Lisa Ells – Cal. Bar No. 243657*
Jenny S. Yelin – Cal. Bar No. 273601*
ROSEN BIEN GALVAN & GRUNFELD LLP
50 Fremont Street, 19th Floor
San Francisco, California 94105-2235
Telephone: (415) 433-6830
Facsimile: (415) 433-7104
lells@rbgg.com
jyelin@rbgg.com

Lance Weber – Fla. Bar No. 104550*
Sabarish Neelakanta – Fla. Bar No. 26623*
HUMAN RIGHTS DEFENSE CENTER
Post Office Box 1151
Lake Worth, Florida 33460-1151
Telephone: (561) 360-2523
Facsimile: (866) 735-7136
lweber@humanrightsdefensecenter.org
sneelakanta@humanrightsdefensecenter.org

David J. Bodney
bodneyd@ballardspahr.com
Heather Todd Horrocks
horrocksh@ballardspahr.com
BALLARD SPAHR LLP
1 East Washington Street, Suite 2300
Phoenix, AZ 85004-2555
Telephone: 602.798.5400
Facsimile: 602.798.5595

* *Pro Hac Vice* applications to be filed forthwith

Attorneys for Plaintiff Prison Legal News

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Prison Legal News, a project of the Human Rights Defense Center,

Plaintiff,

v.

Charles L. Ryan, in his official capacity as Director of the Arizona Department of Corrections and in his individual capacity; Gail Rittenhouse, in her official capacity as Division Director, Support Services of the Arizona Department of Corrections and in her individual capacity; Jeff Hood, in his

NO. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

JURY TRIAL DEMANDED

official capacity as Deputy Director of the Arizona Department of Corrections and in his official capacity; Alf Olson, in his official capacity as an employee of the Office of Publication Review of the Arizona Department of Corrections and in his individual capacity; and Does 1 to 20, inclusive,

Defendants.

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

INTRODUCTION

1. Plaintiff PRISON LEGAL NEWS ("PLN" or "Plaintiff"), a project of the Human Rights Defense Center, brings this action regarding Defendants' censorship of four issues of its monthly publication mailed to prisoners in the Arizona Department of Corrections ("ADC"), in violation of PLN's clearly established rights under the First and Fourteenth Amendments to the United States Constitution. Defendants have adopted and implemented mail policies and a pattern of practices that unconstitutionally prevent distribution of PLN's eponymously named monthly publication. The censored issues contain articles that include non-salacious descriptions of sexual activity to make clear the factual basis for legal cases of interest to PLN's readers. In particular, Defendants refuse to deliver issues of PLN's monthly publication to subscribers in ADC facilities when those issues contain articles describing sexual contact between jail or prison guards and prisoners to which the prisoners did not consent.

2. Defendants' mail policies and practices also do not afford constitutionally adequate notice and an opportunity to challenge Defendants' censorship, in violation of PLN's right to due process. Defendants' actions violate PLN's rights and the rights of others under the First Amendment and the Due Process Clause of the Fourteenth Amendment. PLN thus brings this action, pursuant to 42 U.S.C. § 1983, seeking injunctive and declaratory relief, and damages to be proven at trial.

JURISDICTION AND VENUE

3. This action arises under the First and Fourteenth Amendments to the United States Constitution and is brought pursuant to 42 U.S.C. § 1983. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343. The Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57.

4. Venue is proper in the District of Arizona under 28 U.S.C. § 1391(b)(2) because substantial acts and omissions giving rise to the claims occurred in this District, including Defendants' implementation of the challenged mail policies and practices, and because Defendants reside in this District.

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

PARTIES

5. Plaintiff PRISON LEGAL NEWS is a project of the Human Rights Defense Center, a Washington non-profit corporation. PLN publishes a 72-page monthly journal of corrections news and analysis called *Prison Legal News*, and distributes books about the criminal justice system and legal issues affecting prisoners to prisoners, lawyers, courts, libraries, and the public throughout the country.

6. The Defendants listed below are sued in their official capacities only for equitable relief as to each and every violation of federal rights alleged in this complaint. Defendants are also sued in their individual capacities for damages.

7. Defendant CHARLES L. RYAN ("RYAN") is, and at all relevant times herein mentioned was, the Director of the ADC, the state agency that manages the correctional facilities within the State of Arizona. Defendant RYAN has ultimate responsibility for the promulgation and implementation of ADC policies, procedures, and practices and for the management of the ADC. As to all claims presented herein against him, Defendant RYAN is being sued in his individual capacity for damages, and in his official capacity for injunctive and declaratory relief. At all relevant times, Defendant RYAN has acted under color of state law.

8. Defendant GAIL RITTENHOUSE is, and at all relevant times herein mentioned was, Division Director, Support Services of ADC. Defendant RITTENHOUSE is responsible for the promulgation and implementation of policies, procedures, and practices at the ADC. As to all claims presented herein against her, Defendant RITTENHOUSE is being sued in her individual capacity for damages, and in her official capacity for injunctive and declaratory relief. At all relevant times, Defendant RITTENHOUSE has acted under color of state law.

9. Defendant JEFF HOOD is, and at all relevant times herein mentioned was, Deputy Director of ADC. Defendant HOOD is responsible for the promulgation and implementation of policies, procedures, and practices at the ADC. As to all claims presented herein against him, Defendant HOOD is being sued in his individual capacity

for damages, and in his official capacity for injunctive and declaratory relief. At all relevant times, Defendant HOOD has acted under color of state law.

10. Defendant ALF OLSON is, and at all relevant times herein mentioned was, an ADC employee who worked or works in the Office of Publication Review. Defendant OLSON is responsible for the promulgation and implementation of policies, procedures, and practices at the ADC. As to all claims presented herein against him, Defendant OLSON is being sued in his individual capacity for damages associated with clearly established federal rights, and in his official capacity for injunctive and declaratory relief. At all relevant times, Defendant OLSON has acted under color of state law.

11. The names and capacities of the persons sued as DOES 1 to 20, inclusive, herein are unknown to Plaintiff at this time. Each of Defendants DOES 1 through 20 is or was employed by and is or was an agent of ADC when some or all of the challenged prisoner mail policies and practices were adopted and/or implemented. Each of Defendants DOES 1 through 20 is or was personally involved in the adoption and/or implementation of the ADC's mail policies for prisoners, and/or is or was responsible for the hiring, screening, training, retention, supervision, discipline, counseling, and/or control of the ADC staff who interpret and implement these prisoner mail policies. Each of Defendants DOES 1 through 20 is or was acting under color of state law. Each of Defendants DOES 1 through 20 is sued in his or her individual capacity for damages and his or her official capacity for injunctive and declaratory relief. PLN will seek to amend this Complaint as soon as the true names and identities of Defendants DOES 1 through 20 have been ascertained.

12. Each and every act and omission alleged herein of Defendants, their officers, agents, servants, employees, or persons acting at their behest or direction, were done and are continuing to be done under the color of state law and within the scope of their official duties as officers, employees or agents of the ADC. Each Defendant was or is an agent of each other Defendant in committing the unconstitutional acts alleged in this complaint.

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

FACTUAL BACKGROUND

13. Plaintiff PRISON LEGAL NEWS publishes and distributes *Prison Legal News: Dedicated to Protecting Human Rights*, a monthly journal of corrections news and analysis. PLN also publishes and distributes paperback books about the criminal justice system and legal issues impacting prisoners.

14. *Prison Legal News* has thousands of subscribers in the United States and abroad, including prisoners, attorneys, journalists, public libraries, judges, and other members of the public. PLN distributes its publication to prisoners and law librarians in approximately 2,600 correctional facilities across the United States, including institutions within the Federal Bureau of Prisons and all of the adult prisons of the California Department of Corrections and Rehabilitation.

15. PLN also distributes approximately fifty (50) different books about the criminal justice system, legal reference books, and self-help books of interest to prisoners. These books are designed to foster a better understanding of criminal justice policies and to allow prisoners to educate themselves about related issues, such as legal research, how to write a business letter, health care issues, and similar topics.

16. Plaintiff's organizational purpose, as stated in its Articles of Incorporation, is to disseminate legal information on issues affecting prisoners and their loved ones on the outside and to educate prisoners and the public about the destructive nature of racism, sexism, and the economic and social costs of prisons to society, among other purposes.

17. For more than 25 years, the core of PLN's mission has been public education, advocacy and outreach on behalf of, and for the purpose of assisting, prisoners who seek legal redress for infringements of their constitutionally guaranteed and other basic human rights. PLN's mission, if realized, has a salutary effect on public safety.

18. PLN engages in core protected speech and expressive conduct on matters of public concern, such as the operations of corrections facilities, jail and prison conditions, prisoner health and safety, and prisoners' rights. PLN regularly receives correspondence from prisoners in correctional facilities around the country, including ADC prisons, in

which they ask questions and report on jail or prison conditions.

19. Currently, PLN has ninety-seven (97) subscribers to its monthly publication at ADC facilities. Despite ADC's recent censorship of issues of *Prison Legal News*, PLN continues to pursue its mission to promote public safety through educational and journalistic avenues by sending its monthly publication to prisoners confined at ADC prisons.

Overview of Censorship and Lack of Due Process

20. Until approximately March 2014, ADC prisoners who subscribed to *Prison Legal News* or ordered other publications from PLN generally received those publications without incident.

21. Beginning in March 2014, Defendants began refusing to deliver certain issues of *Prison Legal News* to prisoner subscribers in the custody of ADC with more consistency. In particular, Defendants refused to deliver the March 2014, April 2014, July 2014, and October 2014 issues of *Prison Legal News*.

22. Defendants did not return the censored issues of *Prison Legal News* to PLN, nor did they provide any notice to PLN of their refusal to deliver the issues. PLN only learned of the censorship from its subscribers.

23. After PLN notified Defendant RYAN, the director of ADC, on February 6, 2015 of the unlawful censorship of *Prison Legal News* in ADC facilities and of Defendants' failure to provide due process to PLN, Defendants reconsidered some of their censorship decisions. But to date, Defendants have still not delivered the full, uncensored version of the October 2014 issue of *Prison Legal News*, and some prisoner subscribers never received copies of the other three previously censored issues that Defendants ultimately agreed to deliver after PLN protested the censorship.

24. Moreover, in its February 6, 2015 letter to Defendants, PLN asked Defendants to identify all issues of *Prison Legal News* that it censored from March 2014 to February 2015. Defendants informed PLN about three of the four issues they had censored, but never informed PLN that they censored the March 2014 issue. As alleged

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

infra, PLN later confirmed Defendants' censorship of the March 2014 issue from another source.

25. ADC's mail policies (a true and correct copy of which are attached hereto as **Exhibit A**) state that publications are "prohibited" in ADC facilities if they contain, *inter alia*, "depictions or descriptions that incite, aid, or abet riots, work stoppages, or means of resistance," or "pictures, photographs, illustrations, text or other content that may encourage unacceptable sexual or hostile behaviors, or creates a hostile environment for volunteers, including but not limited to sexual representations of inmates, law enforcement, military, professional medical staff, teachers and Clergy." **Exhibit A**, ADC DO 914.08, Policy Numbers 1.1.1; 1.1.18. ADC policies also prohibit publications with "sexually explicit material," which is defined as "publications that contain any of the following acts and behaviors either visually, written, or in audio (non-lyric) form: (1) Physical contact by another person with a person's unclothed genitals, pubic area, buttocks, or if such a person is a female, breast; (2) Sadomasochistic abuse; (3) Sexual intercourse, vaginal or anal, fellatio, cunnilingus, bestiality or sodomy; (4) Masturbation, excretory functions, and lewd exhibition of the genitals; (5) Incestuous sexual activity; (6) Sexual activity involving an unwilling participant, or a participant who is the subject of coercion, or any sexual activity involving children." **Exhibit A**, ADC DO 914.07, Policy Number 1.2.

26. Defendants' policies do not contain an exception permitting delivery of publications that describe sexual acts in a non-salacious way as part of an article reporting on the facts of a court case or published legal decision, such as the articles in the issues of *Prison Legal News* that Defendants censored.

27. Plaintiff is informed and believes and thereon alleges that ADC's censorship policies and practices are widespread. In addition to their censorship of *Prison Legal News*, Defendants have also recently refused to deliver issues of publications such as *Bloomberg Business*, *The Economist*, *National Geographic*, and *Newsweek* to prisoner subscribers in ADC facilities.

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

28. Plaintiff is informed and believes and thereon alleges that Defendants' policies and practices continue to deprive publishers such as PLN of any notice or opportunity to appeal when their publications are not delivered to prisoner subscribers.

Censorship of March 2014 Issue of *Prison Legal News*

29. On or about March 10, 2014, PLN mailed its March 2014 *Prison Legal News* publication to ninety-seven (97) of ADC prisoners in Defendants' custody at the following ADC facilities: Arizona State Prison-Kingman; ASPC Aspen; ASPC Douglas; ASPC Eyman-Browning; ASPC Eyman-Cook; ASPC Eyman-Meadows; ASPC Eyman-Rynning; ASPC Eyman-SMU; ASPC Florence Central; ASPC Florence East; ASPC Florence North Unit; ASPC Florence South; ASPC Lewis-Barchey; ASPC Lewis-Buckley; ASPC Lewis-Rast; ASPC Lewi-Stiner; ASPC Perryville-Lumley; ASPC Perryville-San Pedro; ASPC Perryville-Santa Cruz; ASPC Santa Maria; ASPC Tucson-Cimarron; ASPC Tucson-Manzanita; ASPC Tucson-Rincon; ASPC Tucson-Winchester; ASPC Winslow; ASPC Yuma-Cheyenne; ASPC Yuma-Cibola; ASPC Yuma-Dakota; Central Arizona Correctional Institute; Central Arizona Correctional Facility; and Florence Correctional Center. A true and correct copy of the March 2014 issue is attached hereto as **Exhibit B**.

30. Plaintiff is informed and believes and thereon alleges that many of the prisoner subscribers incarcerated at the ADC facilities did not receive the March 2014 issue of *Prison Legal News*. Several subscribers in ADC facilities wrote to Plaintiff to notify it that they did not receive the March 2014 issue, and/or sent Plaintiff copies of notices they received from Defendants informing them that the March 2014 issue was being withheld for purportedly violating Defendants' mail policies.

31. PLN has never received any notice from Defendants that the March 2014 issue, or any article in it, would not be delivered or was not delivered to the addressed recipients, even after PLN asked Defendants to identify all issues of *Prison Legal News* from March 2014 to February 2015 that were censored in ADC facilities.

32. In 2015, the American Civil Liberties Union ("ACLU") submitted a request

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

pursuant to the Arizona Public Records Law, Ariz. Rev. Stat. §§ 39-121 et seq. to the ADC. The ADC, in response, produced to the ACLU a copy of an ADC "Notice of Result-Publication Review" dated May 9, 2014 ("May 9, 2014 Notice"), which excluded the March 2014 issue of *Prison Legal News* from distribution in ADC facilities. A true and correct copy of that notice is attached hereto as **Exhibit C.**

33. The May 9, 2014 Notice states that the March 2014 issue of *Prison Legal News* was excluded because of "Riots/Work Stoppages/Resistance," and "Unacceptable Sexual or Hostile Behaviors," and cites to Department Order ("DO") 914.08, Policy Numbers 1.1.1 and 1.1.18 (*see* **Exhibit A**). The Notice does not specify which article(s) or page(s) of the March 2014 issue of *Prison Legal News* purportedly violated those policies.

34. There are no articles in the March 2014 issue of *Prison Legal News* which "incite, aid, or abet riots, work stoppages, or means of resistance," or that "may encourage unacceptable sexual or hostile behaviors." **Exhibit A**, DO 914.08, Policy Numbers 1.1.1 and 1.1.18.

35. Plaintiff is informed and believes and thereon alleges that the article in the March 2014 issue to which Defendants objected is on page 54 of the issue, and is entitled "Ninth Circuit Holds Staff Sexual Abuse Presumed Coercive; State Bears Burden of Rebutting Presumption." *See* **Exhibit B** at 54. The article describes the facts underlying a Ninth Circuit reported decision, including a non-salacious description of sexual contact between a prison guard and a prisoner in an Idaho prison, to which the prisoner did not consent.

36. Plaintiff is informed and believes and thereon alleges that Defendants have never delivered the March 2014 issue to any PLN subscribers incarcerated in ADC facilities.

Censorship of April 2014 Issue of *Prison Legal News*

37. On or about April 4, 2014, PLN mailed its April 2014 *Prison Legal News* publication to one-hundred and fourteen (114) ADC prisoners in Defendants' custody at

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

the following ADC facilities: Arizona State Prison-Kingman; ASPC Aspen; ASPC Douglas; ASPC Eyman-Browning; ASPC Eyman-Cook; ASPC Eyman-Meadows; ASPC Eyman-Rynning; ASPC Eyman-SMU; ASPC Florence Central; ASPC Florence East; ASPC Florence North Unit; ASPC Florence South; ASPC Bachman; ASPC Lewis-Barchey; ASPC Lewis-Buckley; ASPC Lewis-Rast; ASPC Lewi-Stiner; ASPC Perryville-Lumley; ASPC Perryville-Piestewa; ASPC Perryville-San Pedro; ASPC Perryville-Santa Cruz; ASPC Santa Maria; ASPC Tucson-Cimarron; ASPC Tucson-Manzanita; ASPC Tucson-Rincon; ASPC Tucson-Winchester; ASPC Winslow; ASPC Yuma-Cheyenne; ASPC Yuma-Cibola; ASPC Yuma-Dakota; ASPC Phoenix-Alhambra; ASPC Safford-Tonto; Central Arizona Correctional Institute; Central Arizona Correctional Facility; and Florence Correctional Center. A true and correct copy of the April 2014 issue of *PLN* is attached hereto as **Exhibit D**.

38. PLN did not receive any notice from Defendants that the April 2014 issue, or any article in it, would not be delivered or was not delivered to the addressed recipients.

39. Plaintiff is informed and believes and thereon alleges that many of the prisoner subscribers incarcerated at the ADC facilities did not receive the April 2014 issue of *Prison Legal News*. Several subscribers in ADC facilities wrote to Plaintiff to notify it that they did not receive the April 2014 issue, and/or sent Plaintiff copies of notices they received from Defendants informing them that the April 2014 issue was being withheld for purportedly violating Defendants' mail policies.

40. On or about March 20, 2015, in response to a letter from PLN regarding the censorship of its publications in ADC facilities, Assistant Attorney General Pamela J. Linnins informed PLN that the April 2014 issue of *Prison Legal News* had been excluded from ADC prisons. Ms. Linnins did not identify the reason for the censorship of the April 2014 issue.

41. In the same letter, Ms. Linnins also notified PLN that, after PLN objected to the censorship, Defendants had reconsidered their decision to withhold the April 2014

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

issue of *Prison Legal News* from distribution to subscribers in ADC facilities.

42. On or about May 26, 2015, after PLN sent a follow-up letter objecting to the censorship and requesting Defendants' basis for doing so, Defendants provided PLN with a copy of the Notice of Result-Publication Review for the April 2014 issue of *Prison Legal News*, which had a "Review Date" of November 25, 2014 ("November 25, 2014 Notice"). A true and correct copy of the November 25, 2014 Notice is attached hereto as **Exhibit E.**

43. The November 25, 2014 Notice states that the April 2014 issue of *Prison Legal News* was excluded from ADC facilities pursuant to DO 914.08, Policy Number 1.1.18, "Unacceptable Sexual or Hostile Behaviors." *See* **Exhibit A**. The Notice does not specify which article(s) or page(s) of the April 2014 issue of *Prison Legal News* purportedly violated those policies.

44. There are no articles in the April 2014 issue of *Prison Legal News* that "may encourage unacceptable sexual or hostile behaviors." **Exhibit A**, DO 914.08, Policy Number 1.1.18.

45. Plaintiff is informed and believes and thereon alleges that the article in the April 2014 issue to which Defendants objected is on page 20 of the issue, and is entitled "Kitchen Supervisor Gets Prison Time for Sexually Abusing Two Prisoners." *See* **Exhibit D** at 20. The article describes the facts underlying a criminal case in the United States District Court for the District of Arizona, including a non-salacious description of non-consensual sexual contact between a prison kitchen supervisor and two prisoners in a federal prison in Arizona.

46. In the May 26, 2015 correspondence from Ms. Linnins, Defendants provided PLN with a copy of a follow-up Notice of Result-Publication Review for the April 2014 issue of *Prison Legal News*, with a "Review Date" of March 18, 2015 ("March 18, 2015 Reconsideration Notice"). A true and correct copy of the March 18, 2015 Reconsideration Notice is attached hereto as **Exhibit F.** The March 18, 2015 Reconsideration Notice states that the April 2014 issue of *Prison Legal News* would be

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

allowed.

47. On June 22, 2015, Defendants notified PLN that the April 2014 issue of *Prison Legal News* had been distributed to subscribers.

48. Plaintiff is informed and believed and thereon alleges that while some subscribers to *Prison Legal News* incarcerated in ADC prisons ultimately received their copies of the April 2014 issue, others never did, even though those subscribers remained in custody after the March 18, 2015 Reconsideration Notice and Defendants' June 22, 2015 confirmation that the issue had been delivered.

49. Plaintiff is further informed and believes and thereon alleges that some of the subscribers to *Prison Legal News* who were incarcerated in ADC facilities in April 2014 never received the April 2014 issue of *Prison Legal News* because they were no longer in custody when Defendants decided to reverse their initial censorship decision approximately one year later.

Censorship of July 2014 Issue of *Prison Legal News*

50. On or about July 1, 2014, PLN mailed its July 2014 *Prison Legal News* publication to one hundred and thirty-five (135) ADC prisoners in Defendants' custody at the following ADC facilities: Arizona State Prison-Kingman; Arizona State Prison – Kingman/Cerbat; ASPC Aspen; ASPC Douglas; ASPC Eyman-Browning; ASPC Eyman-Cook; ASPC Eyman-Meadows; ASPC Eyman-Rynning; ASPC Eyman-SMU; ASPC Florence – Globe Detention; ASPC Florence Central; ASPC Florence East; ASPC Florence North Unit; ASPC Florence South; ASPC Bachman; ASPC Lewis-Barchey; ASPC Lewis-Buckley; ASPC Lewis-Rast; ASPC Lewi-Stiner; ASPC Perryville-Lumley; ASPC Perryville-Piestewa; ASPC Perryville-San Pedro; ASPC Perryville-Santa Cruz; ASPC Santa Maria; ASPC Tucson-Cimarron; ASPC Tucson-Manzanita; ASPC Tucson-Rincon; ASPC Tucson-Winchester; ASPC Winslow; ASPC Yuma-Cheyenne; ASPC Yuma-Cibola; ASPC Yuma-Dakota; ASPC Phoenix-Alhambra; ASPC Safford-Tonto; Central Arizona Correctional Institute; Central Arizona Correctional Facility; and Florence Correctional Center. A true and correct copy of the July 2014 issue is attached

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

hereto as **Exhibit G**.

51. PLN did not receive any notice from Defendants that the July 2014 issue, or any article in it, would not be delivered or was not delivered to the addressed recipients.

52. Plaintiff is informed and believes and thereon alleges that many of the prisoner subscribers incarcerated at the ADC facilities did not receive the July 2014 issue of *Prison Legal News*. Several subscribers in ADC facilities wrote to Plaintiff to notify it that they did not receive the July 2014 issue, and/or sent Plaintiff copies of notices they received from Defendants informing them that the July 2014 issue was being withheld for purportedly violating Defendants' mail policies.

53. On or about March 20, 2015, in response to a letter from PLN regarding the censorship of its publications in ADC facilities, Assistant Attorney General Pamela J. Linnins informed PLN that the July 2014 issue of *Prison Legal News* had been excluded from ADC prisons. Ms. Linnins did not state the reason for the censorship of the July 2014 issue.

54. Also in that letter, Ms. Linnins notified PLN that Defendants had reconsidered their decision to withhold the July 2014 issue of *Prison Legal News* from distribution to subscribers in ADC facilities.

55. On or about May 26, 2015, after PLN sent a follow-up letter objecting to the censorship and requesting Defendants' basis for doing so, Defendants provided PLN with a copy of an undated "Complex Publications Review – Sexually Explicit Material" form ("Undated Complex Publications Review Form") from the ASPC-Tucson facility for the July 2014 issue of *Prison Legal News*, completed by an ADC staff member identified as "AA II Vasquez" from the "Complex-Level Publications Staff." A true and correct copy of the Undated Complex Publications Review Form is attached hereto as **Exhibit H.**

56. The Undated Complex Publications Review Form states that the July 2014 issue of *Prison Legal News* was excluded from ADC facilities pursuant to DO 914.07, Policy Numbers 1.1 through 1.2.2.6, which prohibit "publications that feature nudity

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

and/or sexual behaviors and/or the publication is promoted based on such depictions." *See* **Exhibit A**. The Notice does not specify which article(s) or page(s) of the July 2014 issue of *Prison Legal News* purportedly violated those policies.

57. There are no articles in the July 2014 issue of *Prison Legal News* which "feature nudity and/or sexual behaviors," and *Prison Legal News* is not "promoted based on such depictions."

58. Plaintiff is informed and believes and thereon alleges that the article in the July 2014 issue to which Defendants objected is on page 36 of the issue, and is entitled "New York Jail Guard Sentenced for Sexually Abusing Seven Prisoners." *See* **Exhibit G** at 36. The article describes the facts of a state criminal case and federal civil rights cases, including a non-salacious description of forced sexual contact between a jail guard and seven prisoners in a New York correctional facility.

59. In the May 26, 2015 correspondence from Ms. Linnins, Defendants provided PLN with a copy of a Memorandum from Defendant OLSON in the Office of Publication Review to a prisoner whose name was redacted, dated January 15, 2015 and regarding "Prison Legal News, July 2014, V25 N7" ("January 15, 2015 Memorandum"). A true and correct copy of that Notice is attached hereto as **Exhibit I.**

60. The January 15, 2015 Memorandum notified the prisoner that upon second review, the July 2014 issue of *Prison Legal News* was determined "**not [to] contain material** that meets the sexually explicit criteria," that the "prior decision to exclude this publication is rescinded," and that the publication "**shall be distributed** to those inmates who were to receive the edition." **Exhibit I** (emphasis in original).

61. On June 22, 2015, Defendants notified PLN that the April 2014 issue of *Prison Legal News* had been distributed to subscribers.

62. Plaintiff is informed and believes and thereon alleges that while some subscribers to *Prison Legal News* incarcerated in ADC prisons received their copies of the July 2014 issue of *Prison Legal News*, others did not, even though they remained in ADC custody after January 15, 2015 Memorandum and Defendants' June 22, 2015

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

confirmation that the issue had been delivered.

63. Plaintiff is informed and believes and thereon alleges that some of the subscribers to *Prison Legal News* who were incarcerated in ADC facilities in July 2014 never received the July 2014 issue of *Prison Legal News* because they were no longer in custody when Defendants decided to reverse their initial censorship decision approximately six months later.

Censorship of October 2014 Issue of *Prison Legal News*

64. On or about October 9, 2014, PLN mailed its October 2014 *Prison Legal News* publication to one hundred and forty-two (142) ADC prisoners in Defendants' custody at the following ADC facilities: Arizona State Prison-Kingman; Arizona State Prison – Kingman/Cerbat; ASPC Aspen; ASPC Douglas; ASPC Eyman-Browning; ASPC Eyman-Cook; ASPC Eyman-Meadows; ASPC Eyman-Rynning; ASPC Eyman-SMU; ASPC Florence – Globe Detention; ASPC Florence Central; ASPC Florence East; ASPC Florence North Unit; ASPC Florence South; ASPC Bachman; ASPC Lewis-Barchey; ASPC Lewis-Buckley; ASPC Lewis-Rast; ASPC Lewi-Stiner; ASPC Perryville-Lumley; ASPC Perryville-Piestewa; ASPC Perryville-San Pedro; ASPC Perryville-Santa Cruz; ASPC Santa Maria; ASPC Tucson-Cimarron; ASPC Tucson-Manzanita; ASPC Tucson-Rincon; ASPC Tucson-Winchester; ASPC Winslow; ASPC Yuma-Cheyenne; ASPC Yuma-Cibola; ASPC Yuma-Dakota; ASPC Phoenix-Alhambra; ASPC Safford-Tonto; Central Arizona Correctional Institute; Central Arizona Correctional Facility; and Florence Correctional Center. A true and correct copy of the October 2014 issue is attached hereto as **Exhibit J**.

65. PLN did not receive any notice from Defendants that the October 2014 issue, or any article in it, would not be delivered or was not delivered to the addressed recipients.

66. Plaintiff is informed and believes and thereon alleges that many of the prisoner subscribers incarcerated at the ADC facilities did not receive the October 2014 issue of *Prison Legal News*, and none of the prisoner subscribers incarcerated at the ADC

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

facilities received a full, unredacted copy of the October 2014 issue. Several subscribers in ADC facilities wrote to Plaintiff to notify it that they did not receive the October 2014 issue, and/or sent Plaintiff copies of notices they received from Defendants informing them that the October 2014 issue was being withheld for purportedly violating Defendants' mail policies.

67. On or about March 20, 2015, in response to a letter from PLN regarding the censorship of its publications in ADC facilities, Assistant Attorney General Pamela J. Linnins informed PLN that the October 2014 issue of *Prison Legal News* had been excluded from ADC prisons. Ms. Linnins did not state the reason for the censorship of the October 2014 issue.

68. On or about May 26, 2015, after PLN sent a follow-up letter objecting to the censorship and requesting Defendants' basis for doing so, Defendants provided PLN with a copy of the Notice of Result-Publication Review for the October 2014 issue of *Prison Legal News*, which had a "Review Date" of February 11, 2015 ("February 11, 2015 Notice"). A true and correct copy of the February 11, 2015 Notice is attached hereto as **Exhibit K.**

69. The February 11, 2015 Notice states that the October 2014 issue of *Prison Legal News* was excluded from ADC facilities pursuant to DO 914.07, "Sexually Explicit Material." *See* **Exhibit A**. The February 11, 2015 Notice does not specify which article(s) or page(s) of the October 2014 issue of *Prison Legal News* purportedly violated that policy.

70. On or about June 22, 2015, Defendants informed PLN that, after further review of the October 2014 issue, Defendants distributed a redacted version of the issue to subscribers. A true and correct copy of the page of the October 2014 issue with those redactions is attached hereto as **Exhibit L**. PLN did not authorize Defendants to make any redactions or modifications to its publication at any point.

71. The unredacted version of the article Defendants censored appears on page 32 of the October 2014 issue, and is entitled "Tenth Circuit Holds 'Consensual' Sex

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

Defeats Prisoner's Eighth Amendment Claim." *See* **Exhibit J** at 32. The article describes the facts underlying an opinion by the Tenth Circuit Court of Appeals, *Graham v. Sheriff of Logan County*, 741 F.3d 1118 (10th Cir. 2013), including a non-salacious description of sexual contact between a prisoner in a county jail and two jail guards, to which the prisoner asserted she did not consent.

72. Defendants' unauthorized redaction of the October 2014 issue violates Defendants' own mail policies. ADC DO 914.06, Policy Number 1.12 prohibits ADC staff from "remov[ing] pages of any publication to make the publication acceptable," because "[r]emoving pages alters the publication rendering it as contraband." *See* **Exhibit A**.

73. PLN has never received an updated Notice of Result-Publication Review for the October 2014 issue that indicates that the issue was delivered to subscribers, with or without the redactions.

74. Plaintiff is informed and believes and thereon alleges that some subscribers to *Prison Legal News* incarcerated in ADC prisons received copies of the redacted October 2014 issue of *Prison Legal News* between March 18, 2015 and June 22, 2015.

75. Plaintiff is informed and believes and thereon alleges that some of the subscribers to *Prison Legal News* who were incarcerated in ADC facilities in October 2014 never received the October 2014 issue of *Prison Legal News* because they were no longer in custody when Defendants decided to reverse their censorship decision. Plaintiff is further informed and believes and thereon alleges that additional subscribers may not have received the redacted issue, even though they remained in custody after March 18, 2015.

Defendants Failed to Provide Due Process to PLN

76. Defendants did not provide PLN with constitutionally adequate due process when censoring PLN's written speech. Defendants provided neither notice nor an opportunity to appeal the aforementioned censorship decisions at or shortly after the time they occurred.

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

77. Defendants failed to provide notice to PLN of the reason for rejecting issues of *Prison Legal News* by, among other inadequacies, failing to notify PLN directly of their refusal to deliver the issues to *Prison Legal News* subscribers in a timely fashion (or at all), failing to explain the basis for their censorship decisions or to identify the mail policies relied on at the time of the decision, and otherwise failing to give meaningful notice of the censorship. Even when Defendants notified PLN of the censorship months after it occurred, in response to inquiries from PLN, Defendants failed to identify specific articles or pages of the issues of *Prison Legal News* that they found objectionable, and failed to notify PLN that they had censored the March 2014 issue. At no time did Defendants provide an opportunity for PLN to appeal the rejection of its mail.

78. Plaintiff is informed and believes and thereon alleges that Defendants fail to provide notice and an opportunity to appeal to other senders of censored mail addressed to prisoners at the ADC prisons.

79. Plaintiff is informed and believes and thereon alleges that Defendants fail to provide constitutionally adequate notice to some of the prisoner subscribers when ADC censors issues of *Prison Legal News*. Defendants also fail to provide the same prisoner subscribers with any opportunity to be heard to challenge the censorship decisions.

ADC Policies and Practices Do Not Provide for Notice and Are Overbroad

80. ADC policies do not provide for any notice to be given to the publisher or sender when a publication or mailing is censored by ADC staff. **Exhibit A**, ADC DO 914.02, Policy Number 1.7 specifies that "[u]nauthorized property or material discovered in incoming mail shall be removed," and a "Notice to Sender of Rejection of Incoming Mail, Form 909-3, shall be completed and sent to the inmate." The policy is explicit that the ADC "shall not pay for the cost of notifying the sender." **Exhibit A**, ADC DO 914.02, Policy Number 1.7 violates constitutional requirements regarding notice to senders of mail to prison prisoners.

81. Moreover, ADC policies explicitly prohibit appeals of "decisions to

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

exclude publications" from ADC facilities. **Exhibit A**, ADC DO 914.06, Policy Number 1.13 states that "[p]reviously excluded Publications shall not be re-submitted for review or appeal under this Department Order." **Exhibit A**, ADC DO 914.06, Policy Number 1.13 violates constitutional requirements regarding due process for senders of mail to prison prisoners.

82. Similarly, while ADC DO 914.07, Policy Number 1.5 provides an opportunity for a *prisoner recipient* of a publication deemed to contain "Sexually Explicit Material" to request second-level review of ADC staff's decision to exclude the publication, it has no such provision for the publisher or sender to request a second-level review. **Exhibit A**, ADC DO 914.07, Policy Number 1.5 violates constitutional requirements regarding due process for senders of mail to prison prisoners.

83. As noted above, Defendants' policies prohibiting distribution of publications with sexual content do not contain any exception for discussion of sexual acts in a non-salacious manner for the purpose of discussing the facts underlying a reported decision or legal proceeding, and are therefore overbroad.

84. Allowing PLN to distribute publications with articles that contain a discussion of sexual acts in a non-salacious manner for the purpose of discussing the facts underlying a court case will not have any negative impact on the operation of ADC facilities or programs.

85. Defendants' mail policies, practices, and customs have been used to censor PLN's correspondence with prisoners at ADC prisons, in particular PLN's monthly publication.

86. Defendants' conduct prohibiting distribution of at least four issues of *Prison Legal News* in a seven month period in 2014 to prisoners confined at ADC prisons violates the First Amendment. Defendants' policies, practices and customs censor PLN's expressive activities and have a chilling effect on PLN's future speech and expression directed toward inmates confined there. Defendants' policies, practices and customs are unconstitutional both facially and as applied to PLN. Defendants' censorship of *Prison*

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

Legal News serves no legitimate penological purpose.

87. PLN publishes and distributes content concerning the rights of prisoners and the means by which they may obtain relief from unconstitutional conditions of confinement. As a result, PLN is informed and believes and thereon alleges that Defendants have retaliated against PLN by refusing to deliver PLN's written materials to inmates held at ADC prisons.

88. Defendants' actions have violated, continue to violate, and are reasonably expected in the future to violate PLN's constitutional rights, and have caused Plaintiff financial harm in the form of lost subscriptions and diversion of resources to address the censorship. In addition, Defendants' actions have frustrated Plaintiff's mission of education and advocacy, including the dissemination of PLN's political message, and the reporting and publishing of news regarding the human and legal rights of persons held in prisons and jails. Further, Defendants' actions have interfered with PLN's ability to recruit new donors, writers and supporters.

89. Defendants' actions and inactions were and are malicious, oppressive, and were and are all committed under color of law with reckless disregard to PLN's rights.

90. Defendants CHARLES L. RYAN, GAIL RITTENHOUSE, JEFF HOOD, ALF OLSON, DOES 1 to 20, and other agents of the ADC are responsible for or personally participated in creating and implementing these unconstitutional policies, practices, and customs, or for ratifying or adopting them. Further, Defendants are responsible for training and supervising the mail staff whose conduct has injured and continues to injure PLN.

91. Defendants' unconstitutional policies, practices, and customs are ongoing, and continue to violate PLN's rights. It is likely that Defendants will continue to censor future issues of *Prison Legal News* in violation of the First Amendment and without providing due process. As such, PLN has no adequate remedy at law.

92. PLN is entitled to injunctive relief prohibiting Defendants from refusing to deliver its publication without any legal justification, and prohibiting Defendants from

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

censoring mail without due process of law.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF
(Against all Defendants – For Violations of the First Amendment Under Color of State Law – Free Speech; Section 1983)

93. Plaintiff realleges and incorporates herein by reference each and every allegation set forth in paragraphs 1-92.

94. The acts described above constitute violations of Plaintiff's rights under the First Amendment to the United States Constitution through 42 U.S.C. § 1983, and have caused and will continue to cause damages and irreparable injury to Plaintiff.

95. Plaintiff seeks declaratory and injunctive relief, as well as nominal and compensatory damages, against all Defendants.

96. Plaintiff is informed, believes, and based thereon alleges that in engaging in the conduct alleged herein, the individual Defendants acted with the intent to injure, vex, annoy and harass Plaintiff, and subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's rights with the intention of causing Plaintiff injury and depriving it of its constitutional rights.

97. As a result of the forgoing, Plaintiff seeks nominal and compensatory damages against Defendants in their individual capacities.

98. Moreover, Plaintiff is informed, believes, and based thereon alleges that in engaging in the conduct alleged herein, the individual Defendants' actions were malicious, oppressive, and/or in reckless disregard for Plaintiff's rights, and therefore Plaintiff seeks exemplary and punitive damages against Defendants in their individual capacities.

WHEREFORE, Plaintiff seeks relief as set forth below.

SECOND CLAIM FOR RELIEF
(Against all Defendants – For Violations of the Due Process Clause of the Fourteenth Amendment Under Color of State Law)

99. Plaintiff realleges and incorporates herein by reference each and every

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

allegation set forth in paragraphs 1-98.

100. By failing to give Plaintiff sufficient notice of the censorship of its written speech, and by failing to give an opportunity to be heard with respect to that censorship, Defendants have deprived and continue to deprive Plaintiff of liberty and property without due process of law, in violation of the Fourteenth Amendment to the United States Constitution via 42 U.S.C. § 1983.

101. The acts described above have caused and will continue to cause damage to Plaintiff.

102. Plaintiff seeks declaratory and injunctive relief, as well as nominal and compensatory damages, against all Defendants.

103. Moreover, Plaintiff is informed, believes, and based thereon alleges that in engaging in the conduct alleged herein, the individual Defendants' actions were malicious, oppressive, and/or in reckless disregard for Plaintiff's rights, and therefore Plaintiff seeks exemplary and punitive damages against Defendants in their individual capacities.

WHEREFORE, Plaintiff seeks relief as set forth below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff PRISON LEGAL NEWS, a project of the Human Rights Defense Center, prays for judgment against Defendants CHARLES L. RYAN, in his official capacity as Director of the Arizona Department of Corrections and in his individual capacity; GAIL RITTENHOUSE, in her official capacity as Division Director, Support Services of the Arizona Department of Corrections and in her individual capacity; JEFF HOOD, in his official capacity as Deputy Director of the Arizona Department of Corrections and in his individual capacity; ALF OLSON, in his official capacity as an employee of the Office of Publication Review of the Arizona Department of Corrections and his individual capacity; and DOES 1 to 20, inclusive, as follows:

1. A declaration that Defendants' policies, practices, and customs violate the First and Fourteenth Amendments to the United States Constitution;

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

2. An order enjoining all Defendants and their employees, agents, and any and all persons acting in concert with them from further violating Plaintiff's and other senders' civil rights under the First and Fourteenth Amendments to the United States Constitution.

3. Nominal damages for each violation of Plaintiff's rights by the Defendants.

4. Compensatory damages in an amount to be proven at trial.

5. Punitive damages in an amount to be proven at trial.

6. Costs, including reasonable attorney's fees, under 42 U.S.C. § 1988 and under other applicable law.

7. Prejudgment and post-judgment interest.

8. Such other relief as the Court deems just and equitable.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

RESPECTFULLY SUBMITTED this 6th day of November, 2015.

BALLARD SPAHR LLP

By: */s/ David J. Bodney*

David J. Bodney
bodneyd@ballardspahr.com
Heather Todd Horrocks
horrocksh@ballardspahr.com
1 East Washington Street, Suite 2300
Phoenix, AZ 85004-2555
Attorneys for Plaintiff Prison Legal News

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004-2555

EXHIBIT A

ARIZONA DEPARTMENT OF CORRECTIONS	CHAPTER: 900 INMATE PROGRAMS AND SERVICES	OPR: OPS
DEPARTMENT ORDER MANUAL	DEPARTMENT ORDER: 914 *INMATE MAIL*	SUPERSEDES: DO 914 (5/1/08)
		EFFECTIVE DATE: FEBRUARY 26, 2010
		REPLACEMENT PAGE REVISION DATE: JUNE 8, 2012

TABLE OF CONTENTS

PROCEDURES

914.01 MAIL GENERAL 1
914.02 INCOMING MAIL 2
914.03 AUTHORIZATION OF COMPACT DISCS AND/OR CASSETTE TAPES 7
914.04 INTER-RELATIONAL MAIL 8
914.05 OUTGOING MAIL 9
914.06 PUBLICATIONS 10
914.07 SEXUALLY EXPLICIT MATERIAL 12
914.08 UNAUTHORIZED PUBLICATIONS AND MATERIAL 13
914.09 PUBLICATION REVIEW PROCESS 16
914.10 THE OFFICE OF PUBLICATION REVIEW 16

IMPLEMENTATION 17
DEFINITIONS 18
AUTHORITY 20
ATTACHMENT

PURPOSE

This Department Order establishes regulations, processes and procedures for inmates to send and receive mail, music, and individually reviewed publications. All mail is processed consistent with postal regulations and the security requirements of correctional facilities. Each publication is individually reviewed consistent with the Department's legitimate penological interest in maintaining the safety, security and orderly operations of the institutions.

PROCEDURES

914.01 MAIL GENERAL

1.1 There is no limitation put on the amount of mail an inmate may receive regardless of custody or detention status, provided the incoming mail meets requirements, does not violate policy, and the mail is not between an inmate and any of the following:

1.1.1 Released offenders currently under community supervision by the Department, excluding members of the inmate's immediate family as defined in this Department Order.

1.1.2 An inmate confined in any local, state or federal correctional facility including, but not limited to county jails, detention centers, halfway houses, privately operated correctional facilities, and juvenile facilities, excluding an inmate's immediate family as defined in this Department Order.

1.1.2.1 Inter-relational mail shall be approved as outlined in section 914.04 of this Department Order.

1.1.3 Current or former Department/Contract Bed employees or current or former Department volunteers, without the Complex Warden's prior written approval.

1.1.4 Minors that are not the inmate's natural or adopted child or minors that do not have parents' or guardians' prior written approval.

1.1.5 Anyone who advises the Warden or Deputy Warden in writing that they do not wish to receive mail from a particular inmate. This request must be documented and filed in the inmate record and through an AIMS entry.

1.1.6 Victim(s) of a crime for which an inmate was convicted and/or their family members when the victim has requested for no communication on a Post-Conviction Notification request in accordance with Department Order #1001, Inmate Release System. Victims that have not formally made the "No Inmate Mail" request may communicate with the inmate or the inmate's family members with prior Warden or Deputy Warden written approval. This request must be documented and filed in the inmate record and through an AIMS entry.

1.1.6.1 Unit/Complex staff shall notify the inmate of the victim's request and that further contact with the victim or his/her family members identified by the victim will result in disciplinary action.

1.2 All outgoing domestic mail shall be sent by pre-stamped envelope only, unless otherwise indicated. Domestic postage stamps are not sold in inmate stores. Only stamps for international mail (i.e. Mexico, Canada) or airmail will be available in the commissary.

1.2.1 Indigent inmates shall be provided with pre-stamped envelopes, or applicable postage for Mexico or Canada, for five one-ounce pieces of first class mail per month. Inmates may receive additional credit for postage for Legal Mail as outlined Department Order #902, Inmate Legal Access to Courts.

1.2.2 All postage required beyond the limits cited in this Department Order and all postage for inmate groups and organizations shall be at the expense of the inmate, group or organization.

1.2.3 Postage stamps shall not be used as negotiable instruments or legal tender as payment for materials ordered from private vendors.

1.2.4 Inmates shall not barter, trade, sell, or exchange postage stamps for any goods or services.

1.2.5 Inmates are subject to the limits for possession of postage stamps as outlined in Attachment A of Department Order #909, Inmate Property.

1.3 Mail room staff shall maintain:

1.3.1 An itemized list of all incoming and outgoing registered, insured and certified mail.

1.3.2 Permanent logs that will be subject to periodic inspections shall consist of:

1.3.2.1 An itemized list of all incoming and outgoing packages, including the name and ADC number of each inmate who sends or receives a package.

1.3.2.2 The name and address of each sender and addressee for each package.

1.3.2.3 A detailed description of the contents of each. For incoming publications, this includes the name and dated information for each publication.

1.3.2.4 The amount of postage or the amount paid to the contract carrier for each outgoing package.

1.3.2.5 The date of the mailing or receipt of each package, expenses incurred in processing the mail, and the name of the staff member who recorded the information.

1.3.3 An electronic log of all incoming and outgoing legal mail to include the date received, inmate name and number, sender, and the date received by the inmate. All Incoming and Outgoing Legal Mail shall be processed as outlined in Department Order #902, Inmate Legal Access to Courts.

914.02 INCOMING MAIL

1.1 Upon arrival at a new Department/Contract Bed facility, staff shall provide each inmate with the correct mailing address. It shall be the responsibility of the inmate to notify correspondents of the correct mailing address.

1.2 Incoming Mail addressed to inmates shall have the inmate's complete first and last name, the inmate's name under which he/she is incarcerated (unless legally changed), the inmate's correct ADC number, as well as the inmate's unit name and the appropriate Post Office (PO) Box.

1.3 Incoming Mail shall have a complete return address including the sender's name and the complete street address or PO Box. Mail without a complete return address shall be opened and read to inspect the contents to make a reasonable attempt to ascertain the identity of the sender. If the sender can be identified and the mail does not present any security concerns the mail may be delivered to the inmate. If the sender cannot be verified, the inmate shall receive a notice and the mail held for 90 days before it is destroyed.

1.4 It is the inmate's responsibility to notify correspondents of his/her mailing address, where local U.S. Postmaster practice permits, a U.S. Postal Service (USPS) change of address form shall be completed by the inmate and sent to the USPS. All Department/Contract Bed facilities shall make these forms available. Incoming mail shall be forwarded as follows:

1.4.1 Mail that arrives without an inmate ADC number shall be stamped "Return to Sender," and returned.

1.4.2 Mail that arrives for an inmate at an institution where the inmate is no longer housed shall be forwarded to the inmate's current institution.

1.4.3 When possible, First Class mail belonging to an inmate who is temporarily confined at a hospital or local county jail shall be forwarded.

1.4.4 Mail belonging to an inmate who is no longer in physical custody of the Department shall be forwarded up to 30 days after his/her release; provided a forwarding address is available. When no forwarding address is available, the mail shall be stamped "inmate is no longer in custody" and returned to the sender.

1.4.5 All mail received for inmates on escape status shall be forwarded to the Criminal Investigation Unit (CIU) for evaluation and processing.

1.5 Designated staff at each unit/complex is authorized to open, inspect and read incoming mail to prevent criminal activity and prevent inmates from receiving contraband or any other material that may be detrimental to the safe and orderly operation of the institution.

1.5.1 Upon inspection, incoming mail shall be withheld from an inmate if it meets one or more of the following criteria:

1.5.1.1 Poses a direct and immediate threat to the security, safety or order of the institution.

1.5.1.2 Substantially hinders efforts to treat or rehabilitate the inmate; however, legal mail will not be withheld for this purpose.

1.5.1.3 Threatens the intended recipient.

1.5.1.4 Promotes, aids or abets criminal activity or violation of Department rules, including but not limited to rioting, extortion, escape, illegal drug use, conveyance of contraband, solicitation of funds, violence towards others, and promotes or encourages security threat groups.

1.5.1.5 Has content written in code or that contains hidden messages.

1.5.2 Mail meeting one or more of the criteria in 1.5.1 through 1.5.1.5 of this section shall be forwarded to CIU for review. CIU shall return the mail for delivery within 72 hours unless it is determined that an investigation is required, in which case the mail shall be held. If it is determined that the mail is not to be delivered, the inmate shall be notified unless notification would interfere with the investigation.

1.5.3 When an incoming envelope is stamped "Return to Sender" staff shall open and inspect it for contraband before returning it to the inmate.

1.5.4 Incoming legislative correspondence shall be opened in the presence of the inmate to whom it is addressed and may only be inspected to the extent necessary to establish the presence of contraband.

1.6 Inmates may only receive money orders, cashier's checks or certified checks for deposit into inmates' accounts, in accordance with Department Order #905, Inmate Banking/Money System. No other monetary instrument, including cash, coins or personal checks, shall be deposited into an inmate's account.

1.6.1 Money orders, cashier's checks or certified checks shall be made payable to "The Arizona Department of Corrections for the account of (Inmate's Name and ADC Number)."

1.6.2 Mail Room staff shall deliver a receipt to the inmate and forward all money orders, cashiers checks, cash and personal checks received to the Business Office for processing.

1.6.3 The Business Office/designated staff shall process the monetary instruments that meet the Department requirements and return those that do not meet Department requirements at the inmate recipient's expense.

1.6.4 The Business Office shall notify CIU of any received Internal Revenue Service (IRS) checks. CIU may notify the IRS if deemed appropriate.

1.6.5 Outgoing inmate/IRS correspondence shall contain a notation by staff on the envelope directing the correspondence to the Criminal Investigations Branch at the Service Center to which the correspondence is addressed.

1.7 Unauthorized property or material discovered in incoming mail shall be removed from incoming letters and held as contraband. An inmate Property/Contraband/Disposition, Form 909-6, and Notice to Sender of Rejection of Incoming Mail, Form 909-3, shall be completed and sent to the inmate. Inmates have 90 days to either have item(s) destroyed or returned to the sender. The Department shall not pay for the cost of notifying the sender of the inmate's contraband arrangements or its mailing cost.

1.7.1 The Department shall not pay for the cost of returning unauthorized property or material that includes, but is not limited to:

1.7.1.1 Used or unused postage stamps.

1.7.1.2 Stickers, labels, address labels or decorative stamps.

1.7.1.3 Photos where the non-photo side can be separated (Polaroid's).

1.7.1.4 Photos of other inmates.

1.7.1.5 Unknown foreign substances and/or powders.

1.7.1.6 Oils, perfumes, incense or personal property items.

1.7.1.7 Lottery tickets or games of chance.

1.7.1.8 Tax forms.

1.7.1.9 Battery operated greeting cards, or greeting cards larger than 8 ½" by 11."

1.7.1.10 Unused Greeting cards, stationary, pens/pencils and/or envelopes.

1.7.1.11 Unused postcards.

1.7.1.12 Bookmarks.

1.7.1.13 Inspirational cards or medals.

1.7.1.14 Candy, gum, or any food items.

1.7.1.15 Art, crafts and hobby supplies.

1.7.1.16 Road maps of Arizona, areas contiguous to Arizona, states that contain the contract prison facilities, and states contiguous to those states where contract prison facilities are located; Public Transportation maps of Arizona and states with contract prison facilities and/or descriptions or photos of Department or contract prison facilities. ("Contiguous", as used in this section, means states surrounding and bordering the subject state. In the example of Arizona, this would mean California, Nevada, Utah, New Mexico, Colorado, and Mexico, or any portion thereof). Any publication containing maps as part of the material will be subject to all publication review requirements.

1.7.1.17 Calendars.

1.7.1.18 A printed individual item (not a supplement of an item such as a newspaper), specifically intended for the purpose of advertising or selling merchandise (catalog, circular) for any items that an inmate would not be permitted to receive.

1.7.1.18.1 Catalogs for publications, compact discs, cassettes and other items inmates would be able to receive shall be processed according to the publication review requirements.

1.7.1.19 Personal or professional/commercial photographs that feature nudity or sexually explicit acts, as detailed in the DEFINITION section. Photos of current or former Department/Contract Bed employees and/or Department volunteers.

1.8 Newspaper clippings, magazine articles, cartoons or copies of material from the internet may be enclosed within personal mail; however, the content is subject to the publication review process. Internet material containing information about staff or other inmates is unauthorized if it is determined to be a threat to the safe and orderly operation of an institution and/or a threat to the safety of any other person. Inmates are not authorized to receive items from the ADC Net website.

1.9 Inmates may be permitted to view crime scene and/or autopsy photographs in accordance with Department Order #909 Inmate Property.

1.10 Incoming third class/bulk mail and publications will be delivered provided the mail/publication content meets policy guidelines and:

1.10.1 Is prepaid, as defined by this Department Order;

1.10.2 Is addressed to a specific inmate or inmates with the correct name, ADC number and housing location.

1.11 Undeliverable Standard Mail shall be returned to the Post Office, if the Post Office will accept it. If the Post Office does not accept the undeliverable mail, it shall be documented in the appropriate log and destroyed/shredded and bagged by staff and placed in a dumpster or other trash container.

1.12 Incoming telegrams or similar urgent mail, including but not limited to, overnight mail shall be delivered within 12 hours unless circumstances make delivery impractical.

1.13 Excluding holidays and weekends, incoming mail shall not be held and shall be delivered within 24 hours unless circumstances make delivery impractical.

1.14 All mail and publications with metal bindings other than staples, including paper clips, binder clips, and other metal fasteners are prohibited. An inmate that receives a metal binding piece of mail and/or publication shall be informed of its arrival and will either decide to have the publication processed as contraband or give his/her written permission to have the binding removed prior to its release to the inmate. Staff shall make note of the removal in the inmate's property file.

1.14.1 Staples in all mail and publications are prohibited in the following types of housing units:

1.14.1.1 Death Row.

1.14.1.2 Administrative or Disciplinary Confinement.

1.14.1.3 Close Management.

1.14.1.4 Maximum Management.

1.14.1.5 Mental Health Treatment Units (Baker and Flamenco)

914.03 AUTHORIZATION OF COMPACT DISCS AND/OR CASSETTE TAPES

1.1 All compact discs (CD's) and/or cassettes received through the mail shall be new, clear or a cardboard container, in its original wrapper and packaging, and shall not be a re-recording of an original, and shall be consistent with copyright laws. Authorized mail order purchases for inmate in disciplinary detention may be held until inmate is released from detention.

1.2 Envelopes/packages containing incoming CD's and/or cassettes shall have the inmate's complete first and last name, the inmate's name under which he/she is incarcerated unless legally changed, the correct ADC number, institution and unit, and the appropriate Post Office Box. Incoming approved compact discs and/or cassette tapes for inmates in disciplinary detention may be held until the inmate is released from detention.

1.3 Incoming CD's and/or cassettes must come directly from a recognized publisher, distributor or authorized retailer. Family members or friends are not authorized to send CD's and/or cassettes directly to an inmate even if they include a verifiable packing list or invoice. Secondary markets also known as third party vendors, (for example, "eBay," and "Amazon Marketplace"), or any other auction sites are not authorized retailers or distributors for the purpose of this Department Order.

1.4 Cassette tapes and/or CD's commonly referred to as "Books on Tape" are subject to the publication review requirements, as outlined in section 914.09 of this Department Order and shall be included in the total possession limit amount for cassette tapes/discs as outlined in Attachment A of Department Order #909, Inmate Property.

1.5 Inmates may receive correspondence tapes with prior written approval of the unit Deputy Warden. Inmates shall only receive correspondence tapes from an individual on his/her approved visitation list.

1.5.1 The requesting individual shall submit a written justification to the unit Deputy Warden requesting approval for correspondence tapes indicating that the inmate or visitor has a disability or literacy concern that prevents written correspondence.

1.5.2 The inmate shall show in advance that he/she is in possession of an operational and authorized appliance with a cassette player.

1.5.3 Correspondence tapes shall not contain sexually explicit language or any other unauthorized content that would be in violation of this Department Order.

1.5.4 Correspondence tapes shall be screened at the Complex/Unit Level only and shall not be forwarded to Central Office Publication Review.

1.6 Religious oriented tapes and/or CD's sent through the mail to a specific inmate shall be commercially recorded. Tapes/CD's of religious services being donated by volunteers or outside groups for services or inmate listening shall be pre-screened by the Senior Chaplain to ensure that they are consistent with the guidelines within this Department Order. Volunteers are not authorized to directly provide inmates with recorded material.

1.7 Cash on delivery (COD) orders and contract purchases such as music clubs are prohibited and shall be returned to sender. The Department shall not be responsible for the cost of returning any unauthorized material.

914.04 INTER-RELATIONAL MAIL

1.1 Inmates that are immediate family members as defined in this Department Order and those that are the verified natural or legally adopted parents of a child are authorized to have inter-relational mail, provided the communication meets the criteria set forth in this Department Order.

1.2 In order to have inter-relational mail privileges, the natural or adoptive parents shall:

1.2.1 Provide the child's birth certificate, and

1.2.2 The relationship can be readily verified by staff, i.e. it is clear in the pre-sentence report or file.

1.3 Inter-relational communication shall not contain communications with or on behalf of any other inmates that do not have inter-relational mail approval.

1.4 Only letters, homemade greeting cards or greeting cards purchased through the inmate store are authorized for inter-relational mail. The transfer of funds and/or any other item is prohibited.

1.5 The sending unit/complex shall verify the inmate's relationship, and shall stamp the outgoing letter as "verified." Letters that have not been verified and approved shall be returned to the inmate sender.

1.6 All inter-relational mail privileges shall be pre-approved by both the requesting and receiving Warden or Deputy Warden. Approvals and denials are at the discretion of the Warden or Deputy Warden and may be revoked when it is in the best interest of institutional security.

1.7 The inmate shall pay postage. Indigent inmates may be provided postage as outlined in section 914.01 of this Department Order.

1.8 Inmates who wish to send mail to an incarcerated immediate family member shall submit the request to their assigned Correctional Officer III who shall verify the relationship.

1.9 The assigned Correctional Officer III or designated staff member at the requesting institution shall:

1.9.1 Complete a Request to Communicate with an Incarcerated Family Member, Form 915-3, as outlined in Department Order #915, Inmate Phone Calls.

1.9.2 Verify that an immediate family relationship exists between the inmates.

1.9.3 Forward the application to the Warden or Deputy Warden for approval/disapproval.

1.9.4 Forward copies of the approved applications to the respective Mail/Property rooms at the requesting and receiving institution.

1.9.5 Advise inmate of disapproved applications, and note all approvals and denials on AIMS.

914.05 OUTGOING MAIL

1.1 All outgoing inmate mail shall include on the envelope the inmate's complete first and last name (the name under which he is incarcerated), ADC inmate number, and full return address, including the name of the complex, unit and bed location.

1.1.1 Institution mailroom staff shall return mail lacking this information to the sending inmate, if known, for a correction.

1.1.2 If the inmate sender is not known, the correspondence shall be opened to make a reasonable attempt to determine the identity of the inmate sender. If the identity cannot be determined, the mail shall be held in a "Dead Letter" repository for 90 days, pending claim. If no claim is made, the mail shall be processed as unclaimed property.

1.1.3 Inmates shall seal outgoing mail and place it in locked mailboxes located throughout the institution or in other areas designated by the Warden or Deputy Warden. Mail shall be collected at approximately the same time each workday, except on weekends and holidays, and shall be delivered to the mail room for processing.

1.1.3.1 Outgoing mail being sent to any elected government official shall be brought to the mailroom unsealed. Staff shall review the envelope for content, but shall not read the contents of the letter.

1.1.4 **SECTION DELETED**

1.1.5 Inmates shall not use the complex or unit address to fraudulently identify themselves as employees, agents, or representatives of the Department, complex, unit, or Contract Bed facility.

1.2 Staff who processes outgoing inmate mail may inspect it for contraband, but shall not read or censor mail being sent to:

1.2.1 The inmate's attorney, a judge, or court.

1.2.2 Publisher or editor of a newspaper, news magazine or periodical of general distribution, national or international news service or to the station manager of any radio or television stations.

1.2.3 The Director, Deputy Director or Division Directors of the Department.

1.2.4 Elected or appointed public officials.

1.3 Staff shall read up to 10% of outgoing mail. Mail may be returned to the inmate, retained by the institution, or removed from the mailing (the balance of which shall be mailed) when the contents or communications:

1.3.1 Pose a direct and immediate threat to the security, safety or order of the institution.

1.3.2 May substantially hinder efforts to treat or rehabilitate the inmate.

1.4 Staff shall not stamp or mark the contents of outgoing read mail, rather, the envelope or box shall be stamped or marked as having been inspected and resealed prior to mailing.

1.5 Outgoing inmate mail is subject to being opened and read by staff when there is a reasonable belief that the inmate is using the mail to further a crime or circumvent Department regulations or written instructions. Such mail may include, but is not limited to:

1.5.1 Descriptions or encouragement of activities that may lead to the use of physical violence.

1.5.2 Information that involves escape plans and/or activities that violate Department or institution regulations or written instructions.

1.5.3 Threatens the intended recipient.

1.5.4 Promotes, aids or abets criminal activity or violation of departmental rules, including but not limited to, rioting, extortion, escape, illegal drug use, conveyance of contraband, solicitation of funds, violence towards others, and promotes or encourages security threat groups.

1.5.5 Mail written in code or provides instruction on code use.

1.6 Outgoing mail that is read by staff and is determined to be detrimental to the security or safe operation of the institution or that may impede the protection of the public or facilitate criminal activity shall be referred to the Criminal Investigations Unit for further action.

1.7 The Criminal Investigation Unit shall:

1.7.1 Retain the censored portion of any outgoing mail during any investigation, and then return it to the sender.

1.7.2 Stamp the uncensored portion of any censored mail to indicate that portions of the mail were censored, and mail it to the recipient unless doing so would interfere with an ongoing investigation.

1.7.3 The Department may censor the item or determine not to mail the item.

1.8 Mail outlined in 1.7.2 of this section shall be sent within 72 hours, and unless it is determined that such mail is not to be sent. If the mail is not to be sent, the inmate shall be notified of such within 72 hours, unless doing so interferes with an ongoing investigation.

1.9 Excluding holidays and weekends, outgoing mail shall not be held and shall be delivered to the Post Office within 24 hours unless circumstances make delivery impractical.

914.06 PUBLICATIONS

1.1 All publications are subject to screening and review and shall meet standards and guidelines as detailed in this Department Order.

1.2 The envelope/container shall have the inmate's complete first and last name under which he/she is incarcerated unless legally changed, the correct ADC number, institution and unit, and the appropriate Post Office Box.

1.3 Publications shall come directly from a recognized publisher, distributor, or authorized retailer, be consistent with copyright laws and shall include a packing list/invoice with all shipments.

1.3.1 Secondary markets (also known as Third Party Vendors) such as e-Bay and Amazon Marketplace are not authorized retailers or distributors.

1.3.2 Used publications are authorized provided they meet all incoming publication requirements including coming from a recognized publisher, distributor or retailer or a verifiable organization that donates publications to inmates and are in good condition, free of highlighting, underlining, notes or other marks.

1.4 Non-English publications may be delayed due necessary translation.

1.5 Incoming publications shall be pre-paid. Cash on Delivery (COD) orders and contract purchases such as music or book clubs are prohibited and will be returned to the sender at the inmate's expense. Donated publications not coming in from a recognized publisher, distributor or retailer shall be processed as contraband or donated to an inmate library provided they meet Departmental policy requirements and publication review as set forth in this Department Order.

1.6 Publications shall be forwarded for a 90 day period if the inmate is in custody at a Department or Contract Bed facility, provided there is no state or other governing rules/regulations preventing the forwarding of the publication.

1.6.1 The inmate shall be responsible for the change of address notifications.

1.6.2 At the end of the 90-day period, the publications shall be subject to contraband policies and procedures and will no longer be forwarded.

1.7 Inmates are responsible for staying within publication possession limit requirements as outlined in Attachment A of Department Order #909, Inmate Property, and may be subject to disciplinary action for exceeding publication/property limits. Items over the established limit shall be considered contraband.

1.8 Authorization to withdraw funds from an inmate's account for the purchase of a publication does not constitute approval of the publication.

