.N.M.), Case No. 1:20-cv-00147; and *Grano v. Penitentiary of N.M.*, N.M. 4th Jud. Dist. (San Miguel Cty.), Case No. D-412-CV-2019-00073. Centurion medical staffers listed in the complaints were Dr. Andrade-Barraza (see above) and RN Lorella Turpin. According to the state Board of Nursing, Turpin holds an active RN license with no disciplinary history.

### **Adonus R. Encinias**

When incarcerated at CNMCF on February 21, 2018, Adonus R. Encinias was taking multiple psychotropic medications for mood disorders, including severe depression, and he was court-ordered to participate in the prison's Residential Drug Abuse Program. In March 2018, he was seen by a prison psychiatrist who diagnosed substance abuse disorder along with anxiety, post-traumatic stress disorder and psychosis. The psychiatrist also noted that Encinias was experiencing anxiety, depression, irrita-

bility, visual and auditory hallucinations and insomnia. The psychiatrist's treatment plan included both medication and participation in group therapy.

Centurion doctors failed to provide medication or counseling though. Encinias' mental health continued to deteriorate over his nine months at CNMCF, resulting in 12 separate stints in segregation. With each trip to solitary, he became more suicidal, but his requests for help went ignored. Instead, he was transferred to the Northeast New Mexico Correctional Facility (NENMCF). There some Centurion staffers again recommended therapy, but Encinias was never enrolled. In May 2018, the prisoner repeatedly requested assistance from mental health staff, stating that he was depressed and suicidal. He was thrown in medical segregation and eventually transferred to Guadalupe County Correctional Facility (GCCF), where Centurion staffers again made note of his condition and the standing recommendation that he receive counseling. But no action was taken other than scheduling a follow-up evaluation in 180 days. Encinias continued submitting requests for help and to participate in court-ordered therapy without success until he was transferred back to CNMCF on June 5, 2018.

In July 2018, he became agitated when Centurion staff declared that he would not receive therapy at CNMCF, and he was placed on suicide watch. Medical staff could have referred Encinias to the Mental Health Treatment Center, NMCD's psychiatric unit, where he would have access to therapy. But he was instead taken off suicide watch and was not seen by psychiatric staff—despite claiming to have a demon inside him—and on December 2, 2018, his corpse was found hanging in his cell. He was just 22.

Encinias' family filed suit in state and federal court, alleging that Centurion and MHM Health Professionals failed to provide him with adequate mental health treatment which resulted in his suicide. On March 29 and October 17, 2022, Centurion entered into two settlement agreements to resolve the cases, agreeing to pay the estate a total of \$150,001. Plaintiffs' settlement was likely limited because their federal civil rights claims went nowhere; the federal court for the District of New Mexico ultimately granted Defendants qualified immunity on March 2, 2023, which the U.S. Court of Appeals for the Tenth Circuit affirmed on October 3, 2024. *See: Encinias*

*v. N.M. Corr. Dep't*, 2024 U.S. App. LEXIS 25010 (10th Cir.).

The estate was represented by attorneys with Collins & Collins and Santa Fe attorney Richard A. Sandoval of the Sandoval Firm. *See: Encinias v. N.M. Corr. Dep't*, USDC (D.N.M.), Case No. 1:21-cv-01145; and *Encinias v. Cen. N.M. Corr. Facility*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2019-00720.

Centurion staffers listed in the complaints included Dr. Andrade-Barraza, as well as Drs. Digna Christina Cruz-Grost, James Dillon and Javier Vera, plus social workers Marcia Esquivel and Tammy D. Ali-Carr. According to the state Medical Board, the doctors hold active medical licenses with no disciplinary history, except Dr. Andrade-Barraza (see above). PLN was unable to verify the license status, if any, of the social workers.

### **Norman Deherrera**

In 2017, Norman Deherrera was a prisoner at Northwest New Mexico Correctional Facility (NWNMCF) in Grants. Centurion medical staffers knew that he had chronic insulin-dependent diabetes mellitus and was

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receiving treatment with insulin and oral hypoglycemic drugs. But they prescribed and provided the wrong medication for his diabetes, causing diabetic peripheral neuropathy and chronic erosive Gastroesophageal reflux disease. Several of his toes became infected and had to be amputated. Following his release from prison, Deherrera filed suit against Centurion; the case was still pending when he died on May 22, 2021.

After the trial court allowed the medical malpractice suit to be converted to a wrongful death action, Centurion agreed to settle the case on December 21, 2022, paying \$50,000 to Deherrera's estate, which was represented by attorneys with Collins & Collins and Guebert Gentile & Piazza. See: *Deherrera v. Centurion Corr. Healthcare of N.M., LLC*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2020-02549. Centurion Dr. Beaven and Dr. Eduardo Castrejon were named in the complaint. Dr. Beaven's license lapsed in July 2024 (see above). According to the state Medical Board, Dr. Castrejon has an active medical license with no disciplinary history.

**Phillip Anthony Trujillo**

A "long-term" prisoner at Southern New Mexico Correctional Facility (SNMCF) in Doña Ana County, Phillip Anthony Trujillo suffered mental health issues that were known to Centurion staffers, who also knew his required regular treatment and medication. But they allegedly failed to properly maintain, administer and monitor his treatments before he fatally hanged himself on December 2, 2016. He was 36.

After Trujillo's estate sued Centurion and NMCD officials for his wrongful death,

Defendants removed the case from state court to federal court in February 2019. Centurion then settled the suit on September 5, 2019, for \$30,000. The estate was represented by Albuquerque attorney Dathan L. Weems. See: *Romero v. State*, USDC (D.N.M.), Case No. 2:19-cv-00108. The complaint named no Centurion employee whose license could be researched.

**Medical Malpractice Settlements**

**Gabriel Miera**

On December 3, 2018, while a prisoner at PNM, 32-year-old Gabriel Miera went to the infirmary complaining of extreme pain in his neck and upper back. Centurion medical staff provided muscle rub and over-the-counter pain medication. But Miera's condition continued to deteriorate over the next month until he was confined to a wheelchair, reporting excruciating pain. Centurion staff allegedly failed to order medically necessary imaging and then falsified medical records to hide the seriousness of his condition. Medical staff also allegedly ignored clear evidence that he was suffering from a spinal epidural abscess.

Finally, on January 2, 2019, Miera was taken to a local hospital, where doctors quickly determined he had cervical osteomyelitis and epidural abscess. Cervical osteomyelitis is an infection in the cervical bone that requires surgery and strong intravenous antibiotics; an epidural abscess is an infection between the spinal bones and lining membrane of the spinal cord, which requires immediate antibiotics and often surgery to remove or drain the abscess. Doctors noted that Miera's condition was serious due to "delayed diagnosis," and that the infections "went largely unchecked given his incarceration status."

The prisoner underwent several surgeries to eradicate the infection, which left him with severe mobility issues and pain. Hospital doctors recommended rehabilitative therapy and pain medication. After just 36 days under their care though, Miera was transferred to CNMCF. Centurion medical staff there failed to follow the hospital doctors' aftercare plan. The prisoner was left with "significant motor and sensory deficits," affecting his ability to walk or lift anything. When he was released from prison on December 15, 2021, his medical condition left him unable to find and maintain employment.

Miera sued Centurion and its employees for medical neglect and deliberate indifference to his serious medical needs in both state and federal court. On February 8, 2022, Centurion settled the cases for \$487,500. Miera was represented by attorneys with Collins & Collins and Guebert Bruckner Gentile. See: *Miera v. Centurion Corr. Healthcare of N.M., LLC*, USDC (D.N.M.), Case No. 1:21-cv-01227; and N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2019-00989.

Centurion medical staff listed in the complaints included PA Wittman and Drs. Andrade-Barraza and French (see above). Also included were Dr. Benjamin Huang and Nurse Kathy Bustos. According to the state Medical Board, Dr. Huang has an active license with no disciplinary history, though he reportedly works now as a "Telemedicine Physician" in California. No records for Bustos were located on the New Mexico Board of Nursing website.

**Andrew Robinson**

In 2019, 25-year-old Andrew Robinson was imprisoned at LCCF, with a medical history of intravenous drug abuse that left him susceptible to infections, including osteomyelitis. Beginning on August 7, 2019, he reported significant back pain and difficulty with daily activities to Centurion staff. Despite clear warning signs that he suffered from a serious infection, he was allegedly instead treated like a "drug seeking malingerer." Two months later, on October 8, 2019, he was finally taken to UNM Hospital for treatment of a severe infection. He remained there for 11 days before a transfer to the Long-Term Care Unit at CNMCF on October 19, 2019. However, Centurion staff there allegedly failed to provide proper follow-up care, and he was taken back to the hospital on November 10, 2019, after developing sepsis.

Following release from custody, Robinson sued Centurion in federal court for showing deliberate indifference to his serious medical needs. The complaint detailed Centurion's long history of medical abuse, including reference to many of the cases outlined in this article, also citing Centurion's practice of delaying taking prisoners to outside hospitals unless staffers believe that the prisoner will remain there for more than 24 hours—allegedly because its contact with NMCD does not require Centurion to pay for hospital stays exceeding 24 hours, creating a financial incentive to delay

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such transfers. The complaint also noted Centurion's alleged practice of destroying medical records and concealing the names of its medical personnel.

Centurion settled the case on July 24, 2024, for \$348,750. Robinson was represented by attorneys with Collins & Collins and the Sandoval Firm. *See: Robinson v. Centurion Corr. Healthcare of N.M., LLC*, USDC (D.N.M.), Case No. 1:22-cv-00748. The only Centurion employee directly involved in Robinson's treatment who was named in his complaint was Nurse Aiste Chamblin. According to the state Board of Nursing, she holds active RN and APRN-CNP licenses with no disciplinary history. Other "Doe" medical providers were not identified, since Centurion settled the case prior to discovery.

### Todd Jager

While Todd Jager was confined at SNMCF on May 31, 2016, another prisoner punched him in the face, shattering his left eye socket. Centurion medical staff delayed referring Jager to a hospital for evaluation and surgical treatment until December 1, 2016—seven months after his injury. The delay left surgeons only two options: They could refracture the bones in the prisoner's face or install a facial implant to repair the injury. Both procedures involved substantial risk of complications. Having waited so long already, Jager refused to undergo either procedure, since he was scheduled for release in a few months. Following release, he underwent surgery, but doctors were not able to completely correct his disfigurement.

Jager filed suit in both state and federal court, alleging that his facial injuries were inadequately treated by Centurion staff, resulting in disfigurement and loss of his opportunity for a better outcome. Centurion settled the case for \$262,500 on December 29, 2020. Jager was represented by attorneys Margaret Strickland and Mollie McGraw of McGraw & Strickland, LLC, in Las Cruces. *See: Jager v. Centurion Corr. Healthcare of N.M.*, USDC (D.N.M.), Case No. 2:18-cv-00743; and N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2020-00358. Centurion staff named in the complaints included Drs. Andrade-Barraza and Castrejon (see above), as well as Nurses Sheri Pierce and Lilian A. Klinger. According to the state Board of Nursing, both have active RN licenses with no disciplinary history.

### Randy Dunn

Paraplegic since a bout of spinal cancer in August 2010, former CNMCF nurse Randy Dunn was convicted on child sex abuse charges and imprisoned in its Long-Term Care Unit in February 2016. When he arrived, he could still sit up, turn over and remain in a chair or transfer himself to and from his wheelchair. Though he suffered from spasms, they were controlled by medication; he could also feed himself, bathe in a shower chair and perform other basic daily activities with little or no assistance.

When Centurion took over NMCD healthcare a few months after Dunn's arrival, his medication was reduced and his catheter wasn't cleaned—part of a pattern of failure to provide proper care that he blamed on being imprisoned where he once worked. Though he suffered severe, debilitating infections, he was generally ignored until his condition seriously deteriorated. On numerous occasions, he was left to lie in his own waste for days on end.

Dunn eventually developed sepsis from the unsanitary catheter. He also suffered from chronic constipation and fecal impact. Both conditions caused serious pain and discomfort. Yet Centurion medical staff again ignored his worsening condition for weeks, despite increasing fever. When finally transported to a hospital, Dunn had a fever of 107.2 degrees Fahrenheit and tachycardia; he was also spasmodic. Hospital doctors determined that his hips had undergone a destructive process caused

by repeated and severe spasms which had completely eroded the necks of his femurs, fractured the femoral heads and left an infected pocket of fluid around the right femur. Infectious disease specialists treated him for a potentially deadly bone infection, and he had to undergo surgery to address the abscess. He also required surgery to remove bone fragments from his legs.

Dunn sued Centurion and its employees for medical negligence in state court, alleging that the inadequate care he received caused him severe pain, terrifying spasms, physical disfigurement and disability, as well as unnecessary hospitalizations, surgeries, life-threatening infections, anxiety, grief, terror and severe emotional distress. On June 15, 2020, Centurion settled the case for \$220,000. Dunn was represented Albuquerque attorneys Ryan J. Villa, Richelle Anderson and Justine Fox-Young. *See: Dunn v. Centurion Corr. Healthcare of New Mexico, LLC*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2018-03288. Centurion medical personnel listed in the complaint were Dr. Beaven (see above) and Nurse Lindsey Selva; no licensing information or disciplinary records could be located for her.

### Shelly Marler

In 2017, Shelly Marler was a prisoner at Springer Correctional Center (SCC) when she advised Centurion staffers that she had been experiencing abdominal pain for about 10 days. They noted that she had a history of



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Hep-C and diverticulitis, an inflammation or infection in one or more small pouches of the digestive tract. Despite this history, Marler was given only a laxative. Over the next several months, she continued experiencing gastrointestinal problems; by late-April 2017, she began throwing up, experiencing diarrhea and was unable to eat. But she still got nothing more than a laxative. Her condition worsened until her fever soared and she was barely able to stand. She was also experiencing significant abdominal pain. When she was finally transported to a local hospital, physicians there soon realized she had a ruptured colon and performed emergency surgery.

Five days later, Marler was transported back to prison with instructions to return to the hospital for post-operative care. But Centurion employees canceled the appointment and refused to transport her. Her incision then ruptured—during a sneeze—and her intestines fell out into her hands. She was returned to the hospital, where physicians observed that Centurion

medical staff had not provided proper after-surgery care; as a result, Marler developed a significant infection, which is what caused her incision to rupture. She underwent two additional surgeries and then sued Centurion and several of its employees for medical malpractice in state court. On January 30, 2023, Centurion settled the case for \$200,000. Marler was represented by attorneys with Coyte Law. *See: Marler v. Centurion Corr. Healthcare of N.M., LLC*, N.M. 8th Jud. Dist. (Colfax Cty.), Case No. D-809-CV-2019-00068.

Dr. Martin Trujillo and Nurses Dolores Romero and Shantelle Gallegos were the Centurion medical personnel listed in the complaint. According to the state Medical Board, Dr. Trujillo still has an active medical license. His only disciplinary action came in 1995, when his license was limited because of his history of substance abuse; those restrictions were lifted in 1999. *See: In re Trujillo, M.D.*, N.M. Med. Bd., Case No. 95-005. The state Board of Nursing indicated that Romero and Gallegos have active RN licenses with no disciplinary history. Centurion administrative employee Anna Chavez was also named in the complaint,

but there is no record of a medical license for her with either board.

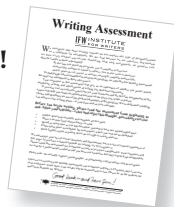
**Jose Varela**

While incarcerated at Grants Prison on September 27, 2017, Jose Varela slipped on grease on the floor near the infirmary. Centurion medical staffers who treated him noted an obvious deformity to his right leg as a result of the fall. He was transported to a local hospital, where it was determined that he had a comminuted displaced fracture of the right patella (kneecap). Hospital doctors recommended an immediate follow-up with an orthopedic surgeon. But Centurion delayed a consultation for nearly two months. As a result, the knee healed incorrectly.

After release from prison, Varela underwent surgery in Texas, but it was not possible to fully restore his mobility. He filed suit in New Mexico state court, accusing Centurion of negligence in delaying orthopedic consultation and follow-up surgery. On December 14, 2020, Centurion settled the case for \$130,000. Varela was represented by Espanola attorney Sheri A. Raphaelson. *See: Varela v. Centurion Corr. Healthcare of N.M., LLC*, N.M. 1st



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Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2019-01789. The complaint named no Centurion employee whose license could be researched.

### Gerald Wilson

Gerald Wilson was confined at GCCF on May 10, 2018, when he requested health services for extreme low back pain. He was transported to the infirmary in a wheelchair, but he received only Acetaminophen, a warm compress and advice to exercise. His condition continued to deteriorate, but he was not sent to a hospital for 54 days. When he was finally taken there on July 3, 2018, doctors found that he had a serious spinal infection resulting from IV drug use. Wilson underwent surgery, and a portion of his spine was fused.

For “permanent and debilitating spinal injuries” he suffered due to the delayed care, Wilson sued Centurion and its employees in state court for medical negligence. Centurion settled the case on March 31, 2021, for \$125,000. He was another client of Collins & Collins and Guebert Bruckner Gentile. *See: Wilson v. Centurion Corr. Healthcare of N.M., LLC*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2019-00691. The only Centurion medical employee named in the complaint was Dr. Andrade-Barraza (see above).

### Jerry Sisneros

Fifty-two-year-old Jerry Sisneros was confined at NWNMCF from October 2017 to April 3, 2018. Not long before his release, he complained to Centurion staff on March 16, 2018, of severe lower back pain and difficulty walking. He also reported burning dysuria, chills and nausea. His complaints went mostly ignored. When released from prison, he went immediately on April 4, 2018, to a hospital emergency room, where doctors discovered he had been suffering from severe spinal infections, or discitis. Sisneros spent his first 35 days of freedom in a hospital and nursing home as the infection was slowly brought under control.

He then sued Centurion and its employees for medical negligence. Centurion settled the case for \$110,000 on February 11, 2021. Sisneros was represented by attorneys with Collins & Collins and Guebert Bruckner Gentile. *See: Sisneros vs. Centurion Corr. Healthcare of N.M., LLC*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2019-00598. The complaint named no

Centurion employee whose license could be researched.

### Michael Padilla

While held by NMCD between 2017 and 2019, Michael Padilla contracted a rare MRSA infection. The heel of his foot had previously been partially amputated due to a serious infection, and Centurion allegedly failed to properly care for the wound while he was in custody; the resulting infection caused significant pain and suffering. Following his release from prison, Padilla began seeing an infection specialist, who was attempting to bring the infection under control—without amputating his leg—when the former prisoner filed two lawsuits against Centurion for medical negligence.

Sadly, Padilla died while the suits were pending. Centurion settled one by paying \$100,000 to the estate, which was also represented by attorneys with Collins & Collins and Guebert Bruckner Gentile. *See: Padilla v. Centurion Corr. Healthcare of N.M., LLC*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2020-02554; and Case No. D-101-CV-2021-01909. Centurion medical staffers named in the suits were Dr. Donna L. Deming and Nurse T. Romero Peralta. According to the state Medical Board, Dr. Deming holds an active medical license with no disciplinary history. *PLN* was unable to locate licensing information for Peralta.

### Dominick Mora-Solis

Between 2012 and 2019, Dominick Mora-Solis was a prisoner at NWNMCF. He is also paraplegic as the result of a gunshot wound. Centurion medical staff allegedly failed to properly care for him, and he developed a Stage IV pressure ulcer, Sepsis, Acute Thrombocytosis, acute pyelonephritis and acute chronic osteomyelitis, which put him in the hospital. Pressure ulcers are considered “never events” in the medical community, especially those as serious as his: 4 cm deep with visible bone.



Mora-Solis filed a medical negligence claim in state court against Centurion and its employees. On July 12, 2021, Centurion settled the suit for \$100,000. He was also represented by attorneys with Collins & Collins and Guebert Bruckner Gentile. *See: Mora-Solis v. Centurion Corr. Healthcare of N.M., LLC*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2019-00627. Centurion Dr. Michele Cox was named

in the complaint, along with Dr. Andrade-Barraza (see above). According to the state Medical Board, Dr. Cox has an active medical license with no history of discipline.

### Christopher Pino

From 2018 to 2021, Christopher Pino was a prisoner at CNMCF and NWNMCF. With a history of septic arthritis in his left knee, he had undergone two prior surgeries, Centurion staff knew. But after he reported significant left knee pain and an inability to walk in 2018, Centurion staff allowed the symptoms to persist for nearly a year. Pino developed fever, nausea and swelling of the knee before he was finally transported to a hospital on March 19, 2019. Doctors there quickly diagnosed deep vein thrombosis, cellulitis, arthritis, hematoma, septic arthritis and an abscess. The infection was so severe that open-knee surgery was needed to eradicate it. The infection also resulted in organ damage with acute kidney injury.

Following his release from prison, Pino sued Centurion and its employees for medical negligence, settling the case for \$100,000 on July 6, 2023. His case was also handled by attorneys with Collins & Collins and Guebert Bruckner Gentile. *See: Pino v. Centurion Corr. Healthcare of N.M., LLC*, N.M. 1st Jud. Dist. Ct. (Santa Fe Cty.), Case No. D-101-CV-2021-00477. Centurion staffers named in the complaint were Drs. Andrade-Barraza and Cox (see above), plus Dr. Matthew Rounseville. According to

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the state Medical Board, Dr. Rounseville's license was allowed to lapse on July 1, 2023, with no history of disciplinary activity.

**Shavis Wright**

In 2016, NENMCF prisoner Shavis Wright sought treatment from Centurion medical staff for dizziness and right-sided weakness and partial paralysis. His condition was ignored for nearly a month before he received treatment for ischemic stroke. He then sued Centurion and several of employees in state court for medical negligence. On April 4, 2018, Centurion settled the case for \$100,000. Wright was represented by attorney Stephen F. Lawless of Albuquerque. *See: Wright v. Centurion Corr. Healthcare of N.M., LLC*, N.M. 13th Jud. Dist. (Valencia Cty.), Case No. D-1314-CV- 2017-01064. Centurion medical employees named in the complaint were RNs Preston E. Farnum and Michelle A. Paquin. Farnum's RN license expired on August 1, 2018; Paquin's RN and APRN-CNP licenses expired on December 31, 2023. Neither had a history of discipline.

**Michael Jaramillo**

Michael Jaramillo was an NMCD prisoner from November 18, 2014, to January 28, 2019. Despite his long history of Diabetes Mellitus (DM) type II, Centurion medical staff failed to provide him with diabetic medical shoes; as a result, he developed sores on his left foot that became infected. He was taken to an emergency room, where one of his toes was partially amputated. Centurion staff then allegedly failed to provide appropriate surgical aftercare, resulting in more needless suffering.

The complaint noted that Jaramillo

was emailing his attorney, Parrish Collins, while incarcerated to report the inadequate care he received, even providing photographic evidence. Counsel promptly contacted Centurion and requested that medical staff provide appropriate care, but even these requests went ignored. Jaramillo filed suit against Centurion following his release from prison. On November 3, 2022, Centurion settled the case for \$75,000. Unusually, the settlement agreement specifically did *not* resolve claims against individual NMCD defendants or private prison operator CoreCivic, Inc. Jaramillo was represented by attorneys with Collins & Collins and Guebert Bruckner Gentile. *See: Jaramillo v. Centurion Corr. Healthcare of N.M., LLC*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2019-02934.

Centurion employees named in the suit were James Gonzales, M.D., Katherine Allen, FNP, and Danielle Palumbo, LPN. According to the state Board of Medicine, Dr. Gonzales has an active medical license with no disciplinary history. The state Board of Nursing indicated that Allen's license expired on September 30, 2024, while Palumbo has an active LPN license with no disciplinary history.

**Calvin Finch**

An NMCD prisoner from October 13, 2016, to April 29, 2017, 58-year-old Calvin Finch had a number of medical conditions that left him susceptible to infection. He reported low back pain, fever and chills, but Centurion employees allowed these symptoms to persist for six months before transporting him to an emergency room. Doctors there quickly determined that Finch had acute lumbar discitis and an epidural abscess. They treated the infection with IV antibiotics and released him to NMCD custody after 13 days; yet Centurion employees again failed to provide proper care, so he was returned to the hospital for another 11 days

After release from prison, Finch sued Centurion, which settled the case for \$65,000 on February 23, 2021. Finch was represented by attorneys with Collins & Collins. *See: Finch v. Centurion Corr. Healthcare of N.M., LLC*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2019-00778. The Centurion employee named in the suit, Dr. Omar Izquierdo-Frau, has an active medical license with no disciplinary history, according to the state Board of Medicine.

**Felix Martinez**

While Felix Martinez was a prisoner at LCCF, he developed a serious infection on his spine that Centurion employees allegedly ignored for many months. When they finally performed diagnostic testing, he was rushed by ambulance to a local hospital and then transported by helicopter to UNM Hospital for emergency spinal surgery. However, the infection eroded and deformed Martinez's spine, causing permanent pain and disability.

He sued Centurion and its employees following release from prison. Centurion settled the case on March 24, 2021, for \$65,000. Martinez was represented by Santa Fe attorney Paul D. Mannick. *See: Martinez v. Centurion Corr. Healthcare of N.M., LLC*, N.M. 11th Jud. Dist. (San Juan Cty.), Case No. D-1116-CV-2019-00060. Centurion Dr. Birnbaum was named in the complaint (see above).

**George Yribe**

Forty-six-year-old George Yribe was a prisoner at NWNMCF from October 2017 to March 14, 2018. Centurion staff allegedly failed to take appropriate measures to prevent him from developing a spinal infection and then ignored obvious signs when he developed an abscess on his spine. Yribe was eventually taken to a hospital after months spent in excruciating pain with a high fever. The abscess required surgery and IV medication.

Yribe sued Centurion and its employees following his release from prison. On May 27, 2021, Centurion settled the case for \$65,000. He was represented by attorneys with Collins & Collins, and Guebert Bruckner Gentile. *See: Yribe v. Centurion Corr. Healthcare of N.M., LLC*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2019-00633. The complaint named Centurion Drs. Andrade-Barraza and Izquierdo-Frau (see above).

**Denton Thomason**

In June 2016, CNMCF prisoner Denton Thomason reported to Centurion medical staff that he had experienced uncontrollable jerking in his shoulders and upper extremities for approximately three years. But rather than send him to a specialist for proper diagnosis, a Centurion psychiatrist prescribed him Sinemet, a powerful drug used for treating Parkinson's disease. The medicine caused Thomason to suffer from

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extreme nausea, vomiting and rectal bleeding before he lost consciousness, fell down and sustained injury.

Thomason was transported to a local hospital where it was quickly determined that he did not have Parkinson's disease and never should have received Sinemet. He was hospitalized for several days; doctors recommended that Centurion cease

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Sinemet and send him to a specialist for proper diagnosis. When that didn't happen, Thomason sued Centurion and its psychiatrist in federal court, alleging deliberate indifference to his serious medical needs. Centurion settled the case on November 10, 2017, for \$50,000. Thomason was represented by Albuquerque attorneys Alexandra Smith and Frances Crockett Carpenter. *See: Thomason v. Centurion Corr. Healthcare of N.M., LLC*, USDC (D.N.M.), Case No. 1:17-cv-00659. Centurion Dr. Guillermo Pezzarossi was named in the complaint. According to the state Board of Medicine, his medical license was inactive as of July 1, 2018. He was disciplined in 2001, but the order was not available.

### **Other Settlements**

#### **Timothy Harlan**

In 2014, Timothy Harlan was incarcerated at the NWNMCF when he slipped and fell in the shower, fracturing his wrist. The fracture was not diagnosed or treated for over a year. After he finally received surgery to rebreak and repair his wrist, medical staff allegedly failed to provide appropriate follow-up care. Harlan endured significant pain and suffering before and after the surgery. But a Centurion regional director wrote that "[t]here is absolutely no way we can send the patient twice a week for 8 weeks to Physical Therapy."

Since his treatment spanned NMCD contracts with Corizon Health and Centurion, Harlan sued both in state court. On January 19, 2019, Centurion settled its share of the case for \$35,000; the agreement did not release Corizon Health or any of its employees for conduct prior to the end of the firm's contract on June 1, 2016. Harlan was represented by Albuquerque attorney Carey C. Bhalla. *See: Harlan v. Corizon Health, Inc.*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2017-02436.

Centurion employees named in the complaint were Nurses Patricia Thompson and Jennifer Marks, as well as Dr. Boynton (see above). According to the state Board of Nursing, Marks's RN license expired in 2016, but Thompson's APRN-CNP license is active; neither had a disciplinary history.

#### **Stephanie Montano**

Thirty-seven-year-old Stephanie Montano was confined at SCC on May 9, 2018. Beginning the following month, she complained of symptoms consistent with

pelvic organ prolapse, and she experienced abnormal uterine bleeding. But Centurion medical staff denied her a referral to see an OB/GYN. Her lawyers wrote to NMCD and Centurion, demanding that she be seen by a specialist, and they included affidavits from independent medical experts. Still nothing was done. Montano's medical condition was never treated before her incarceration ended in February 2020.

She then filed suit for medical malpractice in state court against Centurion, NMCD and various employees. On September 24, 2021, Centurion settled the case for \$32,500. Montano was represented by attorneys Lalita Moskowitz and Leon Howard of the American Civil Liberties Union of New Mexico in Albuquerque. *See: S.M. v. Centurion Corr. Healthcare of N.M., LLC*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2019-02326.

Centurion employees named in the complaint were Dr. Trujillo (see above) and Nurse Marcia Hefker. According to the state Board of Nursing, Hefker has active APRN-CNP and RN licenses with no disciplinary history.

#### **Oswaldo Suarez**

In 2019, Oswaldo Suarez was a prisoner at LCCF. With a seizure disorder requiring medication, he was supposed to be assigned to a lower bunk. But Centurion staff allegedly stopped his seizure medication without explanation and failed to inform guards of his lower bunk status. On April 27, 2019, Suarez had a seizure and fell from his top bunk. He bit his tongue, had two black eyes, a cut below one eye and injuries to his jaw and mouth as a result. Centurion allegedly then failed to properly treat these injuries and left him assigned to a top bunk. Letters from his attorney went ignored. Unsurprisingly, Suarez had another seizure and fell again from his top bunk on June 5, 2019, this time injuring his foot and biting a chunk out of his tongue.