1.9 All publications, including those that are part of a title or series, are reviewed on an individualized basis. Rejection of several issues of any one publication is not sufficient reason to reject a subscription to a publication in its entirety; unless the publication regularly includes sexually explicit material as part or all of its content.

1.10 Unless there is a legitimate correctional concern relating to security, safety, criminal activity or a threat to the orderly operation of the institution, the contents of incoming publications or publications under review shall not be revealed to any non-Publications Review Staff. Only those staff approved to participate in publication review and who have received publication review training, shall be involved in processing, reading and reviewing publications.

1.11 No publication shall be excluded solely on the basis of its appeal to a particular ethnic, racial or religious group.

1.12 Staff shall not remove pages of any publication to make the publication acceptable. Removing pages alters the publication rendering it as contraband. Previously excluded publications that have been re-edited by removing pages or the blocking out of pictures or texts will remain excluded. Staff may remove stapled or perforated items including, but not limited to free product samples, calendars, advertising or promotional items provided that no damage is done to the publication in the removal process.

1.13 Previous decisions to exclude publications, regardless of any subsequent revisions in standards or criteria, remain final. Previously excluded Publications shall not be re-submitted for review or appeal under this Department Order.

1.14 Publications delivered to an inmate in error at any complex/unit prior to and contrary to a First or Second Review may be considered contraband upon official notice from Publication Review Office that the publication has been excluded. Inmates will be provided the options of sending out the material, placing it in long-term storage, or having it destroyed.

1.15 Approved incoming publications in disciplinary detention may be held until the inmate is released from detention.

914.07 SEXUALLY EXPLICIT MATERIAL

1.1 In order to assist with rehabilitation and treatment objectives, reduce sexual harassment and prevent a hostile environment for inmates, staff and volunteers, inmates are not permitted to send, receive or possess sexually explicit material. For the purpose of this Departmental Order, sexually explicit material is defined as publications that feature nudity and/or sexual behaviors/acts and/or the publication is promoted based on such depictions.

1.2 Prohibited publications include, but are not limited to:

1.2.1 Publications that contain photographs, drawings, cartoons, animations, pictorials or other facsimiles that show nudity of either gender. (For Nudity see Definitions.)

1.2.2 Publications that contain any of the following acts and behaviors either visually, written or in audio (non-lyric) form:

1.2.2.1 Physical contact by another person with a person's unclothed genitals, pubic area, buttocks or, if such person is a female, breast.

1.2.2.2 Sadomasochistic abuse.

1.2.2.3 Sexual intercourse, vaginal or anal, fellatio, cunnilingus, bestiality or sodomy.

1.2.2.4 Masturbation, excretory functions, and lewd exhibition of the genitals.

1.2.2.5 Incestuous sexual activity.

1.2.2.6 Sexual activity involving an unwilling participant, or a participant who is the subject of coercion, or any sexual activity involving children.

1.3 Publications that contain nudity and/or sexual behaviors/acts for artistic, scientific, medical, educational, or anthropological purposes will be sent to the Office of Publication Review and may be approved on an individualized basis.

1.4 Personal letters are not subject to Publication Review.

1.5 Sexually Explicit Publications will be reviewed and processed as following:

1.5.1 Within seven calendar days, unit/complex staff shall send the inmate the Complex Level Publications Review/Sexually Explicit Material, Form 914-7 stating that a sexually explicit publication has arrived and will be processed according to contraband policies and procedures, unless a second level review is requested within 20 calendar days of the inmate's actual receipt of the notice of exclusion.

1.5.2 Inmates may give their request of a second level review to the Complex/Stand-Alone Unit Publication Review staff through Inmate Letter, Form 916-1 within 20 calendar days of the actual receipt of the notice of exclusion. If no second level review is requested within the 20 calendar days, the publication will be returned to sender at the inmate's expense. Publications under second level review will not be returned to sender pending disposition of the appeal.

1.5.2.1 The Office of Publication Review is considered the second level review for sexually explicit material.

1.5.2.2 **SECTION DELETED**

1.5.2.3 Appeal decisions made by the Office of Publication Review are final and exhaust inmates' administrative remedies.

1.5.3 A Division Director or Director's designee not in the same chain of command as the Office of Publication Review shall complete second level reviews for excluded publications that contain nudity and/or sexual behaviors/acts for artistic, scientific, medical, educational, or anthropological purposes.

914.08 UNAUTHORIZED PUBLICATIONS AND MATERIAL - Prohibited publications include those that by their nature or content threaten or are detrimental to the security, safety and orderly operation, or discipline of the facility, or inmate rehabilitation, or, are found to facilitate, encourage, incite, promote or instruct in criminal activity or unauthorized prison activity.

1.1 Prohibited publications include, but are not limited to:

1.1.1 Depictions or descriptions that incite, aid, or abet riots, work stoppages, or means of resistance.

1.1.2 Instructions or plans on the sending or receiving of prison contraband.

1.1.3 Depictions or descriptions of street gangs and/or Security Threat Groups (STG), and related gang/STG paraphernalia, including, but not limited to, codes, signs, symbols, photographs, drawings, training material, and catalogs.

1.1.4 Pictures, descriptions and instructions regarding the function of locks and/or security devices (e.g. cameras, alarms) or how to bypass or defeat the security functions of these devices.

1.1.5 Depictions, descriptions, instructions on the use of hands, feet, or head as weapons, fighting weapons and techniques, self-defense and martial arts.

1.1.6 Depictions or descriptions, or promotion of drug paraphernalia or instructions for the brewing of alcoholic beverages or the manufacture or cultivation of drugs, narcotics or poisons.

1.1.7 Content that is oriented toward and/or promotes racism and/or religious oppression and the superiority of one race/religion/political group over another, and/or the degradation of one race/religion/political group by another.

1.1.8 Depictions, descriptions or content that instructs on the sale, manufacture, concealment, or construction of ammunition, guns, rifles, bombs, explosives or any other type weaponry; displays, realistic pictures, or cutaway pictures of guns or knives suitable for use in making of reproduction weapons. The mere photograph of a gun or knife in a magazine or publication (e.g. Field and Stream) is not sufficient in and of itself to exclude the publication.

1.1.9 Detailed illustrations, explanations, and/or descriptions of computers/ communications systems or electronics.

1.1.10 Depictions, descriptions or content that promotes or instructs on identity theft.

1.1.11 Content that depicts, encourages, or describes methods of escape and/or eluding capture, or contains blueprints, drawings, road maps of Arizona, areas contiguous to Arizona, states that contain the contract prison facilities, and states contiguous to those states where contract prison facilities are located; Public Transportation maps of Arizona and states with contract prison facilities and/or descriptions or photos of Department or contract prison facilities. ("Contiguous", as used in this section, means states surrounding and bordering the subject state. In the example of Arizona, this would mean California, Nevada, Utah, New Mexico, Colorado, and Mexico, or any portion there of.)

1.1.12 Content that contains survival skills that could be used as an aid in eluding capture following an escape.

1.1.13 Gambling strategies and other gambling-related instructional material.

1.1.14 Pictures, depictions, illustrations, explanations, instructions, and/or patterns for tattoos and/or skin modification equipment which would provide, at minimum, visual aids for inmates wishing to reproduce this type of body ornamentation and/or equipment.

1.1.15 Cipher or code or instruct on the usage of code.

1.1.16 Pictures, depictions, illustrations or text that promotes acts of violence, that cause or intends to cause serious criminal injury or harm.

1.1.17 Graphic violence that includes but is not limited to murder, rape, sexual assault, assault, amputation, decapitation, dismemberment, mutilation maiming, disfigurement or cruelty to animals.

1.1.18 Pictures, photographs, illustrations, text or other content that may encourage unacceptable sexual or hostile behaviors, or creates a hostile environment for volunteers including, but not limited to sexual representations of inmates, law enforcement, military, professional medical staff, teachers and Clergy.

1.1.19 Intelligence gathering instruction and/or investigative techniques that may impede the Department's investigative ability.

1.1.20 Military/strategy publications that may circumvent the Department's ability to monitor and control activities/behaviors that may be a violation of law and/or Departmental policy.

1.1.21 Medical publications that may lead to any or all of the following:

1.1.21.1 Harming of oneself or others;

1.1.21.2 Impacting clinical test results;

1.1.21.3 Preventing medical staff from accurately diagnosing medical issues and providing appropriate medical treatment and/or false concerns of a given diagnosis or medical treatment necessities.

1.1.22 Depictions/descriptions/textual content that may create a health and fire risk.

1.1.23 Crime scene/autopsy photos.

1.1.24 Depictions, descriptions or content that promotes and/or instructs on the facilitation of activity that is in violation of departmental policy and/or governmental laws.

1.1.25 Canine search procedures, techniques and scent discrimination.

1.1.26 Instruction on the making of incense.

1.1.27 Depictions, descriptions or content that instructs on the sale, manufacture, concealment, or the construction of tools.

2.1 A publication will not be rejected based upon inclusion of an advertisement promoting of the following if the publication is otherwise permissible and the advertisement is merely incidental to, rather than the focus of, the publication:

2.1.1 Three-way calling services;

2.1.2 Pen pal services;

2.1.3 The purchase of products and services with postage stamps;

2.1.4 The purchase of products and services that violate Departmental policy;

2.1.5 Conducting a business while incarcerated.

2.2 Publications that contain detailed content of any subjects listed above may be excluded.

914.09 PUBLICATION REVIEW PROCESS

1.1 The Complex/Stand-Alone Unit Level Publication Review staff shall:

1.1.1 Facilitate the processing of sexually explicit publications as contraband as outlined in section 914.07 of this Department Order.

1.1.2 Forward publications that contain nudity and/or sexual behaviors/acts for artistic, scientific, medical, educational, or anthropological purposes to the Office of Publication Review for disposition.

1.1.3 Approve/release publications that do not require additional review.

1.1.4 Notify inmates of publications that are pending disposition by the Office of Publication Review.

1.1.5 Process inmates' second level review request and notify inmates of their outcome or inform inmates if the request is not within timeframes. Second Review can be requested by inmates through Inmate Letter, Form 916-1 to the assigned Complex/Stand-Alone Unit Level Publication Review staff within 20 calendar days of the inmate's actual receipt of the notice of exclusion.

1.1.6 Distribute copies of Office of Publication Review - Notice of Result, Form 914-6 and a Memorandum of Second Review to inmates affected by either the decision to exclude a publication or the referral for a Second Review. The distribution of these copies shall include inmates presently in possession of excluded publications, or who may in the future possess excluded publications. The excluded publication will be dealt using the same procedures as set forth in section 914.02, subsections 1.7 - 1.7.1 of this Department Order.

1.1.7 Provide the Warden with a copy of any Memorandums of Second Review.

1.1.8 Respond to Inmate Publication Review-Related Letters questions or concerns.

1.1.9 Log all incoming publications that are included as part of Publication Review, noting the specific publication, inmate information, and disposition, and sending the monthly report to the Office of Publication Review.

1.1.10 Maintain log information for a period of two years.

914.10 THE OFFICE OF PUBLICATION REVIEW

1.1 The Office of Publication Review shall:

1.1.1 Review, process, document and track publications forwarded by the Complex/Stand-Alone Unit Publication Review staff and determine whether to allow or exclude them.

1.1.2 Notify all Wardens and Mail/Property rooms of the decision on each reviewed item.

1.1.3 Complete the Office of Publication Review - Notice of Result form for all reviewed publications. Notices of Reviews for excluded publications must provide a reason for the exclusion.

1.1.4 Send completed Office of Publication Review - Notice of Result form to the Complex/Stand-Alone Unit Publication Review staff for distribution.

1.1.5 Act as second level review for publications that contain nudity or the sexually explicit material as outlined in section 914.07 of this Department Order.

1.1.6 Maintain copies of all Notices of Review for period of three years from the date of exclusion. Excluded publications shall be returned to the complex/unit mailroom within 90 days following the review unless a Second Review has been requested. One copy of an excluded publication will be retained for three years if a Second Review has been completed and the exclusion was upheld.

1.1.7 Compile a monthly list of all excluded publications, which shall be forwarded to all Complex/Stand-Alone Unit Level Publication Review staff and to all Wardens.

1.1.8 Notify all Wardens and Complex/Stand-Alone Unit Level Publication Review staff of pending and completed second reviews.

1.1.9 Prepare a Memorandum of Second Review and appeal packet for publications that inmates have requested a second level review that do not fall under the sexually explicit material as outlined in section 914.07, of this Department Order.

1.1.9.1 A Division Director or Director's designee not in the same chain of command as the Office of Publication Review shall complete the Memorandum of Second Review to affirm or reverse the original decision. The Memorandum shall be forwarded to all affected inmates through Complex/Stand-Alone Unit Level Publication Review staff. The decision of the Division Director or Director's Designee is final and exhausts inmates' administrative remedies.

1.1.9.2 Inmates may file grievances on Publication Review process procedural issues. Grievances shall be processed through the inmate's unit to the Central Office Appeals Unit. The appeal response shall only address procedural issues and will not re-consider any decisions to exclude publications.

1.1.10 Forward completed Memorandums of Second Review to Complex/Stand-Alone Unit Level Publications Review staff for distribution.

IMPLEMENTATION

Within 90 days of the effective date of the Department Order:

- Each Warden shall provide direction for Inmate Mail addressing, at a minimum:
  - Outgoing and incoming mail.
  - Inter-relational mail.
  - Mail Room operations.
  - Mail contraband control.

- Wardens and Deputy Wardens shall update and issue the appropriate direction and Post Orders for mail procedures and processing all types and rates of mail consistent with current USPS requirements mail operations.

Section 914.07, Sexually Explicit Material is not effective until August 26, 2010:

- Until August 26, 2010 the previous Department Order 914, Inmate Mail, Section 914.07, Obscene Material dated May 1, 2008 remains in effect. (See Attachment A)
- Prior to this date inmates:
  - Shall cancel or allow to expire any current subscriptions to commercially published magazines or publications that feature nudity.
  - Shall mail out, destroy or request long-term storage for these publications or any other material that is in violation of this Department Order.
- Inmates may receive disciplinary action if found in the possession of unauthorized commercially published magazines or publications after August 26, 2010. All such items shall be considered contraband and will be subject to seizure.

DEFINITIONS

ALTERING - To change or make different; modify.

AUDIO BOOK - A taped reading of a book or book condensation reproduced in audiocassette form.

CENSOR - To delete, ban, suppress or withhold portions of mail.

CONTRABAND – For the purpose of this Department Order, contraband is defined as any item considered to be a detriment to the safe and orderly operation of an institution or parole office. Contraband includes, but is not limited to:

- Any item that could be used as an aid to escape.
- Any item that could be used to disguise or alter an inmate's appearance.
- Any item of clothing or items for personal use or consumption that are not cleared first through security or the property room of the institution.
- Cameras, video, audio or related equipment, unless authorized by order of written instructions.
- The introduction and/or possession of any separate components that may aid in the use of wireless devices and/or multimedia storage devices. This includes, but may not be limited to:
  - Cell phone chargers.
  - Mobile chargers.
  - Cell phone batteries.
  - Any other item that staff reasonably determines may aid in the use of wireless devices and/or multimedia storage devices.
- Allowable items which are:

- Possessed without permission.
- Discovered in improper locations.
- Over set allowable amounts.
- Obtained in improper manners or methods.
- In altered forms or conditions.

CORRESPONDENCE TAPES - Cassette tapes sent or received by an inmate or visitor where there exists a disability or literacy concern that prevents written correspondence.

CRIMINAL ACTIVITY - Any activity that violates local, state and federal law, statutes, ordinances, or codes, and constitutes a criminal act under the law.

CUNNILINGUS - Oral stimulation of the clitoris or vulva.

EXCRETORY FUNCTIONS - The elimination of a body's waste products through defecation and urination.

FEATURES - The publication contains nudity on a routine or regular basis or promotes itself based upon such depictions in the case of an individual one-time issue.

FELLATIO - Oral stimulation of the penis.

REST OF PAGE BLANK

THIS PAGE BLANK

FIRST CLASS MAIL - A class of mail including letters, postcards, and postal cards, all matter wholly or partially in writing or typewriting; includes but is not limited to anything mailable such as bills, invoices, personal correspondence, and some merchandise.

GENITALIA – Male and female sexual organs.

IMMEDIATE FAMILY - A legal spouse, natural or adopted parents, siblings, natural or adopted children, stepchildren, grandparents, or other verified person primarily responsible for the raising of the inmate in the absence of the inmate in the absence of a parent.

INCESTUOUS ACTIVITY - Sexual activity between family members who are forbidden to marry due to their close kinship.

INFLAMMATORY - Arousing passion or strong emotion, especially anger and belligerence.

INTERCOURSE - The act of having sex.

INTER-RELATIONAL MAIL - Letters deliverable by the United States Postal Service written by an inmate to an incarcerated immediate family member, clearly marked with the name and ADC number of the sending and receiving incarcerated immediate family member.

ILLEGAL CONTRABAND - Any item, the possession of which in the community or on prison grounds is a felony or misdemeanor, i.e., weapons, explosive devices, drugs, wireless communication devices, multimedia storage devices or other statutorily prohibited item(s).

LEGISLATIVE CORRESPONDENCE - Letters to or from a member of the Arizona State Legislature. Mail that is received in envelopes that are clearly marked as official envelopes used by the Arizona State Legislature is considered incoming legislative correspondence.

MASTURBATION - Touch or rubbing of sexual organs for the purpose of sexual pleasure. Excitation of one's own or another's genital organs, usually to orgasm, by manual contact or means other than sexual intercourse.

NUDITY - Nudity as defined by ARS 13-3501, the showing of the human male or female genitals, pubic area, female breast with less than a fully opaque covering of the nipple, or male or female buttocks with less than a full opaque covering of the anus (e,g., a thong). The anus does not need to be visible.

PENOLOGICAL - Relating to the theory and practice of prison management and criminal rehabilitation.

PERIODICAL CLASS MAIL - Mail that consists of magazines, newspapers and other publications.

PREPAID PUBLICATIONS – Are any type of publication sent to an inmate that has been paid for in advance of delivery to the inmate. Publications not paid for in advance will not be accepted and returned to the sender at the inmate's expense.

PUBLICATION - A book, booklet, pamphlet, (or similar document), or a single issue of a magazine, catalog, periodical, newsletter, audio (non music) tapes and CDs. Publication does not include personal letters and personal photographs.

SADOMASOCHISTIC ABUSE - As defined by ARS 13-3501means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed, for the purpose or in the context of sexual gratification or abuse.

SEXUALLY EXPLICIT MATERIAL - Any publications, drawing, photograph, film, negative, motion picture, figure, object, novelty device, recording, transcription, or any book, leaflet, catalog, pamphlet, magazine, booklet or other item, the cover or contents of which pictorially depicts nudity of either gender, or that graphically depicts through text any sexually explicit homosexual, heterosexual, or auto-erotic sex acts including fellatio, cunnilingus, masturbation, sadism, sado-masochism, bondage, bestiality, excretory functions, sexual activity involving children, an unwilling participant, or the participant who is the subject of coercion.

STANDARD MAIL - Advertising mail that includes advertisements, circulars, newsletters, magazines, small parcels and merchandise and weighs less than 16 ounces.

STG - An unofficial term used to denote any type of gang activity in prisons and correctional facilities. The official term for this is Security Threat Group.

UNAUTHORIZED MATERIAL- Material that by its nature or content threatens or is detrimental to the security, safety, good order or discipline of the facility, or inmate rehabilitation, or, that is found to facilitate, encourage, incite, promote or instruct in criminal activity or unauthorized prison activity.

VIOLENCE - Acts of aggression or abuse that causes or intends to cause criminal injury or harm. These acts include, but are not limited to, murder, rape, sexual assault, assault, and cruelty to animals. Graphic violence would include, but is not limited to, acts of violence that include amputation, decapitation, dismemberment, or mutilation maiming or disfigurement.

{Original Signature on File}

Charles L. Ryan
Director

ATTACHMENT
Attachment A – Obscene Material

FORMS LIST
914-6, Office of Publication Review - Notices of Result
914-7, Complex Level Publications Review/Sexually Explicit Material

AUTHORITY

A.R.S. 12-941 et seq, Disposal of Certain Unclaimed Property in Custody of State, City or Town Officers.
A.R.S. 13-2501, Definitions of Contraband.
A.R.S. 13-2505, Promoting Prison Contraband.
A.R.S. 13-3309, Seizure; Exception; Definition.
A.R.S. 13-3501, Obscene Material.
A.R.S. 13-3503, Seizure of Obscene Things; Disposition.
A.R.S. 13-4301 et seq, Forfeiture.
A.R.S. 13-4411.01, Notice of Right to Request Not to Receive Inmate Mail.
A.R.S. 13-4429, Return of Victim's Property; Release of Evidence.
A.R.S. 31-231, Unauthorized Communications.
A.R.S. 31-235, Prisoner correspondence: definitions.

ATTACHMENT A
DEPARTMENT ORDER 914

OBSCENE MATERIAL

(DEPARTMENT ORDER 914, INMATE MAIL, SECTION 914.07, DATED MAY 1, 2008)

914.07 OBSCENE MATERIAL

1.1 Publications that contain obscene material may be prohibited and includes material that by its nature or content poses a threat or is detrimental to inmate rehabilitation or is detrimental to the security, safety, good order and discipline of the facility.

1.2 Material may be deemed obscene under applicable constitutional standards. A publication is deemed obscene when ALL of the following apply:

1.2.1 The average person, applying contemporary state standards, would find that the publication, taken as a whole, appeals to the prurient interest.

1.2.2 The average person, applying contemporary state standards, would find that the publication depicts or describes, in a patently offensive way, sexual activity as defined in this written instruction.

1.2.3 The publication, taken as a whole, lacks serious literary, artistic, political or scientific value.

1.3 Prohibited publications include, but are not limited to:

1.3.1 Publications that contain portrayal of actual or simulated acts or threatened acts of force or violence in a sexual context, including, but not limited to forcible intercourse (rape) or acts of sadomasochism emphasizing the infliction of pain.

1.3.2 Publications that contain portrayal of actual or simulated acts or behaviors between a human being and an animal.

1.3.3 Publications that contain portrayal of actual or simulated acts or behaviors in which one of the participants is a minor, or appears to be under the age of 18.

1.3.4 Publications that include cartoons, animations, or other facsimiles of the above listed acts.

EXHIBIT B

Prison Legal News

VOL. 25 No. 3
ISSN 1075-7678

Dedicated to Protecting Human Rights

March 2014

Corizon Needs a Checkup: Problems with Privatized Correctional Healthcare

by Greg Dober

Corizon, the nation's largest for-profit medical services provider for prisons, jails and other detention facilities, was formed in June 2011 through the merger of Prison Health Services (PHS) and Correctional Medical Services (CMS).

In April 2013, the debt-rating agency Moody's downgraded Corizon's nearly $360 million worth of debt to a rating of B2 – an indication the company's debt is highly speculative and a high credit risk. According to Moody's, the rating downgrade was due to an "expectation of earnings volatility following recent contract losses, margin declines from competitive pricing pressure on new and renewed contracts, and Moody's belief that Valitás [Corizon's parent corporation] will be unable to restore metrics to levels commensurate with the prior B1 rating over the near to intermediate term."

Valitás Health Services is majority owned by Beecken Petty O'Keefe & Company, a Chicago-based private equity management firm. Beecken's other holdings are primarily in the healthcare industry.

On September 23, 2013, Moody's again downgraded Corizon's debt rating and changed the company's rating outlook from "stable" to "negative." The following month Corizon announced that it had replaced CEO Rich Hallworth with Woodrow A. Myers, Jr., the former chief medical officer at WellPoint Health. Hallworth, who had been appointed Corizon's CEO in 2011, previously served as the president and CEO of PHS. At the same time that Hallworth was replaced, Corizon president Stuart Campbell also stepped down.

Prison Medical Care for Profit

According to Corizon's website, the company provides healthcare services at over 530 correctional facilities serving approximately 378,000 prisoners in 28 states. In addition, Corizon employs around 14,000 staff members and contractors. The company's corporate headquarters is located in Brentwood, Tennessee and its operational headquarters is in St. Louis, Missouri.

The 2011 merger that created Corizon involved Valitás Health Services, the parent company of CMS, and America Service Group, the parent company of PHS. The *Nashville Business Journal* reported the deal was valued at $250 million.

"Corizon's vision is firmly centered around service – to our clients, our patients and our employees," Campbell said at the time. "To that we add the insight of unparalleled experience assisting our client partners, and caring professionals serving the unique healthcare needs of [incarcerated] patients."

Corizon has around $1.5 billion in annual revenue and contracts to provide medical services for the prison systems in 13 states. The company also contracts with numerous cities and counties to provide healthcare to prisoners held in local jails; some of Corizon's larger municipal clients include Atlanta, Philadelphia and New York City (including the Rikers Island jail). Additionally, the company has its own in-house pharmacy division, PharmaCorr, Inc.

The prison healthcare market has flourished as state Departments of Corrections and local governments seek ways to save money and reduce exposure to litigation. [See: *PLN*, May 2012, p.22]. Only a few major companies dominate the industry. Corizon's competitors include Wexford Health Sources, Armor Correctional Health Services, NaphCare, Correct Care Solutions and Centurion Managed Care – the latter being a joint venture of MHM Services and Centene Corporation. Around 20 states outsource all or some of the medical services in their prison systems.

As Corizon is privately held, there is little transparency with respect to its internal operations and financial information, including costs of litigation when prisoners (or their surviving family members) sue the company, often alleging inadequate medical care.

For example, when Corizon was questioned by the news media in Florida during

INSIDE

From the Editor	18
Private Prison Racial Disparities	20
When Victims Speak for Criminals	24
Texas Criminal Court Fees	28
CA Female Prisoners Sterilized	32
Michigan Parole Scrutinized	42
Introduction to the FTCA	44
Execution Drugs Hard to Find	46
A Look Inside Maine's Supermax	48
Video Visitation in Jails	50
UNICOR Faces Criticism	52
Oregon Jail Death Lawsuits	54
News in Brief	56

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

EDITOR
Paul Wright

MANAGING EDITOR
Alex Friedmann

COLUMNISTS
Michael Cohen, Kent Russell,
Mumia Abu Jamal

CONTRIBUTING WRITERS
Matthew Clarke, John Dannenberg,
Derek Gilna, Gary Hunter,
David Reutter, Mark Wilson,
Joe Watson, Christopher Zoukis

RESEARCH ASSOCIATE
Mari Garcia

ADVERTISING DIRECTOR
Susan Schwartzkopf

LAYOUT
Lansing Scott

HRDC LITIGATION PROJECT
Lance Weber—General Counsel
Robert Jack—Staff Attorney

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

A one year subscription is $30 for prisoners, $35 for individuals, and $90 for lawyers and institutions. Prisoner donations of less than $30 will be pro-rated at $3.00/issue. Do not send less than $18.00 at a time. All foreign subscriptions are $100 sent via airmail. PLN accepts Visa and Mastercard orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without an SASE. PLN is a section 501 (c)(3) non-profit organization. Donations are tax deductible. Send contributions to:

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

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

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

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

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

a contract renewal, the company initially tried to prevent the release of its litigation history, claiming it was a "trade secret."

In 2012, Corizon agreed to settle a lawsuit filed against PHS – one of its predecessor companies – by *Prison Legal News*, seeking records related to the resolution of legal claims against the firm in Vermont. Based on the records produced pursuant to that settlement, PHS paid out almost $1.8 million in just six cases involving Vermont prisoners from 2007 to 2011. [See: *PLN*, Dec. 2012, p.16].

Companies like Corizon provide healthcare in prisons and jails under the HMO model, with an emphasis on cutting costs – except that prisoners have no other options to obtain medical treatment except through the contractor.

Arizona DOC

A former Corizon nurse had her license suspended and is currently under investigation by the Arizona State Board of Nursing for incompetence. In January 2014, nurse Patricia Talboy was accused of contaminating vials of insulin at three units at the ASPC-Lewis prison, potentially exposing two dozen prisoners to HIV or hepatitis.

Talboy reportedly used a needle to stick prisoners' fingers to check their blood sugar levels. She then used the same needle to draw insulin from vials of the medication utilized for multiple prisoners, possibly contaminating the insulin in the vials. After placing the vials back into inventory, other staff members may have unknowingly used them to dispense insulin.

"Every indication is that the incident is the result of the failure by one individual nurse to follow specific, standard and well-established nursing protocols when dispensing injected insulin to 24 inmates," Arizona Department of Corrections (ADC) director Charles L. Ryan said in a January 9, 2014 statement.

Talboy's failure to follow procedures was discovered after a prisoner told a different nurse about the issue. Corizon reportedly delayed three days before publicly reporting the incident; in a press release, the company admitted that one of its nurses had been involved in "improper procedures for injections." Talboy received her nursing license in August 2012 and became an RN in June 2013; as a rookie nurse, Corizon likely paid her less than more experienced nurses.

Following the insulin-related incident, the company was ordered to develop a comprehensive plan that includes "supplemental training and competency testing procedures for blood glucose testing and administration of insulin," as well as "nurse-peer reporting education to ensure professional accountability" and "patient awareness education on injection protocols."

Granted, Corizon isn't alone with respect to such incidents. In August 2012, a nurse employed by the ADC's previous medical services contractor, Wexford Health Sources, contaminated the insulin supply at ASPC-Lewis through improper injection protocols, potentially exposing 112 prisoners to hepatitis C. [See: *PLN*, July 2013, p.1].

Corizon has a three-year, approximately $370 million contract to provide medical care in Arizona state prisons, which began in March 2013. The contract award generated controversy because former ADC director Terry Stewart was hired by Corizon as a consultant; current director Charles Ryan had previously worked under Stewart, raising a potential conflict of interest. Ryan denied any improprieties.

According to a report by the American Friends Service Committee released in October 2013, titled "Death Yards: Continuing Problems with Arizona's Correctional Health Care," medical services in Arizona prisons did not improve after Corizon replaced Wexford as the ADC's healthcare contractor. "Correspondence from prisoners; analysis of medical records, autopsy reports, and investigations; and interviews with anonymous prison staff and outside experts indicate that, if anything, things have gotten worse," the report stated.

Florida DOC

In 2013, the Florida Department of Corrections (FDOC) awarded Corizon a five-year, $1.2 billion contract to provide medical services to state prisoners in north and central Florida. Wexford Health Sources was contracted to provide similar services in the southern region of the state for $240 million. [See: *PLN*, June 2013, p.24]. The wholesale privatization of healthcare in Florida's prison system followed a 2011 legislative decision to disband the state's

Privatized Healthcare Problems (cont.)

Correctional Medical Authority, which had oversight over prison medical care. [See: *PLN*, May 2012, p.30].

The contracts were part of the Republican administration's initiative to expand privatization of government services, including prison management and healthcare, in spite of previous setbacks. In 2006, PHS withdrew two months into an almost $800 million contract to provide medical care to Florida prisoners; at that time, the company said the contract was not cost-effective and claimed it would lose money.

The 2013 contract awards to Corizon and Wexford followed a two-year legal fight. In 2011, AFSCME Florida and the Federation of Physicians and Dentists/Alliance of Healthcare and Professional Employees filed suit challenging the prison healthcare contracts, in an effort to protect the jobs of nearly 2,600 state workers.

On June 21, 2013 the First District Court of Appeals approved the privatization of medical care in FDOC facilities, overturning a ruling by the Leon County Circuit Court. The appellate court noted in its decision that "The LBC [Legislative Budget Committee] simply moved funds from different line items within the Department's Health Services' program, providing additional funds for contracts that the Department otherwise had the authority to enter." See: *Crews v. Florida Public Employers Council 79*, 113 So.3d 1063 (Fla. Dist. Ct. App. 1st Dist. 2013).

Under the terms of the FDOC's contract with Corizon, the company must provide medical care to Florida state prisoners for 7% less than it cost the FDOC in 2010. When entering into the contract, state officials apparently had few concerns about the numerous lawsuits previously filed against Corizon, and no hard feelings toward the company's predecessor, PHS, when it terminated its 2006 contract to provide medical services to Florida prisoners because it wasn't profitable.

"Most people feel, as long as they achieve their 7 percent savings who cares how they treat inmates?" noted Michael Hallett, a professor of criminology at the University of North Florida.

Florida Counties

In a September 6, 2012 unpublished ruling, the Eleventh Circuit Court of Appeals affirmed a $1.2 million Florida jury verdict that found Corizon – when it was operating as PHS – had a policy or custom of refusing to send prisoners to hospitals. The Court of Appeals held it was reasonable for jurors to conclude that PHS had delayed medical treatment in order to save money. See: *Fields v. Corizon Health*, 490 Fed.Appx. 174 (11th Cir. 2012).

The jury verdict resulted from a suit filed against Corizon by former prisoner Brett A. Fields, Jr. In July 2007, Fields was being held in the Lee County, Florida jail on two misdemeanor convictions. After notifying PHS staff for several weeks that an infection was not improving, even with antibiotics that had been prescribed, Fields was diagnosed with MRSA. PHS did not send him to a hospital despite escalating symptoms, including uncontrolled twitching, partial paralysis and his intestines protruding from his rectum. A subsequent MRI scan revealed that Fields had a severe spinal compression; he was left partly para-

lyzed due to inadequate medical care.

The Eleventh Circuit wrote that PHS "enforced its restrictive policy against sending prisoners to the hospital," and noted that a PHS nurse who treated Fields at the jail "testified that, at monthly nurses' meetings, medical supervisors 'yelled a lot about nurses sending inmates to hospitals.'" Further, PHS "instructed nurses to be sure that the inmate had an emergency because it cost money to send inmates to the hospital."

At trial, the jury found that PHS had a custom or policy of deliberate indifference that violated Fields' constitutional right to be free from cruel and unusual punishment. The jurors concluded that Fields had a serious medical need, PHS was deliberately indifferent to that serious medical need, and the company's actions proximately caused Fields' injuries. The jury awarded him $700,000 in compensatory damages and $500,000 in punitive damages. [See: *PLN*, March 2013, p.54; Aug. 2011, p.24].

More recently, the estate of a 21-year-old prisoner who died at a jail in Manatee County, Florida filed a lawsuit in October 2013 against the Manatee County Sheriff's Office and Corizon, the jail's healthcare provider. The complaint accuses the defendants of deliberate indifference to the serious medical needs of Jovon Frazier and violating his rights under the Eighth Amendment.

In February 2009, Frazier was incarcerated at the Manatee County Jail; at the time of his medical intake screening, staff employed by Corizon, then operating as PHS, noted that his health was unremarkable. Frazier submitted a medical request form in July 2009, complaining of severe pain in his left shoulder and arm, and a PHS nurse gave him Tylenol.

Throughout August and September 2009, Frazier submitted five more medical requests seeking treatment for his arm and shoulder. "It really hurts! HELP!" he wrote in one of the requests. PHS employees saw him and recorded his vital signs. Despite the repeated complaints, Frazier was never referred to a doctor or physician assistant; on September 9, 2009 his treatment was documented as routine but he was placed on the "MD's list."

An X-ray was taken on September 17, 2009 to rule out a shoulder fracture. The X-ray was negative for a fracture, and Frazier was not referred to a doctor. He submitted two more medical requests that month and five requests in October 2009 seeking treatment for his increasingly painful condition. The complaint alleges that in total, Frazier submitted 13 medical request forms related to pain over a period of three months; he was seen by a nurse each time but not examined by a physician.

On October 29, 2009, Frazier received an X-ray to determine if he had a tendon injury. An MRI was recommended and he was transported to a hospital where an MRI scan revealed a large soft tissue mass on his shoulder. A doctor at the hospital, concerned that the mass was cancerous, recommended additional tests.

After being diagnosed with osteosarcoma, a form of bone cancer, Frazier was returned to the jail and subsequently treated at the Moffitt Cancer Center, where he received chemotherapy, medication and surgery. Despite this aggressive treatment the cancer progressed and Frazier's left arm was amputated. The cancer continued to spread, however, and he was diagnosed with lung cancer in June 2011. He died

Privatized Healthcare Problems (cont.)

within three months of that diagnosis, on September 18, 2011.

In a letter to the attorney representing Frazier's estate, Florida oncologist Howard R. Abel wrote that the lack of treatment provided by Corizon at the Manatee County Jail constituted "gross negligence and a reckless disregard to Mr. Frazier's right to timely and professionally appropriate medical care."

The lawsuit filed by Frazier's estate claims that Corizon was aware of his serious medical condition but failed to provide adequate treatment. In addition, the complaint contends the company has a widespread custom, policy and practice of discouraging medical staff from referring prisoners to outside medical practitioners and from providing expensive medical tests and procedures. Finally, the lawsuit states that "Corizon implemented these widespread customs, policies and practices for financial reasons and in deliberate indifference to [the] serious medical needs of Frazier and other inmates incarcerated at Manatee County Jail."

On January 10, 2014, U.S. District Court Judge James Moody denied Corizon's motion to dismiss the case. The company had argued that the allegations in the lawsuit failed to assert sufficient facts to establish deliberate indifference, amounted only to medical negligence and were insufficient to establish gross negligence, and failed "to adequately allege a policy or custom that violated Frazier's rights." Judge Moody disagreed, finding the claims set forth in the complaint were "sufficient to establish a constitutional violation."

The Manatee County Sheriff's Office had better luck with its motion to dismiss. The Sheriff argued the complaint did not establish facts indicating that the jail had a similar practice – like Corizon – of providing deliberately indifferent medical care to prisoners. The court agreed and dismissed the claims against the Sheriff's Office; the claims against Corizon remain pending. See: *Jenkins v. Manatee County Sheriff*, U.S.D.C. (M.D. Fla.), Case No. 8:13-cv-02796-JSM-TGW.

Idaho DOC

In February 2013, the Idaho Department of Corrections (IDOC) announced it had reached a one-year extended agreement with Corizon to provide medical care in the state's prison system. However, the *Idaho Business Review* reported that the extension also resulted in a rate increase. Then-Corizon president Stuart Campbell informed the IDOC Board of Correction that the company wouldn't sign an extension for less money, stating the current contract had become too costly. During the preceding three years of the contract the IDOC had incurred approximately 20% in cumulative rate increases.

Both sides agreed that the contract would run through December 2013 and the IDOC would pay an additional $250,000. It seems odd that Idaho was willing to continue contracting with the company, though, as the relationship between the IDOC and Corizon has been a rocky one.

The quality of medical care at the Idaho State Correctional Institution (ISCI) in Boise has been an ongoing issue for nearly three decades. The prison was the focus of a class-action lawsuit filed on behalf of prisoners alleging a variety of problems, including inadequate healthcare. The lawsuit was known as the *Balla* litigation after plaintiff Walter Balla.

In July 2011, after new complaints were filed regarding medical care at ISCI, U.S District Court Judge B. Lynn Winmill appointed a special master, Dr. Marc F. Stern, to assess the situation at the facility. The court wanted Stern to confirm whether ISCI was in compliance with the temporary agreements established in the *Balla* case, and to investigate and report on "the constitutionality of healthcare" at the facility.

Dr. Stern, a former health services director for the Washington Department of Corrections who also had previously worked for CMS, one of Corizon's predecessor companies, issued a scathing report in February 2012. With the aid of psychiatrist Dr. Amanda Ruiz, Stern and his team reviewed ISCI over a six-day period and met with dozens of prisoners, administrators and Corizon employees.

Stern stated in the report's executive summary: "I found serious problems with the delivery of medical and mental health care. Many of these problems have either

resulted or risk resulting in serious harm to prisoners at ISCI. In multiple ways, these conditions violate the rights of prisoners at ISCI to be protected from cruel and unusual punishment. Since many of these problems are frequent, pervasive, long-standing, and authorities are or should have been aware of them, it is my opinion that authorities are deliberately indifferent to the serious health care needs of their charges."

The report found that prisoners who were terminally ill or in long-term care were sometimes left in soiled linens, given inadequate pain medication and went for long periods without food or water. The findings regarding sick call noted instances in which prisoners' requests either resulted in no care, delayed care or treatment that was deemed dangerous. Emergency care situations had insufficient oversight, delays or no response; inadequately trained medical staff operated independently during emergencies without oversight from an RN or physician. The report also found problems with the pharmacy and medication distribution at ISCI.

In one case, a prisoner with a "history of heart disease was inexplicably dropped from the rolls of the heart disease Chronic Care Clinic." As a result, medical staff stopped conducting regular check-ups and assessments related to the prisoner's heart condition. A few years later the prisoner went in for a routine visit, complaining of occasional chest pain. No evaluation or treatment was ordered and the prisoner died four days later due to a heart attack. In another case, Corizon staff failed to notify a prisoner for seven months that an X-ray indicated he might have cancer.

Dr. Stern's report not only reviewed processes but also staff competency and adequacy. The report cited allegations that a dialysis nurse at ISCI overtly did not like prisoners, and routinely "failed to provide food and water to patients during dialysis, prematurely aborted dialysis sessions or simply did not provide them [dialysis] at all and failed to provide ordered medications resulting in patients becoming anemic." Stern concluded that prison officials were aware of this issue and the danger it presented to prisoners, but "unduly delayed taking action."

The mental health care provided by Corizon at ISCI was found to be deficient by Dr. Ruiz, who conducted the psychiatric portion of the court-ordered review. The report noted that the facility had 1) inadequate "screening of and evaluating prisoners to identify those in need of mental health care," 2) "significant deficiencies in the treatment program at ISCI" which was "violative of patients' constitutional right to health care," 3) an "insufficient number of psychiatric practitioners at ISCI," 4) incomplete or inaccurate treatment records, 5) problems with psychotropic medications, which were prescribed with no face-to-face visits or follow-up visits with prisoners and 6) inadequate suicide prevention training.

The report concluded: "The state of guiding documents, the inmate grievance system, death reviews and a mental health CQI [continuous quality improvement] system at ISCI is poor. While not in and of themselves unconstitutional, it is important for the court to be aware of this and its possible contribution to other unconstitutional events."

In March 2012, shortly after Dr. Stern's report was released over the objection of state officials, Corizon disagreed with its findings. The company retained

Privatized Healthcare Problems (cont.)

the National Commission on Correctional Health Care (NCCHC) to review the report. Corizon described the review as an "independent assessment," even though it was paying NCCHC accreditation fees.

The NCCHC review consisted of a three-person team assessing the facility over a two-day period in April 2012. Unlike Stern's assessment of medical and mental health care, the NCCHC team did not interview prisoners or include a psychiatrist. Regardless, the agency concluded that "The basic structure of health services delivery at ISCI meets NCCHC's standards."

Corizon stated in a press release that Dr. Stern's report was "incomplete, misleading and erroneous," and then-CEO Rich Hallworth appeared in a video defending the company. The NCCHC had previously accredited Corizon's healthcare services at ISCI, thus in essence the NCCHC's review was self-validating the organization's prior accreditation findings. Also, according to NCCHC's website, two Corizon officials sit on the agency's health professionals certification board of trustees.

Corizon's criticism of Dr. Stern's report is just one example where the company has objected to an independent, third-party assessment of its medical services. The *Balla* case settled in May 2012 after 30 years of litigation. [See: *PLN*, Feb. 2013, p.40].

Indiana DOC

Following a competitive bidding process, Corizon was selected to continue providing medical care to Indiana state prisoners under a three-year contract effective January 1, 2014. The contract has a cap of $293 million, based on a per diem fee of $9.41 per prisoner.

Three weeks later, a lawsuit filed in federal court named Corizon and the Indiana Department of Correction as defendants in connection with the wrongful death of prisoner Rachel Wood. Wood, 26, a first-time drug offender, died in April 2012; the suit, filed on behalf of her family, claims she was transferred from prison to prison and denied care for her serious medical conditions, which included lupus and a blood clotting disorder.

"Notwithstanding the duty of the prison medical staff to provide adequate medical care to Rachel and to treat her very serious life threatening conditions, prison medical staff willfully and callously disregarded her condition, and allowed Rachel to deteriorate and die," the complaint stated.

"That is just the attitude of these guys, is saving money rather than providing health care," said Michael K. Sutherlin, the attorney representing Wood's family.

Prison officials reportedly moved Wood among several different prisons and hospitals, and at one point lost track of her and claimed she had escaped even though she was still incarcerated.

"She died a horrible death and she died alone," stated her father, Claude Wood. The lawsuit remains pending. See: *Williams v. Indiana DOC*, Marion County Superior Court (IN), Case No. 49D05-1401-CT-001478.

Maine DOC

In an October 2013 *Bangor Daily News* article, Steve Lewicki, coordinator of the Maine Prisoner Advocacy Coalition, discussed the state of healthcare in Maine's prison system. "Complaints by prisoners are less," he said, noting that while medical services provided to prisoners are better than in the past, there are still concerns. This relative improvement coincided with the end of the state's contract with Corizon. The contract, valued at approximately $19.5 million, was awarded to another company in 2012.

A year earlier, the Maine legislature's Office of Program Evaluation and Government Accountability (OPEGA) completed a review of medical services in state prisons. The agency contracted with an independent consultant, MGT of America, to conduct most of the fieldwork, and the review included services provided under Corizon's predecessor company, CMS.

The OPEGA report, issued in November 2011, cited various deficiencies in medical care at Maine prisons – including medications not always being properly

administered and recorded by CMS staff. Although the company was notified of the problem, no corrective action was taken. CMS employees did not follow policies related to medical intake and medical records; OPEGA reported that 38% of prisoners' medical files had inadequate or inaccurate documentation regarding annual physical assessments, and that files were not complete or consistently maintained. The report found 11% of sick calls reviewed were either not resolved timely or had no documented resolution. OPEGA also criticized CMS for inadequate staff training.

At a January 2012 legislative committee hearing, state Senator Roger Katz asked Corizon regional vice president Larry Amberger, "My question to you is in light of this history, why should the state seriously be considering any proposal your company might make to get this contract back again?"

In response, Amberger criticized the methodology used by MGT during the assessment and said he believed Corizon provided quality medical care. Questioning and challenging the findings of an independent reviewer is the same tactic the company used in Idaho. Regardless, Corizon's contract to provide medical care to Maine state prisoners is now a part of history.

Louisville, Kentucky

While some jurisdictions, like Maine, have chosen not to renew their contracts with Corizon due to performance-related problems, in 2013 the Metro Department of Corrections in Louisville, Kentucky (LMC) offered the company a chance to rebid for its $5.5 million contract to provide medical care at the LMC jail. This time, however, it was Corizon that said "no thanks."

The rebid offer was made even though seven healthcare-related prisoner deaths occurred in a seven-month period in 2012 during Corizon's prior contract, which expired in February 2013. Nevertheless, LMC and Corizon agreed to extend the contract through July 30, 2013 on a month-to-month basis pending a formal rebid.

After the expiration of the month-to-month contract extension, Corizon notified LMC that it was no longer interested in providing services to the corrections department and would not seek to rebid the contract. LMC director Mark Bolton told the *Courier Journal* he was "surprised" by the company's decision. What seems more surprising is that LMC wanted to continue contracting with Corizon to provide medical services in spite of the number of prisoner deaths.

In April 2012, Savannah Sparks, 27, a heroin addict and mother of three, was arrested and held on shoplifting charges at the LMC jail. While withdrawing from heroin she vomited, sweat profusely, could not sit up, could not eat or drink, and defecated and urinated on herself. Six days later she was dead. According to the medical examiner, her death was due to "complications of chronic substance abuse with withdrawal."

A subsequent wrongful death suit alleged that Corizon and LMC employees were negligent in failing to provide treatment for Sparks' opiate addiction and withdrawal. Corizon settled the suit under confidential terms. See: *May v. Corizon*, Jefferson County Circuit Court (KY), Case No. 13-CI-001848.

Four months after Sparks' death, on August 8, 2012, another LMC prisoner, Samantha George, died. A lawsuit filed in Jefferson County Circuit Court claimed that George was moved from the Bullitt County Jail to the LMC facility on a charge of buying a stolen computer. According to the complaint, she told a Corizon nurse that she was a severe diabetic, needed insulin, and was feverish and in pain from a MRSA infection.

The nurse notified an on-call Corizon physician, who was not located at the facility and thus could not examine George in person, to decide if she should be taken to an emergency room. The doctor recommended monitoring George and indicated he would see her the next day. George's condition rapidly deteriorated while she was monitored by staff at the jail; she was found unresponsive a few hours after being admitted to the facility and pronounced dead a short time later.

An autopsy concluded that George died due to complications from a severe form of diabetes compounded by heart disease. According to the lawsuit, the Corizon doctor never saw George; among other defendants, the suit named Corizon and LMC director Mark Bolton as defendants.

Privatized Healthcare Problems (cont.)

The case was removed to federal court, then remanded to the county circuit court in October 2013. See: *George v. Corizon*, U.S.D.C. (W.D. Ky.), Case No. 3:13-cv-00822-JHM-JDM.

A few weeks after George's death, Kenneth Cross was booked into the LMC jail on a warrant for drug possession. According to a subsequent lawsuit, upon Cross' arrival at the jail a nurse documented that he had slurred speech and fell asleep numerous times during the medical interview. Several hours later he was found unconscious, then died shortly thereafter due to a drug overdose. The lawsuit filed by Cross' estate alleged that employees at the LMC jail were deficient in recognizing and treating prisoners' substance abuse problems and that the facility was inadequately staffed for such medical care.

After the deaths of Sparks, George, Cross and four other prisoners in 2012, LMC director Bolton said he believed Corizon took too long to evaluate and treat prisoners at the jail. According to the *Courier-Journal*, Bolton sent an email to his staff in December 2012 regarding the prisoners' deaths, stating, "Mistakes were made by Corizon personnel and their corporation has acknowledged such missteps." He further indicated that Corizon employees – not LMC staff members – were responsible for the care of the prisoners who died. Six Corizon employees at the LMC jail resigned in December 2012 during an internal investigation; they were not identified.

Bolton's criticism was too little, too late to prevent the deaths of the seven LMC prisoners, though the jail has since made improvements to its medical services, including a full-time detox nurse and new protocols for prisoners experiencing withdrawal. One could speculate that LMC's critique of Corizon might be a litigation tactic, to deflect responsibility. The fact remains that seven deaths occurred under Corizon's watch and, notwithstanding those deaths, LMC was willing to renew its contract with the company.

In January 2014, the Louisville Metro Police's Public Integrity Unit concluded investigations into three of the deaths at the jail, and criticized both Corizon and LMC. The Commonwealth Attorney's Office found that Sparks' and George's deaths were preventable; however, no criminal charges were filed. Dr. William Smock, a forensic examiner who served as a consultant during the investigations, stated with respect to George's death: "There is compelling evidence of a significant deviation from the standard of care and medical negligence on the part of the medical providers."

"I'm glad to see that the government's investigation matches exactly what our investigation showed, which is that her death and others like hers is easily preventable," said Chad McCoy, the attorney representing George's estate.

Minnesota DOC

After providing medical care to Minnesota state prisoners for 15 years, Corizon was not selected when the contract was rebid in 2013 – despite having submitted the lowest bid. Instead, competitor Centurion Managed Care was to begin providing healthcare services in Minnesota's prison system effective January 1, 2014 under a two-year, $67.5 million contract.

Corrections Commissioner Tom Roy said the contract with Centurion was expected to "deliver significant savings to taxpayers while improving the quality of care for offenders."

According to the *Star-Tribune*, nine prisoners died and another 21 suffered serious or critical injuries in Minnesota correctional facilities due to delay or denial of medical care under the state's previous contract, which had been held by Corizon or its predecessor, CMS, since 1998.

That contract was for a fixed annual flat fee of $28 million. A flat fee contract provides an incentive for the contractor to tightly control costs, as a reduction in expenses results in an increase in profit. The *Star-Tribune* found that many of the staffing arrangements negotiated in the contract played a role in the deaths and injuries. For example, the contract allowed Corizon physicians to leave at 4:00pm daily and did not require them to work weekends. During off-hours there was only one doctor on call to serve the state's entire prison system, and many of the off-hour consultations were done telephonically without the benefit of the prisoner's medical chart. Under the

contract, Corizon was not required to staff most facilities overnight.

The Minnesota Department of Corrections was held liable for nearly $1.8 million in wrongful death and medical negligence cases during the period when the state contracted with Corizon or CMS.

In October 2012, a jury in Washington County awarded Minnesota prisoner Stanley Riley more than $1 million after finding a Corizon contract physician, Stephen J. Craane, was negligent in providing medical treatment. The *Star-Tribune* reported that Riley suffered from what turned out to be cancer and had written a series of pleading notes to prison officials. One read, "I assure you that I am not a malingerer. I only want to be healthy again."

In May 2013, the state paid $400,000 to settle a lawsuit over the death of a 27-year-old prisoner at MCF-Rush City. Xavius Scullark-Johnson, a schizophrenic, suffered at least seven seizures in his cell on June 28, 2010. Nurses and guards didn't provide him with medical care for nearly eight hours. According to documents obtained by the *Star-Tribune*, Scullark-Johnson was found "soaked in urine on the floor of his cell" and was "coiled in a fetal position and in an altered state of consciousness that suggested he had suffered a seizure." An ambulance was called several hours later but a nurse at the prison turned it away, apparently due to protocols to cut costs. Corizon settled the lawsuit for an undisclosed sum in June 2013. See: *Scullark v. Garin*, U.S.D.C. (D. Minn.), Case No. 0:12-cv-01505-RHK-FLN.

Philadelphia, Pennsylvania

In Philadelphia, Mayor Michael A. Nutter has been accused of being too loyal to his campaign contributors, including Corizon. The company donated $1,000 to Nutter's 2012 campaign committee several months before the city renewed Corizon's contract to provide medical care to 9,000 prisoners in Philadelphia's prison system. Further, PHS donated $5,000 to Nutter's mayoral campaign in 2008.

The contract renewal would have been routine except for the fact that Corizon's performance in Philadelphia has been far from stellar. In July 2012 the company agreed to pay the city $1.85 million following an investigation that found Corizon was using a minority-owned subcontractor that did no work, which was a sham to meet the city's requirements for contracting with minority-owned businesses.

The renewed year-to-year Corizon contract, worth $42 million, began in March 2013. Nutter's administration was accused of using the year-to-year arrangement to avoid having the contract scrutinized by the city council; the city's Home Rule Charter requires all contracts of more than one year to be reviewed by

Privatized Healthcare Problems (cont.)

the council. Further infuriating opponents of the contract, Corizon was not the lowest bidder. Correctional Medical Care (CMC), a competitor, submitted a bid that would have cost the city $3.5 million less per year than Corizon. Philadelphia Prison Commissioner Louis Giorla defended the city's decision to award the contract to Corizon at a council hearing; however, he declined to answer questions as to why the administration considered Corizon's level of care to be superior to that provided by CMC.

Three union contracts with Corizon covering 270 of the company's workers in Philadelphia's prison system expired on November 26, 2013. Corizon demanded benefit cuts, including changes in employee healthcare programs, to offset wage increases promised under the company's contract with the city. A strike was averted in December 2013 when the mayor's office intervened and both sides reached a settlement. The *Philadelphia Daily News* reported that the new union contracts provide wage increases but also include a less-generous health insurance plan for Corizon employees.

Since 1995, Corizon and its predecessor, PHS, have received $196 million in city contracts. The company's contract was terminated for several months in 2002 as a result of complaints that a diabetic prisoner had died after failing to receive insulin. The city renewed the contract anyway, citing affordability and pledging increased oversight. The city's law department estimates that Philadelphia has paid over $1 million to settle lawsuits involving claims of deficient prison healthcare; the largest settlement to date is $300,000, paid to a prisoner who did not receive eye surgery and is now partially blind.

Based upon the number of lawsuits filed against Corizon alleging inadequate medical care, its use of a sham subcontractor and the company's treatment of its own employees, it appears that maintaining the status quo – not best practices – may be the controlling factor in Philadelphia's continued relationship with Corizon.

Allegheny County, Pennsylvania

On September 30, 2013, a prisoner jumped from the top tier of a pod at the Allegheny County Jail. Following an investigation, authorities refused to make public their findings and declined to disclose the prisoner's injuries, citing medical privacy laws. The prisoner, Milan Karan, 38, was not transported to the hospital until the following day.

A spokesperson for Corizon, which provides medical care at the 2,500-bed jail, defended the nearly 24-hour delay by noting the prisoner "was under observation" before being sent to a hospital.

In December 2013, the *Pittsburgh Post-Gazette* reported that Corizon was having difficulty staffing the Allegheny County Jail. When the newspaper requested a comment from Corizon vice president Lee Harrington, Harrington claimed he had no knowledge of staffing problems – despite having previously received emails from the facility's warden about that exact issue.

The staffing problems resulted in prisoners not receiving their medication in a timely manner. In emails obtained by the *Post-Gazette*, Warden Orlando Harper wrote to Harrington in October 2013, noting, "We are continuing to experience issues pertaining to the following: 1. Staffing, 2. Medication distribution." Also, on November 17, 2013, Deputy Warden Monica Long sent an email to Corizon and jail staff. "I was just informed by the Captain on shift, the majority of the jail has not received medication AT ALL," she stated, adding, "Staffing is at a crisis."

That crisis had been ongoing since Corizon assumed the medical services contract at the facility on September 1, 2013. Before the $62.55 million, five-year contract was awarded, Corizon vice president Mary Silva wrote in an email that it was imperative the jail have "adequate staffing on ALL shifts." That promise was made despite Corizon laying off many of the former employees of Allegheny Correctional Health Services, the jail's previous healthcare provider.

Allegheny Correctional had provided four full-time and one part-time physician during its contract tenure. Corizon reduced the number of doctors to one full-time and one part-time physician. Allegheny Correctional also employed three psychiatrists and one psychologist. Corizon's contract

requires that it provide one full-time psychiatrist and a part-time psychologist.

In January 2014, the United Steelworkers union (USW) filed a petition with the National Labor Relations Board to unionize Corizon employees at the Allegheny County Jail, including nurse practitioners, RNs, physician assistants and psychiatric nurses. USW representative Randa Ruge indicated that the Corizon workers had approached the union for representation due to intolerable working conditions.

"Our folks [Corizon employees] are in danger of losing their licenses to practice by some of the things that the company has them doing," she said. Ruge told the *Post-Gazette* that the jail had run out of insulin for more than a week and Corizon supervisors had "countermanded doctors' orders."

Several weeks after the USW filed the labor petition, a Catholic nun who worked as an RN at the jail was fired by Corizon, allegedly for union organizing activities. Sister Barbara Finch was dismissed after she openly expressed concerns about staffing, patient care and safety at the facility. The USW filed an unfair labor complaint against Corizon regarding Finch's dismissal, claiming she was terminated in retaliation for her union activities.

"This is a clear case of intimidation and union-busting at its worst," said USW President Leo W. Gerard. "Sister Barbara has been an outspoken advocate of change for these courageous workers and their patients, and this kind of illegal and unjust action, unfortunately, is par for the course with Corizon."

On February 14, 2014, Corizon employees at the Allegheny County Jail voted overwhelmingly to unionize. "The next step is getting to the bargaining table and getting Corizon to bargain in good faith and get some changes made in the health system at the jail," said Ruge.

The previous week, Allegheny County Controller Chelsa Wagner stated she had "grave and serious concerns" about medical care at the facility, including issues related to staffing and treatment for prisoners with certain mental health conditions. "I regard the current situation as intolerable and outrageous, and I fully expect necessary changes to be urgently implemented," she wrote in a letter to Corizon.

Polk County, Iowa

On August 29, 2013, Ieasha Lenise Meyers, incarcerated at the jail in Polk County, Iowa on a probation violation, gave birth on a mattress on the floor of her cell. Her cellmates assisted with the delivery. Earlier, when Meyers, 25, had complained of contractions, a Corizon nurse called an offsite medical supervisor and was told to monitor the contractions and check for water breaking.

Despite Meyers having been twice sent to a hospital earlier the same day, and pleading that she was about to give birth, the nurse did rounds in other parts of the jail. Guards reportedly did not check on Meyers as required, even though the birth could be seen on a nearby security monitor. Only after the baby was born was medical care provided. Sheriff Bill McCarthy defended the actions of jail staff.

Corizon Employee Misconduct

Like most private contractors that provide prison-related services, Corizon tends to cut costs in terms of staffing and operational expenses. As noted above, this includes paying lower wages, providing fewer or inferior benefits and hiring less qualified workers who can be paid less. Sometimes, however, these practices result in employees more like to engage in misconduct.

At the Pendleton Correctional Facility in Indiana, a Corizon nurse was arrested and charged with sexual misconduct, a Class C felony. The *Herald Bulletin* reported that in April 2013, when Colette Ficklin was working as a contract nurse for Corizon, she convinced a prisoner to fake chest pains so they could be alone in an exam room. A guard told internal affairs officers that she witnessed Ficklin and the prisoner engaging in sex acts in the prison's infirmary. [See: *PLN*, Sept. 2013, p.17].

In March 2013 at the Indiana State Prison in Michigan City, a Corizon practical nurse was charged with drug trafficking and possession with intent to distribute. Phyllis Ungerank, 41, was arrested and booked into the LaPort County Jail after attempting to smuggle marijuana into the facility. [See: *PLN*, July 2012, p.50].

A Corizon nurse at the Volusia County Branch Jail in Daytona Beach, Florida

Privatized Healthcare Problems (cont.)

was fired after officials learned she was having sex with and giving money to a prisoner. Valerie Konieczny was terminated on December 18, 2012 when the jail was contacted by the brother of prisoner Randy Joe Schimp, who had written in a letter that a nurse was having sex with him and depositing money into his jail account. Investigators determined that Konieczny was the nurse who had sex with Schimp at both the Volusia County facility and another branch jail in 2011.

In New Mexico, Corizon physician Mark Walden was accused of fondling prisoners' genitals and performing prostrate exams that were "excessive and inappropriate in terms of length and method." At times, Walden reportedly did not wear gloves during the prostate exams. He was accused of sexually abusing 25 or more male prisoners while employed as a doctor at two privately-operated facilities, the Guadalupe County Correctional Facility in Santa Rosa and Northeast New Mexico Detention Facility in Clayton.

Lawsuits were filed against Walden, Corizon and private prison operator GEO Group, and Walden's medical license was suspended in December 2013. The suits claim that Corizon allowed Dr. Walden to work at the Clayton prison "despite knowing of the risk of sexual abuse and having the ability to know that [he] was repeatedly sexually abusing patients" at the Santa Rosa facility. [See: *PLN*, Sept. 2013, p.47].

The Privatization Model

Economics professors Kelly Bedard and H.E Frech III at the University of California at Santa Barbara examined the privatization of correctional medical services in their research study, "Prison Health Care: Is Contracting Out Healthy?," published in *Health Economics* in November 2009.

They concluded: "We find no evidence to support the positive rhetoric regarding the impact of prison health care contracting out on inmate health, at least as measured by mortality. Our findings of higher inmate mortality rates under contracting out are more consistent with recent editorials raising concerns about this method of delivering health care to inmates."

Today, five years after the Bedard-Frech report was published, it has the benefit of hindsight. Since the report was written, its findings and conclusions have been reaffirmed in prisons and jails across the nation that have contracted with private companies to provide medical care to prisoners. Cost reductions in the provision of correctional healthcare tend to result in greater inefficiencies that lead to poorer outcomes. Consequently, for-profit medical contractors may actually be increasing morbidity and mortality in prison and jail populations.

Many governmental entities are willing to outsource correctional healthcare to private companies; reasons for doing so include cutting costs, risk management and removing healthcare duties from corrections departments. If Corizon's record with respect to providing medical care to prisoners seems dismal, the company can always defend its actions by stating it does what it has been hired to do: Cut costs for its customers. And those costs have been rising due to an increasingly aging, and thus medically-needy, prison population. [See: *PLN*, Nov. 2012, p.22; Dec. 2010, p.1].

With respect to risk management, litigation is not a compelling issue within the prison healthcare industry and Corizon views lawsuits as simply a cost of doing business. "We get sued a lot, but 95% or 97% of cases were self-represented cases," ex-CEO Rich Hallworth was quoted in an August 2013 article. He added that most lawsuits settle for an average of less than $50. Of course it is difficult for prisoners to obtain representation to pursue litigation – unless it's a wrongful death case, and then usually their family or estate is doing the suing.

Nor are the public agencies that contract with private medical providers greatly concerned about their litigation records. In fact, when Florida contracted with Corizon and Wexford Health Sources to provide medical care for the state's entire prison system, the Florida Department of Corrections didn't ask the companies about their litigation histories – such as lawsuits raising claims of deliberate indifference, negligence and medical malpractice.

"What really troubles me about this is the fact that the department didn't ask these very basic, elemental questions any system would ask," observed ACLU National Prison Project staff attorney Eric Balaban. "These two vendors were taking

over Florida's massive health care system and you'd think they would have asked hard questions to determine if these companies can provide these services within constitutional requirements."

Even worse, the downgrading of Corizon's debt rating by Moody's in 2013 creates a potential problem for the company's service delivery model. The majority of Corizon's revenue is derived from contracts with state and local agencies that are trying to reduce their budgetary expenses. Given those fiscal pressures and competition from Wexford, Armor, Centurion and other prison healthcare companies, Corizon cannot easily increase its revenue through contractual price increases. But the company's expenses are largely within its control.

Unfortunately for prisoners, in order to reduce costs Corizon will likely have to curtail the quality or quantity of healthcare services it provides. As noted above, this can be done by reducing employee wages or benefits; the company can also cut costs through understaffing and by limiting prescription medications or providing fewer referrals to hospitals and specialists. A growing trend is to use off-site medical staff who consult with prisoners through telemedicine. [See: *PLN*, Dec. 2013, p.34].

The correctional healthcare industry, comprised of only a few large companies, is highly competitive. When one company loses a contract, another is more than willing to step in and submit a bid. What really matters for most government agencies and policymakers is the bottom line cost.

According to Dr. Marc Stern, the court-appointed special master in Idaho, "whoever delivers prison healthcare is doing it on less than adequate funding because that's how much municipalities, state legislatures and county commissions are allocating." He noted that privatization can be good in some cases and bad in others, depending on the level of oversight by the contracting public agency.

When Corizon compromises medical care to save money, such as curtailing the use of ambulances for emergency transports, reducing the number of on-site doctors or sending fewer prisoners to outside hospitals for needed treatment, government officials typically fail to take corrective action and deny responsibility for the resultant deaths and injuries. Indeed, as with the Idaho Department of Corrections and LMC in Kentucky, they sometimes want to reward the company with renewed contracts.

Why? Because continuity maintains

cost control, which is the driving force behind privatization of prison and jail medical services.

Conclusion

The intent of this article was to review Corizon's performance and practices based on publicly-available information, including news reports and court records. Although the company was formed in June 2011, its two predecessor firms, PHS and CMS, littered the news and judicial dockets over the years with lawsuits and articles involving cases of inadequate healthcare. Thus, the sins of Corizon's parents, CMS and PHS, are forever linked with the progeny of their merger.

Such past misdeeds could be explained away had Corizon adopted a new, post-merger culture that was removed from prior practices under PHS and CMS. However, many of Corizon's mid-level and top executives – including ex-CEO Rich Hallworth, former president Stuart Campbell, chairman Richard H. Miles and a number of vice presidents – were previously executives with PHS or CMS. It was during their tenure at those companies that numerous cases involving deficient medical care occurred.

The corporate culture of Corizon, as well as its business model, appears to be largely the same as those of its predecessors. Therefore, the only thing that may have changed as a result of the merger that created Corizon is the company's name.

Gregory Dober is a freelance writer in healthcare and ethics. He has been a contributing writer for PLN since 2007 and co-authored Against Their Will: The Secret History of Medical Experimentation on Children in Cold War America, *published by Palgrave in 2013. [See: PLN, Nov. 2013, p.36].*

Sources: *Bloomberg News, Forbes, www.businessweek.com, Philadelphia Inquirer, Philadelphia Daily News, The American Independent, Pittsburgh Tribune-Review, St. Louis Business Journal, www.browardbulldog.org, Miami Herald, WHAS-TV, The Tennessean, Courier-Journal, Idaho Business Review, Associated Press, The Arizona Republic, Maine Public Broadcasting Network, Bangor Daily News, WANE-TV, Raton Range, Des Moines Register, Star-Tribune, The Nation, The Florida Current, www.usw.org, KPHO-TV, WANE-TV, Tucson Citizen, WCAV-TV, www.wdrb.com, www.modernhealthcare.com, www.cochs.org, www.wndu.com, www.afsc.org, www.americanownews.com*

Florida County Agrees to Pay $4 Million to Deceased Prisoner's Estate

by Derek Gilna

Nicholas T. Christie, incarcerated at the Lee County jail in Ft. Myers, Florida, died on March 31, 2009 after being repeatedly pepper sprayed by deputies while strapped to a restraint chair. Following three years of litigation, Lee County officials agreed in May 2013 to pay a record settlement of $4 million to Christie's estate.

The jail's for-profit medical contractor, Prison Health Services (PHS), now known as Corizon, was named as a defendant in the federal lawsuit and included in the settlement agreement.

The § 1983 suit raised claims related to Christie's death under the "Fourth, Eighth and/or Fourteenth Amendments to the United States Constitution, the laws of the United States, and the laws of the State of Florida."

The complaint alleged that Christie was "restrained to a chair with a hood over his head and face for several hours in the custody of the Lee County Sheriff, while being detained on a misdemeanor trespass charge," and that medical staff at the jail failed to provide him with adequate care after he showed signs of respiratory distress during and after that incident. Medical personnel, the lawsuit stated, "acted willfully, wantonly, maliciously, and with reckless and callous disregard for and deliberate indifference to the serious medical and mental health needs of Nick Christie, and in a manner that shocks the conscience and offends traditional notions of decency, all of which led to his wrongful and untimely death."

According to the complaint, prior to and during his placement in the restraint chair, Christie disclosed to jail staff that he had "certain serious medical conditions..., including, but not limited to, Chronic Obstructive Pulmonary Disease (COPD), a heart condition, cardiovascular disease, atrial fibrillation, obesity, gout, back pain, constipation, and umbilical hernia, all of which was recorded and documented in Mr. Christie's PHS medical chart/record."

Further, Christie's wife had contacted jail officials to advise them of her husband's medical conditions and to inform them he had not been taking his medication regularly, which often caused him to act in an erratic manner. When Christie was booked into the jail, officials confiscated the medications he had with him and failed to refer him for a proper medical intake evaluation that would have resulted in the jail reissuing his prescribed medications to replace those that were taken.

A report by Florida's state medical examiner found the cause of Christie's death was "hypoxic encephalopathy, following resuscitation for cardiac arrest, due to or as a consequence of cardiogenic shock with congestive heart failure, due to or as a consequence of physiologic stress, following restraint and noxious effects of Oleoresin Capsicum" – i.e., the pepper spray used by sheriff's deputies.

The often excessive and abusive use of "restraint chairs" by corrections officials has been criticized by prisoners' rights groups and has resulted in litigation in other jurisdictions as well. Unfortunately for Christie, the failure of Lee County jail staff to follow proper procedures and the failure of PHS employees to provide adequate medical care led to his death. And unfortunately for the county and PHS, those failures resulted in a $4 million settlement to resolve the subsequent lawsuit filed by Christie's estate. See: *Christie v. Scott,* U.S.D.C. (M.D. Fla.), Case No. 2:10-cv-00420-UA-DNF.

Seventh Circuit Upholds Removal of Prisoner's Dreadlocks

The Seventh Circuit Court of Appeals has held that an Illinois prisoner's religious rights were not violated when prison officials required him to cut off his dreadlocks to be transported to a court hearing.

Peter A. Lewis, incarcerated at the Dixon Correctional Center, is a member of a religious sect called the African Hebrew Israelites of Jerusalem. Consistent with the requirements of his faith, Lewis took the voluntary Nazirith vow, which, among other things, committed him to not cut his hair. He had previously filed suit against prison officials, claiming that they infringed his religious freedom by refusing to let him have visits unless he agreed to cut his hair. A 2003 settlement in that lawsuit allowed Lewis to have visitors if he permitted guards to search his dreadlocks for contraband before and after each visit.

Prison officials gave Lewis a choice in January 2004, when he was scheduled to appear in federal court. He could either get a haircut or go to segregation as punishment for eluding (by refusing a haircut) his scheduled court hearing. Lewis chose the haircut, then claimed prison officials knew his court date had been postponed, depriving them of a security concern that justified cutting his hair.

A dispute existed as to what prison officials knew about the court date, and when. It was undisputed, however, that Lewis was transported to court shortly after the originally-scheduled court hearing. The Seventh Circuit wrote, "it is obvious that transporting prisoners and placing them in courtrooms presents significant security concerns, warranting protective measures."

The appellate court held that prison officials' discretion relative to security-related matters extends to a determination that a particular prisoner's dreadlocks are too thick or dense to be readily searchable on a certain occasion, such as a visit to federal court. There was no evidence that Lewis was treated differently than other similarly situated prisoners, nor that the prison's security concerns were outweighed by his interest in engaging in a sincere religious observance.

The district court's order granting summary judgment to the defendant prison officials was therefore affirmed, and the U.S. Supreme Court denied Lewis' petition for writ of certiorari on October 7, 2013. See: *Lewis v. Sternes*, 712 F.3d 1083 (7th Cir. 2013), *cert. denied*.

The Seventh Circuit had previously held that an Illinois prison guard violated a prisoner's First Amendment rights by ordering his dreadlocks to be forcibly cut, and that the guard was not entitled to qualified immunity. However, the appellate court noted that the facts in that case involved "outright arbitrary discrimination rather than a failure merely to 'accommodate' religious rights." [See: *PLN*, April 2013, p.44].

From the Editor

by Paul Wright

This month's cover story on Corizon, the company formed by the merger of Prison Health Services and Correctional Medical Services, is our most recent reporting on an issue that has been ongoing for the past several decades. Namely, the prison HMO model whereby corrections agencies contract with for-profit companies to provide medical services to prisoners, while the companies' business model requires that they delay or deny treatment in order to make a profit. Not surprisingly this results in a pattern of deaths, injuries and pain suffered by prisoners who have no other options for obtaining medical care.

What is interesting is that despite decades of abuse, corruption and fraud, the government entities that contract with for-profit prison medical providers still fail to adequately monitor and audit their performance. Even after repeated contractual violations, if one company's contract is canceled or expires, the government typically awards the contract to another corporation with similar performance problems. Besides Corizon, other prison medical care companies include Wexford Health Sources, Centurion, NaphCare, Armor Correctional Health Services, Correct Care Solutions and Conmed Health Management.

The notion that such companies should actually be required to provide the medical services for which they are being paid with taxpayer dollars seems alien to the government officials who enter into these contracts. If anyone has information on services that are being contracted by corrections agencies but not being performed by medical care providers or other private prison companies, please contact us with details.

PLN's website has over 20,000 articles related to prisons and jails, over 7,000 legal documents in our brief bank and more than 5,000 documents in our publications library, and receives over 100,000 visitors a month. We are in the process of redesigning our websites for Prison Legal News, the Human Rights Defense Center and the Campaign for Prison Phone Justice, to make them easier to use and navigate and to incorporate all the technological updates that have occurred since our last website design. The new sites should be online within the next several months.

As we move into 2014, our goal is to increase our circulation by adding another 1,000 print subscribers. You can help by encouraging others to subscribe or giving someone a gift subscription. Please consider doing both, and enjoy this issue of PLN.

Second Circuit Vacates Magistrate's Judgment Entered without Consent

On March 6, 2013, the Second Circuit Court of Appeals vacated the summary judgment dismissal of a New York prisoner's lawsuit, finding he had not consented to having the case decided by a magistrate judge.

Willie James Yeldon filed suit in federal court against numerous New York and Wyoming prison and community-based doctors under 42 U.S.C. § 1983.

Although he expressly declined to consent to the appointment of a magistrate judge, the district court entered a February 8, 2008 order referring the case to a magistrate pursuant to 28 U.S.C. § 636(c). The magistrate judge then granted summary judgment to the defendants on all of Yeldon's claims.

On appeal, the Second Circuit noted it had previously held in *N.Y. Chinese TV Programs, Inc. v. U.E. Enterprises*, 996 F.2d 21 (2d Cir. 1993) that consent to appoint a magistrate judge must be "truly voluntary," and "consent of all parties must be clear and express or the requirement would mean little."

Recognizing that Yeldon had expressly refused to consent to a magistrate, the Court of Appeals could not find on the record before it that he gave implied consent by failing to object to the district court's February 2008 order.

"As a pro se litigant, he may not have appreciated that participating in proceedings before the Magistrate Judge could impugn the effectiveness of his written refusal to consent," the appellate court wrote.

Since "the lack of consent is a jurisdictional defect that cannot be waived," the Court of Appeals found the magistrate lacked authority to enter final judgment under 28 U.S.C. § 636(c)(1), and that the Court consequently lacked jurisdiction to review that judgment. The Second Circuit therefore vacated the judgment, holding that Yeldon had not consented to the appointment of a magistrate judge. See: *Yeldon v. Fisher*, 710 F.3d 452 (2d Cir. 2013).

State of Washington Prison Phone Justice Campaign!

Prison Phone Justice Project needs your help for statewide campaign!

While much progress has been made in reducing the costs of long distance prison calls, we are still fighting to reduce the high costs of in-state prison and jail calls at the local level. In January 2014, the Human Rights Defense Center (HRDC), the parent organization of Prison Legal News, reopened its Seattle office to launch the Washington Prison Phone Justice Campaign.

This is our first statewide phone justice campaign, and we're excited to have people involved on both the local and national levels who are dedicated to ending the exorbitant phone rates and kickbacks associated with the prison phone industry. David Ganim, HRDC's national Prison Phone Justice Director, has already been obtaining the phone contracts and rates for all 39 county jails in Washington, as well as data from the Washington Department of Corrections.

We recently hired a local campaign director, Carrie Wilkinson, who will manage our office in Seattle and coordinate the statewide campaign. Washington prisoners and their families pay some of the highest phone rates in the nation, and we need your help to win this battle!

Here's how you can help – first, please visit the Washington campaign website:

www.wappj.org

There you can see all the ways you can make a difference. The site allows you to sign up for the campaign and upload videos and share blog entries about how high prison phone rates make it difficult for you to stay in touch with your incarcerated loved ones. You can also upload an audio message, and even call in your story to **1-877-410-4863**, toll-free 24 hours a day, seven days a week! We need to hear how you and your family have been affected by high prison phone rates. If you don't have Internet access, you can mail us a letter describing your experiences and we'll post it. Send letters to HRDC's main office at: **HRDC, Attn: WA Phone Justice Campaign, P.O. Box 1151, Lake Worth, FL 33460.** Washington state prisoners can mail us letters and send a copy of this notice to their family members so they can get involved.

By choosing to participate in the Washington Prison Phone Justice Campaign, you will be playing a key role in ending the unfair phone rates that prisoners' families have to pay. We cannot win this battle without your help, so please visit the campaign website and share your experiences! Donations are also welcome and greatly appreciated, and can be mailed to the above address or made online via the campaign site. Thank you for your support!

Why There's an Even Larger Racial Disparity in Private Prisons Than in Public Ones

by Katie Rose Quandt

It's well known that people of color are vastly overrepresented in U.S. prisons. African-Americans and Latinos constitute 30 percent of the U.S. population and 60 percent of its prisoners. But a new study by University of California-Berkeley researcher Christopher Petrella addresses a fact of equal concern. Once sentenced, people of color are more likely than their white counterparts to serve time in private prisons, which have higher levels of violence and recidivism and provide less sufficient health care and educational programming than equivalent public facilities. [See: *PLN*, March 2013, p.16].

The study compares the percentage of prisoners identifying as black or Hispanic in public prisons and private prisons in nine states. It finds that there are higher rates of people of color in private facilities than public facilities in all nine states studied, ranging from 3 percent in Arizona and Georgia to 13 percent in California and Oklahoma. According to Petrella, this disparity casts doubt on cost-efficiency claims made by the private prison industry and demonstrates how ostensibly "colorblind" policies can have a very real effect on people of color.

The study points out an important link between prisoner age and race. Not only do private prisons house high rates of people of color, they also house low rates of individuals over the age of 50 – a subset that is more likely to be white than the general prison population. According to the study, "the states in which the private versus public racial disparities are the most pronounced also happen to be the states in which the private versus public age disparities are most salient." (California, Mississippi and Tennessee did not report data on prisoner age).

Private prisons have consistently lower rates of older prisoners because they often contractually exempt themselves from housing medically expensive – which often means older – individuals, which helps them keep costs low and profits high. This is just another example of the growing private prison industry's prioritization of profit over rehabilitation, which activists say leads to inferior prison conditions and quotas requiring high levels of incarceration even as crime levels drop. The number of state and federal prisoners housed in private prisons grew by 37 percent from 2002 to 2009, reaching 8 percent of all prisoners in 2010.

The high rate of incarceration among young people of color is partly due to the war on drugs, which introduced strict sentencing policies and mandatory minimums that have disproportionately affected non-white communities for the past 40 years. As a result, Bureau of Justice Statistics data shows that in 2009, only 33.2 percent of prisoners under 50 reported as white, as opposed to 44.2 percent of prisoners aged 50 and older.

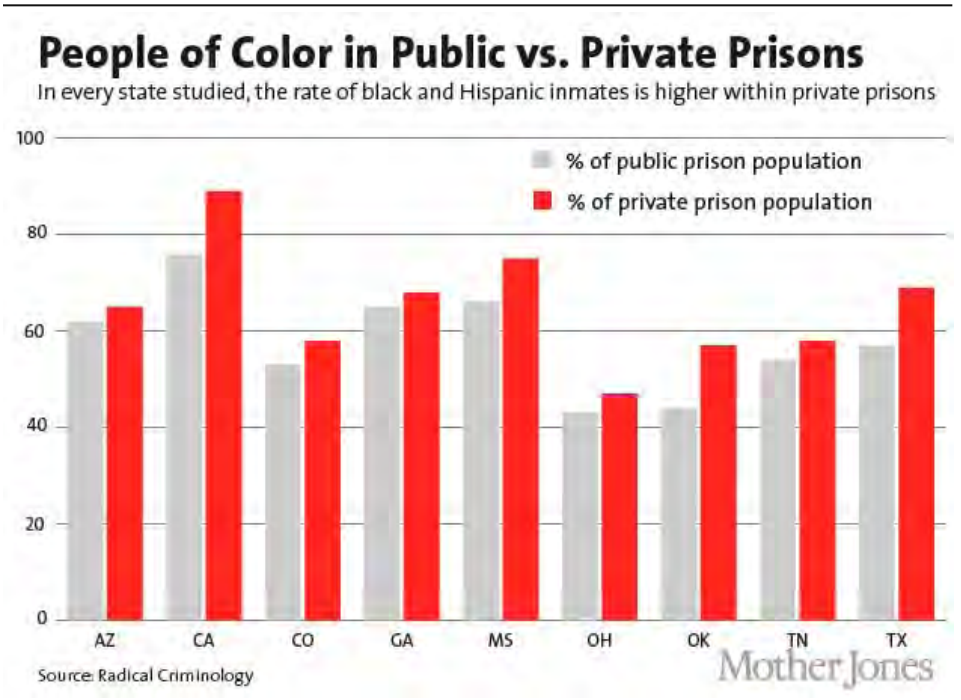
So when private prisons avoid housing older prisoners, they indirectly avoid housing white prisoners as well. This may explain how private facilities end up with "a prisoner profile that is far younger and far 'darker' ... than in select counterpart public facilities."

Private prisons claim to have more efficient practices, and thus lower operating costs, than public facilities. But the data suggest that private prisons don't save money through efficiency, but by cherry-picking healthy prisoners. According to a 2012 ACLU report, it costs $34,135 to house an "average" prisoner and $68,270 to house an individual 50 or older. In Oklahoma, for example, the percentage of individuals over 50 in minimum- and medium-security public prisons is 3.3 times that of equivalent private facilities.

"Given the data, it's difficult for private prisons to make the claim that they can incarcerate individuals more efficiently than their public counterparts," Petrella tells *Mother Jones*. "We need to be comparing apples to apples. If we're looking at different prisoner profiles, there is no basis to make the claim that private prisons are more efficient than publics."

He compared private prisons to charter schools that accept only well-performing students and boast of their success relative to public schools.

David Shapiro, former staff attorney at the ACLU National Prison Project, agrees. "The study is an example of the many ways in which for-profit prisons create an illusion of fiscal responsibility even though the actual evidence of cost savings, when apples are compared to apples, is doubtful



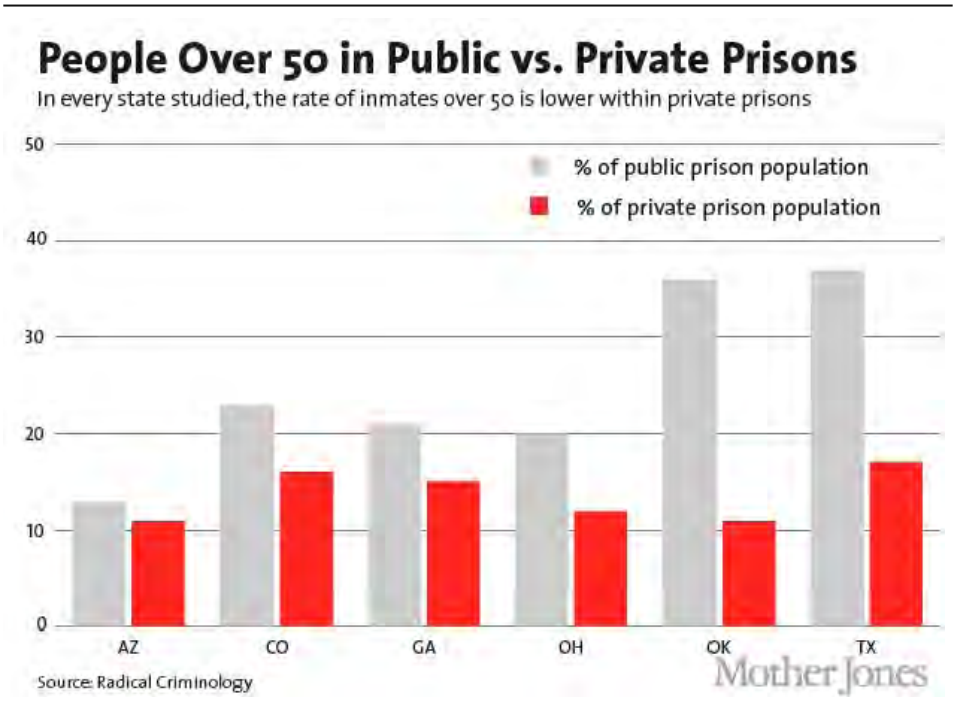
at best," he says. "Privatization gimmicks are a distraction from the serious business of addressing our addiction to mass incarceration."

But in addition to casting doubt on the efficacy of private prison companies, Petrella says his results "shed light on the ways in which ostensibly colorblind policies and attitudes can actually have very racially explicit outcomes. Racial discrimination cannot exist legally, yet still manifests itself."

Alex Friedmann, managing editor of *Prison Legal News,* calls the study a "compelling case" for a link between age disparities and race disparities in public and private prison facilities. "The modern private prison industry has its origins in the convict lease system that developed during the Reconstruction Era following the Civil War, as a means of incarcerating freed slaves and leasing them to private companies," he says. "Sadly, Mr. Petrella's research indicates that the exploitation of minority prisoners continues, with convict chain gangs being replaced by privately-operated prisons and jails."

* The study draws on data from nine states – Arizona, California, Colorado, Georgia, Mississippi, Ohio, Oklahoma, Tennessee and Texas – selected because they house at least 3,000 individuals in private minimum- and medium-security facilities.

Katie Rose Quandt is an online editorial fellow at Mother Jones. This article was originally published by Mother Jones (www.motherjones.com) on February 17, 2014; it is reprinted with permission, including the accompanying charts.



Arrest-Proof Yourself, by Dale Carson and Wes Denham
(Chicago Review Press, 2007). 282 pages (paperback), $14.95.

Book review by John E. Dannenberg

In short, *Arrest-Proof Yourself* is a colorfully-written manual on how to avoid being arrested. The book's principal thesis is a hypothetical "electronic plantation" where all persons who are arrested – even if later exonerated – must serve an irrevocable life sentence of being blacklisted from future employment, socially ostracized, etc. as a result of their arrest record. The book is written in street language to garner the attention of younger people who, statistically, are more likely to face arrest. The authors emphatically counsel the reader, wherever possible, to simply avoid being seen by the police; but if stopped, they provide advice on how to act and, more importantly, how *not* to act.

Authors Carson and Denham speak from years of experience: Carson was a former police officer in both state and federal jurisdictions while Denham is a private investigator. Carson, now a defense attorney, today defends the very people who, in *Arrest-Proof Yourself*, he tries to prevent from needing his services. Throughout the book the authors speak about how police officers love to arrest people, which not only makes them happy but also improves their job performance reviews. Accordingly, police are not motivated to help little old ladies cross the street but rather to arrest as many people as they can. The means by which people are targeted for arrest, and whether they are arrested following a police stop, are the central topics of *Arrest-Proof Yourself*.

Those targeted for arrest are not the rich and famous, who have good attorneys and money to influence prosecution decisions, but rather the average person who is less educated and lacks street smarts. Those are the people who comprise the millions arrested each year for misdemeanors, traffic violations and petty crimes – mostly non-violent offenses. *Arrest-Proof Yourself* examines why they are even stopped by police officers, let alone arrested.

Most people are not arrested for something they do in plain view of the police but for incidental things during the course of a routine stop and search. This commonly occurs when people are pulled over in vehicle stops – such as for a defective brake light – and an incidental search reveals drugs, weapons or stolen property in plain sight. If the suspect doesn't have a good attitude, can't produce ID, registration or insurance, is in the "wrong neighborhood," has outstanding unpaid tickets or warrants, or has medication without a copy of the doctor's prescription, then he or she is likely to be arrested rather than receive a citation. And that arrest record, standing alone, will destroy the person's otherwise clean record for all time due to the ubiquitous online data that follows everyone wherever they go; those once upstanding citizens are consigned forever to the "electronic plantation."

Arrest-Proof Yourself is written in an arrogant style, demonstrating through the authors' experience the nature of police officers to arrest as many people as possible. The treatment of suspects is described as demeaning, revealing an unfair and biased arrest process that primarily targets the less fortunate and impoverished. Although published in 2007, this book provides information that remains timely today and is a sobering wake-up call. *Arrest-Proof Yourself* is available in PLN's bookstore on page 62 of this issue.

WELCOME TO KRASNYA BABES & KRASNYA STUDS WORLD

TENS OF THOUSANDS OF THE HOTTEST AND MOST SCANDALOUS BABES&DUDES FOUND ON THE PLANET.
EACH CATALOG PAGE HAS 120 BEAUTIFUL GIRLS OR BOYS POSING JUST FOR YOU!
ORDER ONE CATALOG PAGE FOR ONLY $4.50 OR FOR 10 U.S. FOREVER STAMPS WITH AN SASE ENCLOSED.
WE WILL SEND YOU VOLUME ONE. EACH ADDITIONAL VOLUME THE SAME PRICE!

HELP US TO HELP YOU!

WE ARE MORE THAN HAPPY TO ANSWER E-MAIL INQUIRES HOWEVER, DUE TO MAILING COST AT $0.46 CENTS A LETTER, PLEASE ENCLOSE AN SASE WITH YOUR QUESTIONS, OTHERWISE NO REPLIES!

WHAT ABOUT OUR PRICES AND POLICIES

COLOR PRINTS ON 4x6 GLOSSY PHOTO PAPER AS LOW AS $0.35 CENTS PER PRINT ON ORDERS OVER 500 SHIPPED ACCORDING TO POLICY: 25 PICTURES PER ENVELOPE EVERY 24 HOURS. S&H $2.00 PER ENVELOPE.

METHOD OF PAYMENT/CONTACT INFORMATION

U.S. POSTAL SERVICE MONEY ORDERS-STATE & FEDERAL CORRECTIONAL INSTITUTIONAL CHECKS

PAYABLE ONLY TO: KRASNYA L.L.C.

EQUATION FOR FIRST CLASS U.S. FOREVER STAMPS
BRAND NEW FLAT BOOK FOR ALL ORDERS AT THE RATE OF $6.00 PER FLAT BOOK.
WE RESPOND TO OUR CLIENTS NEEDS AND TRY TO HELP THE BEST WE CAN.

OUR SEASONAL SPECIALS MEAN A KICKOFF OF SAVINGS!

COLOR CATALOG DISCOUNT SALE
ONE COLOR CATALOG OF 120 BABES IN CLASSIC OR NUDE LINES $4.50
PLEASE INCLUDE A SELF-ADDRESSED STAMPED (2-FIRST CLASS STAMPS) ENVELOPE.
QUANTITY BUYS:

5-14 CATALOGS	=10% OFF OUR REGULAR PRICE
15 CATALOGS	=15% OFF OUR REGULAR PRICE
20 CATALOGS	=20% OFF OUR REGULAR PRICE
25 CATALOGS	=25% OFF OUR REGULAR PRICE
30 CATALOGS	=30% OFF OUR REGULAR PRICE
35 CATALOGS	=35% OFF OUR REGULAR PRICE
40 CATALOGS	=40% OFF OUR REGULAR PRICE
45 CATALOGS	=45% OFF OUR REGULAR PRICE
50 CATALOGS	=50% OFF OUR REGULAR PRICE

BE SURE TO SPECIFY CLASSIC OR NUDE BABES!

150 VOL. OF KRASNYA BABES CLASSIC LINE
150 VOLUMES OF KRASNYA BABES NUDE LINE

LOOSE STAMPS FOR LOOSE BABES
KRASNYA LOOSE STAMP GRAB BAG SPECIAL
10 LOOSE BABES.....30 STAMPS
25 LOOSE BABES.....75 STAMPS
50 LOOSE BABES.....150 STAMPS
ALL STAMPS MUST BE 1ST CLASS STAMPS IN LIKE NEW CONDITION!
SPECIFY NUDE OR BOP-SAFE (NO VISIBLE NUDITY)
WE WILL PICK SELECTION FOR YOU

KRASNYA BABES HAS SPRUNG SALE!
FREE SAMPLE CATALOG FROM KRASNYA!
120 BABES IN EACH CATALOG
ENCLOSE ONE SASE WITH TWO FIRST CLASS STAMPS! 1 CAT PER CUSTOMER
PLEASE SPECIFY MALE OR FEMALE BABES NUDE OR BOP-FRIENDLY

WE'D LIKE TO START THE HOLIDAYS RIGHT THIS YEAR!
THE WAY TO DO THAT IS BY SENDING YOU INCREDIBLE VALUES
IT'S ONE THING TO TALK THE TALK, ANOTHER TO WALK THE TALK

50 GREAT BABES 0.50 CENTS EACH—$25.00
100 GREAT BABES 0.45 CENTS EACH!—$45.00
200 GREAT BABES 0.40 CENTS EACH!—$80.00
300 GREAT BABES 0.40 CENTS EACH!-$120.00
500 GREAT BABES 0.35 CENTS EACH!-$175.00

STANDARD TERMS & CONDITIONS APPLY – $2.00 PER ENVELOPE (25 PHOTO) FOR SHIPPING AND HANDLING!

$24.95 S&H FREE
FOR GRAB BAG OF
50 PHOTOS
FROM ALL OUR CATALOGS
SPECIFY RACE AND MAIN AREA OF YOUR INTERESTS
WE WILL PICK SELECTION FOR YOU
BONUS 1 COLOR CATALOG PAGE OF 120 BABES

3 BRAND NEW FLAT BOOKS OF FOREVER STAMPS FOR GRAB BAG OF 45 PHOTOS FROM ALL OUR CATALOGS. SPECIAFY RACE AND MAIN AREA OF YOUR INTERESTS
WE WILL PICK SELECTION FOR YOU
BONUS 1 COLOR CATALOG OF 120 BABES
PLEASE INCLUDE 6 FOREVER STAMPS WITH YOUR ORDER FOR S&H

KRASNYA L.L.C.
P.O.BOX 32082
BALTIMORE, MD 21282
EMAIL AND CORRLINKS REQUESTS ACCEPTED AT:
KRASNYABABES@HOTMAIL.COM

WAIT!
YOU SAY YOU DON'T HAVE ENOUGH BABE CHOICES OR CATALOGS? YOU NEED CATALOGS?
PREPAY YOUR ORDER AND WE WILL SEND YOU FREE COLOR CATALOGS!
GREAT DEAL, BUT HOW MANY CATALOGS?

FOR EVERY 100 BABES WE'LL SEND YOU 240 BABES TO CHOOSE FROM!

ORDER

50 BABES————————ONE SINGLE CATALOG
100 BABES————————--ONE DOUBLE CATALOG
200 BABES————————TWO DOUBLE CATALOGS
300 BABES————————--THREE DOUBLE CATALOGS
500 BABES————————FIVE DOUBLE CATALOGS

KRASNYA IS PROUD TO INTRODUCE AT FANTASTIC INTRODUCTORY PRICES

THE CONNOISSEUR'S COUTURE "CACHE TWO-FIVE COLLECTION" OF INTERNATIONAL ADULT FILM STARS

TWELVE PACKAGES OF 25 NUDE AND NON-NUDE POSES,
AVAILABLE ONLY IN OUR "CACHE TWO-FIVE" COLLECTION.
"CACHE TWO-FIVE"
"CACHE TWO-FIVE" IS AVAILABLE IN TWELVE (12) SPECIALLY PRICED PACKAGES OF 25 POSES IN NUDE AND NON-NUDE POSES.
PLEASE SPECIFY ON YOUR ORDERS IF YOU WANT NUDE OR NON-NUDE PACKAGES AND WHAT COLLECTION NUMBER YOU'D LIKE.
COLLECTIONS ARE NUMBERED 01-12 FOR EXAMPLE ON YOUR ORDER YOU'D WRITE:
NUDE CACHE TWO-FIVE PACKAGE 01 & 02
REMEMBER THERE ARE TWELVE (12) COMPLETELY DIFFERENT PACKAGES OF 25 BABES, THERE ARE NO DUPLICATES IN ANY OF THE 12 PACKAGES.
600 BEGUILING BEAUTIES, ALL BRAND NEW ADDITIONS TO OUR LINE AND AVAILABLE ONLY IN OUR CACHE "TWO-FIVE" PACKAGES! 300 NUDES AND 300 NON-NUDE BEAUTIES
CAPTURE YOUR OWN COLLECTION OF KRASNYA'S "CACHE TWO-FIVE" SELECTIONS IN INDIVIDUALIZED PACKAGING OF 25 RARE AND EXQUISITE BREATH-TAKING BEAUTIES.
THE CONNOISSEUR'S COUTURE COLLECTION OF "CACHE TWO-FIVE" BRINGS YOU
25 BEAUTIES IN EACH "CACHE TWO-FIVE" PACKAGE FOR ONLY $12.95 PER PACKAGE
LIMITED TIME SPECIAL ***** $59.95*****
PLUS S&H FOR 6 "CACHE TWO-FIVE" PACKAGES OF THE NUDE OR NON-NUDE COLLECTIONS
150 BEAUTIES
IMAGINE 150 OF THESE EXCITING AND EXQUISITE BEAUTIES
FOR A RIDICULOUSLY LOW PRICE OF
*****$59.95***** PLUS $12.00 SHIPPING AND HANDLING CHARGE.
ADD $2.00 FOR SHIPPING AND HANDLING PER "CACHE TWO-FIVE" PACKAGE ORDERED.
YOU MUST SPECIFY NUDE OR NON-NUDE PACKAGES
IF NOT SPECIFIED NON-NUDE WILL BE SHIPPED AUTOMATICALLY
ALL OF OUR NORMAL POLICIES APPLY

FOR KRASNYA CLIENTS WHO WORK THE YARDS;
HAVE WE GOT A GREAT OPPORTUNITY FOR YOU...GRAB BAG

MR. HUSTLE GRAB BAG BARGAIN DAY$

ONLY $0.25 CENT$ PER BABE
5 GRAB BAG MINIMUM PURCHASE REQUIRED
$2.00 SHIPPING AND HANDLING PER BAG
25 AWESOME BABES PER BAG AT ONLY $6.25 PER BAG
YOU MUST BUY AT LEAST 5 GRAB BAGS OR 50 GRAB BAGS.
THIS*GRAB BAG BARGAIN*** IS NOT GOING TO BE OFFERED AGAIN THIS YEAR. *$O STOCK UP NOW!*
AS YOU KNOW YOU GET AN ARRAY OF 25 GORGEOUS BABES
YOU CAN ONLY CHOOSE EITHER MALES OR FEMALES,
ALL NUDES OR BOP SAFE...THE INDIVIDUAL SELECTIONS COME FROM OUR BEST CATALOGS!!!
YOU MAY WANT TO SIT DOWN FOR THIS BONUS BARGAIN!
OUR BABES CATALOGS SPECIAL OF THE DECADE
—- 5 COLOR CATALOGS FOR $6.00 —-
—- 10 COLOR CATALOGS FOR $12.00 —-
—- 15 COLOR CATALOGS FOR $18.00 —-
—- 20 COLOR CATALOGS FOR $24.00 —-
OUR CATALOGS SPECIAL AVAILABLE WHEN YOU PURCHASE THE 5 GRAB BAG MINIMUM!
THIS PRICE INCLUDES FREE SHIPPING ON THE CATALOGS
BECAUSE OF SHIPPING TERMS ALL CATALOGS SOLD IN MULTIPLES OF 5 FOR $6.00 ONLY.
YOU CHOOSE EITHER MALE OR FEMALE CATALOGS AND IF YOU WANT NUDE OR BOP SAFE!!

When Victims Speak Up in Court – in Defense of the Criminals

by Andrew Cohen

A death penalty case in Colorado has generated an unusual fight between a district attorney and two parents who oppose capital punishment against the man who murdered their son.

One of the most profound changes in criminal justice over the past 40 years has been the rise of the victims' lobby. Essentially shut out of the core of the process until the 1970s, the victims' rights movement today can cite legislation from sea to sea, chapter and verse under both federal and state laws, that broadens the rights of victims to participate in the trials of those accused of harming them or their families. The Department of Justice's 2012 "Attorney General Guidelines for Victim and Witness Assistance," for example, totals 66 pages and barely scratches the surface of what similar state guidelines reveal.

The immutable trio that once existed in criminal cases – judge, prosecutor and defendant – now almost always resembles a quartet. Victims have a voice – and they use it. All 50 states now allow some form of "victim impact statement" at sentencing. Because such statements are often so compelling to jurors, defense attorneys frequently seek ways to blunt their impact. But these efforts almost always fail. Even judges who are sympathetic to the constitutional rights of defendants, who fret about the prejudicial impact of victim testimony, say they are bound by legislative declarations broadening the scope of victim participation in criminal cases.

But a pending Colorado case raises a profound question that few judges (or prosecutors or jurors) ever have to confront: What happens when the victims of violent crime seek to speak out on behalf of the defendant and not the state? What happens when the family members of a murder victim seek leave to beg jurors at sentencing to spare the life of the man who killed their son? What responsibility does the prosecutor have in that case? What obligations do the courts have? Do victims' rights sound only when they favor the government and the harshest sentence, or do they sound as well when they cry out for mercy?

So far, the prosecutor in the case, Arapahoe County District Attorney George Brauchler, has answered those questions clearly: He wants to block one couple's efforts to speak out against the death penalty for the man who murdered their child. Brauchler has filed a motion in a pending case seeking to bar Bob and Lola Autobee from participating in the sentencing phase of the trial of Edward Montour, their son's killer. The law only guarantees the rights of victims to "discuss the harm that resulted from the crime," Brauchler argues. But I haven't been able to find a single victims' right advocate who believes that's true.

People of the State of Colorado v. Montour

There doesn't seem to be much doubt, reasonable or otherwise, that Edward Montour killed Colorado corrections officer Eric Autobee in a prison kitchen on October 18, 2002. (Montour was in that kitchen, and in that prison, because he was serving a life sentence for killing his infant daughter). Less than one year after Autobee's death, Montour pleaded guilty to first-degree murder and was quickly sentenced to death by a Colorado judge. But that death sentence was overturned, in 2007, after the U.S. Supreme Court ruled in *Ring v. Arizona* that judges alone, without juries, could not impose death sentences.

Then, last year, a trial judge overturned Montour's conviction and allowed him to withdraw his initial guilty plea in the Autobee killing. Montour was not adequately defended by a lawyer at the time of that plea, the judge ruled, and had a documented history of mental illness. A new trial was ordered. Montour, through his attorney, said he would re-plead guilty to Autobee's murder if he could be spared the death penalty and receive a(nother) sentence of life in prison without the possibility of parole. The prosecutor, Brauchler, rejected the offer and went ahead instead with the now-pending capital case against Montour.

The last time Montour faced trial for Autobee's death, the victim's family supported the death penalty as an option. Not this time. This time, having educated themselves about capital punishment, and better understanding the nature of Montour's mental illness at the time of Eric's death, the Autobees have been vocally, stridently, ceaselessly against the imposition of death in this case. In January 2014, for example, as potential jurors in the Montour case were lined up outside the courthouse waiting to learn about the case for which they were summoned, the Autobees picketed the line and pleaded with Brauchler to spare their son's killer.

Episodes like this – and the media attention they inevitably generated – prompted Brauchler, the prosecutor in the Montour case, to remove the family from his preliminary list of witnesses to be called during the sentencing of the case. And that removal, in turn, has prompted Montour's attorneys to ask the trial judge in the case to allow the Autobees to testify during sentencing. That prompted an aggressive response from Brauchler, arguing that Colorado's victims' rights laws don't apply to "mitigating" factors during sentencing but only to "aggravating factors." And that is where we stand today.

The Autobees

The parents of the victim have spoken, and eloquently so, about the reasons why they have chosen to oppose the death penalty in this case. Below, from a court filing, is the essence of their claim:

"Bob would like any jury considering the appropriate penalty for Eric's killer to know who Eric truly was and how his loss has impacted the Autobees. The Autobees loved Eric deeply, and now remember him for his peace-loving nature, his love of the outdoors, and his innate desire to find moments of calm when hunting or fishing. Eric was a gentle soul who would hold Bob's hands even when he was in his 20's. Eric started his career in the culinary arts and then, like Bob, became a prison corrections officer.

"Despite the inhumanity he saw around him, Eric would not speak disdainfully of prisoners, but, instead, recognized their human dignity. Eric accomplished much in his short time on earth – he saved three lives before he died – but missed out on even more. It pains the Autobees to consider the many milestones in Eric's life that might have occurred were he still alive, including marriage, children, and career advancement.

"The crime affected the Autobees not just because of their beloved son's loss, but also because of who they became after this loss. After Eric's death, their warm feelings of love that Eric always nurtured quickly turned into cold feelings of vengeance and violence. Originally, the Autobees fervently supported the prosecution's efforts to seek absolute retribution. Over time, however, and with reflection, they realized that Eric would not have wanted this for himself or for them; Eric would not have wanted someone killed in his name, nor would he have wanted his family to live in the darkness of hatred. The Autobees know this because they know how Eric lived: by loving life, saving lives, and extending mercy to the merciless.

"The effect of the crime on the Autobees cannot be separated from this ongoing death penalty prosecution. Bob and his family have found healing in the forgiveness that they have extended to their son's killer. However, the prosecution strives to forever undo this healing by seeking to avenge one killing with another, over the family's pleas for mercy. For the Autobee family, a death sentence and the accompanying years of litigation, all supposedly done in their son's name, would rob them of peace. For, in the eyes of society, their son's name forever would be associated with cruelty and violence, rather than the human dignity and mercy he embodied in life."

Call and Response

Brauchler surely has no moral answer for this, and the legal answer he has ginned up barely passes the straight-face test, but that has not stopped him from seeking to silence the Autobees' voice during the upcoming trial. "To permit testimony concerning the victims' general view of the death penalty or whether this particular defendant should be executed or given a life sentence invades the province of the jury and should not be permitted," prosecutors told the judge. Can you imagine them making that argument if the Autobees were still advocating *for* Montour's death?

Colorado law "only guarantees the right of the victims to discuss the harm that resulted from the crime," Brauchler argues, and this limits "evidence from the victims to the characteristics of the victim and the impact of the crime on the victim's family." It is "not the court process that can be attacked by the victims," prosecutors assert, before claiming that Montour's Eighth Amendment rights will be implicated if the Autobees speak out in his favor. You don't

Victims Defend Criminals (cont.)

need to be a lawyer, or a juror, to understand that this is a terrible argument. And Brauchler cites no controlling Colorado law in support of it.

In their response, the Autobees' attorneys seem incredulous as they recite the provisions of Colorado law that support their view. "A crime victim," they told the court, has the "'right to appear, personally or with counsel, at the sentencing proceeding and to adequately and reasonably express his or her views' regarding *'the type of sentence which should be imposed by the court.'*" Under Colorado law, the Autobees added, "prosecutors are required to support – not oppose – this right by 'inform[ing] each victim of' his or her 'right' to *'express an opinion at the sentencing hearing* or any sentence proposed to the court for consideration'" (emphasis in original).

And then the Autobees shared with the trial judge what they really think is happening here. "Because the Autobee family's beliefs conflict with the prosecutions' agenda," the family's lawyers wrote, "the prosecution has relegated [them] to the status of second-class victims." Brauchler has it all wrong, the family asserts. Prosecutors should be heeding the wishes of the family members instead of putting their own priorities first. What the family really is saying, however, is that the world of victims' rights is far different than it was 40 years ago and that prosecutors can't always have things their own way.

The Lobby

Although this conflict now is unfolding in Colorado, it has national implications. The Autobees are not the first family to seek mercy for someone who took the life of a loved one. And Brauchler isn't the first prosecutor to seek to block such a family from getting through to a jury. In fact, this sort of dispute happens more often than you might think. So I called around to a few national victims' rights organizations with a simple question: Does your organization support the families of victims who oppose the imposition of the death penalty in a particular case? Here are some of the responses I received.

From Kristy Dyroff, of the National Organization for Victim Assistance (NOVA):

"We support crime victims in seeking justice in the way they are comfortable. There are victims who seek capital punishment and those who strongly oppose it. Restorative Justice is the term used for this type of model. It focuses on addressing the needs of the victim, the offender and the community, not the justice system.

"It is definitely NOT for all victims/survivors but there is a significant contingent within the crime victim assistance network who support this model. At NOVA, our focus is always on assisting the crime victims and their families. We are very careful not to tell them what they need, or how to heal. We try to educate and support them in their choices.

"We support the crime victim in pursuing the justice they seek, regardless of the interests of the prosecutor, law enforcement or others. Yes, we have supported victims in the past who object to capital punishment. We also encourage all other participants in the process to support and respect the victims in their position."

And from Kate Lowenstein, the program director of the group Murder Victims' Families for Human Rights, whose own father was murdered:

"More people likely understand that you can't automatically assume that losing a loved one to murder will mean that you support the death penalty, nor does opposition to the death penalty mean you don't want the killer or killers brought to justice, and it does not necessarily mean you have forgiven the murderer. Murder and the justice system are complicated, as are the views and experiences of the victims and families who are affected by it. We must not try to simplify this, but allow victims their unique and complicated responses to the trauma and horror of having a family member murdered and the criminal justice process that occurs after that.

"Despite the wider cultural awareness of victim opposition to the death penalty, unequal treatment of victim family members by prosecutors in capital trials is still a problem, one that exists largely below the public radar, in District Attorneys offices across the country, where often victims' family members don't know their rights and there is no one around to step forward and advocate on their behalf.

"It occurs, for example, that if two surviving family members want to give a victim impact statement during the sentencing phase of the trial, the prosecutor will allow the pro-death penalty survivor to speak but not the survivor who opposes the death penalty, regardless of the fact that no mention of the victims' views of what the sentence should be is allowed in Victim Impact Statements.

"The point is not that victims should get to determine sentencing. The point is that victims' rights should be granted to all victims, regardless of their position on the death penalty, or perceived 'cooperation' with the District Attorneys office. Disagreeing with the prosecutor – opposing the death penalty when the prosecutor is seeking a death sentence – should not mean that you are silenced, treated as 'part of the defense team' and not a 'real' victim, or denied the right to speak about the impact of the murder on you and your family."

It's not the Autobees who are the outliers here. It's the prosecutor. He can hardly purport to serve as the "conscience of the community," or claim he is following clear Colorado law by ignoring the wishes of the one family in the state that has earned the right to speak at the Montour trial. Victims' rights mean rights *for all victims* and not just those who toe the government's line. The jury in Edward Montour's case deserves to hear what the Autobees have to say, the family has a right to say it in court, and no lawman has the right to come between that vital communication.

A ruling from the trial judge is expected any day.

Andrew Cohen is a contributing editor at The Atlantic, 60 Minutes' first-ever legal analyst and a fellow at the Brennan Center for Justice. He is also chief analyst for CBS Radio News and has won a Murrow Award as one of the nation's leading legal journalists. This article was originally published in The Atlantic (www.theatlantic.com) on January 28, 2014; it is reprinted with permission.

States Renewing Their Prison Phone Contracts

As state DOCs renew or rebid their prison phone contracts, you can help urge them to eliminate commission kickbacks and lower intrastate phone rates.

The Campaign for Prison Phone Justice needs your help in

***** *Minnesota, Kentucky and Alaska!* *****

The Departments of Corrections in the above states are in the process of re-bidding or renewing their prison phone contracts. Most DOCs receive a commission (kickback) on revenue generated from calls made by prisoners, which results in excessively high phone rates. Although the FCC voted last year to cap the costs of interstate (long distance) prison calls, which went into effect on February 11, 2014, the order does not apply to intrastate (in-state) calls; an estimated 85% of prison phone calls are in-state. This is an opportunity to ask DOCs to forgo commissions and ensure their new prison phone contracts are based on the lowest cost to those who pay for the calls – mostly prisoners' families.

Take Action NOW! Here's What YOU Can Do!

Ask your family members and friends to write, email, call and fax the DOC and the governor's office (addresses and contacts are listed below), requesting that the DOC: 1) forgo commission payments when re-bidding or renewing its prison phone contract, and 2) base the new contract on the lowest calling cost. Lower prison phone rates should apply not just to long distance calls but also to in-state calls. For a sample letter or to easily send an email, visit the Campaign for Prison Phone Justice's website and click on the "Take Action" tab:

www.phonejustice.org

Prison phone contract information & Contacts:

Minnesota: Receives a 59% kickback; existing contract expires on 3-31-2014. The DOC charges $6.45 for a 15-minute collect intrastate call and $1.75 for a collect local call. **Contacts:** Minnesota DOC, Commissioner Tom Roy, 1450 Energy Park Drive, Suite 200, St. Paul, MN 55108; ph: 651-361-7226 or 651-361-7200, fax: 651-642-0414, email: tom.roy@state.mn.us. Governor Mark Dayton, 130 State Capitol, 75 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, MN 55155; ph: 651-201-3400, fax: 651-797-1850, email: gmark@gov.state.mn.us or kathy.kostohryz@state.mn.us

Kentucky: Receives a 54% kickback; existing contract expires on 5-31-2014. The DOC charges $4.50 for a 15-minute collect intrastate call and $1.85 for a collect local call. **Contacts:** Kentucky DOC, Commissioner LaDonna Thompson, 275 East Main Street, Frankfort, KY 40602; ph: 502-564-4726, fax: 502-564-5037, email: ladonna.thompson@ky.gov. Governor Steve Beshear, 700 State Capitol, Frankfort, KY 40601; ph: 502-564-2611, fax: 502-564-2517, email: governor@ky.gov

Alaska: Receives a 7 to 32.1% kickback; existing contract expires on 6-30-2014. The DOC charges $2.63 to $7.61 for a 15-minute collect intrastate call (local calls are free). **Contacts**: Alaska DOC, Commissioner Joseph Schmidt, 550 W. 7th Ave., Suite 860, Anchorage, AK 99501; ph: 907-465-4652, fax: 907-465-3390, email: joseph.schmidt@alaska.gov. Governor Sean Parnell, State Capitol, P.O. Box 110001, Juneau, AK 99811; ph: 907-465-3500, fax: 907-465-3532, email: governor@alaska.gov

Texas Criminal Court Fees are a Tax on Poor Defendants

by Matt Clarke

The Texas legislature has erected such a hodgepodge of criminal court fees that even the court administrators and clerks don't know how to apply them. These fees, which are frequently not used for their intended purposes, amount to a hidden tax on the poorest members of society ensnared in Texas' criminal justice system.

"Sometimes, I can't even tell my client what the bill is for," said Austin defense attorney David Gonzales.

He is not alone. The Texas Office of Court Administration (TOCA) receives "hundreds of calls from court officials about how to assess and prioritize fines, fees and surcharges in criminal cases," according to a report the agency published in 2009. "The sprawling number of state and local fees and court costs that state law prescribes as a result of a criminal conviction amounts to a nearly incomprehensible package."

The fee system is so complex that people convicted of identical crimes might be charged vastly different fees, possibly violating the constitutional guarantee of equal treatment under the law.

Nor is it always possible to determine how a particular fee is actually used; typical legislative practice includes the raiding of fee accounts to balance the budget or fund pet projects. Some fees, such as the $50 clerk's fee and $25 prosecutor's fee, go straight into a county's general fund where they can be used to pay for any budget item, court-related or not.

Every person convicted of a crime in Texas pays a "Consolidated Court Cost" fee of $40 for a Class C misdemeanor, $83 for Class A and B misdemeanors, and $133 for a felony. All criminal defendants are also charged at least six additional fees with titles such as "records management and preservation fee," "clerk's fee," "county and district court technology fund fee" and "courthouse security fee."

Those arrested with a warrant are charged a $50 fee; those without a warrant pay $5. Entering or leaving jail incurs a $5 fee, and DUI defendants are charged a "visual recording fee." A $30 "state traffic fine" is imposed on all traffic violations.

"We have a 'school crossing fee' that nobody – nobody – can tell me what comes of it," observed state Senator John Whitmire, who chairs the Senate Jurisprudence Committee.

The total bill can easily exceed $600. The cost for those placed on probation is much higher: $4,000 to $5,000, according to a 2009 TOCA survey.

Some of the fees go to the state's Compensation to Victims of Crime (CVC) Fund, administered by the Office of the Attorney General. The CVC receives revenue from Consolidated Court Cost fees, restitution installment fees and parole administration fees, among other sources. From 2004 to 2012, the CVC received approximately $100 million per year, mostly from Consolidated Court Cost funds.

Criminal court fees aren't necessarily fair. Defendants convicted of sex crimes pay a $250 "DNA testing fee" plus an additional "DNA collection fee" regardless of whether DNA was collected or tested in their cases. Some of the fees for DNA testing actually end up in a state highway fund.

"Breath alcohol testing fees" in DUI cases don't necessarily go to pay for breath alcohol testing any more than DNA fees necessarily pay for DNA testing. Texas judicial administrators estimate that of every three dollars collected in fees, one will be spent for something unrelated to the court system.

For example, court fees have paid for rehabilitative services for people with brain injuries and an obesity study of minority children in the Houston area. They also fund the salaries of state game wardens. Two million dollars in court fees went to pay a private company to install Internet cameras along the Mexican border so people could view them online and report illegal border crossings.

Court-imposed fees are also raided to balance the budget. In 2011, Texas legislators took $20 million in fees to pay for state employee pensions, and moved $135 million from the Fugitive Apprehension Fee account, intended to help apprehend parolees who abscond, to the state's general fund where it can be used for any purpose.

Another questionable method of using fees to balance the budget on paper is to let them remain uncollected, so they appear as a large amount of "accounts receivable." That may be why almost $5 billion in uncollected

fees is included in designated accounts that can be used to appear to "balance" budgets over and over again.

"The budget is far too much based on diversion and deception," according to state Senator Kirk Watson. "When people are told their money is going to be spent for something specific, a promise is made: If we collect this tax from you, we will spend it for this practice."

"If we're not going to use a fee for a particular purpose, we shouldn't collect it," added Jim Allison of the County Judges & Commissioners Association of Texas.

In fact, collecting fees that are not used for their intended purpose and are in effect general taxes may be unconstitutional. Further, the fees impose an onerous and often unjustified burden on people who are already among society's poorest – criminal defendants.

"We're trying to squeeze more money from people who have a hard time getting jobs because they have a criminal record, or have mental illness problems or substance abuse problems," stated Ana Yáñez-Correa, executive director of the Texas Criminal Justice Policy Coalition. "These fees are a tax on the poor," she concluded.

Poor defendants who can't pay the fees up front face the additional burden of fees on fees. There is a $25 fee to set up a schedule by which to pay fees. It costs another $12 for a "restitution installment fee" to pay off court-ordered restitution over time, and a $2 "transaction fee" each time a payment is made.

Although lawmakers are aware of the absurdity of the criminal court fee system, they don't want to butcher their cash cow. The Consolidated Court Cost fees alone bring in almost $200 million annually. In 2009 and 2011, the Texas Judicial Council – the policy-making body for the state's courts – unsuccessfully urged the legislature to simplify the costs and fees.

There is, however, one positive precedent from a different type of fee. When the legislature attempted in 2011 to empty the System Benefit Fund account, which is funded by fees on telephone bills and intended to help the elderly and poor pay their utility costs during the summer, state Rep. Sylvester Turner raised the issue publicly, causing lawmakers to back down. Unfortunately, people who have been convicted of crimes elicit much less sympathy, so the myriad of criminal court fees and their misuses will most likely continue unabated.

"Lawmakers are like anybody else – they do what they can," noted former Texas chief deputy comptroller Billy Hamilton. "And nobody's ever going to question it if they raise fees on criminals."

Sources: *Austin American-Statesman; "Compensation to Victims of Crime Fund," Legislative Budget Board Staff (Issue Brief, February 2013)*

Oregon Jail Guard Quits, Divorces Wife for Former Prisoner

"I crushed a dude's eye socket from repeatedly punching him in it, then I charged him with menacing and harassment," bragged Multnomah County, Oregon jail guard David B. Thompson in one of more than 1,700 messages he posted on an Internet gaming site over an eight-month period while at work in 2007.

"Seeing someone get Tasered is second only to pulling the trigger," Thompson wrote in another post. "That is money – puts a smile on your face."

As previously reported in *PLN*, Thompson, who had been employed as a veteran guard at the Multnomah County Detention Center (MCDC), was merely suspended without pay for 11 days rather than terminated or prosecuted for misuse of jail computers or using excessive force against prisoners. [See: *PLN*, March 2009, p.25].

The suspension did little to get Thompson's attention, apparently. He faced complaints for injuring a male prisoner in March 2009, for an undocumented use of force on a female prisoner in September 2010 and for an inappropriate conversation with another female prisoner in November 2011.

While assaulting prisoners is seemingly okay, falling in love with them evidently crosses the line in the eyes of Thompson's MCDC co-workers. When he confided in two other guards that he intended to divorce his wife to pursue a relationship with an exotic dancer shortly after her release from jail, they ratted him out.

Thompson also sent an email to a captain, confirming that he was in a relationship with a former prisoner but claiming he did not know if she was still on parole – a fact that his wife's divorce attorney later exposed. A formal investigation began in February 2012, according to Chief Deputy Mike Shults.

The former prisoner at the center of the scandal, Melissa M. Crawn, 31, was in custody at the Inverness Jail from August to December 2011 for violating her parole on a 2008 identity theft conviction. It was her fifth jail stay that year for parole violations and an intoxicated driving conviction.

On March 20, 2012, investigators confirmed that Crawn and Thompson were living together. The following day, Thompson was placed on administrative leave when investigators pulled him over and found Crawn in his vehicle.

In separate interviews, Thompson and Crawn both admitted that they began a personal relationship while she was incarcerated. Crawn told investigators that she thought Thompson was attractive, a good listener and treated her better than other jailers. He even helped her file a harassment complaint against another male guard.

Just a week after her December 2011 release from jail, Crawn called Thompson at work. They continued their relationship by phone until Thompson visited her in January 2012. Thompson later left his wife and child for Crawn, who was still legally married but separated from the father of her children.

"I wonder if it's because he was in this relationship with her for so long and it was boring and I'm a little bit crazier," Crawn surmised in response to investigators' questions about why Thompson had left his wife and child for her. After all, she is "that foul-mouthed, tatted up country girl your momma warned you about," according to her Facebook page.

Crawn told investigators that her mother was a prison guard at the Eastern Oregon Correctional Institution when she met and eventually married Crawn's father, who was a prisoner at the facility.

The MCDC internal investigation found no evidence that Thompson and Crawn were intimate while she was in custody, said Multnomah County Sheriff's Lt. Mark Matsushima. Their relationship did, however, violate agency policy because it became physical after her release, according to Chief Deputy Shults.

Thompson finally resigned. "We had

to make sure we had all the facts before we took any definitive action," said Shults. "But there's no mistaking it, this is a case of extremely bad judgment that happened here."

The Multnomah County District Attorney's Office was investigating possible computer crimes related to Thompson's use of the state's Law Enforcement Data System to access information about Crawn for personal reasons after her release from jail.

Meanwhile, Crawn was sentenced to serve 15 days in the Clackamas County Jail for driving while intoxicated and with a suspended license, after she plowed into a fire hydrant in July 2011, just days after a stint in jail on a DUI conviction.

Thompson attended Crawn's sentencing hearing and the two held hands and kissed in court. Apparently the now-former guard and former prisoner were meant for each other.

Sources: *The Oregonian, www.kptv.com, Portland Tribune*

South Dakota Parole Board Improperly Enhanced Prisoner's Parole Date

The South Dakota Supreme Court has held that the state Board of Pardons and Paroles (Board) exceeded its authority when it calculated a prisoner's initial parole release date by treating Class 4 felonies as Class 2 felonies.

Lloyd Rowley was convicted of two Class 4 felonies on October 12, 2007. His sentence was enhanced two levels – to the equivalent of Class 2 felonies – because he was a habitual offender, and he received 21 years in prison for both convictions.

Pursuant to SDCL 24-15A-32, defendants convicted of Class 4 felonies must serve 40 percent of their sentences before parole eligibility while those convicted of Class 2 felonies have to serve 50 percent of their sentences.

Since his sentence had been enhanced, the Department of Corrections (DOC) calculated Rowley's initial parole date using the Class 2 percentage rather than the Class 4 percentage. The Board subsequently affirmed the DOC's initial parole date calculation; Rowley filed an appeal in circuit court, which upheld the Board's decision.

The South Dakota Supreme Court reversed, finding that the plain language of the habitual offender statute, SDCL 22-7-8.1, "indicates that the sentence is enhanced, not the principal felony."

The Court concluded: "By its plain language, SDCL 22-7-8.1 does not substantively change the principal felony nor does the reference to SDCL 24-15A-32 in the last sentence of SDCL 22-7-8.1 demonstrate legislative intent to enhance the felony class when determining an inmate's parole eligibility date pursuant to SDCL 24-15A-32." Therefore, "the Board acted without authority in determining that Rowley was a Class 2 felon when calculating his initial parole date."

Justice Glen Severson issued a dissenting opinion. See: *Rowley v. South Dakota Board of Pardons & Paroles*, 2013 SD 6, 826 N.W.2d 360 (S.D. 2013).

California Female Prisoners Sterilized

More than 130 female prisoners at two California facilities were sterilized over a four-year period without required state approval, and some of the women have claimed they were pressured, harassed and even tricked into signing forms agreeing to the sterilizations. The procedure, known as tubal ligation, involves severing a woman's fallopian tubes to prevent eggs from reaching the uterus; the operation requires general anesthesia and is considered permanent.

The surgeries were performed from 2006 to 2010 at outside medical facilities by doctors under contract with the California Department of Corrections and Rehabilitation (CDCR). Joyce Hayhoe, a spokeswoman for California Correctional Health Care Services – the federal court-appointed receiver over CDCR medical care – said the procedures violated state regulations that restrict tubal ligations not deemed medically necessary. They did not, however, violate state law.

According to public records, doctors were paid $147,460 to perform the sterilizations on female prisoners from the California Institution for Women and Valley State Prison in Chowchilla. The Center for Investigative Reporting (CIR), which first reported the story on July 7, 2013, initially identified 148 prisoners who were sterilized from 2006 to 2010, but that number was later revised downward to 132 after a further review indicated some of the women had been counted twice. "Perhaps 100 more" prisoners were reportedly sterilized between 1997 and 2006.

Although they signed consent forms, several of the women complained they were pressured into agreeing to the procedures by medical staff and doctors, especially the OB-GYN at Valley State Prison, Dr. James Heinrich.

"As soon as he found out that I had five kids, he suggested that I look into getting it done," said Christina Cordero, 34, who was incarcerated at Valley State. "The closer I got to my due date, the more he talked about it. He made me feel like a bad mother if I didn't do it," she stated. "Today, I wish I would have never had it done."

Former prisoner Kimberly Jeffrey, who gave birth to a son while at Valley State, said she "went into a straight panic" when confronted with sterilization while she was sedated and on an operating table for a caesarean section. She said her doctor tried to use the operation to perform a tubal ligation even though she had twice refused the procedure during earlier visits.

"As I was laying on the operating table, moments before I went into surgery, [the doctor] had made a statement that, 'Okay, we're going to do this tubal ligation, right?' And I'm like, 'tubal ligation? What are you talking about? I don't want any procedure. I just want to have my baby.'"

"Our physicians were not following the proper procedures," Hayhoe admitted. "The first priority we had was to stop it from taking place, which we did in 2010." Heinrich and other doctors involved in the sterilizations "are no longer employed" by the CDCR, she added.

Extensive media coverage prompted state lawmakers to order investigations by the Medical Board of California and California State Auditor.

In a letter addressed to the federal receiver, the 31-member California Legislative Women's Caucus wrote: "Pressuring a vulnerable population – including at least one documented instance of a patient under sedation – to undergo these extreme procedures erodes the ban on eugenics." The letter continued, "In our view, such practice violates constitutional protections against cruel and unusual punishment; protections that you were appointed to enforce."

"We've been assured that this practice hasn't occurred since [2010], but the question of course is why was this occurring?" asked state Senator Hannah-Beth Jackson. "We want to make absolutely sure – whether we have to do legislation or what – this procedure never becomes the practice it had in the past."

In a July 10, 2013 letter to the Medical Board of California, state Senator Ted Lieu singled out Dr. Heinrich for criticism; Heinrich had told CIR that the $147,460 paid to doctors who performed the sterilizations was not a large amount compared to what the state would save in welfare costs.

"Particularly troubling was a statement by Dr. James Heinrich, ... who made a reference that tubal ligations on inmates save in welfare paying for these unwanted children – as they procreated more," wrote Senator Lieu. "Whether a surgical procedure would have any hypothetical effect on welfare rolls should never, ever play a part in a doctor's decision."

"We also want to find out, who are the women who have been sterilized while in prison? Let's break them down by race, by economic situation, by age, by number of children they have," added Senator Jackson. "One could argue, almost by definition, that being incarcerated takes away your ability to voluntarily consent."