Following release from custody in April 2020, Suarez filed suit in federal court accusing LCCF operator The GEO Group, Inc., as well as Centurion and its employees, of deliberate indifference to his serious medical needs. On October 21, 2020, Centurion settled the case for \$32,500. Suarez was represented by attorney Carpenter and her Law Office of Frances Crockett, LLC, in Albuquerque. *See: Suarez v. The Geo Group, Inc.*, USDC (D.N.M.), Case No.

2:20-cv-00541. The complaint named no Centurion employee whose license could be researched.

### **Stephen Molina**

After Stephen Molina suffered a broken jaw from an assault by another prisoner at CNMCF in 2018, Centurion medical staff allegedly failed to treat him for over two months. He sued Centurion in state court, alleging medical negligence. On April 14, 2021, Centurion settled the case for \$27,500. Molina was represented by attorney Stephen F. Lawless. *See: Molina v. Centurion Corr. Healthcare of N.M., LLC*, N.M. 2nd Jud. Dist. (Bernalillo Cty.), Case No. D-202-CV-2020-00287. Centurion dentist Dennis Jackson was named in the complaint; however, *PLN* was unable to verify the status of his medical license.

### **Alonzo Gonzales**

Alonzo Gonzales fell and fractured an elbow while playing basketball at a NMCD lockup on January 7, 2019. But Centurion doctors allegedly failed to diagnose and treat the injury for over four months. Gonzales experienced prolonged and unnecessary pain and disability as a result. He sued Centurion following his release from prison. On April 29, 2022, Centurion settled the case for \$25,000.00. He was also

represented by attorney Lawless. *See: Gonzales v. Centurion Corr. Healthcare of N.M., LLC*, N.M. 2nd Jud. Dist. (Bernalillo Cty.), Case No. D-202-CV-2021-02399. The complaint named no Centurion employee whose license could be researched.

### **Monica Lujan**

In 2018, WNMCF prisoner Monica Lujan was summoned to the infirmary, although she had not requested to see a doctor. While there, she requested a stool softener from Centurion Dr. William Eyzaguirre. He stated that she needed a rectal exam; when she submitted, he forced his fingers inside her vagina. Nurse Nizohonie Sarver immediately reported the incident, and the prisoner was taken to a local hospital for an examination, which confirmed she had been sexually assaulted. Lujan then sued Dr. Eyzaguirre, NMCD and Centurion.

The state district court accepted Plaintiff's filings and motions through November 2020 and then did nothing until later in the following year—when it granted Defendants' motion to dismiss for failure to prosecute. The Court of Appeals of New Mexico reversed that decision on June 30, 2022. *See: Lujan v. Eyzaguirre*, 2022 N.M. App. Unpub. LEXIS 253 (Ct. App.). Centurion then settled Lujan's claims against the firm on May 30, 2024, for \$25,000; however, the agreement did not resolve her claims against Dr. Eyzaguirre or NMCD, which remain pending. She is represented by attorney Anthony J. Ayala of Albuquerque. *See: Lujan v. Eyzaguirre*, N.M. 13th Jud. Dist. (Cibola Cty.), Case No. D-1333-CV-2018-00053.

According to the state Medical Board, Dr. Eyzaguirre's medical license lapsed on July 1, 2020. He had no disciplinary history; he was also apparently never criminally charged for Lujan's sexual assault.

### **Christopher Pierce**

Christopher Pierce was incarcerated at SNMCF beginning in April 2016. Though he was diagnosed with schizophrenia and bi-polar disorder, medical personnel failed to provide Clonazepam. Instead, they gave him some other medication. When Pierce complained, medical staff first said the manufacturer changed and then claimed he had switched out the pills himself.

Without medication, the prisoner unsurprisingly exhibited erratic behavior, cutting himself repeatedly and becoming sick

from the switch in his medication. He was deprived of his correct medication for nearly five months. After Centurion took over NMCD healthcare from Corizon Health, nurse Sheri R. Pierce (no relation) examined the package containing his pills and determined someone in the medical unit had split open the sealed packaging and swapped out the Clonazepam. Police investigated but were unable to identify who was responsible.

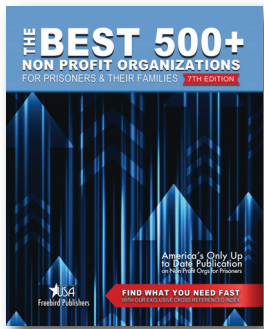
Pierce filed suit in state court alleging both constitutional and state law tort claims. On November 13, 2019, Centurion settled the case for \$17,500. The prisoner was represented by attorneys Steven K. Sanders of Steven K. Sanders & Assoc., LLC in Albuquerque and Ed Meintzer of the Meintzer Law Firm in Los Lunas. *See: Pierce v. Corizon Health, Inc.*, N.M. 3rd Jud. Dist. (Doña Ana Cty.), Case No. D-307-CV-2018-01563. The complaint named but did not accuse Nurse Pierce (see above); no other Centurion employee was named whose license could be researched.

### **Adrian Sedillo**

While confined at NENMCF, Adrian Sedillo slipped and fell on his way to the shower in his housing unit on July 23, 2018. He injured his back, but Centurion employees allegedly ignored his requests for medical assistance and refused to transport him to a hospital for an MRI. Sedillo suffered pain and permanent disability due to the fall and lack of care. He sued Centurion, Geo Group, Inc.—the prison's operator at the time—and NMCD in state court. Defendants removed the case to federal court, where Centurion settled its share of the claims against for \$15,000.00 on April 15, 2022. GEO Group ultimately reached an undisclosed settlement of the remaining claims, and the case was jointly dismissed in February 2023. Sedillo was represented by Albuquerque attorney Alvin R. Garcia. *See: Sedillo v. N.M. Corr. Dep't*, USDC (D. N.M.), Case No. 1:20-cv-01019. Centurion nurse Lang Chhour was the only medical employee named in the complaint. According to the state Board of Nursing, she has active RN and APRN-CNP licenses with no disciplinary history.

### **Cynthia Varela-Cesaus**

While incarcerated at WNMCF on July 27, 2016, Cynthia Varela-Cesaus was treated for an eye infection with medication that she was allergic to. Her face swelled, both



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her eyes turned red, her eye lids swelled and she suffered conjunctive tears. Worse, the medication caused permanent and disfiguring injuries. The prisoner sued Centurion in state court, and the firm settled the case for \$10,000 on June 5, 2018. Albuquerque attorney Anthony J. Ayala represented her. *See: Casaus v. Centurion, LLC*, N.M. 13th Jud. Dist. (Cibola Cty.), Case No. D-1333-CV-2017-00313. The complaint named Centurion employee “M. Abeyta,” perhaps referring to RN Merriam Abeita; her license is active with no disciplinary history, according to the state Board of Nursing.

### **Leonardo Lucero**

While incarcerated at NWNMCF, guards falsely labeled Leonardo Lucero a snitch, and he was severely beaten by six other prisoners on October 22, 2018. Afterward, his head was swollen, his jaw and ribs were fractured, and spinal and back injuries made walking difficult. Because the infirmary was short-staffed, Lucero was allegedly placed in segregation and left there without medical attention or pain medication for several days before taken to a hospital for treatment. Due to the delay, he suffered permanent disfigurement and hearing loss. Lucero sued Centurion for medical malpractice in state court. On August 17, 2023, Centurion settled the case for \$10,000. He was also represented by attorney Lawless. *See: Lucero v. CoreCivic, Inc.*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2020-00378. The complaint named no Centurion employee whose license could be researched.

### **Brenton Rael**

NMCD prisoner Brenton Rael allegedly complained about serious dental problems for several years but was ignored. When he finally received treatment, dental work was performed incorrectly resulting in significant pain, infection and tooth loss. He also did not receive sufficient anesthesia when his tooth was extracted, causing more pain.

Rael sued Centurion for medical malpractice and related claims in federal court. On October 19, 2017, Centurion settled the case for \$10,000. Rael was represented by attorney Carpenter. *See: Rael v. N.M. Corr. Dep’t*, USDC (D.N.M.), Case No. 17-cv-00613. Centurion dentist Roger Ames was named in the complaint, but *PLN* was unable to verify the status of his medical license or disciplinary history.

### **Melissa Folsom**

Centurion medical staff at WNMCF allegedly knew for at least six years that prisoner Melissa Folsom had Hep-C and was at risk for liver damage without antiviral treatment but refused to provide it. Folsom sued Centurion and employees in state court for medical malpractice. Centurion settled the case on October 13, 2022, for \$8,500. The prisoner was represented by attorneys with Collins & Collins and Guebert Gentile & Piazza. *See: Folsom v. Centurion Corr. Healthcare of N.M., LLC*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2020-02551.

Centurion employees named in the complaint were Drs. Deming and Cox (see above), as well as Dr. Murray Young, PA Michelle Lucero and Nurse Hillary Habiger. According to the state Board of Nursing, Habiger has active RN and APRN-CNS licenses with no disciplinary history. The state Medical Board likewise indicated that Lucero has an active medical license with no disciplinary history. *PLN* was unable to verify the status of Dr. Young’s medical license.

### **Pedro J. Amaro**

Pursuant to a Centurion policy that allegedly prohibits prisoners from receiving dental crowns or surgery, regardless of necessity, NMCD prisoner Pedro J. Amaro was denied root canal therapy and a crown. He filed suit in federal court, alleging that the policy denied his constitutional rights and violated state tort law. Centurion settled the case on March 29, 2023, for \$5,000. The prisoner proceeded *pro se*. *See: Amaro v. Grewal*, USDC (D.N.M.), Case No. 1:20-cv-01398. The complaint named numerous Centurion administrators and supervisors but no medical personnel whose license could be researched.

### **Guy Bryan**

While held at MDC and Cibola County Correctional Center (CCCC) in Milan, Guy Bryan claimed that he had an obvious, non-healed fracture of his right collarbone which was extremely painful and deformed the skin above his collarbone. Moreover, he said,

medical staff at both lockups failed to provide timely and appropriate treatment. He sued Centurion and several employees for medical malpractice and related claims in federal court. On September 1, 2022, Centurion settled the case for \$5,000. Bryan was represented by Albuquerque attorneys Taylor E. Smith of Garrett & Smith Law and Jamison Shekter of Shekter Law, P.C. *See: Bryan v. CoreCivic, Inc.*, USDC (D.N.M.), Case No. 1:22-cv-00158.

Centurion medical staff named in the complaint were Dr. Keith Ivens and Nurse Kathleen Lamphere. He has an active medical license with no disciplinary history, according to the state Medical Board. The state Board of Nursing indicated that Lamphere has an active APRN-CNP license with no disciplinary history.

### **Pete Lovato**

Pete Lovato suffered from severe and permanent vision impairment in both eyes while incarcerated at the Otero County Prison Facility (OCPF), but medical personnel allegedly failed to provide adequate treatment for 11 months. He is now totally blind in his left eye and legally blind in his right eye. Lovato sued Centurion and others in state court for medical malpractice. On July 11, 2023, Centurion settled its share of the claims for \$5,000. Lovato was represented by attorney Lawless. *See: Lovato v. MTC Medical, LLC*, N.M. 12th Jud. Dist. (Otero Cty.), Case No. D-1215-CV-2020-0862. The complaint named no Centurion employee whose license could be researched.

### **Victor Plumb**

During intake into CNMCF in September 2016, Victor Plumb indicated that he is a combat veteran with severe PTSD which



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causes him night terrors and nightmares. He was supposed to receive a lower bunk assignment as a result, but he was ordered into a top bunk and then fell off it while experiencing night terrors. The fall seriously injured his hip. Centurion medical staff allegedly failed to provide timely and appropriate treatment before he was eventually transferred to a local hospital to undergo surgical hip repair. He sued Centurion in state court for medical malpractice. On March 12, 2020, Centurion settled the case for \$5,000. Plumb was represented by attorney Joshua Bradley of the Bradley Law Firm, LLC, in Albuquerque. *See: Plumb v. New Mexico Corr. Dep't*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2018-03078. The complaint named no Centurion employee whose license could be researched.

**Alberto Aranzola**

When NWNMCF prisoner Alberto Aranzola tested positive for Hep-C, Centurion medical staff allegedly refused to provide

appropriate antiviral treatment, resulting in cirrhosis of the liver. Aranzola sued Centurion and employees for medical malpractice in state court following his release from prison. On August 25, 2022, Centurion settled the case for \$1,500. He was represented by attorneys with Collins & Collins and Guebert Gentile & Piazza. *See: Aranzola v. Centurion Corr. Healthcare of N.M., LLC*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2020-02548. Centurion medical staff named in the complaint were Drs. Deming and Young (see above).

**Concluding Thoughts**

Several disturbing patterns emerge from these cases. First, Centurion is repeatedly accused of delay in sending prisoners to hospitals for necessary treatment. The apparent motivation: Wait until prisoners will need hospitalization longer than 24 hours, since Centurion is contractually obligated to pay only for hospital stays less than that.

Centurion was also repeatedly accused of failing to keep or destroying medical records related to its inadequate care, and records that were kept were not detailed or thorough.

Lastly, prisons are dirty and crowded—breeding grounds for infection. But even knowing this, Centurion routinely fails to take reasonably necessary steps to ensure prisoners do not suffer and die from infections.

Eight million in settlement payouts may seem like a lot, but it represents less than 6% of more than \$136 million that NMCD paid during its 40-month contract period with Centurion. On the company's financial statement, that line item is about the same as sales tax—certainly not significant enough by itself to bring about meaningful change. As attorney Parrish Collins put it, malpractice and wrongful death payouts are to private medical providers “what some might refer to as chump change.”

In most cases, moreover, prisoners sued not just Centurion but also NMCD; yet when Centurion settled a case, prisoner-plaintiffs were usually compelled to dismiss all claims, including those against NMCD, even if not directly related to inadequate medical care. With this sort of indemnification, NMCD has no financial incentive to discontinue its long-standing practice of

**Prison Education Guide**

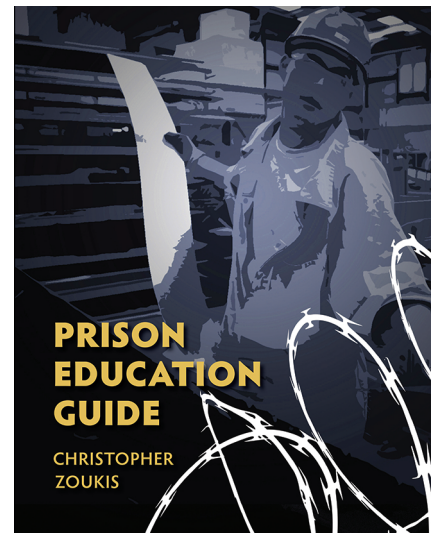
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contracting away its constitutional obligation to care for the prisoners in its custody.

It is also important to note how often the same medical personnel were named in these suits. As with NMCD defendants, settlement agreements usually require prisoner-plaintiffs to dismiss all claims against Centurion staff, thereby insulating the providers from professional discipline. In fact, *PLN* was unable to locate a single case in which a Centurion medical employee was disciplined for the inadequate healthcare that prisoners received.

This lack of disciplinary action is particularly troubling because most prison doctors and nurses do not stop working at NMCD facilities when a new private medical contractor assumes responsibility for prisoner healthcare. Rather, staffers simply move their employment to the new contractor and continue mistreating prisoner-patients because nothing has changed other than the signature on their paychecks.

If New Mexico were really concerned with the welfare and health of the people it incarcerates, the state legislature would abolish the practice of contracting with private medical providers and establish minimum standards for prison healthcare. Prisoner

rights organizations have called for such reforms for years; New Mexico House Bill 40, for example—the Private Detention Facility Moratorium Act—was introduced during the 2021 legislative session. But it died in the Appropriations and Finance Committee without ever being referred to the floor of the state House of Representatives for a vote.

Over the past few years, New Mexico has reassumed control of several privately operated prisons in the state under scrutiny about the treatment prisoners received in them. Yet, the State continues to contract with private companies for healthcare inside its prisons. In 2019, NMCD entered a three-year contact with Wexford Health Sources, replacing Centurion as medical care provider. That contract pays Wexford \$58 million in the first year, \$60 million in the second year and \$62 million in the third.

But this was the second time in a decade that NMCD contracted with Wexford; during a previous three-year contact, Wexford settled at least 53 claims filed by prisoners. Given that track record, it is unlikely that returning to the firm will improve the quality of healthcare that prisoners receive, particularly since Wexford retained most of the medical staff previously employed by

Centurion and its behavioral health subsidiary, MHM Health Professionals.

During a 2023 news conference, state Gov. Michelle Lujan Grisham (D) said she was “taking a close, hard look at any number of our medical care contracts that I think leave a lot to be desired.” Yet, during that same news conference, the governor admitted that addressing conditions within New Mexico’s jails and prisons was “not part of the core public safety bills” proposed for that year’s legislative session. Instead, she and state legislators were more interested in limiting pretrial releases and increasing prison sentences. Meanwhile, prisoners continue to suffer and die at the hands of New Mexico’s private, for-profit correctional healthcare providers. 🐞

Additional sources: *Searchlight New Mexico*, *Source NM*

*Complaints and settlement agreements for these cases are available on PLN’s website, where digital subscribers may navigate to the “Brief Bank” and search by case name. If you know of other settlements involving Centurion Correctional Healthcare of New Mexico on or after January 1, 2010, please contact PLN with relevant information and documents if possible.*

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Call (561) 360-2523, or send mail to PLN



**Human Rights Defense Center**  
Attn: Legal Team  
PO Box 1151  
Lake Worth Beach, FL 33460

# From the Editor

by Paul Wright

One of the biggest changes in the American Prison Industrial Complex in the past 40 years has been the privatization of assorted functions related to the capture and caging of people. This has ranged from building and running prisons to performing discrete functions like providing medical care or telecommunications services. The theory, or big lie, has always been that somehow these private, for-profit companies would be able to perform these carceral functions better and more cheaply than the government does. Given how poorly the government does, this is a low bar indeed.

Over 40 years later we have an ample track record to determine how these promises of better and cheaper have panned out. While the companies may provide some services cheaper than the government does, mainly by using a nonunion work force and then understaffing their facilities, they do not seem to do anything better than the government does. That they may do it cheaper has not translated into any savings for taxpayers, as that merely becomes profit for the shareholders and private equity funds that own these companies.

A trademark of the private prison industry is the secrecy in which it operates. Government-run prisons and jails are little better and likely the most transparent of all American government institutions, so again we are comparing slightly different pieces of

rotten fruit. For several decades now, *Prison Legal News* has investigated and reported on prisons and jails as well as their corporate collaborators and we have successfully broken many of their secrecy barriers.

This month's cover story on litigation payouts by Centurion in New Mexico is the result of an almost four-year-long (and still ongoing) court battle to obtain their litigation payouts while they held the New Mexico prison system's medical services contract. Centurion is a large company, and they are so committed to secrecy they have actually sued the Human Rights Defense Center, publisher of *PLN*, in Florida to prevent us from filing public records requests for how their company operates. We also just settled a public records lawsuit against Centurion in Vermont after a court ordered them to disclose records we had requested in that state.


The records released as a result of our New Mexico lawsuit reveal that the company agreed to pay over \$8 million for killing 13 prisoners and injuring 34 others. These were just the lawsuits that were filed and litigated to settlement. None were taken to trial as far as we can determine. Killing prisoners is literally the cost of doing business for these companies and, as a practical matter, they are not paying out that much money. One take away is how little value a prisoner's life has according to these compa-

nies. Whether juries in New Mexico would award more at trial remains to be seen.

While this is a first-of-its-kind story involving Centurion in New Mexico, the sad news is that New Mexico prisoners will not be able to read it because the prison system there has banned all books and magazines, as a purported result of their mail digitization. HRDC has filed suit and is challenging that ban so hopefully they will soon have access to *PLN* and other publications again.


We are doing our annual fund raiser. If you have not donated yet please do so, and if you cannot afford a donation of your own, please ask those who can to donate on your behalf. For almost 35 years now HRDC and *PLN* have been publishing the news that the police state does not want people to know about and fighting for the rights of prisoners and their families around the country. The cost of subscriptions and advertising does not cover everything that we do, which includes advocacy with regulatory agencies, testimony before legislatures, and much more.

We have always relied on donations and support from individuals like you to continue our work. This is the last issue of *PLN* for 2024. Everyone at HRDC would like to wish our readers and supporters a happy holiday season and best wishes for the new year. 🍷

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# HRDC Wins Massive New Mexico Records Trove from Centurion

This month's *PLN* cover story covers documents pried loose from Centurion Correctional Healthcare of N.M., LLC, which held the contract to provide medical care for the state Corrections Department (NMCD) in 2020, when a request was filed under the state Inspection of Public Records Act (IPRA), NM Stat § 14-2-1 (2023), by the Human Rights Defense Center (HRDC), non-profit publisher of *PLN* and *Criminal Legal News (CLN)*.

HRDC sent IPRA requests in August 2020 to both NMCD and Centurion for documents related to litigation over prisoner healthcare that cost \$1,000 or more to resolve. NMCD in turn asked Centurion whether it wanted to respond or send the documents to the state it could forward them. Importantly, Centurion replied that it had received the IPRA request and would respond.

But Centurion ignored HRDC's request; it later claimed that it's not a "public body" under IPRA so not obligated to respond. Meanwhile, NMCD notified HRDC on August 19, 2020, that it had no records responsive to the request and that it had not gotten any from Centurion. With that, the state considered the request closed.

HRDC then filed suit in the state's First Judicial District Court for Santa Fe County in 2021, accusing NMCD and Centurion of violating IPRA with the denied records request. NMCD continued to shrug its shoulders, since all responsive records were in Centurion's possession. The company continued to insist that it wasn't obligated under IPRA to respond. Centurion also claimed that it had never been properly served with HRDC's complaint. Both HRDC and Centurion moved for summary judgment.

On August 30, 2024, the Court granted HRDC's motion and denied Centurion's cross-motion. The Court first swatted down Centurion's claim that it wasn't properly served, pointing to that early exchange with NMCD proving the firm received the request. Next the Court looked at Centurion's obligations under IPRA, which specifies that requests must be sent to a records custodian designated by the state. NMCD had a records custodian, but no records. Centurion had records, but no custodian—not least because its contract with NMCD failed to cover this point.

However, an NMCD attorney admitted during deposition that Centurion's contractual relationship with the state materially satisfied the nine-factor test to determine whether a private entity has assumed a public function, laid out by the state Court of Appeals a dozen years ago in *State ex rel. Toomey v. City of Truth or Consequences*, 2012-NMCA-104. "Certainly the spirit and intent of IPRA would be violated to just stop here and say that NMCD did all they could and they cannot force [Centurion] to turn over the records," the Court opined.

Instead it found that the Court of Appeals also provided guidance in a similar case against Corizon Health, Centurion's predecessor in providing NMCD health-

care. Quoting *N.M. Found. for Open Gov't v. Corizon Health*, 2020-18 NMCA-014, the Court said that although Centurion was a private entity, it "ha[d] a clear legal duty to provide public records" since it "acted on behalf of a public entity [NMCD] by providing medical care to inmates at various New Mexico correctional and detention facilities." Finding no other reason to exempt the records from disclosure, the Court ordered Centurion to release them.

HRDC moved for sanctions, and on September 23, 2024, the Court agreed that Centurion owed \$100 a day for the denied request, from August 28, 2020—after the 15-day statutory response window closed following HRDC's initial request—until the documents were sent on September 16, 2024. For that 1,480-day delay, Centurion could owe \$148,000 in sanctions, plus attorney's fees and additional contempt sanctions that HRDC has requested. HRDC is ably represented by attorneys Adam C. Flores, Laura Schauer Ives, Alyssa D. Quijano, Henry A. Jones and Andrew J. Pavlides of Ives & Flores, P.A. in Albuquerque. See: *Hum. Rts. Def. Ctr. v. Centurion Corr. Healthcare of N.M., LLC*, N.M. 1st Jud. Dist. (Santa Fe Cty.), Case No. D-101-CV-2021-01620. 🐾



## LEGAL WRITERS WANTED

*Prison Legal News* and *Criminal Legal News* are searching for the top incarcerated legal talent in the country to join our writing staff.

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# Ninth Circuit Reverses Federal Prisoner's Conviction for Assaulting Guards at California Prison

On April 16, 2024, the U.S. Court of Appeals for the Ninth Circuit reversed the conviction of a federal prisoner for assaulting two guards. The Court concluded that Gabriel Mirabal should have been permitted to present evidence that the government's position during a co-defendant's case was antithetical to that taken at his trial. The trial court excluded this evidence as hearsay, but the Court said that was error because the statements were made by a "party-opponent."

Mirabal was a prisoner at the Federal Correctional Institution in Victorville, California, on August 19, 2017, when he and fellow prisoner Erik Rojo passed through a metal detector on their return to their cell block after lunch. One of them wore a white shirt, the other a brown shirt, but only the latter triggered the device. Guards Brian Moreno and Anthony Guerrero stopped the brown-shirted prisoner and initiated a pat down search. An argument ensued.

Moreno claimed the brown-shirted prisoner punched him without provocation. Mirabal, who claimed he was that prisoner, said he swung in self-defense after Moreno raised his arm to strike him. Guerrero intervened in the melee, and the other prisoner in the white shirt joined the fray, punching Moreno in the back of the head. The guard lost consciousness. Other guards rushed in to quell the disturbance. Both Moreno and Guerrero suffered physical injuries.

A federal grand jury indicted both Rojo and Mirabal on two counts of assaulting a federal officer resulting in bodily injury—one for each guard—and aiding and abetting thereof. Rojo took a plea deal, in which he was identified as the white-shirted prisoner. Government prosecutors did not disagree and in fact reaffirmed that Mirabal was the brown-shirted prisoner and Rojo wore the white shirt, both at Rojo's change of plea and sentencing hearings. However, one day after Rojo's sentencing hearing, the

government filed an amended plea agreement omitting any reference to Mirabal. Mirabal's case proceeded to trial, at which the key issue was the color of shirt he wore. Throughout trial, he contended that it was brown, and that he swung at Moreno from behind and knocked him out. Prosecutors filed a motion *in limine* to exclude their previous statements during Rojo's case—identifying Mirabal as the brown-shirted prisoner—arguing that the evidence consti-

tuted inadmissible hearsay. The district court agreed and granted the motion. At trial then, the evidence presented did not clearly indicate which prisoner wore what shirt—even other guards involved couldn't agree—but the jury rejected Mirabal's self-defense claim and convicted him as charged. He appealed. At the Ninth Circuit, Mirabal argued that government statements during Rojo's case identifying Mirabal as the brown-shirted prisoner should have been admitted at trial, pursuant to Federal Rule of Evidence 801(d)(2); that rule exempts from the definition of "hearsay" any statements made by an opposing party. The government argued that prosecutors' statements were merely "opinions." But the Court flatly rejected this, concluding that the rule "encompasses formal, signed statements made by a government attorney in filings before a court, such as plea agreements and sentencing memoranda."

Therefore, prosecution statements in Rojo's case were those of a party-opponent and "constituted the official position of the United States regarding what happened during the August 19 altercation." The district court erred in excluding them—an error that was not harmless, either, since the brown-shirted prisoner had a much stronger self-defense case. Accordingly, Mirabal's conviction was vacated and his case remanded for a new trial. Before the Court, he was represented by San Francisco attorney Elizabeth Richardson-Royer. *See: United States v. Mirabal*, 98 F.4th 981 (9th Cir. 2024).

While his appeal was pending, Mirabal also filed a civil rights complaint against Moreno and Guerrero, claiming the guards are members of "hate groups" and that this animus motivated the altercation. But he sued under 42 U.S.C. § 1983, which does not apply to federal officials, rather than *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971), which does. After giving the prisoner a chance to correct the deficiency, which he didn't take advantage of, the district court dismissed the case on December 21, 2023. *See: Mirabal v. Fed. Bureau of Prisons*, 2023 U.S. Dist. LEXIS 236502 (C.D. Cal.).



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**Information to identify the case:**

Debtor: Wellpath Holdings, Inc., et al., EIN: [83-1316669]

United States Bankruptcy Court for the Southern District of Texas

Case Number: 24-90533 (ARP), Date case filed for Chapter 11: 11/11/2024

Official Form 309F1 (For Corporations or Partnerships)

**Notice of Chapter 11 Bankruptcy Case 12/17**

**For the debtor listed above, a case has been filed under chapter 11 of the Bankruptcy Code. An order for relief has been entered.**

**This notice has important information about the case for creditors and debtors, including information about the meeting of creditors and deadlines. Read carefully.**

The filing of the case imposed an automatic stay against most collection activities. This means that creditors generally may not take action to collect debts from the debtor or the debtor's property. For example, while the stay is in effect, creditors cannot sue, assert a deficiency, repossess property, or otherwise try to collect from the debtor. Creditors cannot demand repayment from the debtor by mail, phone, or otherwise. Creditors who violate the stay can be required to pay actual and punitive damages and attorney's fees.

Confirmation of a chapter 11 plan may result in a discharge of debt. A creditor who wants to have a particular debt excepted from discharge may be required to file a complaint in the bankruptcy clerk's office within the deadline specified in this notice. (See line 11 below for more information.)

To protect your rights, consult an attorney. All documents filed in the case may be inspected at the bankruptcy clerk's office at the address listed below or through PACER (Public Access to Court Electronic Records at <https://pacer.uscourts.gov>).