Former Valley State prisoner Crystal Nguyen, 28, who worked in the prison's infirmary in 1997, said she frequently heard medical staff asking female prisoners to agree to sterilization.

According to CIR, Nguyen told investigators, "I was like, 'Oh my God, that's not right.' Do they think they're animals, and they don't want them to breed anymore?"

Dr. Heinrich retired in 2011 but was rehired and continued working at Valley State Prison until December 2012. He has been linked to arranging 378 other sterilizations between 2006 and 2012, including hysterectomies, the removal of ovaries and a procedure called endometrial ablation, which destroys the lining of the uterus.

Dr. Ricki Barnett with the federal receiver's office said such procedures are not banned in California prisons, but the sheer number attributed to Heinrich caused officials to take notice. Dr. Heinrich declined to comment on the sterilizations; according to news reports, he had settled a number of lawsuits related to medical care before being hired by the CDCR.

Justice Now, a prisoner advocacy group, reported that at least 10 women have alleged they were sterilized improperly, including one who underwent an operation to remove cysts on her ovaries. Kelli Thomas, a prisoner at Valley State, told the *Los Angeles Times* that she gave the doctor permission to remove her ovaries only if cancer was discovered. Her medical records indicated that no cancer was found but her ovaries were removed anyway, leaving her sterile.

"I feel like I was tricked," she said. "I gave permission to do it based on a [cancer] diagnosis, and the diagnosis wasn't there."

Sources: *Los Angeles Times, www.foxnews.com, www.theguardian.com, www.npr.org, New York Daily News, www.sacbee.com, www.jnow.org*

FREE LOCAL NUMBER WITH SENTEL

Get a local Number & Save up to 85% on Prison Calls with Sentel.

Save on International Calls with Sentel

Below is a summary of the Great plans we offer:

FREE USA PLAN	**USA -100**	**USA UNLIMITED**	**INTERNATIONAL**
Features:	**Features:**	**Features:**	Features:
Price: $0.00 20 Free Minutes Risk Free Sign Up Additional Minutes @ 6 cent	Price: $4.99 100 Minutes Additional lines @ $2.5 Additional Minutes @ 5 cents	Price: $9.99 Unlimited USA Fair Minute Usage Limited Time offer Only Hurry Up !!! You have it You keep it	Price for 1st line: $1 Add a line: 50 cents Rates Based Upon Destination Calls as low as 10 cents/mn Guaranteed lowest rates

NÚMERO LOCAL GRATIS CON SENTEL

Obtenga un número de locales y ahorra hasta un 85% en la prisión de llamadas con Sentel.

Ahorra en llamadas internacionales con Sentel

A continuación se muestra un resumen de los Grandes planes que ofrecemos:

GRATIS EE.UU. PLAN	**EE.UU. -100**	**EE.UU. ILIMITADO**	**INTERNACIONAL**
Características:	Características:	Características:	Características:
Precio: $ 0.00 20 minutos gratis Riesgo Inscribirse Minutos adicionales @ 6 cents	Precio: $ 4.99 100 Minutos Las líneas adicionales @ $ 2,5 Minutos adicionales @ 5 cents	Precio: $ 9.99 Ilimitado EE.UU. Uso de minutos Fair	Precio para 1 ª línea: $ 1 Agregue una línea: 50 cents de dólar Precios basados en la Destino Las llamadas de tan solo 10 cents Garantizado los mejores precios

We accept debit and credit card payments, institutional checks, bank deposits and paypal

Sentel, Sentel
9550 S. Eastern Ave Ste 253
Las Vegas, NV 89123
Ph: 702-430-9445
Email: sentel.nv@gmail.com
Website: www.sentelinmatecall.com

Kentucky Supreme Court: Probation Cannot be Extended for Sex Offender Treatment

The Supreme Court of Kentucky has held that a probationer's period of probation cannot be extended to require completion of a sex offender treatment program.

Elmer David Miller was originally charged with felony first-degree unlawful transaction with a minor. He entered into a plea agreement for a misdemeanor charge of criminal attempt to commit first-degree unlawful transaction with a minor, because the victim was over the age of sixteen. The plea agreement included two years of probation and required Miller to "[a]ttend any counseling recommended by probation and parole."

Following the recommendation of the Division of Probation and Parole, Miller enrolled in the state's sex offender treatment program. Shortly before his period of probation ended, his probation officer informed the trial court that Miller would be unable to complete the program before the expiration of his probation term. The court then held a hearing and extended Miller's probation until he finished the three-year sex offender treatment program.

Miller challenged the trial court's order and the Court of Appeals reversed, holding that he had not agreed to the extension of his probation and, in fact, had opposed it at the hearing. The appellate court remanded the case for a determination of whether Miller's term of probation should have been allowed to expire or should have been revoked for his failure to complete the treatment program. See: *Miller v. Commonwealth of Kentucky,* 2010 Ky. App. Unpub. LEXIS 1001 (Ky. Ct. App. 2010).

On discretionary review by the Kentucky Supreme Court, the state agreed that the Court of Appeals was correct in concluding Miller's term of probation could not be extended. The Court concurred, stating the statutory two-year period for misdemeanors is an "absolute limit, absent some overriding statute or waiver by the defendant," neither of which applied in this case.

The Supreme Court further found that Miller had not been convicted of a sex crime, because under state law criminal attempt is a "separate, inchoate offense." As such, the Division of Probation and Parole incorrectly believed Miller had to complete a sex offender treatment program. That program, the Court held, only applies to felony sex offenses and thus was not applicable to Miller, who was convicted of a misdemeanor.

Finally, the Court found that a term of probation cannot be extended beyond the limit set by statute to facilitate completion of a sex offender treatment program. Combining that legal principle with precedent that a trial court must hold a hearing and revoke probation before the period of probation ends, the trial court was without jurisdiction to act in Miller's case as its order extending his probation was entered months after his probationary term was over.

Consequently, the case was remanded to discharge Miller from probation. See: *Miller v. Commonwealth of Kentucky,* 391 S.W.3d 801 (Ky. 2013).

Former Detainee Alleges Unconstitutional Conditions at Illinois Jail, Accepts $7,501 Judgment

On April 24, 2013, the Seventh Circuit Court of Appeals held that a former pretrial detainee at the Edgar County Jail (ECJ) in Illinois stated a claim concerning unconstitutional conditions of confinement at the facility. The appellate court also affirmed the dismissal of a claim alleging deliberate indifference to the detainee's medical needs.

Over a period of two-and-a-half years, Richard D. Budd served three stints at ECJ as a pretrial detainee. He initially spent 45 days at the jail following a 2009 arrest. During that time he was confined with eight other detainees in an area of the facility intended for three; he had to sleep on the floor alongside broken windows and damaged toilets.

After another arrest two years later, Budd was placed in a section of the ECJ where overcrowded conditions again forced him and other prisoners to sleep on the floor amid water from a shower leak. The cells had broken windows, exposed wiring, extensive rust, sinks without running water, toilets covered in mold and spider webs, and a broken heating system. ECJ staff did not provide prisoners with cleaning supplies.

Four months later, Budd was again arrested and had to sleep on the floor in an ECJ cellblock. The cell's vents were blocked, the heating and air conditioning systems did not work, and detainees were denied recreation. While living in these conditions, something scratched or bit Budd's leg, resulting in an infection and swelling. He was taken to a local hospital for treatment after contacting the Sheriff.

Budd's civil rights complaint alleged that conditions at ECJ fell below constitutional standards and that jailers were deliberately indifferent to his medical needs. The district court dismissed the suit for failure to state a cause of action.

On appeal, the Seventh Circuit held the complaint stated a claim as to the conditions at ECJ. The appellate court noted that Budd had attached two newspaper articles to his complaint in which Edgar County Sheriff Edward Motley was quoted describing the jail as not "livable" and violating "acceptable standards." The Court of Appeals said the unhygienic conditions described in Budd's complaint had been held to state a claim in other cases under the Fourteenth Amendment, as he was a pretrial detainee. Moreover, three doctors had told Budd that his infection was caused by unsanitary conditions at the jail, so the harm was not speculative. He also alleged the conditions at ECJ had traumatized him, and the Seventh Circuit found Budd's "exposure to psychological harm or a heightened risk of future injury" from being held at the jail was itself actionable.

Further, jails must meet minimal standards of habitability, such as adequate bedding and protection from cold. Allegations of overcrowding, lack of recreation and poor air circulation in combination likewise contribute to a conditions of confinement

claim. Having found that Budd stated such a claim, the appellate court concluded the lawsuit named the Sheriff in his official capacity and thus should be allowed to proceed.

Budd's medical claim, however, failed. The Court of Appeals noted that he was seen by a nurse as soon as he complained about his leg injury. He was also promptly taken to a hospital after contacting the Sheriff. Therefore, the district court's order was vacated in part and affirmed in part, and on remand the lower court was ordered to rule on Budd's motion for appointment of counsel. See: *Budd v. Motley*, 711 F.3d 840 (7th Cir. 2013).

Following remand, on September 4, 2013 the district court denied the defendants' Fed.R.Civ.P. 12(f) motion to strike portions of Budd's amended complaint. Those portions included "facts which tend to show that the Defendants were well aware of the deplorable conditions at the Edgar County Jail before, during, and after Plaintiff's injuries, but exhibited deliberate indifference to the jail's deplorable conditions." In denying the motion, the court found that the challenged portions of the amended complaint were relevant to Budd's claims against the county. See: *Budd v. Edgar County Sheriff's Office*, 2013 U.S. Dist. LEXIS 125823 (C.D. Ill. 2013).

On January 3, 2014, Budd accepted a Fed.R.Civ.P. Rule 68 offer of judgment by Edgar County and resolved his lawsuit for $7,501 in damages plus taxable court costs and attorney's fees.

Seventh Circuit Upholds FTCA Venue Transfer

The Seventh Circuit Court of Appeals has upheld the transfer of a former federal prisoner's negligence action from Illinois to Kansas.

Daniel Hudson relocated to Illinois following his release from a federal prison in Kansas. He filed a Federal Tort Claims Act (FTCA) suit in U.S. District Court in Illinois, alleging that Kansas medical staff had negligently misdiagnosed a blood clot in his leg.

The district court granted the defendants' motion to transfer the case to a federal court in Kansas pursuant to 28 U.S.C. § 1404(a), because the principal witnesses were located in Kansas and the per-judge caseload in that state was lighter than the caseload in Illinois.

Hudson then filed a mandamus petition with the Seventh Circuit, seeking to return venue to Illinois. He argued that he and five of his witnesses – including three treating physicians – resided in Illinois.

The Court of Appeals agreed that mandamus was the proper method to challenge the district court's transfer order: "The grant of the government's motion to transfer the case was an unappealable interlocutory order, but an unappealable order can in exceptional circumstances be reviewed by a mandamus proceeding. The grant of a motion to transfer is an appealing candidate for such review."

The appellate court found that "Although the question of transfer in this case is a close one, we cannot say that the district judge committed a clear error in holding that the defendants had made the required showing: More than two-thirds of the potential witnesses (12 out of 17) are either in Kansas, just across the border in Missouri, elsewhere in Missouri, or in California, which is closer to Kansas than it is to Illinois."

The Seventh Circuit further noted that "in our age of advanced electronic communication ... changes of venue motivated by concerns with travel inconvenience should be fewer than in the past." However, Hudson did "not argue against the transfer on the ground that the electronic revolution has erased the advantages that the Kansas venue would once undoubtedly have had under the facts of this case." Therefore, his mandamus petition was denied. See: *In re Hudson*, 710 F.3d 716 (7th Cir. 2013).

Alabama Sheriff Made Party on Counterclaim Alleging Prisoners Subjected to Sexual Abuse

The Alabama Supreme Court has held that a third party to a lawsuit may be made a party when a counterclaim is filed. The Court also held a sheriff named as a defendant was not entitled to qualified immunity on a federal claim in her individual capacity, but was entitled to immunity on a federal official capacity claim and state law claims.

The case involved a lawsuit filed by Scott Cotney, an administrator at the Clay County Jail, against former jail guard Phillip E. Green and prisoners Anthony Haywood and Daniel Hall, alleging defamation, slander, libel, invasion of privacy, negligence and wantonness. The claims resulted from a report filed by Green, Haywood and Hall with the Alabama Department of Corrections, claiming that Cotney had used his position to sexually abuse or assault Haywood and Hall while they were held at the jail.

Haywood and Hall filed a counterclaim against Cotney for violations of their Fourth, Eighth and Fourteenth Amendment rights. They also filed counterclaims against the Clay County Commission and Sheriff Dorothy "Jean Dot" Alexander, in her official and individual capacities. They alleged Alexander "had knowledge of [Cotney's] unlawful acts ... and permitted the abuse to occur," and made the same claims against her as those against Cotney in addition to a claim of negligent supervision.

The counterclaims against the Commission were dismissed with Hall and Haywood's consent, and the circuit court granted Alexander's motion to dismiss without specifying its reasons for doing so. On appeal, the Alabama Supreme Court addressed the grounds in Sheriff Alexander's motion.

First, the Court held that Alexander could be made party to a counterclaim or cross-claim under Rules 13(h) and 20(a) of the Alabama Rules of Civil Procedure, and the circuit court's dismissal on that basis was error. Next, Haywood and Hall were convicted felons during at least part of the time the tortious conduct at the jail occurred, so dismissal of their Eighth Amendment claim also was erroneous.

The Supreme Court further found that Hall and Haywood alleged a causal connection between Sheriff Alexander and the deprivation of their Fourth Amendment rights related to strip searches, under a theory of supervisory liability; thus, she was not entitled to have the "claims against her dismissed on the basis that she cannot be held vicariously liable for the alleged violations."

Finally, the Court addressed immunity issues, holding that Alexander was entitled to immunity under Article I § 14 of the Alabama Constitution on state law claims in her individual and official capacities. It also held she was entitled to Eleventh Amendment sovereign immunity as to a federal official capacity claim.

However, Sheriff Alexander was not entitled to qualified immunity on a federal individual capacity claim at this stage of the proceedings, as Hall and Haywood had alleged sufficient facts to show her failure to act led to a violation of their rights. They also alleged the harm they suffered resulted from customs or policies attributable to Alexander.

The circuit court's order was therefore affirmed in part and reversed in part, and the case remanded. See: *Haywood v. Alexander*, 121 So.3d 972 (Ala. 2013).

Adverse Inference Instruction Required for New York Jail's Destruction of Video Evidence

The New York Court of Appeals has held that when a criminal defendant acts with due diligence to demand the preservation of evidence that is reasonably likely to be of material importance, and the evidence is destroyed by the state, the defendant is entitled to an adverse inference jury instruction.

Dayshawn P. Handy was charged with assaulting three deputy sheriffs at the Monroe County Jail. The first two assaults took place on November 8, 2006 and the third incident occurred on January 8, 2007. Handy was acquitted by a jury on counts one and three, but convicted on count two.

The count two assault charge involved an altercation with Deputy Brandon Saeva, who approached Handy in his cell after Handy returned from the shower. Saeva noticed that the boxers and sandals Handy was wearing were not "jail issue." According to Saeva, Handy refused to turn over the sandals and swung at him. They scuffled, and other deputies helped Saeva gain control of Handy.

Deputy Timothy Schiff testified that he assisted in subduing Handy after the altercation with Saeva. When he reached for Handy's right leg to control him, Schiff said Handy kicked back, injuring his thumb. Handy, however, testified that Saeva swung at him and then tackled him; he also claimed he never kicked at the deputies. Handy was convicted of the assault charge involving Deputy Schiff, but not Saeva.

At issue was a video camera in the cell block that faced toward Handy's cell, but not "directly" toward it. Saeva viewed the video recorded on November 8. He said that since the camera showed "only a part of his doorway, but not much," the video captured a "very small part" of the incident. It was undisputed that the video was destroyed prior to trial.

Handy argued it was error for the trial court to refuse to charge the jury with an adverse inference instruction due to the missing video evidence with respect to the count two assault charge. The Court of Appeals agreed.

In response to the state's assertion that it was "merely speculative" that the video was exculpatory, the Court noted that such speculation was caused by the destruction of the video, and that requiring an adverse inference instruction would mitigate the harm to the defendant caused by the loss of evidence.

"We hold that when a defendant in a criminal case, acting with due diligence, demands evidence that is reasonably likely to be of material importance, and that evidence has been destroyed by the State, the defendant is entitled to an adverse inference charge," the Court wrote.

Moreover, the Court of Appeals said its ruling would increase the chances that prison and jail staff will take whatever steps are necessary to ensure that video evidence is not erased or destroyed when it is foreseeable an incident will lead to a criminal prosecution.

Accordingly, Handy's conviction was reversed and the case remanded for a new trial on the assault charge involving Deputy Schiff. See: *People v. Handy*, 20 N.Y.3d 663, 988 N.E.2d 879 (N.Y. 2013).

Washington Jail Denied Good Time without Due Process; Rehearing Ordered

The Washington Court of Appeals held in an unpublished opinion that a prisoner was denied good time credits without adequate due process protections.

Allen Michael Knoll was held in the Skagit County jail between March 2011 and August 30, 2011, when he was transferred to the Washington Department of Corrections. One day prior to his transfer, jail officials notified Knoll that he would not receive any good time credits because he "had been the subject of over 40 incident reports and had been disciplined 10 times for both major and minor rule violations."

Knoll requested a hearing, contending that he had not been disciplined 10 times. The hearing was held five hours later and "the hearing officer upheld the denial of good time credit," finding that Knoll had been the subject of "43 reports, 10 disciplinary actions, and 2 instances of use of force" at the jail.

Knoll then filed a personal restraint petition, arguing that inadequate advance notice of the hearing and lack of specificity of the disciplinary actions deprived him of good time credits without due process.

The Court of Appeals accepted the state's concession that the jail's failure to provide Knoll with at least 24 hours to prepare for the hearing violated minimal due process requirements. The Court further found that "the notice provided only the number of incident reports and disciplinary actions. Without further identification or description of the disciplinary incidents at issue, the notice failed to provide sufficient information to enable Knoll to defend against the allegations."

However, following *In re PRP of Atwood*, 146 P.3d 1232 (Wash. Ct. App. 2006), the Court rejected Knoll's argument that restoration of good time credits was the proper remedy, as he had not lost previously-earned good time. Rather, he was only entitled to another hearing that comports with the minimal due process protections set forth in *Wolff v. McDonnell*, 418 U.S. 539, 94 S.Ct. 2963 (1974).

"While it is true that Knoll is not entitled to litigate the underlying facts of his prior disciplinary incidents," the appellate court explained, "the existence of those disciplinary incidents must be established to support the denial of good time premised on the prior incidents." See: *In re PRP of Knoll*, 2013 Wash. App. LEXIS 498 (Wash. Ct. App. 2013) (unpublished).

California County Not Liable for Misconduct of Jail Guard Not Acting within Scope of Employment

On April 3, 2013, the California Court of Appeal held that a county is not liable for damages arising out of the misconduct of one of its jail guards when such misconduct is deemed to be "purely personal" and thus not within the scope of the guard's employment.

In February 2005, Paul and Felicia Perry were injured in a car accident involving a vehicle owned by Alejandro Vital, who was then employed as a veteran jail guard by Fresno County. After the Perrys filed a personal injury suit against Vital, he became obligated to pay their medical bills resulting from the accident because his insurance company refused to cover those expenses.

Vital then embarked on a scheme designed to intimidate the Perrys into dropping their lawsuit. He accessed information about "dangerous inmates" through the jail's computer system, then sent them racially inflammatory and insulting letters in Paul Perry's name using his return address, hoping they would provoke the prisoners to retaliate against the Perrys.

Vital also wrote an anonymous letter to Fresno High School officials, accusing Perry, a coach, of once molesting a basketball player at the school.

An investigation led to Vital's eventual admission that he wrote the letters to the jail prisoners and to Fresno High School, as well as insulting letters to members of a street gang who, in response, said they would "do a drive-by" at the home of Paul Perry's 70-year-old mother.

Vital was fired by the county and criminally charged with identity theft, extortion and attempting to dissuade a witness from testifying. He entered a no contest plea to three felony counts and was sentenced in November 2006 to one year in jail. In court, he explained his actions by saying, "I just lost my mind."

The Perrys filed suit against Fresno County on the theory that under the doctrine of respondeat superior, an employer is liable for the torts of its employees when those torts are committed within the scope of their employment.

The trial court granted the county's motion for summary judgment, finding that Vital's actions were not within the scope of his duties as a jail guard.

The Court of Appeal affirmed, holding that although Vital's position at the jail gave him access to the information he needed to carry out his scheme, the act of writing and mailing fraudulent letters was "purely personal" and not within the scope of his employment. Thus, the county could not be held vicariously liable for his actions. See: *Perry v. County of Fresno*, 215 Cal.App.4th 94, 155 Cal.Rptr.3d 219 (Cal. App. 5th Dist. 2013), *rehearing denied, review denied*.

Additional source: *www.star-telegram.com*

Texas Courts Examine Proof of Ability to Pay Probation Fees before Revocation

by Matt Clarke

In a November 14, 2012 opinion, the Texas Court of Criminal Appeals held prosecutors are not required to prove that a probationer was able to pay fees and fines when his probation was revoked due to nonpayment. The Court of Appeals reversed the probation revocation on remand, and the Court of Criminal Appeals granted discretionary review of that ruling in June 2013.

Raimond Kevon Gipson, who was serving a term of probation, failed to pay his fees and fines. He was required to pay a $500 fine, supervision fees, court costs, a pre-sentence investigation (PSI) fee, a $50 Crime Stoppers fee and $1,000 in attorney fees. [See article in this issue of *PLN* regarding Texas criminal court fees].

The state filed for revocation due to the nonpayment. Gipson pleaded "true" to failure to pay fees but contested other reasons for the revocation. At no time did the state claim he was able to pay the fees but willfully failed to do so; Gipson also did not raise the issue of inability to pay. The trial court revoked his probation and sentenced him to eight years in prison.

On appeal, Gipson claimed that the state's failure-to-pay statute, art. 42.12 § 21(c), Texas Code of Criminal Procedure, required the state to show that he was able to pay but willfully did not. He also claimed that *Bearden v. Georgia*, 461 U.S. 660 (1983) established a constitutional requirement that the state prove ability to pay before revoking his probation. The state maintained that by pleading true to the allegation, Gipson had waived any such claims.

Without addressing the state's procedural arguments the Court of Appeals reversed the trial court's order, holding that the failure-to-pay statute required the state to first prove ability to pay before revoking probation. The state petitioned the Texas Court of Criminal Appeals for discretionary review, which was granted.

The Court of Criminal Appeals held that the lower appellate court must first determine whether the alleged error had been preserved for review or waived by Gipson when he pleaded true to failure to pay fees. Because a plea of true normally waives any challenge to sufficiency of evidence of a probation revocation on appeal, this analysis must be performed within the framework of *Marlin v. State*, 851 S.W.2d 275 (Tex. Crim. App. 1993), in which the Court of Criminal Appeals held that "certain requirements and prohibitions are absolute and ... certain rights must be implemented unless expressly waived."

Because it disagreed with the constitutional and statutory analysis of the appellate court, the Court of Criminal Appeals provided its own analysis.

The Court held that *Bearden* did not impose a duty on prosecutors to prove ability to pay; rather, it imposed a duty on the trial court to make an inquiry into ability to pay. The Court further held that the failure-to-pay statute did not cover two of the fees Gipson did not pay – the fees for Crime Stoppers and PSI. Therefore, if the Court of Appeals determines on remand that pleading true to failure to pay did not waive that issue for appellate review, it must decide whether Texas common law or the U.S. Constitution requires the prosecution to prove inability to pay prior to a probation revocation.

The judgment of the Court of Appeals was reversed and the case remanded to that court for further proceedings. See: *Gipson v. State*, 383 S.W.3d 152 (Tex. Crim. App. 2012).

Following remand, on March 13, 2013 the Court of Appeals again reversed the trial court's revocation of Gipson's probation. The appellate court found that "Generally, a defendant cannot challenge a revocation finding to which he pleaded 'true'"; however, "[i]n this case, the record is devoid of evidence showing that Gipson's failure to pay attorney's fees, community supervision fees, or court costs, including PSI and Crime Stoppers fees, was willful."

Therefore, the Court of Appeals held the trial court had abused its discretion by revoking Gipson's probation, which affected his substantial rights by subjecting him "to a prison sentence rather than continued community supervision." With respect to Gipson's argument that the trial court violated his due process rights, the appellate court found he had failed to preserve that issue for review because he did not raise it before the trial court. See: *Gipson v. State*, 395 S.W.3d 910 (Tex. App. 2013).

On June 26, 2013, the Texas Court of Criminal Appeals granted the state's petition for discretionary review, and a decision remains pending.

Second Circuit: Videoconference at Resentencing Violates Right to be Present

The Second Circuit Court of Appeals has held that resentencing a defendant by videoconference violated his right to be present in court, and the government failed to satisfy its burden of establishing that the defendant knowingly and voluntarily waived his right to be present. Under the circumstances, however, the error was not prejudicial.

On November 1, 2000, alleged al Qaeda member Mamdouh Mahmud Salim was confined at the Metropolitan Correctional Center (MCC) in New York, awaiting trial on federal terrorism charges.

Salim and his cellmate, a co-defendant in the terrorism case, plotted "to take a guard's keys so that Salim could attack his lawyers in an attorney-inmate meeting room. Their goal was to force Salim's attorneys to withdraw their representation so that District Judge Sand, who was presiding over the terrorism case and previously had denied Salim's repeated requests for new lawyers, would have to grant substitute counsel."

As Salim was escorted to his cell from a meeting with his lawyers, under the guise of retrieving additional legal materials, Salim and his cellmate assaulted MCC guard Louis Pepe, stabbing him in the left eye with a sharpened plastic comb. Before he could attack his attorneys, however, Salim was overpowered by other guards.

"Pepe was severely injured. He lost his left eye, incurred reduced vision in his right eye, and suffered brain damage that left his right side partially paralyzed and interfered with other normal functions, including his ability to speak and write."

On April 3, 2002, Salim pleaded guilty to conspiracy to murder and attempted murder of a federal official for the attack on Pepe. He was initially sentenced to 384 months in prison, which was later reversed on appeal. See: *United States v. Salim*, 549 F.3d 67 (2d Cir. 2008), *cert. denied*.

The district court imposed the same sentence on remand and Salim again appealed. This time, the Second Circuit agreed with the government that a terrorism enhancement was appropriate, and thus vacated the sentence and remanded.

On August 31, 2010, the district court held a second resentencing hearing which Salim attended by videoconference. The court imposed a life sentence as a terrorism enhancement, and Salim appealed a third time. Among other issues, he argued that he had not voluntarily waived his right to be present at the hearing, because the waiver "was premised on his fear of abuse by correctional officers" who, he alleged, had previously beaten and spit on him when he was moved to another prison.

The Court of Appeals recognized that Salim had a right to be present at a sentencing hearing under "both the Constitution and Federal Rule of Criminal Procedure 43(a)(3)," which extended to resentencing. As a matter of first impression in that circuit, the appellate court held that the right to be present requires a defendant's physical presence and is not satisfied by appearing via videoconference.

The Second Circuit further found the district court had erred in determining that the government had satisfied its burden of proving that Salim knowingly and voluntarily waived his right to be present. The appellate court affirmed the district court's sentencing order, however, because "Salim has not explained why his absence might have altered his resentence, nor has he demonstrated that any error in his resentencing was so egregious as to warrant relief on plain error review." See: *United States v. Salim*, 690 F.3d 115 (2d Cir. 2012), *cert. denied*.

On January 9, 2014, Salim filed a motion to vacate under 28 U.S.C. 2255, which remains pending.

Eighth Circuit: Denial of Nominal Damages Jury Instruction was Improper

The Eighth Circuit Court of Appeals held on September 4, 2012 that a district court erred when it refused to give a nominal damages jury instruction in a lawsuit brought by a Missouri state prisoner. Another trial was held in June 2013 following remand, and the jury again ruled in favor of the defendant prison officials.

Missouri Department of Corrections (DOC) policy allows a prisoner to declare his cellmate an "enemy" and be removed from the cell if he fears for his safety. The prisoner is then placed on a restraint bench until a compatible cellmate is found, a single-person cell becomes available or the prisoner elects to return to the original cell. While on the restraint bench, bathroom breaks and small amounts of water are allowed but food is not provided per DOC policy.

Arthur E. Taylor, Jr., was confined at the maximum-security Jefferson County Correctional Center when he declared his cellmate an enemy and was removed from the cell on September 9, 2005.

Taylor was shackled to a metal restraint bench, where he remained until he was placed in a cell with a new cellmate on September 11. He was unable to sleep during the two days he was shackled to the restraint bench in an upright position. Therefore, once in the new cell, he slept through breakfast and lunch.

Later that day, Taylor declared his new cellmate an enemy and was returned to the bench. This time he remained on the restraint bench until the evening of September 14, 2005.

Again, pursuant to policy, Taylor was not fed while on the bench. He first ate again on the morning of September 15, 2005 after missing about twelve meals.

Taylor filed suit in federal court, alleging that the failure of prison officials to provide him with food violated the Eighth Amendment. The case proceeded to trial and the district court gave Taylor's requested excessive force jury instruction but refused to give his nominal damages instruction. The jury returned a verdict for the defendants, finding zero damages for Taylor.

The Eighth Circuit reversed, holding that "the district court abused its discretion in not submitting the requested nominal damages instruction to the jury."

The appellate court rejected the defendants' argument that the error was harmless, finding that "if the jury analyzed this element first and found no damages, it could not find excessive force." As such, "the lack of a nominal damages instruction had a probable effect on this verdict." Justice Kermit E. Bye issued a separate opinion that concurred in part and dissented in part. See: *Taylor v. Dormire*, 690 F.3d 898 (8th Cir. 2012).

Following remand, on May 14, 2013 the district court denied the defendants' motion for summary judgment in part and granted it in part, and denied Taylor's motion to amend his complaint to add a new defendant. See: *Taylor v. Dormire*, 2013 U.S. Dist. LEXIS 68062 (W.D. Mo. 2013).

The case went to another jury trial in June 2013, and the jury found in favor of the defendants on all counts. The district court denied Taylor's motion for a new trial and he filed an appeal, which remains pending. The Missouri DOC has since revised its policy related to feeding prisoners while they are on a restraint bench.

Taylor County, Texas Rarely Disciplines Jailers

Compared to scandals at the Harris County Jail in Houston – where guards have assaulted and had sex with prisoners, mistakenly released prisoners and abandoned their posts to play dominos [see: *PLN*, Sept. 2013, p.23] – problems at the Taylor County Jail in Abilene, Texas seem fairly tame.

According to news reports, 28 of 135 employees at the Taylor County jail were disciplined in the three years prior to 2012, but the disciplinary action was minor and the misconduct much less serious than at Harris County. None of the discipline resulted in termination.

Former Taylor County Sheriff Les Bruce had a three-tier approach to employee discipline. First, an employee was given a letter of counseling. If that didn't correct the problem, a letter of reprimand was issued. The last resort, termination, was reserved for when the letters did not have the desired effect of correcting errant behavior.

During the three-year period, two jail guards were reprimanded for "major booking errors." One received a letter of counseling after he was caught surfing the Internet on the job after having received repeated prior warnings.

Other deputies were reprimanded for sleeping while on the job or in connection with the escape of two prisoners. One received a letter of counseling after five incidents of verbally abusing prisoners within nine months. Another employee was reprimanded for making "several medication errors on numerous times."

One jailer didn't check on a noise coming from a cell block which turned out to be a prisoner banging his head against the walls and doors, injuring himself enough to bleed from a head wound. The same guard was later disciplined again for yelling at prisoners in a cell block who were threatening to riot if the air conditioner wasn't repaired, which allegedly caused the prisoners to become more aggressive.

Another jailer was reprimanded for releasing a prisoner a month early; the prisoner later turned himself in to complete his remaining sentence.

Repeated tardiness was also a problem among employees at the jail. Then-Sheriff Bruce noted that was a serious issue due to the need to maintain a mandatory guard-to-prisoner ratio at the facility.

"It's very important to have those jailers there to receive briefing notes during shift changes," he said. "They need to know what has been going on in that facility since they left."

So long as misconduct by Taylor County jail employees mainly involves yelling at prisoners, surfing the Internet and being late for work, though, such transgressions pale in comparison to problems at other jails where guards have sexually abused prisoners or beaten and tasered them – sometimes to death.

Source: *www.correctionsone.com*

D.C. Circuit Holds PLRA's Exhaustion Requirement Inapplicable to Former Prisoner

The Circuit Court of Appeals for the District of Columbia has held that the administrative exhaustion requirement of the Prison Litigation Reform Act (PLRA) does not apply to suits filed by persons who are no longer incarcerated.

The lawsuit at issue, filed by former prisoner John B. Lesesne, alleged permanent, life-threatening injuries suffered while in the custody of the District of Columbia (D.C.) Department of Corrections (DOC). Lesesne was involved in an altercation on March 30, 2008 in which he was shot in the lower abdomen, causing neurological damage to his leg.

He was arrested and transported to a hospital where he remained in the custody of the D.C. Metropolitan Police for the next 48 hours. He was then taken into DOC custody but remained cuffed by his wrist and ankle to the hospital bed.

As a result of the injury to his leg, doctors prescribed physical and occupational therapies and directed Lesesne to walk in the hospital hallway. However, even after the doctors faxed their recommendations to the DOC, guards did not let Lesesne walk in the hallway and restrained movement of his injured leg.

When he was discharged from the hospital on April 8, 2008, guards forced Lesesne to walk to the transport vehicle in full restraints; he fell when guards attempted to lift him into the vehicle. Shortly after his arrival at the D.C. Jail infirmary, Lesesne was re-hospitalized due to signs of distress resulting from the transport.

He was diagnosed with having suffered a pulmonary embolism and placed in intensive care; once again, his leg was restrained to the bed. Lusesne was released from the hospital on April 21. Over the next four days, jail personnel failed to provide his prescribed medications, change his bandages or clean his gunshot wound and surgical incision. The failure to supply this medical care resulted in the wound becoming infected.

Lesesne was released from jail on April 25, 2008. Two years later he filed a pro se civil rights complaint, arguing that the DOC's failure to treat his medical needs resulted in permanent, life-threatening injuries which require expensive therapeutic care, prescription drugs and constant pain management, as well as pain, suffering and emotional distress.

The district court granted the District of Columbia's motion for summary judgment on grounds that Lesesne had failed to exhaust administrative remedies at the D.C. Jail as required by the PLRA. The D.C. Court of Appeals joined its sister circuits in holding that the PLRA's exhaustion requirement did not apply to Lesesne because he was not confined when he filed his lawsuit, even though he had failed to make that argument before the district court. See: *Lesesne v. Doe*, 712 F.3d 584 (D.C. Cir. 2013).

Michigan Parole and Probation Supervision Scrutinized; Three Officials Fired

The failure to properly supervise parolees and probationers accused of committing high-profile murders has resulted in the firing of three Michigan Department of Corrections (MDOC) employees. The MDOC supervises around 20,000 parolees and 50,000 probationers.

"Our parole/probation staff performs critical functions that are vital to ensuring public safety," MDOC director Daniel H. Heyns said in a written statement to the *Detroit Free Press*. "The overwhelming majority of these employees do excellent work and help to make our communities safer."

The burden on those employees has increased in recent years as the MDOC overhauled its parole system to release more prisoners as a result of budget reductions. The changes resulted in a decreased prison population, saving the MDOC millions of dollars and allowing it to close several facilities. [See: *PLN*, June 2010, p.13; April 2009, p.1].

However, three incidents led to scrutiny as to how the MDOC is supervising parolees and probationers. The first involved the robbery and brutal murder of Nancy Dailey, 80, in her Royal Oak home on November 20, 2011. She was discovered with her hands bound and her throat slit.

Alan Wood, 49, and Tonia Watson, 40, were charged with first-degree murder for killing Dailey; both were on parole, and a condition of their parole prohibited them from associating with each other. A *Free Press* investigation found that MDOC employees had failed to violate their parole despite knowing they were associating with each other and were suspected of committing new crimes.

The parole agent supervising Wood was fired and the agent supervising Watson received a 30-day suspension. UAW, the union that represents Michigan state employees, blamed the parole agents' supervisors. "It was management who cut Alan Wood free," said UAW representative Rick Michael, a veteran probation officer. "No agent can send a probationer or parolee back to prison without management approval. This agent went to her supervisors, and they're the ones who said 'Set him free.'"

Wood went to trial in January 2013. He was found guilty of first-degree murder, felony murder, larceny in a building and illegal use of a financial transaction device. He received a mandatory life sentence the following month, telling the judge to "just get on with the sentencing and stop your preaching." Tonia Watson pleaded guilty, testified against Wood and was sentenced to 23 to 80 years in prison.

The second incident involving supervision errors by MDOC officials was the January 31, 2012 murder of 12-year-old Kadejah Davis-Talton, who was shot through the door of her home as the result of an argument over a cell phone. Joshua Brown, 19, was charged with her murder.

In September 2010, Brown had been placed on probation for drug and home invasion convictions. The judge ordered him to wear an electronic monitor but his probation agent never activated the device. Four months before Davis-Talton's murder, Brown was a suspect in an armed home invasion; his probation agent was aware of the incident and wrote a report to the judge, but it was unclear whether the report was ever sent or received.

Brown's probation agent and the agent's supervisor were later fired. Michael said the agent was working to get Brown a landline phone when Davis-Talton was shot. "First of all, they have to have a telephone; we can't hook them up without one, and he was working on it," Michael stated. "He is a very good agent, and his supervisor was aware of what was going on."

On January 7, 2014, almost two years after fatally shooting Davis-Talton and following an initial mistrial, Brown was sentenced to 24 to 50 years for second-degree murder, 14 to 30 years for assault with intent to murder to be served concurrently, and two years for using a firearm during a felony.

The third incident involving MDOC officials occurred after Tucker Cipriano, 19, was placed on probation following his February 2012 release from jail on drug charges. Cipriano and a friend attacked his adoptive family with a baseball bat on April 16, 2012, bludgeoning his father to death and leaving his mother and brother in critical condition.

An MDOC probation agent was placed on paid leave for losing track of Cipriano after he failed to show up for an April 5 meeting with the agent. A *Free Press* source said MDOC officials had trouble keeping up with Cipriano, who claimed he was homeless and staying in motels.

Cipriano pleaded no contest to felony murder and was sentenced in July 2013 to life without parole for killing his adoptive father. His co-defendant, Mitchell Young, also received a sentence of life without parole.

Michael said the blame for inadequate monitoring of parolees and probationers falls upon the MDOC and its management. "I believe that the union will be able to prove that there is a double standard in MDOC and that management is not capable of policing themselves," he stated. "There is a double standard – one for the agent and one for the manager – and when something goes wrong due to some shortcoming with MDOC, the agents are always blamed."

The MDOC, in turn, said it was taking action to increase supervision of parolees and probationers.

"The governor has made it clear that the level of violence in southeast Michigan, Flint and Saginaw is unacceptable. The Michigan Department of Corrections has a role to play in reducing that violence," said MDOC director Heyns. "I am putting measures in place that will improve supervision of parolees and probationers throughout Michigan. The restructuring of Ryan Correctional Facility to provide more custody beds for parole violators, aggressively going after absconders, embedding parole officers into police departments and auditing case loads are examples of some changes we are making that I believe will enhance public safety."

Sources: *Detroit Free Press, www.theoaklandpress.com, Huffington Post*

The Habeas Citebook: Ineffective Assistance of Counsel **$49.95**
Brandon Sample
ISBN: 978-0-9819385-1-6
Paperback, 224 pages

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

Prisoners' Guerrilla Handbook to Correspondence Programs **$49.95**
in the United States and Canada, 3rd Edition
Jon Marc Taylor
ISBN: 978-0-9819385-0-9
Paperback, 224 Pages

The greatly anticipated and newly updated third edition of the Prisoner's Guerrilla Handbook to Correspondence Programs in the United States and Canada has finally arrived! Author Jon Marc Taylor's brand new version is the latest in this unique and highly successful guidebook for the prisoner-student. This invaluable tool and how-to handbook provides the reader with step-by-step instructions to find the appropriate education program for correspondence high school, vocational, paralegal, undergraduate, and graduate courses offered in the U.S. and Canada today.

Prisoners' Self-Help Litigation Manual, 4th Edition **$45.95**
John Boston & Dan Manville
ISBN: 978-0-1953744-0-7
Paperback, 960 pages

Prisoners' Self-Help Litigation Manual, in its much-anticipated fourth edition, is an indispensable guide for prisoner litigants and prisoner advocates seeking to understand the rights guaranteed to prisoners by law and how to protect those rights. Clear,comprehensive, practical advice provides prisoners with everything they need to know on conditions of confinement, civil liberties in prison, procedural due process, the legal system, how to actually litigate, conducting effective legal research, and writing legal documents. It is a roadmap on how to win lawsuits.

☐ Habeas Citebook, Ineffective Assistance of Counsel $49.95

☐ Prisoners' Guerrilla Guide to Correspondence Programs 3rd edition $49.95

☐ Prisoners' Self-Help Litigation Manual 4th edition $45.95

Shipping included in all prices

Order by mail, phone, or on-line. Amount enclosed _____

By: ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name _____

DOC/BOP Number _____

Institution/Agency _____

Address _____

City _____ State ___ ZIP _____

PUBLISHED BY
PRISON LEGAL NEWS
Dedicated to Protecting Human Rights

PO Box 1151 • Lake Worth, FL 33460
Tel 561-360-2523 • www.prisonlegalnews.org

The Federal Tort Claims Act: A Primer

by Derek Gilna

The Federal Tort Claims Act (FTCA) is outlined in various sections of Chapter 28 of the United States Code, which describe the steps necessary to file and maintain a tort action against the U.S. government.

The FTCA is the exclusive remedy for monetary damages for injuries "caused by the negligent or wrongful act or omission of any employee of the government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U.S.C. § 1346(b)(1).

This means that the FTCA is only available to address acts or omissions by federal employees that constitute torts under state law. Constitutional violations are not actionable under the FTCA unless they are also torts. For example, deliberate indifference to serious medical needs, which is a constitutional violation under the Eighth Amendment, may also constitute the torts of medical malpractice or negligence.

The FTCA constitutes a limited waiver of the United States' sovereign immunity, allowing claimants to sue the federal government; however, the FTCA does not apply to acts by federal employees that are outside the scope of their employment.

FTCA suits should not be confused with § 1983 actions, commonly known as civil rights complaints, which apply to defendants acting under color of state – not federal – law. FTCA claims are also distinguishable from *Bivens* claims brought under *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), which provides a private action for monetary damages against federal officials who commit constitutional violations.

Failure to follow the requirements for FTCA claims may lead to dismissal, with prejudice, at an early stage of the proceeding – thereby preventing any recovery even for serious personal injuries and financial losses.

The most significant hurdles to be cleared to prevent an early dismissal of an FTCA action include the exhaustion of administrative remedies and detailed notice requirements. The FTCA administrative process must be exhausted prior to filing an FTCA complaint, which is subject to dismissal on jurisdictional grounds if the claimant has failed to exhaust such remedies. See: *Plyler v. United States*, 900 F.2d 41 (4th Cir. 1990). Note that the administrative process, described below, is separate and distinct from the Bureau of Prisons' grievance procedure, and that filing a grievance (i.e., a Form BP-9) does not satisfy FTCA administrative exhaustion requirements.

FTCA claims involve an administrative process in which notice is presented to a federal agency, then a separate complaint (lawsuit) is filed in federal court if the agency fails to resolve the claim administratively.

According to the FTCA, notices must be written and directed to the appropriate federal agency that the claimant asserts is responsible for wrongdoing. U.S.C. § 2675(a). The notice must provide the agency with sufficient information so it can carry out an investigation to ascertain its potential liability. The usual form of notice is Standard Form 95 (SF-95), but claimants are not required to use that form.

The written notice does not have to assert all elements of the cause of action (i.e., all of the legal requirements for stating a claim), but a claimant's suit may be brought only on those facts and theories of liability raised in the administrative notice. See: *Williams v. United States*, 932 F.Supp. 357 (D.D.C. 1996). In other words, a claimant should err on the side of caution by including all facts and supporting information in the notice, to avoid possible dismissal of the complaint if the agency fails to settle the matter administratively. See: *Bembenista v. United States*, 866 F.2d 493 (D.C. Cir. 1989).

Claimants also must request a sum certain, and their potential for recovery will be limited to no more than the amount requested. 28 C.F.R. § 14.2(a). "Failure to have specified a sum certain at the administrative stage is a defect that deprives the court of subject matter jurisdiction over the action." See: *Ahmed v. United States*, 30 F.2d 514 (4th Cir. 1994); *Kokotis v. U.S. Postal Service*, 223 F.3d 275 (4th Cir. 2000); 28 U.S.C. § 2675(b). A sum certain means a specified dollar amount.

Claimants under the FTCA must sign their notices or have them signed by their attorneys or legal representatives. If someone signs in their representative capacity, "evidence of the representative's authority to sign ... must be shown." 28 C.F.R. § 14.3(e); *Kanar v. United States*, 118 F.3d 527 (11th Cir. 1997). For example, if the representative has a prisoner's power of attorney, a copy of the notarized power of attorney should be submitted with the notice. Failure to do so may result in dismissal of the claim, though some circuits are split on that issue.

The claimant must present written notice of the claim to the correct federal agency, such as on SF-95, and obtain proof that it was presented. 28 U.S.C. § 2675(a). Written notice is effective on the date it is received by the agency, not the date of mailing. 28 C.F.R. § 14.2(a). The claimant should attempt to ascertain the correct agency whose employees' acts or omissions were the proximate cause of his injuries, and submit the notice to that agency. However, if the claimant inadvertently notices the wrong agency, the agency that received the notice "must transfer the claim forthwith to the appropriate agency and notify the claimant of the transfer." 28 C.F.R. § 14.2(b)(1).

Further, the claimant bears the burden of presenting written notice of his claim prior to the expiration of the statute of limitations. FTCA claims will be barred if they are not presented in writing to the correct federal agency within two years of the accrual of the claimant's cause of action. 28 U.S.C. § 2401(b).

After the presentation of notice of the claim, the claimant cannot file an FTCA complaint in federal court until the agency receiving the notice has had the claim for six months, and the federal court lacks subject matter jurisdiction until the six-month period has expired or the agency has issued a final denial of the claim. See: *McNeil v. United States*, 113 S.Ct. 1980 (1993). If the agency denies the claim, the claimant must file a complaint in federal court within six months of the date of the denial.

With respect to venue for filing FTCA

complaints, the proper venue is the district where the claimant resides or where the act or omission occurred. 28 U.S.C. § 1402(b). The substantive law of the state in which the act or omission occurred is the controlling authority for FTCA claims, and the government's liability is "in the same manner and to the same extent as a private individual under like circumstances...." 28 U.S.C. § 1346(b), 28 U.S.C. § 2674. In some cases, state law presuit notice or expert report requirements may apply, such as in medical malpractice or negligence cases.

If state law does not permit recovery for certain types of tort claims, an FTCA complaint filed in that jurisdiction likewise will be barred from recovery. Further, South Carolina attorney Joe Griffith has noted that district courts are increasingly enforcing state-imposed damages caps in FTCA cases.

When filing an FTCA complaint, the complaint and summons are served on both the Attorney General in Washington, D.C. and the U.S. Attorney's Office for the district in which the lawsuit is filed.

FTCA trials are held before a district court judge, not a jury; relief may only take the form of monetary damages, and equitable relief is not available. Damages may not exceed the sum certain specified in the administrative claim unless "the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the federal agency." See: 28 U.S.C. § 2675(b); *Cole v. United States*, 861 F.2d 1261 (11th Cir. 1988). Punitive damages and prejudgment interest are not allowable under the FTCA. 28 U.S.C. § 2674.

The United States – not federal departments, agencies or individual employees – is the only proper defendant in an FTCA claim. 28 U.S.C. § 2679. The alleged tortfeasor must be a federal employee acting within the course and scope of his or her federal employment, and must not be an independent contractor. 28 U.S.C. § 1346(b)(1), 2675, 2672, 2679 and 2671. Thus, for example, federal prisoners held at a facility operated by a private contractor, such as CCA or GEO Group, cannot file an FTCA claim against the company or its employees, as they are not federal employees.

The Supreme Court has held that a suit against the United States under the FTCA is the exclusive remedy for claims arising from medical treatment and related functions provided by Public Health Service (PHS) employees acting within the scope of their employment. See: *Hui v. Castaneda*, 559 U.S. 799 (2010) [*PLN*, Oct. 2010, p.44]. PHS employees provide medical care in some Bureau of Prisons and immigration detention facilities.

Further, compensation from the Federal Prison Industries Fund (18 U.S.C. § 4126) is the exclusive source of compensation available for an injury sustained by a prisoner in connection with work activities at a federal prison. See: *Vander v. U.S. Dept. of Justice*, 268 F.3d 661 (9th Cir. 2001).

FTCA claims concerning government policy decisions are barred by the discretionary function exception – i.e., acts or omissions of federal employees related to a "discretionary function or duty" – as are certain intentional torts. In general, only claims of negligence are covered by the FTCA rather than intentional misconduct. The discretionary function exception applies even when decisions are intentionally or negligently made, or the discretion is abused. See: *United States v. Gaubert*, 499 U.S. 315 (1911).

However, the intentional acts or omissions of an "investigative or law enforcement officer," including but not limited to assault, battery, false arrest, false imprisonment, abuse of process and malicious prosecution, are covered by the FTCA and may proceed. 28 U.S.C. § 2680(h); *Millbrook v. United States*, 133 S.Ct. 1441 (2013) (involving FTCA claims against Bureau of Prisons employees) [*PLN*, June 2013, p.28].

Lastly, attorneys are prohibited from receiving fees in FTCA cases that exceed 20% of an administrative settlement or 25% of a judgment or compromise settlement after a complaint is filed. 28 U.S.C. § 2678.

Editor's Note: This article provides a brief introduction to the FTCA and FTCA claims. As the law is constantly changing, claimants who plan to file FTCA claims or complaints should research the most recent case law related to such actions. Special thanks to attorney John Boston for reviewing this article.

Sources: "*The Basics of the Federal Tort Claims Act," by Joseph P. Griffith, Esq. (www.joegriffith.com); www.usphs.gov; www.justice.org; www.nolo.com; www.washingtonpost.com*

Psst! Hey Man, Need Some Execution Drugs?

Officials in Delaware and 31 other states that use lethal injection to execute prisoners are scrambling to find new drugs to carry out death sentences, and in some cases are procuring them through secret exchanges and confidential deals – and from questionable sources.

Emails obtained by the Associated Press (AP) revealed how the head of Delaware's Department of Correction enlisted a drugstore owner-turned-bureaucrat to acquire pentobarbital, the sedative component of the state's new three-drug execution protocol since production of sodium thiopental ceased in the U.S. in early 2011. [See: *PLN*, June 2011, p.1].

Delaware DOC Commissioner Carl Danberg reached out to Alan Levin, the state's economic development director, knowing that Levin used to own the Happy Harry's drugstore chain, which he sold in 2006 before becoming a state official. Aware that Levin had spent more than a decade cultivating connections in the pharmaceutical industry, Danberg asked him to make a few calls.

According to the emails obtained by the AP, in May 2011, Levin contacted Mike Kaufmann, CEO of the pharmaceutical division of Cardinal Health, one of the largest wholesale distributors of prescription drugs in the United States.

"While I know this is a bit of a political issue, since Cardinal is not located in Delaware, I believed it may be easier for Cardinal to do this," Levin wrote to Kaufmann. "Is [pentobarbital] something that Cardinal would be interested in selling to the state of Delaware? If not, do you have any recommendations who else we can pursue?"

Once Levin hooked up Danberg with his connection at Cardinal, "things fell into place," Danberg told the AP.

Officials said the drugs that Cardinal shipped to the Delaware DOC in June 2011 – including pentobarbital, pancuronium bromide and potassium chloride – were enough to last for several executions, beginning with Shannon Johnson, a convicted murderer who was put to death by lethal injection in April 2012.

Levin told the AP that he was "happy to help facilitate" the process of acquiring the drugs, but that he, Danberg and other state officials worked hard to conceal the process so as not to jeopardize the possibility of getting more drugs in the future.

"I did not want it getting outside the smallest number of people as possible how we were pursuing the chemicals because I wanted to make sure we had a supply of the chemicals first," Danberg said, candidly. "I did not want the supplier of the chemicals to go public, to be publicly known, simply because I did not want that source to dry up."

Executions in many states have been halted or postponed due to concerns that replacement execution drugs do not meet the constitutional prohibition against cruel and unusual punishment, as they may result in pain and suffering. In addition, death row prisoners and advocacy groups have filed a flurry of lawsuits stemming from states' efforts to find alternative sources for the drugs.

Some states have turned to compounding pharmacies to obtain execution drugs that are no longer available from manufacturers. Compounding pharmacies typically custom blend small amounts of specific drugs, but are not regulated by the federal government and the safety or effectiveness of the drugs is not verified by the U.S. Food and Drug Administration. A compounding pharmacy in Massachusetts was linked to an outbreak of fungal meningitis in October 2012 that resulted in over 60 deaths due to contaminated medication.

Three death row prisoners in Texas, the state with the highest number of executions, are challenging the state's plan to use a drug obtained from a compounding pharmacy.

"Use of compounded pentobarbital would constitute a significant change in the lethal injection protocol, a change that adds an unacceptable risk of pain, suffering and harm to the plaintiffs if and when they are executed," their lawsuit contends.

Medical experts note that compounded drugs carry a high risk of contamination and could subject prisoners to excruciating pain, which one expert compared to rubbing sandpaper on an open wound.

Further, a separate civil complaint filed in federal court in October 2013 alleges that officials with the Texas Department of Criminal Justice (TDCJ) submitted falsified prescriptions for pentobarbital to Woodlands Pharmacy, a compounding pharmacy in Houston, and used an individual employee's credit card to buy the drug instead of a state purchasing order.

Prison officials had previously tried to obtain pentobarbital using the name of the "Huntsville Unit Hospital," even though the Huntsville Unit, which houses the state's execution chamber, hasn't had a functional hospital for more than two decades.

"We believe that TDCJ's purchase of compounded pentobarbital from Woodlands Pharmacy violates numerous state laws," said Maurie Levin, one of the attorneys representing death row prisoners in the lawsuit. "The vast majority of compounded drugs can only be mixed or sold pursuant to a doctor's prescription. TDCJ did not get a prescription for its purchase of compounded drugs. There are exceptions to the requirement, but TDCJ's purchase does not qualify for any of them."

The pharmacy demanded that state officials return the pentobarbital, but they refused.

"The states are scrambling to find the drugs," noted Richard Dieter, who heads the Death Penalty Information Center. "They want to carry out these executions that they have scheduled, but they don't have the drugs and they're changing and trying new procedures never used before in the history of executions."

As a result, unpredictable things can happen with new, largely untested lethal injection drugs. One example was the October 15, 2013 execution of Florida prisoner William Happ, who was put to death for the 1986 rape and murder of 21-year-old Angela Crowley. Happ was injected with the sedative midazolam hydrochloride, the first-ever use of that drug to execute a prisoner in the United States. The drug, known commercially as Versed, was part of a three-drug protocol.

According to the Associated Press, Happ's execution lasted twice as long as it would have had pentobarbital been used; it took 16 minutes before Happ was declared dead, and he "remained conscious longer and made more body movements after losing consciousness than other people executed recently by lethal injection."

The execution prompted seven Florida death row prisoners to file a federal lawsuit challenging the "Midazolam Protocol" used by the Florida Department of Corrections.

"We don't even know if the new drug

[midazolam] is working or not," said Dieter. "Everything is a bit of an experiment with a human subject. If this were ordinary medicine, that would not be allowed, but this is the death penalty and that's how it goes."

As another example, when Michael Lee Wilson, 38, was executed in Oklahoma on January 9, 2014 by lethal injection, which included pentobarbital and a combination of other drugs, his final words were: "I feel my whole body burning."

In Ohio, the planned November 2013 execution of Ronald Phillips was put on hold due to concerns about the use of a combination of midazolam and hydromorphone, a powerful painkiller.

"We really don't know what the effect of using this drug cocktail will be, and that's the really scary thing," said Mike Brickner of the American Civil Liberties Union of Ohio. "What we are proposing is basically experimenting on human beings."

This was the third time Ohio prison officials had changed their lethal injection drugs since 2009; previously, the state had used sodium thiopental and then pentobarbital when the former drug was no longer available.

"We don't know how these drugs are going to react because they've never been used to kill someone," said Fordham University law professor Deborah Denno, an expert on lethal injections. "It's like when you wonder what you're going to be eating tonight and you go home and root through your refrigerator to see what's there. That's what these departments of corrections are doing with these drugs."

"You're basically relying on the toxic side effects to kill people while guessing at what levels that occurs," explained Professor Jonathan Groner at the Ohio State University College of Medicine. He said there are no guidelines for giving a lethal dose of hydromorphone because the drug is not designed to kill. An overdose could cause the prisoner to experience symptoms such as an extreme burning sensation, muscle pain or spasms, seizures, hallucination and vomiting, Groner said.

Ohio prisoner Dennis McGuire, 53, was executed on January 16, 2014 with an injection of midazolam and hydromorphone. According to news reports it took McGuire around 25 minutes to die; he struggled to breath, tensed his body and made snorting sounds. His family has since filed a lawsuit in federal court over his prolonged death, while prison officials claimed that McGuire's attorney coached him to fake that he was suffocating during the execution.

Hospira, Inc., the manufacturer that produces midazolam and hydromorphone, announced in February 2014 that it opposes using the drugs in lethal injections. "Hospira makes its products to enhance and save the lives of the patients we serve, and, therefore, we have always publicly objected to the use of any of our products in capital punishment," the company stated. Ohio prison officials had obtained the drugs produced by Hospira from McKesson, a pharmaceutical distributor based in San Francisco.

Legal challenges have halted scheduled executions in several states, including California, Missouri, Georgia, North Carolina, Pennsylvania and Colorado.

In October 2013, Missouri announced that it would use pentobarbital obtained from a compounding pharmacy. That announcement followed the Missouri DOC's decision to return vials of propofol it had planned to use for lethal injections to Morris & Dickson, the company that had supplied the drug. Morris & Dickson had sold the propofol to the DOC in violation of its agreement with the German manufacturer, Fresenius Kabi, which prohibits the drug's use in executions.

At least one execution in Missouri was postponed pending the switch to pentobarbital, and in February 2014 a compounding pharmacy in Oklahoma, the Apothecary Shoppe, agreed to not sell the drug to the Missouri DOC. Previously, prison officials had paid the pharmacy $8,000 in cash for each dose of pentobarbital.

California abandoned plans to use a three-drug execution protocol in July 2013, and instead indicated it would use a single-drug method. The state has not had an execution since 2006, largely due to legal challenges to its lethal injection procedures.

Oklahoma prison officials reportedly used petty cash accounts to buy lethal injection drugs, including an account used to purchase bus tickets for released prisoners, in order to minimize the paper trail and avoid identifying the supplier of the drugs. Other states likewise have tried to prevent the disclosure of their sources for obtaining execution drugs.

"There is absolute chaos among the states," said Professor Denno. "So, every few months it seems we see a different state using a different type of drug, or types of drugs."

"Recent restrictions imposed by pharmaceutical companies and the Food and Drug Administration make procuring these drugs challenging. We must ensure that individuals facing the death penalty are afforded certain guaranteed rights of due process before a state proceeds with an execution," stated Colorado Governor John Hickenlooper.

The Denmark-based drug manufacturer Lundbeck, which holds the sole license to produce pentobarbital for the United States, told prison officials as early as January 2011 that the drug was not intended for lethal injections and asked for its use in executions to cease.

Many states then turned to propofol instead, but the European Union, which opposes the death penalty, threatened to restrict shipments of the drug to the U.S. if it was used in executions. Propofol is a common anesthetic widely used by hospitals, and import restrictions would potentially impact patient health and safety.

"Our system is completely broken, and I don't know how to say it more bluntly than that," said Arkansas Attorney General Dustin McDaniel. "It's a complete impossibility. I can no more flap my arms and fly across the state than I can carry out an execution."

Some states have considered abandoning lethal injection and returning to more traditional forms of capital punishment. For example, a bill to permit firing squads was introduced in Wyoming, though the state senate voted on February 11, 2014 not to consider the legislation. A similar bill has been introduced in Missouri, while lawmakers in several other states, including Virginia, Louisiana and Tennessee, have proposed reinstating the use of the electric chair.

Sources: *Associated Press, www.delawareonline.com, www.deathpenaltyinfo.org, www.allgov.com, www.correctionsone.com, www.correctionalnews.com, www.motherjones.com, The Gainesville Sun, New York Times, CNN, National Journal, Los Angeles Times, KUOW Radio, The Raleigh News & Observer, www.cleveland.com, TIME, www.abcnews.go.com, www.mercurynews.com, Washington Post, www.nola.com*

A Rare Look Inside the Maine State Prison's "Supermax"

An almost-clean version of hell

by Lance Tapley

There was a stain of what looked like blood on the floor of the otherwise shiny-clean, empty Mental Health Unit isolation cell. "It's Kool-Aid," said my minder, a deputy warden. He smiled. But, as the saying goes, I hadn't drunk the Kool-Aid.

The cell faintly stank of shit. Mentally ill prisoners and those made mentally ill by prolonged solitary confinement are driven to cut themselves and to try to throw their feces at guards.

In one of the Administrative Segregation cellblocks – pure solitary confinement – I heard undulating cries and saw shadowy faces behind the steel doors' tiny windows.

The Maine State Prison "supermax," or Special Management Unit, is an ugly place. Are my photos ugly enough? Trying to fit form to content, I used an old film camera and grainy-image-producing 400-speed, black-and-white film shot usually without a flash under fluorescent lights. There were big limitations. I was not supposed to photograph prisoners, and my tour was rapid. That said, I was, possibly, the first journalist to visit and photograph the supermax – after eight years of writing about it.

Super-harsh supermax (super-maximum-security) prisons and their central feature of solitary confinement became a correctional craze 30 years ago. They became dumping grounds for the mentally ill and others who couldn't follow prison rules or who simply irritated guards. At least 80,000 human beings are held in them nationwide. Maine opened its supermax in the coastal town of Warren in 1992. Ten years later it built the new state prison around it.

The supermax's unforgiving conditions are not helpful, to put it mildly, in improving prisoner behavior. The evidence is overwhelming, in fact, that protracted solitary confinement damages or destroys prisoners' minds. Human rights groups consider it torture. And it costs taxpayers twice as much as "general population" incarceration.

Maine corrections commissioner Joseph Ponte has reduced the typical number of prisoners in isolation from close to 100 to 40 or so in a 900-man prison. Of the supermax's four cellblocks or "pods," two, of Administrative Segregation, have 50 cells each, and one is now empty. The Mental Health Unit, where solitary confinement has never been total, has two pods of 16 cells each, one for "acute" prisoners, one for "stabilization." Together they held 17 men the day I was there.

Stays in the supermax also are much shorter now, and there's a lot less prisoner "cutting up" and fewer brutal cell "extractions" by guards to tie prisoners into the restraint chair. For his reforms, Ponte has deservedly received national attention, helping fuel a still-weak movement to limit solitary confinement.

But the Maine supermax is still there, and it's still grim. While 40 prisoners may not sound like many, it's the total, according to one report, that England and Wales, with 56 million inhabitants, keep in isolation – isolation less severe than in American supermaxes.

And the supermax is part of a prison from which I receive constant reports of guard cruelty, inadequate medical care, understaffing, deliberate mixing of predators and the vulnerable, and – currently – turmoil because scores more men are being forced to double-bunk. Corrections says the double-bunking is being done for proper "classification" of prisoners. Critics suspect it's being done to save money.

It's hard to uncover the truth of what goes on in prisons. Prisoners are always unhappy, prisons are rumor mills and corrections officials are tight-lipped. But the reports I get are consistent.

I wasn't supposed to interview prisoners, but in the Mental Health Unit a short, meek-looking prisoner, James Brensinger, handed me a typed essay describing his incessant cutting up (he showed me deep scars on his arms), suicide attempts, hallucinations and the medical staff's failure to deal with his condition. It ends: "I am begging someone to please hear my pleas and cries."

In the other part of the unit, seven prisoners, some seemingly heavily doped, watched a TV high on a wall. I asked an alert young man how prisoners occupied themselves there. He silently pointed to the TV. Then, he remarked, referring to the cellblock: "Our mental health unit without mental health."

Here – to the supermax's Mental Health Unit – is where Republican Governor Paul LePage and the Democratic legislature recently decided to send violence-prone patients from the state's chief psychiatric hospital, Riverview, in Augusta. Unconvicted jail prisoners whom the courts have concluded should be examined for their sanity – people presumably innocent until proven guilty – will also be sent to this prison unit. Twenty more cells will be opened.

There's individual insanity, and there's social insanity. The writer Hannah Arendt famously coined the phrase "the banality of evil" to describe Nazi bureaucrat Adolf Eichmann, a "normal" man who sat at his desk and calmly signed papers that sent millions of Jews to their death.

The Maine State Prison's supermax, with its polished floors only a little stained with blood and, while I was there, with its tranquility only occasionally interrupted by a prisoner's muffled cries, is, to me, a physical manifestation of the banality of evil. "A clean version of hell," as a former prison warden described another supermax.