**The staff of the bankruptcy clerk's office cannot give legal advice.**

**Do not file this notice with any proof of claim or other filing in the case.**

**1. Debtors' full name: See chart below.**

**List of Jointly Administered Cases**

NO.	DEBTOR	ADDRESS	CASE NO.	EIN #
1	Physicians Network Association, Inc.	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90532 (ARP)	75-2450559
2	Alpine CA Behavioral Health HoldCo, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90537 (ARP)	87-3896299
3	Behavioral Health Management Systems, LLC	2120 Alpine Blvd., Alpine, CA 91901	24-90538 (ARP)	83-4002952
4	Boynton Beach Florida Behavioral Health Hospital Company, LLC	4905 Park Ridge Blvd, Boynton Beach, FL 33426	24-90539 (ARP)	86-3410154
5	CCS-CMGC Intermediate Holdings 2, Inc.	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90541 (ARP)	83-1435061
6	CCS-CMGC Intermediate Holdings, Inc.	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90540 (ARP)	83-1387234
7	CCS-CMGC Parent GP, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90534 (ARP)	83-1412522
8	CCS-CMGC Parent Holdings, LP	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90535 (ARP)	83-1459251
9	CHC Companies, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90542 (ARP)	20-5114318
10	Conmed Healthcare Management, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90543 (ARP)	42-1297992
11	Correct Care Holdings, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90544 (ARP)	46-1501406
12	Correct Care of South Carolina, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90545 (ARP)	63-1166611
13	Correctional Healthcare Companies, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90546 (ARP)	27-1813172
14	Correctional Healthcare Holding Company, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90547 (ARP)	46-1580164
15	Harborview Center, LLC	490 W 14th St, Long Beach, CA 90813	24-90548 (ARP)	83-3654233
16	HCS Correctional Management, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90549 (ARP)	30-0999604
17	Healthcare Professionals, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90550 (ARP)	35-2416196
18	Jessamine Healthcare, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90551 (ARP)	90-0580757
19	Justice Served Health Holdings, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90552 (ARP)	93-3605284
20	Missouri JSH Holdco, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90553 (ARP)	99-2272235
21	Missouri JSH Manager, Inc.	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90554 (ARP)	99-2292676
22	Perimeter Hill RPA, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90555 (ARP)	93-2014061
23	901 45th Street West Palm Beach Florida Behavioral Health Hospital Company, LLC	993 45th Street, West Palm Beach, FL 33407	24-90536 (ARP)	86-3223831
24	Wellpath CFMG, Inc.	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90556 (ARP)	46-1363407
25	Wellpath Community Care Holdings, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90558 (ARP)	87-4304235
26	Wellpath Community Care Management, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90559 (ARP)	87-4329332
27	Wellpath Community Care Centers of Virginia, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90557 (ARP)	86-3398769
28	Wellpath Education, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90560 (ARP)	30-0100814
29	Wellpath Group Holdings, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90561 (ARP)	27-3482253
30	Wellpath Holdings, Inc.	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90533 (ARP)	83-1316669

31	Wellpath Hospital Holding Company, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90562 (ARP)	86-3177119
32	Wellpath LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90563 (ARP)	32-0092573
33	Wellpath Management, Inc.	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90564 (ARP)	46-1365058
34	Wellpath Recovery Solutions, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90565 (ARP)	65-0749307
35	Wellpath SF Holdco, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90566 (ARP)	99-2418460
36	WHC LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90567 (ARP)	88-2673631
37	WPMed, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90568 (ARP)	52-1530272
38	Zenova Management, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90569 (ARP)	93-4088609
39	Zenova Telehealth, LLC	3340 Perimeter Hill Drive, Nashville, Tennessee 37211	24-90570 (ARP)	93-4088427

**2. All other names used in the last 8 years:** CCS-CMGC Holdings, Inc.; Correct Care Solutions Group Holdings, LLC; CFMG Holdings Corp.; Correct Care Solutions, LLC; Jessamine Healthcare, Inc.; Correctional Medical Group Companies, Inc.; Health Cost Solutions, LLC; Correctional Healthcare Holding Company, Inc.; Conmed Healthcare Management, Inc.; Correct Care, LLC; CHC Companies, Inc.; Conmed, LLC; Conmed, Inc.; Correctional Mental Health Services, LLC; GEO Care of South Carolina, LLC; Correctional Healthcare Companies, Inc.; Healthcare Professionals, Ltd; CCS-CMGC Parent Holdings, LLC

**3. Address: See chart above.**

**4. Debtors' attorneys: MCDERMOTT WILL & EMERY LLP,** Marcus A. Helt (Texas Bar #24052187), 845 Texas Avenue, Suite 4000, Houston, Texas 7702-1658, Telephone: (214) 295-8000, Facsimile: (972) 232-3098, Email: mhelt@mwe.com; **MCDERMOTT WILL & EMERY LLP,** Felicia Gerber Perlman (admitted pro hac vice), Bradley Thomas Giordano (admitted pro hac vice), Jake Jumbleck (admitted pro hac vice), Carole Wurzelbacher (admitted pro hac vice), Carmen Dingman (admitted pro hac vice), 444 West Lake Street, Suite 4000, Telephone: (312) 372-2000, Facsimile: (312) 984-7700, Email: fperlman@mwe.com, bgiordano@mwe.com, jjumbleck@mwe.com, cwurzelbacher@mwe.com, cdingman@mwe.com; **MCDERMOTT WILL & EMERY LLP,** Steven Z. Szanzer (admitted pro hac vice), One Vanderbilt Avenue, New York, New York 10017, Telephone: (212) 547-5400, Facsimile: (212) 547-5444, Email: szsanzer@mwe.com. Debtors' notice and claims agent (for court documents and case information inquiries): **Case Website:** <https://dm.epiq11.com/Wellpath>, **Telephone:** (888) 884-6182 (Toll Free), +1 (503) 479-4073 (International), Email: wellpathinfo@epiqglobal.com

**5. Bankruptcy Clerk's Office: Documents in this case may be filed at this address: United States Courthouse, 515 Rusk Street, Houston, TX 77002. Hours Open: Monday – Friday, 8:00 AM - 5:00 PM CT, Contact phone: (713) 250-5500. You may inspect all records in this case at this office or online at <https://pacer.uscourts.gov/>. All documents in this case are available filed free of charge on the website of the Debtors' notice and claims agent at <https://dm.epiq11.com/Wellpath>.**

**6. Meeting of Creditors: December 18, 2024, at 1:30 p.m. (prevailing Central Time). Dial in will be: 866-707-5468 / Participant Code 6166997#.** The meeting may be continued or adjourned to a later date. If so, the date will be on the court docket. **Location:** Bob Casey United States Courthouse, Office of the United States Trustee, 515 Rusk, Suite 3401, Houston, Texas, 77002. The debtor's representative must attend the meeting to be questioned under oath. Creditors may attend, but are not required to do so.

**7. Proof of claim deadline: Deadline for filing proofs of claim:** Not yet set. If a deadline is set, the court will send you another notice. When Filing Proofs of Claim, claims may be sent to either address below or filed electronically via the case website: <https://dm.epiq11.com/Wellpath>. If by First-Class Mail: Wellpath, Claims Processing Center, c/o Epiq Corporate Restructuring, LLC, P.O. Box 4420, Beaverton, OR 97076-4420. If by Hand Delivery or Overnight Mail: Wellpath, Claims Processing Center, c/o Epiq Corporate Restructuring, LLC, 10300 SW Allen Blvd., Beaverton, OR 97005.

A proof of claim is a signed statement describing a creditor's claim. A proof of claim form may be obtained at [www.uscourts.gov](http://www.uscourts.gov), any bankruptcy clerk's office or on the case website at <https://dm.epiq11.com/Wellpath>.

Your claim will be allowed in the amount scheduled unless: your claim is designated as *disputed*, *contingent*, or *unliquidated*; you file a proof of claim in a different amount; or you receive another notice.

If your claim is not scheduled or if your claim is designated as *disputed*, *contingent*, or *unliquidated*, you must file a proof of claim or you might not be paid on your claim and you might be unable to vote on a plan. You may file a proof of claim even if your claim is scheduled.

You may review the schedules at the bankruptcy clerk's office or online at <https://pacer.uscourts.gov>.

Secured creditors retain rights in their collateral regardless of whether they file a proof of claim. Filing a proof of claim submits a creditor to the jurisdiction of the bankruptcy court, with consequences a lawyer can explain. For example, a secured creditor who files a proof of claim may surrender important nonmonetary rights, including the right to a jury trial.

**8. Exception to discharge deadline:** The bankruptcy clerk's office must receive a complaint and any required filing fee by the following deadline. If § 523(c) applies to your claim and you seek to have it excepted from discharge, you must start a judicial proceeding by filing a complaint by the deadline imposed by Federal Rule of Bankruptcy Procedure 4007(c).

**9. Creditors with a foreign address:** If you are a creditor receiving notice mailed to a foreign address, you may file a motion asking the court to extend the deadlines in this notice. Consult an attorney familiar with United States bankruptcy law if you have any questions about your rights in this case.

**10. Filing a Chapter 11 bankruptcy case:** Chapter 11 allows debtors to reorganize or liquidate according to a plan. A plan is not effective unless the court confirms it. You may receive a copy of the plan and a disclosure statement telling you about the plan, and you may have the opportunity to vote on the plan. You will receive notice of the date of the confirmation hearing, and you may object to confirmation of the plan and attend the confirmation hearing. Unless a trustee is serving, the debtor will remain in possession of the property and may continue to operate its business.

**11. Discharge of debts:** Confirmation of a chapter 11 plan may result in a discharge of debts, which may include all or part of your debt. See 11 U.S.C. § 1141(d). A discharge means that creditors may never try to collect the debt from the debtor except as provided in the plan. If you want to have a particular debt owed to you excepted from the discharge and § 523(c) applies to your claim, you must start a judicial proceeding by filing a complaint and paying the filing fee in the bankruptcy clerk's office by the deadline.

**If you have any questions related to this notice, please call (888) 884-6182 (toll-free for U.S.-based parties) or +1 (503) 479-4073 (for international parties), or send an email to [wellpathinfo@epiqglobal.com](mailto:wellpathinfo@epiqglobal.com).**

**You may access documents and case information free of charge at <https://dm.epiq11.com/Wellpath>.**

# California Supreme Court: Jail Detainees Not Entitled to Minimum Wage, or Any Wages

On April 22, 2024, California's highest court ruled that detainees held in local jails have no right to receive minimum wage—or any wages—for their labor.

The case arose when pretrial detainees at the Santa Rita Jail filed a class-action suit against Alameda County in federal court for the Northern District of California in 2019. They prepared meals for Aramark Correctional Services LLC under its \$19 million contract with the County, but cried foul when they received no pay. Defendants' motion to dismiss was partially denied, so they filed an interlocutory appeal with the U.S. Court of Appeals for the Ninth Circuit.

The appellate court, in turn, submitted a certified question of state law to the California Supreme Court: Do pretrial detainees performing work in county jails "have a claim for minimum wages and overtime under Section 1194 of the California Labor Code in the absence of any local ordinance prescribing or prohibiting the payment of such wages?" See: *Ruelas v. Cty. of Alameda*, 51 F.4th 1187 (9th Cir. 2022).

To answer that, the Supreme Court considered "the interplay between the Penal Code, the Labor Code, and the constitutional provisions governing public-private contracts for inmate labor." Per Penal Code § 4019.3, a county may provide wages to jail detainees "not to exceed two dollars

(\$2) for each eight hours of work"—i.e., up to \$.25/hour. That rate, the Court noted, had not changed since 1975. But it found that § 4019.3 controlled, since it applies to all detainees held in local jails, convicted or not. "Counties therefore may—but are not required to—credit inmates ... up to two dollars per eight-hour shift, notwithstanding the legal minimum wage, which is much higher," the Court wrote.

Plaintiffs argued that § 4019.3 does not apply to prisoners participating in public private work programs like the county's contract with Aramark. That argument was rejected though, and the Supreme Court concluded that all work performed at the jail, whether for the county or a private contractor, was subject to § 4019.3. In fact, the Court explained the law "does not ensure county jail inmates working in the county jail will be paid anything at all."

Nor did the Prison Inmate Labor Initiative of 1990 (Prop. 139) impose an obligation on counties or private companies to comply with minimum wage requirements under the state's Labor Code. The Court noted that Prop. 139 applies only to state prisoners, not detainees in local jails. Plaintiffs pointed out how absurd it is that convicted prisoners, who can be forced to work, "must" be paid wages comparable to non-incarcerated workers for their labor

in public-private partnerships, while non-convicted pretrial detainees "who cannot be forced to work, may be paid nothing."

Though not dismissing that argument, the Court answered the Ninth Circuit's certified question of law by holding that pretrial detainees "performing services in county jails for a for-profit company ... do not have a claim for minimum wages and overtime" under § 1194 of the Labor Code. In a footnote, the Court clarified its decision did not address the separate issue of detainees who perform work for a private company *outside* a local jail.

"The California Supreme Court recognized the severe economic burdens the people incarcerated in county jails face from an exploitive system," said Senior Staff Attorney Kyle Virgien of the American Civil Liberties Union (ACLU). "It's now up to Alameda County to do the right thing and ensure that when corporations profit from the labor of people incarcerated in the Alameda County Jail, they pay for that labor."

Plaintiffs were represented by attorneys with Siegel, Yee, Brunner & Mehta in Oakland. Amici briefs in support of the class were filed by over a dozen organizations, including the ACLU, Prison Law Office, Prison Policy Initiative, Worth Rises, National Employment Law Project, California Employment Lawyers Association and Legal Services for Prisoners with Children. See: *Ruelas v. Cty. of Alameda*, 15 Cal.5th 968 (Cal. 2024).

Following the ruling, on July 26, 2024, the Ninth Circuit reversed the district court's order which had partially denied Defendants' motion to dismiss, saying that the Court's answer to the certified question made it clear that the wage-related claims must fail. See: *Ruelas v. County of Alameda*, 108 F.4th 1208 (9th Cir. 2024). 📰

Additional sources: *Courthouse News*, ACLU

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# In Failure-to-Treat Claims, Wellpath Denied Dismissal in Virginia, Settles in Pennsylvania

by David M. Reutter

On November 11, 2024, private prison and jail healthcare contractor Wellpath LLC filed for bankruptcy protection from debtors collectively owed \$544 million, casting doubt on its ability to continue in business, much less pay settlements and verdicts owed in suits for poor medical care filed by prisoners, detainees or their estates.

One of the many cases still pending against the firm was filed by the family of a Virginia detainee who died of “salt wasting” after being denied medication necessary to control the disorder by officials at Henry County Adult Detention Center (HCADC), where Wellpath held the healthcare contract. Deborah Sue Damron, a firm nurse responsible for Brad Steven Hensley’s care, was not only named a defendant in the civil case but also criminally charged after his death with involuntary manslaughter.

Hensley, 42, was born with Congenital Adrenal Hyperplasia, which caused him to suffer from “salt wasting” when his body failed to produce cortisol needed to regulate blood pressure and blood sugar, among other things. Hensley’s condition was treated with twice daily doses of prescribed Prednisone and Fludrocortisone, which was noted at booking into HCADC on August 22, 2022. It was further noted that Hensley had not taken his medication since the previous day. His mother called to advise jailers of his condition and offered to get the medications to him, but she was

refused, with assurances that the medication was being procured.

The next day, Damron, 57, recorded an order from Physician Assistant Sarah Eves for the medication, but it didn’t arrive. Meanwhile, Hensley asked Wellpath staff “for help due to severe abdominal pain and discomfort, headache and fever, weakness and fatigue, dehydration due to vomiting and diarrhea, confusion and lightheadedness, loss of appetite, and the other increasing and predictable symptoms of adrenal crisis,” according to the civil rights complaint filed by his estate. His family made at least 18 calls to the jail by August 5, 2022, warning that his condition was life-threatening without medication. A local judge also called the jail with his concerns.

Finally, on August 5, 2022, the medication arrived. But attempts to administer it orally failed. When Hensley vomited that evening, Wellpath Registered Nurse M. Adkins “found” he’d puked some sort of red drink; it was actually blood. According to Damron’s indictment, she falsified records to indicate taking vital assessments of Hensley twice in the early morning hours of August 6, 2022. Around 7:33 a.m., he was found unresponsive in his cell. Efforts to revive him failed. The medical examiner concluded the cause of death was acute fentanyl toxicity and adrenal crisis due to congenital adrenal hyperplasia contributing.

With the aid of attorneys Devon J. Munro and Benjamin Byrd of Munro & Byrd PC in Roanoke, along with Jonathan E. Halperin and Darrell German of Halperin Law Center in Glen Allen, the estate filed suit alleging deliberate indifference to Hensley’s serious medical needs, in violation of his Fourteenth Amendment rights, as well as state-law claims for negligence and wrongful death. Wellpath and Damron moved to dismiss

the complaint. But on August 6, 2024, the federal court for the Western District of Virginia denied them. See: *Hensley v. Wellpath, LLC*, 2024 U.S. Dist. LEXIS 139351 (W.D. Va.).

Meanwhile Damron was indicted on March 20, 2023; she was arrested in Kentucky two days later and held for extradition. The Virginia Board of Nursing suspended her license on September 12, 2023. See: *Hensley v. Wellpath, USDC* (W.D. Va.), Case No. 4:24-cv-00014. *PLN* will update developments as they are available in the case, as well as Wellpath’s bankruptcy. See: *Wellpath Holdings, Inc.*, USBC (S.D. Tex.), Case No. 24-90533.

## \$10,000 Settlement for Pennsylvanian Prisoner in Another Failure-to-Treat Claim

Another failure-to-treat claim against Wellpath in Pennsylvania resulted in a \$10,000 settlement in August 2021. That suit was filed by Tyreek Jackson, a prisoner at the State Correctional Institution (SCI) in Chester, where the firm held the contract to provide healthcare. It paints a damning picture of Wellpath policy to juice profit by denying care to prisoners.

Before entering prison, Jackson was under the care of University of Pennsylvania Hospital gastroenterologist Dr. Farzana Rashid for Crohn’s disease, ulcerative colitis, gastroesophageal reflux disease, and irritable bowel syndrome. He took three different medications for these, but upon arrival at SCI-Chester, Jackson came under the care of Wellpath’s Dr. Paul Little, who prescribed only Tylenol for pain.

The complaint he later filed recalled events between February and October 2019. Jackson had four medical appointments the first month, at two of which Little allegedly made derogatory religious and racial remarks, refusing to treat him. Then, on February 27, 2019, Little reduced Jackson’s prescribed pain medication from three daily pills to one but “provided no explanation for the change,” the complaint alleged.

When Jackson’s condition began to degrade in March 2019, lab tests were finally conducted and he was started on

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the complaint. But on August 6, 2024, the federal court for the Western District of Virginia denied them. See: *Hensley v. Wellpath, LLC*, 2024 U.S. Dist. LEXIS 139351 (W.D. Va.).



a regimen of Prednisone, replacing the Tylenol. Between March 5 and 13, 2019, Little saw Jackson four times. But at each visit, he refused to address “Jackson’s questions or concerns about his treatment,” becoming “hostile” and “curt” and raising his voice,” the complaint recalled. Little also denied pain medication and refused to send Jackson to Dr. Rashid. At a visit on March 13, 2019, he allegedly said that Jackson could wait until his release to have his chronic illnesses treated, since SCI-Chester was a “transitional institution” with a limited budget, so chronic illnesses like Jackson’s were not prioritized.

Six more times in April 2019, Jackson saw Little, who called him a “f\*\*\*ing cry baby” who would “have to learn to cope with his pain and discomfort,” the complaint alleged. Jackson was seen by rheumatologist Dr. Ritu Kharana on April 12, 2019, and finally by Dr. Rashid on June 19 and October 16, 2019. At each visit, the specialists issued discharge instructions or made recommendations for treatment. Each time, Little allegedly failed to follow those instructions and recommendations. Meanwhile, Jackson’s lack of bowel movement resulted in severe pain, once putting him in an outside hospital for two weeks.

On July 6, 2019, nurses reiterated that Jackson would not be treated because he was “ready to be paroled.” Two days later, Little hurled “racial slurs” at Jackson and said he was not prescribing anything because of a complaint that the prisoner had filed with the Pennsylvania Board of Osteopathic Medicine on May 3, 2019.

Jackson then filed suit in federal court for the Eastern District of Pennsylvania, accusing Wellpath and Little of violating his Eighth Amendment rights with deliberate indifference to his serious medical needs. The complaint also made a First Amendment claim for Little’s alleged retaliation after Jackson filed a medical board complaint. The parties then proceeded to reach their settlement agreement. Jackson was represented by attorneys from Schnader, Harrison, Segal & Lewis in Philadelphia. See: *Jackson v. Little*, USDC, (E.D. Pa.), Case No. 2:19-cv-05824. 📄

Additional source: *Martinsville Bulletin*, *WDBJ*



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# Watchdog Finds “Serious Safety and Security Issues” at Oregon BOP Lockup

In a report issued on May 22, 2024, the federal Department of Justice’s Office of the Inspector General (OIG) slammed persistent staff shortages at the Federal Correctional Institution (FCI) in Sheridan, Oregon, saying they raise “serious safety and security issues” for both prisoners and staff. Ironically, the report was released just weeks after a former guard at the lockup was sentenced to federal prison for his role in a drug-smuggling and bribery conspiracy at the prison.

Nickolas Carlos Herrera, 34, was sentenced on March 18, 2024, to 15 months in prison and three years of supervised release for taking bribes to mule contraband to prisoner Donte Hunt, 40, from a non-incarcerated accomplice, 34-year-old Elizabeth McIntosh. The loot included marijuana, Suboxone, Yeezy sneakers and a cellphone. The former guard pleaded guilty in May 2022 to conspiracy, providing contraband in prison and accepting a bribe as a public official. McIntosh pleaded guilty to misprision of a felony in November 2023. The next month Hunt pleaded guilty to conspiracy and bribery. She was sentenced to a year of probation on February 13, 2024. He got a 15-month prison term on March 18, 2024, running consecutively to a 25-year term already received for a federal drug, weapons and money-laundering conviction. Special assessments were assessed, too: \$100 to McIntosh, \$200 to Hunt and \$300 to Herrera. See: *United States v. Herrera*, USDC (D. Or.), Case No. 3:20-cr-00444.

As noted by the OIG in its report, the problems are not unique to FCI-Sheridan,

but are instead consistent with the staffing crisis throughout the federal Bureau of Prisons (BOP). To prepare the report, the OIG conducted an unannounced, on-site inspection of the prison between November 27 and December 1, 2023. It was the third BOP prison inspection under OIG’s new on-site inspection program.

It was also not the first time that troubling conditions were identified at FCI-Sheridan. As *PLN* reported, the Oregon federal public defender’s office, appointed as a special master to monitor the prison’s compliance with a consent decree, also found significant safety and security concerns in a status report filed in February 2022. [See: *PLN*, June 2022, p.56.] From what OIG found, it seems conditions have not improved much.

As an example of the problems revealed in its 39-page report, OIG found “a backlog of 725 laboratory orders for blood draws or urine collection and 274 pending x-ray orders” due to lack of medical staff to perform the procedures. The inability to perform these tests is concerning because, without proper monitoring, prisoners with chronic diseases such as diabetes suffer serious health complications. But staff shortages are so severe that one prisoner faked a suicide attempt just to get treatment for an ingrown hair that had become infected. He wasn’t being overly dramatic either; the infection had gone so long without treatment that he required hospitalization.

Shortages in psychological and educational staff also left hundreds of prisoners unable to participate in cognitive behavioral

or chemical dependency treatment programs, the OIG reported. These programs not only address recidivism but can also reduce the time a prisoner spends confined through earned time credits.

Guard shortages also left many areas of the prison unsupervised, the OIG continued. As a result, prisoners remained confined to their cells when they should have been engaged in programming or other constructive activities. “When we go in, we are getting staff telling us, in a very straightforward way, how concerned they are about what’s going on at their facilities,” Inspector General Michael E. Horowitz said. “We heard repeatedly from staff, including corrections officers, who were so exhausted and so understaffed they couldn’t do their jobs.”

Perhaps most troubling, these staffing shortages have left the prison unable to keep track of allegations of prisoner-on-prisoner sexual misconduct—a failure that directly violates data collection requirements of the Prison Rape Elimination Act, 42 U.S.C. ch. 147 § 15601 et seq. That data is crucial to inform prison policies and procedures to reduce sexual violence.

The OIG report chronicled other problems at FCI Sheridan, too, including leaky roofs, substandard food services and smuggled drugs. See: *Inspection of the Federal Bureau of Prisons’ Federal Correctional Institution Sheridan*, OIG Evaluations and Inspection Division (May 2024). 📰

Additional source: *KTVS, NPR News, New York Times*

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# Jury Awards \$352,300 to Prisoners Tortured at Notorious Utah Jail

After an investigation into rampant abuse by guards, Utah's Daggett County Jail closed its doors in 2017. A group of four state prisoners held at the jail under contract with the state Department of Corrections (DOC) then filed suit the following year. The state Department of Corrections settled its share of the claims in November 2019 for \$122,000, as *PLN* reported. [See: *PLN*, Aug. 2020, p.60.] On April 23, 2024, a federal jury returned a verdict totaling \$352,000 in favor of three of the four claims against the county.

The jail was shuttered after the investigation snared then-Sheriff Jerry Jorgensen and five of his deputies; they pleaded guilty to charges ranging from theft to aggravated assault and reckless endangerment while Jorgensen pled guilty to official misconduct. However, his plea was later withdrawn, and he retired.

But the investigation cost the county its contract with DOC, which withdrew all its prisoners, also taking away per diem payments to house them that had provided almost 30% of Daggett County's revenue. The jail had previously been in the news, too; after two convicted murderers escaped in 2007, it took over three hours for the only guard on duty to notice they were gone. Another escape occurred in 2015.

State prisoners Dustin L. Porter, Steven Drollette, Joshua Asay and Joshua Olsen cited jailers "unbelievably inhumane conduct" in their complaint. They raised claims under the Eighth Amendment and Art. 1, § IX of the Utah Constitution, which prohibits detainees from being subjected to "unnecessary rigor." Plaintiffs stated that they "lived in fear for their lives, health, safety and welfare because of the ongoing abuse they and other prisoners experienced." They further alleged that Sheriff Jorgensen had a policy which could be summarized: "If it wasn't on camera, it didn't happen."

Drollette said he was required by Deputy Joshua Cox to submit to a Taser shock as part of "initiation" onto a work crew. Cox also allegedly ordered a K9 to attack Drollette, injuring his hands and leg, after which he was threatened with retaliation if

he requested medical care. Porter described how Cox punched him, put him in a headlock and choked him, and "stuck his finger up inside [Porter's] nose, and pulled [him] backward onto the ground." After this incredible display of petty cruelty, the deputy reportedly bragged: "This badge says I can do anything I want to anyone here." Porter said he also was twice subjected to Taser shocks. Asay said Cox once unholstered a gun and pointed it at his face. Other deputies who were aware of these incidents failed to intervene or report them.

A DOC investigation found that Cox had "tased inmates without provocation, using a stolen taser," and that he also "required inmates to participate in training for his police service dog." The deputy also "was seen on camera assaulting inmates," DOC said, citing "numerous policy and criminal violations." Largely denying Defendants' motion to dismiss the prisoners' complaint on February 4, 2022, the federal court for the District of Utah noted that Jorgensen knew how on-duty guards "would watch television" or "engage in horseplay and wrestling with each other." See: *Porter v. Daggett Cty.*, 587 F.Supp.3d 1105 (D. Utah 2022).

After the suit went to trial, jurors found that Daggett County had a policy or custom of "failing to adequately supervise or discipline its employees," resulting in cruel and unusual punishment of all

the prisoners except Porter. Drollette was awarded \$65,000 in compensatory damages, with \$228,800 to Asay and \$58,500 to Olsen, for a total of \$352,300. Plaintiffs were represented by attorneys with the American Civil Liberties Union of Utah Foundation and The Bronx Defenders. See: *Porter v. Daggett Cty.*, USDC (D. Utah), Case No. 2:18-cv-00389.

The shuttered Daggett County Jail is presently for sale at a list price of \$3.5 million. 📰

Additional sources: *Axios*, *KSTU*

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION**  
In re: TEHUM CARE SERVICES, INC.,<sup>1</sup> Chapter 11  
Debtor. Case No. 23-90086 (CML)

**NOTICE OF DEADLINE FOR CASTING VOTES TO ACCEPT OR REJECT PROPOSED JOINT CHAPTER 11 PLAN OF REORGANIZATION OF THE TORT CLAIMANTS' COMMITTEE, OFFICIAL COMMITTEE OF UNSECURED CREDITORS, AND DEBTOR**

PLEASE TAKE NOTICE THAT on November 14, 2024, the Official Committee of Tort Claimants appointed in the Debtor's Chapter 11 Case (the "**Tort Claimants' Committee**"), the Official Committee of Unsecured Creditors appointed in the Debtor's Chapter 11 Case (the "**Unsecured Creditors' Committee**"), and Tehum Care Services, Inc., the above-captioned debtor (the "**Debtor**") and, together with the Tort Claimants' Committee and the Unsecured Creditors' Committee, the "**Plan Proponents**") filed:

- the **Joint Chapter 11 Plan of the Tort Claimants' Committee, Official Committee of Unsecured Creditors, and Debtor** (Docket No. 1815-1) (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the "**Plan**");<sup>2</sup> and
- the **Disclosure Statement for the Joint Chapter 11 Plan of the Tort Claimants' Committee, Official Committee of Unsecured Creditors, and Debtor** (Docket No. 1815-2) (together with all schedules and exhibits thereto, and as may be modified, amended, or supplemented from time to time, the "**Disclosure Statement**").

PLEASE TAKE FURTHER NOTICE THAT:

- The United States Bankruptcy Court for the Southern District of Texas (the "**Bankruptcy Court**") has scheduled a hearing on March 3, 2025, at 10:00 a.m. (Prevailing Central Time) (the "**Confirmation Hearing**") to consider whether to confirm the Plan. The Confirmation Hearing will be held before the Honorable Christopher M. Lopez, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of Texas, located at the Bob Casey United States Courthouse, 515 Rusk, Houston, TX 77002.
- On November 13, 2024 the Bankruptcy Court entered an order (the "**Solicitation Procedures Order**") approving the Disclosure Statement and procedures for soliciting votes to accept or reject the Plan (the "**Solicitation Procedures**").
- Pursuant to the Solicitation Procedures Order, the Bankruptcy Court approved certain procedures for soliciting votes to accept or reject the Plan, which are attached to the Disclosure Statement. Only Holders of Claims in Classes 3 through 10 are entitled to receive a ballot for casting a vote on the Plan (a "**Ballot**"). Holders of Claims in all other Classes under the Plan are deemed to accept the Plan because they are Unimpaired. Holders of Equity Interests under the Plan are deemed to reject the Plan because not receiving any distribution. For a vote to accept or reject the Plan to be counted, a Ballot must be completed and returned in accordance with the instructions provided on the Ballot so that it is received by **February 21, 2025, at 5:00 p.m. (Prevailing Central Time)**.
- The Plan proposes certain releases and injunctions in furtherance of the Plan. For the specific terms and conditions of all the releases and injunctions provided for in the Plan, and the precise scope of the Claims and Demands to be channeled, please refer to the specific terms of the Plan, which can be obtained as described below.**
- The Bankruptcy Court has issued the Solicitation Procedures Order describing how to vote on the Plan and the Disclosure Statement contains information that will help You decide how to vote. Your legal rights will be affected if the Plan is approved.
- If You would like to object to the Plan, You may do so by filing Your objection no later than February 21, 2025, at 5:00 p.m. (Prevailing Central Time) (the "**Confirmation Objection Deadline**"). Objections, if any, to confirmation of the Plan must: (a) be in writing; (b) state the name and address of the objecting party and the nature of the Claim or Equity Interest of such party; (c) state with particularity the legal and factual basis and nature of any objection to the Plan and include any evidentiary support therefor in the form of declarations submitted on information and belief; and (d) be filed with the Bankruptcy Court, Bob Casey United States Courthouse, 515 Rusk, Houston, TX 77002, together with proof of service, and served so as to be **RECEIVED on or before the Objection Deadline**.

**OBJECTIONS NOT TIMELY FILED AND SERVED IN SUCH MANNER MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND MAY BE DEEMED OVERRULED WITHOUT FURTHER NOTICE.**

**COPIES OF PLAN AND DISCLOSURE STATEMENT.** If You would like additional copies of the Plan, the Disclosure Statement, or the Solicitation Procedures Order, You can obtain those documents in the following manner: by (a) telephoning the Solicitation Agent at (866) 967-0491 (U.S. / Canada, Toll-Free) or +1 (310) 751-2691 (International); (b) visiting <https://veritaglobal.net/tehum>; (c) submitting an inquiry at <http://www.veritaglobal.net/tehum/inquiry>; (d) emailing Your request to [tehuminfo@veritaglobal.com](mailto:tehuminfo@veritaglobal.com); or (e) writing to Tehum Care Services, Inc., Ballot Processing Center, c/o Verita Global, 222 N Pacific Coast Highway, 3rd Floor, El Segundo, CA 90245.

Dated: November 15, 2024 Respectfully Submitted,  
*/s/ Eric R. Goodman*, David J. Molton (*pro hac vice*), Eric R. Goodman (*pro hac vice*), D. Cameron Moxley (*pro hac vice*), Gerard T. Cicero (*pro hac vice*), Meghan McCafferty (*pro hac vice*), Amir Shachmurove (*pro hac vice*), **BROWN RUDNICK LLP**, Seven Times Square, New York, NY 10036, Telephone: (212) 209-4800, Facsimile: (212) 209-4801, Email: [dmolton@brownrudnick.com](mailto:dmolton@brownrudnick.com), [egoodman@brownrudnick.com](mailto:egoodman@brownrudnick.com), [cmoxley@brownrudnick.com](mailto:cmoxley@brownrudnick.com), [gcicero@brownrudnick.com](mailto:gcicero@brownrudnick.com), [mmccafferty@brownrudnick.com](mailto:mmccafferty@brownrudnick.com), [ashachmurove@brownrudnick.com](mailto:ashachmurove@brownrudnick.com) -and- */s/ Michael W. Zimmerman*, Michael W. Zimmerman, **BERRY RIDDELL LLC**, 6750 E. Camelback Road, Suite #100, Scottsdale, AZ 85251, Telephone: (480) 385-2727, Email: [mz@berryriddell.com](mailto:mz@berryriddell.com), *Counsel to the Tort Claimants' Committee*  
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<sup>1</sup> The last four digits of the Debtor's federal tax identification number is 8853. The Debtor's service address is: 205 Powell Place, Suite 104, Brentwood, Tennessee 37027.  
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# Alabama Shrouds Executioners in Secrecy

"Sunlight is said to be the best of disinfectants," remarked U.S. Supreme Court Justice Louis Brandeis in 1913. Given the effort put into execution secrecy by Alabama's Department of Corrections (DOC), its death chamber needs a good deal of exposure.

On September 26, 2024, the state carried out the killing of prisoner Alan Eugene Miller, 59, by nitrogen hypoxia—the agreed-upon method after botching his last execution attempt—with scant evidence that it was ready. Nitrogen hypoxia had been used only once before in Alabama, when it made for a brutal execution of prisoner Kenneth Eugene Smith, 58, in January 2024, as *PLN* reported. [See: *PLN*, Mar. 2023, p.50; and Mar. 2024, p.24.]

Witness Lauren Gill reported that "Miller visibly struggled for roughly two minutes, shaking and pulling at his restraints," before he "then spent the next 5-6 minutes intermittently gasping for air." DOC Commissioner John Q. Hamm replied with gaslighting that what Gill saw were only "involuntary body movements," adding that "[e]verything went according to plan and according to our protocol."

But that protocol also put a spotlight on guards who staff the execution team; beyond simply strapping a condemned prisoner to a gurney for lethal injection, they are tasked with technical responsibilities during nitrogen hypoxia, like monitoring oxygen levels and putting equipment together. Again, DOC has tried to keep details secret, though some members of the execution team were identified by witnesses to Smith's killing.

The team's leader, Cpt. Brandon McKenzie, was accused in a 2020 lawsuit of violently attacking Holman Correctional Facility prisoner Lawrence Phillips, who was subsequently treated for a brain bleed and needed stitches, staples and a neck brace. DOC also kept resolution of that case in the dark with an undocketed August 2023 settlement. See: *Phillips v. McKenzie*, USDC (S.D. Ala.), Case No. 1:20-cv-00270. The agency then promoted McKenzie in October 2023; he reportedly earned \$135,600 that year—over twice the state's median household income, which the U.S. Census Bureau estimated at \$62,212.

Another execution team member, Christopher Earl, was demoted from lieutenant after Holman prisoner Jamal Jackson, 29, fatally hanged himself in May 2020. Earl found him but sent a nurse away and left Jackson hanging another 12 minutes before the nurse was summoned back and the prisoner was finally cut down. The guard left work before the body was picked up, another policy violation. DOC's then-Commissioner Jefferson Dunn sanctioned Earl for "disgraceful" conduct, but the guard kept his job. The following year he left three other prisoners sweltering in outdoor cages for three hours, earning a three-day suspension by Dunn. The guard earned \$127,000 in 2023.

A fellow execution team member, Lt. Brian Finch, also got a three-day suspen-

sion in May 2021, after DOC learned that he failed to report pleading no contest to third-degree battery on a law enforcement officer during a drunken November 2019 incident in Florida. Finch drove back to both states—Florida and inebriation—in January 2024, earning a one-year probation sentence and a six-month drivers license suspension. He earned \$104,000 in 2023.

Justice Brandeis would disapprove of Alabama's efforts to keep these details under wraps. The jurist decried "the wickedness of people shielding wrongdoers & passing them off (or at least allowing them to pass themselves off) as honest men." 🐦

Additional sources: *Alabama Political Reporter*, *Bolts Magazine*

## Minnesota Judge Spanked For Ignoring Law Restoring Felon Voting Rights

Just over a year after Minnesota restored voting rights to former felons, the state Board on Judicial Standards (BJS) reprimanded Mille Lacs County District Judge Matthew Quinn on June 27, 2024, for attempting to disenfranchise formerly incarcerated people.

Minnesota's Restore the Vote Act re-enfranchised over 55,000 former prisoners on probation for felony convictions. Signed by Gov. Tim Walz (D), it took effect on June 1, 2023, as Democratic Secretary of State Steve Simon registered newly eligible voters in St. Paul.

Yet in October 2023, Judge Quinn issued supplementary sentencing orders warning at least six defendants that they are not eligible to vote or register to vote. Making sure no one thought it a mistake, he also called the new law unconstitutional.

The orders were quickly challenged. Democratic Farm Labor officials condemned his attempt to undermine the Restore the Vote Act, and the Minnesota Court of Appeals ruled in November 2023 that he overstepped his authority.

BJS's subsequent investigation and reprimand condemned the judge, deeming

his orders "unfair" for threatening newly enfranchised voters with criminal charges if they attempted to exercise the right. The incident is not Judge Quinn's first brush with ethical concerns. In 2021, he received a separate reprimand for social media activity exhibiting political bias toward former Pres. Donald J. Trump (R). 🐦

Sources: *AP News*, *Minneapolis Star Tribune*

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# Kentucky's Failure to Timely Release Prisoners Costs Taxpayers \$30 Million (So Far)

by Douglas Ankney

When Kentucky prisoner Keith Bramblett complained about not receiving “good time credit” against his sentence for the class he took while incarcerated, an official with the state Department of Corrections (DOC) replied: “Sue me.” So Bramblett did. A dozen years later, the class-action has cost the state about \$30 million to defend what one judge called a “severely mismanaged” program, which left thousands of prisoners like Bramblett confined months or years beyond their release dates.

In its most recent ruling on March 29, 2024, the federal court for the Eastern District of Kentucky likened the case to “an imposing kudzu vine that swiftly grew in its number of claims and its number of parties.” The Seventh Amended Class Action Complaint filed by Bramblett and fellow Plaintiffs—Brandon Biggs, Osiris Caise, James Coitrone, Quincy Dunn, Barbara Gordon, Lorenzo Lee, Tony Lutes, Lance Meacham, Walter A. Noland, Cedrick Lee Pollard, Donald Roberts and David Voyles—challenged the Commonwealth of Kentucky, its Justice and Public Safety Cabinet and DOC, on behalf of a certified class of prisoners allegedly denied sentence credits under KRS 197.045 “through completion of educational or behavioral modification programs” over the previous five years.

Plaintiffs Biggs, Caise, Hopper, Meacham, Gordon, Voyles and Roberts had been released from custody but argued their releases were delayed by the failure to award sentence credits. Remaining Plaintiffs were still incarcerated—17 years after passage of the relevant statute. That law says prisoners completing enumerated courses are entitled to educational good time (EGT) credit reductions from their sentences in amounts of 60 to 90 days per course completed. In turn, lawmakers hoped that EGT would save taxpayers money with a reduction in the population of prisoners and in the recidivism rate of those released.

The state Community and Technical College System (CTCS) operated DOC's education programs until 2010; using a computerized system to monitor which prisoners completed which programs, it

could quickly produce a transcript of every prisoner involved in classes. But when the DOC took over, the CTCS software was abandoned, and prison system employees attempted to keep records as best they could.

Worse, DOC apparently began treating EGT awards as discretionary. In *Roberts v. Thompson*, No. 2011-CA-1950-MR (Ky. App. Sept. 14, 2012) (unpublished), Plaintiff Donald Roberts—who is also a Plaintiff in the instant case—successfully argued *pro se* that KRS 197.045(1)(a)(2) afforded Defendants zero discretion in whether to award EGT. Even earlier, in *Mercer v. Commonwealth*, Kent. 48th Jud. Cir. (Franklin Cty.), Case No. 05-CI-01714 (2007), a state judge warned that denial of EGT could amount to a violation of due process guaranteed by the Fourteenth Amendment to the U.S. Constitution, irrespective of whether the diploma Mercer earned was similar to another diploma for which he had already received EGT.

However, trial in this class-action was delayed because Defendants' records, to put it mildly, were in disarray. The Court ordered an independent audit by private accounting giant KPMG. After more than 150 visits to Kentucky jails and prisons over 30 months, auditors found over 3,600 prisoners who were improperly denied EGT. Of those, more than 2,000 were released late—by an average of 90 days. Some even died while wrongfully imprisoned. KPMG found approximately 1,500 prisoners remained in custody even after receiving their EGT—meaning they should be released immediately. Around 6,000 more prisoners may have been wrongfully denied EGT, auditors added, but those cases were disputed by Defendants. Still an estimated 3,000 more late releases would probably result.

The audit cost the state \$28 million. Shockingly, DOC did not even attempt to fix the problem until it was completed. Even after the class-action was filed, putting DOC on notice of the problem, it only worsened: 78% of the errors that auditors found occurred *after* the suit was filed, including 40% after the audit began.

Defendants removed the case to the Court, arguing they were entitled to

qualified immunity. The Court agreed and granted them summary judgment on claims under 42 U.S.C. § 1983 on March 30, 2022, pruning the case to two pendant state-law claims. See: *Bramblett v. Commonwealth*, 2022 U.S. Dist. LEXIS 58224 (E.D. Ky.). In its most recent decision, the Court punted those claims to the Franklin County Circuit Court, which originally certified the class. See: *Bramblett v. Kentucky*, 2024 U.S. Dist. LEXIS 57702 (E.D. Ky.).

“How much would I have to pay you to spend 24 hours in a Kentucky prison?” wondered Plaintiffs' counsel, Prospect attorney Greg Belzley. “We're not just talking about these prisoners. We're talking about their families. We're talking about kids going 90 days without their dad or mom when they should have been home.”

It remains to be seen what relief the current and former prisoners will get. But as Belzley noted, it's already clear that Kentucky taxpayers are big losers from DOC's “sue me” attitude. “This is very possibly going to be the largest, one of the costliest lawsuits that's going to be brought against this state,” the attorney said. 🗞️

Additional source: *WDRB*

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# Trends Show Mortality Risks Increase with Higher Jail Turnover Rates

by David M. Reutter

Thousands of people die in local jails annually. The causes of death vary, leading researchers to seek identifiable trends. A report published by the National Institutes of Health (NIH) on December 19, 2023, found an underlying risk of mortality traced to “a heavy reliance on incarceration: the cycling of people into and out of jails where the impacts of addiction, mental illness, and health inequity can be exacerbated with dire consequences.” The nonprofit Prison Policy Initiative (PPI) then issued an update on April 15, 2024, to an earlier analysis of local jail data, concluding that little has changed since that 2017 look at overuse of jails in the U.S.

Authored by Jessica L. Adler and Weiwei Chen, the NIH report used data from the federal Bureau of Justice Statistics (BJS) to assess mortality rates and conditions in about 450 local jails between 2008 and 2019. In the latter year alone, there were some 10.3 million admissions to jails which the study called “the front door of the criminal justice system.” Of the 734,500 people serving time in U.S. jails in 2019, two-thirds were pretrial detainees—a group which also comprised 76% of jail deaths.

Jails are diverse in “terms of size, conditions, oversight, and demographics.” At

least 30% of detainees are “significantly poorer” than people outside jails, leaving them at “heightened risk” of incarceration because they cannot afford to post bond. As of 2019, Blacks were jailed at a rate three times higher than whites. Hispanics were also disproportionately subject to pretrial confinement.

Medical services in jails are also strained, since pretrial detainees often present themselves to jail with drug or alcohol addiction and withdrawal issues or with chronic or infectious medical conditions that are often mismanaged or untreated.

“A particular health risk—dying while incarcerated—became more commonplace during the period 2000-19,” wrote Adler and Chen, as jail mortality shot up 11%, deaths related to drug or alcohol abuse “almost quintupled,” and the suicide rate “hovered at more than double the adjusted national average.” Moreover, while “mortality due to some illnesses fell,” the report found “there were increases in deaths due to heart disease and cancer.”

Adler and Chen looked at mortality data for 523 jails or jail systems provided by *Reuters*. Jail admission data came from BJS’s 2013 and the 2019 Census of Jails data and its Annual Survey of Jails data from

the 2008-18 period. The data indicated troubling trends.

“On average, about 1.40 deaths occurred annually per 1,000 incarcerated people,” of which 0.62 were “illness-related deaths,” 0.53 were suicides, and 0.15 were “acute drug- or alcohol-related deaths,” Adler and Chen found. “Accidents or homicides were less common (0.03 deaths each). The daily population was close to 1,000 people per facility. The average turnover rate was about 67 percent, and the capacity occupied was more than 90 percent.”

Importantly, Adler and Chen concluded that “jails with higher turnover rates were likely to have higher overall mortality than jails with lower turnover.” Deaths due to suicide, homicide, drugs and alcohol showed “a significant association with high turnover.” In 2019, the average jail stay was six days, but “[d]uring the period 2000-19, the median time served before a drug- or alcohol-related death was one day,” versus “nine days before a suicide death” and “thirty days before a homicide death.”

Suicide was the leading cause of jail deaths in 2019, with a rate that was “more than double both the adjusted national average and the suicide rate in prisons,” Adler and Chen found. “As prior studies suggest and our results show, cycling higher numbers of people into and out of jails relates to more fatalities.”

BJS data showed that length of stay increased with jail size, and illness-related deaths are associated with the largest jails. Adler and Chen found that medium-sized jails experienced higher rates of illness-related deaths than smaller jails, as well as “higher rates of drug- or alcohol-related deaths than either smaller or larger jails.” Yet they estimated that just 34% of jails provide detox services, and “even fewer offer maintenance pharmacotherapy.”

Black detainees were more likely to die of illness-related deaths, especially in larger jails. A higher proportion of females and juveniles in a jail was also associated with increased deaths. Privatized medical services led to more deaths, too. “Our results indicate,” the authors wrote, “that health care in jail that is overseen by a public provider, as opposed to a private provider



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or a hybrid of the two, is related to lower mortality due to suicide.”

When one out of every three Americans faces incarceration at some point during his or her life—and jail populations remain stagnant despite advocates’ efforts to reduce the number of people held in pretrial detention—understanding jail mortality must become a public priority. *See: Jail Conditions And Mortality: Death Rates Associated With Turnover, Jail Size, And Population Characteristics*, NIH (Dec. 2023).

PPI’s report, *Era of Mass Expansion: Why State Officials Should Fight Jail Growth* (2017), examined drivers of jail incarceration

and how jails impact the entire criminal justice system and millions of lives annually. Since it was issued, many jurisdictions have passed reforms aimed at reducing jail populations. Yet PPI’s recent update found the same trends continue to increase jail populations.

Among those trends: the perverse practice of renting out jail space, which fuels jail growth. Some jurisdictions have financed and built jail bed space they don’t need but expect to rent to other jurisdictions or to federal agencies, such as the U.S. Marshals Service (USMS) and federal Immigration and Customs Enforcement (ICE). USMS

rents about 26,000 jail beds each year. ICE rents about 15,700 more. The practice “both skews the data and gives local jail officials a powerful incentive to endorse policies that contribute to unnecessary jail expansion,” PPI wrote.

Renting of jail beds to other jurisdictions—“while *also* building ever-larger facilities in order to cash in on that market”—alters policy priorities for jail officials, the report noted, leaving “little incentive to welcome or implement reforms.” As jails continue to experience overcrowding and high turnover, the trend of higher death rates will likely continue. 📖

## \$38 Million Jury Award for Physical, Sexual Abuse at New Hampshire Juvenile Lockup

In 1995, when David Meehan was 14 years old, he was committed to New Hampshire’s Youth Development Center (YDC), later renamed Sununu Youth Services Center, a secure juvenile detention center in Manchester. There he was raped about a year later.

The assault took place in his room. The attacker was guard Frank Davis. Another staffer stood watch at the door. The teen contracted gonorrhea, which medical staff treated. But then in late 1997, counselors Jeffrey Buskey and Stephen Murphy forced Meehan to perform oral sex on them. Buskey later anally raped him, too; another time, he extorted oral sex at gunpoint.

The following year, after Meehan absconded and was caught and returned to YDC, “[o]n an almost daily basis, [he] was anally and/or orally raped by Buskey and/or Murphy, sometimes multiple times in one day,” recalled the complaint he later filed. “During those rapes, the perpetrator would often beat him.” Meehan and other juveniles had visible injuries, yet no staff members reported the abuse.

Multiple times while held at YDC, Meehan was placed “Out of Community”—a form of solitary confinement—sometimes in rooms without toilets; when staff did not make regular rounds to let him use the bathroom, he had to urinate on the floor. During his time in solitary, he was also denied educational programs.

Meehan continued to suffer physical and sexual abuse until transferred to another facility. He was released from custody when he turned 18 in 1999. Due to the trauma

experienced at YDC, he “became addicted to heroin for many years, abused alcohol for many years, and attempted suicide multiple times,” his complaint said.

In 2017, after decades remaining silent about the horrific abuse he suffered, Meehan told his wife and filed a police report. He also began investigating and learned that YDC supervisors were aware of the systemic misconduct but covered it up; some had engaged in sexual and physical abuse themselves, as *PLN* reported. [See: *PLN*, April 17, 2024, online.]

Meehan’s police report sparked an investigation. Buskey and Murphy were indicted in July 2019 on 82 counts of aggravated sexual assault. Nine other former YDC employees were also charged, though charges against one, Frank Davis, were dropped when he was found incompetent.

Meehan filed suit in state court in 2020, raising claims of negligence, breach of fiduciary duty and conspiracy, as well as 42 U.S.C. § 1983 civil rights violations. The case went to trial, and on May 3, 2024, a jury awarded him \$18 million in compensatory damages plus \$20 million in “enhanced” damages—similar to punitive damages. Jurors found the state’s negligence and/or breach of fiduciary duty was a “substantial factor” in the injuries suffered by Meehan, now 42.

The Attorney General’s office moved to reduce the \$38 million award, citing state law that limits damages to \$475,000 per incident and arguing that Meehan’s injuries had been incurred in only one incident. The state also argued that his

suit was untimely—contrary to the jury’s findings—and that he had failed to prove negligence. When he denied the motion, Judge Andrew Schulman said that Defendants “either knew and didn’t care or didn’t care to learn the truth” about abuse at YDC.

“Maybe there is more to the story,” the judge added, “but based on the trial record, liability for negligence and breach of fiduciary duty was proven to a geometric certainty.”

Over 1,100 former YDC residents have filed lawsuits raising similar allegations; Meehan’s case was the first to go to trial. He was represented by attorneys with Rilee & Associates, PLLC in Bedford. *See: Meehan v. State*, N.H. Super. (Merrimack Cty.), Case No. 217-2020-CV-00026. The state indicated in June 2024 that it would appeal the verdict. *PLN* will update developments as they are available. 📖

Additional source: *AP News*

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# GEO Group Just Wants to Be a Landlord for Oklahoma DOC

In June 2024, after Oklahoma failed to meet a \$3 million pay hike demanded by The GEO Group, Inc., the private prison operator gave notice to terminate its contract to run Lawton Correctional and Rehabilitation Facility (LCRF), the state's last private prison—giving the Oklahoma Department of Corrections (DOC) just three months to find another home for 2,375 prisoners. Unsurprisingly, the state Board of Corrections (BOC), which provides oversight for DOC, then approved a one-year extension for GEO Group to continue running the prison.

Three prisoners died at LCRF in 2023: Matthew Treat, 36, suffered a fatal fentanyl overdose on March 21; Loren Dean Tucker was fatally stabbed by fellow prisoners on May 6, four days after turning 31; and Raymond Bailey, 45, was found dead in a trash can on October 26, gagged, hogtied and stabbed multiple times. After getting rid of 10 guards, GEO Group blamed them for a laundry list of contractual failures which contributed to the deaths: prisoners who were allowed to roam unsupervised and not locked in their cells; mandatory security checks that were skipped; and records that were falsified in all three deaths—a crime under state law, though none of the former employees was referred for prosecution, according to Comanche County District Attorney Kyle Cabelka.

But what had the company done to keep it from happening again with the firm's remaining employees? The prison's camera system was upgraded, GEO Group said.

It also asked for a \$3 million raise. State lawmakers fell in line to vote for the hike, but Gov. Kevin Stitt (R) vetoed that bill in June 2024, calling out the company for failing to fix problems at LCRF. That same month, GEO Group told DOC goodbye.

It wasn't the first time a private prison operator gave up running a state lockup. After persistent fines for short-staffing and 18 stabbings in less than nine months, CoreCivic handed over the keys to what was then called Davis Correctional Facility in October 2023; however, assumed control of the lockup—still leased from CoreCivic, now called Allen Gamble Correctional Center—it was even more short-staffed than before, as *PLN* also reported. [See: *PLN*, Mar. 2023, p.45; and June 2024, p.12.]

To keep GEO Group from running off too quickly, BOC agreed to relocate 238 prisoners that the firm is too short-staffed to supervise. Since the contract is based on a per-diem rate, that will lower payments by about \$1.7 million through June 2025. After that, DOC expects to ink a lease deal similar to its CoreCivic contract, renting the lockup from GEO Group and staffing it with DOC personnel.

## Fighting Get Out of Hinton Prison Lease

Meanwhile, 70 miles north, GEO Group was apparently trying to extricate itself from a lease of the Great Plains Correctional Facility (GPCF). The lockup was built 35 years ago to revive the town of Hinton with new jobs at the prison, as well as a small

ecosystem of cheap motels and eateries that sprang up around it, catering to prisoners' visitors.

But after a 2021 executive order from newly elected Pres. Joseph R. Biden, Jr. (D), the federal Department of Justice stopped pulled out detainees held for the U.S. Marshals Service. GEO Group might have replaced those with immigrant detainees held for federal Immigration and Customs Enforcement (ICE), but local leaders were afraid that the immigrants might be released into the town.

The prison sat empty for two years until DOC agreed to sublease it from GEO Group in 2023. There have since been more troubling headlines; as *PLN* reported, a federal lawsuit filed in May 2024 alleged that prisoners who complained about being held in eight-man "special management unit" cells were locked in tiny showers for up to three days. [See: *PLN*, Oct. 2024, p.59.]

GEO Group also sued Hinton's Economic Development Authority (HEDA) in federal court for the Western District of Oklahoma in November 2023, asking for declaratory judgment that it is obligated to pay only its base rent of \$100,000 a year for GPCF—just 10% of what it paid HEDA at a per diem of \$1 to \$1.25 per prisoner per day. See: *GEO Grp., Inc. v. Hinton Econ. Dev. Auth.*, USDC (W.D. Okla.), Case No. 5:23-cv-01014. 📄

Additional sources: *McAlester News-Capital*, *Non-DOC*, *Oklahoma Watch*

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## Former Warden at Troubled Illinois Lockup Promoted to Run BOP Training Academy

Overlooking a troubling record of overseeing abusive conditions, the federal Bureau of Prisons (BOP) promoted Andrew Ciolli in July 2024 to serve as director of the agency's Management and Specialty Training Center (MSTC) in Aurora, Colorado. Ciolli is the former head of the U.S. Penitentiary (USP) in Thomson, Illinois, and the Federal Correctional Complex (FCC) in Florence, Colorado.

BOP shuttered the Special Management Unit at USP-Thomson after numerous uses of excessive restraint on prisoners, seven of whom died in less than four years after its 2019 opening—the highest of any BOP prison, as *PLN* reported. [See: *PLN*, Aug. 2023, p.16.] At FCC-Florence, a BOP staffer reported in an April 2024 whistleblower letter that restraints were also used on FCC-Florence prisoners even when they “were behind a secure door” and “no immediate threat to staff existed,” beyond which “no actual disruptive behavior was observed from any inmate that would have placed a staff member in danger.”

Ciolli started as a BOP Recreational Specialist in 2003, rising eventually to warden at USP-Atwater in California in 2019. He then moved in February 2021 to

USP-Thomson, helming the prison when three of those seven SMU deaths were recorded in the solitary confinement unit before it was shuttered in 2023. His tenure was also marked by allegations of excessively tight restraints that scarred prisoners with what some called the “Thomson tattoo” in interviews published by the Washington Lawyers' Committee for Civil Rights & Urban Affairs (WLCCR&UA). Some prisoners reported being shackled for hours or days at a time without access to food or a bathroom. See: *Cruel and Usual: An Investigation into Prison Abuse at USP Thomson, WLCCR&UA* (July 2023).

Thomas Bergami, who succeeded Ciolli as warden at USP-Thomson, said his predecessor left behind an “enormous problem with inmate abuse.” Meanwhile

Ciolli was off to Colorado with a \$20,000 raise, though allegations of abuse soon followed. The whistleblower complaint revealed that Ciolli and other prison officials targeted prisoners for masturbating, subjecting them to excessive force, solitary confinement and humiliation. An internal investigation earlier in 2024 substantiated some of the abuse and criticized Ciolli for failing to interrupt it. He was referred for disciplinary action, but then he landed in the top job at MSTC.

“Historically, when a warden is disciplined for misconduct, they aren't reassigned as a director of anything, let alone a training center,” said Bergami, who has since retired. 🗨️

Sources: *The Marshall Project, NPR*

## San Quentin Brings in Hollywood, Moves Out California Death Row Prisoners

When the inaugural San Quentin Film Festival wrapped up on October 13, 2024, the California Department of Corrections and Rehabilitation (CDCR) completed a star-studded step in transforming its oldest state prison into the new San Quentin Rehabilitation Center, with Hollywood luminaries like Jerry Seinfeld on hand to award prisoner-made films.


Between February 26 and May 8, 2024, the remodel also forced relocation of 324 condemned prisoners—over half of the state's Death Row. Another 104 condemned prisoners had already been relocated to await execution in other state lockups, which are notably *not* open for inspection by invited outsiders.

Gov. Gavin Newsom (D) insisted that the moves were necessary to comply with Proposition 66, a 2016 voter initiative passed both to speed up the execution process and put condemned prisoners to work to pay restitution to their victims. Newsom declared an execution moratorium in 2019, leaving the other half of the law to be implemented through transfers to prisons closer to work centers than San Quentin.

Meanwhile, the film festival is just one way that CDCR is trying to turn San Quentin into a Scandinavian-style prison focused on rehabilitation. A 156-page report released by Newsom's San Quentin Transformation Advisory Council in January 2024 called for more changes, like ending double-celling and providing onsite overnight housing for guards to use between shifts.

Nearly 10% of the death row transfers went to California Institution for Men (CIM) in Chino; ironically, that was the lockup dubbed a “prison without walls” when constructed in the 1970s for its resemblance to European prisons. Also ironic: The 63 prisoners transferred to CIM reversed a larger migration in May 2020 that was blamed for a COVID-19 outbreak that killed 29 San Quentin prisoners and staffers, as *PLN* reported. [See: *PLN*, July 2021, p.34.] 🗨️

Sources: *Bay Area Local News Matters, CalMatters, Los Angeles Times, New York Times*



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## Suicidal Texas Prisoners Held in Phone-Booth-Size “Containment Cages”

In an essay published by *Slate* on October 20, 2024, Texas Department of Criminal Justice (TDCJ) prisoner Jeremy Busby admitted that even after 20 years behind bars, what he found when released from a 23-month solitary confinement in 2022 left him “shocked.”

It wasn’t the “containment cage,” which he’d been inside before when heading to or from solitary; Busby described it as “a contraption smaller than a telephone booth made of steel and mesh wire” that had “no toilet or sink” and “no room to lie down.” What shocked him was finding two nearby cages holding fellow McConnell Unit prisoners under CDO—“constant and direct observation”—while they waited for clearance from the mental health department or transfer to a mental health facility, “a process that often took days.”

As it turned out, each time a prisoner

attempted self-harm, he was tossed in one of these cages. With no toilet, the wire mesh was clogged with feces, some leftover from previous prisoner occupants. For his feces, one enterprising prisoner saved the paper sack in which his meals arrived; Busby also saw a row of cereal cartons inside the cage where the man stored his urine.