To be more compassionate toward its creators, however – to be less like those who defend this uniquely American form of mass torture – I should discard a word like "evil" and describe the supermax as a manifestation of social insanity, of a sick society.

"It's just crazy, this whole place," the young man in the Mental Health Unit told me.

This article was originally published by The Portland Phoenix (http://portland.thephoenix.com) on November 8, 2013; it is reprinted with permission of the author.

Video Visitation a Growing Trend, but Concerns Remain

A growing trend toward the use of video visitation at jails across the country is drawing the praise of corrections officials and prisoners' family members alike, though some advocacy groups worry that video visits could pose an undue financial hardship on those least able to afford it and possibly lead to the elimination of in-person visits.

"I think it's the way of the future," said Kane County, Illinois police commander Corey Hunger. "In the next 20 years, I think everyone will have it."

At some jails, visitors can use video screens to communicate with prisoners in another part of the facility. Other systems allow people to conduct visits via the Internet from a remote location, including their own homes. Prisoners typically use video monitors set up in cell blocks or other designated areas; the visits are monitored and recorded. [See: *PLN*, July 2013, p.44; Sept. 2012, p.42; Nov. 2011, p.37; Jan. 2010, p.22].

But in Kane County and other jails, the installation of video systems spelled the end of in-person visits. Hunger said not having to screen visitors and escort them through the jail frees up guards to perform other duties. Officials also claim that doing away with face-to-face visits reduces confrontations among prisoners and the risk that visitors will smuggle in contraband.

"[F]rom the standpoint of safety and security, it's a huge improvement," stated St. Clair County, Illinois Sheriff Rick Watson. "Every pod has a video monitor and the prisoners don't have to be moved for visits, which saves on staff time. And if you cut down on movement of prisoners, you cut down on dangerous incidents."

Eliminating face-to-face visits worries some prisoner advocacy groups.

"It's a fundamental right to have meaningful visits with loved ones," said John Maki, executive director of the John Howard Association of Illinois, a Chicago-based organization. "If it's to supplement in-person visits, that's great. I think the danger in video visitation is using it to replace in-person visits," he added.

"I hate not being able to see him face-to-face when I come to the jail," stated Sherry McCullough, whose son is incarcerated at the St. Clair County Jail. "I want to get a good look at him, to tell him to stand up and turn around so I can see that he's getting enough to eat and that he hasn't been hurt. Instead, I have to see his cellmates marching around behind him in their underwear."

However, other family members have complained about problems with in-person visits, including long wait times, searches and non-contact visits conducted through a window using telephones.

"A lot of times you're trying to talk to your loved one and the phone on their end doesn't work," said Marilyn Murphy. "I don't like it. I like it when you can physically see them," she added. However, Murphy said visiting her son remotely through a home computer would be welcome. "To sit in the privacy of your home and visit a loved one?" she said. "Oh, yes."

Critics complain that video visits are sometimes used to financially exploit prisoners and their families, and that service providers often return a percentage of the video visitation fees to correctional facilities.

Paul Wright, director of the Human Rights Defense Center, the parent organization of *Prison Legal News*, described the practice as a kickback. "They're using this as another revenue stream from people who have the least ability to do anything about it," he said, comparing it to the "commission" model prevalent in the prison phone industry. [See: *PLN*, Dec. 2013, p.1]. He also noted that online video conferencing for non-prisoners, such as Skype, is usually free.

The largest provider of video visits, Securus, charges $1.00 per minute for the service. Securus CEO Richard Smith said the company anticipates adding another 100 video visitation sites by the end of 2014. According to the company's website, Securus already provides phone service to about 2,200 correctional facilities housing more than 850,000 prisoners in 45 states, as well as 81 video visitation systems.

Global Tel*Link, the nation's largest provider of phone services in prisons and jails, also offers video visitation – which is typically fee-based, with prisoners' families paying the cost of the visits.

For example, the Del Valle jail in Travis County, Texas ended in-person visitation in 2013 except for attorney visits. Instead, Securus installed a video system and charges a $20 fee for a 20-minute visit. The county gets a $4.60 cut from each fee.

At the Lake County, Illinois jail, a 30-minute video visit costs $25.95 and the county receives 20% of the revenue generated from visitation fees. The Shawnee County Jail in Kansas eliminated in-person visits in January 2014 and now charges $20 for a 20-minute video visit. Other jails that have recently adopted video visitation, charging fees that typically range from $.40 to $1.00 per minute, include those in Alachua County, Florida; Hamilton County, Tennessee; Cumberland County, New Jersey; Chippewa County, Wisconsin; and Maricopa County, Arizona.

While the cost of video visitation may seem steep, when prisoners' family members can visit over the Internet from their homes it eliminates the time and expense of traveling to the jail, plus allows them to accommodate work or school schedules.

The non-profit Prison Policy Initiative has urged the Federal Communications Commission (FCC) to regulate the fees for video visits in the same way it has regulated prison phone rates. The Massachusetts-based organization warned in a December 20, 2013 comment filed with the FCC that video visitation fees shared with corrections officials provide "perverse incentives" to eliminate in-person visits.

"The bottom line is that prison visits are a basic right that needs to be disconnected from a profit motive, both for private companies and the jails," stated John Maki.

Despite such concerns, video visitation has gained support from both jailers and prisoners' family members.

"I liked it because the privacy is better, said Karla Maldonado, who visits her brother at the Cook County jail. "Now you can hear what he's saying."

The Cook County jail complex eliminated in-person visits at a new building following the installation of a $1 million video visitation system, though face-to-face visits are still allowed in older units at the complex.

All 25 Illinois state prisons are scheduled to begin using video visitation this spring, officials said, with an estimated cost of $30 per visit. But Illinois Department of Corrections spokesman Tom Shaer stressed the state will not use the system, provided by Global Tel*Link, as a revenue source.

"Any money that comes to us will be applied to offset our costs," he noted. "There is no profit motive for us. But we have so many families wishing to do this we may need more staff hours to make the service available."

Shaer said the state also has no plans to eliminate in-person visits. "I can't imagine the scenario in which someone would travel to a prison and then wish to communicate through a video screen rather than see a prisoner face-to-face," he said. "All research shows in-person visits absolutely benefit the mental health of both parties; video can't match that."

Certainly, free or reasonably-priced video visitation offered in conjunction with in-person visits can benefit prisoners' families who must travel long distances or otherwise have difficulty participating in face-to-face visits. But eliminating in-person visits and charging for video visitation is just another way to monetize the corrections system and financially exploit prisoners and their family members.

"With proper regulation and oversight, prison and jail video communication has the potential to offer additional avenues for critical family communication. But if left unregulated, this market could follow the trajectory of the infamously broken prison telephone industry, dominated by the same corporations," warned Prison Policy Initiative executive director Peter Wagner. "In that market, companies compete not based on price or service, but rather on who can charge families the most and kick back the largest share of the revenue to the facility that awarded the monopoly contract."

Sources: *Chicago Tribune, South Jersey Times, Chicago Sun-Times, https://securustech.net, St. Louis Post-Dispatch, Arizona Republic, Phoenix New Times, www.wcjb.com, www.cjonline.com*

Online Gaming Accounts of New York Registered Sex Offenders Restricted or Closed

According to New York Attorney General Eric T. Scheiderman, around 5,600 online gaming accounts belonging to sex offenders registered with the State of New York have been restricted or canceled. Gaming companies Microsoft, Sony, Blizzard, Electronic Arts, Warner Brothers, Disney, Funcom, THQ, Gaia Online, NCSoft and Apple all cooperated in "Operation: Game Over," resulting in the closure of sex offenders' gaming accounts or revocation of their online communications privileges. The move was an initiative of the Entertainment Software Association.

New York requires registered sex offenders to list all of their email addresses, screen names and similar online identifiers in order to limit their access to certain websites such as Facebook. Scheiderman said sexual predators had been using the voice and text chat features in online games to identify and lure potential victims.

"The Internet is the crime scene of the 21st century, and we must ensure that online video game platforms do not become a digital playground for dangerous predators," he said. "That means doing everything possible to block sex offenders from using gaming systems as a vehicle to prey on underage victims."

As one example, Richard J. Kretovic, a 19-year-old resident of Monroe County, New York, pleaded guilty to sexually abusing a 12-year-old boy he met online on XBox Live in 2011. He lured the boy to his house, where the abuse occurred. Kretovic was sentenced to a six-month jail term and 10 years' probation in May 2012.

The logic of banning registered sex offenders from online gaming forums is hard to understand, though, as it does not affect *unregistered* offenders and will drive sexual predators to open accounts using pseudonyms and anonymous email addresses. Meanwhile, sex offenders who were not abusing their online gaming account privileges – including those whose offenses did not involve children – are being collectively punished by having their accounts restricted or canceled.

Sources: *New York Times, CBS6 Albany, www.gamespot.com*

PLRA Does Not Permit Waiver of Court-ordered Answer

An Illinois federal district court has condemned a practice employed by the Illinois Attorney General when representing defendants in lawsuits brought by prisoners. The district court concluded that a motion for leave to waive an answer is unnecessary, and that the assertion of affirmative defenses in a pleading purporting to be a "waiver" of the defendants' obligation to file an answer is not permitted by statute or rule.

In the case at issue, the defendants' motion for leave to waive an answer was filed in response to the court's order that they answer the complaint. The motion relied upon the language of 42 U.S.C. § 1997e(g)(1). The district court noted that that provision of the Prison Litigation Reform Act (PLRA) "allows defendants to conserve resources by waiving their right to reply to potentially frivolous or meritless claims." It does not require the defendants to request a waiver to file an answer unless ordered to do so by the court upon a finding the claim has a reasonable chance of prevailing on the merits.

Once a district court orders an answer from the defendants they must comply, and the PLRA does not provide that their answer may deviate from the Federal Rules of Civil Procedure. Moreover, the PLRA states the court may not grant relief to a prisoner-plaintiff until the defendants file an answer, making the answer essential to the litigation.

The district court noted the defendants may generally deny the allegations in a complaint under Rule 8(b)(3), but may not respond by continuing to waive their answer "while simultaneously purporting to plead affirmative defenses." The defendants' motion, the court held, failed to comply with its order to answer the complaint.

The district court gave the defendants one week to file an answer and said failure to do so would result in their having "admitted the allegations of the amended complaint." See: *Boclair v. Hardy*, U.S.D.C. (N.D. Ill.), Case No. 11-cv-05217; 2013 U.S. Dist. LEXIS 14278.

New Hampshire Prisoners Suspected of Breaching Prison Computer System

New Hampshire officials are investigating a suspected "breach" of the Department of Corrections (DOC) computer system at the State Prison for Men in Concord. The investigation began when a staff member noticed a cable linking a computer used by prisoners to a staff computer with access to the DOC's data system.

"I'm told an inmate, or inmates, were able to hack into the CORIS system," said Mark Jordan, a former president of the guards' union. "Once they are in there, they could have access to parole dates, sentencing information, programming schedules for inmates, staff information. And they could change any of that. They could delete [detainer] information from other states."

The Corrections Information System (CORIS) was installed in 2008 by Abilis New England. "CORIS connects relevant stakeholders through a single electronic offender record and centralized database, thereby providing a holistic view of the offender's status, history, and risk profile," a news release stated when CORIS was installed.

When the cable was noticed on August 24, 2012, the DOC called the State Police to assist in the investigation. "It's a really complex investigation," said DOC spokesman Jeffrey Lyons. "We don't know whether any data was compromised. Maybe none was."

Officials did not have many details about the breach. "We don't know for certain when it occurred. We don't know how long ago it may have occurred," Lyons said. "We don't know how it occurred."

He added, "CORIS is password protected and only certain staff have the ability to add to or otherwise change the data that is maintained there. Most other data on the DOC network is password protected and anyone who attempted to access that would be blocked unless they had the appropriate password. Appropriate disciplinary action will be taken when all of the facts are gathered at the conclusion of the investigation." The breach occurred in an area of the Correctional Industries program, which employs about 200 prisoners in a furniture-making shop, printing shop, license plate shop, woodworking shop and sign-making shop. Prisoner workers in the industries program use about two dozen computers in a closed network to track contracts and billing.

The investigation includes a forensic computer crimes investigator. According to DOC spokesman Lyons, contacted by *PLN* on March 4, 2014, "This is still an ongoing investigation that is being handled by the NH State Police Major Crimes Unit."

Sources: *Associated Press, New Hampshire Union Leader*

Businesses, Members of Congress Not Happy with UNICOR

by Derek Gilna

When a powerful U.S. Senator takes interest in an issue, even a bureaucratic government agency like the Bureau of Prisons (BOP) pays attention.

Kurt Wilson, an executive with American Apparel, Inc., an Alabama company that makes military uniforms, and Michael Marsh of Kentucky-based Ashland Sales and Service Co., found that out after they learned that UNICOR, which runs prison industry programs for the BOP, was considering bidding on contracts for business that their companies already had. A public statement from U.S. Senator Mitch McConnell, who sits on the Senate Appropriations Committee, led UNICOR to change its mind.

Like many other initiatives of the federal government, UNICOR, formally known as Federal Prison Industries, Inc., started off as well-intentioned. Prisoners earning from $.23 to $1.15 an hour are trained to work in factories supervised by BOP staff, where in theory they learn job skills that will help them find employment following their release. However, UNICOR has become not only a job training program but a manufacturing behemoth that employs some 12,300 prisoners and made approximately $606 million in gross revenue in fiscal year 2012 – yet still reported a net loss of $28 million. [See: *PLN*, Nov. 2013, p.52].

With that kind of size, purchasing power and cheap prisoner labor, it is almost impossible for small businesses to compete. Indeed, several companies have lost federal contracts due to competition from UNICOR, resulting in job losses among freeworld workers. [See: *PLN*, Feb. 2013, p.42]. This has made some business owners nervous – and angry.

American Apparel has to compete head-to-head with UNICOR on almost all of its contracts with the federal government, and the company said unfair competition from low-paid prisoner labor forced it to close a plant in May 2012 and lay off 175 workers. "We pay employees $9 on average," Wilson stated. "They get full medical insurance, 401(k) plans and paid vacation. Yet we're competing against a federal program that doesn't pay any of that."

Ashland Sales and Service Co. has been making windbreakers for the U.S. Air Force for 14 years, according to Marsh, and competition from UNICOR is endangering 100 jobs at the company, which is the largest employer in Olive Hill, Kentucky. "That's 100 people buying groceries. We use trucking companies in the town; buy parts and light bulbs there every day. That's all lost when prisons take away contracts."

UNICOR has 81 factories in BOP facilities around the country and does far more than supply products and services for prisons and prisoners' needs. It manufactures goods in six industry categories – clothing and textiles, electronics, fleet and industrial products, office furniture, recycling, and data entry and other services – with clothing being its mainstay.

In the past, legislation gave UNICOR an advantage in obtaining various federal contracts, but the law was amended by Congress from 2002 to 2005, and again through Section 827 of the National Defense Authorization Act of 2008, to limit that preferential advantage.

Kurt Courtney, director of governmental relations at the American Apparel and Footwear Association, said UNICOR

is "a federal program [that is] tanking our industry.... The only way for workers to get jobs back is to go to prison. There's got to be a better way to do this."

U.S. Representative Bill Huizenga sponsored a bill in 2011 to do just that – HR 3634, the Prison Industries Competition in Contracting Act. "This is a threat to not just established industries; it's a threat to emerging industries," Rep. Huizenga stated at the time. "We know that in the [economic] recovery, many new jobs are coming out of small businesses, and it makes no sense to strangle them in the cradle."

Manufacturing in America has changed over the decades but UNICOR does not use state-of-the-art manufacturing techniques because it has no need or motivation to do so – even though this means prisoners employed in UNICOR programs don't receive modern job training that will help them obtain post-release employment.

As for quality, when UNICOR steps outside of its comfort zone and attempts to compete in areas other than prisoner goods and services, it sometimes falls flat. Even though it landed a federal contract to supply helmets for the U.S. military based upon a preferential bidding process, 44,000 of the helmets were recalled in 2010 due to quality issues. UNICOR then won a no-bid contract the following year to produce body armor to be supplied to Pakistan's military. [See: *PLN*, Sept. 2011, p.46; Jan. 2011, p.20].

Although the BOP has cited statistics claiming that UNICOR workers have lower recidivism rates, such data has been questioned. In 2013, the Congressional Research Service noted that "... questions about the methodology used in most evaluations of correctional industries means that there is no definitive conclusion about the ability of correctional industries to reduce recidivism."

John Palatiello, president of the Business Coalition for Fair Competition, said his organization comprised of businesses and taxpayer groups is sympathetic to the BOP's goals of providing job training to prisoners and reducing recidivism, but that such goals should not be accomplished at the expense of small businesses and their employees who face unfair competition from UNICOR.

HR 3634 failed to pass and was reintroduced on May 22, 2013 as HR 2098, which has 15 cosponsors and is currently pending in committee. Among other provisions, the legislation would require UNICOR to compete for its contracts, "minimizing its unfair competition with private sector firms and their non-inmate workers and empowering Federal agencies to get the best value for taxpayers' dollars."

HR 2098 would further require UNICOR's board of directors to, "not later than September 30, 2014, increase the maximum wage rate for inmates performing work for or through Federal Prison Industries to an amount equal to 50 percent of the minimum wage," and "not later than September 30, 2019, increase such maximum wage rate to an amount equal to such minimum wage." However, the bill also provides that up to 80% of prisoners' gross wages may be deducted for taxes, fines, restitution, family support, a savings fund or other purposes.

Sources: *www.money.cnn.com; www.govtrack.us; www.businessinsider.com; "Federal Prison Industries: Overview and Legislative History," by Nathan James, Congressional Research Service (Jan. 9, 2013)*

Ninth Circuit Holds Staff Sexual Abuse Presumed Coercive; State Bears Burden of Rebutting Presumption

The Ninth Circuit Court of Appeals has held that a district court erred when finding a prisoner could not state an Eighth Amendment sex abuse claim because he "consented" to a relationship with a prison guard.

In 2002, Idaho prisoner Lance Wood and guard Sandra De Martin began a romantic, but not sexual, relationship. Within a few months, however, Wood heard "rumors that Martin had gotten married." She denied being married but Wood said he wanted to end the relationship.

Shortly thereafter, Martin entered Wood's cell and "cupped her hand on [his] groin ... enough to excite [him]." Wood pushed her away and said "you need to back off on this."

Wood again tried to end the relationship but Martin pursued him and subjected him to "aggressive pat searches" on several occasions. Wood went so far as to ask another guard for help, but Martin continued to pursue him.

After Wood ended the relationship, Martin again entered his cell and "grabbed ahold of [his] penis and started to stroke it."

Martin continued to harass Wood after that incident, but he did not initially report her due to fear of retaliation. Eventually he did report Martin and was transferred to a different prison the next day.

Wood then filed suit in federal court, alleging sexual harassment, retaliation and failure to protect claims. The district court granted summary judgment to the defendant prison officials on Wood's retaliation claim and his claims that Martin had entered his cell, cupped his groin and stroked his penis.

The district court relied on *Ault v. Freitas*, 109 F.3d 1335 (8th Cir. 1997) to hold that "welcome and voluntary sexual interactions, no matter how inappropriate, cannot as a matter of law constitute 'pain' as contemplated by the Eighth Amendment." Under that standard, the court concluded that Wood could not establish an Eighth Amendment violation.

The Ninth Circuit disagreed, first recognizing the indisputable proposition that a guard's sexual harassment or abuse of a prisoner violates the Eighth Amendment. Noting that whether a prisoner can consent to a relationship with a guard was a matter of first impression, the appellate court observed that "because of the enormous power imbalance between prisoners and prison guards, labeling a prisoner's decision to engage in sexual conduct in prison as 'consent' is a dubious proposition."

The Court of Appeals declined to follow *Ault* because it "utterly failed to recognize the factors which make it inherently difficult to discern consent from coercion in the prison environment."

While the Ninth Circuit was "concerned about the implications of removing consent as a defense for Eighth Amendment claims," it found that "allowing consent as a defense may permit courts to ignore the power dynamics between a prisoner and a guard and to characterize the relationship as consensual when coercion is clearly involved."

Ultimately, the Court of Appeals adopted a bright-line rule which establishes a presumption that alleged sexual misconduct by prison staff is not consensual. While declining to exhaustively define coercive factors, the Court noted that obvious factors include "explicit assertions or manifestations of non-consent" and "favors, privileges, or any type of exchange for sex."

The appellate court held that the state bears the burden of rebutting "this presumption by showing that the conduct involved no coercive factors.... Unless the state carries its burden, the prisoner is deemed to have established the fact of non-consent."

Applying this rule, the Ninth Circuit held Wood had established non-consent for purposes of surviving summary judgment, because his "objective conduct demonstrates non-consent and the state cannot overcome its burden." See: *Wood v. Beauclair*, 692 F.3d 1041 (9th Cir. 2012).

Following remand, a jury trial was held in December 2012, resulting in a mistrial. On April 8, 2013 the district court denied Wood's motion to hold the defendants in contempt for "allegedly recording his attorney phone calls, monitoring his attorney visits, and opening and reviewing his legal mail," finding they had legitimate security reasons for doing so. The court also denied his motion for a protective order and for appointment of counsel. See: *Wood v. Martin*, 2013 U.S. Dist. LEXIS 52305 (D. Idaho 2013).

Lawsuits filed over Oregon Jail Death

The mother of a deceased prisoner has sued jail and hospital officials over the death of her son at the Marion County Jail (MCJ) in Salem, Oregon.

On June 14, 2010, Robert Haws was arrested for several criminal offenses and a probation violation, according to court records. He was held at the MCJ pending trial.

A month later, Haws was playing basketball with other prisoners at 9:30 a.m. During an argument, fellow prisoner Robert Dailey punched Haws in the jaw, knocking him unconscious and causing his head to hit the concrete floor. Dailey and the other prisoners fled.

Guards did not witness the altercation or see Haws lying unconscious on the basketball court. Approximately fifteen minutes later, Dailey and a few other prisoners returned to check on him.

They dragged Haws to the edge of the court and propped him up. He was barely conscious, vomiting and urinating on himself and bleeding from the nose. Unbeknownst to guards, one prisoner made several trips to the laundry room to replace Haws' bloody clothing.

Guards did not notice Haws on the video monitor until 10:40 a.m. When they finally responded, he was disoriented, unresponsive and exhibiting signs of delusion, according to a federal lawsuit filed by his mother, Diane Bernard. See: *Bernard v. Myers*, U.S.D.C. (D. Ore.), Case No. 11-cv-00608-HZ.

Haws was handcuffed and taken to segregation by wheelchair. Guards later placed him in leg restraints, even as he continued to vomit and bleed from his mouth and nose. Jail officials finally called 911 sometime after 11:15 a.m., and paramedics arrived fifteen minutes later.

"Security officers and medical staff present said that Haws probably had a seizure and conducted no medical exam for evidence of trauma or other causes," the suit alleged.

A jail nurse told paramedics that Haws may have suffered a seizure, and a guard who rode in the ambulance falsely informed paramedics that Haws had been suicidal two days prior to the incident and "had lots of access to over-the-counter drugs." His medical history and symptoms did not support those claims, and the possibility of head trauma was never discussed.

Haws finally reached the emergency room at Salem Health about 12:00 p.m. but his condition was not classified as a true emergency. Doctors treated Haws "as if he were an overdose patient despite the rather ample evidence of head trauma," according to court records.

In a separate state court suit, Bernard alleged that hospital employees were negligent in diagnosing and treating her son. She claimed, for example, that Haws remained chained to a gurney, without a head scan, from noon until evening.

"A critical factor in overall outcome from acute subdural hematoma is the timing of operative intervention," the lawsuit stated. "Those operated on within four hours of injury may have mortality rates as low as 30 percent. Those operated on after four hours of sustaining the injury have mortality rates around 90 percent."

"The hospital allowed him to languish for about nine hours in the ER," said Michelle Burrows, a longtime prisoners' rights attorney who represents Bernard. "That is somewhat inexplicable by the hospital."

When an X-ray was finally performed at about 7:00 p.m., it revealed that Haws had a subdural hematoma. He was rushed into emergency brain surgery but emerged five hours later in a coma; he remained on life support for four days and died a week after the surgery.

"Defendants failed to adequately evaluate and diagnose [Haws] by assuming facts not present and treating [him with] less than the standard of care, because [he] was an inmate," the suit filed by his mother alleged.

When Haws was admitted, hospital staff misidentified him as having come from the Oregon State Penitentiary, according to court documents. While such a mistake may seem innocuous, the evidence suggested that the lack of adequate care provided to Haws was the result of prisoner bias and mistreatment by hospital staff. A jail nurse admitted during her deposition testimony that she had debated sending Haws to a different hospital because she had "so many long-term concerns with Salem Health and the way they treat prisoners."

Bernard is suing the hospital and its staff for medical malpractice, wrongful death and civil rights violations for the delay in providing adequate medical care. She said she filed separate actions because she did not want to sue the Marion County Sheriff's Office in Marion County Circuit Court, and wasn't sure if a suit against the hospital and staff could be brought in federal court.

A jury trial has been requested in both cases. Unsurprisingly, both hospital spokesman Mark Glyzewski and sheriff's office spokesman Don Thomson declined to comment, citing the pending litigation.

The case in federal court was remanded to the Marion County Circuit Court in May 2013, where it remains pending with a status hearing scheduled for June 3, 2014. See: *Bernard v. Salem Health*, Marion County Circuit Court (OR), Case No. 12C18741.

Robert Dailey ultimately pleaded guilty to criminally negligent homicide for causing Haws' death, and was sentenced to five years in prison.

Source: *Statesman Journal*

News in Brief

Arizona: Two prisoners at the Yavapai County Jail have been sentenced for their involvement in a fraudulent tax refund scheme. James Borboa pleaded guilty and on September 8, 2013 received an additional term of 18.5 years in prison for using other prisoners' IDs to file tax returns for 2010, 2011 and 2012. Justin Eugene Shaw Young, who also participated in the scheme, pleaded guilty in August 2013 and received a mitigated sentence of 6 years. Borboa and Young offered kickbacks of about $1,000 to each prisoner whose ID was used in the tax scam.

California: On August 23, 2013, Robert Eugene Vasquez, 36, was sentenced to life in prison without the possibility of parole for the stabbing death of his neighbor, Bobby Ray Rainwater, Jr. Vasquez had been told by his mother that Rainwater was a child molester, though actually he had been required to register as a sex offender for an offense that did not involve a child. Vasquez attacked Rainwater in their mobile home park, punched him in the back of the head and then stabbed him until he was nearly decapitated.

California: A veteran prison guard at the California Men's Colony was sentenced to 30 days in jail in August 2013 for accepting bribes. Kevin Jon Venema, 50, was confronted by internal affairs officers who accused him of selling tobacco and cell phones to prisoners. Venema, initially charged with three felonies, pleaded no contest to one count of accepting a bribe as a correctional officer. His sentence included three years of probation in addition to the jail term.

California: Santa Barbara County jail guards Robert Kirsch and Christopher Johnson pleaded not guilty on August 30, 2013 to charges of assaulting a prisoner. They were released on their own recognizance and had no comment after their arraignment. "Our agency does not tolerate the unnecessary or excessive use of force. I am saddened by these allegations," Sheriff Bill Brown said in a statement.

Colorado: In a 400-page report, the Colorado Bureau of Investigation concluded that wrongdoing by jail officials was not responsible for the in-custody death of Zackary Dean Moffitt, 33, who suffered a cardiac arrest during a confrontation with deputies at the Summit County Jail. As a result of the report, the 5th Judicial District Attorney's Office issued a declination letter on August 26, 2013, confirming that they would not pursue criminal charges related to Moffitt's death.

Florida: A Pasco County Jail nurse's assistant was fired and arrested on August 27, 2013 after she used her agency laptop to hack into the email accounts of Sheriff Chris Nocco and other top jail staff. Diedre Devonne Fitzgerald, 24, was released on $15,000 bail after she admitted to unlocking passwords and using the hacked accounts to obtain confidential material. She had worked at the jail for almost two years.

Georgia: On September 9, 2013, Georgia state prisoner Jesse Barrett Mainor was charged with impersonating a police officer in connection with a telephone scam. Mainor had made phone calls to at least nine Alabama residents, claimed they had outstanding warrants and attempted to get them to send him money on Green Dot Moneypak cards. A grand jury will decide whether Mainor, who also has outstanding charges in Florida, will face trial on eight other charges related to the phone scam.

Georgia: At a hearing in Bibb County Superior Court on August 26, 2013, former jail guard Nazon Eo'ne Johnson, 22, was sentenced to four years' probation for bringing alcohol into Central State Prison and violating his oath of office. Another guard, Paris Dewayne Watson, who pleaded guilty to the same charges, admitted the alcohol was for consumption while on duty. Both guards were sentenced as first-time offenders, and must surrender their Peace Officer Standards and Training certification and pay fines and attorney fees in addition to their terms of probation.

Illinois: Kenneth Conley, who escaped from the Metropolitan Correctional Center in December 2012 while facing federal bank robbery charges, was sentenced to a prison term of 41 months on February 24, 2014. Conley, 40, and fellow prisoner Joseph Banks had used bed sheets and dental floss to rappel 17 stories from a window at the high-rise jail; they then escaped in a cab. Banks was caught two days later while Conley remained on the run for 18 days. At his sentencing hearing, while the judge was explaining the 41-month sentence for the escape charge, Conley told him, "You can take your analogy and shove it right up your ass."

India: On September 2, 2013, Jai Shankar, also known as "Psycho Killer Shankar," a convicted murderer and rapist, escaped from the high-security Parappana Agrahara jail with the help of a duplicate key and a bed sheet, which he used to climb down a wall. Shankar also allegedly scaled two 15-foot walls and wore a police uniform when he absconded. Eleven jail employees were suspended in connection with the escape.

Indiana: Michael Snow, a shift supervisor at the Marion County Jail, was bitten by prisoner Deondre Langston on August 22, 2013. Guards were trying to transfer Langston to the medical unit for a psychological evaluation when he resisted and charged at Snow with his head down. He then wrapped his arms around Snow's legs and bit him on the thigh. Snow was treated for the bite wound, which broke the skin and caused bruising; he plans to file charges against Langston.

Indiana: On July 30, 2013, Marcus Crenshaw, a guard at the Indiana State Prison, was caught bringing three-quarters of a pound of marijuana into the facility. He was suspended without pay and charged with trafficking with an offender, a Class C felony. Crenshaw was stopped and searched at the start of his shift and found to be in possession of approximately 343 grams of marijuana that DOC officials said was

intended for delivery to a prisoner.

Indiana: Two unnamed Indiana State Prison guards were hospitalized following an August 22, 2013 incident in which they were stabbed by prisoner Terrance Swann. One was injured so severely that he had to be airlifted to Wishard Memorial Hospital in Indianapolis; the other guard was treated at a Michigan City hospital and returned to work later that same day. The prison was placed on lockdown after the attacks and Swann was transferred to the Westville Correctional Facility.

Kentucky: A contract food service worker was charged with rape and promoting contraband at the Henderson County Detention Center on September 11, 2013. Britanny L. Murch, 26, was jailed on two felony counts of third-degree rape and two felony counts of first-degree promoting contraband. State police said Murch had sex with a prisoner and brought him methamphetamine and alcohol. She pleaded guilty to the charges and was sentenced on February 25, 2014 to concurrent terms of 12 months on each count of rape and three years on each contraband charge.

Louisiana: As a result of a joint investigation involving the Louisiana State Police and Lincoln Parish Sheriff's Office, prison guard Danny Henshaw was charged with using excessive force against a prisoner during a disturbance at the Lincoln Parish Detention Center. Henshaw resigned from the Sheriff's Office and turned himself in on August 22, 2013. The prisoner was examined by medical staff at the facility but did not report any injuries as a result of the incident.

Maryland: Prince George's County deputy sheriff Lamar McIntyre pleaded guilty on August 15, 2013 to two counts of sexual misconduct. He was initially charged with rape, but the charges were reduced after the female prisoner he had been accused of assaulting told investigators the sex was consensual. A $15 million lawsuit was filed against the former deputy by the 34-year-old prisoner, who said the incident occurred inside a holding cell while she awaited a court hearing.

Mexico: A prison in the Mexican town of Nuevo Laredo, across the border from Laredo, Texas, was the site of yet more violence in Mexico's overcrowded prison system. On August 29, 2013, eight prisoners were murdered with homemade knives after being transferred to the facility; it was unclear whether the killings were gang-related. In October 2013, *PLN* reported a violent disturbance at a prison in the central Mexican state of San Luis Potosi that left 11 prisoners dead and more than 65 injured.

Michigan: Derreck White, also known as Abraham Pearson, attacked Deputy Harrison Tolliver in a holding cell near a Detroit courtroom on September 9, 2013. Using a sharpened comb to stab the guard three times in the neck, White handcuffed Tolliver and left the courthouse wearing his uniform; he then carjacked a minivan and escaped. White was captured later the same night while walking along I-94. Harrison was treated at a local hospital and released.

Mississippi: Tyler Smith, 20, beat fellow prisoner Clifton Majors, 35, to death at the Central Mississippi Correctional Facility on September 1, 2013, because he feared that Majors and other prisoners planned to harm him. MDOC Commissioner Christopher Epps said "breaches in security" in the maximum-security area of the prison allowed the deadly assault to occur. Investigators said there was no indication Smith had used a weapon in the attack.

Mississippi: As many as 90 prisoners were released from their cells on August 24, 2013 after an altercation between a guard and a prisoner resulted in the prisoner gaining control of the keys to many of the pods in C Building at the Lauderdale County Jail. Sheriff Billy Sollie said six prisoners were charged with arson, escape, simple assault and aiding escape in connection with the disturbance. Surveillance video helped investigators identify the prisoners involved in the incident.

Nevada: There's the Mile High Club, then there's the 2.9 Mile Drive Club. That's the distance between the Clark County Detention Center (CCDC) and the city jail, which provided prisoners Carlisa Brookins and Alexis Garcia enough time to engage in oral sex while they were being transported in a jail van on August 8, 2013. After the tryst was discovered, Brookins and Garcia were returned to the CCDC where they were charged with voluntary sex with an inmate. Brookins said she performed the act to "make the guys in the back of the bus jealous."

Nevada: Michael Marcel Law pleaded

News In Brief (cont.)

guilty on January 7, 2014 to felony battery charges stemming from an incident at the Clark County Detention Center. Law walked into the jail with an aluminum baseball bat in September 2013 and proceeded to attack jail guard Darren McCray, who was the first officer he encountered. Law told detectives he was seeking revenge against the police for failing to conduct a proper investigation after he was robbed. He was sentenced to 3–10 years on March 3, 2014.

New Hampshire: On September 4, 2013, the New Hampshire Executive Council rejected a pardon request from Thomas Schoolcraft, a former Cheshire County jail guard who was convicted in 2004 for a series of home burglaries. The Council voted 3-2 to deny the pardon, with Councilmember Christopher Sununu stating that Schoolcraft's crimes were still "fresh in the minds" of his victims. Schoolcraft is currently pursuing a master's degree in criminology and had hoped a pardon would allow him to resume working in law enforcement.

New York: While incarcerated at the St. Lawrence County Correctional Facility, Joshua Henderson entered another prisoner's cell, pushed him down and allegedly reached into the victim's pants and grabbed his genitals. Henderson, 24, was charged with forcible touching and second-degree harassment in connection with the August 30, 2013 incident.

New York: On August 25, 2013, Robert Smalls, an off-duty prison guard, shot his 17-year-old son. There were conflicting accounts regarding what happened. Smalls told investigators he thought there was an intruder and felt he was in immediate danger; his son, Quasaun, told police the two had been arguing. Quasaun fled the hospital before being treated for the gunshot wound, and his father was charged with felony assault and criminal possession of a weapon.

North Dakota: New Castle Correctional Facility prisoner Michael Howard Hunter mailed a threatening letter to federal judge Rodney Webb on December 12, 2012. He was charged with sending the letter even though Judge Webb had died more than three years earlier, and pleaded guilty on September 2, 2013. He faces up to 10 years in federal prison.

Ohio: On August 16, 2013, federal prosecutors filed charges against Marlon Tayor, a former guard at the Lorain County Jail, for repeatedly striking a prisoner and causing him bodily injury. The Lorain County Sheriff's Office had previously released surveillance video of the incident. [See: *PLN*, Jan. 2013, p.50]. Tayor was charged with one count of deprivation of rights under color of law.

Ohio: Death row prisoner Billy Slagle's August 4, 2013 suicide was accomplished with an "item of permissible property," according to Department of Rehabilitation and Correction spokeswoman JoEllen Smith. Slagle killed himself hours before he was scheduled to be placed on 24-hour suicide watch in advance of his execution for the 1988 stabbing death of Mari Anne Pope during a burglary. Officials at the Chillicothe Correctional Institution would not say what the item was and did not provide details regarding the manner of Slagle's death.

Ohio: According to Richland County Assistant Prosecutor Brent Robinson, on August 12, 2013, Robert A. Picklesimer, 54, a food service supervisor at the Mansfield Correctional Institution, was indicted on one count of sexual battery, one count of theft in office and two counts of bribery. "He was permitting these inmates to have

food in exchange for allowing him to touch them in sexual ways," Robinson stated.

Oklahoma: Prison officials said Donald Lee Grayson, 61, gained access to a laptop from his prison cell and filed false tax returns using the names and bank accounts of fellow prisoners. In August 2013, Grayson received concurrent sentences of 18 months for each of three counts of filing false returns, and will be required to pay restitution. A guard discovered the scheme after noticing a power cord in Grayson's cell. Investigators said he received fraudulent tax refunds in the amount of $14,226.

Oklahoma: A lawsuit filed on August 13, 2013 claims that prisoner Philip Thomas Burris, Jr. was forced to have sex with female prison employee Kasey McDonald "50 to 100" times at the Joseph Harp Correctional Center. McDonald was arrested and charged with engaging in sexual misconduct – the fifth such case involving a Joseph Harp employee since 2008. The lawsuit also alleges that Burris' former case manager supplied him with cell phones and marijuana. "These things happen," said Corrections Department spokesman Jerry Massie.

Oklahoma: Mark Gregory Valadez faces additional charges after he was booked into the Oklahoma County jail on September 1, 2013 with a loaded derringer concealed in his rectum. He managed to avoid a metal detector and was only caught after bragging to other prisoners about smuggling the weapon into the facility. Valadez was hospitalized to have the pistol removed and now faces felony charges of possession of contraband in a penal institution.

Pennsylvania: On September 12, 2013, a jury acquitted former veteran federal prison guard Lamont Lucas of having sex with a female prisoner after the defense argued that the prisoner was a habitual liar. [See: *PLN*, Sept. 2013, p.17]. The jury rejected the prisoner's story and was presented with powerful character evidence in support of Lucas. An attorney for the defense said Lucas, who had been suspended without pay following the accusations, was unlikely to return to his job with the Bureau of Prisons.

Tennessee: A dietitian at the Unicoi County Jail was arrested on September 6, 2013 and charged with introducing drugs into a penal facility. Faith A. Smith allegedly met with a prisoner's family member who provided the drugs that she brought into the jail.

Texas: Justin P. MacDonald, 29, was in the Dallas County Jail on a probation violation and just wanted some fresh air. He walked out the front doors of the facility while taking out the trash on July 26, 2013, which prompted a lockdown. MacDonald was spotted walking outside in jail-issued pants with no shirt, and quickly captured. He now faces a felony escape charge. "The investigation is ongoing to determine how the inmate made it to the outside of the facility," said sheriff's department spokesman Raul Reyna.

Tunisia: On September 2, 2013, police and soldiers searched for 49 prisoners who had escaped from a facility in the southern coastal town of Gabes. Colonel Hicham Ouni, security director for Tunisia's prisons, told the Associated Press that the prisoners were mostly young and none were incarcerated for terrorism-related crimes. Tunisia's prison system is at more than triple capacity, with around 22,000 prisoners.

Utah: Christopher Stein Epperson, a former Wasatch County sheriff's deputy, was charged with taking advantage of his position as a jail guard to physically abuse two female prisoners. [See: *PLN*, April 2012, p.1]. He pleaded guilty to the federal charges on August 29, 2013, and faces up to

10 years in prison for each of two counts of deprivation of rights under color of law.

Virginia: Former Augusta Correctional Center guard Brian Peduto was three months into serving a suspended sentence for attempting to have sex with a 12-year-old girl when he began having a sexual relationship with a minor. He was not spared prison the second time, and received a three-year sentence on August 26, 2013. Peduto apologized before he was sentenced, saying, "It's time for me to stay away from girls in general."

Washington: A riot broke out at the Pend Oreille County Jail on July 7, 2013, and ten prisoners now face additional charges as a result. Two cells were flooded during the disturbance, which caused water damage in an adjoining courtroom. Although no serious injuries were reported, one prisoner allegedly attacked a guard, another intimidated a witness and there were two prisoner-on-prisoner assaults. The jail was locked down for several hours following the riot.

Washington: Sarah Brooks, a prison therapist specializing in sexual deviancy treatment, was charged with engaging in sexual activity with a sex offender. [See: *PLN*, Sept. 2013, p.17]. Brooks pleaded guilty on August 20, 2013 to a lesser offense and was sentenced to 24 months on probation. As part of the plea deal she must also complete alcohol treatment and mental health counseling. According to prosecutors, Brooks developed a sexual relationship with a male prisoner; however, he did not want to press charges, which resulted in the reduced charge and plea deal.

Criminal Justice Resources

ACLU National Prison Project

Handles state and federal conditions of confinement claims affecting large numbers of prisoners. Publishes the NPP Journal (available online at: www.aclu.org/national-prison-project-journal-fall-2011) and the Prisoners' Assistance Directory (write for more information). Contact: ACLU NPP, 915 15th St. NW, 7th Fl., Washington, DC 20005 (202) 393-4930. www.aclu.org/prisons

Amnesty International

Compiles information about prisoner torture, beatings, rape, etc. to include in reports about U.S. prison conditions; also works on death penalty issues. Contact: Amnesty International, 5 Penn Plaza, New York NY 10001 (212) 807-8400. www.amnestyusa.org

Center for Health Justice

Formerly CorrectHELP. Provides information related to HIV in prison – contact them if you are not receiving proper HIV medication or are denied access to programs due to HIV status. Contact: CHJ, 900 Avila Street, Suite 102, Los Angeles, CA 90012. HIV Hotline: (214) 229-0979 (collect calls from prisoners OK). www.centerforhealthjustice.org

Centurion Ministries

Works to exonerate the wrongfully convicted, in both cases involving DNA evidence and those that do not. Centurion only takes 1-2 new cases a year involving actual innocence. They do not consider accidental death or self-defense murder cases, he said/she said rape cases, or child abuse or child sex abuse cases unless there is physical evidence. All case inquiries must be from the prisoner involved, in writing. Contact: Centurion Ministries, 221 Witherspoon Street, Princeton, NJ 08542 (609) 921-0334. www.centurionministries.org

Critical Resistance

Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in Florida, California, New York, Texas and Louisiana. Publishes The Abolitionist newsletter. Contact: Critical Resistance, 1904 Franklin Street #504, Oakland, CA 94612 (510) 444-0484. www.criticalresistance.org

The Exoneration Project

The Exoneration Project is a non-profit organization dedicated to working to free prisoners who were wrongfully convicted. The Project represents innocent individuals in post-conviction legal proceedings; typical cases involve DNA testing, coerced confessions, police misconduct, the use of faulty evidence, junk science and faulty eyewitness testimony, and ineffective assistance of counsel claims. Contact: The Exoneration Project, 312 North May Street, Suite 100, Chicago, Illinois 60607 (312) 789-4955. www.exonerationproject.org

Family & Corrections Network

Primarily provides online resources for families of prisoners related to parenting, children of prisoners, prison visitation, mothers and fathers in prison, etc. Contact: F&CN, 93 Old York Road, Suite 1 #510, Jenkintown, PA 19046 (215) 576-1110. www.fcnetwork.org

FAMM

FAMM (Families Against Mandatory Minimums) publishes the FAMMGram three times a year, which includes information about injustices resulting from mandatory minimum laws with an emphasis on federal laws. Recommended donation of $10 for a subscription. Contact: FAMM, 1612 K Street NW #700, Washington, DC 20006 (202) 822-6700). www.famm.org

The Fortune Society

Provides post-release services and programs for prisoners in the New York City area and occasionally publishes Fortune News, a free publication for prisoners that deals with criminal justice issues, primarily in New York. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. www.fortunesociety.org

Innocence Project

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

Just Detention International

Formerly Stop Prisoner Rape, JDI seeks to end sexual violence against prisoners. Provides counseling resources for imprisoned and released rape survivors and activists for almost every state. Contact: JDI, 3325 Wilshire Blvd. #340, Los Angeles, CA 90010 (213) 384-1400. www.justdetention.org

Justice Denied

Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, and includes all back issues of the Justice Denied magazine and a database of more than 3,000 wrongly convicted people. Contact: Justice Denied, P.O. Box 68911, Seattle, WA 98168 (206) 335-4254. www.justicedenied.org

National CURE

Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the CURE Newsletter. $2 annual membership for prisoners. Contact: CURE, P.O. Box 2310, National Capitol Station, Washington, DC 20013 (202) 789-2126. www.curenational.org

November Coalition

Publishes the Razor Wire, a bi-annual newsletter that reports on drug war-related issues, releasing prisoners of the drug war and restoring civil rights. A subscription is $10 for prisoners and $30 for non-prisoners. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 684-1550. www.november.org

Prison Activist Resource Center

PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners, and supports activists working to expose and end the abuses of the Prison Industrial Complex and mass incarceration. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. www.prisonactivist.org

Prison Legal News Book Store

Fill in the boxes next to each book you want to order, indicating the quantity and price. Enter the Total on the Order Form on the next page. **FREE SHIPPING on all book / index orders OVER $50 (effective 9-1-2013 until further notice). $6.00** S/H applies to all other book orders.

SUBSCRIBE TO PLN FOR 4 YEARS AND CHOOSE ONE BONUS!
1. **SIX (6) FREE ISSUES FOR 54 TOTAL!** OR
2. **PRISON PROFITEERS (A $24.95 VALUE!)** OR
3. **WITH LIBERTY FOR SOME (AN $18.95 VALUE!)**

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

With Liberty for Some: 500 Years of Imprisonment in America, by Scott Christianson, Northeastern University Press, 372 pages. **$18.95**. The best overall history of the American prison system from 1492 through the 20th Century. A must-read for understanding how little things have changed in U.S. prisons over hundreds of years. 1026

Prison Nation: The Warehousing of America's Poor, edited by Tara Herivel and Paul Wright, 332 pages. **$35.95**. PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. 1041

The Celling of America, An Inside Look at the U.S. Prison Industry, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. **$22.95**. PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. 1001

Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, PLN Publishing, 221 pages. **$49.95**. Written by Missouri prisoner Jon Marc Taylor, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, paralegal and college courses by mail. 1071

The Criminal Law Handbook: Know Your Rights, Survive the System, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 608 pages. **$39.99**. Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy to understand question-and-answer format. 1038

Represent Yourself in Court: How to Prepare & Try a Winning Case, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 528 pages. **$39.99**. Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. The authors explain what to say in court, how to say it, etc. 1037

Law Dictionary, Random House Webster's, 525 pages. **$19.95**. Comprehensive up-to-date law dictionary explains more than 8,500 legal terms. Covers civil, criminal, commercial and international law. 1036

The Blue Book of Grammar and Punctuation, by Jane Straus, 110 pages. **$14.95**. A guide to grammar and punctuation by an educator with experience teaching English to prisoners. 1046

Legal Research: How to Find and Understand the Law, by Stephen Elias and Susan Levinkind, 568 pages. **$49.99**. Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. 1059

Deposition Handbook, by Paul Bergman and Albert Moore, Nolo Press, 352 pages. **$34.99**. How-to handbook for anyone who conducts a deposition or is going to be deposed. 1054

Criminal Law in a Nutshell, by Arnold H. Loewy, 5th edition, 387 pages. **$43.95**. Provides an overview of criminal law, including punishment, specific crimes, defenses & burden of proof. 1086

SUBSCRIBE TO PLN FOR 3 YEARS AND CHOOSE ONE BONUS!
1. **FOUR (4) FREE ISSUES FOR 40 TOTAL!** OR
2. **PROTECTING YOUR HEALTH AND SAFETY (A $10.00 VALUE!)**

Protecting Your Health and Safety, by Robert E. Toone, Southern Poverty Law Center, 325 pages. **$10.00**. This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how to enforce your rights, including through litigation. 1060

Spanish-English/English-Spanish Dictionary, 2nd ed. Random House. **$15.95**. Spanish-English and English-Spanish. 60,000+ entries from A to Z; includes Western Hemisphere usage. 1034a

Writing to Win: The Legal Writer, by Steven D. Stark, Broadway Books/Random House, 283 pages. **$19.95**. Explains the writing of effective complaints, responses, briefs, motions and other legal papers. 1035

Actual Innocence: When Justice Goes Wrong and How to Make it Right, updated paperback ed., by Barry Scheck, Peter Neufeld and Jim Dwyer, 403 pages. **$16.00**. Describes how criminal defendants are wrongly convicted. Explains DNA testing and how it works to free the innocent. Devastating critique of police and prosecutorial misconduct. 1030

Webster's English Dictionary, Newly revised and updated, Random House. **$8.95**. 75,000+ entries. Includes tips on writing and word usage, and has updated geographical and biographical entries. Includes recent business and computer terms. 1033

Everyday Letters for Busy People, by Debra Hart May, 287 pages. **$18.99**. Hundreds of sample letters that can be adapted for most any purpose, including letters to government agencies and officials. Has numerous tips for writing effective letters. 1048

Roget's Thesaurus, 717 pages. **$8.95**. Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. 1045

Beyond Bars, Rejoining Society After Prison, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alpha, 240 pages. **$14.95**. *Beyond Bars* is a practical and comprehensive guide for ex-convicts and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more. 1080

Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A., by Mumia Abu Jamal, City Lights Publishers, 280 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. 1073

The Habeas Citebook: Ineffective Assistance of Counsel, by Brandon Sample, PLN Publishing, 200 pages. **$49.95**. This is PLN's second published book, written by federal prisoner Brandon Sample, which covers ineffective assistance of counsel issues in federal habeas petitions. Includes hundreds of case citations! 1078

Complete GED Preparation, by Steck-Vaughn, 922 pages. **$24.99**. This useful handbook contains over 2,000 GED-style questions to thoroughly prepare students for taking the GED test. It offers complete coverage of the revised GED test with new testing information, instructions and a practice test. 1099

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

Hepatitis and Liver Disease: What You Need to Know, by Melissa Palmer, MD, 457 pages. **$17.95**. Describes symptoms & treatments of hepatitis B & C and other liver diseases. Includes medications to avoid, what diet to follow and exercises to perform, plus a bibliography. 1031

Arrested: What to Do When Your Loved One's in Jail, by Wes Denham, 240 pages. **$16.95**. Whether a defendant is charged with misdemeanor disorderly conduct or first-degree murder, this is an indispensable guide for those who want to support family members, partners or friends facing criminal charges. 1084

Prisoners' Self-Help Litigation Manual, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 960 pages. **$39.95**. The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Highly recommended! 1077

How to Win Your Personal Injury Claim, by Atty. Joseph Matthews, 7th edition, NOLO Press, 304 pages. **$34.99**. While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents. 1075

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

Advanced Criminal Procedure in a Nutshell, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **$43.95**. This text is designed for supplemental reading in an advanced criminal procedure course on the post-investigation processing of a criminal case, including prosecution and adjudication. 1090

Our Bodies, Ourselves, by The Boston Women's Health Book Collective, 944 pages. **$26.00**. This book about women's health and sexuality has been called "America's best-selling book on all aspects of women's health," and is a great resource for women of all ages. 1082

Arrest-Proof Yourself, by Dale Carson and Wes Denham, 288 pages. **$14.95**. This essential "how not to" guide written by an ex-cop explains how to act and what to say when confronted by the police to minimize the chances of being arrested and avoid additional charges. Includes information on basic tricks that police use to get people to incriminate themselves. 1083

Nolo's Plain-English Law Dictionary, by Gerald N. Hill and Kathleen T. Hill, 496 pages. **$29.99**. Find terms you can use to understand and access the law. Contains 3,800 easy-to-read definitions for common (and not so common) legal terms. 3001

Criminal Procedure: Constitutional Limitations, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **$43.95**. Intended for use by law students, this is a succinct analysis of constitutional standards of major significance in the area of criminal procedure. 1085

A Dictionary of Criminal Law Terms (Black's Law Dictionary® Series), by Bryan A. Garner, 768 pages. **$33.95**. This handbook contains police terms such as preventive detention and protective sweep, and phrases from judicial-created law such as independent-source rule and open-fields doctrine. A good resource to help navigate your way through the maze of legal language in criminal cases. 1088

PLN Cumulative Index. $22.50 each. PLN Article Indexes provide detailed information about all PLN articles, including title, author, issue, page number, topics covered, citations, and if it is state, BOP or jail specific. Can be searched on over 500 subjects such as medical neglect or sexual assault. Circle the index(es) you are ordering: **1990-1995, 1996-1998, 1999-2001, 2002-2004** (more recent indexes not yet available)

Subscription Rates

	1 year	2 years	3 years	4 years
Prisoners	**$30**	**$ 60**	**$ 90**	**$120**
Individuals	**$35**	**$ 70**	**$105**	**$140**
Professionals (Attorneys, agencies, libraries)	**$90**	**$180**	**$270**	**$360**

Subscription Bonuses

2 years - 2 bonus issues for 26 total issues
3 years - 4 bonus issues (40 total) or a bonus book as listed on pg. 61
4 years - 6 bonus issues (54 total) or a bonus book as listed on pg. 61

(All subscription rates and bonus offers are valid as of 9-1-2013)

Purchase with Visa, MasterCard, AmEx or Discover by phone: **561-360-2523**
Or buy books and subscriptions online: **www.prisonlegalnews.org**

Mail Payment and Order to:

Prison Legal News
P.O. Box 1151
Lake Worth, FL 33460

All purchases must be pre-paid. Prisoners can pay with new first-class stamps (strips or books only, no loose stamps) or pre-stamped envelopes, *if allowed by institutional policies.*

Please **Change my Address** to what is entered below ☐

Mail Order To:

Name: _____
DOC #: _____
Suite/Cell: _____
Agency/Inst: _____
Address: _____
City/State/Zip: _____

Subscribe to Prison Legal News	**$ Amount**
6 month subscription (prisoners only) - $18	
1 yr subscription (12 issues)	
2 yr subscription (2 bonus issues for 26 total!)	
3 yr sub (*write below which FREE book you want*) or 4 bonus issues for 40 issues total!	
4 yr sub (*write below which FREE book you want*) or 6 bonus issues for 54 issues total!	
Random sample issue of **PLN** - $3.50 each	

Books or Index Orders (No S/H charge on 3 & 4-year sub free books OR book orders OVER $50!)

	Qty.	

Add $6.00 S/H to Book Orders **UNDER $50**	
FL residents ONLY add 6% to Total Book Cost	
Total Amount Enclosed:	

**** No refunds on PLN subscription or book / index orders after orders have been placed ****

Prison Legal News
PO Box 1151
Lake Worth FL 33460

Change Service Requested

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

Subscription Renewal

Subscriptions expire after the issue shown on the label is mailed. For example, if the label says: EXPIRES 02/2015, then the subscription expires after the February 2015 issue is mailed. Please renew at least 2 months before the expiration date. IF THE LABEL SAYS **EXPIRES: 03/2014** THIS IS YOUR LAST ISSUE. Please renew immediately to avoid missing any issues.

Change of Address

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

EXHIBIT C

ARIZONA DEPARTMENT OF CORRECTIONS

Notice of Result-Publication Review

Review Date	Name Of Publication	ISBN or Vol/N	Publication Date
5/9/2014	PRISON LEGAL NEWS	V. 25 N. 3	MARCH 2014

The Office of Publication Review has reviewed the above-mentioned individual publication and has determined that the individual publication will be:

[ ] Allowed [X] Excluded

Per DO 914.08 Inmate Mail - Unauthorized Publications and Material, it is determined that this individual publication is excluded.

For the complete exclusion explanations, refer to DO 914 directly. The "X" indicates the specific violation(s).

X	Policy #	Description
X	1.1.1	Riots/Work Stoppages/Resistance
	1.1.2	Sending/Receiving Contraband
	1.1.3	Street Gang/STG
	1.1.4	Locks/Security Devices
	1.1.5	Hands, Feet, or Head as Weapons/Fighting Techniques/Self-Defense
	1.1.6	Drug Promotion/Manufacture or Cultivation of Drugs, Narcotics, Poisons/Brewing Alcohol
	1.1.7	Superiority of One Group Over Another/Promotes Racism/Degradation
	1.1.8	Sale/Manufacture/ Concealment of Weapons
	1.1.9	Computer/Electronics/ Communications Systems
	1.1.10	Idendity Theft
	1.1.11	Escape/Elude Capture

X	Policy #	Description
	1.1.12	Survival Skills
	1.1.13	Gambling
	1.1.14	Tatoo/Skin Modification
	1.1.15	Cipher/Code
	1.1.16	Promote Violence
	1.1.17	Graphic Violence
X	1.1.18	Unacceptable Sexual or Hostile Behaviors
	1.1.19	Intelligance/Investigative Techniques
	1.1.20	Military/Strategy
	1.1.21	Medical Publications
	1.1.22	Health/Fire Risk
	1.1.23	Crime Scene/Autopsy

X	Policy #	Description
	1.1.24	Violation of Policy/Law
	1.1.25	Scent/Canine Search
	1.1.26	Making of Incense
	1.1.27	Sale/Manufacture/ Concealment of Tools
	2.2	Advertisement Promotion
	914.07	Sexually Explicit Material
	Other	

- Refer to the revised DO 914, Inmate Mail for information on Second Reviews as the policy has changed to include two separate Second Review processes. Second Review decisions are not grievable through the traditional grievance process and exhaust inmates' administrative remedies.
- Inmates must go to the assigned Complex/Stand-Alone Unit Publication Review staff for all Publication Review-related questions/concerns including requesting Second Reviews prior to writing to the Office of Publication Review. Letters to the Office of Publication Review that do not indicate that the inmate first addressed the issue with Complex/Stand-Alone Unit Publication Review staff may be returned unprocessed or forwarded to the Complex/Stand-Alone Unit Publication Review staff for response.
- To prevent from ordering previously excluded publications or publications that may be in violation of policy, inmates can write to their Complex/Stand-Alone Unit Publication Review staff concerning up to 10 individual publications providing the publication information.
- If your copy of a publication was used by the Office of Publication Review in the determination that an individual publication is excluded, your copy will be held for 90 days if no Second Review is requested or 3 years if a Second Review was requested and the exclusion was upheld. If you are to be released prior to this 90 day or 3 year period, please inform your Complex/Stand-Alone Unit Publication Review staff 6-8 weeks prior to the release date.

OTHER EXCLUSION:

ELECTRONICALLY SENT
Original Signature for file

914-6
9/1/11

EXHIBIT D

Prison Legal News

VOL. 25 No. 4
ISSN 1075-7678

Dedicated to Protecting Human Rights

April 2014

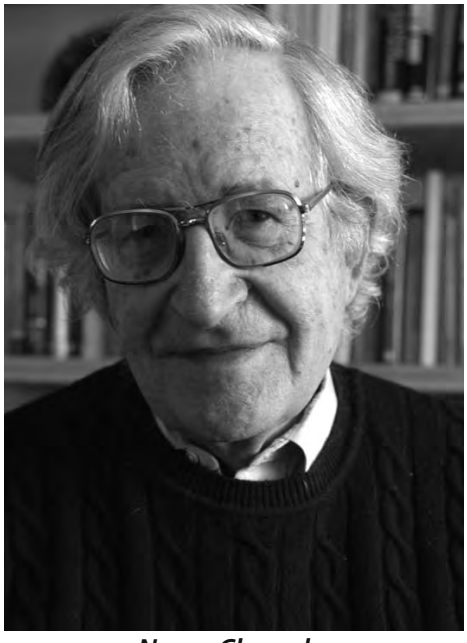
An Interview with Noam Chomsky on Criminal Justice and Human Rights

On February 5, 2014, *Prison Legal News* editor Paul Wright interviewed Noam Chomsky, 75, at his home in Lexington, Massachusetts. Professor Chomsky is the foremost dissident intellectual in the United States, and for decades has been a prominent critic of U.S. foreign policy, human rights abuses, imperialism and the media's facilitation of same. He is also one of the world's eminent linguists and has been a professor of linguistics at the Massachusetts Institute of Technology since 1955. He was arrested and jailed for anti-war activism in the 1960s.

The author of dozens of books on politics, media analysis, foreign policy and other issues, Professor Chomsky was also one of *PLN*'s earliest subscribers and has corresponded with Paul on various topics since the early 1990s. However, in his books, essays and interviews, Professor Chomsky has rarely addressed human rights abuses in the United States with respect to policing and prisons – until now.

While Professor Chomsky agreed to be interviewed by *PLN*, scheduling was difficult due to his extensive travel and speaking schedule. It turned out that the day of the interview was also the day a massive snowstorm hit Boston, and he did not come into work. He graciously agreed to conduct the interview at his home, and Paul and *PLN* advertising director Susan Schwartzkopf made an adventurous cab ride through the snowstorm to his house.

We extend our thanks to Professor Chomsky for this interview and to his assistant, Beverly Stohl, for making the necessary arrangements.



Noam Chomsky

•••

PAUL WRIGHT: I think one of the things that's interesting is I've been reading your work since I was in high school, and I would say that for at least 30 years now, 30-plus years, I've been reading your work and all the interviews that you've done, and very few people ever ask you about domestic issues.

NOAM CHOMSKY: Really?

PW: Yes. About domestic stuff, in terms of ... you know, they ask you about human rights in other countries, but not about human rights in this country. I think you did one interview in the mid-90s which we reprinted in *Prison Legal News*.

NC: There are many. I don't know what happens to them. There are so many, I can't keep track. There's several a day.

PW: Okay. My first question, Professor Chomsky, is the United States talks about human rights abroad but not domestically. Why is that? Why aren't Americans deemed to have human rights while people overseas are?

NC: Well, first of all, it's not true that people overseas are. We talk about human rights in enemy states, but we don't talk about them in our own client states. So, for example, compare, say, Eastern Europe and Latin America. Eastern Europe was Soviet domain in the post-Stalin, post-Second World War period, up until 1990. Eastern Europe was dominated by the Soviet Union. And there's an enormous amount of discussion about human rights in Eastern Europe. Human Rights Watch, the organization, pretty much grew out of Helsinki Watch, which was concerned specifically with Eastern Europe.

Well, what about the U.S. domains during the same period? Say, roughly 1960

INSIDE

From the Editor	16
Prison Food Allergy Policies	18
$15 Million Settlement in NM	20
Recidivism & Family Communication	24
Arkansas DOC Suing Prisoners	30
TASERs May Cause Heart Attacks	34
Mass Incarceration by the Numbers	36
GPS Monitoring Problems in LA	40
Book Review: The Redbook	43
PLN Awarded Fees, Costs in OR Suit	44
Prisoner Organ Transplants, Donations	52
Excessive Force Claims in Oregon	54
News in Brief	56

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

EDITOR
Paul Wright
MANAGING EDITOR
Alex Friedmann
COLUMNISTS
Michael Cohen, Kent Russell,
Mumia Abu Jamal
CONTRIBUTING WRITERS
Matthew Clarke, John Dannenberg,
Derek Gilna, Gary Hunter,
David Reutter, Mark Wilson,
Joe Watson, Christopher Zoukis
RESEARCH ASSOCIATE
Mari Garcia
ADVERTISING DIRECTOR
Susan Schwartzkopf
LAYOUT
Lansing Scott
HRDC LITIGATION PROJECT
Lance Weber—General Counsel
Robert Jack—Staff Attorney

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

A one year subscription is $30 for prisoners, $35 for individuals, and $90 for lawyers and institutions. Prisoner donations of less than $30 will be pro-rated at $3.00/issue. Do not send less than $18.00 at a time. All foreign subscriptions are $100 sent via airmail. PLN accepts Visa and Mastercard orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without an SASE. PLN is a section 501 (c)(3) non-profit organization. Donations are tax deductible. Send contributions to:

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

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

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

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

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

Noam Chomsky Interview (cont.)

to 1990? You take a look at the scholarly literature, it's quite straight. Human rights in the U.S. domains of Latin America were under vastly greater attack than in Eastern Europe. It's true whether you look at the murders, torture, incarceration, slaughters the U.S. was carrying out, including a major war against the Church. The story after Vatican II, really, there were lots of religious martyrs.

So in 1989, the Berlin Wall falls. A lot of, you know, justified excitement; there's liberation in Eastern Europe. And what happens in Central America at that time? Well, shortly after the Berlin Wall fell, a Salvadoran brigade, the Atlacatl Brigade, U.S.-trained, U.S.-armed, fresh from renewed training at the John F. Kennedy School of Counter-Insurgency Warfare, under the orders of the high command, broke into the university and murdered six leading Jesuit intellectuals, leading Latin American intellectuals. Anything like that happen in Eastern Europe? I mean, people were, you know, Václav Havel was in prison, but he didn't have his head blown off. And this is the record all the way through. Is it discussed? No.