“Housing prisoners in containment cages for days is a widespread and unchecked practice in certain Texas prisons,” Busby declared, noting they are also used in at least two other state prisons, the Gib Lewis Unit and John B. Connally Unit. At McConnell, seven cages stood side-by-side in an unused utility closet, where suicidal and mentally ill prisoners shouted and threw bodily waste at one another.

Two nonprofits, the Texas Civil Rights Project and Texas Prison Reform, asked for an investigation, but the TDCJ Indepen-

dent Ombudsman reported in April 2023 that he could not “substantiate the allegation [that] staff violated policy ... because a policy specifying length of time spent in [a holding cell] does not appear to exist.” The Prison Policy Initiative, another nonprofit, lodged a request for the policy, which was referred to the Texas Medical Board, which denied it to protect patient confidentiality. “So the official policy is still unknown,” Busby said.

Meanwhile another nonprofit, the Texas Justice Initiative, reported in June 2024 that the annual suicide rate in state prisons had nearly doubled from an average of 28.6 a year between 2005 and 2019 to 56 a year from 2020 to 2023. 📰

Sources: *Austin Chronicle*, *High Plains Public Radio*, *Slate*

## Sprawling Indictment Targets Two Smuggling Networks Run by Georgia Prisoners

Two federal indictments unsealed on August 21, 2024, charged 23 current and former Georgia prisoners and their accomplices in a conspiracy using drones to distribute methamphetamine, marijuana and cellphones at two lockups in the southeastern part of the state. Defendants were charged with conspiring to possess drugs with intent to distribute, utilizing unlawful communication facilities and using drones to breach prison security.

The charges resulted from Operation Night Drop, a multi-agency investigation including the state Department of Corrections (DOC) that targeted two conspiracies to smuggle contraband into Smith State Prison and Telfair State Prison beginning in 2019 until July 2024. Among items confiscated during the investigation were 10 drones and 21 firearms.

The indictments detail extensive communications to coordinate the delivery of contraband between Defendants, including text messages and Facebook Messenger exchanges from contraband cellphones. The

communications often included images of prisons, drugs, drones and other materials, revealing the level of sophistication of the smuggling operations.

The 15 defendants in the first indictment included alleged ringleader Alan “Strong” (or “Krook”) Hall, 44, who is currently incarcerated at Georgia Diagnostic and Classification Prison (DCP) along with fellow defendant Deivon “Hitman” Waller, 33. Waller was previously housed with Nathan Weekes, another state prisoner accused of plotting a murder-for-hire scheme that led to the death of a guard’s neighbor and the arrest of former Smith State Prison Warden Brian Adams in 2023, as *PLN* reported. [See: *PLN*, July 2023, p.11.]

Other codefendants with Hall and Waller included fellow DCP prisoner Asa “Foolay” Ward, 28; Martin “The Mayor” Holmes, 33, who is currently held at Macon State Prison; and Raymond “Flako” Razo, 36, currently at Telfair State Prison. Each was charged with distributing drugs and

contraband in DOC. Holmes is also linked to the murder of former Smith State Prison guard Jessica Gerling—Weekes’ former girlfriend, whom he sent Sumlin Jones to kill when the hitman botched the job and murdered Gerling’s neighbor, Bobby Kicklighter.

Also named in the indictment were former DOC prisoners Travius “Nut” Bateman, 39; Devonn “Vonn” Collins, 28; Torlandus “Mustafa\$upa” Fuller, 33; Marquez Chandler, 25; Jamar Hill, 37; and Donald Pate, 51. Four non-incarcerated codefendants were named, too: Anisha Usher, 38, of Covington; Chad Henry, 26, of Conyers; Raane Onessimo, 29, of Powder Springs; and Katrina Hampton, 28, of Killeen, Texas. See: *United States v. Hall*, USDC (S.D. Ga.), Case No. 6:24-cr-00009.

The second indictment added eight more defendants, including Robert “Messiah” (or “Dean”) Harris, 32, who is currently held at Macon State Prison; Kelvin “Gangsta” Rogers, 38, currently at Smith State Prison; and Thomas “Shoota” (or “Tee”)

Cothran, 37, currently at Ware State Prison; and Tristahn “Mohawk” Ash, 27, who is currently incarcerated at Metro Reentry Facility in Atlanta. They face similar conspiracy charges related to the drone-assisted smuggling, along with a pair of former DOC prisoners, Quinton “JR” Samples, 29, and his brother, Quintaveous “Pee Wee” Samples, 26. Their non-incarcerated sister, Quinesha Oliver, 27, was also indicted; in August 2020, she allegedly received a text

from Cothran that read in part, “U get that drone and go praxtixe wit it bae, and learn the layout of dis mf.”

The last defendant, David Williams, 35, was not charged in the conspiracy but rather with Ash with possession of methamphetamine with intent to distribute and possession of a firearm in furtherance of the drug trafficking crime. *See: United States v. Harris*, USDC (S.D. Ga.), Case No.6:24-cr-00010.

Smith State Prison has been plagued by corruption and violence as DOC has failed to secure the lockup. Numerous prisoner assaults have been recorded, along with two staff murders, in addition to non-incarcerated victims, like Kicklighter. Many of those named in the indictments were until recently held near one another—apparently fostering their alleged conspiracy. 🗞

Additional source: *Georgia Virtue*

## Book Review: Public Records Act Manual for the State of Washington

by Derek Gronquist

reviewed by Sam Rutherford

The *Public Records Act Manual for the State of Washington* (2nd Ed. 2020), by Derek Gronquist, is a must have compendium for anyone, from the novice record requestor to attorneys experienced in public records litigation, interested in pursuing public records requests from governmental agencies within the state of Washington. It is by far the most comprehensive and complete encyclopedia of Washington public records law currently available.

Gronquist is an experienced *pro se* litigator who has successfully pursued public records cases at all levels of the state court system. He has drawn on his substantial experience to provide a well thought out and detailed guide on public records law and litigation in Washington.

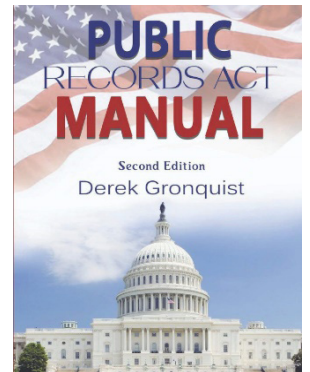
The Manual is 534 pages long, broken into nine chapters that cover every aspect of the Public Records Act (PRA), Chapter 42.56 RCW, including but not limited to its history and purpose, the types of records subject to disclosure, statutory and case law exemptions from disclosure, instructions on how to initiate a records request, state agencies’ affirmative duties under PRA, record retention policies and how and when PRA requires agencies to respond to records requests, plus how to enforce PRA by filing an action in superior court and beyond.

Each section of the Manual contains extensive commentary with citation to relevant cases and statutes current through April 1, 2020. The accuracy, thoroughness, and insightfulness of the commentary and citation to legal authority is on par with what practicing attorneys would expect

to find in a leading legal treatise, yet the information is presented in such a way that the novice record requestor will not find it difficult to digest, comprehend and, most importantly, put to good use obtaining the records he or she seeks.

In addition to chapters covering the PRA itself, there are subsections dedicated to explaining the process for seeking judicial review of an agency’s denial of access to records. Topics span stages of a case from filing a complaint through discovery to seeking appellate review of adverse trial court rulings. Perhaps most useful to the novice requestor is the extensive library of forms contained in the appendix, demonstrating exactly how every conceivable document required during public records litigation should be drafted.

Whether you are a journalist pursuing a story that requires access to public records, a concerned citizen wanting to know what the government is up to, or an attorney who litigates PRA cases, the Manual should be within arm’s reach of your computer. It is available from Amazon for just \$49.95 by following this link: <https://www.amazon.com/Public-Records-Manual-Derek-Gronquist/dp/B08Q6HK111>. 🗞





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# Georgia Deputy Warden and Guard Fired for Prisoner Sex Assaults, Second Guard Sentenced to 25 Years

by David M. Reutter

On November 4, 2024, former Georgia Department of Corrections (DOC) guard Lorenzo Cheeks, 25, was sentenced to 25 years in prison for having sex with three prisoners at Lee Arrendale State Prison—injuring one so badly that she required surgery. Earlier, DOC also fired Deputy Warden Alonzo McMillian, 44, and guard Lt. Russell Clark, 62, when both were arrested in May 2024 and charged with having sex with prisoners.

Cheeks was fired, too, when a prisoner accused him of rape in December 2022, as *PLN* reported. [See: *PLN*, Feb. 2023, p.63.] He had been on the job just a few months when he told another prisoner, “You make me want to fuck you,” before pulling her into a hallway and ripping off her pants. He had a sexual relationship with a second prisoner during November 2022. He was finally fired after taking the third prisoner to a shower area, where he shoved her against a wall and penetrated her so violently that she required a partial hysterectomy.

That last victim, “Jane Doe,” filed suit in federal court for the Northern District of Georgia on February 22, 2024, accusing Cheeks of violating her civil rights when he “violently and forcibly raped her” on a solo escort to the shower, a task which ordinarily requires two guards. She also corroborated that Cheeks “verbally flirted” with other prisoners and passed them notes expressing sexual interest in them.

Before his sentencing, Cheeks was held without bond in Habersham County Jail and charged with rape. But Mountain Judicial Circuit Assistant District Attorney Rosanna Szabo cut a deal for the lesser plea when the prisoners declined to testify about their experience. Following his sentence, Cheeks must serve 35 years on probation. Judge William Oliver allowed the disgraced former guard to keep a photo of his young son only if “every time you look at that picture, you apologize to him for the man that you turned out to be.”

Two days later, “Doe” dismissed her suit, raising the question whether DOC refused to indemnify its former guard. Plaintiff was represented by attorneys Jeffrey Filipovits and Wingo F. Smith of

Spears & Filipovits, LLC in Decatur. See: *Doe v. Cheeks*, USDC (N.D. Ga.), Case No. 2:24-cv-00036.

The other prison employees fired and charged with sexual assault of prisoners were higher ranking than Cheeks. DOC investigators accused Deputy Warden McMillian of an inappropriate relationship with an unnamed prisoner and having sex with her—ironically, on the same day that “Doe’s” lawsuit was filed. McMillian, whose career began as a guard with the state Department of Juvenile Justice in 2003, was booked into the Pulaski County Jail on May

2, 2024, and released the following day on a \$10,000 bond.

Clark, whose career began in 1995, was accused of taking another unidentified prisoner between February 13 and 14, 2024, to an area away from surveillance cameras, where he fondled her breast and kissed her. He was booked into the Habersham County Jail on a \$5,600 bond, but he was no longer on its inmate roster in November 2024. 📰

Additional sources: *Atlanta Journal-Constitution*, *Now Habersham*, *WGTJ*

## Illinois Shuttters Decrepit Prison

As of September 30, 2024, the Illinois Department of Corrections (DOC) had transferred most of the 558 prisoners held at Stateville Correctional Center a month before. The move followed a preliminary injunction (PI) issued by the federal court for the Northern District of Illinois on August 9, 2024, in a long-running class-action over conditions at the 99-year-old lockup.

DOC prisoner Lester Dobbey filed the suit *pro se* in 2013, alleging infestations of birds, mice and cockroaches, plus failure to provide cleaning supplies at Stateville. Additional allegations included incessant lighting that disrupted prisoners’ sleep, inadequate ventilation and a contaminated water supply. The Court certified a class in the case in early 2014, and attorneys from Loevy & Loevy in Chicago were appointed class counsel in April 2014.

The parties engaged in settlement negotiations that stretched through the COVID-19 pandemic in 2020. Meanwhile, conditions at the prison continued to deteriorate, leaving prisoners dodging falling concrete and sweltering in the summer behind nailed-shut windows. The lousy conditions were blamed for the June 2024 death of Michael Broadway, 51; as *PLN* reported, the asthmatic prisoner succumbed on the top floor of the stifling prison without so much as a fan while temperatures outside soared to 91 degrees Fahrenheit. [See: *PLN*, Aug. 2024, p.34.]

Plaintiffs then moved for a PI, which the Court granted based on evidence “showing that Stateville faces over \$250 million in deferred maintenance, resulting in risks posed by falling concrete due to deteriorated masonry walls, ceilings, steel beams and window lintels.” DOC had until September 30, 2024, to transfer out all prisoners, except for about two dozen held in the healthcare unit, “a separate housing building that does not exhibit the risks of falling concrete that exists in the general housing units,” the Court said. See: *Dobbey v. Weilding*, USDC (N.D. Ill.), Case No. 1:13-cv-01068.

State lawmakers approved a 2025 budget request from Gov. J.B. Pritzker (D) for \$900 million to rebuild both this prison and Logan Correctional Facility for women on the Stateville site. However, DOC officials said those plans are not “shovel ready.” Meanwhile, guards represented by the American Federation of State, County and Municipal Employees Council 31 remained on the job at the empty lockup, whose closure they picketed earlier in September 2024. They wanted to negotiate terms for relocating staffers from Stateville and also where the affected prisoners would be sent—details DOC has not shared yet. 📰

Sources: *AP News*, *Southern Illinois Now*, *WTTW*

# Washington State Patrol Accused of Confusing Driver's Brain Bleed for DUI

by Douglas Ankney

On July 17, 2024, the Washington State Patrol (WSP) was accused of negligently arresting and jailing a woman for suspected DUI when in fact she was suffering a life-threatening brain bleed. Beyond the outrageous underlying facts, the case is instructive for those making similar claims, since Nicole McClure's original complaint filed under 42 U.S.C. § 1983 was dismissed because of a pleading error.

Feeling ill on March 21, 2023, McClure, 40, left work early to drive back to her Olympia home. WSP Trooper Jonathan Barnes observed her vehicle traveling "at a noticeably slow rate of speed" and activated his lights and siren. But when McClure continued traveling, he deactivated his lights and siren and called for backup—just before McClure drove into a roundabout and collided with a concrete barrier in the center.

Dashcam footage from Barnes' patrol care recorded him rushing to her vehicle, gun drawn, repeatedly screaming: "Get out of the car now!" McClure replied that she had left work early due to a severe headache. She felt dizzy, she added, and didn't know what was going on. Barnes ordered McClure to drop her keys, but she didn't. It was later revealed that McClure had a brain injury which paralyzed her hand, but when she failed to comply, Barnes yelled, "Stop resisting! She's trying to use these keys to stab. She's trying to use these keys as a weapon."

After two other officers intervened and deescalated the situation, Barnes arrested McClure for DUI. But he didn't conduct any field sobriety tests nor administer a breathalyzer test. He also failed to complete a required form, *Washington State DUI ARREST REPORT DUI INTERVIEW*; that has several questions which would have revealed McClure was experiencing a medical emergency.

Instead, Barnes transported McClure to Capital Medical Center for a blood draw. He failed to inform staff there that McClure had been in an accident, though, nor did he ask for her to be medically checked. The results of a blood test revealed

no alcohol or drugs in McClure's system. Nevertheless, Barnes took her to Thurston County Corrections Center (TCCC) on charges of DUI and Felony Eluding.

During the next 24 hours, TCCC staff ridiculed McClure's slurred speech and other symptoms, asking if she wanted "another shot." They did not summon any medical aid or even bother to complete her booking process. McClure lay on a cell floor for approximately 24 hours before she was found unresponsive in a pool of her own urine on the morning of March 22, 2022.

She was transported to an Emergency Room, where she was diagnosed with a brain bleed. Staff took lifesaving measures to address her "intraparenchymal hemorrhage with edema and midline shift likely emanating from cerebral venous thrombosis." But the delayed treatment required removing a portion of her skull to ease brain swelling. McClure suffered significant brain injury was left unable to work.

With the assistance of attorneys from Dubin Law Group in Seattle, McClure filed a complaint in federal court for the Western District of Washington, alleging violations of her civil rights under § 1983, plus a supplemental state-law negligence claim. However, her complaint named only WSP, Thurston County and an unidentified medical services company. Since the statute recognizes a cause

of action against individuals only, Defendant WSP moved to dismiss her claim and bar her from refile under § 1983. To salvage her state-law claims, McClure's attorneys were forced to accept that condition in their motion to dismiss, which was granted on April 10, 2024. *See: McClure v. Thurston Cty.*, 2024 U.S. Dist. LEXIS 65770 (W.D. Wash.).

The complaint has now been refiled in state Superior Court for Thurston County, making claims for negligence, gross negligence and intentional infliction of emotional distress. *PLN* will update developments as they are available. *See: McClure v. Wash. State Patrol*, Wash. Super. (Thurston Cty.), Case No. 3:24-cv-05088-BHS (W.D. Wash. 2024). 📰

Additional source: *KIRO*

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# Fourth Circuit Grants Rare *Bivens* Extension to Federal Prisoner Allegedly Abused by Guards at Virginia Lockup

On July 25, 2024, the U.S. Court of Appeals for the Fourth Circuit agreed that the constitutional tort first recognized in *Bivens v. Six Unknown Named Agents of Fed. Narcotics Bur.*, 403 U.S. 388 (1971), extended to a federal prisoner’s civil rights action alleging that guards repeatedly entered the solitary confinement cell where he was shackled and beat him at the U.S. Penitentiary (USP) Lee in Petersburg, Virginia.

In *Bivens*, the Supreme Court of the U.S. (SCOTUS) first recognized an implied cause of action for money damages against federal officials for violating a citizen’s constitutional rights. But to date, SCOTUS has recognized such actions in only three circumstances: (1) for Fourth Amendment violations committed by federal law enforcement officials; (2) for Fifth Amendment violations in the federal employment context; and (3) for Eighth Amendment violations by medical staff for deliberate indifference to a prisoner’s serious medical needs. The high Court has refused further extension of *Bivens*, warning lower federal courts that doing so is “a disfavored judicial activity.” See: *Egbert v. Boule*, 596 U.S. 482 (2022) [quoting *Ziglar v. Abbasi*, 582 U.S. 120 (2017)].

Andrew Fields was confined by the federal Bureau of Prisons (BOP) at USP

Lee in November 2021 when he got into a scuffle with guards for not having a “movement pass” while outside his housing unit. He was placed in a special housing unit (SHU) observation cell with his hands and feet cuffed, and guards allegedly used their regular safety checks to enter his cell and slam his head against the concrete wall or hit him with a fiberglass security shield.

Once released from the SHU, Fields attempted to file grievances, but BOP staff refused to give him necessary forms. He eventually filed suit *pro se* in federal court for the Western District of Virginia, accusing guards of violating his Eighth Amendment rights with the excessive force used on him. The district court dismissed the case, noting that an excessive force claim is not recognized under *Bivens*. Fields appealed to the Fourth Circuit, which appointed *pro bono* counsel from attorney Daniel Zemel of the Krudys Law Firm in Richmond.

The sole question before the Court was whether Fields’ case presented the rare situation when *Bivens* should extend to a new factual scenario. SCOTUS had set out a two-part test for this in *Egbert*, asking first if a case indeed represents a new *Bivens* context and second whether courts are “less equipped than Congress to weigh

the costs and benefits of allowing a damages action to proceed.”

Since *Egbert*, the Fourth Circuit had refused extensions to claims involving deplorable conditions of confinement in the SHU at USP Lee, failure to protect a prisoner from assault by other prisoners, and racial discrimination against a prisoner in a BOP employment program. See: *Tate v. Harmon*, 54 F.4th 839 (4th Cir. 2022); *Bulger v. Hurwitz*, 62 F.4th 127 (4th Cir. 2023); and *Mays v. Smith*, 70 F.4th 198 (4th Cir. 2023). In these, the Court said first that the principle of separation of powers left it to Congress to add “an individual-capacity damages remedy” that currently doesn’t exist in the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e. Second, Congress had already authorized BOP to create and implement the Administrative Remedies Program (ARP) to addressing wrongdoing by BOP staff—though that doesn’t provide the same type of relief available under *Bivens*. Nevertheless, finally, the potential for “systemwide consequences” affecting the scope of prison officials’ responsibilities and administrative or economic decisions made extension inappropriate.

However, the Court continued, “these factors do not apply with equal force to Fields’s case, and thus they do not bar his claim” because it involved “egregious physical abuse with no imaginable penological benefit.” Thus, “no special factors counsel against providing a judicial remedy” for what amounted to a “clear-cut constitutional violation” that would be cognizable under 42 U.S.C. § 1983, were Fields held in a state prison rather than a federal one.

Moreover, Fields’ constitutional claims implicated only “individual front-line officers who subjected him to excessive force,” so any claims against BOP or administrative employees must be dismissed, the Court said. After that, the suit no longer “implicated prison policies and broader systemic concerns” but “narrow and discrete” claims against individual guards who failed to follow BOP policy prohibiting excessive force—just as staff failed to follow prison policy by ignoring a prisoner’s medical

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needs in *Carlson v. Green*, 446 U.S. 14 (1980), an earlier case where SCOTUS recognized a *Bivens* claim; doing the same in the limited context of *Fields*' case meant that the "impact on prison officials' discharge of their duties will be minimal," the Court decided.

As for availability of remedies under ARP, the Court noted that they were unavailable to *Fields* because "prison officials deliberately thwarted his access to them." So *Fields* wasn't asking for additional remedies, and the Court was not "trampling on Congress's or the Executive's authority" by "stepping in" to "secure[] the objectives of the wrongfully displaced remedial scheme."

PLRA does not prohibit an implied cause of action for damages by federal prisoners in all cases because, if it did, Congress would have abrogated the *Carlson* decision when enacting it. Rather, permitting claims like *Fields*'—ones that involve isolated instances of abuse by individual officers—who then deny a federal prisoner access to administrative remedies—is "entirely in line with the PLRA," the Court declared.

Accordingly, the district court's order was partially reversed and the case remanded to hear those claims related "to the individual officers who personally subjected *Fields* to excessive force." A request for rehearing before the entire Fourth

Circuit *en banc* was denied on October 22, 2024. See: *Fields v. Fed. Bureau of Prisons*, 109 F.4th 264 (4th Cir. 2024); and 2024 U.S. App. LEXIS 26660 (4th Cir.). It is important to note that the Court did *not* recognize a *Bivens* claim for every federal prisoner subjected to excessive force by guards; the decision rather was narrowed to "egregious physical abuse with no imaginable penological benefit," after which access was denied to all administrative remedies. As the Eleventh Circuit recognized in a decision on October 3, 2024, *Fields* was also decided over a "vigorous and cogent dissent" by a majority whose opinion it called "a far-field outlier." 📖

## Trump Outpolled Harris in Pre-Election Survey Behind Bars

**A** July 2024 survey of 11,500 people held in 542 prisons and jails found that 44% supported the candidacy of former Pres. Donald J. Trump (R), who then went on to win a second nonconsecutive term in the White House. His opponent, Vice-Pres. Kamala Harris (D), came in second at 35%—though that represented a significant improvement over the 20% who indicated support for the now-withdrawn candidacy of Pres. Joseph R. Biden, Jr. (D).

Conducted by The Marshall Project (TMP), the survey found that support for Harris among Black respondents increased from 26% to 51% after Biden withdrew; that also cut Black support for Trump from 40% to 28%. The ticket change drove up support for Harris among white respondents from 15% to 24%. But Trump retained a lock on this group, polling 60% of those responding. The comparisons were

drawn between the recent survey and an earlier version that drew on a larger sample of 54,000 people in 785 prisons and jails in 45 states and D.C.

Trump is the first major-party candidate for President with a felony record; he was convicted by a New York jury in June 2024 of falsifying his business records to cover up hush money paid to porn actress Stormy Daniels, who said it was payment for having sex with him nearly 20 years ago. Trump denied that claim but hasn't said what the payment was for. Some survey respondents took pity on the candidate for this, criticizing Harris for making Trump's conviction a campaign issue.

Others were already turned off by Biden's role in passing a draconian 1994 anti-crime bill while he was a U.S. Senator from Delaware; replacing him with Harris,

a former California prosecutor, did not win over this group. Yet Trump's support behind bars defied his calls for capital punishment for drug convictions and criticism of police reform efforts.

TMP noted that racial segregation in prisons and jails affects what news programs are watched, reinforcing a split in support for candidates along racial lines. White detainees and prisoners were more likely to watch *Fox News* and *Newsmax* while *CNN* and *MSNBC* drew more Black viewers behind bars. TMP's first such survey in 2020 also found strong support for Trump, that year's losing candidate; the result sent shockwaves through the movement to re-enfranchise former felons, who were until then assumed to vote Democratic. 📖

Source: The Marshall Project

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# The Crisis in Prison Healthcare: Understanding Your Rights and Fighting for Change

by Alex Dietz, Civil Rights Attorney at PCVA

The state of healthcare in American prisons and jails has reached a critical point. As someone who regularly represents incarcerated individuals fighting for their basic right to medical care, I've witnessed firsthand how our system routinely fails those behind bars. What many don't realize is that this crisis affects not just those who are convicted, but also pretrial detainees who are presumed innocent until proven guilty.

## How Did We Get Here?

The story begins in the 1970s when the U.S. Supreme Court ruled that depriving prisoners of medical care violates the Eighth Amendment. This landmark decision sparked the creation of prison healthcare systems nationwide. However, what started as a constitutional mandate has evolved into a profit-driven industry that often prioritizes cost-cutting over human lives.

Today, over 60% of jail medical services are provided by private companies who promise cost savings but deliver substandard care. These corporations, often owned by private equity firms, have found ways to cut costs that directly impact patient care: understaffing, hiring under qualified personnel, limiting outside hospital visits, and delaying necessary treatments.

## The Real Cost of Delayed Care

"Healthcare delayed is healthcare denied." This isn't just a catchphrase—it's a devastating reality for those in custody in Washington state and across the country. Incarcerated individuals routinely wait months or even years for essential medical procedures. The consequences are severe: research shows that each year spent in custody reduces life expectancy by approximately two years. Lack of proper medical treatment plays a significant role in this reduced life expectancy. But those who survive their time incarcerated are the lucky ones, as hundreds of people behind bars die each year throughout the United States due to medical neglect. Many of these people were never convicted of any crime.

For those with mental health conditions,

the situation is particularly dire. Many individuals end up in jail due to mental health related episodes, often accused of minor offenses like trespassing. Once inside, they face a system ill-equipped to handle their needs, staffed by personnel who lack proper training in how to recognize the signs that someone is experiencing a mental health crisis. Untrained correctional staff will often assume a detainee or inmate is resisting or faking symptoms instead of arranging for someone with the required expertise to determine if there is a genuine emergency. This can lead to dire, and entirely preventable, consequences for those suffering from mental health conditions.

## Understanding Your Rights

If you're incarcerated or have a loved one in custody, here are crucial points to understand:

### 1. Your Rights Begin Immediately:

From the moment you enter a facility, you have a constitutional right to medical care. This includes:

- A medical screening upon arrival
- Ongoing evaluation of medical needs
- Treatment for serious medical conditions
- If you take medication, advise jail staff and request continuation of your medication. It's your right

### 2. Documentation Is Critical:

Always submit formal requests for medical care (often called "kites")

- Keep copies of all medical-related communications
- Request your medical records regularly
- If possible, have family members maintain copies of your records

### 3. Persistence Matters:

- Continue requesting care even if initially denied
- Be specific about your symptoms and needs
- Alert staff to any pre-existing conditions

- Don't assume visible symptoms will automatically receive attention

## Taking Action

For those facing medical neglect in custody, here are essential steps:

### 1. Document Everything:

- Keep detailed records of all medical requests
- Note dates, times, and names of staff involved
- Record any symptoms or changes in your condition
- Request copies of your medical records regularly

### 2. Seek Legal Help Early:

- Don't wait until a crisis occurs
- Attorneys can often intervene before serious harm occurs
- Legal pressure can help expedite necessary care

### 3. Know Your Rights:

- The Constitution protects your right to adequate medical care
- This right applies whether you're convicted or awaiting trial
- Private companies must meet the same constitutional standards as government providers

## Why This Matters to Everyone

Some might ask why they should care about correctional healthcare if they don't have a personal connection to the system. The answer is twofold:

First, our justice system isn't perfect. Not everyone in jail has actually committed a criminal offense. Many people in custody are pretrial detainees who haven't been convicted of any crime. Others are there due to mental health crises rather than criminal intent. The system affects not just those accused of serious crimes, but also individuals detained for minor offenses who couldn't afford bail.

Second, this is a public health issue. Most incarcerated individuals eventually return to their communities. When we deny them proper healthcare, we're not only being inhumane—we're creating broader public health challenges that affect everyone.

### The Path Forward

The solution to this crisis requires systemic change. Private companies must be held accountable when they prioritize profits over patient care. This accountability often comes through litigation, but it also requires public awareness and advocacy.

For real change to occur, we must make it

more expensive for facilities to deny care than to provide it. This means:

- Supporting litigation that challenges inadequate care
- Advocating for stronger oversight of private healthcare providers
- Pushing for transparency in prison healthcare systems
- Demanding better training and proper staffing for correctional healthcare systems

Remember: speaking up about inadequate medical care isn't just about your own health—it's about improving the system for everyone. Every time an incarcerated person stands up for their right to adequate medi-

cal care, they're helping to create positive change for others in the system.

### Taking the First Step

If you or a loved one is experiencing medical neglect in custody, don't stay silent. Document everything, persist in requesting care, call your representatives to demand that they ensure proper medical care is provided in correctional facilities, and reach out to an attorney like me who specializes in prisoner rights. 🗞️

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## New York Court of Appeals (Lightly) Slaps State Prison Officials for Holding Sex Offenders Past Release

On April 25, 2024, New York's highest court took up a challenge brought by sex offenders confined in residential treatment facilities beyond expiration of their prison sentences. The result: A puny demand that the state Department of Corrections and Community Supervision

(DOCCS) make "reasonable efforts" to secure work and education opportunities for them outside prison.

The Court of Appeals has previously upheld DOCCS when it confined convicted sex offenders in its Residential Treatment Facility (RTF), located inside

Fishkill Correctional Facility, beyond the maximum expiration date of their sentences. Many are then held until expiration of their post-release supervision period because they are unable to locate housing compliant with the Sexual Assault Reform Act (SARA), which bars convicted sex of-

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fenders from living within 1,000 feet of a school.

In 2016, a group of offenders confined at RTF sued DOCCS, alleging it failed to provide them with adequate employment and programming opportunities. The suit, which sought declaratory and injunctive relief, as well as class certification, was largely dismissed by a trial court, which also denied class certification. But it permitted Plaintiffs' claims to proceed for declaratory relief from what, in practice, leaves them waiting in RTF for months or years until SARA-compliant housing becomes available.