PW: And I think it's interesting that you use the example of Eastern Europe because we can note that since the collapse of the Soviet Union and Eastern bloc countries, I think it's no coincidence that we now learn that Eastern European countries, like Poland, Lithuania and elsewhere, are leading rendition states for the United States to set up its secret torture prisons where people can be kidnapped and tortured with impunity, which, arguably, did not happen under the Soviet Union.

NC: That's very interesting, in fact, because there was a study by the Open Society Forum of countries that had been involved in the U.S. rendition programs, and these, as you say, are kind of at the extreme end of commitment to torture. Taking suspects and sending them to countries like Syria or Egypt or Libya, where you know they're going to be tortured. Who participated? Well, of course, European countries mostly participated. The former Eastern European domains and Soviet Union did. The Middle East, of course, participated. That's where they were sending them to be tortured. One region of the world didn't participate.

PW: Latin America.

NC: Latin America. What happened is in the past 10 years, roughly 10-15 years, Latin America has pretty much extricated itself from U.S. domination. Not entirely, but substantially. This is a dramatic example of it. It's kind of doubly interesting because during the period when Latin America was pretty much controlled by the United States, it was one of the world centers of torture. And now that it's somewhat, pretty much liberated itself, it didn't participate in the massive U.S. torture programs. And actually it shows up in other ways, too.

The U.N. Economic Commission for Latin America [recently] published a report on poverty reduction in Latin America. I don't think it was reported here. But it's striking. What it basically shows is the usual. The more countries that were free of U.S. control, free to carry out reforms, the more they carried out extensive poverty reduction. So Venezuela, Brazil, other countries had a very sharp reduction in poverty. You get closer to home, say, Guatemala and Honduras, poverty remains extreme. Now the interesting case is Mexico. A rich country, relatively speaking, under the NAFTA umbrella, and practically the only country where poverty substantially increased last year.

These are very systematic properties. But are they discussed? No. So it's not just human rights in the United States that aren't discussed, it's in U.S. domains even when it is really dramatic. Like, for example, Central America.

As you know, the huge increase in incarceration in the United States was mostly since around 1980, and during those years Central America was subjected to really massive atrocities, all backed by the United States or carried out by the United States. Hundreds of thousands of people slaughtered. All kinds of torture. The murder atrocities. I mentioned one case, but it's vastly greater. Now you take a look at, say, immigration today; there's a big immigration problem in the United States. So, for example, people are coming to the United States illegally, undocumented aliens from the Mayan highlands in Guatemala. Why? Because they were practically wiped out in the early '80s by a really genocidal attack backed by President Reagan, who assured us that the general in charge was a nice guy committed to democracy and so on. So

Noam Chomsky Interview (cont.)

now the people in the areas that we helped destroy are fleeing for refuge to the United States, and President Obama has sent back [deported] two million, not just from there but from other places. None of this gets discussed except kind of at the margins.

PW: One of the things, too, is what I think of as a discussion of human rights and slaughters, and I think one of the things that's interesting with Guantanamo seems to be almost a quantitative departure. For over 60 years the United States ran a very successful counter-insurgency program around the world which consisted of kidnapping people, torturing whatever information they had out of them, murdering them and disappearing the bodies. They did this very successfully in the Philippines and Central America, as you know, with less success in Southeast Asia.

NC: Oh, there was plenty of success in Southeast Asia. Tiger cages in South Vietnam were major torture chambers.

PW: Sure. Exactly. But at some point, one of the things I find interesting is that with Guantanamo they've publicly acknowledged capturing people, though not always, hence the secret rendition prisons. But at least in Guantanamo they're publicly acknowledging that they've kidnapped people. They've pretty much publicly acknowledged that they tortured them extensively. And continue to torture them. But they aren't killing them and dumping the bodies, as they did for decades before that. Do you have any idea why that changed?

NC: Well, there is a difference. Some of the major scholarly work done on torture is done by Alfred McCoy, a historian.

PW: Yes. We've published his work.

NC: He's pointed out that there is a difference. The U.S. used to delegate torture to subsidiaries. It was sometimes carried out by U.S. operatives, but usually it was kind of delegated. The last couple of years it's been carried out by the U.S. It's pretty much the same thing, as you say, but there's a difference in direct participation. And in fact, he also points out that you could make a case that George Bush's resort to extensive torture is not illegal by U.S. law.

PW: No. It isn't.

NC: The U.S. never really signed or ratified the torture convention. There is a U.N. torture convention which the U.S. technically ratified, but after rewriting it to exclude the methods that are used by the CIA.

PW: Actually, the second question I was going to ask you was that the U.S. routinely signs international treaties on issues like torture and prisoners' rights. Then it holds there's no private causes of action for them and, of course, as you're noting right now, it doesn't fully ratify them or creates critical exemptions that prevent enforcement. So my question is, why sign them?

NC: Well, there are two steps. Signing and ratifying. Ratifying is what counts, otherwise nothing happens. But the U.S. has ratified very few international conventions. I mean, even ones like the rights of a child and things like that; I think the U.S. and Somalia are the only countries that didn't ratify it. And in the very rare cases where the U.S. ratifies a convention, there's a reservation attached. It's called "non self-executing," which means, "inapplicable to the United States." So, for example, the U.S. did finally sign the genocide convention after 40 years, but with a condition: "not applicable to the United States."

That's actually been upheld by the World Court. Because under the Court rules, a country can be prosecuted only if it's accepted the jurisdiction of the Court. When Yugoslavia brought a case against NATO after the bombing in 1999, the United States withdrew from the case. And the Court accepted that because one of the charges was genocide and the U.S. is not susceptible to charges of genocide.

And this runs right through the record. In fact, even in 1946, when the U.S. pretty much led the establishment of the International Court of Justice, the World Court, it added a condition that the U.S. is not subject to any charges under international treaties such as the OAS Charter and the U.N. Charter. And the foundation of the U.N. Charter, of course, bars threats or use of force in international affairs. But the U.S. is not susceptible to that rule. And, in fact, that's kind of tacitly understood. So, for example, President Obama, high officials and others are constantly threatening force against Iran. That's what it means to say "All options are open."

PW: Sure. And every other country in the world, too.

NC: Well, they can do what they want, but if the U.S. were brought to the Court under that charge, they would appeal that it's not applicable. And, in fact, that was done. Nicaragua brought the United States to the World Court.

PW: For the mining of its harbors.

NC: Well, that was what the final charge was, because the main charges were thrown out by the World Court since they were charges of violations of the Organization of American States treaty against intervention. But the Court pointed out you can't charge [under the OAS treaty]. The U.S. is free from that.

PW: And, obviously, I think for *Prison Legal News* readers sitting in prison the idea that you're only susceptible to a criminal court's jurisdiction if you agree to it sounds like a pretty good deal.

NC: A pretty good deal. But, of course, if we go back to Guantanamo, the torture at Guantanamo was horrible. But it's kind of standard in American prisons.

PW: Actually, it is. When Abu Ghraib first happened, one of the things I've noticed over the many years of publishing *Prison Legal News* is that human rights abuses that occur overseas will get a lot of American media attention. But when the same abuse occurs in American prisons, being done by American officials to Americans, it gets very little attention or is largely ignored.

NC: It gets nothing. Take isolation. The U.N. and other authorities consider that torture. And, in fact, as is known, a short amount of [solitary confinement] drives people completely crazy.

PW: And we've done this for several hundred years.

NC: Yes. But that's standard in America, in American prisons. Almost total isolation for prisoners if they want to, and other treatment, too. There's a general principle that if we carry out a crime, it doesn't happen.

PW: Or it's not a crime.

NC: Either it's not a crime, or it doesn't happen. It literally doesn't happen. And that's true of the media. It's largely true of scholarship.

PW: Do you believe that Americans have fewer or more rights vis-à-vis state power than the citizens of other industrialized countries?

NC: We do, in fact. It's an unusually free country. Despite all of these crimes, which are real, it is nevertheless quite a free country for people who are relatively privileged. Not if you're a black kid in the slums of Boston. But if you're, say, living where we're talking now, you've got lots of rights. In many respects, more so than other countries. For example, freedom of speech, which is after all a crucial right, is protected in the United States to an extent beyond maybe any other country. Certainly other western countries.

PW: I find it ironic that you say that because our organization is involved right now, for example, ... we're going to trial in Georgia to protect our right to send prisoners letters where the jail bans all books and magazines. They only allow prisoners to send and receive postcards. And it's ironic in the age of the Internet, we're defending a 15th century means of communication.

NC: Yes, well, life is complex. Both things are true. The U.S. has set formally high standards for protection of freedom

of speech, and they are pretty well implemented to the extent that you have a degree of privilege. Prisoners in Georgia are down at the opposite end. They don't gain the rights.

PW: Okay. The past 40 years have seen a massive increase in the U.S. prison population. The U.S. now imprisons more people than any other country in the world ever has, even including, you know, the Soviet Union at the height of the collectivization in the 1930s, even Nazi Germany. In your view, what has led to the rise of mass imprisonment in the United States?

NC: Primarily the drug war. Ronald Reagan, who was an extreme racist, barely concealed it under his administration. There had been a drug war but it was reconstituted and restructured so it became basically a race war. Take a look at the procedures of the drug war beginning from police actions. Who do you arrest? All the way through the prison system, the sentencing system, even to the post-release system.

And, here, Clinton was involved. Taking away rights of former prisoners, say, to live in public housing and so on. The lack of any kind of rehabilitation. The impossibility of getting back into your own community, into a job, essentially it demands recidivism. So there's a system in place, mostly directed against black males – although by now it's also African-American women, Hispanics and so on – but it's overwhelmingly been black males, which essentially criminalizes black life. And it has led to a huge increase in incarceration and essentially no way out. It started with the Reagan years and goes on right up to the present.

PW: And what do you think is the basis for that?

NC: Well, it's kind of striking. First of all, it has a historical parallel which is worth thinking about. After the Civil War there were Constitutional amendments that freed slaves. And there was a brief period, roughly ten years, in which freed slaves had formal rights.

PW: Right, Reconstruction.

NC: The Reconstruction period. And it was not insignificant, like you had black legislators and so on. After the Reconstruction period, roughly a decade, there was a north-south compact which effectively permitted the former slave states to do essentially what they liked, and what they did was they criminalized black life. So, for example, if a black man was standing on a corner he could be accused of vagrancy and charged some fee which he couldn't pay, so he went to jail. If he was looking at a white woman the wrong way, somebody claimed attempted rape, you know. A bigger fine. Pretty soon they had a very large part of the black population – black male, mainly – in jail. And they became a slave labor force.

A large part of the American Industrial Revolution was based on slave labor in the post-Civil War period. And for U.S. steel and mining corporations and others, it was a wonderful labor force. I mean, much better than slavery. Slavery is a capital investment; you've got to keep your slave alive. [But] you can pick them up from the state system for nothing. They're docile. They're obedient. They can't unionize. They can't ask for anything. I mean, we're familiar with the chain gangs, but that's only the agricultural aspect of it. There was also an industrial aspect. This went on almost until the Second World War when there was a demand for free labor for the war industry. And we're essentially reconstituting it.

PW: Well, we've reported extensively on prison slavery in both the former, the older types as well as the modern ones. *Prison Legal News* has broken some of the major stories on that, but I think one of the bigger impacts now isn't the prisoners working. It's not the 5,000 prisoners working for private corporations or the 60,000 working for prison industries. It's the 2.3 million who aren't working at all. That's the impact on labor markets.

NC: Yes. But that's the difference between now and the latter part of the 19th century. The latter part of the 19th century was a period of the Industrial Revolution. Now it's quite different. It's industrial anti-revolution.

PW: Or devolution.

NC: In fact, what's really happening is this is a superfluous population. A lot of the working class is basically superfluous at a time when multi-national corporations can shift their production operations to northern Mexico or Vietnam or somewhere. And the black population has never escaped the effects of slavery; I mean, the first slaves came to the United States in the early 17th century. By 1620, there were slaves. And the effect of slavery has never been overcome, in all sorts of ways, so the most superfluous population is the black male population. Fine. So we stick them in prison. Get rid of them.

PW: One of the things, too, as you say this, there's obviously a number of black, racial minority political organizations in this country, and for the most part they've all been pretty silent about criminal justice policies over the past 40 years. If you

look at a lot of the major organizations like the NAACP, the Urban League, folks like that, they've been pretty silent on criminal justice issues, and today we have President Obama, who obviously is black. So is our Attorney General. And, you know, while the Attorney General has made some noises on criminal justice issues, if you look at actual practices, nothing's really changed. So to an extent it seems that the political black community has largely been silent or supportive of mass incarceration.

NC: Well, yes. They have their own reasons. But there has been progress in civil rights which for the more privileged sector of the black community has meant more rights. And while I don't like to criticize them – as I said, they have their own reasons – I can see why they might want to try to expand the range of rights that they've achieved and not take on issues that would be unacceptable to the ruling groups.

Take a look at what happened to Martin Luther King, for example. It was very striking. When you listen to the oratory on Martin Luther King Day, it typically ends with his "I have a dream" speech in Washington, in 1963. But he didn't stop there. He went on to the north. He went on to northern racism, to class issues, urban problems in Chicago, then he was assassinated supporting a public workers' strike. That part of his life has been kind of wiped out. In fact, he lost his northern liberal popularity at that point. As long as he was attacking racist sheriffs in Alabama it was acceptable. When he started talking about racist and class-based oppression in the north, that was beyond the limits.

After all, when he was killed he was on his way to organizing a party of the poor. Not of the blacks. Of the poor. And that's beyond the pale when you do that. So, how much this kind of understanding resonates in the minds of black leadership I don't know, but they can't be oblivious to the phenomenon.

PW: And I guess one of the things, too, it's not just the black leadership of civil organizations, but we pretty much have a bipartisan consensus on mass imprisonment. I think it's like U.S. foreign policy, just like it has a bipartisan consensus. And we can see that over the past 40 years, to use your slavery analogy, looking back to recent modern history of 1980 or so, no one law at a time but thousands of laws every year around the country have led to mass imprisonment. There's never been one sweeping law, for example. But within mainstream political parties there's been no opposition to mass incarceration, whether it's mandatory minimums, draconian prison conditions or whatever. And why is there, for lack of a better term, mass consensus within the political elite and within the legislative bodies of this country on mass imprisonment?

NC: We're talking about a period of kind of a major neoliberal assault on the population which had all kinds of effects. One of them is that both political parties drifted to the right. There used to be a quip that the United States is a one-party state, the business party, which has two factions, the Democrats and the Republicans. It's not really true anymore. It's still a one-party state, the business party. But it has only one faction, and it's not Democrats. It's moderate Republicans. The contemporary Democrats are what used to be called moderate Republicans.

Noam Chomsky Interview (cont.)

Meanwhile, the Republican Party has just drifted off the spectrum. The distinguished political conservative analyst, Norman Ornstein of the American Enterprise Institute, speaking from the right, describes the contemporary Republican Party as just what he calls a radical insurgency which has abandoned any commitment to functioning as a parliamentary party. It's just dedicated to extreme wealth and power. Period. And it's had to kind of mobilize popular forces of the kind that hadn't been politically mobilized much in the past, which is why you see what you do. But as both parties drifted to the right, yes, you get the consensus on rightwing policies. As I mentioned, Clinton's policies just made the incarceration system even harsher.

PW: Well, Clinton remains, I think, the worst thing that's happened to American prisoners not just in living memory but in American history. The laws that he passed, the Prison Litigation Reform Act, the Anti-terrorism and Effective Death Penalty Act among them. The elimination of Pell Grants for prisoners to get an education in prison. And, you know, again, it's all happened with bipartisan consensus.

NC: I wouldn't call it bipartisan because we've lost the concept of [two parties]. There was a narrow spectrum of bipartisan division under the framework of the business party, and that's pretty much gone. The only question is, how rightwing are you? And somebody like Richard Nixon would be regarded as a liberal today.

PW: You know, he had some pretty good ideas, like the Environmental Protection Agency. I wouldn't see that passing today.

NC: In fact, they're attacking it now. The earned income tax credit, OSHA, you know. Nixon's reforms would be considered way off the spectrum now.

PW: In your view, what's the Obama administration's track record on domestic human rights issues?

NC: Well, I never frankly expected much of Obama.

PW: Neither did I.

NC: I wrote about him before the primaries even, in 2008, just using his own web page. But there was one thing that surprised me, and that's his attack on civil liberties. I don't understand it. It's gone way beyond anything I expected, and I don't even think he gets any political gain from it. I just don't understand what's driving it.

PW: Well, he did campaign as being a better technocratic manager.

NC: Yes, but why the attack on civil liberties? I mean, some of these attacks aren't even discussed much.

PW: Well, I think if you look at the rise of militarized policing, and that in this country the ruling class is fully geared up for a full-blown counter-insurgency. They barely have protests, much less resistance. It seems like they're just not taking any chances.

NC: That I can understand. But take something like one of the most extreme attacks, which barely gets discussed – the Humanitarian Law Project case. Here's a case where the Obama administration brought it to the courts, went up to the Supreme Court. They won. And what it does is expand the concept of material assistance to terrorism. Like if you're on the terrorist list and I give you a gun, so, okay, I'm complicit. The Obama administration expanded that to advice. To talk. The case in question [involved] a group that was giving legal advice to some group that's on the terrorist list, but the colloquy in the court extends it way beyond that.... That's a tremendous attack on civil liberties.

PW: And the right to free speech or the notion of....

NC: Of free speech. Yes. But it's barely even discussed. Incidentally, the whole concept of the terrorist list is a scandal which should never be accepted. The terrorist list is by executive order. No recourse.

PW: And no due process right as to how you get on or how you get off.

NC: Nothing. If you look at the record, it's appalling. Like, for example, Nelson Mandela was on it until a couple of years ago. And Saddam Hussein was taken off it because Reagan wanted to support him during the Iraq invasion of Iran.

PW: One of the things you've written extensively about is the impunity of American client state torturers in other countries, specifically like in East Timor and Indonesia and Central America. And yet here in the United States human rights abusers such as policemen kill unarmed, innocent civilians. In *Prison Legal News*, we report routinely in every issue of our magazine about prisoners who are just outright murdered, directly through use of excessive force by prison and jail staff, as well as much more commonly through medical neglect, through the withholding of adequate medical care. And yet the government officials who do this enjoy virtual impunity. Occasionally there are a few criminal prosecutions. There are civil suits, but government officials have a broad range of immunities. And, again, those only seek money damages and, statistically, are not very successful. So in your view, what accounts for this virtual impunity for American and domestic human rights abusers?

NC: In part, impunity is automatic if it's not discussed. It's barely even discussed. Who talks about it?

PW: No one. Well, *Prison Legal News* does, but....

NC: Yes, I know, but anywhere near the mainstream there's just no discussion of it. The number of people in the country who even know about it outside the prisoners' families is very slight. And if things are not even a topic of discussion, sure, there's going to be impunity. And all of this reflects the fact that it's simply accepted in the elite culture.

We want to protect ourselves – privileged white people. What happens to the rest, this is not our business. You know, Guantanamo itself is pretty remarkable. So, for example, the first case that came up under Obama was the Omar Khadr case. He was kidnapped in Afghanistan. He happened to be a Canadian citizen, [and] was a 15-year-old kid who was in a village which was attacked by American troops.

PW: And, also, it was interesting since when are soldiers on the battlefield deemed to be war criminals when defending themselves on the battlefield?

NC: This is a 15-year-old child. Foreign soldiers are attacking his village. And he's accused of defending it. So he was taken, he was kidnapped. He was put in Bagram, which is worse than Guantanamo, I think, for several years. Then he was moved to Guantanamo. More torture. Finally, he came to trial where he was given a choice. Of course, his lawyers have to make the choice. The choice was, plead innocent and you'll stay in Guantanamo forever, or worse. Or plead guilty and you'll only have to stay for eight more years. And it was public. Did you see any outcry about it? I mean, the very idea of kidnapping a child for the crime of defending his village from aggression, it's

so scandalous you don't know what to say about it.

PW: Well, we follow Guantanamo fairly closely, and one of the things I think is interesting now is that as soon as the prisoners start talking about being tortured or how they've been tortured, the judges immediately cut off the sound system. And so they can't even talk about the torture they've endured, so it's not even ... you know, we've got multiple layers of impunity.

NC: It goes beyond that. So, for example, there's one Australian citizen, David Hill, who was kidnapped in Afghanistan, sold by bounty hunters to the American army. He was held in prison for years in Afghanistan, Bagram and other prisons, and finally Guantanamo. Horrible prison story. Finally, after a lot of negotiations, the Australian government began to intervene slightly. They hadn't done much. And he was released.

He wrote a book about it – a detailed book describing his years of torture, humiliation, how it worked in Afghanistan, what it was like in Guantanamo. Did you read a review of it? It's more than the judges cutting off testimony. It's when material is published in our open, free society, it is deep-sixed. This is not the only case by any means.

PW: This is in the context, as you're mentioning atrocities that are occurring today, that if you look at *The New York Times*, for example, books that are being published, I was recently reading a review not too long ago, by, I think, Applebaum, about human rights violations under Stalin. And it's like, okay, so *The New York Times* is still mulling over human rights violations that happened 70 years ago in the Soviet Union, but nary a word or very little about what's actually occurring today by the American government.

NC: And again, I think maybe one of the most striking cases is just the comparison of post-Stalin Eastern Europe with U.S. domains in the same period, like Central America or South America. It's almost not discussed. I mean, some of the things that happened are kind of mind-boggling. Like, for example, right after the murder of the Jesuit intellectuals, something which never happened in Eastern Europe post-Stalin....

PW: Even under Stalin, I don't think they were....

NC: Well, not that way. I mean, there were plenty of purges and monstrosities.

PW: They weren't doing it openly.

NC: Yes, but remember, this is under the orders of the high command, very close to the American Embassy. The troops had just returned from further training in the United States and they carried out this atrocity. Okay. A couple of days after that, there was a visit to the United States by Václav Havel, a Czech dissident who suffered under....

PW: And became president.

NC: Yes. And he addressed a joint session of Congress, and he received massive applause, standing ovations when he praised the United States as the defender of freedom – the defender of freedom that was just responsible for the slaughter of half a dozen of his counterparts in Central America. You take a look at the press after that; the liberal press was just swooning with admiration. Why can't we have wonderful intellectuals like this who praise us for being defenders of freedom, and we've just carried out huge atrocities? Anthony Lewis wrote about how we're in a romantic age, you know, and there's no comment on this. It just passes as if it's normal.

I mean, it's happening right at this moment. Take the crimes going on in Iraq, especially in Fallujah. In Fallujah, there's an insurgent force being attacked by the Iraqi army. There are many laments here in the press about "the pain we suffer after American boys fought to liberate Fallujah. Look what's happening." How did American boys fight to liberate Fallujah? It's one of the major war crimes of the 21st century. You take a look at the record, even as it was just reported in the press.

PW: Yes. They flattened the city.

NC: They surrounded the city. They cut off food. They allowed people to escape but kept the male population inside, and then they went in and mostly slaughtered them. We don't know how many because we don't count our crimes.

PW: And the U.S. has been doing that since at least the 1850s.

NC: Well, you know, but now we suffer pain because the American boys fought to liberate it. I mean, there's no comment on this. And, in fact, people here don't know what happened. Or in England, incidentally. There was just a poll in England recently, people were asked how many Iraqis they thought had died during the war. The mean answer was 10,000.

PW: **If you ask them how many Jews died in the Holocaust, everyone knows those numbers.**

NC: Yes, I mean, that's like you know probably 5% of the number. There were some efforts to get the British press to publish something about it. Most were rejected.

PW: **Let me ask you this while we're on the subject of people dying. Why are the U.S. and Japan the only industrialized countries that judicially execute their own citizens through use of the death penalty? And notice I didn't say "kill" because we're going to leave out the extra-judicial murders and death squads which most governments engage in when they're threatened.**

NC: That's true that most countries have abandoned the death penalty.

PW: **Formally.**

NC: The United States is different, sometimes in interesting ways. I happened to be in Norway a couple of times last year. I was there fortuitously, you remember the Anders Breivik massacre?

PW: **Yes.**

NC: So I was there just at the time when he was captured and identified. And then I was there again at the time when he was sentenced. And it was very interesting to see just the attitudes of the population. The question of the death penalty never arose. He was treated as a human being who had carried out a horrible crime, but he's a human being. At the court proceedings he was permitted to rave and rant on as long as he wanted. The sentence finally was, I think, 21 years.

PW: **Which was the maximum allowed under Norwegian law.**

NC: Which was the maximum, with the possibility of rehabilitation. The circumstances of his imprisonment would seem like a luxury hotel by U.S. standards. And this was accepted, you know? It wasn't bitterly denounced. The attitude was, well, yes, we have to treat people humanely even when they've carried out a shocking massacre. He killed, I think, what, 70 children? Can you imagine what would have happened here?

PW: **I don't know. It's interesting because I was imprisoned in Washington State, and you have Gary Ridgway who ultimately pleaded guilty to kidnapping, raping and murdering, I think it was 51 women, mostly prostitutes, and ultimately he was sentenced to life without parole. And yet at the same time you have people in Washington State, which has the three-strikes law, on their third offense they're sticking their finger in their pocket, pretending it's a gun and robbing an espresso stand. And they get life without parole. So you can say that the equivalency of the punishment for sticking your finger in your pocket and pretending it's a gun to rob someone is the same whether you're doing that or if you're killing 51 people.**

NC: Well, as soon as you have any contact with the prison system, what you discover is appalling. I don't have to tell you. For example, in one of the demonstra-

Noam Chomsky Interview (cont.)

tions in the early '60s in the south, I was with Howard Zinn. We went to Jackson, Mississippi for a demonstration and at one point we were able to get the police chief to take us through the Jackson prison, which, I should say, by the standards of northern prisons, wasn't too bad. I've been in worse ones. Just, you know, under civil disobedience arrests.

But as we were walking through the halls, of course they were all black men, you know, a child tapped on the bars. He was in the prison and he asked me if he could have a drink of water. So I asked the police chief, "Can I get him a drink of water?" He said, "Okay." When we got back to his office, I asked did he know why that child was in the jail? So he asked some secretary who looked it up, and it turned out that the child had been found in the streets and they didn't know who he was, and they had nothing special to do with him, so they put him in jail.... How much of this goes on?

PW: Actually, it still goes on. *Prison Legal News* has reported cases of mentally ill children in Florida who, for lack of any place to care for them, they wind up in the prison system.

NC: This kid wasn't even mentally ill. They just didn't know what happened. Maybe he got lost, or whatever it might have been. If it had been a white kid, he wouldn't have been put in jail.

PW: Yes. And I think that one of the things we've seen increasingly in the last 30 years – it goes back to what you talk about as a system of class and race control – is that the solution for everything in this country domestically seems to be prison. We may not have public housing for the poor, but we've got prisons. I think it goes back to Governor Cuomo using HUD funds for low-income housing to build prisons, which, in a grotesque way, *is* low-income housing.

NC: Unfortunately true. A lot of it. And the racism is really severe and can't be overlooked. The whole record of white supremacy in the United States is beyond anything that was known.

PW: Well, one of the things that I find interesting is that *Prison Legal News* has sued a number of jails around the country, and when you go to jurisdictions like the District of Columbia, Atlanta and places like Birmingham, we find that the prisoners are still mostly black but the elected officials, the sheriffs, the prosecutors, the mayors, the judges, huge portions of the police force and most of the guards, they're all black too, and the conditions are as bad if not worse than they were under Bull Connor, their white counterparts, 40 or 50 years ago.

NC: That's pretty common. If you go to South Africa, remember, the worst crimes were carried out by black forces mobilized by the white government. It's the way coercive systems operate.

PW: So, basically, what's more important is who's doing it rather than the color of who's doing it.

NC: There are all kinds of reasons why people, individuals do what they do, but it's very standard to co-opt oppressed people to carry out crimes and atrocities for the government. I mean, take, say, England and India. Some of the worst crimes were carried out by Indian troops, Indian Sikh police. In fact, England sent them all over the world to impose imperial rule.

PW: One of the things you've talked about is race, and yet we've got two-and-a-half million people in prison and even when we talk about race, no one is claiming that wealthy black people or Hispanics are being herded into prison in significant numbers. So what accounts for the virtual absence of the wealthy from the U.S. prison population?

NC: The virtual absence of....

PW: Of the wealthy from the prison population? That should be an easy question. Well, they're rich.

NC: Do I even have to answer? I'll give you an anecdote. We're living in a pretty well-to-do suburb, right? You can see that when you walk around. Once we were away, the neighbors called and told us there was a broken window in the house. So we came back and took a look, and it turned out somebody had broken in. We called the local police and they came and the first thing they asked us was, "is there a pillowcase missing?" So we looked upstairs, and yes, there was a pillowcase missing. Then they said, "We want you to take a look in your medicine cabinet." So we looked, and yes, somebody had rummaged through the cabinet. And they said, "Well, we know who's doing this. This is teenage kids who live here, and they're going sort of house to house, and if they find one that's easy to

break into, they'll go in and see if they can get drugs." They said, "We know who they are, and we could arrest them. But it's no use. Their parents will have them out of jail tomorrow." That's a typical example.

Or, say, let's go way high up. Last week there were news reports about the fact that Jamie Dimon, CEO of JPMorgan Chase, just had his salary almost doubled. Why? It was in gratitude because he had saved the bank directors from going to prison and they were only fined $20 billion for criminal activities. Well, $20 billion, first of all, a lot of it's tax deductible and the rest is kind of a statistical error on their accounts. Now here's a guy who was supervising criminal activities serious enough to cause a $20 billion fine. Is anybody in jail? What would have happened if this was a kid who robbed a store?

PW: Yes, that's the joke. Rob the 7-11 for $20 and get 20 years. And, you know, rob other people of $20 billion and you get a raise.

NC: That's class-based justice.

PW: Do you see the criminal justice system, police and prisons, as a tool of class war domestically?

NC: Class war and race war. It's been very clearly, especially since Reagan; it's very hard to see it as anything other than a kind of race war. There is kind of a reasonably close class-race correlation in the United States, to some extent you can't....

PW: The racial minorities are disproportionately poor.

NC: Yes. But it goes beyond that. I mean, as I said, from police practices up till post-sentencing, it's sharply racially discriminatory. But, you know, it's a racist country since its origins. I mean, it's even familiar in scholarship. There's a major study of white supremacy by George Frederickson, a well-known historian. He basically compares South Africa and the United States, but it's really a comparative study. His conclusion is there is nothing anywhere in South Africa or anywhere else to compare with the horror of white supremacy in the United States. Actually, it is so deeply ingrained that none of us even notice it. I mean, for example, take President Obama. He's called a black president. In Latin America he wouldn't be called a black president.

PW: Right.

NC: He'd be called one of the various gradations of mixed race. But the United States still has kind of tacitly, not formally, the principle of one drop of black blood. That's deep-seated racism.

PW: I have a black Cuban friend. We were in prison together, and he once told me that he didn't know he was black until he came to the United States. He said in Cuba he was just Cuban. And then he comes here and....

NC: Or mulatto. There's a whole bunch of gradations of mixed race, but here the racism is extreme. You can see it coming back to Reagan. So he opened his 1980 campaign in Philadelphia, Mississippi. A tiny little town. Why pick that? Nobody knows anything about it except one thing. They murdered civil rights workers there. Did that affect the campaign?

PW: Yes. Arguably, that's what led to him winning the Presidency.

NC: It leads to Obama calling him a great transformative figure, you know.

PW: My final question is at this point, after 40 years of mass incarceration with militarization of the police, we've had a massively expanding prison and jail system. We've seen some small dips

Noam Chomsky Interview (cont.)

in [prison population] numbers in the last year or two in the United States. It's too soon to tell if that's just a statistical anomaly.

NC: I don't think it's an anomaly. I think it's just gotten to a point where it's kind of economically unfeasible to maintain it.

PW: **My question is, do you see any prospect of permanent change in U.S. prison and criminal justice policies and practices in the near future?**

NC: Sure. I mean, if you went back 60 years, you couldn't have predicted the achievements of the Civil Rights Movement.... You couldn't have predicted the women's movement, which completely changed things for half the population. After all, if you go back to the early days of the Republic, under law, women were not persons. They were property. A woman was the property of her father, transferred to her husband.

And in fact it wasn't until 1975 – not that long ago – that the Supreme Court recognized that women were peers. They had a legal right to serve on federal juries. Prior to that they weren't peers. And that's sort of the core of being a person under law. You couldn't have predicted it. And you can't predict what will happen in the future; it depends how people act. If they become organized, militant, active, the system of coercion is pretty fragile and I think it can crack very quickly.

PW: **Do you know who Thomas Mathiesen is? The Norwegian criminologist?**

NC: Yes.

PW: **One of his quotes that I've always thought about, and this is in the context that I recall when the Soviet Union collapsed and I have a degree in Soviet history, is that no one predicted that one coming.**

NC: One of the people who didn't predict it was [former CIA director] Robert Gates, who was a Soviet specialist. He didn't predict it even after it was happening.

PW: **And, you know, Mathiesen's comment is that systems of repression appear to be stable right up until the moment they collapse.**

NC: That's right.

PW: **And so do you think that's possible?**

NC: This is a very fragile system here. I think it can crack very easily.

PW: **Why do you say it's fragile?**

NC: Because there is very little coercive force behind it. By comparative standards, the state in the United States has quite limited capacity for violent repression. I mean, what happens is unacceptable, but again, by comparative standards it is not high.

PW: **By comparative standards, are you referring to....**

NC: Western countries.

PW: **So you would say, for example, in England, that their police and military has more domestic repressive capacity?**

NC: I think so. And, in fact, they have much harsher constraints on even things like freedom of speech.

PW: **Yes. The libel laws are pretty outrageous.**

NC: Horrifying. And how fragile it is, let's take Norway again, which you mentioned. The famous Norwegian criminologist Nils Christie wrote a history of punishment.

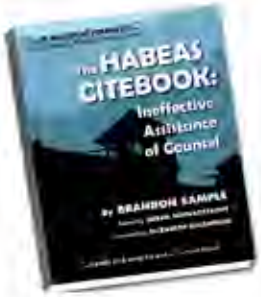
PW: **I've read it. It's one of my favorite books.**

NC: Right. And if you remember, in the early 19th century, Norway was outlandish.

PW: **All the Scandinavian countries were.**

NC: Horrifying, horrifying crimes. And now they're remarkably humane. Things can change.

PW: **Okay. Well, this is one of the few times we end anything on an optimistic note in *Prison Legal News*. Thank you very much.**



The Habeas Citebook: Ineffective Assistance of Counsel **$49.95**
Brandon Sample
ISBN: 978-0-9819385-1-6
Paperback, 224 pages

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

Prisoners' Guerrilla Handbook to Correspondence Programs in the United States and Canada, 3rd Edition **$49.95**
Jon Marc Taylor
ISBN: 978-0-9819385-0-9
Paperback, 224 Pages

The greatly anticipated and newly updated third edition of the Prisoner's Guerrilla Handbook to Correspondence Programs in the United States and Canada has finally arrived! Author Jon Marc Taylor's brand new version is the latest in this unique and highly successful guidebook for the prisoner-student. This invaluable tool and how-to handbook provides the reader with step-by-step instructions to find the appropriate education program for correspondence high school, vocational, paralegal, undergraduate, and graduate courses offered in the U.S. and Canada today.

Prisoners' Self-Help Litigation Manual, 4th Edition **$45.95**
John Boston & Dan Manville
ISBN: 978-0-1953744-0-7
Paperback, 960 pages

Prisoners' Self-Help Litigation Manual, in its much-anticipated fourth edition, is an indispensable guide for prisoner litigants and prisoner advocates seeking to understand the rights guaranteed to prisoners by law and how to protect those rights. Clear, comprehensive, practical advice provides prisoners with everything they need to know on conditions of confinement, civil liberties in prison, procedural due process, the legal system, how to actually litigate, conducting effective legal research, and writing legal documents. It is a roadmap on how to win lawsuits.

☐ Habeas Citebook, Ineffective Assistance of Counsel $49.95

☐ Prisoners' Guerrilla Guide to Correspondence Programs 3rd edition $49.95

☐ Prisoners' Self-Help Litigation Manual 4th edition $45.95

Shipping included in all prices

Order by mail, phone, or on-line. Amount enclosed _____

By: ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name _____

DOC/BOP Number _____

Institution/Agency _____

Address _____

City _____ State ___ ZIP _____

PUBLISHED BY
PRISON LEGAL NEWS
Dedicated to Protecting Human Rights

PO Box 1151 • Lake Worth, FL 33460
Tel 561-360-2523 • www.prisonlegalnews.org

From the Editor

by Paul Wright

This month's interview with Noam Chomsky is part of *PLN*'s ongoing series of interviews with notable people who have diverse views of the U.S. criminal justice system. Prior interviews have been conducted with well-known actor Danny Trejo, media mogul and millionaire Conrad Black, and wrongfully convicted former prisoner Jeff Deskovic. We hope that these interviews serve to further what passes for discussion and debate on this country's criminal justice system in general and prisons in particular.

We still need to expand our circulation in order to keep our subscription rates as low as possible; since most publishing-related costs are fixed, the higher our circulation the lower our per-issue expenses for things like printing, postage and layout, which helps keep our costs – and thus our subscription rates – low.

How can you help? First, you can subscribe to *PLN* for four years and get a copy of *The Habeas Citebook: Ineffective Assistance of Counsel* for free! This $49.95 value is yours if you subscribe for four years or extend your existing subscription for four years. Second, if you know someone who would benefit from *PLN*, purchase a gift subscription for them. *PLN* makes a great gift, especially for friends or family members who are incarcerated.

If you write to *PLN*, please try to be as concise as possible as our office staff is limited and it saves time if you can let us know the purpose of your letter in the opening paragraph. We are always interested in reporting lawsuit wins by prisoners, including verdicts, settlements and judgments, so let us know when you prevail in a case. Informing us that you have filed a lawsuit is not useful until there has been a ruling on the merits, at a minimum.

Lastly, look in this issue of *PLN* for full-page ads for the Washington Prison Phone Justice Campaign and how you can take action on prison phone contracts in other states that are up for renewal or re-bids. *PLN* and our parent organization, the Human Rights Defense Center, continue to advocate for lower phone rates and reform of the prison phone industry.

Enjoy this issue of *PLN* and please consider renewing your subscription or purchasing gift subscriptions for others who are interested in criminal justice-related issues.

$2.25 Million Jury Verdict against LCS in Texas Prisoner Death Suit

by Matt Clarke

On October 24, 2012, a federal jury in Texas awarded $2.25 million to the estate and survivors of a prisoner who died at a facility operated by LCS Corrections Services (LCS), after finding the company was 100% at fault. The district court subsequently reversed its dismissal of § 1983 claims against LCS and granted a new trial as to those claims.

Mario A. Garcia was incarcerated at the Brooks County Detention Center (BCDC) in Falfurrias, Texas, owned and operated by LCS, when he died of a seizure on January 12, 2009. After Garcia was booked into BCDC, his wife delivered a supply of clonazepam, a prescription anti-anxiety medication he had been using for years, to the facility. BCDC officials received the medication but did not give it to Garcia because they allegedly had a policy of refusing to allow prisoners to take any controlled substances, even bona fide prescription medications.

Garcia began shaking badly later that day. He was taken to the emergency room, treated and returned to BCDC. The prison's contract physician, Dr. Michael Pendleton, saw Garcia twice – the last time on January 8, 2009. After the second visit with Dr. Pendleton, Garcia's condition deteriorated rapidly; he was admitted to the prison's medical unit with uncontrollable shaking on January 10 and remained there until he had a seizure and died two days later.

Garcia's estate, widow, son and parents filed a civil rights action pursuant to 42 U.S.C. § 1983 in federal court that alleged failure to provide adequate medical care plus state law claims of wrongful death and gross negligence. Garcia's father died a few months prior to trial, after which his mother agreed to a confidential settlement.

The district court had previously dismissed the § 1983 claims against LCS, finding that because Garcia was a federal prisoner the company was acting under color of federal law – and § 1983 claims only apply to deprivations of rights under color of state law.

At trial on the plaintiffs' remaining claims, experts testified that Garcia could have been saved had he been taken to a hospital on January 10, and might not have had the seizure at all had he not been denied his medication. LCS named Dr. Pendleton as a responsible third party and claimed he was 75% at fault. The jury found that neither Pendleton nor Garcia was at fault, but rather LCS was 100% responsible for Garcia's death.

The jury awarded Garcia's estate $500,000 for personal injury and past pain and suffering. His widow received a total of $500,000 in damages, and the jury awarded Garcia's son $1.25 million for loss of companionship and mental anguish. The total award against LCS was $2.25 million plus prejudgment interest at a rate of 5%.

On March 25, 2013, Garcia's widow filed a motion for a new trial on the § 1983 claims that had been dismissed, noting that another federal court in the Southern District of Texas

had found LCS was a state actor because it derived its authority to operate a prison from the State of Texas, even though the facility housed federal prisoners.

The district court agreed, reversing its dismissal of the § 1983 claims and granting the motion for a new trial as to those claims against LCS. The new trial remains pending; the plaintiffs are represented by Corpus Christi attorneys Craig Henderson and Kathryn A. Snapka. See: *Garcia v. LCS Corrections Services,* U.S.D.C. (S.D. Tex.), Case No. 2:11-cv-00004.

Additional source: *www.verdictsearch.com*

Ohio: Attorney General May Not Increase Sex Offender's Registration Requirements

In April 2013, an Ohio appellate court ruled that a sex offender, who was required by virtue of a California conviction to register his address annually for ten years, could not subsequently be indicted, after moving to Ohio and being reclassified under the Adam Walsh Act, for failing to register every 90 days.

Ansuri Ameem was convicted in California of sexual assault and pandering. Classified as a sexually-oriented offender under the former Megan's Law, Ameem was required to register his address annually for ten years.

In July 2007, after moving to Ohio, that state's attorney general reclassified Ameem as a Tier III offender under the Adam Walsh Act. The reclassification subjected Ameem to an increased obligation to register – specifically, every 90 days for life. Ameem failed to register as required and was indicted in July 2010.

After unsuccessfully moving to have the indictment dismissed on grounds that the Ohio attorney general's reclassification was unconstitutional, Ameem pleaded no contest to failing to register.

On appeal, the Eighth Appellate District of the Court of Appeals held that the attorney general's reclassification of Ameem from Megan's Law to the Adam Walsh Act was invalid. Relying on Ohio Supreme Court precedent, the appellate court found that the reclassification violated the separation of powers doctrine because it would allow the executive branch to review or overrule a decision made by the judicial branch.

The Court of Appeals further noted that Ameem's case was not affected by the Ohio Supreme Court's decision in *State v. Brunning,* 2012 Ohio 5752, 983 N.E.2d 316 (Ohio 2012), which held that "despite an offender who was originally classified under Megan's Law being wrongly reclassified under the Adam Walsh Act, the state could still maintain a prosecution for a violation of the reporting requirements as long as the alleged violation also constituted a violation of Megan's Law."

Accordingly, Ameem's conviction for failure to register was reversed. See: *State v. Ameem,* 2013 Ohio 1555 (Ohio Ct. App. 2013); 2013 Ohio App. LEXIS 1448.

The Inadequacy of Prison Food Allergy Policies

by Jamie Longazel and Rachel Archer

Michael Saffioti was arrested on a misdemeanor marijuana charge and held at the Snohomish County Jail (SCJ) in Washington State. On the morning of July 2, 2012, he arrived at the center of his module where breakfast was being served. Because he had a severe dairy allergy, Saffioti examined very closely the pancake and oatmeal he was given. Video footage obtained by local news agency KIRO-7 showed him discussing his food with guards, servers and fellow prisoners. This was not the first time Saffioti was held at the SCJ, so his allergy was on record. Yet jail staff had brought no special diet trays to his module that morning; they instead simply removed the pancake from his tray and assured him the oatmeal would be safe to eat.

After taking just a few bites, Saffioti began to experience shortness of breath. Video footage showed him approaching a guard's desk, where reports say he asked for his inhaler and to see a nurse. He was given the inhaler but his request for a nurse was denied, and shortly afterwards he was sent back to his cell. Once there, according to a subsequent lawsuit, he pressed his call button and repeatedly asked when the nurse would arrive. By looking closely at the video footage, one can see how he later began jumping up and down in his cell, seeking assistance. Thirty-five minutes later a guard found Saffioti unconscious. After attempts to perform CPR were unsuccessful, he was rushed to a nearby hospital where he was pronounced dead.

Saffioti's tragic death raises many important questions about food allergy policies in U.S. prisons and jails – a subject that has been relatively overlooked, likely to the detriment of many prisoners. The federal Bureau of Prisons (BOP) estimates that 0.2% to 3.5% of all prisoners suffer from food allergies. And a recent study by the Centers for Disease Control and Prevention reported a 50% increase in food allergies among children since 1997. With approximately 2.2 million people confined in U.S. prisons and jails today, this means prison food allergy policies impact as many as 77,000 prisoners and likely many more in years to come, including some like Saffioti whose allergies are so severe that meal choices can literally mean life or death.

As far as we can tell, there is no reliable data on how common it is for prisoners with food allergies to die or otherwise suffer from unmet dietary needs. We do know that prisoners file a fair number of lawsuits pertaining to food allergies each year. Given the many legal obstacles confronted by those challenging the conditions of their confinement, these cases are likely just the tip of the iceberg. In an effort to shine more light on the issue, we sent public records requests to all fifty states (we received responses from 39), asking about the food allergy policies used in their prison systems.

Three observations become apparent after analyzing these policies. The first is that many are lacking – in some cases, substantially. The implication is that some prisoners likely suffer from food allergies that the facilities at which they are confined do not recognize. An official in Kansas responded to our inquiry by noting that they "do not have a procedure in place on this subject." California – whose prison system houses more than 117,000 people (as many as 4,000 with food allergies, if the BOP's estimate is accurate) – has a very vague policy that places limits on the therapeutic diets that physicians are able to order for prisoners. Neighboring Oregon only recognizes food allergies that are "life threatening." This policy thus excludes prisoners who suffer from soy allergies, for example, a condition that the Mayo Clinic notes is "rarely ... life threatening" but could nonetheless cause substantial discomfort with symptoms that include tingling in the mouth, hives, swelling, abdominal pain, diarrhea, nausea or vomiting.

New Hampshire's policy identifies only certain allergies as "acceptable" – specifically, the "main food allergies (i.e. onion, tomato, egg, and peanut)." Saffioti's severe dairy allergy would not have been recognized under this policy, nor would someone suffering from a wheat or gluten allergy, among many others. Georgia draws a slightly different line between allergies that are acknowledged and those that are not. They "honor the following Food Allergies: Milk, Egg, Wheat, Gluten, Fish/Shellfish, Peanut/Nut, Chocolate, and Tomato."

The second observation is that even among states that do acknowledge an array of allergies, prisoners face a substantial burden in becoming eligible for alternative diets. Many states require that an allergy be "verifiable and documented," and that

"written medical proof" be provided. This means either that prisoners must have had access to allergy tests before their confinement – which for the uninsured can cost hundreds of dollars – or that they be tested while behind bars. In the latter case, the trouble is that some states impose limits on who can be tested for food allergies.

For example, Arizona's policy stipulates: "Inmates should only be allergy tested when there is sufficient evidence to do so." This raises concern for those who suffer from allergies where physical symptoms are absent, such as celiac disease. As the National Digestive Diseases Information Clearinghouse points out, "People with celiac disease may have no symptoms but can still develop complications of the disease over time. Long-term complications include malnutrition – which can lead to anemia, osteoporosis, and miscarriage, among other problems – liver diseases, and cancers of the intestine." In other words, a diet can be doing substantial harm to a prisoner's body and some existing food allergy policies provide no means by which that harm can be avoided.

At least one state has a policy in place that actually deters prisoners from being tested for food allergies. Kentucky's policy permits prisoners to take an allergy test, but stipulates that prisoners will be charged for tests that come up negative. One can assume that this is an attempt to root out false claims, but even if it succeeds in doing so, the policy may disaffect those who really do suffer from allergies. As Food Allergy Research and Education points out, allergy tests "do not always provide clear-cut answers" and patients "may have to take more than one test before receiving [a] diagnosis." Even under the circumstances when all the hoops are jumped through and prisoners do manage to furnish acceptable "proof" of their allergy, a number of states require continual renewal of such proof, usually every 90 days.

A final observation is that the burden is often on the prisoner to make choices about their food. This is not to say that prisoners with food allergies should not be well aware of their condition and have a firm understanding of how to respond in the event of an allergic reaction, but rather to point out the lack of institutional support for food allergy issues. Choices about what to eat and what to avoid are especially difficult to make when prisoners are served food they did not prepare. Yet some institutions tell prisoners to fend for themselves, often without recognizing how difficult doing so can be.

Take Oregon's policy, for example: "We encourage inmates to self-select from the line. For example, if an inmate has a peanut allergy and we are serving peanut butter & jelly sandwiches, they may select the meal alternative tray which consists of beans, rice, vegetables, fruits, and bread." South Carolina's policy similarly states little more than the obvious: "If an inmate notifies medical staff of a food allergy, the medical staff will instruct the inmate to avoid that allergy in his/her food choices." Georgia's policy is that once a prisoner receives a food tray, they are considered compliant. This policy also brings Saffioti's case to mind, for technically after servers handed him the pancake and oatmeal breakfast tray, he would have been considered compliant and his desperate attempts to learn the contents of the food would have been irrelevant in a lawsuit.

In conclusion, our content analysis of prison food allergy policies provides cause for alarm. Granted, it is possible that prison staff go beyond what is listed on policy forms in helping prisoners meet their dietary needs. However, given the conditions of confinement that have characterized our nation's overcrowded prisons in this era of mass imprisonment, we have little reason to be so optimistic. Consider that in the realm of health care, containment has taken precedent over healing, as was recently exposed in California's sweeping *Brown v. Plata* class-action lawsuit.

Along similar lines, cost cutting rather than nutritional adequacy seems to be increasingly emphasized in the realm of prison food. A recent *Prison Legal News* article, for example, detailed the great lengths that Aramark – a company that contracts with more than 600 correctional facilities – goes through to cut costs. A class-action lawsuit filed by prisoners in Illinois protesting the high amounts of soy in their diet is another example of providing prison food "on the cheap" to the detriment of prisoners' health. The likelihood that prisoners with food allergies have their needs met is thus diminished as they confront not just a set of inadequate policies, but also a system whose main concern is not their health and well-being.

Jamie Longazel is an Assistant Professor of Sociology at the University of Dayton, Ohio. He is co-author (with Benjamin Fleury-Steiner) of the book, The Pains of Mass Imprisonment (Routledge, 2013). Rachel Archer is a Criminal Justice Studies major at the University of Dayton who has research interests in the areas of food allergies, law and prison conditions. They provided this article exclusively for Prison Legal News.

Kitchen Supervisor Gets Prison Time for Sexually Abusing Two Prisoners

A civilian prison employee's sexual abuse of two prisoners at a federal facility in Phoenix, Arizona was made public after an FBI surveillance camera captured the lascivious details of their ménage à trois.

According to a rather explicit criminal complaint filed on August 29, 2012 in U.S. District Court, Carl David Evans, the kitchen supervisor at FCI-Phoenix, traded packs of cigarettes for oral sex with two male prisoners identified only as "J.I." and "E.D." Evans was charged with two counts of sexual abuse of a ward and one count of providing contraband.

Prison officials learned in June 2012 that Evans was "engaged in a sexual relationship" with at least one prisoner, according to FBI Agent Tyler Woods. Investigators hid a video camera in the food storage area in the kitchen where the alleged sex acts were taking place, and recorded Evans' work shifts for an entire week.

Woods then reviewed the video and discovered footage showing Evans, J.I. and E.D. entering the storage area. E.D. was heard asking Evans and J.I. if they were "ready to suck some dick." Evans locked the door, and the trio then had mutual fellatio on top of some food sacks.

E.D., who worked as a cook, told FBI investigators that beginning in April 2012, Evans gave him a pack of cigarettes every two weeks that he sold to other prisoners for as much as $150 each. Evans exacerbated the relationship when he became "aggressive physically," according to E.D., asking him to take off his shirt and then proceeding to play with his nipples.

E.D. estimated that Evans performed oral sex on him 15-20 times. Once, E.D. alleged, Evans brought K-Y gel and placed a condom on him, and the men briefly engaged in anal sex before E.D. had a change of heart.

J.I. told investigators that he engaged in oral sex with Evans and E.D. three times, only because he knew that E.D. had access to food and "benefited from his relationship with Evans," according to the complaint.

Evans pleaded guilty to five of the federal charges in February 2013, and seven other charges were dropped. He was sentenced on July 3, 2013 to 36 months in prison, three years of supervised release and a $5,000 fine. Evans has since appealed his sentence to the Ninth Circuit. See: *United States v. Evans*, U.S.D.C. (D. Ariz.), Case No. 2:12-cr-01634-SRB.

Additional sources: *Arizona Republic, www.thesmokinggun.com*

$15.5 Million Settlement for Mentally Ill Jail Detainee Held in Solitary Confinement

A mentally ill detainee who was placed in solitary confinement in a New Mexico county jail for nearly two years, without adequate medical or mental health care, accepted a $15.5 million settlement for violations of his civil rights.

Stephen Slevin, 59, served almost 22 months in solitary confinement between 2005 and 2007 at the Doña Ana County Detention Center in Las Cruces, New Mexico. On January 24, 2012, a federal jury awarded him $22 million. The award was upheld by a federal judge after county officials challenged it as being excessive, but Slevin decided in February 2013 to accept a $15.5 million settlement and end the legal battle without further appeals.

"It has been a long and hard fight to bring Mr. Slevin justice," said one of his attorneys, Matthew Coyte. "This settlement, although very large, does not give back to Mr. Slevin what was taken from him, but if it prevents others from enduring the pain and suffering he was subjected to, then the fight has been worthwhile."

Slevin's ordeal began on August 24, 2005, when he was booked into the jail on charges of driving while intoxicated and

receiving or transferring a stolen vehicle.

"He was driving through New Mexico and arrested for a DWI, and he allegedly was in a stolen vehicle. Well, it was a car he had borrowed from a friend; a friend had given him a car to drive across the country," said Coyte.

Slevin had a lifelong history of mental illness. He was found to have suicidal tendencies by former Doña Ana County Detention Center medical director Daniel Zemek. As a result, Slevin was placed alone in a bare, padded cell for a few days, then moved to the medical center and finally transferred to solitary confinement in October 2005. He remained there for the next 18 months.

When he entered the jail, Slevin "was a well-nourished, physically healthy, adult male with a mental illness." On May 8, 2007, he was transferred to the New Mexico Behavioral Health Institute (NMBHI) for a psychiatric review.

According to Slevin's civil rights complaint, when he was admitted to NMBHI he smelled, his beard and hair were overgrown and he had a fungal skin infection. He was also malnourished, weighed only 133 pounds and complained of paranoia, hallucinations, bed sores and untreated dental problems. He was disoriented and clueless to the fact that he had spent the last 18 months in solitary confinement.

Slevin received mental health care at NMBHI, and the reintroduction to human interaction and socialization brought back his alertness and awareness. After only 14 days of treatment, however, Slevin was returned to the Doña Ana Detention Center where he was again placed in solitary confinement.

As before, his mental health began to deteriorate. The failure of jail officials to act on his requests for dental care forced Slevin to pull his own tooth while in his cell. His toenails "grew so long they curled under his toes," the *Albuquerque Journal* reported.

Slevin was finally released on June 25, 2007 after the charges against him were dismissed. He claimed he had never seen a judge and was placed in solitary confinement with no explanation from jail officials.

Slevin sued for deprivation of his civil rights. At trial, Zemek admitted that he couldn't remember ever having visited Slevin in solitary confinement during the time he worked as the jail's medical director, and accepted responsibility for being the person who was supposed to oversee Slevin's health care.

"There were circumstances beyond my control that contributed to that, my failure. I take the blame, yes," he testified. Zemek also said he had informed county officials that he felt the jail did not have enough medical staffing.

At the conclusion of the six-day trial, the jury found Doña Ana County Detention Center director Christopher Barela liable for depriving Slevin of his constitutional rights to humane conditions of confinement, adequate medical care and procedural due process, awarding Slevin $3 million in punitive damages.

The jury found Zemek liable for $3.5 million in punitive damages for the same types of violations, and also found that a municipal policy, implemented by the Board of Commissioners for the County of Doña Ana, resulted in violations of Slevin's rights under the Americans with Disabilities Act as well as various torts, including false imprisonment. The jury awarded $15.5 million in compensatory damages against the defendants.

The *Las Cruces Sun-News* reported in early 2013 that the County of Doña Ana is responsible for paying $9.5 million of the settlement, while the county's insurance provider will cover the remaining $6 million. See: *Slevin v. Board of County Commissioners for the County of Doña Ana*, U.S.D.C. (D. NM), Case No. 1:08-cv-01185-MV-SMV.

Sources: *www.huffingtonpost.com, Las Cruces Sun-News, Santa Fe Reporter, Albuquerque Journal*

Colorado Prisoner who Murdered Guard Gets Life Without Parole

Last month, *Prison Legal News* reported that the parents of a slain Colorado prison guard did not want the prisoner who murdered him to face the death penalty. Edward Montour, who beat Lima Correctional Facility guard Eric Autobee to death in October 2002, was initially sentenced to death but that sentence was overturned in 2007.

Montour faced the death penalty again in a retrial, but Eric Autobee's parents, Bob and Lola, who now oppose capital punishment, wanted to provide a victim impact statement to the jury urging them not to impose a death sentence.

"A lot of people think because I forgave him [Montour], I don't want to hold him accountable or have him punished," Bob Autobee stated. "That's not true. People that do these things have to be punished, but death is not the answer."

Eighteenth Judicial District Attorney George Brauchler objected to the Autobees' request to provide a victim impact statement, arguing that such statements could only be for punitive and not mitigating purposes. [See: *PLN*, March 2014, p.24].

Before murdering Eric Autobee, Montour was serving a life sentence for killing his 11-week-old daughter, Taylor, which he claimed was an accident when she fell and hit her head. On February 27, 2014, the El Paso County coroner's office changed the cause of Taylor's death from homicide to undetermined, and a group of experts retained by Montour's defense counsel said her injuries were consistent with an accident.

Defense attorneys had intended to argue at trial that Montour's mental illness became worse after he was wrongfully convicted of killing his daughter, culminating in his fatal attack on Eric Autobee in the kitchen at the Lima Correctional Facility.

However, on March 6, 2014, Montour pleaded guilty to murdering Autobee in exchange for a sentence of life without parole; he said he owed the plea to Autobees' parents. Even if he is eventually exonerated in his daughter's death, he still must serve a life sentence for killing Eric Autobee.

"I had to get as much justice out of this situation as I could," Brauchler said in reference to offering the plea bargain to Montour.

Sources: *www.kdvr.com, Denver Post*

U.S. Supreme Court: District Courts Can Make Federal Sentences Consecutive or Concurrent to Future State Sentences

On March 28, 2012, the U.S. Supreme Court held that a federal district court may impose a federal prison term that is consecutive to an anticipated future state court sentence. In February 2014, the Third Circuit ruled that a district court's ability to impose such a sentence only applies at the time when the federal sentence is imposed.

Monroe Ace Setser was on probation for a drug charge when he was arrested in Texas on a new charge of possession with intent to deliver a controlled substance. After Setser was indicted on the new drug charge, the state moved to revoke his probation. A federal grand jury then indicted him on the federal offense of possession with intent to distribute 50 grams or more of methamphetamine, based on the same incident that had resulted in the new state drug charge.

This did not constitute double jeopardy based on the legal fiction that it is permissible to pursue state and federal charges for the same criminal conduct under the "dual sovereignty" doctrine.

Setser pleaded guilty to the federal charge and was sentenced to 151 months in prison. The federal judge made Setser's sentence consecutive to the sentence he would receive in the probation revocation proceedings, but concurrent with the sentence he would receive for the new state drug charge.

Setser appealed. While his appeal was pending, the state sentenced him to five years in prison for the probation revocation and 10 years for the new drug charge, with both sentences to run concurrent. This made it impossible to implement the federal sentence as ordered by the district court.

Regardless, the Fifth Circuit Court of Appeals affirmed his federal sentence, holding that the district court had the authority to run a sentence consecutive to a future state sentence that had not yet been imposed, and that the sentence was reasonable even if "partially foiled" by the state court's decision to make the state sentences concurrent. Setser filed a petition for writ of certiorari in the U.S. Supreme Court, which was granted.

The Supreme Court held that the traditional broad discretion that federal judges enjoy when imposing sentences includes the ability to make a sentence consecutive to an anticipated state sentence, and that such a determination is not left for the Bureau of Prisons to decide. However, in this case the sentence pronounced by the federal judge could not be carried out because the state court had made the probation revocation and new drug charge sentences concurrent.

In such a case, the Supreme Court held that the Bureau of Prisons "ultimately has to determine how long the District Court's sentence authorizes it to continue Setser's confinement. Setser is free to urge the Bureau to credit his time served in state court based on the District Court's judgment that the federal sentence run concurrently with the state sentence for the new drug charges. If the Bureau initially declines to do so, he may raise his claim through the Bureau's Administrative Remedy Program. See 28 CFR § 542.10 *et seq*. (2011). And if that does not work, he may seek a writ of habeas corpus."

The judgment of the Fifth Circuit upholding Setser's federal prison sentence was therefore affirmed. See: *Setser v. United States*, 132 S.Ct. 1463 (2012).

On February 12, 2014, the Third Circuit Court of Appeals applied the ruling in *Setser* to find that while a district court can decide whether to run a federal sentence concurrent or consecutive to a future state sentence that has not yet been imposed, it can do so only at the time of sentencing on the federal charges.

Defendant Michael Sharpe was sentenced to 144 months in federal prison in 2004; he expired his sentence in May 2013 and was remanded to Pennsylvania officials for a parole violation. He then filed a motion in the district court seeking reconsideration of his federal sentence, requesting that the court run it concurrent with his subsequently-imposed Pennsylvania state sentence.

The district court held it did not have jurisdiction to modify Sharpe's sentence, which was affirmed on appeal. The Third Circuit found that *Setser* "holds merely that district courts have such authority" at the time the federal sentence is imposed when deciding whether federal sentences are to be made concurrent or consecutive to future state sentences.

The appellate court further noted that "even if the District Court had been authorized to modify Sharpe's federal sentence, that is not really what he was asking the court to do. Sharpe's federal sentence has expired and he is now serving a state-court sentence. Thus, Sharpe is really seeking to modify his state sentence on the ground that it should (or should have) run concurrently with his federal sentence. That is a matter for Pennsylvania authorities, not the federal courts." See: *United States v. Sharpe*, 2014 U.S. App. LEXIS 2653 (3d Cir. 2014) (unpublished).

Lowering Recidivism through Family Communication

by Alex Friedmann

There are currently 2.2 million people held in prisons and jails in the United States,[1] and an estimated 95% of prisoners currently in custody will one day be released. Based on 2012 data, around 637,400 people are released annually from state and federal prisons.[2]

According to an April 2011 report by the Pew Center on the States, the average national recidivism rate is 43.3%.[3] Based on that average rate, an estimated 276,000 released prisoners can be expected to recidivate each year, many committing new crimes and returning to prison.

This negatively impacts our communities in several ways, including the societal costs of more crime and victimization as well as the fiscal costs of reincarcerating ex-prisoners who commit new offenses – at an average annual cost of $31,286 per prisoner, according to a 2012 report by the Vera Institute.[4]

Studies have consistently found that prisoners who maintain close contact with their family members while incarcerated have better post-release outcomes and lower recidivism rates.

These findings represent a body of research stretching back over 40 years. For example, according to "Explorations in Inmate-Family Relationships," a 1972 study: "The central finding of this research is the strong and consistent positive relationship that exists between parole success and maintaining strong family ties while in prison. Only 50 percent of the 'no contact' inmates completed their first year on parole without being arrested, while 70 percent of those with three visitors were 'arrest free' during this period. In addition, the 'loners' were six times more likely to wind up back in prison during the first year (12 percent returned compared to 2 percent for those with three or more visitors). For all Base Expectancy levels, we found that those who maintained closer ties performed more satisfactorily on parole."[5]

These findings still ring true. An article published in August 2012 in *Corrections Today*, a publication of the American Correctional Association, titled "The Role of Family and Pro-Social Relationships in Reducing Recidivism," noted that "Family can be a critical component in assisting individuals transitioning from incarceration because family members provide both social control and social support, which inhibit criminal activity.... In contrast, those without positive supportive relationships are more likely to engage in criminal behavior."[6]

Further, a Vera Institute study, published in October 2012, found that "Incarcerated men and women who maintain contact with supportive family members are more likely to succeed after their release.... Research on people returning from prison shows that family members can be valuable sources of support during incarceration and after release. For example, prison inmates who had more contact with their families and who reported positive relationships overall are less likely to be re-incarcerated."[7]

Another Vera Institute report, published in 2011, stated: "Research shows that incarcerated people who maintain supportive relationships with family members have better outcomes – such as stable housing and employment – when they return to the community. Many corrections practitioners and policy makers intuitively understand the positive role families can play in the reentry process, but they often do not know how to help people in prison draw on these social supports."[8]

According to research published in *Western Criminology Review* in 2006, "a remarkably consistent association has been found between family contact during incarceration and lower recidivism rates."[9]

Correctional practices that "facilitate and strengthen family connections during incarceration" can "reduce the strain of parental separation, reduce recidivism rates, and increase the likelihood of successful re-entry," according to a 2005 report by the Re-Entry Policy Council.[10]

A 2003 study by the Washington, D.C.-based Urban Institute, "Families Left Behind: The Hidden Costs of Incarceration and Reentry," as revised in 2005, noted: "Research findings highlight the importance of contact among family members during incarceration. Facilitating contact has been shown to reduce the strain of separation and increase the likelihood of successful reunification. Studies comparing the outcomes of prisoners who maintained family connections during prison through letters and personal visits with those who did not suggest that maintaining family ties reduces recidivism rates."[11]

Also, a 2004 study by the Urban Institute stated, "Our analysis found that [released prisoners] with closer family relationships, stronger family support, and fewer negative dynamics in relationships

with intimate partners were more likely to have worked after release and were less likely to have used drugs." The study authors, Christy Visher, Vera Kachnowski, Nancy La Vigne and Jeremy Travis, concluded, "It is evident that family support, when it exists, is a strong asset that can be brought to the table in the reentry planning process."[12]

It is thus abundantly clear that maintaining close family relationships during incarceration results in lower recidivism rates and therefore less crime, which benefits society as a whole. Yet in spite of this clear correlation, corrections officials often do little to encourage contact between prisoners and their family members.

There are three primary forms of communication available to prisoners: letters, visits and phone calls.

With respect to letters, many prisoners are illiterate or functionally illiterate, which frustrates correspondence. A 2007 report by the National Center for Education Statistics found that 39% of prisoners scored "below basic" for quantitative literacy testing, while another 39% scored at only a "basic" level.[13]

Other studies likewise have found high levels of illiteracy or poor written communication skills among prisoners, which makes letter-writing as a means of regular contact between prisoners and their families problematic.

Further, an increasing number of jails are adopting postcard-only policies, whereby prisoners can only receive, and sometimes send, mail in the form of postcards – a very limited means of correspondence. [See: *PLN*, Nov. 2010, p.22]. Such policies place additional burdens on communication between prisoners and their families; PLN and other organizations have challenged postcard-only policies in various jurisdictions, including Florida, Tennessee, Oregon, Washington and Michigan. [See: *PLN*, Jan. 2014, p.42; Nov. 2013, p.24; June 2013, p.42; Jan. 2012, p.30; Sept. 2011, p.19].

In regard to visitation, a November 2011 study by the Minnesota Department of Corrections examined recidivism rates for 16,420 ex-prisoners over a five-year period, comparing rates for those who received visits while incarcerated and those who didn't. The study found that "Any visit reduced the risk of recidivism by 13 percent for felony reconvictions and 25 percent for technical violation revocations, which reflects the fact that visitation generally had a greater impact on revocations. The findings further showed that more frequent and recent visits were associated with a decreased risk of recidivism."[14] [See: *PLN*, May 2013, p.1].

However, prison officials often make visitation an unpleasant process, including lengthy waits, onerous searches, restricted visitation times and rigid enforcement of often petty rules. For example, one female attorney said she was told by prison officials that she could not visit a prisoner because her underwire bra set off the metal detector. After leaving, removing her bra and then returning, she was told she could not visit because she wasn't wearing a bra.

According to the 2011 Vera Institute study, "Many family members also indicated that prison rules and practices – including searches, long waits, and inconsistent interpretations of dress codes for visitors – can be unclear, unpleasant, too restrictive, and even keep people from visiting again."

Due to such problematic issues with visitation, and because prisoners are frequently housed at facilities located far from

their families which makes in-person visits difficult (federal prisoners, for example, may be held at any federal prison in the United States), phone calls are a primary means of maintaining family contact.

As acknowledged by the largest prison phone company in the nation, Global Tel*Link: "Studies and reports continue to support that recidivism can be significantly reduced by regular connection and communications between inmates, families and friends – [a] 13% reduction in felony reconviction and a 25% reduction in technical violations."[15]

Kevin O'Neil, president of Telmate, another phone service provider, agreed, stating, "The more inmates connect with their friends and family members the less likely they are to be rearrested after they're released."[16]

When the Federal Communications Commission voted in August 2013 to reduce the cost of interstate prison phone calls nationwide, the issue of rehabilitation and recidivism played a contributing role in the FCC's decision.

As stated by FCC Commissioner Mignon Cylburn: "Studies have shown that having meaningful contact beyond prison walls can make a real difference in maintaining community ties, promoting rehabilitation, and reducing recidivism. Making these calls more affordable can facilitate all of these objectives and more."[17]

The FCC's order imposing rate caps on interstate prison phone calls went into effect on February 11, 2014, though other parts of the order have been stayed by the D.C. Circuit Court of Appeals. [See: *PLN*, Feb. 2014, p.10].

Notably, numerous corrections officials filed objections to the FCC's plan to impose rate caps, and intrastate (in-state) prison phone rates, which were not affected by the FCC's order, remain high. Meanwhile, prisons and jails nationwide have received hundreds of millions of dollars in "commission" kickbacks from prison phone companies, and such kickbacks have long resulted in inflated phone rates that create financial barriers to communication between prisoners and their family members. [See: *PLN*, Dec. 2013, p.1; April 2011, p.1].

In conclusion, although research has consistently found that regular contact between prisoners and their families results in better post-release outcomes and lower recidivism rates, corrections officials have done little to facilitate – and have sometimes deliberately frustrated – such communication with respect to written correspondence, visitation and phone calls.

Investments in prison-based literacy programs and less restrictive mail policies, revising visitation policies to encourage visits by family members, and reducing intrastate prison and jail phone rates would provide prisoners with greater opportunities to maintain close relationships with their families, leading to lower recidivism rates and less crime in our communities.

Few corrections officials seem willing to take such actions, though, which is a strong indicator that reducing recidivism – thus reducing the size of our nation's prison population and the associated costs – is not one of their priorities.

ENDNOTES

1 http://www.bjs.gov/content/pub/pdf/cpus12.pdf

2 http://www.bjs.gov/content/pub/pdf/p12tar9112.pdf

3 http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/sentencing_and_corrections/State_Recidivism_Revolving_Door_America_Prisons%20.pdf

4 www.vera.org/sites/default/files/resources/downloads/Price_of_Prisons_updated_version_072512.pdf

5 http://www.fcnetwork.org/reading/holt-miller/holt-millersum.html

6 https://www.aca.org/fileupload/177/ahaidar/Flower.pdf

7 http://www.vera.org/files/the-family-and-recidivism.pdf

8 http://www.vera.org/sites/default/files/resources/downloads/Piloting-a-Tool-for-Reentry-Updated.pdf

9 http://wcr.sonoma.edu/v07n2/20-naser/naser.pdf (citing other sources)

10 http://csgjusticecenter.org/wp-content/uploads/2013/03/Report-of-the-Reentry-Council.pdf

11 http://www.urban.org/UploadedPDF/310882_families_left_behind.pdf

12 http://www.urban.org/UploadedPDF/310946_BaltimorePrisoners.pdf

13 http://nces.ed.gov/pubs2007/2007473.pdf

14 http://www.doc.state.mn.us/pages/files/large-files/Publications/11-11MNPrisonVisitationStudy.pdf

15 Petitioners' Opposition to Petition for Stay of Report and Order Pending Appeal, FCC WC Docket No. 12-375, Exhibit D, page 6 (October 29, 2013)

16 www.telmate.com/oregon-doc-installatio

17 http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0926/FCC-13-113A2.txt

Iowa: Parole Agreement Does Not Constitute Voluntary Consent that Justifies Warrantless Search

Last year the Supreme Court of Iowa reversed a parolee's conviction on drug charges, holding that his acceptance of a search condition in a parole agreement did not constitute voluntary consent, and therefore a warrantless, suspicionless search of his car was unreasonable and violative of his rights under the search and seizure clause of the state constitution.

While on parole in 2009, Isaac A. Baldon III was subjected to a search of his person, the motel room where he was staying and his car, all pursuant to a consent-to-search provision in the parole agreement that Baldon, like all Iowa parolees, was required to sign as a prerequisite to being released on parole. The police found a large quantity of marijuana in Baldon's car and charged him with drug-related offenses.

Baldon moved to suppress the marijuana from the search of his vehicle, arguing that his signing of the parole agreement did not constitute voluntary consent to searches of his person or property. The district court denied the motion and found him guilty of the charges.

On appeal, the Iowa Supreme Court reversed the judgment. Analyzing the issue of consent on state constitutional grounds, the Court concluded, in a thoughtful opinion, that the standard search provision contained in Baldon's parole agreement did not represent a voluntary grant of consent to searches. Notably, this finding rested on provisions in the Iowa constitution, and the Supreme Court noted that many courts in other jurisdictions "have concluded that consent-search provisions in probation agreements constitute a waiver of search-and-seizure rights." See: *State v. Baldon*, 829 N.W.2d 785 (Iowa 2013).

Update on Missouri Incarceration Reimbursement Act Case

Prison Legal News previously reported a decision by the Bankruptcy Appellate Panel for the Eighth Circuit, which held that a Missouri bankruptcy court was correct in concluding that state prison officials did not violate a discharge injunction by collecting money from a prisoner's account for incarceration costs that accrued after the injunction was filed.

In 2009, Missouri prisoner Zachary A. Smith was initially ordered to pay $87,830.13 to cover the costs of his incarceration through March 2007 under the Missouri Incarceration Reimbursement Act (MIRA), plus future costs that accrued until his release from custody. He filed a Chapter 7 bankruptcy petition in 2010 and received a discharge in March 2011, effectively voiding the MIRA judgment.

In September 2012, however, prison officials seized funds deposited into Smith's prison account for costs that had accrued after he filed for bankruptcy. Smith sought a contempt ruling from the bankruptcy court, alleging the state had violated the discharge injunction. The bankruptcy court agreed that the MIRA judgment was void with respect to costs accrued as of the date of the bankruptcy filing, but held the judgment remained valid as to future incarceration reimbursement costs. The Eighth Circuit affirmed on February 5, 2013. [See: *PLN*, Feb. 2014, p.11].

Smith then filed a Rule 74.06(b) motion in circuit court, arguing that the state could not seize assets from his prison account for MIRA judgments that were unknown at the time of the MIRA hearing, citing *State ex rel. Koster v. Cowin*, 390 S.W.3d 239 (Mo. Ct. App. 2013) and *State ex rel. Koster v. Wadlow*, 398 S.W.3d 591 (Mo. Ct. App. 2013).

In a March 6, 2014 letter to *PLN*, Smith wrote: "The Chapter 7 [bankruptcy] was necessary to discharge the MIRA debt, but I had to argue that the AG's office could not be reimbursed with assets that were not identified and not known at the time of the MIRA hearing – meaning the AG could not impose future costs for incarceration against me unless it was shown to come from a current stream of income" that existed when the MIRA judgment was entered.

The state conceded, filing a satisfaction of judgment in the circuit court on October 16, 2013, and the MIRA liens against Smith were subsequently removed. Smith, who handled the litigation pro se, noted that Missouri prisoners facing MIRA judgments can successfully challenge them. See: *State of Missouri v. Smith*, Cole County Circuit Court (MO), Case No. 07AC-CC00109-01.

No Discipline for Oregon Prosecutor and Defense Counsel for Illegal Confinement of Mentally Ill Defendant

Although the Oregon State Bar initially decided to pursue disciplinary charges against the district attorney for Washington County and a criminal defense attorney who represented a mentally ill defendant, for causing the defendant's illegal confinement, the charges were later dropped.

Donn Thomas Spinosa stabbed his wife to death on May 10, 1997, reportedly because she wouldn't give him money to play video poker. He was found unable to aid and assist in his defense and sent to the Oregon State Hospital (OSH) for mental health treatment.

Under Oregon law, Spinosa could be held at OSH for no more than three years. When he was still not competent to stand trial in 2000, the criminal charges against him were dismissed and he was civilly committed.

The civil commitment order was renewed annually until 2010, when Washington County District Attorney Bob Hermann claimed that OSH officials told him they were considering discharging Spinosa. An OSH official denied his claim.

In October 2010, Hermann refiled aggravated murder charges against Spinosa, who was again found unable to aid and assist in his defense and returned to OSH.

Hermann and Spinosa's defense counsel,

Robert B. Axford, then filed a joint motion asking Washington County Circuit Court Judge Thomas Kohl to issue a permanent "magistrate mental illness hold" requiring Spinosa's indefinite confinement at OSH and prohibiting his release without approval by the court. This was unusual because Oregon law does not recognize, or allow for, a "magistrate mental illness hold."

Nevertheless, Hermann argued that the hold was necessary due to the "woeful inadequacy of Oregon law" with respect to dangerous mentally ill defendants. He admitted that he and other prosecutors dislike the civil commitment process because it removes mentally ill offenders like Spinosa from the criminal justice system.

Neither Hermann nor Axford offered authority for the legality of a magistrate mental illness hold, because no such authority exists. Regardless, Judge Kohl signed the order and dismissed Spinosa's murder charges. The order cited no legal authority for the hold and simply referred to Hermann's memorandum.

In December 2011, retired Circuit Court Judge Jim Hargreaves filed complaints with the Oregon State Bar (OSB) against Hermann and Axford, as well as a judicial complaint against Judge Kohl.

Hargreaves noted in the OSB complaints that state law does not allow for a magistrate mental health hold. "Such an order is entirely without legal foundation in Oregon and stripped Mr. Spinosa of all his rights and protections," he wrote. Hermann, Axford and Kohl had agreed to an "undeniably invalid order" to sidestep the law, he alleged.

An unrepentant Hermann called the OSB complaint a "cruel irony" given that he, Axford and Judge Kohl had agreed on a solution that they felt best for the public and for Spinosa – even though that solution was unsupported by state law.

Hermann and Axford told the OSB that they believed the order was valid and did not intentionally violate the law. The OSB evidently disagreed, as it voted in September 2012 to pursue disciplinary charges against the two attorneys for unmeritorious legal positions and engaging in conduct prejudicial to the administration of justice.

Meanwhile, Judge Kohl granted OSH's request to dismiss the questionable magistrate mental illness hold, and Spinosa remained at the hospital under a regular civil commitment order.

Disability Rights Oregon (DRO) launched its own investigation following news reports about Spinosa's situation, according to Bob Joondeph, the organization's executive director.

Upon completion of that investigation, DRO issued a report in July 2012 that found Hermann, Axford and Kohl had acted outside the law in creating and imposing the magistrate mental illness hold. The legislature makes the law, the report noted, but in Spinosa's case the attorneys and judge "essentially created a new law that allows for a person with mental illness to be detained without the elements of due process."

In September 2013, the Oregon State Bar rescinded the charges against Hermann and Axford. "Most notably, the OSB's case rested on a belief that Hermann and Axford crafted an order essentially to bypass Oregon's civil commitment process in order to permanently institutionalize a criminal defendant without due process of law," the agency said in a statement. However, the OSB concluded that the attorneys had tried to initiate, rather than circumvent, civil commitment proceedings.

Hermann said the OSB had made the right decision, and noted the case had prompted the state legislature to pass Senate Bill 421 in July 2013, which created new civil commitment procedures for people who are mentally ill and deemed "extremely dangerous."

In other words, the legislature created the law that did not exist when Hermann, Axford and Judge Kohl ordered Spinosa to be held indefinitely at OSH.

Source: *The Oregonian*

Montana: Hospitalized Prisoner Entitled to Continuance in Divorce Case

The Montana Supreme Court held on March 5, 2013 that refusing to grant a hospitalized prisoner's motion for continuance of a divorce trial was an abuse of discretion.

David and Lori Eslick were married on August 15, 2005. In December 2010, David began serving a sentence in the Montana State Prison (MSP), and Lori filed for divorce.

David was unrepresented and appeared telephonically at all court hearings. A June 12, 2012 pretrial conference and June 25, 2012 trial were scheduled. David failed to appear at the pretrial conference, which was rescheduled for June 19, 2012.

David's failure to appear or communicate with opposing counsel and the court was due to an unexpected medical emergency. On May 5, 2012, he was hospitalized for amputation of septic toes and part of his foot as a result of diabetes. Due to complications he remained hospitalized until June 11, 2012, then was confined in the MSP infirmary for the following week.

David did not receive his mail and could not attend court proceedings during this time, or schedule phone calls with the trial court. On June 18, 2012 he mailed a motion to the court seeking a 60-day continuance.

When David did not appear at the June 19, 2012 pretrial hearing, the court entered a default judgment against him on June 26, 2012, dissolving the marriage, despite having received his motion requesting a continuance.

The Montana Supreme Court reversed, concluding that "David has demonstrated good cause for granting his motion for a continuance. David's unexpected medical emergency and the conditions of his incarceration were circumstances beyond his control that prevented his appearance at the final pretrial conference."

The Court also concluded that David had suffered prejudice, as the trial court had "entered its findings of fact, conclusions of law, and default decree of dissolution without the benefit of David's arguments." The case was therefore reversed and remanded for a new pretrial conference and trial. See: *In re Marriage of Eslick,* 2013 MT 53, 304 P.3d 372 (Mont. 2013).

Arkansas Suing Prisoners for Incarceration Costs

Arkansas officials are suing prisoners under the State Prison Inmate Care and Custody Reimbursement Act (Act), seeking reimbursement for the costs of their incarceration by obtaining court orders and seizing money from their prison trust accounts.

For example, a state court entered an order requiring prisoner Michael R. MacKool to pay reimbursement costs, and the state sought a similar judgment against prisoner Deral Plunk. Both were subject to orders that confiscated the funds in their accounts for placement in a court account pending the outcome of the litigation.

MacKool is serving a cumulative 60-year sentence for first-degree murder and theft of property. In October 2010, Arkansas filed a petition against him in state court under the Act. Following a show-cause hearing, $5,016.61 in MacKool's prison account was ordered deposited into the state treasury; he appealed that judgment, which was affirmed. See: *MacKool v. State,* 2012 Ark. 287 (Ark. 2012).

On rehearing, he argued the court had incorrectly held that his lack-of-due-process argument had not been presented to the circuit court. Next, he claimed money he had received from his mother was not part of his "estate" as that term is used in the Act. Finally, he argued his equal protection rights had been violated.

The due process claim was based on the funds in MacKool's prison account being ordered confiscated on October 18, 2010, but the court did not provide him with notice until over two weeks later. The Arkansas Supreme Court found the only time that MacKool pointed to this issue was during opening statements, which the Court held is not an occasion for argument; an opening statement is an outline of the evidence to be introduced and the nature of the issues to be tried. Thus, MacKool had failed to properly present the due process argument before the circuit court and could not raise it on appeal.

As to the definition of "estate," the Supreme Court held the plain language of

the Act "reflects that any money received by an inmate, including a gift from a family member, is part of his 'estate' for purposes of this statute." Finally, the Court refused to hear the equal protection claim because MacKool had failed to raise it in his original briefs. See: *MacKool v. State*, 2012 Ark. 341 (Ark. 2012).

The state also filed a petition under the Act to seek reimbursement of incarceration costs from prisoner Deral Plunk. It secured an order to confiscate $7,007.47 from his prison account to hold in a court account until the litigation was concluded. Plunk moved to dismiss the action, and the state moved to transfer the case to another circuit court.

That court denied Plunk's motion but granted the state's motion. Plunk appealed. The Arkansas Supreme Court held that because neither part of the order constituted a final order, it was unappealable. As a result, Plunk's motion to proceed in forma pauperis on appeal was denied. See: *Plunk v. State*, 2012 Ark. 362 (Ark. 2012).

More recently, on October 31, 2013, a U.S. District Court in Arkansas ruled against state prisoner Michael Williams, who challenged the seizure of funds from his prison account that he had received as a judgment in a § 1983 lawsuit against jailers at the Miller County Detention Center. In March 2013, the district court had awarded Williams $10,350 in damages and costs in the suit. Pursuant to a state court order under the Act, however, $8,530.95 was confiscated from the judgment funds after they were deposited in his prison account.

Williams moved the district court to enjoin the state from seizing the judgment awarded in his § 1983 suit, which the court construed as a motion under Fed.R.Civ.P. 69, "invoking the Court's inherent power to enforce its judgments." However, the district court held it did not have jurisdiction to grant the motion after the judgment had been satisfied by the payment of funds to Williams.

The court noted that the Eighth Circuit "has previously held a state may not attach to section 1983 judgment proceeds awarded to an inmate for the purpose of recouping incarceration costs," citing *Hankins v. Finnel*, 964 F.2d 853 (8th Cir. 1992); however, "the facts presented here do not fit within the narrow parameters of that precedent." The district court found that the prohibition against the state's seizure of funds obtained in a § 1983 lawsuit for reimbursement of incarceration costs does not apply when the judgment in the suit was obtained from a non-state party – in this case, from Miller County.

"Therefore, the entity paying Williams's judgment proceeds and the entity seeking to attach to the judgment proceeds are entirely distinct, thus, eliminating any *Hankins* type concerns over the deterrent effect of a section 1983 award," the district court concluded. See: *Williams v. Rambo*, U.S.D.C. (W.D. Ark.), Case No. 4:09-cv-4088; 2013 U.S. Dist. LEXIS 156458 (W.D. Ark. 2013).

Texas: False Arrest and Malicious Prosecution Result in $411,865.18 Recovery

A Texas probationer subjected to false arrest and malicious prosecution has been awarded $169,000 in damages plus attorneys' fees and costs.

Thomas Hannon, 37, unemployed and on probation, had an outstanding arrest warrant for probation revocation. Dallas police knew he was at a local hotel, and on August 1, 2007, police officers arrested several people, including Hannon, at the hotel in connection with a black bag that contained drugs, a .357 revolver and materials related to identity theft. Hannon was jailed on gun, drug and identity theft charges. He was exonerated and released more than 10 months later.

Hannon sued several police officers, but only his claims against officers Jerry Dodd, David Nevitt and Randy Sundquist survived to reach trial. The evidence showed that when the officers arrived at the hotel, Hannon had been waiting for a ride. He was not part of the initial arrest and began walking down the highway.

Police officers were notified that Hannon was walking away, and pursued and arrested him. Prior to the arrest, Hannon had been with a friend. The friend was carrying the black bag with the gun and drugs, but Hannon contended he was never in possession of the bag or knew what it contained.

The police report prepared by Dodd indicated that Nevitt saw Hannon with the bag before the arrest; Nevitt never indicated in the report that he saw Hannon possess the bag, but he later testified to that fact. Nevitt further testified that he never dealt with the hotel clerk.

It was proven that Nevitt lied. Surveillance video showed Hannon's friend had the bag and Hannon was never in possession of it. The clerk testified that Nevitt had in fact requested a copy of the surveillance video from him. Hannon contended that Dodd and Nevitt falsified the police report to maliciously prosecute him; he also noted that Dodd failed to inform federal officials, who were investigating the identify theft, that he had been exonerated.

With respect to injuries, Hannon conceded he would have been arrested in any event and required to serve a month on the probation revocation, but said he remained jailed for 10 months as a result of the false arrest and malicious prosecution, which caused him severe depression and anxiety.

On February 3, 2012, a federal jury found that Hannon did not possess the bag and Dodd and Nevitt had violated his rights. Hannon was awarded $93,500 for mental anguish and wrongful confinement against Nevitt and Dodd jointly and severally, $500 in punitive damages against Dodd and $75,000 in punitive damages against Nevitt, for a total of $169,000.

On March 14, 2013, the district court denied the defendants' motions for a new trial and judgment as a matter of law. The court also awarded attorneys' fees to Hannon in the amount of $241,042.73, plus $1,591.81 in attorneys' costs and $4,414.16 in Hannon's costs. The court further awarded $2,591.71 in costs against Hannon in favor of defendant Sundquist, who prevailed at trial.

On May 8, 2013, pursuant to a joint motion filed by the parties, the district court vacated the judgment and dismissed the case after a settlement was reached in which the City of Dallas agreed to pay a total of $411,865.18 in combined damages, attorneys' fees and costs. Hannon was represented by Dallas attorneys Scott Palmer and John E. Wall, Jr. See: *Hannon v. Nevitt*, U.S.D.C. (N.D. Tex.), Case No. 3:09-cv-00066-N.

California Supreme Court: Challenge to Booking Fee Order Forfeited Due to Failure to Object in Trial Court

On April 22, 2013, the Supreme Court of California, resolving a conflict among lower state courts, held that a defendant who fails to contest a jail booking fee order when it is imposed forfeits the right to challenge the order on appeal.

After pleading no contest to being a convicted felon in possession of a firearm, Antoine J. McCullough was sentenced to a state prison term of four years. When imposing the sentence, the trial court also ordered McCullough to pay a jail booking fee of $270.17.

On appeal, McCullough argued that although he had not objected when the trial court imposed the booking fee, he was entitled to challenge it for the first time on appeal because the evidence was insufficient to support a finding that he was able to pay the fee.

The Court of Appeal affirmed the booking fee order, holding that McCullough's failure to object in the trial court meant he had forfeited his right to challenge the imposition of the fee on appeal. The California Supreme Court granted review to resolve a split among the appellate courts on this question.

The Supreme Court initially held, as a matter of statutory construction, that the state law which authorizes the imposition of a booking fee – Government Code § 29550.2, subd. (a) – requires the trial court, before ordering payment, to determine the defendant's ability to pay. The Court then cited the general rule that a right may be forfeited if the defendant fails to timely assert it, and found no reason to deviate from that rule with respect to McCullough's challenge to the booking fee order.

Accordingly, the judgment of the Court of Appeal was affirmed. See: *People v. McCullough*, 56 Cal. 4th 589, 298 P.3d 860 (Cal. 2013).

State of Washington Prison Phone Justice Campaign!

Prison Phone Justice Project needs your help for statewide campaign!

While much progress has been made in reducing the costs of long distance prison calls, we are still fighting to reduce the high costs of in-state prison and jail calls at the local level. In January 2014, the Human Rights Defense Center (HRDC), the parent organization of Prison Legal News, reopened its Seattle office to launch the Washington Prison Phone Justice Campaign.

This is our first statewide phone justice campaign, and we're excited to have people involved on both the local and national levels who are dedicated to ending the exorbitant phone rates and kickbacks associated with the prison phone industry. David Ganim, HRDC's national Prison Phone Justice Director, has already been obtaining the phone contracts and rates for all 39 county jails in Washington, as well as data from the Washington Department of Corrections.

We recently hired a local campaign director, Carrie Wilkinson, who will manage our office in Seattle and coordinate the statewide campaign. Washington prisoners and their families pay some of the highest phone rates in the nation, and we need your help to win this battle!

Here's how you can help – first, please visit the Washington campaign website:

www.wappj.org

There you can see all the ways you can make a difference. The site allows you to sign up for the campaign and upload videos and share blog entries about how high prison phone rates make it difficult for you to stay in touch with your incarcerated loved ones. You can also upload an audio message, and even call in your story to **1-877-410-4863**, toll-free 24 hours a day, seven days a week! We need to hear how you and your family have been affected by high prison phone rates. If you don't have Internet access, you can mail us a letter describing your experiences and we'll post it. Send letters to HRDC's main office at: **HRDC, Attn: WA Phone Justice Campaign, P.O. Box 1151, Lake Worth, FL 33460.** Washington state prisoners can mail us letters and send a copy of this notice to their family members so they can get involved.

By choosing to participate in the Washington Prison Phone Justice Campaign, you will be playing a key role in ending the unfair phone rates that prisoners' families have to pay. We cannot win this battle without your help, so please visit the campaign website and share your experiences! Donations are also welcome and greatly appreciated, and can be mailed to the above address or made online via the campaign site. Thank you for your support!

Study: TASER Shocks May Cause Fatal Heart Attacks

by Matt Clarke

A study involving eight people who lost consciousness immediately after being shocked by a TASER X26 – the most common electronic control device (ECD) used by police, corrections agencies and the military – concluded that ECD shocks can induce fatal cardiac arrest by causing cardiac "capture" and ventricular tachycardia/ventricular fibrillation (VT/VF). Seven of the eight persons profiled in the study died while the eighth suffered memory impairment after receiving a near-fatal shock, according to an article published in *Circulation*, the journal of the American Heart Association.

The eight subjects of the peer-reviewed study were all male, ranging from 16 to 44 years old. Six were under the age of 25. All were struck in the chest with barbs from a TASER X26, a handgun-shaped weapon that fires the barbs with attached conductive wires using compressed nitrogen. The device delivers an initial 5,000-volt shock, followed by rapid micro-pulsing that is designed to mimic the electrical signals used by the brain to communicate with the muscles. The standard shock cycle lasts five seconds but can be shortened or repeated by the user.

The study found that a TASER shock "can cause cardiac electric capture and provoke cardiac arrest" resulting from an abnormal, rapid heart rate and uncontrolled, fluttering heart contractions. The journal article on the study's findings was authored by Dr. Douglas Zipes, with the Krannert Institute of Cardiology at Indiana University.

Scottsdale, Arizona-based TASER International, Inc., which manufactures the ECD devices, strongly defended its products. Company spokesman Steve Tuttle noted that with only eight subjects in the study, "broader conclusions shouldn't be drawn based on such a limited sample."

"There have been 3 million uses of TASER devices worldwide, with this case series reporting eight of concern," he added. "This article does not support a cause-effect association and fails to accurately evaluate the risks versus the benefits of the thousands of lives saved by police with TASER devices."

The company's website boasts that TASERs have saved nearly 125,000 lives, and that "Every Day TASER CEWs [Conducted Electrical Weapons] are Used **904** Times, Saving a Life from Potential Death or Serious Injury Every **30** Minutes." The site also quotes a Wake Forest University study which found that "in 1,201 cases, 99.75% [of] people subjected to a TASER CEW had no significant injuries."

Research published by *USA Today* in May 2012 indicated that the use of TASERs by police has saved lives because officers are less likely to kill someone using a TASER than by shooting them. The research also found that TASERs reduced the number of injuries suffered by police officers when apprehending suspects.

Tuttle questioned whether Dr. Zipes might have possible bias because he had testified as an expert witness in lawsuits against TASER. "There are key facts that contradict the role of the TASER device in all of these cited cases, and Dr. Zipes has conveniently omitted all facts that contradict his opinion," Tuttle said.

However, Amnesty International reported in February 2012 that more than 500 post-ECD-shock deaths occurred following TASER deployments between 2001 and 2008. Further, a report from a commission of inquiry into the death of a man at the Vancouver airport in Canada concluded there was evidence "that the electric current from a conducted energy weapon is capable of triggering ventricular capture ... and that the risk of ventricular fibrillation increases as the tips of the probes get closer to the walls of the heart."

Other studies, including a 2011 report by the ACLU of Arizona, have also identified problems with the use of TASERs by law enforcement agencies. [See: *PLN*, April 2012, p.26]. Prior to Dr. Zipes' research, though, no peer-reviewed study had concluded that ECD shocks can induce ventricular fibrillation leading to sudden cardiac arrest and death.

TASER published an eight-page warning in March 2013 that stated, "exposure in the chest area near the heart has a low probability of inducing extra heart beats (cardiac capture). In rare circumstances, cardiac capture could lead to cardiac arrest. When possible, avoid targeting the frontal chest area near the heart to reduce the risk of potential serious injury or death."

In November 2013, TASER submitted a statement to the U.S. Securities and Exchange Commission (SEC) indicating that the company would pay a total of $2.3 million in settlements in product liability lawsuits. The statement said the settlements were intended to end legal battles over TASER-related "suspect injury or death."

TASER also changed the warning labels on its ECD products. The company used to tout TASERs as delivering "non-lethal" shocks, but following several TASER-related deaths the language was changed in 2009 to read "less lethal." Company training manuals now state that "exposure in the chest area near the heart ... could lead to cardiac arrest."

The eight subjects in the study authored by Dr. Zipes were all clinically healthy. They were hit with one or both TASER barbs in the anterior chest wall near the heart, and all lost consciousness during or immediately after being shocked. In six cases, the first recorded heart rhythms were VT/VF. One had no heart rhythm, and in the eighth subject an external defibrillator reported a shockable rhythm but did not record it.

Two of the subjects had structural heart disease, two had elevated blood alcohol levels and two had both. The study concluded, however, that those conditions were considered unlikely to be the cause of the sudden loss of consciousness that occurred at the time or immediately after they received TASER shocks, although the conditions may have increased the likelihood of ECD-induced VT/VF.

The study also concluded it was unlikely that other known causes of in-custody death, such as "excited delirium" or restraint asphyxia, were factors in the deaths of seven of the eight subjects due to the proximity of the TASER shock to the loss of consciousness.

Dr. Zipes' research noted that studies in pigs, sheep and humans established that shocks across the chest from the TASER X26 and a new prototype ECD could cause cardiac capture. The pig studies also repeatedly showed that the TASER X26 could induce VT/VF at normal or higher-than-

normal outputs. Similar studies attempting to induce VT/VF by placing the barbs in the anterior chest and using strong, multiple and/or lengthy shocks could not be conducted on humans due to ethical considerations.

Of course, such considerations do not prevent police officers from using TASERs on suspects, or prison and jail guards from deploying TASERs against prisoners.

Sources: *"Sudden Cardiac Arrest and Death Associated with Application of Shocks from a TASER Electronic Control Device," by Douglas P. Zipes, M.D. (May 2012); www.taser.com; USA Today, www.theverge.com*

Texas Court Holds CCA is a "Governmental Body" for Purposes of Public Records Law

On March 19, 2014, a state district court in Travis County, Texas held that Corrections Corporation of America (CCA), the nation's largest for-profit prison company, is considered a "governmental body" for purposes of the state's Public Information Act and therefore subject to the Act's "obligations to disclose public information."

The court entered its ruling on a motion for summary judgment filed by Prison Legal News, which had brought suit against CCA in May 2013 after the company refused to produce records related to the now-closed Dawson State Jail in Dallas – including reports, investigations and audits regarding CCA's operation of the facility. [See: *PLN*, June 2013, p.46]. Such records would have been made public had the jail been operated by a government agency.

"This is one of the many failings of private prisons," said PLN managing editor Alex Friedmann. "By contracting with private companies, corrections officials interfere with the public's right to know what is happening in prisons and jails, even though the contracts are funded with taxpayer money. This lack of transparency contributes to abuses and misconduct by for-profit companies like CCA, which prefer secrecy over public accountability."

CCA currently operates nine facilities in Texas, including four that house state prisoners.

"The conditions of Texas prisons have been the focus of intense public scrutiny for nearly 40 years," stated Brian McGiverin, an attorney with the Texas Civil Rights Project. "Today's ruling is a victory for transparency and responsible government. Texans have a right to know what their government is doing, even when a private company is hired to do it."

In its summary judgment motion, PLN argued that CCA meets the definition of a governmental body under the state's Public Information Act, Section 552.003 of the Texas Government Code, because, among other factors, the company "shares a common purpose and objective to that of the government" and performs services "traditionally performed by governmental bodies."

In the latter regard, PLN noted that "Incarceration is inherently a power of government. By using public money to perform a public function, CCA is a governmental body for purposes" of the Public Information Act. CCA's argument to the contrary – that it is not a governmental body and therefore does not have to comply with public records requests – was rejected by the district court.

CCA had also argued that the taxpayer funds it receives from the State of Texas "are not necessarily used specifically for operating Texas facilities," and that such payments "are used generally to support CCA's corporate allocations throughout the United States."

PLN previously prevailed in a similar public records lawsuit against CCA in Tennessee, where the firm is headquartered; another records suit filed by PLN is pending against CCA in Vermont. The company has vigorously opposed lawsuits requiring it to comply with public records laws. [See: *PLN*, July 2013, p.42; June 2013, p.14].

"CCA and other private prison companies should not be able to hide behind closed corporate doors when they contract with government agencies to perform public services using taxpayer money," said PLN editor Paul Wright.

PLN was ably represented by attorneys Cindy Saiter Connolly with Scott, Douglass & McConnico, LLP and Brian McGiverin with the Texas Civil Rights Project. See: *Prison Legal News v. CCA*, Travis County District Court (TX), Cause No. D-1-GN-13-001445.

Mass Incarceration: The Whole Pie

A Prison Policy Initiative briefing

by Peter Wagner and Leah Sakala

Wait, does the United States have 1.4 million or more than 2 million people in prison? And do the 688,000 people released every year include those getting out of local jails? Frustrating questions like these abound because our systems of federal, state, local and other types of confinement – and the data collectors that keep track of them – are so fragmented. There is a lot of interesting and valuable research out there, but definitional issues and incompatibilities make it hard to get the big picture for both people new to criminal justice and for experienced policy wonks.

On the other hand, piecing together the available information offers some clarity. This briefing presents the first graphic we're aware of that aggregates the disparate systems of confinement in this country, which hold more than 2.4 million people in 1,719 state prisons, 102 federal prisons, 2,259 juvenile correctional facilities, 3,283 local jails and 79 Indian Country jails as well as in military prisons, immigration detention facilities, civil commitment centers and prisons in U.S. territories.[1]

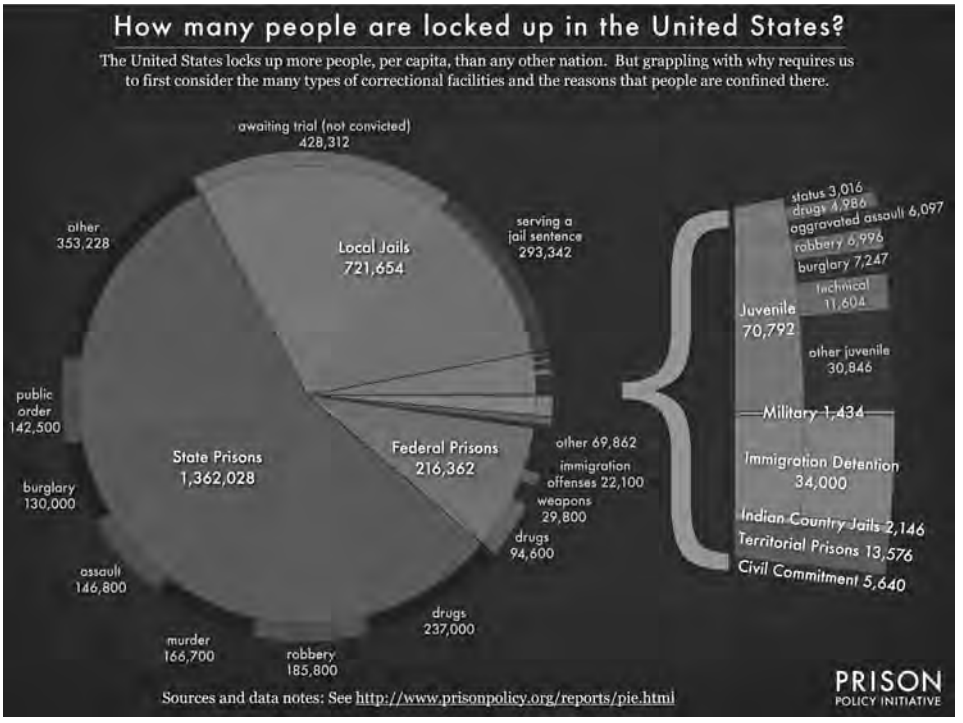
While the numbers in each slice of this pie chart represent a snapshot cross section of our correctional system, the enormous churn in and out of confinement facilities underscores how naive it is to conceive of prisons as separate from the rest of our society. In addition to the 688,000 people released from prisons each year,[2] almost 12 million people cycle through local jails annually.[3] Jail churn is particularly high because at any given moment most of the 722,000 people in local jails have not been convicted and are incarcerated because they are either too poor to make bail and are being held before trial, or because they've just been arrested and will make bail in the next few hours or days. The remainder of the people in jail – almost 300,000 – are serving time for minor offenses, generally misdemeanors with sentences under a year.

So now that we have a sense of the bigger picture, a natural follow-up question might be something like: how many people are locked up in any kind of facility for a drug offense? While the data don't give us a complete answer, we do know that it's 237,000 people in state prison, 95,000 in federal prison and 5,000 in juvenile facilities, plus some unknowable portion of the population confined in military prisons, territorial prisons and local jails.

Offense figures for categories such as "drugs" carry an important caveat here, however: all cases are reported only under the most serious offense. For example, a person who is serving prison time for both murder and a drug offense would be reported only in the murder portion of the chart. This methodology exposes some disturbing facts, particularly about our juvenile justice system. For example, there are nearly 15,000 children behind bars whose "most serious offense" wasn't anything that most people would consider a crime. Almost 12,000 children are behind bars for "technical violations" of the requirements of their probation or parole, rather than for a new criminal offense, and more than 3,000 children are behind bars for "status" offenses, which are, as the U.S. Department of Justice explains, "behaviors that are not law violations for adults, such as running away, truancy, and incorrigibility."[4]

Turning finally to the people who are locked up because of immigration-related issues, more than 22,000 are in federal prison for criminal convictions of violating federal immigration laws. A separate 34,000 are technically not in the criminal justice system but rather are detained by U.S. Immigration and Customs Enforcement (ICE), undergoing the process of deportation, and are physically confined in immigration detention facilities or in one of hundreds of individual jails that contract with ICE.[5] (Notably, those two categories do not include the people represented in other pie slices who are in some early stage of the deportation process due to non-immigration-related criminal convictions).

Now that we can, for the first time, see the big picture of how many people are locked up in the United States in the various types of facilities, we can see that something needs to change. Looking at the big picture requires us to ask if it really makes sense to imprison 2.4 million people on any given day, giving us the dubious distinction of having the highest incarceration rate in the world. Both policy makers and the public have the responsibility to carefully consider each individual slice of the pie chart in turn, to ask whether legitimate social goals are served by putting each category behind bars and whether any benefit really outweighs the social and fiscal costs. We're



optimistic that this whole-pie approach[6] can give Americans, who seem increasingly ready for a fresh look at the criminal justice system, some of the tools they need to demand meaningful changes to how we do justice.

Notes on the Data

This briefing draws the most recent data available as of March 13, 2014 from:

• **Jails**: Bureau of Justice Statistics, Jail Inmates at Midyear 2012 - Statistical Tables, page 1 and Table 3, reporting data for June 30, 2012.

• **Immigration detention**: "Congress Mandates Jail Beds for 34,000 Immigrants as Private Prisons Profit," Bloomberg News, Sept. 24, 2013.

• **Federal**: Bureau of Justice Statistics, Prisoners in 2011, page 1 and Table 11, from data as of December 31, 2011.

• **State Prisons**: Bureau of Justice Statistics, Prisoners in 2011, Table 9, reporting data as of December 31, 2010.

• **Military**: Bureau of Justice Statistics, Correctional Populations in the United States, 2012, Appendix Table 2, reporting data for December 31, 2012.

• **Territorial Prisons**, Prisons in U.S. territories (American Samoa, Guam and the U.S. Virgin Islands) and U.S. commonwealths (Northern Mariana Islands and Puerto Rico): Correctional Populations in the United States, 2012, Appendix Table 2, reporting data for 2012 – includes both territorial prisons and jails.

• **Juveniles**: Office of Juvenile Justice and Delinquency Prevention, Census of Juveniles in Residential Placement, 2010, reporting data for February 24, 2010.

• **Civil Commitment**: Deidre D'Orazio, Ph.D., Sex Offender Civil Commitment Programs Network Annual Survey of Sex Offender Civil Commitment Programs, 2013.

• **Indian Country** (correctional facilities operated by tribal authorities or the Bureau of Indian Affairs): Bureau of Justice Statistics, Correctional Populations in the United States, 2012, Appendix Table 2, reporting data for June 29, 2012.

Mass Incarceration (cont.)

Several data definitions and clarifications may be helpful to researchers reusing this data in new ways:

• The state prison offense category of "public order" includes weapons, drunk driving, court offenses, commercialized vice, morals and decency offenses, liquor law violations and other public-order offenses.

• The state prison "other" category includes offenses labeled "other/unspecified" (7,900), manslaughter (21,500), rape (70,200), "other sexual assault" (90,600), "other violent" (43,400), larceny (45,900), motor vehicle theft (15,000), fraud (30,800) and "other property" (27,700).

• The federal prison "other" category includes people who have not been convicted or are serving sentences of under 1 year (19,312), homicide (2,800), robbery (8,100), "other violent" (4,000), burglary (400), fraud (7,700), "other property" (2,500), "other public order offenses" (17,100) and a remaining 7,850 records that could not be put into specific offense types because the "2011 data included individuals committing drug and public-order crimes that could not be separated from valid unspecified records."

• The juvenile prison "other" category includes criminal homicide (924), sexual assault (4,638), simple assault (5,445), "other person" (1,910), theft (3,759), auto theft (2,469), arson (533), "other property" (3,029), weapons (3,013) and "other public order" (5,126).

• To minimize the risk of anyone in immigration detention being counted twice, we removed the 22,870 people – cited in Table 8 of Jail Inmates at Midyear 2012 – confined in local jails under contract with ICE from the total jail population and from the numbers we calculated for those in local jails that have not been convicted. (Table 3 reports the percentage of the jail population that is convicted (60.6%) and unconvicted (39.4%), with the latter category also including immigration detainees held in local jails).

• At least 17 states and the federal government operate facilities for the purposes of detaining people convicted of sexual crimes after their sentences are complete. These facilities and the confinement there are technically civil, but in reality are quite like prisons. They are often run by state prison systems, are often located on prison grounds and, most importantly, the people confined there are not allowed to leave.

Acknowledgements

Thanks especially to Drew Kukorowski for collecting the original data for this project and to [PLN managing editor] Alex Friedmann for both identifying ways to update the data and for locating the civil commitment data. We thank Tracy Velázquez and Josh Begley for their insights on how to use color to tell this story. Thanks to Holly Cooper, Cody Mason and Judy Greene for helping untangle the immigration-related statistics. Thanks also to Arielle Sharma and Sarah Hertel-Fernandez for their copy editing assistance.

This briefing was published by the Prison Policy Initiative (www.prisonpolicy.org) on March 12, 2014; it is reprinted with permission.

ENDNOTES

1 The number of state and federal facilities is from Census of State and Federal Correctional Facilities, 2005; the number of juvenile facilities from Census of Juveniles in Residential Placement, 2010; the number of jails from Census of Jail Facilities, 2006 and the number of Indian Country jails from Jails in Indian Country, 2012. We aren't currently aware of a good source of data on the number of the other types of facilities.

2 U.S. Department of Justice, Prisoners in 2011, page 1, reporting that 688,384 people were released from state and federal prisons in 2011. [*Ed. note* – the number of releases dropped to 637,400 in 2012]

3 See page 3 of Bureau of Justice Statistics, Jail Inmates at Midyear 2012 - Statistical Tables for this shocking figure of 11.6 million.

4 See Office of Juvenile Justice and Delinquency Prevention, Census of Juveniles in Residential Placement, 2010, page 3.

5 Of all of the confinement systems discussed in this report, the immigration system is the most fragmented and the hardest to get comprehensive data on. We used "Congress Mandates Jail Beds for 34,000 Immigrants as Private Prisons Profit," Bloomberg News, Sept. 24, 2013. Other helpful resources include Privately Operated Federal Prisons for Immigrants: Expensive. Unsafe. Unnecessary; Dollars and Detainees: The Growth of For-Profit Detention; and The Math of Immigration Detention.

6 It is important to remember that the correctional system pie is far larger than just prisons and includes another 3,981,090 adults on probation and 851,662 adults on parole. See Bureau of Justice Statistics, Probation and Parole in the United States, 2012, Appendix Tables 2 and 4.

New York Prisoner Secures Court Order for Visitation with Child

The New York Court of Appeals upheld a lower court's ruling that granted an incarcerated father visitation rights with his three-year-old child. The Court held the lower court had properly applied a legal standard that presumes in favor of visitation and considers whether that presumption is rebutted by evidence showing visits would be harmful to the child.

The petitioner, New York state prisoner Shawn G. Granger, acknowledged paternity of a child prior to his imprisonment. He sought an order under the Family Court Act allowing visitation after the mother refused to bring the child to see him in prison.

The family court noted that state law presumes a child's best interest is served by visits with a non-custodial parent, and "the fact that such parent is incarcerated is not an automatic reason for blocking visitation." The court found that Granger had been involved in the child's life prior to incarceration and had acted to maintain the relationship after he went to prison. Further, the court determined the child would not be harmed by travel to the prison and thus ordered periodic four-hour visits. The Appellate Division affirmed.

The Court of Appeals rejected the mother's argument that the family court had applied the wrong standard of law. It reaffirmed that "substantial proof" must be presented to overcome the presumption in favor of visitation, including when a parent is incarcerated. Visits should be denied to a non-custodial parent upon a showing they would be harmful to the child, which was not demonstrated in this case.

The Court declined to consider the impact of Granger's subsequent transfer to a more distant facility, as that issue should have been the subject of a modification petition and not presented as an issue of first impression on appeal. The lower court's order was affirmed. See: *Matter of Granger v. Misercola*, 21 N.Y.3d 86, 990 N.E.2d 110 (N.Y. 2013).

States Renewing Their Prison Phone Contracts

As state DOCs renew or rebid their prison phone contracts, you can help urge them to eliminate commission kickbacks and lower intrastate phone rates.

The Campaign for Prison Phone Justice needs your help in

***** *Kentucky, Alaska and Georgia!* *****

The Departments of Corrections in the above states are in the process of re-bidding or renewing their prison phone contracts. Most DOCs receive a commission (kickback) on revenue generated from calls made by prisoners, which results in excessively high phone rates. Although the FCC voted last year to cap the costs of interstate (long distance) prison calls, which went into effect on February 11, 2014, the order does not apply to intrastate (in-state) calls; an estimated 85% of prison phone calls are in-state. This is an opportunity to ask DOCs to forgo commissions and ensure their new prison phone contracts are based on the lowest cost to those who pay for the calls – mostly prisoners' families.

Take Action NOW! Here's What YOU Can Do!

Ask your family members and friends to write, email, call and fax the DOC and the governor's office (addresses and contacts are listed below), requesting that the DOC: 1) forgo commission payments when re-bidding or renewing its prison phone contract, and 2) base the new contract on the lowest calling cost. Lower prison phone rates should apply not just to long distance calls but also to in-state calls. For a sample letter or to easily send an email, visit the Campaign for Prison Phone Justice's website and click on the "Take Action" tab:

www.phonejustice.org

Prison phone contract information & Contacts:

Kentucky: Receives a 54% kickback; existing contract expires on 5-31-2014. The DOC charges $4.50 for a 15-minute collect intrastate call and $1.85 for a collect local call. **Contacts:** Kentucky DOC, Commissioner LaDonna Thompson, 275 East Main Street, Frankfort, KY 40602; ph: 502-564-4726, fax: 502-564-5037, email: ladonna.thompson@ky.gov. Governor Steve Beshear, 700 State Capitol, Frankfort, KY 40601; ph: 502-564-2611, fax: 502-564-2517, email: governor@ky.gov

Alaska: Receives a 7 to 32.1% kickback; existing contract expires on 6-30-2014. The DOC charges $2.63 to $7.61 for a 15-minute collect intrastate call (local calls are free). **Contacts**: Alaska DOC, Commissioner Joseph Schmidt, 550 W. 7th Ave., Suite 860, Anchorage, AK 99501; ph: 907-465-4652, fax: 907-465-3390, email: joseph.schmidt@alaska.gov. Governor Sean Parnell, State Capitol, P.O. Box 110001, Juneau, AK 99811; ph: 907-465-3500, fax: 907-465-3532, email: governor@alaska.gov

Georgia: Receives a 60% kickback; existing contract expires on 6-30-2014. The DOC charges $4.85 for a 15-minute collect intrastate call and $2.70 for a collect local call. **Contacts:** Georgia DOC Comm. Brian Owens, 300 Patrol Road, Forsyth, GA 31029; ph: 478-992-5261, fax: 478-992-5259, email: gdccommish@dcor.state.ga.us. Governor Nathan Deal, 203 State Capitol, Atlanta, GA 30334; ph: 404-656-1776, fax: 404-657-7332, email: khorne@georgia.gov or georgia.governor@gov.state.ga.us

Placing Rival Gang Members in Same Cell Not Per Se Unconstitutional

The Ninth Circuit Court of Appeals applied the harmless error test in finding that a district court's late *Rand* summary judgment notice did not deprive a prisoner of substantial rights. Additionally, the appellate court held prison officials were not deliberately indifferent to a substantial risk of violence by placing two rival gang members in the same cell.

This case involved the appeal of a Hawaii federal district court's grant of summary judgment to Corrections Corporation of America and CCA guards at the Saguaro Correctional Center (SCC) in Arizona. The suit was brought by Hawaii state prisoner Keone Labatad, who was housed at SCC and assaulted by another prisoner on July 23, 2009.

Three days earlier, Labatad, a member of the La Familia gang, got into a fight with Howard Giddeons, a member of the USO Family gang. Both told guards that the fight was not gang-related and they had shook hands afterwards. Following procedure, both were placed in administrative segregation.

Labatad was put in a cell with Shane Mara, a USO Family gang member. On the day of the assault, Mara waited until Labatad was in hand restraints in preparation for leaving the cell; he then hit Labatad in the head and back, causing a welt and a bloody nose.

Labatad filed a civil rights action alleging his Eighth Amendment rights were violated by a general policy at SCC that allowed rival gang members to be housed in the same cell, as well as the specific decision to place him in a cell with Mara. He sought damages and injunctive relief, and the defendants moved for summary judgment.

The day after Labatad filed a detailed response to the motion, the district court sent him the summary judgment notice required under *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998) [*PLN*, April 1999, p.19]. The purpose of the *Rand* notice is to provide a pro se prisoner litigant "fair notice" of his "rights and obligations under Rule 56," his "right to file counter-affidavits or other responsive evidentiary materials and be alerted to the fact that failure to do so might result in the entry of summary judgment against" him, and "the effect of losing on summary judgment." The court granted the defendants' motion and Labatad appealed.

The Ninth Circuit held the district court's delay in sending the *Rand* notice was error, but held this was "one of the unusual cases" where the error was harmless because "the record, viewed objectively, shows that Labatad knew and understood the information in the *Rand* notice before he received it."

The district court found that SCC's policy of permitting members of different gangs to be housed together in the same cell was not itself an Eighth Amendment violation. At oral argument, Labatad clarified he was not asserting a per se constitutional violation; instead, he was alleging the defendants were deliberately indifferent to the risk of harm resulting from his cell assignment with Mara, a rival gang member.

Viewing the record objectively and subjectively, the Ninth Circuit found the evidence was insufficient to preclude summary judgment on that claim. Mara and Labatad had been in general population for an extended period of time without threats or problems between them, they were not listed as "separatees," and prison officials had been assured the fight between Labatad and Giddeons was resolved and not gang-related. In sum, there were no facts to suggest that Labatad was at substantial risk of harm when he was housed with Mara.

The district court's order granting summary judgment to the defendants was affirmed. See: *Labatad v. CCA*, 714 F.3d 1155 (9th Cir. 2013).

GPS Monitoring System in Los Angeles Plagued by False Alerts, Ignored Alarms

by Christopher Zoukis

Los Angeles County's GPS monitoring system, designed to keep track of high-risk probationers, has overwhelmed probation officers with thousands of false alerts each day – so many that some officers simply ignore them. As a result, dozens of probationers have been able to roam unmonitored. In some cases, even when probationers removed their monitoring devices, the removal was not discovered for lengthy periods of time.

GPS monitors are used to track the highest-risk probationers and parolees, including sex offenders. A massive shift of prisoners from state prisons to county jails under California's "realignment" legislation has led some counties to release hundreds of low-level offenders on electronic monitoring as a way to cut costs and reduce jail overcrowding.

The GPS system in Los Angeles County picks up satellite signals and transmits the data over cellular networks to a central computer. The system is designed to send an alert to a probation officer under a variety of circumstances; for example, if a probationer tries to remove the monitor or enter a designated prohibited area, or if the GPS batteries run down. The GPS devices send alerts for a number of routine reasons, too, such as when the signal is blocked by a building or if the monitor has a loose strap or damaged case.

According to probation officers, there is no easy way to distinguish the cause of the alert. Thus, a prolonged lost monitoring signal might mean the probationer has absconded or simply that the signal is being blocked due to a building's structure.

County officials say they have been "overwhelmed" with thousands of alarms each day. Most are relatively meaningless, for low battery warnings or blocked signals, and are ignored or deleted by probation officers. Others are more serious; 80 probationers removed their GPS devices in 2013, and in one case an offender went unmonitored for 45 days.

"If a person's not being properly monitored or supervised, then what's going to stop them from taking it off and leaving?" asked Dwight Thompson, a representative for the union that represents Los Angeles County probation officers. "If they take it off, what was the point of putting it on?"

A field test in 2011 found that GPS devices used to monitor California sex of-

fenders transmitted no signal 55 percent of the time, and *PLN* previously reported that thousands of sex offenders in the state had removed their GPS monitors or committed monitoring violations, as there were few repercussions for doing so. [See: *PLN*, April 2013, p.18].

A November 13, 2013 corrective action notice sent by the Los Angeles County Probation Department to Sentinel Offender Services, the company that provides the county's GPS system, indicated that one in four GPS devices were faulty – they generated too many false alarms or had defective batteries. Sentinel blamed poorly-trained probation officers and probationers who didn't follow instructions for properly charging their GPS monitors. [See: *PLN*, Jan. 2014, p.18]. The company has increased training and replaced the monitors with more recent models.

Private companies that provide GPS monitoring services may be more interested in generating profit than ensuring public safety – one of several concerns related to the increased use of electronic monitoring. [See: *PLN*, March 2012, p.20].

While faulty equipment doesn't help matters, Los Angeles County also has the GPS system set up to send an email alert to a probation officer when a probationer passes through, or travels close to, a prohibited area – such as when sex offenders are near schools or parks. There are some 4,900 prohibited areas in the county, about one every square mile. This makes it almost impossible for a probationer to go anywhere without triggering alerts, and thousands of those alarms are generated each month.

"Just riding the Red Line [public transportation] would set off 10 alerts, passing schools on the way," noted John Tuchek, a vice-president for the Association of Probation Supervisors who also works as a probation officer. "If we keep getting false positives, we're not going to know the real ones that mean danger."

"When these alerts are in the tens of thousands, it seems like an unwinnable situation," said Matthew DeMichele, a former researcher for the American Probation and Parole Association, and coauthor of the Justice Department's guide on electronic monitoring. GPS monitoring systems simply don't provide the level of accountability and security that they claim, he added: "In some ways, GPS vendors are selling law enforcement agencies, politicians, the public a false bag of goods."

Sources: *Associated Press, www.latimes.com, www.utsandiego.com, http://arstechnica.com*

No Death Penalty for Maine Prisoner

by Lance Tapley

In 2008, within a supposedly high-security prison in the giant federal correctional complex in Florence, Colorado, Gary Watland, a "boarder" from Maine, murdered another prisoner, white supremacist Mark Baker.

After five and a half years – and after, probably, millions in taxpayer-paid legal costs, including for his defense team – Watland, the only Maine prisoner facing a possible death penalty, saw federal prosecutors in Denver on February 5, 2014 accept his offer to spend life behind bars without the possibility of parole.

However, Watland, 51, already had accumulated enough time to spend life in prison. He had been placed in the federal system after being sentenced to 35 years for a 2006 escape attempt at the Maine State Prison, in Warren, where he was serving 25 years for killing a drinking buddy in 2004.

At Warren, Watland had plotted with his wife to have her smuggle a gun behind her belt buckle into the prison visitors' room, where he allegedly planned to kill guards and anyone else in his way during the breakout. After a prisoner tipped off authorities, Susan Watland was apprehended with the loaded gun in the parking lot.

In Colorado, Watland snuck up on Baker while he was playing poker and stabbed him in the neck with a homemade knife. The plea agreement states: "One blow was to the carotid artery and a second blow severed the brain stem. Mr. Baker fell to the floor dead." Watland maintained he was in a "kill or be killed" situation. Baker's prison gang, the Nazi Low Riders, was allegedly harassing gays. Defending his life, Watland came out of the closet.

The feds had wanted to use the arguments that Watland was still dangerous and had a low chance of rehabilitation to obtain a death sentence from a jury, but a judge ruled them out. Shortly after the ruling, prosecutors accepted the plea bargain.

Watland's case recently stimulated the Maine Prisoner Advocacy Coalition to urge the state Department of Corrections to ban sending Maine prisoners to jurisdictions with the death penalty. Maine doesn't have capital punishment; the federal government does.

"He's a classic example of why the death penalty shouldn't be used," commented a prisoner who knew him at Warren. "I believe that Gary Watland is mentally ill." In 2007 his mother told *The Portland Phoenix* he suffered from bipolar disorder. He denies any mental illness.

Originally from California, Watland re-established his relationship with his parents and teenage daughter during his years awaiting trial in the solitary-confinement ADX prison, which also is in the federal complex in Florence.

"He's grown as a person over the time I've known him," defense attorney Patrick Burke told the *Phoenix*. "I think he'll continue to make a contribution to his family and friends."

Any future contribution Watland makes will likely be from the austere isolation of the most dreaded supermax in America. Although the U.S. Bureau of Prisons will decide where Watland will be kept, expectations are he will continue to be held at ADX. If he were allowed into a prison's general population, he would risk being killed in gang revenge.

This article was originally published by The Portland Phoenix (http://portland.thephoenix.com) on February 12, 2014; it is reprinted with permission of the author.

Qualified Immunity Denied to Michigan Guard for Improper Strip Search of Amputee Prisoner

The Sixth Circuit Court of Appeals affirmed the denial of qualified immunity to a Michigan prison guard who allegedly strip searched a prisoner without a legitimate penological reason for doing so. The appellate court also vacated the denial of qualified immunity to a warden who sanctioned the prisoner's placement in isolation, remanding for consideration of the warden's qualified immunity defense.

When Martinique Stoudemire entered Michigan's prison system at the age of 23 in July 2002, she had a lengthy documented history of health problems. Absent proper care, she was at significant risk of experiencing kidney and liver damage, heart attacks, amputations and chronic pain. After arriving at the Huron Valley Women's Correctional Facility (Huron), her health quickly deteriorated.

By the time she was paroled in 2007, Stoudemire had undergone three amputations, eventually losing both legs below the knee. She attributed her health complications to the failure of prison staff, nurses and associated doctors to provide adequate medical care. The appeal in her lawsuit focused on her final amputation in December 2007, when she contracted a MRSA infection and was quarantined in Huron's segregation unit. [See: *PLN*, May 2007, p.1].

Michigan Department of Corrections (MDOC) policy provides for prisoners with MRSA to be quarantined, and the warden at Huron, Susan Davis, designated the facility's segregation unit as a quarantine location. Pursuant to that policy, Stoudemire spent two weeks in segregation.

While there she received "extremely poor" medical care: The cell was not equipped for disabled prisoners, and she was not provided with assistive devices to safely move between her bed, wheelchair, toilet and shower. Medical staff treated her with contempt, accused her of malingering and responded with hostility when she sought assistance. She was once forced to urinate in a bowl, defecated on herself once, received only one shower in the two weeks she spent in segregation and had to dress her own wounds.

Warden Davis argued that she was entitled to qualified immunity on Stoudemire's claim that the segregation conditions amounted to deliberate indifference to her serious medical needs. The Sixth Circuit found the district court did not make factual findings pertaining to Davis or her mental state or knowledge of the facts alleged by Stoudemire, and remanded that issue to the lower court to make such findings and rule on Davis' qualified immunity defense.

The Court of Appeals then addressed a claim against prison guard Ariel N. Dunagan, who strip searched Stoudemire on

February 10, 2007. An MDOC reprimand noted that "other persons could have observed" Stoudemire during the strip search because Dunagan failed to block a window in the cell door, and Dunagan admitted that such "visual contact" was possible.

Stoudemire alleged the search was "undertaken to harass or humiliate" her. The appellate court wrote that prisoners have a diminished right to be secure in their persons against unreasonable searches, but "a strip search is a particularly extreme invasion of that right." The Sixth Circuit said such searches require exigent circumstances.

Three facts, the Court of Appeals found, indicated that the search was invasive. First, the location allowed people in the hall outside Stoudemire's cell to view the search. Next, Dunagan refused to tell Stoudemire the reasons for the strip search. Dunagan also smirked during the search, which may suggest "personal animus and implicate the dignitary interest 'inherent in the privacy component of the Fourth Amendment's proscription against unreasonable searches.'"

The Court emphasized it was not reviewing MDOC policy, but rather considering the acts of a guard who violated that policy and was sued in her individual capacity. It found the right at issue was clearly established, precluding qualified immunity. The district court's order was vacated in part, affirmed in part, and remanded for a determination of Warden Davis' qualified immunity defense and of Davis and Dunagan's immunity defense to Stoudemire's state law claims. See: *Stoudemire v. Michigan Dept. of Corrections*, 705 F.3d 560 (6th Cir. 2013).

Following remand, on September 25, 2013 the district court granted Stoudemire's motion to reopen the record to obtain "new evidence in opposition to the MDOC Defendants' motion to dismiss and for summary judgment." The case remains pending.

The Redbook – A Manual on Legal Style, by Bryan Garner (Thomson West, 2nd Ed., 2006). 510 pages (spiral bound), $15.00.

Book review by John E. Dannenberg

The *Redbook* is a comprehensive reference manual that provides guidance with every facet of preparing legal documents. Reviewed by judges and attorneys, the *Redbook* authoritatively instructs litigants in the mechanics of writing (e.g., punctuation, spelling, citations, footnotes); grammar (all parts of speech, "legalese," troublesome words); and preparing specific documents such as business letters, case briefs, affidavits, pleadings and motions. The detailed table of contents – 24 pages, not included in the 510 page count – is thoroughly indexed to help locate answers to your questions without time-consuming searches.