Meanwhile, evidence presented to the trial court showed that the only employment opportunities available were jobs in the prison storehouse or janitorial pool—because RTF detainees may not participate in work release programs outside prison. The only programming opportunities available to them were nine class “modules” covering topics such as sex offender registration requirements, relapse prevention and strategies for obtaining employment post-release.

DOCCS argued that these work and programming opportunities satisfied its statutory obligations. The trial court agreed regarding programming but found that permitting detainees to work only inside the prison was insufficient; it therefore ordered DOCCS to provide them community-based employment opportunities. The Appellate Division reversed this ruling, however, and the Court of Appeals ultimately affirmed that judgment, with slight modification.

The sole question before the Court was whether the programming and employment opportunities provided to RTF detainees was consistent with Correction Law (C.L.) § 73. That statute says a detainee “may be allowed to go outside the facility during reasonable and necessary hours to engage in any activity reasonably related to his or her rehabilitation and in accordance with the program established for him or her.” See: C.L. § 73[1]. The statute also provides that DOCCS “shall be responsible for securing appropriate education, on-the-job training and employment for incarcerated individuals transferred to residential treatment facilities.” See: C.L. § 73[2].

While acknowledging that § 73 makes community-based opportunities “an essential characteristic of an RTF,” the Court nonetheless concluded that it “does not

create an individual right to community-based opportunities,” since the “legislature’s use of the permissive phrase, ‘may be allowed to go outside’... must be read to afford DOCCS discretion in determining whether an individual RTF resident should be allowed outside the facility to engage in community-based activities.” Moreover, the statute requires DOCCS only to secure community-based opportunities it deems “appropriate.”

Relying on this permissive language, DOCCS determined that *no* RTF detainee should be allowed outside the prison for work or education because it is *never* appropriate. The agency defended this categorical approach by arguing that it was next to impossible to find work or education opportunities for RTF detainees, especially since it has no authority to force anyone to hire or educate them. The Court, however, rejected this categorical approach, saying it was based on nothing more than speculation. The record demonstrated rather that DOCCS had never tried to secure community-based opportunities for any detainee.

## Former Kentucky Warden, Deputy Warden Accused of Overtime Fraud

The top two officials at Kentucky’s Southeast State Correctional Complex (SSCC) who abruptly left their jobs earlier in 2024 were accused of bilking the state of pay for hundreds of hours they didn’t work, according to analysis of records obtained and published by the *Lexington Herald Leader* on September 11, 2024.

As *PLN* reported, the state Department of Corrections (DOC) offered no explanation for firing Warden Charles Craig Hughes, 53, on February 22, 2024, nor when Deputy Warden Danny Dean McGraw, 52, resigned the same day. [See: *PLN*, Aug. 2024, p.21.] But the records revealed that DOC investigators acting on a tip reviewed the pair’s usage of their state-issued vehicles in 2023 and early 2024, finding they fraudulently claimed unworked hours on their time sheets.

Between January 2, 2023, and February 12, 2024, Hughes claimed 369.5 hours that he was apparently not onsite to work. In the same way, McGraw claimed pay for 173.25 hours he didn’t work from April 19, 2023, through February 12, 2024. Investigators

While that might be challenging, “DOCCS’s wholesale refusal to undertake efforts to secure community-based opportunities for RTF residents constitutes a violation of the statute,” the Court declared, because § 73 requires DOCCS “to undertake reasonable efforts.”

The Appellate Division’s judgment was therefore reversed in part to require DOCCS to make reasonable efforts to secure community-based work and education opportunities for at least some RTF detainees. Otherwise, the judgment was affirmed that employment and programming opportunities provided inside the prison by DOCCS are sufficient. Before the Court, Plaintiffs were represented by attorneys Matthew Freimuth and Ravi Chanderraj of Willkie Farr & Gallagher LLP, along with Robert Newman of The Legal Aid Society, both in New York City; and by James Bogin of Prisoners’ Legal Services of New York in Albany. See: *Alcantara v. Annucci*, 42 N.Y.3d 142 (2024). It remains to be seen what, if any, effort DOCCS will put forward now that the Court has set the bar so low. 🗞

concluded that both officials “displayed a pattern of claiming overtime when not completing the required eight hours of work per day.” Hughes made \$98,315 annually, and McGraw earned \$76,094.

In addition to their vehicles, both lived in state-owned houses; Hughes’ was on the grounds of Northpoint Training Center and McGraw’s at Little Sandy Correctional Complex. Both homes are far from SSCC—166 and 85 miles, respectively—but DOC didn’t explain why the two officials made such long commutes. Hughes was named SSCC warden in December 2021. The lockup is leased from private prison giant CoreCivic and staffed by DOC employees. 🗞

Source: *Lexington Herald Leader*

### Merriam-Webster’s Dictionary of Law

Thousands of clear, concise definitions. See page 69 for ordering information.

## Two Michigan Jails Face Class-Action Suits for Banning In-Person Visits

In a disturbing trend, local jails are discontinuing in-person visits in conjunction with adopting fee-based video calling services. Based on 2015 data, the non-profit Prison Policy Initiative found that “74% of jails banned in-person visits when they implemented video visitation.”

The jails in Michigan’s St. Clair County and Genesee County ended all in-person visits in 2017 and 2014, respectively. They now contract with telecom companies—GTL/ViaPath in Genesee County and Securus Technologies in St. Clair County—to provide phone and video calling services.

On March 15, 2024, both jails were sued by family members of detainees, including children and parents who accused county officials of contracting with the telecom providers to generate profit from “commission” kickbacks. Due to the in-person visitation ban, fee-based phone

calls, video calls and electronic messaging were “the sole way for the families of people detained in the jail to talk with their loved ones.”

Genesee County’s contract with GTL/ViaPath guarantees that the company will pay at least \$240,000 in commissions and incentive payments annually, plus a 20% cut of revenue from video sessions. Phone calls are \$.21/minute (the maximum allowed under federal rules), video calls cost \$10 for 25 minutes and e-messages are \$.25 each—plus various ancillary fees.

In St. Clair County, Securus also charges \$.21/minute for phone calls, \$12.99 for a 20-minute video call, and \$.50 for each e-message. The county receives a 78% kickback on phone revenue with a guaranteed minimum annual payment of \$190,000, plus a \$100,000 “technology grant” and 50% of video calling revenue. Those payments totaled over \$400,000 in 2022.

The jails offer one free video session and/or a free five-minute phone call to each detainee every week. But the free video session must be scheduled in advance, and there are limited available time slots. The lawsuits, both filed in state courts and both seeking class certification, accuse the counties of participating in a “quid pro quo kickback scheme” to exploit prisoners and their families.

The complaints note that “the ability of children and parents to associate without undue government interference is a bedrock of our culture and values,” adding that it was for this reason that state constitution “enshrines family integrity and intimate association as ‘fundamental rights.’” Therefore, Defendants cannot constitutionally “conspire to prohibit in-person family contact as part of a scheme to make money.”

Plaintiffs claim that jail officials purposefully ended in-person visitation in order to monetize communication between prisoners and their loved ones. They quote a Genesee County commissioner who said, “That video visitation is going to work ... A lot of people will swipe that Mastercard and visit their grandkids.”

Citing a report by Physicians for Human Rights, Plaintiffs liken “[t]he effect

of separating a child from a parent ... to torture,” and that the primary means of mitigating “the harm of parent-child separation by incarceration is through regular in-person visitation.” Contrary to best correctional practices, GTL/ViaPath and Securus try “to incentivize local officials to eliminate in-person visits” so as to increase “the use of high-cost video calls and traditional phone calls.” In fact, the companies’ contracts specify that video calling services may be discontinued if they fail to generate sufficient funds—threatening the revenue stream that they enjoy from kickbacks if there are competing alternatives, such as in-person visits.

At least 15 other Michigan jails have banned family visitation; all contract with GTL/ViaPath or Securus. In other jurisdictions, however, officials have reversed such bans after acknowledging the benefits of in-person visits—including Texas’ Dallas County, Oregon’s Multnomah County and North Carolina’s Mecklenburg County.

The suits seek to certify a class of “all individuals with a parent or child” incarcerated at the jails since March 15, 2021, or who will be held there in the future. They raise claims under Article 1, §§ 3 and 23 of the Michigan Constitution as well as conspiracy between the county Defendants and telecom companies. Plaintiffs in both cases are represented by attorneys with Public Justice, the Civil Rights Corps and Pitt McGehee Palmer Bonanni & Rivers PC in Royal Oak. Said Civil Rights Corps attorney Jeremy Cutting, “We are suing for the right of kids to hug their parents, for the right of families to not be separated for profit”

The class-action complaints seek declaratory relief and an injunction to end bans on family visitation, as well as monetary damages “in the form of disgorged profits from depriving parents and children of in-person visits.” See: *MM v. King*, Mich. Cir. (St. Clair Cty.), Case No. 2024-24000546-CZ; and *S.L. v. Swanson*, Mich. Cir. (Genesee Cty.) Case No. 2024-120601-CZ. 🗞️

Additional source: *New York Times*

### Stop Prison Profiteering: Seeking Debit Card Plaintiffs

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

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- 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.
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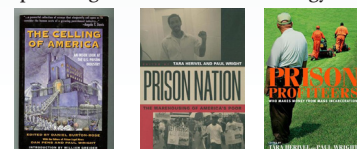
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## \$46 Million Paid to Exonerated Missouri Prisoner Wrongfully Incarcerated for 10 Years

On November 1, 2024, a Missouri jury returned a \$37.9 million verdict against Travelers Indemnity Company in favor of an exonerated state prisoner after the insurance giant balked at covering an \$11 million settlement of his wrongful incarceration suit.

Ryan Ferguson, now 40, was in high school in 2001 when he and classmate Charles Erickson were accused of drunkenly beating to death a newspaper sports editor, Kent Heithold, in the parking lot of the *Columbia Daily Herald*. Erickson made a confession he later claimed was coerced and spent 20 years in prison. That recanted confession also secured a sentence for Ferguson, who served 10 years in prison before his conviction was vacated and he was released in November 2013.

Ferguson then filed a federal civil rights suit against the city of Columbia, Boone County and several employees. They settled in 2017 for \$10 million, plus \$150,000 for legal expenses incurred during Ferguson's trial on the bogus charges, as well as \$854,000 in costs and fees for his counsel in the latter suit, Illinois-based attorney Kathleen T. Zellner. *See: Ferguson v. Short*, USDC (W.D. Mo.), Case No. 2:14-cv-04062.

Columbia paid \$500,000 and its current insurer, Clarendon Insurance, ponied up another \$2.25 million of the award. But Travelers refused to cover the rest of the payout, arguing that it wasn't liable because it wasn't the city's insurer until 2010—five years after Ferguson's wrongful conviction. Zellner then filed another suit against Travelers, arguing that it couldn't skate from liability because it had merged in 2006 with the city's former insurer, St. Paul Fire and Marine Insurance Co.

Missouri's 19th Judicial District Circuit Court for Cole County agreed and issued a partial ruling against Travelers in August 2018, awarding Ferguson \$5 million—\$1 million for each of the five years from 2006 to 2010 that he was wrongfully incarcerated. Additionally, the firm was ordered to cover the \$854,000 legal award, less a \$500,000 offset from the city's self-insurance payment, for a total of \$5.35 million. Travelers appealed that verdict but

lost at the state Court of Appeals in 2019. *See: Ferguson v. St. Paul Fire & Marine Ins. Co.*, 597 S.W.3d 249 (Mo. Ct. App. 2019).

That still left unpaid from the settlement another \$2.9 million apportioned to the fault of the six police officers, whom Travelers also refused to indemnify. The cops joined Ferguson in making a bad-faith claim against the firm, and a Cole County Circuit Court jury found Travelers liable for the full \$2.9 million payout plus another \$35 million in punitive damages, of which Ferguson will collect 86% and the six cops will split the remaining 14%.

Zellner called this latest verdict “hugely

significant for insurance companies that decline coverage to police officers on civil rights violations,” adding that she expects it “to get a lot of attention from insurance companies who offer law enforcement liability insurance.” Joining her in representing plaintiffs in their suit was Jefferson City attorney Michael G. Berry. *See: Ferguson v. St. Paul Fire & Marine Ins. Co.*, Mo. Circ., 19th Jud. Dist. (Cole Cty.), Case No. 17BA-CV03169. 📰

Additional sources: *Columbia Missourian*, *KMIZ*

## \$22,000 Jury Award for Unsanitary Conditions at Virginia Jail

A federal jury in Virginia returned a verdict on March 22, 2024, in favor of Antoinette Weathers, 63, in her civil rights challenge to conditions at Peninsula Regional Jail when detained there after a June 2022 conviction of misdemeanor assault.

Weathers was ordered to serve three weeks at the jail. While there, she was denied toilet paper despite repeated requests; other prisoners told her to use towels, “like we all do.” But the towels and washcloths that she received, according to the complaint she later filed, were “caked in fecal matter”—apparently from prior use by other detainees.

She filed suit in federal court for the Eastern District of Virginia over the unsanitary conditions of confinement, including the lack of toilet paper, noting that she developed a rash as a result. The conditions of her incarceration were “so unsanitary, unsafe, and mentally torturous” as to violate her Eighth Amendment right to freedom from cruel and unusual punishment, her complaint alleged.

Weathers further argued that Defendant jail officials had “intentionally created a dangerous and sadistic environment in order to maliciously cause fear and trauma.” The complaint detailed a plethora of other problems at the jail, including the presence

of weapons and drugs, untrained and uncertified guards, lack of medical and mental health care, numerous lockdowns due to understaffing, denial of pre-approved reading materials, as well as sexual misconduct.

The physical and emotional injuries resulting from these conditions, Weathers claimed, included a 10-pound weight loss in less than a month, plus severe anxiety, panic attacks, abdominal pain and shortness of breath. Those claims related to unsanitary conditions—the lack of toilet paper and feces-covered towels—then proceeded to trial. Jail officials refuted the claims, but a jury believed Weathers, finding the regional jail authority and Superintendent Roy C. Witham violated her Eighth Amendment rights and were “grossly negligent” under state law.

The jury verdict included \$2,000 in compensatory damages against Witham and \$20,000 against the jail authority. While punitive damages were not awarded, Defendants were held liable for an estimated \$60,000 in fees and costs for Weathers' Richmond attorney, Blake A. Weiner. *See: Weathers v. Witham*, USDC (E.D. Va.), Case No. 4:23-cv-00008. 📰

Additional source: *Newport News Daily Press*



# THE PLRA HANDBOOK

**Law and Practice under the Prison Litigation Reform**

By John Boston

Edited by Richard Resch

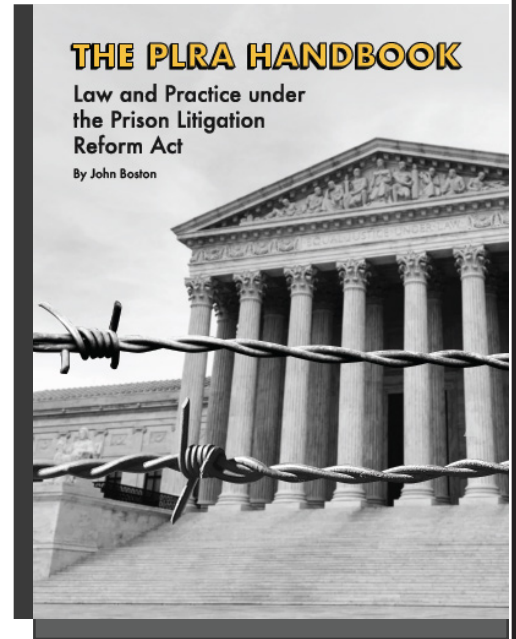
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# Fifth Circuit Judges Battle in Louisiana Over-Detention Cases

The State of Louisiana cannot manage to correctly calculate release dates for those it incarcerates, leaving prisoners held weeks and months beyond expiration of their sentences. These over-detention cases, as the U.S. Court of Appeals for the Fifth Circuit calls them, have spawned numerous opinions revealing a deep divide in remedying this wrong.

State prisons are grossly overcrowded and understaffed, leaving half of the 26,000 prisoners held by the state Department of Public Safety and Corrections (DPSC) in local parish jails. But DPSC remains responsible for them and for calculating their release dates—something it frequently fails to do, thanks to an antiquated tracking process and lack of communication with parish sheriffs. As a result the federal Department of Justice found that more than a quarter of all prisoners released between January and April 2022 were over-detained an average of 29 days, with many held 90 days or more too long, as *PLN* reported. [See: *PLN*, Aug. 2023, p.44.]

## The Fifth Circuit's Response

Unsurprisingly, DPSC has been swamped by a wave of federal § 1983 suits. The state Attorney General's office has responded with an expensive defense that has so far largely failed at the Fifth Circuit, despite vigorous dissents from a contingent of conservative judges on the court.

In *Crittindon v. LeBlanc*, 37 F.4th 177 (5th Cir. 2022), Judge Patrick E. Higginbotham, an appointee of former Pres. Ronald Reagan (R), wrote for the majority of a panel that found DPSC and Direc-

tor James LeBlanc were not entitled to qualified immunity (QI) from civil rights charges arising from over-detention. But Judge Andrew S. Oldham, an appointee of former and now President-elect Donald J. Trump (R), dissented that the suit should be barred by *Heck v. Humphrey*, 512 U.S. 477 (1994), from using § 1983 to challenge the “fact or duration” of a prisoner's confinement unless he first files for habeas corpus relief—an argument that state Defendants hadn't even raised. As the majority noted, the prisoner making an over-detention claim was not challenging his sentence, only being wrongfully held past its expiration. The full Court then denied rehearing *en banc* by a vote of 9 to 7, with all but one Trump appointee—Judge Don R. Willett—dissenting. See: *Crittindon v. LeBlanc*, 58 F.4th 844 (5th Cir. 2023). The Supreme Court of the U.S. (SCOTUS) also denied Louisiana's certiorari petition. See: *LeBlanc v. Crittindon*, 144 S. Ct. 90 (2023).

Next, in *Hicks v. LeBlanc*, 81 F.4th 497 (5th Cir. 2023), Judges Higginbotham, Willett and Leslie H. Southwick, appointed by former Pres. George W. Bush (R), agreed that the claim of another a Louisiana prisoner held 60 days beyond his release date—after DPSC failed to credit him with time served in another state—was not *Heck*-barred, and Defendants were not entitled to QI. In her concluding paragraph, Judge Higginbotham noted that the Fifth Circuit “remains plagued by claims arising from inexplicable and illegal over-detention in Louisiana prisons,” for which “explanations scarcely arise, let alone satisfy scrutiny upon our review.”

“The problem is endemic in Louisiana,” the Judge declared, “where the process for calculating release dates is so flawed (to put it kindly) that roughly one in four inmates released will have been locked up past their release dates—for a collective total of 3,000-plus years.”

Finally, in *McNeal v. LeBlanc*, 90

F.4th 425 (5th Cir. 2024), the Court's per curiam opinion concluded that the civil rights claim of a prisoner held 41 days past his release date was not barred by either *Heck* or QI, citing both *Crittindon* and *Hicks*. Judge Carl E. Stewart, appointed by former president Bill Clinton (D), wrote for the majority. But in her lengthy concurring opinion, Judge Edith Jones, a Reagan appointee, said she agreed only because circuit precedent compelled her to do so, though she believed it was wrong not to find such claims *Heck*-barred or excused by QI. Judge Stuart Kyle Duncan, a Trump appointee, dissented that LeBlanc should deserved QI because, as “the head of a large and complex state agency,” he wasn't “personally liable under § 1983 for causing a prisoner's overdetection.”

The full Fifth Circuit subsequently voted 9 to 8 against *en banc* rehearing. See: *McNeal v. LeBlanc*, 93 F.4th 840 (5th Cir. 2024). Again every Trump appointee but Judge Willett, plus Chief Judge Priscilla Richman, another Bush appointee, along with Judge Jones and fellow Reagan appointee Judge Jerry Edwin Smith. Judges Oldham and Duncan authored the dissenting opinion, repeating many of their complaints from *Crittindon* and *McNeal*. SCOTUS denied Louisiana's certiorari petition on October 7, 2024. See: *LeBlanc v. McNeal*, 2024 U.S. LEXIS 3824 (2024).

## The Drama Continues

But that didn't conclude the Fifth Circuit's internal struggle about over-detention. On February 5, 2024, the Court amended its Internal Operating Procedure for implementing Circuit Rule 41, providing that a mandate no longer issues automatically after a petition for rehearing expires or is denied; rather, any “active Fifth Circuit Judge” may now request that the Court “withhold issuance of its mandate.” See: Fifth Circuit General Order No. 2024-02. Though this is “often done” to “resolve differences” between judges, the rule does *not* require that the judge be identified. There is also no limit on how long the mandate may be withheld.

The next day, on February 6, 2024, an unnamed judge instructed the circuit court clerk to withhold the *Hicks* mandate. See *Hicks v. LeBlanc*, USCA (5th Cir.), Case No.



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22-30184, Order. The case remained dormant for nearly a year until October 4, 2024, when the parties were instructed to file supplemental “letter briefs” concerning the effect on *Hicks* of the Court’s three recent *en banc* opinions in *Wilson v. Midland Cty.*, 116 F.4th 384 (5th Cir. 2024)—“a nine-judge plurality, a three-judge concurrence, and a six-judge dissent” that had failed to “command[] majority support from the *en banc* court,” the order noted.

This request is concerning. The plurality opinion in *Wilson*, authored by Judge Oldham and joined by the eight judges who

dissented from denying rehearing *McNeal*, took an extremely expansive view of the *Heck* doctrine. Judge Willett, in the majority in several of the Court’s over-detention cases, authored the dissent in *Wilson*. Piecing this together suggests that Judge Oldham’s wing of the Court is trying to overturn the Fifth Circuit’s over-detention precedent—arguably the nation’s largest body of such case law—and force prisoners to proceed first with a habeas petition before filing a § 1983 claim.

In practice, this would shift responsibility for tracking release dates to

prisoners, raising a fundamental question of fairness, especially when so many suffer from mental illness or deal with low literacy. It would also prevent most claims for damages, which a habeas petition does not provide. Nor does it incentivize Louisiana to address its prison overcrowding problem, along with the corresponding failure to ensure prisoners are promptly released after their sentences. Meanwhile a jury still hasn’t heard the claims filed by *McNeal* in 2018 or *Hicks* in 2019. *PLN* will update developments in both as they are available. 📖

## Seventh Circuit Lets BOP Restrict Access to Federal Register from Prison in Illinois

The U.S. Court of Appeals for the Seventh Circuit held on July 30, 2024, that the First Amendment does not require the federal Bureau of Prisons (BOP) to provide full, daily access to the Federal Register so that prisoners may comment on proposed rulemaking.

The Federal Register is the U.S. government’s daily publication of proposed rules, executive orders and other administrative documents. The Administrative Procedures Act (APA), 5 U.S.C. § 553, guarantees all citizens the right to submit timely public comments on proposed rules. But BOP law libraries do not contain the full, updated version of the Federal Register. Instead, agency policy requires the libraries to maintain only those “documents ... pertaining to the Bureau and to the U.S. Parole Commission.” See: Bureau Program Statement 1315.07 (Nov. 5, 1999). This information, like most legal resources in BOP law libraries, is uploaded to an electronic bulletin board by staff and forwarded to computer terminals without internet access for prisoners to use.

In 2019, prisoner Robert Decker filed suit against several BOP officials, accusing them of violating APA by failing to upload the full Federal Register to the electronic bulletin board, which he alleged also violated his rights under the First, Fifth and Fourteenth Amendments to receive information and petition the government while incarcerated at the Federal Correctional Institution in Marion, Illinois. BOP moved for summary judgment, which the federal

court for the Southern District of Illinois granted. Decker appealed.

Applying the familiar framework for reviewing prison regulations set forth in *Turner v. Safley*, 482 U.S. 78 (1987), the Seventh Circuit held that the BOP regulation denying prisoners access to the full, daily register was rationally related to legitimate penological goals. Although recognizing that most of Decker’s arguments were “well-taken” and that BOP unquestionably refuses to provide access to portions of the Federal Register that directly impact prisoners—such as regulations regarding inmate calling services—the Court nonetheless concluded that a ruling

in the prisoner’s favor raised “a unique likelihood that this case would lead to a cascade of similar requests that would, in the aggregate, place an inordinate burden on the prison system.”

With that, the district court order dismissing Decker’s suit on summary judgment was affirmed. The prisoner was represented before the Court by North Carolina attorneys Hampton H. Bruton and Erik Zimmerman with Robinson, Bradshaw & Hinson, P.A. Chapel Hill, as well as Zachary A. Johnson and Attor G. Steadman with the firm’s office in Charlotte. See: *Decker v. Sireveld*, 109 F.4th 975 (7th Cir. 2024). 📖

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# California Prisoner Wins Round Before Magistrate in Lawsuit Over Marriage Application Delayed Two Years

It took California state prisoner Rafael Salas almost two years before he was able to marry in May 2022, due to repeated delays by state Department of Corrections and Rehabilitation (CDCR) officials at Kern Valley State Prison. He filed suit *pro se* in federal court for the Eastern District of California, raising claims under the First and Fourteenth Amendments, as well as the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc et seq. On September 26, 2023, a magistrate recommended that Defendant CDCR officials be denied summary judgment on Salas' civil rights claims, though granted on his RLUIPA claim.

Salas believed he was required to marry as part of his Messianic Jewish faith, and he began that process in early 2020, requesting to wed fiancée Heather Tower. It took four months and a grievance just to obtain marriage application forms, then another three months plus another grievance before

a deputy warden ordered the application to be reviewed.

During that review, Counselor Y. Cortez placed the request on hold because Salas' prison records (C-File) indicated that he was already married to someone else. Salas clarified that he had never been married and that Cortez was relying on incorrect information. Despite repeatedly filing grievances and contacting other prison officials, including Kern Valley Warden Christian Pfeiffer and Cortez's supervisor, Counselor D. Thomas, Salas was unable to resolve the issue.

Instead he was told to obtain a "verified document" from a court or Hall of Records to show that he was never married. But officials at the latter assured his fiancée that no such document exists. Nevertheless, delays persisted until November 2020 when, during a meeting with Cortez, she agreed to help Salas marry. But Cortez immediately retracted

her offer, according to Salas, because his fiancée was white.

Salas and Tower were eventually wed, but Defendants vigorously defended their delay of the marriage application. They argued that under the four-prong standard established in *Turner v. Safley*, 482 U.S. 78 (1987)—also a case involving a prisoner's right to marry—they had not improperly burdened Salas' marriage request. Specifically, Defendants pointed to Salas' C-File that indicated (incorrectly) he was already married, saying that preventing prisoners from committing bigamy was a "legitimate penological interest," to borrow the phrase from *Turner* describing what permits violation of a prisoner's civil rights.

In the magistrate's Report and Recommendation (R&R), the judge noted that Salas was not challenging the prison's marriage policy but rather "whether Defendants acted properly in enforcing this regulation as to him." It was undisputed that there were lengthy delays in processing Salas' application, prompting him to submit numerous requests and grievances. Nor was there a dispute that prison officials sent him on a wild goose chase for documentation that didn't exist. So the magistrate found there was a genuine factual dispute whether the prison's marriage policy, as applied to Salas, "was justified and reasonably related to legitimate penological interests."

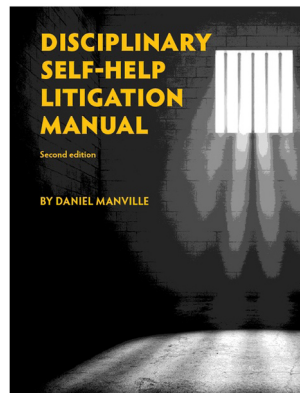
The remaining *Turner* factors—including the absence of alternative means of exercising the right to marry and the devastating impact of failure to accommodate the right—also weighed more heavily in Salas' favor than the deference generally owed to prison officials. Additionally, the magistrate reported, Salas had stated valid claims against Thomas and Warden Pfeiffer, since both were aware of the delays in processing his marriage request but took no corrective action. Nor had Salas failed to exhaust his administrative remedies, alleging in his grievances that Cortez refused to help him "because his fiancée was white." The magistrate thus held that Salas had "sufficiently alerted the prison to the problem" of "having his marriage application approved," which was enough for exhaustion purposes.

Defendants argued that they were

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entitled to qualified immunity. But the magistrate noted that *Turner* clearly established a prisoner's right to marry subject to reasonable regulations. The issue was not whether Defendants had legitimate reasons for delaying the request but whether such delay was due to "illegitimate reasons including that [Salas] lacked a document that did not exist and because [his] fiancée was white."

However, given that Salas was eventually allowed to wed, his request for

injunctive relief was deemed moot, along with his RLUIPA claim. Accordingly, the magistrate recommended denying Defendants summary judgment only as to Salas' First and Fourteenth Amendment claims, while granting it regarding his RLUIPA claim and request for injunctive relief. *See: Salas v. Pfeiffer*, 2023 U.S. Dist. LEXIS 171623 (E.D. Cal.).

Before the Court could act on the R&R, presiding Judge Ana I. de Alba was elevated to the U.S. Court of Appeals for

the Ninth Circuit. The case was delayed six months before it was reassigned to Judge Kirk E. Sherriff in March 2024. No action was taken after that, though—in fact all docket activity ceased in July 2024. But the case remains open, and *PLN* will update developments as they are available. Meanwhile, Salas, now 40, is to be congratulated both on his nuptials and a favorable outcome obtained *pro se* from the magistrate. *See: Salas v. Pfeiffer*, USDC (E.D. Cal.), Case No. 1:21-cv-00669. 🏠

## Washington Appellate Court: "Some Evidence" Standard for Prison Discipline "Is Not Illusory"

In an unpublished opinion issued on May 2, 2024, the Court of Appeals of Washington ruled that a prisoner found guilty of possessing a weapon was denied due process because the disciplinary finding was not supported even by "some evidence"—the low bar set in such situations. In this case a hearing officer *added* language to the disciplinary regulation in order to find the prisoner guilty of the infraction.

After a guard was stabbed at Washington State Penitentiary on April 30, 2021, an emergency response team (ERT) of state Department of Corrections (DOC) guards searched the Victor Unit in another part of the prison. In Jeffrey Driver's cell, ERT guards Gary Bafaro and Stephen LaForce found a state-owned broom handle leaning against the wall. Driver was issued a disciplinary report accusing him of violating a rule prohibiting prisoners from "[p]ossessing, manufacturing, or introducing any firearm, weapon, sharpened instrument, knife, or poison, or any component thereof." *See: WAC 137-25-030(1)* (Category A, 602).

At a disciplinary hearing on May 17, 2021, Driver did not deny possessing the broom handle but said he was using it as a makeshift bar bell—weighted with bags of water in a shirt through the sleeves of which he threaded the broom handle. He offered to plead guilty to violating Rule 702, which prohibits "[p]ossessing, manufacturing, or introducing an unauthorized tool." *See: WAC 137-25-030(1)* (Category C—Level 1, 702). But hearing officer G. Pierce rejected this offer, finding the prisoner possessed "a possible weapons component" and declaring Driver "[g]uilty

of 602." As a result, Driver's extended family visits (EFVs) were suspended for five years, and he lost 30 days of good time.

Driver appealed to DOC headquarters and the Office of Corrections Ombuds (OCO). Both sustained the guilty finding; as OCO noted, only "some evidence" is required to support a prison disciplinary finding, per *In re Pers. Restraint of Malik*, 215 P.3d 209 (Wash. App. 2009). Undeterred, Driver filed his own personal restraint petition (PRP) in the Court on December 7, 2022, arguing that the guilty finding was not supported by sufficient evidence.

As also noted in *Malik*, a threshold analysis of a PRP challenge must show that a prisoner is being restrained unlawfully. Since Driver lost 30 days of good time, the Court said he met that burden, pointing to *In re Pers. Restraint of Krier*, 29 P.3d 720 (Wash. App. 2001). The "central issue" was whether this restraint was unlawful. For that, "the action taken [must be] 'so arbitrary and capricious as to deny the petitioner a fundamentally fair proceeding,'" per *In re Pers. Restraint of Gronquist*, 978 P.2d 1083 (Wash. 1999) [quoting *In re Pers. Restraint of Reismiller*, 678 P.2d 323 (Wash. 1984)].

In turn, fundamental unfairness is demonstrated when the guilty finding is not supported by "some evidence." That may be a modest standard, the Court allowed, but "it is not illusory"; there must be "some reasonable connection between the evidence and the inmate," per *In re Pers. Restraint of Anderson*, 772 P.2d 510 (Wash. 1989). In Driver's guilty finding, the broom handle was called a "possible weapons component."

However, Rule 602 does not prohibit *possible* weapons, the Court said, and nothing in the record supported a finding that it was an actual weapon.

DOC argued that the handle was not "impossible to be used as a weapon." But the Court rejected this because "a conceivable potential based on hypotheticals detached from the facts is not evidence." DOC may punish possession of "seemingly innocuous" items that a prisoner has altered to make more dangerous, but nothing in the record suggested that the broom handle had been altered, nor was there anything to refute Driver's testimony that he used the broom handle as a makeshift bar bell. Thus, there was "some evidence" that Driver was in possession of a *tool*, but not a *weapon*. He had consistently offered this plea, but DOC rejected it, arguing that the broom handle was *not* a tool because the brushes were detached.

DOC was therefore ordered to vacate Driver's Rule 602 guilty finding, restore his good time credits and reinstate his EFVs. DOC was also prohibited from charging Driver with having an unauthorized tool, in violation of Rule 702.

Though DOC agreed that the Court likely had authority to award fees for Driver's appointed attorney, Erin I. Moody of Nielsen, Kock & Grannis, PLLC in Seattle, the prisoner didn't ask for fees so as not to delay restoration of EFVs with his son. Recognizing that this motivated "his dogged pursuit of review in this case," the Court agreed not to impose fees against DOC. *See: In re Pers. Restraint of Driver*, 2024 Wash. App. LEXIS 906. 🏠

# Incompetent Louisiana Sex Offender's Challenge to Registration Requirements Proceeds

On September 16, 2024, the federal court for the Eastern District of Louisiana dismissed a procedural due process claim against the state Department of Public Safety and Corrections (DPSC) for repeatedly arresting a sex offender who failed to meet registration requirements after being declared “unrestorably incompetent.” However, the district court refused to dismiss a companion claim made by Kendra Greenwald that her substantive due

process rights were violated, writing that “arresting someone for not doing something that they are incapable of doing shocks the conscience regardless of what process may be due prior to arrest.”

In July 2012, Greenwald, then 33, was convicted of carnal knowledge of a juvenile for engaging in sex at her New Orleans apartment with a 14-year-old. Although she argued that the teen forced her to have intercourse by threatening

both her and her child, the jury found “overwhelming” evidence she invited him into her bedroom. She received two years on probation and was required to register as a sex offender.

Over the next 11 years, Greenwald was arrested at least seven times for failing to meet the requirements of Louisiana's Sex Offender Registration and Notification Act (SORNA). She blamed a seizure disorder which “caused brain damage that has diminished her intellectual ability, and caused short-term and long-term memory loss,” as the Court later recalled. After the sixth arrest in 2015, a state court ordered a competency evaluation and found she was an “unrestorable incompetent.” Yet when she missed SORNA registration requirements again, she was arrested once more.

Understandably weary of this merry-go-round, she filed suit in 2022 against state and DPSC officials, plus the city of New Orleans. Her complaint raised an Eighth Amendment claim, a due process claim, plus a claim for municipal liability under *Monell v. Dep't of Soc. Svcs.*, 436 U.S. 658 (1978). After the district court dismissed the civil rights claim, Greenwald filed an amended complaint adding a claim under Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. ch. 126 § 12101, et seq. State defendants moved to strike, while City defendants moved to dismiss. In December 2023, the district court denied both motions.

Rejecting the state's argument that Greenwald had impermissibly added the ADA claim, the district court noted that pursuant to Fed.R.Civ.P 15 it must “freely give leave [to amend] when justice so requires.” It also rejected the city's argument that the *Monell* claim should fail because local officials are not responsible for SORNA requirements promulgated at the state level. Greenwald alleged that the New Orleans Police Department had “a policy or practice of arresting individuals for failure to comply with SORNA regardless of their intellectual capabilities,” claiming the city had a policy of “failing to allow discretion” when deciding whether to arrest offenders with mental disabilities who violate SORNA. That was sufficient to allow the *Monell* claim to proceed, the district court said. It further denied the state's request

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

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

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for a stay pending an interlocutory appeal—which the U.S. Court of Appeals for the Fifth Circuit denied on May 2, 2024, calling the earlier a ruling a “legal nullity” after the amended complaint was filed. *See: Greenwald v. Murrill*, 2024 U.S. App. LEXIS 10739 (5th Cir.).

In its most recent decision, the district court first rejected the State’s contention that she lacked standing to sue. “[R]edressability runs with causation,” the district court noted, so the alleged injury could “be redressed by a decision that enforcement of SORNA against her violates federal law.” Greenwald’s procedural due process claim was dismissed, since her rearrests for SORNA violations were predicated on a conviction at a trial in which she was afforded all the process she was due. However, the district court refused to dismiss her substantive due process claim. “She has not, as Defendants suggest, alleged a right ... to be free from all arrests, or a right to be excused from sex offender laws, or that her arrests were without probable cause,” the district court noted—only that “[a]rresting and imprisoning a woman with intellectual disabilities for failing to

complete administrative tasks that her disability makes impossible ... deprives her of her fundamental right to liberty.”

Defendants argued that Greenwald’s claim also necessarily implicated the validity of her sentence, so it was barred by *Heck v. Humphrey*, 512 U.S. 477 (1994). But the district court said a “finding that Plaintiff’s rights are being violated when she is repeatedly arrested without conviction after being declared unrestorably incompetent does not invalidate her earlier convictions for failure to register as a sex offender.” However, it agreed with Defendants that recognizing SORNA registration as a “service or activity” under ADA—the benefit of which a

disabled person has been denied”—would “strain[] the statutory language to, if not past, the breaking point.”

Accordingly, Greenwald’s ADA and procedural due process claims were dismissed against State defendants while her substantive due process claim was allowed to proceed. Greenwald is represented by attorneys Christopher F. Edmunds of Metairie and James D. Courson of Disability Rights Louisiana in New Orleans. *See: Greenwald v. Cantrell*, 2024 U.S. Dist. LEXIS 166028 (E.D. La.).

Additional source: *New Orleans Times Picayune*

## Allegheny County Settles Suit, Lifts Media Gag Policy for Pittsburgh Jail Employees

by Matt Clarke

On April 17, 2024, Pennsylvania’s Allegheny County settled a lawsuit brought by a Pittsburgh journalist challenging policies and practices that prevented employees of the county’s Bureau of Corrections (BOC) from speaking about matters of public concern at the county jail without first receiving permission from the warden. Under the settlement, the county revised the policies, acknowledging that “its employees and contractors have constitutional rights to speak on matters of public concern when acting as private citizens.”

As Director of the Pittsburgh Institute for Nonprofit Journalism, Brittany Hailer “reported extensively on problems at the Allegheny County Jail [ACJ],” her suit noted. In 2023, with *pro bono* assistance from the Reporters Committee for Freedom of the Press (RCFP) and the Yale School of Media Freedom and Information Access Clinic, Hailer filed a federal civil rights lawsuit claiming that the BOC policies violated the First Amendment. The lawsuit alleged that the policies “effectively silenced jail employees, hampering investigative reporting about issues at the Allegheny County Jail,” which had just recorded 13 deaths in two years after the onset of the COVID-19 pandemic in March 2020, as *PLN* reported. [See: *PLN*, May 2022, p.20.]

Once the suit was filed, “the parties worked collaboratively to develop new policies,” according to the settlement agreement they reached. Revisions were made to Policy 605: Code of Ethics/Conduct Required of All ACJ Employees; Policy 624: Use of Social Media by Employees; Policy 625: Access to News Media; and Policy 200: Incident Reporting Procedures. The county also paid litigation costs of \$1,640 to Yale and \$402 to RCFP.

“Meaningful accountability and oversight depend upon the public’s ability to access information about what is happening inside of correctional facilities,” said Pennsylvania Local Legal Initiative attorney Paula Knudsen Burke, who helped RCFP litigate the case.

Jail workers have been leaking information to the media, Hailer said, “to make the jail a better place and to shine a light on the conditions of confinement, despite the fact that they might lose their jobs.” Now those same workers “can talk to the press with protection, which is a benefit to not just the media, but to readers and concerned citizens in Allegheny County.” Hailer, who now writes for The Marshall Project, added that she hoped for “a new era of transparency” at ACJ. *See: Hailer v. Allegheny Cty.*, USDC (W.D. Pa.), Case No. 2:23-cv-01480.

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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.

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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.

# \$25 Million Contempt Fine Prompts Release of Pretrial Detainees from Philadelphia Lockups

The Philadelphia Department of Prisons (PDP) announced the release of 100 pretrial detainees on November 5, 2024. The detainees, all held on bail they couldn't pay, were released during a series of emergency bail hearings that began on October 1, 2024, according to the Defender Association of Philadelphia (DAP), which provides legal representation to indigent detainees held in city prisons and jails.

The releases represented only a little over 2% of PDP's incarcerated population, currently estimated at 4,600—about 15% higher than the low point reached during the COVID-19 pandemic. Andrew Pappas, managing director of pretrial services for the city Public Defender's Office, said that those released had been held on cash bail without other detainers; they faced charges ranging from aggravated assault to weapons violations and arson. As he explained, attorneys in his office asked judges to "[t]ake a second look at them and see if they really needed to be in custody in light of the fact that the prison [system] is a disaster right now."

How much of a disaster was revealed in a class-action lawsuit settlement reached in April 2022. As *PLN* reported, that agreement obligated PDP immediately to reach full staffing—especially of guard positions necessary to provide prisoners and detainees access to needed healthcare, recreation and programming. [See: *PLN*, Aug. 2022, p.1.] Unsurprisingly, that didn't happen; as of June 2024, PDP reported that only 58% of staff positions were filled. Meanwhile the average length of incarceration for pretrial detainees—who represent nearly 90% of

PDP's total population—ballooned to 113 days.

As a result, lawyers from the Pennsylvania Institutional Law Project (PILP) representing Plaintiffs in the class-action suit asked the federal court for the Eastern District of Pennsylvania to find the City in contempt of its order approving the settlement agreement. The Court granted that motion on July 12, 2024, and on August 16, 2024, ordered the City to pay a fine of \$25 million—an amount roughly equal to what PDP had saved on its unfilled staff positions.

The latter order also included specific deadlines to be met in remedying the staffing crisis, including hiring an outside recruitment firm to fill the empty slots permanently and offer double-time pay to put staffers in them in the meantime. PDP was further ordered to institute a Wellness

Program for employees and provide analysis of their compensation to the Monitor appointed by the Court to oversee the case. As of her latest report on September 30, 2024, Monitor Cathleen Beltz found PDP substantially compliant in very few of the agreement's requirements, mostly related to its pandemic response. See: *Remick v. City of Phila.*, USDC (E.D. Pa.), Case No. 2:20-cv-01959.

DAP Director of Prison Advocacy Thomas Innes likened PDP lockups to a "series of pressure cookers that are about to spill over at any given time." His colleague, DAP Chief Defender Keisha Hudson, called the releases "a crucial step in safeguarding both the rights of the incarcerated and the efficiency of our justice system." 🗨️

Additional sources: *Axios*, *Philadelphia Inquirer*, *WCAU*

## Tennessee Attorney Sues Federal Court Over Gag Order in CoreCivic Suit

In a suit filed on September 30, 2024, attorney Daniel Horwitz accused four judges in the federal court for the Middle District of Tennessee of violating his First Amendment rights with a gag order that was issued in a case he was litigating against private prison giant CoreCivic. As *PLN* reported, the Court's July 2022 order silenced Horwitz's criticism of the company and even required him to delete related tweets from his social media account on Twitter, now known as X. [See: *PLN*, Feb. 2023, p.42.]

CoreCivic settled that case, along with four others Horwitz had pending against the firm, leading the judges in each to dismiss his appeal to the gag order as moot. That left only a lawsuit to continue his challenge to the Court's local rule, under which the order was issued. "Mr. Horwitz needs to know the extent to which Rule 83.04 restricts his speech about his litigation in the Middle District because he continues to litigate in this Court, and he continues to do so against CoreCivic—a party that has already invoked Rule 83.04 to silence Mr. Horwitz's speech and has

demonstrated that it will do so again each time Mr. Horwitz asserts his right to speak," his lawsuit declared.

Relying on the same audits and reports that Horwitz cited in his now-deleted tweets, the federal Department of Justice opened a civil rights investigation in August 2024 into conditions at CoreCivic's Trousdale Turner Correctional Center, one of four lockups that the firm operates under contract from the state Department of Corrections. Because Horwitz has successfully sued the CoreCivic so many times, he received many requests for interviews—which the gag order compelled him to decline, he said.

His case remains pending, and *PLN* will update developments as they are available. Horwitz is represented by attorneys Jared McClain and Benjamin A. Field of Institute for Justice in Arlington, Virginia, and Braden H. Boucek of Southeastern Legal Foundation in Roswell, Georgia. See: *Horwitz v. Campbell*, USDC (M.D. Tenn.), Case No. 3:24-cv-01180. 🗨️

Additional source: *Reason*



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# Former Indiana Guards Sentenced for Stealing Prisoners' Identities to Launder Cash From Online Romance Scam

Former Indiana Department of Corrections (DOC) guards Lawrence Onyesonwu, 38, and Martins Tochukwu Chidiobi, 34, were sentenced on September 19 and 20, 2024, respectively, to three years in federal prison for stealing state prisoners' identities to set up bank accounts, where they laundered funds from an online romance scam.

The pair worked at New Castle Correctional Facility (NCCF) from 2015 until their January 2019 arrest, using their access to prisoner personal information to steal the identities of five incarcerated men. The prisoners were not named. The guards used the stolen identities and their own photos to obtain fraudulent passports from Nigeria, Liberia and Ghana, presenting those when opening bank accounts in the stolen names. In turn those were used to collect \$331,282 in deposits from

at least 11 victims of an online romance scam.

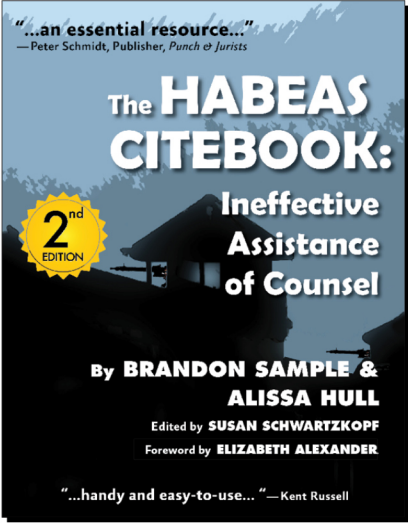
The scheme unraveled when a Citizens State Bank official reported to New Castle Police in early 2019 that "there are large transactions taking place through PayPal" and suspected "that possible identity theft is taking place." Cops caught up with Onyesonwu at a bank branch, but the guard insisted he was the person named on his bank account; however, that was actually a DOC prisoner serving time at NCCF for 2013 rape and sexual battery convictions.

Both former guards pleaded guilty in February 2023 to aggravated identity theft and making false statements to a financial institution. In addition to their prison terms, they were ordered to serve two years of supervised release and pay a \$5,000 fine, plus another \$200 special assessment. The federal court for the Southern District of

Indiana also recommended that the Bureau of Prisons place Onyesonwu at the Federal Correctional Center in Terre Haute and Chidiobi at the Federal Correctional Institution in Elkton, Ohio. *See: United States v. Onyesonwu*, USDC (S.D. Ind.), Case No. 1:19-cr-00224.

In a typical romance scam, perpetrators use a phony account on a dating website to earn the trust of a credulous victim, convincing her or him to send cash for a made-up emergency need. Often based overseas, such scams cost U.S. victims \$547 million in 2021 alone, the Federal Trade Commission estimated. The federal Department of Justice said that a "large portion" of what the guards scammed was transferred to Nigerian bank accounts and lost. 🗞

Additional source: *WTHR*



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by Brandon Sample and Alissa Hull

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# Plea Deal Falls Apart for Accused 9/11 Masterminds

On August 2, 2024, U.S. Defense Secretary Lloyd Austin revoked a plea agreement that military lawyers reached with three high-profile detainees accused in the terrorist attacks on September 11, 2001. As a result, they will soon mark 22 years of confinement without criminal conviction—breaking a core promise of the U.S. Constitution.

Khalid Sheikh Mohammed, Walid Muhammad Salih Mubarak bin Attash and Mustafa Ahmed Adam al-Hawsawi are detained at “Camp Justice,” which was set up in 2002 to hold suspected terrorists inside the U.S. Naval Station at Cuba’s Guantanamo Bay. All three are charged with aiding and abetting 19 terrorists, who hijacked and crashed passenger planes into the World Trade Center, the Pentagon and a Pennsylvania field, killing 2,977 people. They face the death penalty if convicted by the military tribunal.

Before arriving in Cuba, the three were held incommunicado after their 2003 capture in a secret CIA prison network,

where they were subjected to “enhanced interrogation techniques.” Mohammed was waterboarded 183 times, kept nude and deprived of sleep, while his diet was manipulated and he was subjected to other violence. Hawsawi suffered rectal damage from his enhanced CIA interrogations. All three detainees were re-interrogated by the FBI using more traditional methods in 2007 after arriving at Guantanamo.

The defendants were arraigned before a military tribunal in 2012, but their cases have been mired in pre-trial proceedings ever since. Defense lawyers have vigorously contested admission of the suspects’ confessions to the FBI, arguing that they were tainted by torture that the men endured at the clandestine CIA “black” sites. Defense lawyers have also argued that the Government should disclose more of the evidence it claims to possess against them, which is classified top secret.

On July 31, 2024, Brig. Gen. Susan K. Escallier (U.S. Army Ret.), who oversees the Pentagon’s Guantanamo war court,

approved the plea agreement between the detainees’ lawyers and the government, in which the three suspects would plead guilty to conspiracy charges in exchange for a life sentence rather than the death penalty. The plea agreement was hailed as a significant step forward by many legal advocates worried there is no way to fairly try the men.

“It means a lot,” said Karen Greenberg, the director of the Center on National Security at the Fordham University School of Law. “It means that this trial, which has been put off for 12 years, will not happen. The issue has been resolved with this plea deal. It means the idea of bringing Guantanamo to closure is one step closer.”

J. Wells Dixon, a staff lawyer at the Center for Constitutional Rights who has represented defendants at Guantanamo, also welcomed the plea bargain as the only feasible way to resolve the long-stalled and legally fraught 9/11 cases. However, not everyone was happy with the plea deals, which sparked outrage among family members of some 9/11 victims, as well as Republican

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lawmakers who want to see the defendants face the death penalty.

On August 2, 2024, just two days after Escallier approved the deal, Austin sent her a memo stating: “I hereby withdraw from the three pre-trial agreements that you signed on July 31, 2024 in the above-referenced case.” Austin also revoked Escallier’s authority to approve further plea bargains, writing that “in light of the significance of the decision to enter into pre-trial agreements with the accused ... responsibility for such a decision should rest with me.”

Following Austin’s announcement,

attorney Dixon accused him of “bowing to political pressure and pushing some victim family members over an emotional cliff” by rescinding the plea deals. Others, however, applauded the decision.

Austin said that rescinding the plea offer “wasn’t a decision that I took lightly” but was necessitated by the significant loss that occurred on 9/11. “I have long believed that the families of the victims, our service members, and the American public deserve the opportunity to see military commissions, commission trials carried out,” he said.

The status of the three cases remains unclear. No trial date has been set, and the military judge who has overseen proceedings since 2021, U.S. Air Force Col. Matthew N. McCall, has announced his retirement later this year. Meanwhile, Austin is on his way out in January 2025, when Pres.-elect Donald J. Trump (R) takes office and his pick for Defense Secretary, TV host Pete Hegseth, assumes the top post at the Pentagon. 🗞

Sources: *New York Times*, *Al Jazeera*

## Last Charges Dropped in Suffocation Death of Virginia Jail Detainee

On November 4, 2024, Commonwealth’s Attorney Amanda Mann in Virginia’s Dinwiddie County dropped charges against the last two of eight defendants charged in the death of Henrico County Jail detainee Irvo Otieno. That means no one will face trial for the 28-year-old’s fatal suffocation—while shackled—under a pile of 10 Henrico County Sheriff’s deputies and staffers at Central State Hospital (CSH) in Petersburg, the psychiatric lockup where the mentally ill detainee had been taken in March 2023.

As *PLN* reported, the state and Henrico County agreed in September 2023 to pay \$8.5 million to settle claims arising from Otieno’s death and alleged earlier mistreatment at the jail, where surveillance video reportedly captured him naked and shackled in his cell when guards beat him and pepper-sprayed him in the face. Mann’s predecessor, Ann Cabell Baskervill, filed second-degree murder charges in March 2023 against seven deputies of Henrico County Sheriff Alisa A. Gregory and three CSH staffers, though Baskervill dropped two of the medical staffers from the case in June 2023 before resigning to study in Paris. [See: *PLN*, Apr. 2024, p.41.]

After Mann took over, she dismissed charges against five of the deputies, reducing those against two more deputies and the remaining CSH staffer, guard Wavie Jones; he was acquitted at the end of a four-day jury trial on October 3, 2024. Defense attorneys successfully argued that the 310-pound Otieno was off his medication and lashing out when Jones joined the effort to restrain him. The jury verdict was enough to convince Mann that she also couldn’t

convict the last two deputies indicted in the death, Brandon Rodgers and Kaiyell Sanders, leading to dismissal of manslaughter charges against them.

Otieno’s death was ruled a homicide by “positional and mechanical asphyxia with restraints.” Mark Krudys, a Richmond lawyer on the legal team for Otieno’s family, said that Mann “did not appear to have

spoken with witnesses that [were] called” to testify at Jones’ trial, slamming the prosecutor for “allow[ing] Irvo to be villainized even though he was a patient in a mental health crisis.” The dead detainee’s mother, Caroline Ouko, also criticized Mann’s “very lackluster and halfhearted effort.” 🗞

Sources: *Washington Post*, *WTVR*

## MTC Shuts Down Texas Jail

On September 30, 2024, Utah-based Management & Training Corp. (MTC) ended its contract to operate the Giles W. Dalby Correctional Facility in Garza County, Texas. The lockup is owned by the county, which confirmed that most of some 170 employees were out of work.

MTC operated Dalby to hold federal detainees for U.S. Marshals until a ban issued in 2021 by the administration of Pres. Joseph R. Biden, Jr. (D). Garza County officials quickly brought the lockup in line with Texas Jail Commission (TJC) standards as MTC inked contracts to hold overflow from jails in Harris County and Tarrant County.

But after a failed inspection, TJC issued Dalby a notice of non-compliance on December 18, 2023. The problems were corrected, Garza County Judge Lee Norman said. However, no one notified Tarrant County, whose blindsided Commissioners voted to end their contract on February 6, 2024. Harris County also pulled out its

detainees and sent them to other lockups; one, Louisiana’s Natchitoches Parish Correctional Center, inked a new contract with private jail operator LaSalle Corrections for a five-year term beginning November 1, 2024—the same day that Harris County detainees were due to arrive. It was unclear where other overflow detainees went, but the county earlier inked a contract with CoreCivic’s Tallahatchie County Correctional Facility in Tutwiler, Mississippi, as *PLN* reported. [See: *PLN*, June 2024, p.47.]

Judge Norman downplayed the problems that TCJ found at Dalby. “We got dinged on some paperwork, which put us in noncompliance,” he said. “They were paperwork issues. We’ve heard various other things, but technically they were all paperwork issues.” The judge said the county was pursuing another private operator to replace MTC. 🗞

Sources: *KCBD*, *KSLA*, *Lubbock Avalanche-Journal*

# Israel Faces Scrutiny Over “Systematic” Abuse of Palestinian Prisoners

The ongoing war between Israel and the Islamist Hamas militia that has governed the Gaza Strip for 23 years escalated dramatically after Hamas launched a large-scale surprise attack on October 7, 2023, killing approximately 1,200 Israelis. Over 250 more were taken hostage. The Israel Defense Force (IDF) mounted a major counteroffensive arresting thousands of Palestinians, including both suspected Hamas fighters and civilians, and placing them in detention camps.

These detainees have reported abuse, including sexual abuse. A report released by the United Nations human rights office on July 30, 2024, said that prisoners were often stripped, blindfolded and shackled in “cage-like” holding areas; some were even required to wear diapers for long periods. All were typically detained without explanation and denied access to attorneys.

The report also cited incidents of physical abuse, including “waterboarding and the release of dogs on detainees, amongst other acts, in flagrant violation of international human rights law and international humanitarian law,” U.N. High Commissioner Volker Türk said.

While the report noted that 53 prisoners had died in custody, the causes of death were not disclosed. A previous U.N. report issued in April 2024 said that Palestinian detainees had been deprived of food, water and toilets, and subjected to intimidation and harassment.

More recently, a video aired by an Israeli TV station showed IDF soldiers apparently sexually abusing a Palestinian prisoner. “We have seen the video, and reports of sexual abuse of detainees are horrific,” said U.S. State Department spokesperson Matthew Miller. “There ought to be zero tolerance for sexual abuse, rape of any detainee, period.”

According to B’Tselem, an Israeli human rights organization, the IDF has “conducted a systematic policy of prisoner abuse and torture since the start of the Gaza war in October, subjecting Palestinian detainees to acts ranging from arbitrary violence to sexual abuse,” *Reuters News* reported.

B’Tselem released a report in July 2024 based on interviews with 55 prisoners who described beatings, degrading treatment and sleep deprivation. That same month the IDF detained nine soldiers accused of

severely abusing a Palestinian prisoner at the Sde Teiman military prison camp in the Negev desert.

“The food is very bad and they give it to us in a humiliating manner,” said former detainee Fathiyeh Abu Mousa. “They gave us two meals a day, no clothes or shampoo to bathe or shower. My face flared up with a rash from the mattress. It was utter humiliation there.”

“People are dying,” added another former prisoner, Ataa Shbat. “Torture which you cannot imagine unless you taste it. Suffering which you cannot imagine unless you experience it.”

The IDF said it was investigating detainee deaths and incidents of abuse, also phasing out the Sde Teiman detention camp after the Association for Civil Rights in Israel filed a petition with the country’s Supreme Court to close the facility. Israel’s Prison Service claimed all detainees are treated lawfully, though a spokesman acknowledged that stricter prison conditions were ordered following the Hamas attack. 🗨️

Source: *Reuters News*

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# Corruption Charges Dropped Against Maryland Sheriff, Former Virginia Sheriff Headed to Trial

On November 12, 2024, federal prosecutors dropped their criminal case against Sheriff Chuck Jenkins of Maryland's Frederick County, for allegedly obtaining weapons fraudulently from the federal Bureau of Alcohol, Tobacco and Firearms (ATF). Meanwhile, on the other side of the Washington, D.C. exurbs in Virginia's Culpepper County, former Sheriff Scott Jenkins—who is no relation—missed the start of his trial on the same day on bribery and corruption charges.

As *PLN* reported, Chuck Jenkins, 67, was accused of fraudulently ordering machine guns from ATF for demonstration and evaluation—when in fact they were later rented out for profit by local gun shop owner Robert Justin Krop, 37, who was also charged with conspiracy and providing false statements to acquire the guns. [See: *PLN*, Sep. 2023, p.53.] A jury found Krop not guilty of those charges on October 24, 2024; three weeks later, the government dropped its case against the Sheriff, who called it an “assassination attempt” similar to that carried out during the recent campaign of Pres.-elect Donald J. Trump (R). “It was a near miss,” Jenkins said. “I was injured and I was bloodied, but I didn’t give up the fight.”

As *PLN* also reported, Scott Jenkins, 52, was charged with taking bribes totaling more than \$72,500 to make three local businessmen auxiliary deputy sheriffs—issuing

them badges, identification cards, guns and body armor, even helping one get his gun rights restored. [See: *PLN*, Feb. 2024, p.48.] Jury selection for Jenkins’ trial was delayed until November 14, 2024, after an anxiety attack sent him to the hospital with a pike in blood pressure. His attorneys argued for a two-week delay, but federal prosecutors secured a shorter two-day stay. Meanwhile, co-defendants Frederick Gumbinner, James Metcalf and Rick Tariq Rahim pleaded guilty in November 2023, January 2024 and April 2024, respectively. Their sentencing is set for January 2025. *PLN* will update developments in the case as they are available. See: *United States v. Jenkins*, USDC (W.D. Va.), Case No. 3:23-cr-00011. 📰

Additional sources: *Culpepper Times*, *Fredrick News Post*, *WRC*

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## BOP Guard Indicted, Sued for Assaulting Handcuffed Prisoner at Kentucky Lockup

The U.S. Attorney’s Office (USAO) for the Eastern District of Kentucky announced on November 12, 2024, that a federal grand jury had returned an indictment against a federal Bureau of Prisons (BOP) guard for violating a prisoner’s rights under the color of law, as well as witness tampering and falsifying records to impede an investigation into the incident.

Lt. Zachary Toney, 33, was accused of repeatedly kicking and striking a prisoner who was already on the ground and handcuffed behind his back in March 2022 at the U.S. Penitentiary (USP)-McCreary in Pine Knot. In addition to injuring the prisoner, identified as “R.F.,” Toney also allegedly attempted to cover up the crime with a phony account of the incident in his official documentation—conveniently omitting that he kicked and struck the prisoner and also lying that no injuries resulted. Toney was further accused of instructing three fellow guards to write false reports neglecting to mention the force they observed him use against the victim. If convicted, Toney faces up to 10 years in federal prison for the

deprivation of rights charge and up to 20 years for each of the other two charges. See: *United States v. Toney*, USDC (E.D. Ky.), Case No. 6:24-cr-00073.

Toney was also named in a federal civil rights lawsuit filed *pro se* in October 2023 by USP-McCreary prisoner Rafael D. Foster, who described being victimized in the same way on the same date by Toney and fellow guard J. Nichols—possibly in retaliation for allegedly taking a swing at a third guard with his crutch. Attorneys with the same USAO that sought the indictment against Toney also sought to dismiss Foster’s claim, arguing that the guards acted outside the scope of their employment. Toney and Nichols moved for dismissal, too, arguing that the case was filed outside the one-year statute of limitations established under governing Kentucky law. However, on July 17, 2024, the federal court for the Eastern District of Kentucky largely denied those motions. *PLN* will update developments as they are available. See: *Foster v. United States*, 2024 U.S. Dist. LEXIS 125833 (E.D. Ky.). 📰

# Georgia Jail Sued by Local Bookstore Banned from Sending Detainees Reading Materials

When the Avid Bookshop mailed several book orders to prisoners at the Gwinnett County Jail outside Atlanta in May 2023, the Athens retailer likely didn't expect to become embroiled in a lawsuit almost a year later. Then the orders were rejected because the jail has a policy of refusing magazines and books not "mailed directly from the publisher or authorized retailer."

However, "authorized retailer" was not defined nor was there any indication how businesses could obtain that status. According to a deputy at the jail, books were accepted only from Barnes & Noble and Amazon, but not from Amazon independent sellers. The rationale, apparently, was that someone could enter any other store open to the public, place contraband inside books for sale there and then have it mailed to prisoners by the retailer.

Avid sued Gwinnett County Sheriff Keybo Taylor and jail Cmdr. Benjamin Haynes in federal court for the Northern District of Georgia on March 15, 2024. The complaint alleged violations of the bookstore's First and Fourteenth Amendment rights and sought declaratory

relief, plus nominal and compensatory damages.

Avid said it could mail new books to prisoners "from its warehouse without any member of the public having had access to the books." Moreover, approved booksellers such as Barnes & Noble have retail stores open to the public, too. So the jail's ban on Avid's orders constituted prior restraint on its communication with prisoners—besides being "an exaggerated response to the Jail's security objectives."

As a result, the bookstore argued, the jail's policy is not "reasonably related to a legitimate penological interest," so it doesn't fall under that exception to civil rights violations permitted by *Turner v. Safley*, 482 U.S. 78 (1987). Rather, Avid argued, the ban was applied "on an *ad hoc*, subjective basis according to the unbridled discretion of Jail officials." Additionally, the policy functioned as an impermissible "permitting scheme" and was unconstitutionally vague," the complaint alleged.

Prior to filing suit, Avid submitted an Open Records Request to the Sheriff's office, but "no further information on the Jail's Authorized Retailer Policy was

produced." Nor had the jail recorded any incidents where contraband was found in books sent to prisoners. There was also no definition of what constituted an authorized retailer, a "lack of announced criteria or standards allows for arbitrary and potentially discriminatory or even viewpoint-based application" of the jail's book-ordering policy, the complaint declared. Avid is represented by Atlanta attorney Zack Greenamyre and the First Amendment Clinic at the University of Georgia School of Law. See: *Avid Bookshop LLC v. Taylor*, USDC (N.D. Ga.), Case No. 1:24-cv-01135.

The suit remains pending, and *PLN* will update developments as they are available—though readers should not get too hopeful. The district court sits in the Eleventh Circuit of the U.S. Court of Appeals, which denied a challenge to similar restrictions placed on *PLN* by Florida prisons. See: *Prison Legal News v. Sec'y, Fla. Dep't of Corr.*, 890 F.3d 954 (11th Cir. 2018), cert. denied by *Prison Legal News v. Jones*, 586 U.S. 1069 (2019). 📖

Additional source: *Reason*

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## News in Brief

**Alabama:** *Wiregrass Daily News* reported that Mobile Metro Jail guard Timothy Lee Scarbrough, 39, was arrested on September 9, 2024, and charged with first-degree sodomy for the alleged sexual assaulting of a detainee who was still under the effects of anesthesia after eye surgery. Scarbrough had been employed for less than a year and had no prior disciplinary record when the detainee woke to find the guard molesting him. Evidence from a sexual assault kit and witness statements led to Scarbrough's arrest and termination. Sheriff Paul Burch said that two guards normally accompany a detainee to a hospital, but budget constraints only allowed him to send only one. Nevertheless, his investiga-

tors determined the detainee's claims were credible. Scarbrough now faces 10 years to life in prison if convicted.

**Alabama:** An unnamed state Department of Corrections (DOC) guard was arrested on October 9, 2024, on charges of smuggling methamphetamine into Holman Correctional Facility (CF) in Atmore. *Alabama Public Radio* reported that the 48-year-old allegedly smuggled the drugs to an prisoner, also unidentified, at the maximum-security lockup, which holds most of those condemned prisoners waiting on the state's death row.

**Arizona:** State prisoner Jacob Purdue confessed to assaulting two guards at the Arizona State Prison Complex-Lewis in

Buckeye on September 3, 2024. One guard lost sight in one eye, according to *KPNX* in Mesa. Purdue blamed poor prison conditions and disrespectful treatment by staff. His violent history dates back to his 1995 convictions for burglary, aggravated robbery and gang involvement. Just a month before the assault, he was found guilty of promoting prison contraband. Yet he was housed in a close custody environment, one level below maximum security. Carlos Garcia, Executive Director of the Arizona Peace Officers Association (ACPOA) criticized the state Department of Corrections, Rehabilitation, and Reentry (DCRR) for this practice that he called "overriding"—classifying prisoners one level below where their

records show them, in order to reduce the need for more guard staff. DCCR denied that charge. However, data from the summer of 2024 indicates a significant shortage of guards statewide.

**Australia:** Former guard Amber Clavell, 25, avoided prison time when sentenced on October 9, 2024, after she admitted smuggling drugs to a prisoner who got her pregnant, the *Sydney Morning Herald* reported. Clavell was caught smuggling methamphetamine and tobacco into the Geoffrey Pearce Correctional Centre for her partner, Mark Kennedy, a convicted armed robber. Prosecutors called for a prison sentence as a deterrent to other potentially corrupt guards, but Clavell instead got an intensive community corrections order and 200 hours of community service. The court considered her lack of previous criminal history, emotional vulnerability, and inadequate training as mitigating factors; testimony revealed that Clavell was given a training manual, told to read it and then “fake it until you make it.” Penrith District Court magistrate Stephen Corry remarked that her “lack of professional qualifications

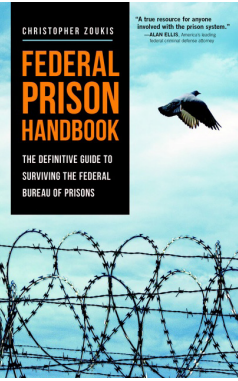
and training was a major contributing factor” to her offense. “She was thrown in the deep end and told to kick [her] legs and swim,” he said. Clavell, expecting Kennedy’s child, has two other kids under age five.

**California:** A convicted killer serving several concurrent sentences was brutally beaten to death by fellow prisoners in the recreation yard of Calipatria State Prison on September 26, 2024, *The Independent* reported. Alberto Martinez, 46, was pronounced dead shortly after the incident. Suspects Tyler Lua, Jorge Negrete-Larios and Luis Beltran were placed in restricted housing pending an investigation. Their motive for the attack remains unknown, but state Department of Corrections and Rehabilitation (CDCR) officials speculated that it may be related to Martinez’s past actions or gang affiliations. Martinez had been sentenced to death for first-degree murder but was moved to general population after Gov. Gavin Newsom (D) issued a moratorium on executions in 2019. The three suspects are also serving lengthy sentences for violent crimes

**California:** A suspected cluster of

fantanyl overdoses at the Los Angeles County Men’s Central Jail killed an unnamed 32-year-old detainee on October 8, 2024. The *Los Angeles Times* reported that another seven detainees, aged 18 to 68, were hospitalized; they were also unnamed. Detainee Donald Booker contacted *PLN* on October 17, 2024, to report that the number dead may have risen, but that has not been confirmed.

**California:** The *Sacramento Bee* reported that CDCR officials are investigating the death of prisoner Kyle Cooper on October 12, 2024, as a homicide. The 50-year-old was found in his cell at California State Prison (CSP) in Sacramento with severe head trauma and taken to a hospital where he died. Cellmate Rahshan Mackey, 38, was placed in solitary confinement; he arrived at CSP in 2021 to serve 23 years for involuntary manslaughter, picking up an additional two-year sentence in 2024 for assault with a deadly weapon. Cooper’s death was the third suspected homicide at New Folsom in just four months. In July and August, prisoners Randy Schlaepfer and Darryl W. Hudson were also killed. Staff witnessed



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\_\_\_\_\_

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both attacks but failed to intervene in time to prevent their deaths.

**Florida:** A former federal Bureau of Prisons (BOP) guard at the Federal Correctional Institution (FCI) in Miami pleaded guilty on October 7, 2024, to wire fraud, after stealing \$46,500 from a pandemic relief loan program. According to the *Miami Herald*, Eshwar Mohabeer, 45, admitted to submitting a fraudulent loan application to the Small Business Administration (SBA) in 2020, claiming to own a transportation and day tour business. The SBA then granted the loan under the Economic Injury Disaster Loan program, which Congress passed to provide relief during the COVID-19 pandemic. However, Mohabeer used the money for personal expenses rather than business overhead. Investigators found that Mohabeer had not filed a required form for a transportation business and that his reported income was far below the amount he claimed on his loan application. When questioned by federal

agents, Mohabeer admitted to submitting the bogus application and using the loan proceeds for personal purposes. He has paid back the full amount of the loan but faces a potential sentence of six months in prison; he remains free on bond until sentencing in January 2025.

**Georgia:** Former Fulton County Jail guard Karmen Bailey, 31, was arrested and charged with multiple counts of bribery and contraband delivery on October 4, 2024, *WSB* in Atlanta reported. She allegedly took \$17,000 in bribes to deliver pills and other contraband to jail. She had been employed by County Sheriff Pat Labat since September 2023 until her resignation on August 27, 2024. Investigators tipped off by detainees found that Bailey was working with the family and associates of at least five other detainees to smuggle the contraband, which she hid on a meal tray to deliver to the detainees' cells. She remains jailed on four counts of violation of oath, two counts of bribery and two counts of obtaining/procuring/giving prisoners prohibited items without authorization. The investigation is ongoing.

**Georgia:** Three former guards at

Riverbend Correctional Facility were sentenced to 10 years in prison and five years of probation on October 9, 2024, after being convicted of smuggling drugs and cellphones into the state prison, which is privately operated for the state DOC by The GEO Group, Inc. Natasha Seals, Tierra Harrison and Shanell Brown were found guilty of trading with prisoners, making false statements, and violating their oaths as public officers, the *Atlanta Journal-Constitution* reported. The three were acquitted of more serious charges, including trafficking methamphetamine, possession of marijuana with intent to distribute and crossing guard lines with drugs. They were also convicted of racketeering, but the judge vacated that charge when no guilty verdicts were returned on the other charges. The guards helped each other smuggle contraband through the prison's screening system, leaving it in a restroom trash can for prisoners to retrieve and sell. After an unnamed prisoner was found with contraband, investigators uncovered the scheme and found it had been ongoing for at least eight months.

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**Hawaii:** Former state DOC guard Anthony Pereira II was sentenced on October 9, 2024, to life in prison with the chance of parole for murdering his mother, *KITV Island News* reported. As *PLN* reported, the former training officer at Oahu Community Correctional Center held Barbara Pereira captive in their home and then fatally shot her in the head in June 2016. Prior to the murder, he had also held his girlfriend captive for three days. Despite claims of mental distress, the court found him guilty, agreeing with prosecutors that his mental state did not justify his actions. [See: *PLN*, Aug. 2024, p.62.]

**Hawaii:** *Honolulu Civil Beat* reported that on September 26, 2023, an Arizona court sentenced Miti Maugaotega, Jr., for the 2010 murder of Bronson Nunuha, a fellow Hawaiian prisoner held at Saguara Correctional Center, a private lockup contracted by CoreCivic for prisoner overflow from the Hawaii Department of Corrections and Rehabilitation. In 2014, the firm paid an undisclosed settlement of a wrongful death claim filed by Nunuha's family with the aid of the Human Rights Defense Center, *PLN's* publisher. [See: *PLN*, May 2015, p.12.] Arizona prosecutors sought the death penalty for Maugaotega, who carved the name of his UFO prison gang into Nunuha's corpse; the jury deadlocked on that before agreeing on a sentence of life without parole—once the prisoner completes his original Hawaii sentences in 2207 (not a typo).

**India:** A police informer from Labour Colony was arrested on October 15, 2024, for aiding and abetting the escape of two prisoners five days earlier from a lockup in Haridwar, near the Himalayas. The *Times of India* reported that Sunil Kumar, cousin of one of the prisoners, helped the two escape during a religious theatrical play known as Rameela. Costumed prisoners who participated in the highly revered event included Pankaj, a gang member sharpshooter serving a life sentence for murder, and Rajkumar, an accused kidnapper; they were dressed as Vanara Sena monkeys when they used a ladder to scale a wall and flee. Following the escape, the deputy jailor and five jail staffers were suspended. The two prisoners remain at large.

**Indiana:** A former guard fired from the Henry County Jail in New Castle was charged on October 24, 2024, with federal civil rights violations for shooting

a detainee in the spine with a pepper ball, the Muncie *Star Press* reported. During a cell search on February 13, 2024, Curtis Lavon Doughty, 27, was assigned to guard a group of detainees in the recreation yard; they were ordered to face a wall, but one turned his head, and Doughty shot him at point-blank range, injuring him. Other guards alerted a supervisor, and Doughty was then fired. The FBI investigated and charged Doughty with deprivation of rights under color of law. If convicted, he faces up to 10 years in federal prison. Henry County Sheriff John Sproles has not commented on the case, but since taking office, more than five tort claims have been filed against his office for which the agency was dropped by Travelers Insurance in December 2023.

**Italy:** On October 2, 2024, a prison guard at Rome's infamous Regina Coeli prison was arrested for embezzlement, according to *Il Messaggero*. The prison, once a convent, is notorious for holding thousands of political prisoners during Italy's fascist years, 1922-45; it has received visits from several Popes, who have washed prisoners' feet. The unnamed guard, who was responsible for overseeing loading and unloading of food supplies, allegedly used his position to steal food intended for prisoners. According to investigators, the guard regularly appropriated tuna, cheese, mortadella, beverages, and oil, with a total value of around €1,000 (\$1,073 USD). The goods were then resold to local businesses. The guard was placed under house arrest and suspended from duty pending further investigation.

**Louisiana:** A St. Landry Parish Sheriff's deputy was arrested on October 1, 2024, and charged with bringing contraband into the local jail. Timothy Lazare, 36, faces charges including malfeasance in office and criminal conspiracy, according to Lafayette's *KLFY*. St. Landry Parish Sheriff Bobby Guidroz said detectives uncovered a plan with non-incarcerated accomplices to

smuggle narcotics into the Parish Jail, where Lazare worked. Three detainees and a "courier" were also arrested but have not been named. This is the second recent drug-smuggling incident at the jail; four people, including two detainees, were arrested in July 2024 for attempting to smuggle synthetic marijuana into the lockup in Opelousas.

**Louisiana:** *KALB* reported that two Georgia residents were arrested on October 10, 2024, for flying a drone with a large amount of contraband into a federal prison in Grant Parish. Sharketie Leverette, 33, and Michael Eulin, 35, were accused of smuggling over \$40,000 worth of tobacco, marijuana, THC vapes, cell phones and a stolen pistol into the U.S. Penitentiary in Pollock. The drone, which was over five feet wide, was recovered by prison guards on October 4, 2024, after it was observed dropping contraband on prison grounds. Leverette and Eulin were arrested less than a week later on charges, including distribution of marijuana and entering contraband into a prison. Eulin was also charged with possession of a firearm by a convicted felon, illegal possession of a stolen firearm, distribution of marijuana and obstruction of justice.

**Maine:** The *Portland Press Herald* reported that former Cumberland County Jail guard Vinal Thompson filed suit against the Sheriff's department on October 25, 2024, for wrongful termination. As *PLN* reported, Thompson was fired after a physical altercation with a detainee but acquitted of criminal charges related to the

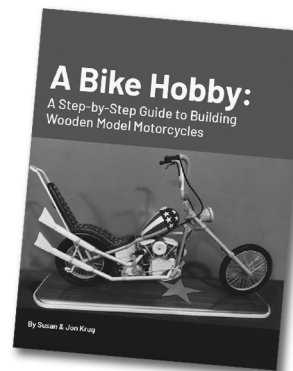
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incident. [See: *PLN*, Feb. 2024, p.63.] His suit claims that Sheriff Kevin Joyce and County Manager James Gailey violated his due process rights by firing him without just cause. Surveillance video captured an altercation over a urine test that turned physical between detainee John Katula and Thompson, who claimed that he was attacked and that the Sheriff's department failed to conduct a fair investigation when it disagreed that he acted in self-defense. Despite being cleared of criminal charges, Thompson faced disciplinary action from the sheriff's department, leading to his termination in July 2021. He is seeking damages for lost wages, emotional distress, and other related costs.

**Maryland:** A fire broke out at Western Correctional Institution (WCI) in Cumberland on October 15, 2024, injuring a prisoner and a guard, *WMAR* in Baltimore reported. The incident caused about \$500 in damages, prompting evacuation of an entire tier. The unnamed 43-year-old prisoner suffered severe third-degree burns and was airlifted to Johns Hopkins Bayview Medical Center. The guard, who was also unnamed, was treated for smoke inhalation and released from a local hospital. Six other guards sought medical attention for minor injuries. The cause of the fire is still under investigation, but officials indicated that it did not appear intentionally set.

**Massachusetts:** The *Fall River Reporter* said that state prisoner Roy Booth, 42, pleaded guilty on October 18, 2024, to brutally attacking a guard with free weights at the Massachusetts Correctional Institution (MCI) in Shirley in 2022. Booth was sentenced to 13-to-15 years in MCI Souza Baranowski for attempted murder, running consecutive to a life sentence he is already serving for a murder in Virginia, which transferred him to Massachusetts in 2021. The attack left Matthew Tidman permanently disabled, leading state lawmakers to propose "Matt's Bill" to ban free weights in high-security prisons, as *PLN* reported. [See: *PLN*, Nov. 2022, p.65.] The bill, H 2422, remains pending.

**Minnesota:** The Looking at the Stars foundation brought a trio of classical musicians to Minnesota Correctional Facility in Stillwater on October 16, 2024, *The Minnesota Star Tribune* reported. Violinist Jonathan Crow, pianist Walter Delahunt and cellist Joseph Johnson provided a much-needed break from harsh prison life for about 100 prisoners; calling it "a ray of sunshine," 68-year-old Dwight Bowers said, "I was in pure heaven. I had left this place." Many prisoners in the audience had never experienced live classical music and were visibly moved.

**Missouri:** *KOMU* in Columbia reported that former Audrain County Jail guard Kyle McIntire, 23, was arrested and charged on September 28, 2024, with smuggling heroin to detainees. A fellow detainee reported seeing the detainees ingest a powdery substance on September 26, 2024,

sparking an investigation that uncovered a scheme between McIntire, who smuggled the drugs, and Jameera Keen, 26, a non-incarcerated accomplice who provided them. McIntire was fired and charged with delivering a controlled substance; he was jailed on a \$10,000 bond. Keen was charged with conspiracy to commit a felony, possession of a controlled substance and unlawful possession of drug paraphernalia. She was being held without bond at the jail.

**Montana:** Former Montana State Prison guard Thomas Blomquist pleaded not guilty on September 10, 2024, to a felony count of mistreating prisoners and a misdemeanor charge of official misconduct, *KXLF* in Butte reported.. Blomquist allegedly trapped the arm of an unnamed prisoner in a cell door food slot in March 2024 and then repeatedly kicked it shut, leaving him stuck there. A fellow guard had to find keys to free the man. The state DOC said that Blomquist is no longer an employee, but details of his separation were not provided.

**New York:** A Suffolk County jail guard was indicted on October 11, 2024, on charges of felony criminal sexual act and misdemeanor official misconduct, the *Daily Voice Massapequa* reported.

As *PLN* reported, Jason Middleton, 35, is accused of repeatedly luring the unnamed detainee into an area away from surveillance cameras between April and September 2023, coercing her once there to perform oral sex and threatening to plant contraband in her cell if she did not comply. [See: *PLN*, Jan. 2024, p.63.]. The

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Suffolk County District Attorney's Public Corruption Squad investigated and arrested Middleton in November 2023, when he was suspended without pay. Following the indictment, he was placed on supervised release. If convicted, he faces up to four years in prison.

**Oregon:** An Umatilla County Circuit Court judge determined on October 22, 2024, that state DOC guard Jorge Morfin instigated a violent attack on prisoner Richard Michael Fay at Eastern Oregon Correctional Institution in 2022, *Oregon Public Radio* reported. The judge also found that DOC failed to provide adequate medical care for severe injuries Fay suffered when he was "punched, kicked and strangled to unconsciousness," according to court documents, leaving him with "a serious concussion, multiple broken ribs, chipped teeth, throat trauma and back injuries" that prevented him from standing and required hospitalization. Morfin, who remains employed at the prison, allegedly encouraged other prisoners to target Fay and other sex offenders. DOC said in a statement that its officials "take incidents like this extremely seriously." But Judge Robert Collins Jr. found that DOC failed to provide Fay necessary medical treatment, including surgery for his fractured ribs and proper care for his brain injury.

**Pennsylvania:** A former guard at the Mercer County Jail in northwest Pennsylvania was accused of smuggling contraband to detainees on October 3, 2024, according to *WKBN* in nearby Youngstown, Ohio. Charles Arn, 54, faces charges of delivering a controlled substance, introducing contraband into a correctional facility and

criminal use of a communication facility. He allegedly accepted bribes via Cash App for supplying detainees with chewing tobacco, vape pens and fentanyl. An investigation began after the jail warden suspected Arn and another staffer of selling contraband to detainees. The other employee resigned while Arn was arrested and charged. One of his locked-up customers said he was required to purchase four cans of chewing tobacco at \$50 each time he made a fentanyl purchase—for \$600—from the guard. Arn admitted only to selling candy to detainees.

**Pennsylvania:** A former BOP guard at the Federal Detention Center (FDC) in Philadelphia was sentenced on October 11, 2024, to three years of probation, including six months of home detention, and a \$5,000 fine for smuggling mobile phones into the lockup. The U.S. Attorney's Office for the Eastern District of Pennsylvania reported that Lee E. Moore, Jr., 36, abused his position between May and June 2020 to smuggle cell phones into FDC in exchange for bribes from a prisoner's wife. Moore also tried to involve a second prisoner in a similar scheme by offering to smuggle or provide favors if the prisoner would pay him. A New Jersey resident, he worked at FDC for eight years prior to his June 2023 indictment.

**South Dakota:** On October 22, 2024, the state DOC emailed employees that Warden Teresa Bittinger would no longer head the South Dakota State Penitentiary in Sioux Falls. With less than two years on the job, her exit extends a pattern of leadership instability at the state's largest prison, *South Dakota Searchlight* reported.

Allegations of nepotism and sexual harassment went unaddressed by Republican Gov. Kristi Noem through the administrations of two wardens before Bittinger was hired in March 2023. In March 2024, there were two nights of disruptions at the prison as prisoners protested suspended tablet, texting and email services for prisoners without an end date because of an ongoing investigation. In September 2024, the penitentiary and Jameson Annex were placed on lockdown during yet another search for contraband, which lasted for weeks and disrupted daily routines for prisoners and staff. Bittinger's exit adds to a list of DOC problems, including pushback from residents and environmental groups regarding a plan to build a new prison in Lincoln County.

**Texas:** In September 2024, three former Texas Department of Criminal Justice (TDCJ) guards were indicted on felony charges related to alleged sexual misconduct with incarcerated women, the *Killeen Daily Herald* reported. Patrick Stuart Wood, Omar Garcia Travieso and Muhammed Salami were charged with violating the civil rights of a person in custody, a second-degree felony, for allegedly forcing unnamed prisoners to perform oral sex, as well as having consensual sexual intercourse with them. Investigations by TDCJ's Office of the Inspector General found that one unnamed prisoner at the Christina Melton Crain Unit reported being coerced into performing oral sex by Travieso in June 2022 under threat of harm to a pet snail she kept in her cell. After another prisoner at Patrick L. O'Daniel Unit was found with hickeys on her neck, Wood admitted in Au-

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gust 2023 to engaging in consensual sexual intercourse with her multiple times. But he blamed the victim, claiming she pressured him for a relationship and he failed to resist because he “ran out of anxiety medication.” A TDCJ sergeant who searched his vehicle in the prison unit’s parking lot found handwritten notes in which the prisoner claimed she loved him and could not wait to be together when she was released in three years. No details about Salami’s alleged misconduct were provided, but he was charged with one count of bribery and two counts of violating the civil rights of a person in custody. None of the men currently works for TDCJ and all bonded out after their arrests.

**Tennessee:** A former Dyer County Sheriff’s Office (DCSO) deputy was arrested on October 28, 2024, for attempting to smuggle drugs into the County Correctional Complex where he worked as a guard, according to *WREG* in Memphis. Tyrell Wallace, 40, faces multiple felony charges, including possession with intent to distrib-

ute methamphetamine, cocaine, marijuana and 26 grams of fentanyl pills—enough “to kill a few hundred people,” DCSO said. Additionally, Wallace was found with a loaded 9mm pistol and charged with possession of a firearm during commission of a felony. Looking for a silver lining in the cloud of bad news, County Sheriff Joe Box offered that Wallace was not trying to smuggle the gun into the jail, just the drugs. He also fired Wallace, who had worked at the jail three years. Wallace was freed on a \$100,000 bond.

**Washington:** *My Northwest* reported that a 102-month sentence handed down to a former King County Jail guard on October 11, 2024. As *PLN* reported, Mosses Ramos, 40, was arrested in November 2023 for smuggling methamphetamine and fentanyl pills to detainees Michael Anthony Barquet and Francisco Montero. [See: *PLN*, Mar. 2024, p.8.] Ramos was found guilty of that charge as well as accepting a \$5,000 bribe in return. Barquet also faces charges for drug smuggling and bribery; Montero is awaiting trial for a double homicide. Neca Silvestre, Katrina Cazares, and Kayara Zepeda Montero, three associ-

ates of the detainees, also pleaded guilty to their roles in the scheme and are awaiting sentencing.

**Wisconsin:** Former Waupun Correctional Institution guard Sarah Ransbottom, 36, was the first of nine defendants to resolve charges in connection with the deaths of two prisoners at the troubled prison when she pleaded no contest on September 27, 2024, to a reduced charge of violating a law governing conduct by prison staff and paid a \$250 fine, *WLUK* in Green Bay reported. The deaths of Donald Maier and Cameron Williams occurred during a prolonged lockdown at the prison, which has been plagued by staff shortages and allegations of mistreatment that have prompted a class-action lawsuit, as *PLN* reported. [See: *PLN*, Apr. 2024, p.11.] The U.S. Department of Justice is also investigating a potential smuggling ring. Ransbottom attributed the deaths to severe understaffing and excessive workloads, but she also admitted to falsifying logs to indicate that she had completed required rounds, a crucial task for monitoring prisoner health and safety. Vacancy rates for guards in 2024 have hovered near 50%. 🗞️



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**Prison Education Guide**, by Christopher Zoukis, PLN Publishing (2016), 269 pages. **\$24.95**. This book includes up-to-date information on pursuing educational coursework by correspondence, including high school, college, paralegal and religious studies. **2019**

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

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**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**

**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**

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**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**

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**Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A.**, by Mumia Abu-Jamal, 286 pages. **\$16.95**. In *Jailhouse Lawyers*, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned advocates who have learned to use the court system to represent other prisoners—many uneducated or illiterate—and in some cases, to win their freedom. **1073**

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**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**

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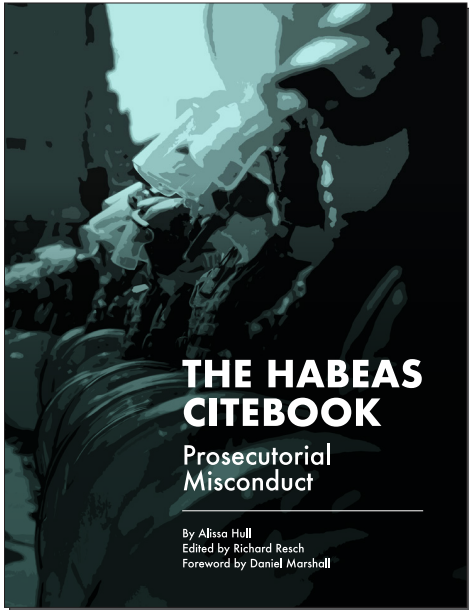
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By Alissa Hull

Edited by Richard Resch

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