The *Redbook* is much more than a reference tool, though. Its bold-faced head notes draw your eye quickly to important subjects. Short tutorial paragraphs follow, educating you about each sub-category within a given topic. This tutorial design provides a superb self-instruction course on English language writing, independent of its focus on legal writing. This text is recommended as the single reference book (beyond a dictionary or thesaurus) necessary for any serious incarcerated writer.

Have you ever stopped to ponder whether you're inaptly (or ineptly) using an incorrect word? Is it "insidious" or "invidious"? Did you mean "insoluble" or "insolvable"? The *Redbook* expends an impressive 100 pages reviewing troublesome words that we all stumble over – offering refreshing distinctions among choices with concise explanations of their differences. If you are not sure where to begin to find a word that's troubling you, a separate index includes 3,600 such words with page number references.

For jailhouse lawyers, the 55-page chapter on appellate briefs will prove useful in creating an effective presentation style beyond the legal points of your argument. Separate chapters guide you through pleadings and motions; additional chapters cover business letters and contracts. Each of the eleven chapters in Part 3 of the manual, "Preparing Legal Documents," contains printed examples that depict format and style as well as content.

The *Redbook* is an invaluable (i.e., "priceless" versus merely "valuable") reference and educational tool for people who want to prepare legal documents and concurrently improve their English language writing skills.

The 3rd edition of the *Redbook* was published in August 2013 and is priced around $45.00. Both editions are available from online booksellers such as Amazon, Alibris and Barnes & Noble. Note that the spiral binding of this book (2nd and 3rd editions) is made of metal wire, which may not be allowed in some prisons and jails. If removed, the wire can be easily replaced with a shoelace.

Court Awards $802,176 in Fees, Costs in PLN Censorship Suit Against Oregon County

In March 2014, a U.S. District Court ordered Columbia County, Oregon to pay $763,803.45 in attorney's fees and $38,373.01 in costs in a lawsuit raising claims of illegal censorship at the Columbia County Jail.

Prison Legal News had filed suit against Columbia County and Sheriff Jeff Dickerson in January 2012 after jail employees rejected PLN's monthly publication and letters mailed to prisoners at the facility. Further, the jail refused to provide notice or an opportunity to appeal the censorship of PLN's correspondence. [See: *PLN*, March 2013, p.50].

The Columbia County Jail rejected PLN's publication and letters pursuant to a policy that only allowed prisoners to send and receive mail in the form of postcards. Further, the jail did not allow magazines. In April 2013, following a bench trial, the district court entered judgment for PLN and prohibited enforcement of the policy – the first time that a jail's postcard-only policy has been struck down as unconstitutional following a trial on the merits. [See: *PLN*, June 2013, p.42].

During the litigation, the county admitted "that inmates have a First Amendment right to receive magazines and inmates and their correspondents have a Fourteenth Amendment right to procedural due process." However, the jail defended its postcard-only policy and claimed there was no official policy banning magazines at the facility.

Following the trial, the district court found that the defendants' purported reasons for adopting the postcard-only policy – preventing the introduction of contraband and saving time during mail inspection – were not supported by the evidence. Columbia County subsequently agreed to pay $15,000 to resolve PLN's claim for monetary damages.

In its March 24, 2014 order awarding $802,176.46 in attorney's fees and costs to PLN, the district court rejected the county's arguments and objections to the award.

Jesse Wing, lead counsel for PLN, praised the court for recognizing that the case had advanced the public interest and the rights of many other people. "In his ruling today, Judge Michael H. Simon remarked that, 'This action brought specific injunctive relief not only to PLN but also to all inmates at the Jail and their family and friends and others who wish to correspond with them...,'" Wing noted.

"The court's award of over $802,000 in attorney's fees and expenses in this case represents the cost of failing to comply with the Constitution of the United States," said PLN editor Paul Wright. "When county officials willingly violate the Constitution and refuse to remedy those violations, instead choosing to engage in protracted litigation, ultimately there is a greater cost to the taxpayers."

Columbia County has appealed the district court's judgment and injunction prohibiting enforcement of the jail's postcard-only policy, and the appeal remains pending before the Ninth Circuit.

PLN was ably represented by Jesse Wing and Katie Chamberlain with the Seattle law firm of MacDonald Hoague & Bayless; by the late Marc D. Blackman with the Portland law firm of Ransom Blackman, LLP, who passed away on January 1, 2014; and by Human Rights Defense Center general counsel Lance Weber. See: *Prison Legal News v. Columbia County*, U.S.D.C. (D. Ore.), Case No. 3:12-cv-00071-SI.

Oregon Appellate Court Declines to Correct Unpreserved Sentencing Error Related to Restitution

by Mark Wilson

In May 2013, the Oregon Court of Appeals agreed that a trial court had committed plain error when it recommended that a defendant pay restitution in an amount to be determined by the Board of Parole and Post-Prison Supervision (Board). The appellate court refused to correct the error, however, because the defendant did not object before the trial court.

Ramon E. Coronado was convicted of three assault charges. At a January 25, 2010 sentencing hearing on two of the convictions, the state requested restitution of $5,931.79 to the victim and $38,676.90 to the victim's insurance company. Coronado's attorney said "No objection." During sentencing on the remaining conviction the following month, the court stated, "I'm going to recommend ... that [defendant] make restitution to the victim in this case in an amount to be determined by the [Board]."

Despite having failed to object to the second restitution order, Coronado argued that the Court of Appeals should exercise its discretion to review the order as plain error under Oregon Rule of Appellate Procedure 5.45(1).

The appellate court recognized that Coronado "correctly points out – and the state concedes – that no statute authorizes the court to recommend that [the Board] determine the amount of restitution."

The Court of Appeals declined to correct the error, however, finding that Coronado had failed to object before the trial court, which would have made this "an easy error for the court to fix." That is, if he "had brought it to the court's attention, the court could have imposed the restitution instead of recommending [the Board] do so. Now, defendant asks this court not to remand to correct the error, but to strike the portion of the judgment relating to restitution." The appellate court refused to do so, as "that could result in a windfall" for Coronado by vacating any restitution as to his third assault charge. See: *State v. Coronado*, 256 Ore. App. 780, 302 P.3d 477 (Or. Ct. App. 2013).

However, the Court of Appeals' refusal to correct the error may still result in a "windfall" for Coronado, given that the Board only has the power bestowed upon it by the legislature. As that authority does not include the power to impose restitution in criminal cases, any order from the Board purporting to do so presumably would be *ultra vires* and thus invalid.

New York Prison Officials Can Force-Feed Hunger Striking Prisoner

The New York Court of Appeals, the state's highest court, held that a hunger striking prisoner's rights were not violated by a judicial order allowing the state to feed him by nasogastric tube to preserve his life.

The Court's decision labeled New York state prisoner Leroy Dorsey a "serial hunger striker." Indeed, Dorsey went on a hunger strike three times in 2010, in an effort to obtain a transfer to another facility and bring attention to his claims of abuse and mistreatment.

Dorsey began one of the hunger strikes in October 2010; a month later he had lost 11.6% of his body weight. The New York Department of Corrections and Community Supervision (DOCCS) sought an order to insert a nasogastric tube and take other steps to hydrate him.

At a hearing on the petition, the DOCCS submitted testimony indicating that Dorsey was at imminent risk of starving to death or experiencing "a fatal cardiac arrhythmia due to electrolyte and fluid imbalance." Dorsey opposed the petition, arguing he was not suicidal and the DOCCS had no authority to interfere with his hunger strike protest.

The Supreme Court granted the DOCCS' petition. Following that decision, Dorsey voluntarily consumed a nutritional supplement and ate solid food. The Appellate Division deemed Dorsey's appeal moot but still ruled on the merits with respect to one issue, holding that when "an inmate's refusal to eat has placed that inmate at risk of serious injury and death ... the State's interest in protecting the health and welfare of persons in its custody outweighs an individual inmate's right to make personal choices about what nourishment to accept."

The Court of Appeals applied the four-part test set forth in *Turner v. Safley*, 482 U.S. 78 (1987). It agreed the state has a significant interest in preserving life and preventing suicidal acts, and had been found liable in the past for failing to do so. The Court also noted a hunger strike can have a "significant destabilizing impact" on a prison. Further, other means were available for Dorsey to protest his treatment, such as grievances or litigation, and the Court distinguished previous cases in which it held that a competent adult may refuse medical treatment.

"In some circumstances we do not doubt that the right to refuse medical treatment is a prerogative that is compatible with incarceration," the Court of Appeals wrote. "But, even if we assume that some permutation of that right was implicated here, its invocation as part of a strategy to strong-arm DOCCS into granting a privilege to which Dorsey was not otherwise entitled is obviously not."

Accordingly, the lower courts' orders were affirmed. See: *Matter of Bezio v. Dorsey*, 21 N.Y.3d 93, 989 N.E.2d 942 (N.Y. 2013).

Ninth Circuit: Delay in Providing Dental Care May Constitute Deliberate Indifference

In an unpublished ruling, a Ninth Circuit Court of Appeals panel reversed in part a district court's grant of summary judgment to prison officials who, a prisoner alleged, were deliberately indifferent to his serious medical needs.

In 2008, Nevada prisoner Martinez Aytch filed numerous requests for dental treatment for a "rotten" tooth that was causing him "awful" and "unbearable" pain. Nearly six weeks after filing an informal grievance alerting prison officials to his submission of five medical "kites," Aytch received pain medication and antibiotics but still had not seen a dentist. His informal grievance was denied.

Aytch then filed a § 1983 complaint alleging that prison officials had been deliberately indifferent to his dental needs; he also alleged they were deliberately indifferent to his vision problems. The district court granted summary judgment in favor of the prison officials, and Aytch appealed.

Noting that Aytch's vision problems had been addressed when he received eyeglasses, the Ninth Circuit affirmed the grant of summary judgment with respect to that issue.

Relying on precedent, however, such as *Hunt v. Dental Dep't*, 865 F.2d 198 (9th Cir. 1989), the appellate court held that Aytch had raised a triable issue as to whether or not the delay in providing dental care – when considered in light of the pain he had to endure as a result of that delay – constituted deliberate indifference to his serious medical needs.

The Court of Appeals noted that budgetary constraints do not absolve prison officials from liability for such indifference, and remanded the case to the district court for further proceedings. See: *Aytch v. Sablica*, 498 Fed.Appx. 703 (9th Cir. 2012) (unpublished).

Following remand, and after Aytch filed numerous motions related to discovery issues and his ability to access the prison law library and obtain legal copies, the case went to trial in November 2013. The jury found in favor of the defendants and Aytch filed a notice of appeal. In January 2014 the district court denied his motion for transcripts at the government's expense, as it would not certify that the appeal was not frivolous pursuant to 28 U.S.C. § 753(f). Aytch litigated the case, including the trial, pro se. See: *Aytch v. Sablica*, U.S.D.C. (D. Nev.), Case No. 2:08-cv-01773-VCF-VCF.

On March 6, 2014, in another case involving a prisoner alleging inadequate dental care, the Ninth Circuit held in an en banc decision that prison officials sued for money damages may raise a defense of lack of available resources to justify the failure to provide adequate medical care. This is contrary to the appellate ruling in *Aytch* and other established precedent, and *PLN* will report the en banc decision in greater detail in a future issue. See: *Peralta v. Dillard*, 2014 U.S. App. LEXIS 4226 (9th Cir. 2014).

Burden-Shifting Jury Instruction Requires New Trial in Prisoner's Lawsuit

The Seventh Circuit Court of Appeals has ordered a new trial in a civil rights action that alleges a prisoner was subjected to improper strip searches to humiliate him, then was subjected to an "especially protracted, gratuitous and humiliating strip search" in retaliation for having filed grievances complaining about the earlier searches.

The Court of Appeals had previously reversed an Illinois district court's grant of judgment as a matter of law to the defendants. See: *Mays v. Springborn*, 575 F.3d 643 (7th Cir. 2009). Following remand, the case went to trial and the jury returned a verdict in favor of the defendants. The plaintiff, Tiberius Mays, formerly incarcerated at the Illinois state prison at Stateville, filed another appeal arguing that he was prejudiced by the instructions and special interrogatories submitted to the jury.

Mays' attorney had failed to object to the instructions and interrogatories. As such, the appellate court said it could reverse only if there was "plain error" – meaning error that was both indisputable and likely to have influenced the outcome of the case.

The appellate court found misleading an interrogatory related to an Eighth Amendment claim that asked the jury to state whether each defendant did or did not "have a valid penological reason for the group search conducted [in a specified month or on a specified date]." As the Seventh Circuit held in the previous reversal in this case, even if there was a valid penological reason for the strip searches, "the manner in which the searches were conducted must itself pass constitutional muster."

The evidence showed the group searches had gratuitously exposed the nudity of each prisoner being searched, and the guards conducted the searches while wearing dirty gloves in a freezing basement and uttering demeaning comments about the prisoners' genitals.

In instructing the jury on Mays' First Amendment claim, the district court placed the burden of proof regarding causation on the wrong party by requiring Mays to negate the possibility that the retaliatory strip searches would have occurred even if there had been no retaliatory motive.

The Court of Appeals held the jury should have been instructed that Mays had the burden of proving retaliation was the motivating factor for the strip search, but even if he presented such proof, the defendants could still prevail if they persuaded the jury that it was more likely than not that the strip search would have occurred even had there been no retaliatory motive.

The failure to give such an instruction was found to be plain error, and that error was compounded by the special interrogatories submitted to the jury by the district court, which asked four times whether retaliation was "the *sole* motivating factor" for the strip search. Therefore, the judgment was reversed and the case remanded for another trial. See: *Mays v. Springborn*, 719 F.3d 631 (7th Cir. 2013).

Mays obtained new counsel following remand and a jury trial has been scheduled for May 20, 2014. This civil rights action, initially filed in 2001, has been pending for 13 years.

Eighth Circuit: Federal Sentence Consecutive to Later-Imposed State Sentence

by Mark Wilson

On June 6, 2013, the Eighth Circuit Court of Appeals held that a prisoner was not entitled to credit toward his federal sentence for time already served on state charges.

In March 2007, Charles Lee Elwell was arrested in Iowa. A federal indictment was issued against him several days later; Elwell was transferred to federal custody and the state court stayed its prosecution until the federal charges were resolved.

Elwell pleaded guilty to the federal charges and was sentenced to 66 months in prison in November 2007. The district court did not address whether the federal sentence would run concurrent or consecutive to any yet-to-be-imposed state sentence, as permitted by *Setser v. United States*, 132 S.Ct. 1463 (2012). [See related article in this issue of *PLN*].

Elwell was then returned to Iowa's custody and sentenced to two concurrent five-year prison terms. The state court expressed its intent to impose the state sentence concurrent with the already-imposed federal sentence.

Later discovering that Elwell's state and federal sentences were not concurrent, however, the state court resentenced Elwell to time served on February 6, 2009. As a result, Elwell's state sentence ended that day and he was transferred to the federal prison system.

The Bureau of Prisons (BOP) subsequently denied Elwell's request for credit for time served toward his federal sentence and for a *nunc pro tunc* designation pursuant to 18 U.S.C. § 3621. Elwell then filed a habeas corpus petition, which was denied by the district court.

On appeal, the Eighth Circuit first applied the primary jurisdiction doctrine, finding that Iowa, not the federal government, had primary jurisdiction of Elwell from March 2007 to February 6, 2009. "Pursuant to the doctrine of primary jurisdiction, service of a federal sentence generally commences when the United States takes primary jurisdiction and a prisoner is presented to serve his federal sentence, not when the United States merely takes physical custody of a prisoner who is subject to another sovereign's primary jurisdiction," the Court of Appeals wrote.

Under 18 U.S.C. § 3584(a), "multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently." As such, the appellate court found that "Elwell's federal sentence must run consecutive to his state sentence."

Given the express bar on double credit imposed by 18 U.S.C. § 3585(b), the Court of Appeals also rejected Elwell's challenge to the BOP's denial of federal credit for time served while he was in state custody between March 2007 and February 6, 2009.

Finally, the Eighth Circuit held the BOP did not abuse its discretion in denying Elwell's request for a *nunc pro tunc* designation of the various facilities where he was incarcerated prior to February 6, 2009 as the locations for serving his federal sentence under 18 U.S.C. § 3621. See: *Elwell v. Fisher*, 716 F.3d 477 (8th Cir. 2013).

Sexual Abuse by Oregon Jail Guard Nets Probation; Defense Attorney Blames Victim

A former Oregon jail guard was sentenced to probation for sexually abusing a female prisoner after pleading guilty to a misdemeanor charge; his defense attorney blamed the incarcerated victim while the prosecutor defended the light sentence. The guard, Eddie James Miller, 60, was later accused of sexually harassing a co-worker.

As previously reported in *PLN*, Miller's 21-year career at the Inverness Jail in Portland, Oregon came to an end when he was accused of walking in on a 34-year-old female prisoner as she was using the bathroom in the jail's medical unit and forcing her to perform oral sex on him on January 9, 2012 [See: *PLN*, April 2012, p.1].

The distraught prisoner immediately reported the incident to detectives, according to Mike Schults, a chief deputy with the Multnomah County Sheriff's Office.

Authorities said the woman's DNA was found on Miller, and she testified before a grand jury. On February 29, 2012, Miller was indicted on charges of official misconduct in the first degree and custodial sexual misconduct in the first degree.

The latter offense is a felony when an Oregon corrections employee or contractor engages in sexual intercourse with a prisoner; all other sexual contact constitutes the misdemeanor offense of custodial sexual misconduct in the second degree. Prisoners are not subject to prosecution, and consent is not a defense due to the power imbalance between guards and prisoners.

Miller entered a not guilty plea through his attorney, Lisa Ludwig. He was fingerprinted, photographed and booked into jail but released on pretrial supervision pending trial.

"We take these things very seriously," said Schults. During the investigation, Miller was initially put on paid leave but later placed on unpaid leave following the indictment. He resigned in April 2012. Schults said the female prisoner was transferred to the nearby Washington County Jail for her safety.

Miller was allowed to plead guilty to a misdemeanor charge of official misconduct in the first degree and sentenced to two years' probation on September 25, 2012. Multnomah County Deputy District Attorney Don Rees defended the plea agreement by claiming that Miller may in fact have been the victim of a scheme to obtain a cash settlement from the county.

Noting that the prisoner has a 15-year criminal history, including fraud and forgery convictions, investigators said they became suspicious of her intentions when her boyfriend and another prisoner reported that she had told them she was using Miller to get rich off the county. Several prisoners at the Washington County Jail also informed officials that Miller told them of a plan to trap another guard in a similar scheme – as if jail guards are somehow unable to resist having sex with prisoners.

When Miller was sentenced, Ludwig called the victim a "con artist" but conceded that Miller was guilty of official misconduct. In addition to probation, Miller was ordered to pay a $2,500 compensatory fine to the victim and forfeit his law enforcement certification.

Meantime, Portland attorney Jennifer Palmquist notified the county of the prisoner's intent to file suit. She said Ludwig's reference to her client as a con artist was nothing more than "blaming the victim." Palmquist stated her client wants to fix a broken system, noting that jail staff did not offer her medical treatment or counseling when she reported the sexual abuse.

Meantime, after Miller was placed on leave, a former co-worker at the Inverness Jail came forward to report that he had kissed and touched her in a sexually aggressive, inappropriate and non-consensual manner.

In January 2013, the former co-worker, Shireela Kennedy, filed a $900,000 lawsuit against Miller, Multnomah County and Aramark Correctional Services, which contracts with the jail. The suit claimed that Miller began making inappropriate comments shortly after she began working at the facility in September 2011.

According to her lawsuit, Kennedy's supervisors destroyed a written sexual harassment complaint she had filed against Miller and ignored her numerous verbal complaints. The suit also alleged that Aramark employee Eddie Climer brushed off her reports of sexual harassment.

Kennedy said she began having panic attacks, depression and difficulty sleeping following Miller's inappropriate actions. She was terminated from her job in February 2012; since then, according to her complaint, she has suffered loss of earnings, job opportunities and other employment benefits.

Kennedy's lawsuit was resolved in October 2013 under undisclosed terms. See: *Kennedy v. Aramark*, Multnomah County Circuit Court (OR), Case No. 130101276.

Source: *www.oregonlive.com*

FREE LOCAL NUMBER WITH SENTEL

Get a local Number & Save up to 85% on Prison Calls with Sentel.

Save on International Calls with Sentel

Below is a summary of the Great plans we offer:

FREE USA PLAN	**USA -100**	**USA UNLIMITED**	**INTERNATIONAL**
Features:	**Features:**	**Features:**	Features:
Price: $0.00 20 Free Minutes Risk Free Sign Up Additional Minutes @ 6 cent	Price: $4.99 100 Minutes Additional lines @ $2.5 Additional Minutes @ 5 cents	Price: $9.99 Unlimited USA Fair Minute Usage Limited Time offer Only Hurry Up !!! You have it You keep it	Price for 1st line: $1 Add a line: 50 cents Rates Based Upon Destination Calls as low as 10 cents/mn Guaranteed lowest rates

NÚMERO LOCAL GRATIS CON SENTEL

Obtenga un número de locales y ahorra hasta un 85% en la prisión de llamadas con Sentel.

Ahorra en llamadas internacionales con Sentel

A continuación se muestra un resumen de los Grandes planes que ofrecemos:

GRATIS EE.UU. PLAN	**EE.UU. -100**	**EE.UU. ILIMITADO**	**INTERNACIONAL**
Características:	Características:	Características:	Características:
Precio: $ 0.00 20 minutos gratis Riesgo Inscribirse Minutos adicionales @ 6 cents	Precio: $ 4.99 100 Minutos Las líneas adicionales @ $ 2,5 Minutos adicionales @ 5 cents	Precio: $ 9.99 Ilimitado EE.UU. Uso de minutos Fair	Precio para 1 ª línea: $ 1 Agregue una línea: 50 cents de dólar Precios basados en la Destino Las llamadas de tan solo 10 cents Garantizado los mejores precios

We accept debit and credit card payments, institutional checks, bank deposits and paypal

Sentel, Sentel
9550 S. Eastern Ave Ste 253
Las Vegas, NV 89123
Ph: 702-430-9445
Email: sentel.nv@gmail.com
Website: www.sentelinmatecall.com

Federal Court Must Give Reasons for Special Conditions of Supervised Release

by David Reutter

The Sixth Circuit Court of Appeals has reversed a district court's imposition of four special conditions of supervised release, due to the court's failure to explain its reasons for imposing them.

Rashan R. Doyle was convicted in New York of attempted sexual abuse in the first degree; as a result of that qualifying felony conviction, the Sex Offender Registration and Notification Act required him to register as a sex offender. When Doyle moved to Tennessee, however, he failed to register.

Doyle pleaded guilty to a charge of failure to register as a sex offender in violation of 18 U.S.C. § 2250(a). A federal district court in Tennessee sentenced him to 37 months in prison followed by ten years of supervised release, plus a $3,000 fine.

The term of supervised release included four special conditions that prohibited Doyle from possessing any pornography, even legal pornography; having direct or indirect contact with any child under eighteen, including loitering near school yards, playgrounds, swimming pools, arcades or other places frequented by children; using sexually-oriented telephone or computer-based services; and possessing or using a computer with access to any "on-line service" or other forms of wireless communication without the approval of his probation officer.

Because Doyle did not object to the special conditions at sentencing, the Sixth Circuit analyzed them under the plain-error standard. The appellate court held that "a district court errs if it fails, at the time of sentencing, to state in open court its rationale for mandating a special condition of supervised release." In this case, the district court had erred procedurally because it failed to explain its reasoning for the special conditions at issue; the Court of Appeals found the error was clear because the record did not show why the conditions were imposed.

Further, the district court's failure to explain its rationale for the special conditions "may have had a substantial influence on the outcome of the proceedings." The Sixth Circuit wrote, "there is a reasonable probability that the court may not have imposed the special conditions if it had fulfilled its obligations to explain the basis for the conditions or at least made sure the record illuminated the basis for the conditions." Finally, as the special conditions were "likely more severe than the ones the district court would have imposed had it fulfilled its obligation to explain its reasoning," the error was not harmless and affected the fairness, integrity or public reputation of the proceedings.

The four special conditions of Doyle's supervised release were vacated and the case remanded for resentencing. The district court was reminded that if it does impose special conditions, they "'must be tailored to the specific case before the court.'" The Sixth Circuit noted that it did not see how some of the special conditions related to the nature and circumstance of Doyle's offense of failure to register; the one exception was contact with children or being in places where children congregate, but that provision should not apply to Doyle's own children. See: *United States v. Doyle*, 711 F.3d 729 (6th Cir. 2013).

Following remand, Doyle was resentenced on August 30, 2013 to 37 months in prison and five years of supervised release, plus a $3,000 fine.

Idaho Supreme Court Upholds Dismissal of § 1983 Claims in Jail Suicide Case

by Mark Wilson

The Idaho Supreme Court has affirmed a lower court's dismissal of § 1983 claims stemming from the death of a detainee who committed suicide at the Ada County Jail (ACJ).

On September 28, 2008, Bradley Munroe was arrested for robbery. He was hospitalized because he was intoxicated, uncooperative and exhibiting odd behavior. Munroe claimed he would commit suicide if released, but the hospital cleared him and he was transported to ACJ.

During the booking process, Munroe was screaming, being rowdy and not making sense. Given his bizarre behavior, booking was suspended until the next morning and he was placed in a holding cell for observation.

James Johnson, a psychiatric social worker at the jail, assessed Munroe's suicide risk. Johnson concluded that Munroe's risk level was insufficient to justify admitting him to ACJ's Health Services Unit (HSU).

After Johnson's assessment, Munroe answered some suicide risk questions in the affirmative during the booking process. Guards did not contact staff in the HSU, however, based on Johnson's evaluation.

Upon his request, Munroe was held in a single cell in protective custody. Guards were required to conduct well-being checks every 30 minutes.

At around 9 a.m. on September 29, 2008, Munroe's mother, Rita Hoagland, called ACJ to express concerns that her son was suicidal. Hoagland's concerns were reported to Johnson, but he did not alter his initial assessment.

That evening, Munroe was found hanging by a bed sheet from the top bunk in his cell. Efforts to revive him were unsuccessful.

On January 23, 2009, Hoagland filed suit in state court, in her personal capacity and as the representative of Munroe's estate, claiming that guards were watching football when her son committed suicide. The initial complaint alleged § 1983 claims, state law torts and wrongful death claims.

When the defendants moved for summary judgment, Hoagland withdrew all of her state law claims and proceeded with only the § 1983 claims.

The trial court granted qualified immunity to Johnson and dismissed Hoagland's claims against the other defendants. It awarded $15,815.31 to the defendants in costs as a matter of right and $77,438.12 in discretionary costs, but not attorneys' fees.

On appeal, the Idaho Supreme Court found "the district court properly held that Munroe's estate is not a valid § 1983 plaintiff," because "Munroe's § 1983 claim abated with his death."

"This Court has clearly held that

§ 1983 is a personal cause of action. Furthermore, there is no federal law governing the issue of abatement. Therefore, the law of Idaho governs to the extent that it is not inconsistent with federal law. At common law in Idaho, a personal tort cause of action abates with the death of the plaintiff."

The state Supreme Court also held that Hoagland had "failed to establish a violation of her constitutional rights underlying her § 1983 claim," as she did not prove the defendants intentionally interfered with her relationship with Munroe.

Given Hoagland's waiver of her state law wrongful death claim, the Court found that judicial estoppel barred her from asserting "that her § 1983 claim incorporates the wrongful death claim."

The Supreme Court upheld the trial court's denial of attorneys' fees but reversed the discretionary award of costs to the defendants, noting that "the district court failed to make adequate findings." On remand, the lower court was directed to reconsider the discretionary costs and make "express findings justifying the award." The Court also reduced to $14,897.31 the costs awarded to the defendants as a matter of right. See: *Hoagland v. Ada County,* 154 Idaho 900, 303 P.3d 587 (Idaho 2013).

Washington PRA Violations Result in Costs and Penalties

by Mark Wilson

The Washington Court of Appeals, Division Two, held on July 30, 2013 that a state agency violated Washington's Public Records Act (PRA) by failing to respond to a prisoner's request within the statutory time limit and by redacting information not exempt from disclosure. The appellate court instructed the lower court to determine on remand the amount of costs and penalties to be awarded as a result of the violations.

On July 20, 2009, Monroe Correctional Complex prisoner Derek E. Gronquist sent a PRA request to the Washington State Department of Licensing (DOL) for the master business license application of a specified company.

The DOL failed to respond within five days in violation of the PRA. When the agency responded to Gronquist's request on July 31, 2009, it provided the requested document but "redacted much of the application without providing a statutory basis for the redactions."

Gronquist filed suit in state court, alleging that the DOL had violated the PRA by providing a redacted copy of the application. Following an inspection of the redacted information, the trial court granted summary judgment to the DOL, holding that the redacted material was not subject to disclosure but protected as confidential under Washington law.

The Court of Appeals reversed, holding that: 1) the DOL did not respond within the statutory time frame; 2) none of the redacted information was exempt when it was requested; 3) the DOL failed to provide timely or adequate justification for the redactions; and 4) the trial court improperly refused to file the deposition transcripts offered by Gronquist in support of his motion for sanctions and in response to the DOL's summary judgment motion.

Due to a 2011 change that transferred the responsibility for master business licenses from the DOL to another state agency, the appellate court declined to order disclosure of the unredacted application requested by Gronquist. It remanded, however, instructing "the trial court to consider the imposition of costs and penalties after consideration of the entire record, including the depositions to be filed by the trial court." Gronquist was also awarded his costs on appeal.

The Court of Appeals did not address the applicability of RCW § 42.56.565(1), effective July 22, 2011, which specifies that a court shall not award penalties for violations of the PRA "to a person who was serving a criminal sentence in a state, local, or privately operated correctional facility on the date the request for public records was made, unless the court finds that the agency acted in bad faith in denying the person the opportunity to inspect or copy a public record." See: *Gronquist v. Washington State Department of Licensing,* 175 Wn. App. 729, 309 P.3d 538 (Wash. Ct. App. 2013).

Prisoner Organ Transplants, Donations Create Controversy

Prison officials in several states are mulling over two sides of the same coin with respect to organ transplants for prisoners: first, the eligibility and cost of such medical procedures, and second, whether prisoners should be allowed to donate their organs.

Prisoners in Need of Organ Transplants

In Rhode Island, a liver transplant performed on a 27-year-old prisoner left officials defending the cost of the life-saving operation.

A spokeswoman for the Rhode Island Department of Corrections (RI DOC) said Jose Pacheco, who is serving a 6½-year sentence for robbery, became the first prisoner in the state to receive a liver transplant. The August 1, 2012 operation was performed in Boston because Rhode Island hospitals don't currently perform such transplants.

The procedure can cost up to almost $1 million, with the state required to pick up 40% of the bill, according to court precedent.

But the RI DOC said in a statement that it was unclear how much of Pacheco's hospital bills the state will actually pay because it's possible he qualified for Social Security benefits before he was incarcerated. In that case, Medicaid would cover about 50% of the cost.

"To date, the Department has paid only for the inmate's supervision in the hospital under an interagency agreement with the [Massachusetts Department of Corrections]," said RI DOC spokeswoman Tracey Zeckhausen. "That totaled just over $110,000" as of June 2012, she added.

"It is a sort of lose-lose situation for the taxpayer," said state Senator Dawson Hodgson. "It can amount to torture if you let someone die without healthcare. At the same time, $1 million is a tremendous amount of taxpayer resources, whether it is coming from the state or federal government, put into any person's healthcare – never mind someone who is a drug dealer and a thief."

Pacheco's case is not the first to generate controversy about prisoners receiving organ transplants, of course.

A California prisoner received a heart transplant in January 2002 at a cost of $1 million – which included follow-up care – according to Russ Heimerich, a spokesman for the California Department of Corrections and Rehabilitation (CDCR). At the time, Heimerich said the 32-year-old prisoner was suffering from a fatal heart condition. [See: *PLN*, Sept. 2002, p.12].

Less than a year later the heart transplant recipient had died, the victim of what prison officials called a failure to adhere to the demanding medical protocols that follow such an operation. [See: *PLN*, Oct. 2003, p.28]. Transplant patients typically require close monitoring and a wide range of daily medications to prevent organ rejection and fight infections.

In 2004, a California federal court ordered the CDCR to contact transplant centers in the state to determine whether they would accept a prisoner as a candidate for a liver transplant. See: *Rosado v. Alameida*, 359 F.Supp.2d 1341 (S.D. Cal. 2004).

New York state prisoner Wilfredo Rodriguez received a $400,000 liver transplant in November 2005. [See: *PLN*, Feb. 2006, p.40]. When another New York prisoner, convicted of rape, was being evaluated in 2011 for a heart transplant, state lawmakers demanded a review of the policies that permitted such operations at taxpayers' expense.

"These reports raise a multitude of questions that demand and deserve answers for New York taxpayers, potential organ donors, and law-abiding families who are still waiting for life-saving transplants," said state Senator Michael Nozzolio. "We cannot allow law-abiding citizens to be denied transplants in favor of dangerous violent offenders, convicted of heinous crimes, who may never leave prison."

Apparently, Nozzolio was unaware that the provision of adequate healthcare by prison officials – including organ transplants when needed – is a Constitutional requirement. The U.S. Supreme Court ruled in *Estelle v. Gamble*, 429 U.S. 97 (1976) that denying necessary medical care to prisoners constitutes cruel and unusual punishment in violation of the Eighth Amendment.

"You get a liver transplant because you meet the very strict criteria, not because we like you," remarked Dr. David Kaufman, the medical director at Strong Memorial Hospital, which performed the liver transplant for Rodriguez.

The New York prisoner seeking a heart transplant, Kenneth Pike, was screened for the operation but later declined the transplant for reasons that were not reported.

Meanwhile, the United Network for Organ Sharing (UNOS), a non-profit organization that manages the organ transplant system in the United States under a contract with the federal government, has taken the position that prisoners should not be precluded by their carceral status from receiving transplants, and should be eligible for such procedures to the same extent as non-incarcerated citizens.

People usually receive organ transplants according to their position on the waiting list, which is based on the severity of their medical condition. There are currently over 121,000 people on organ waiting lists nationwide.

When Prisoners Want to Donate Organs

At the opposite end of the spectrum, controversy has erupted in several states about the ability of prisoners – including those on death row – to donate their organs, and the appropriateness of such donations.

In Mississippi, Governor Haley Barbour commuted the life sentences of sisters Gladys and Jamie Scott in December 2010, on the condition that Gladys donate one of her kidneys to Jamie. Both prisoners, who had served 16 years for an $11 armed robbery, were released in January 2011; Barbour's decision may have been partly motivated by fiscal concerns, as Jamie's dialysis was reportedly costing the state prison system around $190,000 per year. It is unclear whether the post-release kidney transplant occurred, as it was initially postponed for medical reasons. [See: *PLN*, May 2011, p.34].

Utah enacted the Inmate Medical Donation Act in March 2013, which allows voluntary organ donations from prisoners who die "while in the custody" of the Department of Corrections. The law states that prison officials may "release to an organ procurement organization ... the names and addresses of all inmates who complete and sign the document of gift form indicating they intend to make an anatomical gift."

In Ohio, Governor John R. Kasich placed the November 2013 execution of death row prisoner Ronald Phillips on hold in order to study the feasibility of allowing Phillips and other condemned prisoners to donate their organs. Phillips was sentenced

to die for the 1993 rape and beating death of his girlfriend's 3-year-old daughter.

"Ronald Phillips committed a heinous crime for which he will face the death penalty," the governor said in a statement. "I realize this is a bit of uncharted territory for Ohio, but if another life can be saved by his willingness to donate his organs and tissues then we should allow for that to happen."

Phillips' request to donate his organs to sick relatives or others who need them was initially rejected by state prison officials. According to the governor's office, Phillips' non-vital organs, such as a kidney, would be removed and he would then be returned to death row pending his execution, which was re-scheduled for July 2014.

On March 21, 2014, Ohio Department of Rehabilitation and Correction chief counsel Stephen Gray said Phillips would not be able to donate his organs, as he could not to do so in time to allow for a 100-day recuperation period prior to his new execution date.

Some people worry about the ethics of allowing death row prisoners to donate their organs. Jeff Orlowski, who heads Life Share Transplant Services, compared the process to organ harvesting – a practice that has been condemned in China, which until only recently harvested organs from executed prisoners. [See: *PLN*, March 2013, p.27; Sept. 2009, p.35; Jan. 2008, p.16; Sept. 2007, p.24].

Life Share Transplant Services keeps track of the organ donation registry in Oklahoma, where one state lawmaker predicted widespread support for his proposal to allow death row prisoners to donate their organs.

"I don't think it will be a tough sell," state Rep. Joe Dorman said in November 2013. "I think with the strong stance that we have with members of the legislature being pro-life, I certainly see this as a pro-life idea because you're saving lives with the actions of that prisoner seeking redemption" by donating his organs.

"You can't put a price on life," he added, apparently without irony.

Rep. Dorman said organs donated by willing prisoners would benefit people waiting for transplants – especially for organs that are difficult to find, *The Oklahoman* reported. His proposed legislation would allow prisoners to be anesthetized, have their organs removed and then be placed on life support until their executions can be carried out. Oklahoma uses lethal injection, which renders organs useless for post-execution transplants.

"The only options for executing someone to obtain vital organs is to either shoot them in the head or chop their head off and have a team of doctors ready to step in immediately," noted Arthur Caplan, professor of medical ethics at NYU Langone Medical Center.

Oregon death row prisoner Christian Longo has pushed the issue of organ donation for several years. "If I donated all of my organs today, I could clear nearly 1 percent of my state's organ waiting list. I am 37 years old and healthy; throwing my organs away after I am executed is nothing but a waste," he wrote in a *New York Times* editorial on March 5, 2011. Prison officials denied his request.

Longo, who founded an organization called Gifts of Anatomical Value from Everyone (GAVE), renewed his efforts to donate his organs in March 2014, offering to give a kidney to Kevin Gray, an Oregon resident with kidney failure who is on dialysis.

"I don't care if you're incarcerated, if you're my neighbor – if you're willing to donate an organ to save a life it's very breathtaking and I'm very grateful," Gray said, although he later rejected the offer after learning that Longo was on death row.

"The department looks at organ donation on a case-by-case basis," stated Oregon Department of Corrections spokeswoman Jennifer Black. "If someone needs a bone marrow transplant or their mother needs a kidney and there's a match, then there's no reason that can't go forward," she said. "But it's not just a blanket 'yes.' All offenders can give part of their body away to somebody else. It has to be for the right reasons and the right person and all that."

Policies related to organ donations by prisoners, including those on death row, vary from state to state.

"There have been several instances in the United States within the last 20 years where condemned prisoners have requested to become organ donors, either upon their execution as a deceased donor or prior to execution as a living donor," UNOS said in a November 14, 2013 statement posted on the organization's website. "Ultimately the correctional authority must decide whether to allow any inmate to be evaluated for donation, and an organ procurement organization and/or transplant center must make medical decisions whether to accept any person as a donor and allow a transplant to proceed."

UNOS noted that organ donations from prisoners "present special concerns and vulnerabilities, and appropriate precautions are necessary to prevent the potential for coercion" – such as offering early release or other incentives in exchange for prisoners' organs.

Sources: *www.630wpro.com, Providence Journal, www.osv.com, CBS News, NBC News, United Press International, www.waynepost.com, Associated Press, The New York Times, www.kgw.com, www.wamc.org, New York Daily News, NBC News, www.unos.org, The Oklahoman, www.gavelife.org, Statesman Journal*

Oklahoma Jailers Not Immune from Excessive Force Claims

The Oklahoma Supreme Court has held that jail officials are not immune from liability for excessive force claims under the Oklahoma Governmental Tort Claims Act (OGTCA).

On May 17, 2011, Daniel Bosh was detained at the Cherokee County Detention Center for failure to pay a traffic ticket. Video surveillance showed him standing at the booking desk with his hands cuffed behind his back.

Bosh reportedly complained to guard Gordon Chronister, Jr. that his handcuffs were too tight; in response, Chronister grabbed him from behind and slammed his head onto the booking desk. He then placed Bosh's head under his arm and fell backwards, causing Bosh to strike the top of his head on the floor.

According to the video footage, other guards quickly joined the attack. They moved Bosh to a shower area outside the camera's view, where they continued to assault him for an undisclosed period of time.

"The video speaks for itself," said Bosh's attorney, Mitchell Garrett.

Guards then left Bosh to languish in a cell without medical treatment for two days before taking him to a local hospital. Having suffered fractured vertebrae, Bosh required surgery to fuse several discs along his spinal cord.

Chronister later claimed that he thought Bosh was going to spit on him; based on that assertion, and the fact that Bosh had a long criminal history that damaged his credibility, prosecutors did not pursue criminal charges against Chronister or other guards involved in the incident.

On September 29, 2011, Bosh filed a 42 U.S.C. § 1983 action in state court against the Cherokee County Governmental Building Authority ("Authority"), which operates the jail, and against Assistant Jail Administrator T.J. Girdner and the guards who had assaulted him. The defendants removed the case to federal court.

The federal district court dismissed Bosh's state tort claims as being barred by the OGTCA, 51 O.S. 2011 §§ 151 *et seq.*, which "appears to allow the state, or, in this case the Authority, to elude tort liability when its employees beat and injure a citizen who is detained at one of its facilities."

Nevertheless, the district court allowed Bosh "to amend his complaint to assert a claim of excessive force" under Article 2, § 30 of the Oklahoma Constitution. The defendants moved to dismiss the constitutional claim, arguing that it too was barred by the OGTCA. On August 30, 2012, the federal court certified three questions of law to the Oklahoma Supreme Court related to the scope and application of the OGTCA.

In answering those questions, the Supreme Court first found that Article 2, § 30 "provides a private cause of action for excessive force, notwithstanding the requirements and limitations of the OGTCA." Construing the OGTCA "as providing blanket immunity ... would ... render the Constitutional protections afforded the citizens of this State as ineffective, and a nullity," the Court explained. Thus, excessive force claims brought under Article 2, § 30 are not barred by the OGTCA.

The Supreme Court then held that the cause of action it recognized with respect to excessive force claims under Article 2, § 30 applies retroactively "to all matters which were in the litigation pipeline, state and federal, when *Bryson v. Oklahoma County,* 2011 OK CIV APP 98, 261 P.3d 627 [(Okla. Ct. App. 2011)] was decided as well as any claims which arose when *Bryson* was decided."

Finally, the Court found that in regard to such claims under Article 2, § 30 of the Oklahoma Constitution, "respondeat superior applies to hold municipal corporations liable for the actions of their employees where those employees are acting within the scope of their employment."

Although the ruling was superficially amended and corrected on June 28, 2013, the outcome remained the same. See: *Bosh v. Cherokee County Governmental Building Authority,* 2013 OK 9, 305 P.3d 994 (Okla. 2013), *rehearing denied.*

Bosh's suit alleging excessive force claims remains pending before the federal district court, though it is now being litigated by his estate. On March 17, 2014, Bosh's wife notified the court that he had died. See: *Bosh v. Cherokee County Governmental Building Authority,* U.S.D.C. (E.D. Okla.), Case No. 6:11-cv-00376-JHP.

Additional source: *www.kjrh.com*

WELCOME TO KRASNYA BABES & KRASNYA STUDS WORLD

TENS OF THOUSANDS OF THE HOTTEST AND MOST SCANDALOUS BABES&DUDES FOUND ON THE PLANET.
EACH CATALOG PAGE HAS 120 BEAUTIFUL GIRLS OR BOYS POSING JUST FOR YOU!
ORDER ONE CATALOG PAGE FOR ONLY $4.50 OR FOR 10 U.S. FOREVER STAMPS WITH AN SASE ENCLOSED.
WE WILL SEND YOU VOLUME ONE. EACH ADDITIONAL VOLUME THE SAME PRICE!

HELP US TO HELP YOU!

WE ARE MORE THAN HAPPY TO ANSWER E-MAIL INQUIRES HOWEVER, DUE TO MAILING COST AT $0.46 CENTS A LETTER, PLEASE ENCLOSE AN SASE WITH YOUR QUESTIONS, OTHERWISE NO REPLIES!

WHAT ABOUT OUR PRICES AND POLICIES

COLOR PRINTS ON 4x6 GLOSSY PHOTO PAPER AS LOW AS $0.35 CENTS PER PRINT ON ORDERS OVER 500
SHIPPED ACCORDING TO POLICY: 25 PICTURES PER ENVELOPE EVERY 24 HOURS. S&H $2.00 PER ENVELOPE.

METHOD OF PAYMENT/CONTACT INFORMATION

U.S. POSTAL SERVICE MONEY ORDERS-STATE & FEDERAL CORRECTIONAL INSTITUTIONAL CHECKS

PAYABLE ONLY TO: KRASNYA L.L.C.

EQUATION FOR FIRST CLASS U.S. FOREVER STAMPS
BRAND NEW FLAT BOOK FOR ALL ORDERS AT THE RATE OF $6.00 PER FLAT BOOK.
WE RESPOND TO OUR CLIENTS NEEDS AND TRY TO HELP THE BEST WE CAN.

OUR SEASONAL SPECIALS MEAN A KICKOFF OF SAVINGS!

COLOR CATALOG DISCOUNT SALE
ONE COLOR CATALOG OF 120 BABES
IN CLASSIC OR NUDE LINES $4.50
PLEASE INCLUDE
A SELF-ADDRESSED STAMPED
(2-FIRST CLASS STAMPS) ENVELOPE.
QUANTITY BUYS:

5-14 CATALOGS	=10% OFF OUR REGULAR PRICE
15 CATALOGS	=15% OFF OUR REGULAR PRICE
20 CATALOGS	=20% OFF OUR REGULAR PRICE
25 CATALOGS	=25% OFF OUR REGULAR PRICE
30 CATALOGS	=30% OFF OUR REGULAR PRICE
35 CATALOGS	=35% OFF OUR REGULAR PRICE
40 CATALOGS	=40% OFF OUR REGULAR PRICE
45 CATALOGS	=45% OFF OUR REGULAR PRICE
50 CATALOGS	=50% OFF OUR REGULAR PRICE

BE SURE TO SPECIFY CLASSIC OR NUDE BABES!

150 VOL. OF KRASNYA BABES CLASSIC LINE
150 VOLUMES OF KRASNYA BABES NUDE LINE

LOOSE STAMPS FOR LOOSE BABES
KRASNYA LOOSE STAMP GRAB BAG SPECIAL
10 LOOSE BABES.....30 STAMPS
25 LOOSE BABES.....75 STAMPS
50 LOOSE BABES.....150 STAMPS
ALL STAMPS MUST BE 1ST CLASS STAMPS IN LIKE NEW CONDITION!
SPECIFY NUDE OR BOP-SAFE (NO VISIBLE NUDITY) WE WILL PICK SELECTION FOR YOU

KRASNYA BABES HAS SPRUNG SALE!
FREE SAMPLE CATALOG FROM KRASNYA!
120 BABES IN EACH CATALOG
ENCLOSE ONE SASE WITH TWO FIRST CLASS STAMPS! 1 CAT PER CUSTOMER
PLEASE SPECIFY MALE OR FEMALE BABES NUDE OR BOP-FRIENDLY

WE'D LIKE TO START THE HOLIDAYS RIGHT THIS YEAR!
THE WAY TO DO THAT IS BY SENDING YOU INCREDIBLE VALUES
IT'S ONE THING TO TALK THE TALK, ANOTHER TO WALK THE TALK

50 GREAT BABES 0.50 CENTS EACH—$25.00
100 GREAT BABES 0.45 CENTS EACH!—$45.00
200 GREAT BABES 0.40 CENTS EACH!—$80.00
300 GREAT BABES 0.40 CENTS EACH!-$120.00
500 GREAT BABES 0.35 CENTS EACH!-$175.00

STANDARD TERMS & CONDITIONS APPLY – $2.00 PER ENVELOPE (25 PHOTO) FOR SHIPPING AND HANDLING!

$24.95 S&H FREE
FOR GRAB BAG OF
50 PHOTOS
FROM ALL OUR CATALOGS
SPECIFY RACE AND MAIN AREA OF YOUR INTERESTS
WE WILL PICK SELECTION FOR YOU
BONUS 1 COLOR CATALOG PAGE OF 120 BABES

3 BRAND NEW FLAT BOOKS OF FOREVER STAMPS FOR GRAB BAG OF 45 PHOTOS FROM ALL OUR CATALOGS. SPECIAFY RACE AND MAIN AREA OF YOUR INTERESTS WE WILL PICK SELECTION FOR YOU BONUS 1 COLOR CATALOG OF 120 BABES PLEASE INCLUDE 6 FOREVER STAMPS WITH YOUR ORDER FOR S&H

KRASNYA L.L.C.
P.O.BOX 32082
BALTIMORE, MD 21282
EMAIL AND CORRLINKS REQUESTS ACCEPTED AT:
KRASNYABABES@HOTMAIL.COM

WAIT!
YOU SAY YOU DON'T HAVE ENOUGH BABE CHOICES OR CATALOGS? YOU NEED CATALOGS?
PREPAY YOUR ORDER AND WE WILL SEND YOU FREE COLOR CATALOGS!
GREAT DEAL, BUT HOW MANY CATALOGS?

FOR EVERY 100 BABES WE'LL SEND YOU 240 BABES TO CHOOSE FROM!

ORDER

50 BABES————————ONE SINGLE CATALOG
100 BABES————————--ONE DOUBLE CATALOG
200 BABES————————TWO DOUBLE CATALOGS
300 BABES————————--THREE DOUBLE CATALOGS
500 BABES————————FIVE DOUBLE CATALOGS

KRASNYA IS PROUD TO INTRODUCE AT FANTASTIC INTRODUCTORY PRICES
THE CONNOISSEUR'S COUTURE "CACHE TWO-FIVE COLLECTION"
OF INTERNATIONAL ADULT FILM STARS
TWELVE PACKAGES OF 25 NUDE AND NON-NUDE POSES,
AVAILABLE ONLY IN OUR "CACHE TWO-FIVE" COLLECTION.
"CACHE TWO-FIVE"
"CACHE TWO-FIVE" IS AVAILABLE IN TWELVE (12) SPECIALLY PRICED PACKAGES OF 25 POSES IN NUDE AND NON-NUDE POSES.
PLEASE SPECIFY ON YOUR ORDERS IF YOU WANT NUDE OR NON-NUDE PACKAGES AND WHAT COLLECTION NUMBER YOU'D LIKE.
COLLECTIONS ARE NUMBERED 01-12 FOR EXAMPLE ON YOUR ORDER YOU'D WRITE:
NUDE CACHE TWO-FIVE PACKAGE 01 & 02
REMEMBER THERE ARE TWELVE (12) COMPLETELY DIFFERENT PACKAGES OF 25 BABES, THERE ARE NO DUPLICATES IN ANY OF THE 12 PACKAGES.
600 BEGUILING BEAUTIES, ALL BRAND NEW ADDITIONS TO OUR LINE AND AVAILABLE ONLY IN OUR CACHE "TWO-FIVE" PACKAGES! 300 NUDES AND 300 NON-NUDE BEAUTIES CAPTURE YOUR OWN COLLECTION OF KRASNYA'S "CACHE TWO-FIVE" SELECTIONS IN INDIVIDUALIZED PACKAGING OF 25 RARE AND EXQUISITE BREATH-TAKING BEAUTIES.
THE CONNOISSEUR'S COUTURE COLLECTION OF "CACHE TWO-FIVE" BRINGS YOU 25 BEAUTIES IN EACH "CACHE TWO-FIVE" PACKAGE FOR ONLY $12.95 PER PACKAGE
LIMITED TIME SPECIAL ***** $59.95*****
PLUS S&H FOR 6 "CACHE TWO-FIVE" PACKAGES OF THE NUDE OR NON-NUDE COLLECTIONS 150 BEAUTIES
IMAGINE 150 OF THESE EXCITING AND EXQUISITE BEAUTIES FOR A RIDICULOUSLY LOW PRICE OF
*****$59.95***** PLUS $12.00 SHIPPING AND HANDLING CHARGE.
ADD $2.00 FOR SHIPPING AND HANDLING PER "CACHE TWO-FIVE" PACKAGE ORDERED.
YOU MUST SPECIFY NUDE OR NON-NUDE PACKAGES
IF NOT SPECIFIED NON-NUDE WILL BE SHIPPED AUTOMATICALLY
ALL OF OUR NORMAL POLICIES APPLY

FOR KRASNYA CLIENTS WHO WORK THE YARDS;
HAVE WE GOT A GREAT OPPORTUNITY FOR YOU...GRAB BAG

MR. HUSTLE GRAB BAG BARGAIN DAY$

ONLY $0.25 CENT$ PER BABE
5 GRAB BAG MINIMUM PURCHASE REQUIRED
$2.00 SHIPPING AND HANDLING PER BAG
25 AWESOME BABES PER BAG AT ONLY $6.25 PER BAG
YOU MUST BUY AT LEAST 5 GRAB BAGS OR 50 GRAB BAGS.
THIS*GRAB BAG BARGAIN*** IS NOT GOING TO BE OFFERED AGAIN THIS YEAR. *$O STOCK UP NOW!*
AS YOU KNOW YOU GET AN ARRAY OF 25 GORGEOUS BABES
YOU CAN ONLY CHOOSE EITHER MALES OR FEMALES,
ALL NUDES OR BOP SAFE...THE INDIVIDUAL SELECTIONS COME FROM OUR BEST CATALOGS!!!
YOU MAY WANT TO SIT DOWN FOR THIS BONUS BARGAIN!
OUR BABES CATALOGS SPECIAL OF THE DECADE
—- 5 COLOR CATALOGS FOR $6.00 —-
—- 10 COLOR CATALOGS FOR $12.00 —-
—- 15 COLOR CATALOGS FOR $18.00 —-
—- 20 COLOR CATALOGS FOR $24.00 —-
OUR CATALOGS SPECIAL AVAILABLE WHEN YOU PURCHASE THE 5 GRAB BAG MINIMUM!
THIS PRICE INCLUDES FREE SHIPPING ON THE CATALOGS
BECAUSE OF SHIPPING TERMS ALL CATALOGS SOLD IN MULTIPLES OF 5 FOR $6.00 ONLY.
YOU CHOOSE EITHER MALE OR FEMALE CATALOGS
AND IF YOU WANT NUDE OR BOP SAFE!!

News in Brief

Alabama: Carbon Hill Mayor James "Pee Wee" Richardson, 61, was arrested on September 19, 2013 on multiple charges related to sexually abusing four prisoners at the city's municipal jail; he was released eight days later after posting a $250,000 property bond. In addition to the criminal charges, Richardson faces a civil lawsuit filed by a former prisoner who claims he took her into his office and groped her. The civil suit includes 11 counts of alleged wrongdoing by Richardson or the city, and seeks compensatory, statutory and punitive damages as well as attorney's fees.

Angola: A cell phone video, which went viral on the Internet, showed several Angola prison guards kicking prisoners and beating them with sticks, then laughing as they left them bleeding and crying on the floor. Amnesty International called the incident shocking and urged the government to prosecute the guards. In a rare reaction from one of Africa's most authoritarian governments, on September 27, 2013, Angola officials suspended 16 prison guards and firemen in connection with the brutal attack. The prison's director was among those suspended, and the Interior Ministry said criminal charges would likely follow.

Arizona: A Maricopa County jail employee was murdered in his driveway by a 15-year-old boy who police said was motivated by gangs, drugs and guns. The teen, identified on September 25, 2013 as Leonard Moreno, will be tried as an adult for the random shooting of Jorge Vargas, 27. Vargas was an eight-year employee of the sheriff's Custody Support Bureau. Moreno's mother and a friend also were arrested, accused of trying to dispose of evidence and helping him elude police.

Arkansas: On September 25, 2013, a man who escaped from a California prison in 1977 was taken into custody at his home in Jessieville, Arkansas, where he had been residing under an assumed name. Michael Ray Morrow scaled a fence at the California Institute for Men in Chino some 36 years earlier and was living as Carl Frank Wilson, a church-going grandfather. New technology was able to match Morrow's fingerprints to those of his alias from a 1984 arrest. Morrow, now 70, was extradited to California.

Australia: A report issued on September 26, 2013 by the Independent Commission Against Corruption recommended prosecution for a Long Bay prison guard who showed up for tower duty while high on ecstasy, sold steroids to both prisoners and fellow guards, and lied to the commission about his conduct. Robert Di-Bona worked at the Special Programmes Centre at the prison. The commission also recommended that Di-Bona be fired.

California: Danne Desbrow will remember September 17, 2013 as a day with both good and bad news. First the bad: he was sentenced to 53 years to life in prison after being convicted of murder. Then the good: he got married ... by the same judge who had just sentenced him. Plus he got to eat a slice of wedding cake baked by San Diego Superior Court Judge Patricia Cookson, though there was no honeymoon. Desbrow intends to appeal his murder conviction.

Canada: Canada's most notorious prison, Kingston Penitentiary, officially closed its doors on September 30, 2013 after 178 years in operation. The shutdown was a money-saving measure. The prisoners at Kingston were all transferred to other facilities and the prison will begin offering guided tours as a fundraiser for the United Way. Sometimes called Canada's Alcatraz, Kingston Penitentiary opened in 1835, before Canada was formed as a country.

Colorado: On September 25, 2013, a Pitkin County jailer obtained a restraining order against a prisoner who threatened her family. Deputy Deborah Kendrick sought the order to prevent Robert Rice from contacting her, her husband – who is a Pitkin County sheriff's deputy – and one of their family members. Kendrick said Rice had told her, "When I get out of here, I'm going to hurt your family." The order specified that Rice could have limited contact with Kendrick while he is incarcerated at the jail.

El Salvador: Six Mara Salvatrucha (MS-13) gang members were hanged during a riot at a juvenile rehabilitation center in Tonacatepeque on September 24, 2013 – El Salvador's Prisoners' Day. Two of the dead were minors and four were adults who had been sentenced at a younger age. Police believe the murders were carefully calculated gang killings. Prisons in El Salvador are notoriously overcrowded and violent as thousands of members of the country's notorious MS-13 and 18th Street gangs await trial or serve their sentences. The two rival gangs signed a truce in March 2012 but there is fear it may be crumbling, with gang-related murders on the rise.

Florida: On September 26, 2013, Boyd Wallace Higginbotham, Jr. was sentenced to life in prison for the March 2008 stabbing death of fellow prisoner Steven Pritchard in the mess hall at FCC Coleman in

Sumter County. A federal jury found Higginbotham guilty of first-degree murder. The men had been involved in an argument that escalated over several days until Higginbotham grabbed Pritchard around the neck and repeatedly stabbed him.

Florida: Tomoka Correctional Facility Major Shannon Wiggins, 44, was arrested on grand theft charges in September 2013. Wiggins, who worked part-time as a security guard at the Daytona International Speedway, was charged with stealing more than $100,000 worth of Speedway merchandise and selling it on eBay. A friend who was helping him sell the merchandise has not yet been arrested but is under investigation. Wiggins was placed on leave by the Florida Department of Corrections.

France: On September 25, 2013, Sabrina Bonner, 25, and her boyfriend, prisoner Lionel Barthelemy, 31, each received 20-year sentences for raping Bonner's 4-year-old son in 2010 in the visiting area of the Toul detention center. Behind visitation room windows covered with black trash bags, as is standard practice in French prisons for privacy, Bonner blindfolded the boy, made him kneel on a chair and held him by the arms as Barthelemy raped him. Bonner then returned with her son for a second visit, knowing that he would be raped again. A lawyer representing the child said he intends to initiate legal proceedings against the prison.

Hawaii: Two Oahu Community Correctional Center guards, Kevin Ignacio and Ismael Castro, face trial over allegations that they beat prisoner Jeffrey Diaz bloody in October 2012. Ignacio is accused of repeatedly punching Diaz in the head and face, while Castro was caught on surveillance video kicking him in the head. On September 17, 2013, Judge Patrick Border expressed his displeasure when the two guards failed to appear with their attorneys at a hearing to combine their criminal cases.

Illinois: When Cook County jail guards told prisoner Jeremiah Harris to pack up to go home on September 16, 2013, he told them to "quit playin'." Harris, 25, who had been serving a 12-year sentence as a habitual criminal and was being held at the Cook County jail for a court appearance, became the third person in 2013 to be mistakenly released. Earlier that year, prisoners Steven Robbins and Steven Derkits were erroneously released by jailers.

Indiana: Prisoners at the Delaware County Jail are adjusting to frosted windows in their cells, which let sunlight in but prevent unauthorized communication with the outside world. The windows have been a source of concern in the decades since the jail was built, because prisoners sometimes expose themselves or make obscene gestures to passersby on the street. Sheriff Mike Scroggins told reporters on September 3, 2013 that the "fix," a coating of paint applied to the windows, had cost around $91.

Kansas: Ness County Jail escapee Benito Cardenas, Jr., 38, apologized to his victims and law enforcement officials before being sentenced in back-to-back hearings for a two-day crime spree that occurred after he cut through four bars at the jail in August 2012. After escaping, Cardenas stole a van, burglarized a residence and accosted two women before surrendering to officers. He was sentenced on September 24, 2013 to 151 months in prison on two counts of aggravated burglary and a single count of aggravated escape, to be served consecutive to his life sentence on unrelated charges.

Kentucky: Prisoner Ashley Marler, four months pregnant, escaped twice in the same week. She failed to return to the Fayette County Detention Center from a medical pass on September 16, 2013, and was arrested the next day and charged with escape. On September 24, 2013, Marler was taken to the same medical clinic. She reportedly left her clothing behind, climbed into the ceiling and fled wearing only a towel and white t-shirt. She was recaptured two days later.

Kentucky: Former FCI Ashland guard James Lewis and Cindy Gates, the girlfriend of a prisoner at the facility, both pleaded not guilty in September 2013 to charges related to smuggling contraband into the prison. Gates' boyfriend, prisoner Gary Musick, was accused of participating in the scheme by telling Gates and Lewis what items to procure and directing other prisoners to sell the items. The contraband included marijuana, tobacco, cell phones and sexually explicit photos.

Louisiana: On September 19, 2013, Floyd Tillman, 26, pleaded not guilty to attempted second-degree murder after ramming the gates of the state peniten-

News In Brief (cont.)

tiary at Angola with his car, while guards opened fire on him. Tillman had taken his daughters, ages 8 months and 2 years, from Terrebonne Parish. He then drove to the prison and argued with guards about taking a tour. After being told many times there were no tours that day, he began ramming the gate. It is anticipated that Tillman's defense attorney will seek a mental health evaluation for his client.

Michigan: An attorney representing Oakland County jail guard Garry Jackson told a judge on September 16, 2013 that Jackson vehemently denied having sexual contact with a female prisoner in a broom closet while on duty at the jail. The incident was discovered after other prisoners started talking about a sexual relationship between Jackson and a 24-year-old prisoner. Although the investigation revealed that the sex was consensual, Jackson was charged with three felony counts of criminal sexual conduct; he was released on $10,000 personal bond and ordered not to have contact with the female prisoner.

Myanmar: On September 13, 2013, a riot at Nine Mile Prison in Kawthaung Township resulted in the death of one prisoner and injuries to seven others. The incident was sparked after Warden Saw Hla Chit ordered prison staff to beat and kick prisoners Ye Ko Hlaing and Htun Htun in retaliation for their participation in a fight. Officials cut the power lines to the facility in an attempt to disperse the rioters, but gunfire broke out shortly after the prison went dark. The prisoner who died, identified as Htay Nge, and the other casualties suffered gunshot wounds.

New Jersey: Bobby Singletary, 55, a former guard, was convicted on September 27, 2013 of smuggling heroin and marijuana into the Adult Diagnostic and Treatment Center in Avenel, a facility for sex offenders. A prisoner who was tried with him was acquitted of all charges. Jurors heard how Singletary had prisoners pay for drugs by wiring money to outside accomplices; he was found guilty of conspiracy, official misconduct and bribery.

New Mexico: Former Columbus Police Chief Angelo Vega was on the payroll of the local Juarez Cartel at the same time he collected a $40,000 annual salary for his public position, according to testimony in federal court on September 25, 2013. A witness stated that Vega received $2,000 a month plus bonuses from the cartel for performing background and license plate checks, buying military gear and allowing cartel members to use official vehicles. Vega's wife is Assistant U.S. Attorney Paula Burnett; she has not been charged with any crime.

New York: As part of a September 30, 2013 plea bargain, prison guard Aaron A. Netto, 36, agreed to resign from his posi-

tion at the Riverview Correctional Facility. He was charged with possessing property stolen from several construction sites. In addition to resigning, he faces up to three years' probation and will pay $1,600 in restitution. Netto entered an Alford plea, meaning he did not admit to the allegations but pled guilty to avoid the possibility of being convicted at trial.

Ohio: On September 18, 2013, three Ohio Department of Youth Services guards were arraigned on charges of assaulting a teenager at the Scioto Juvenile Correctional Facility. Though details of the incident were at first sketchy, guards Laurel Jeffreys, Nathaniel Strong and Antonio Keith were identified as the suspects who allegedly beat the unnamed 15-year-old. The state's Youth Services agency was recently named in a U.S. Bureau of Justice Statistics report as among the worst in the nation for rape and sexual assaults of juvenile prisoners.

Oklahoma: According to court documents, Shealane Fields, a corporal who was fired from her job at the Logan County Detention Center on September 24, 2013, is accused of committing several felonies for prisoner Daniel Clark, with whom she developed a relationship. Fields allegedly smuggled contraband into the jail for Clark, including tobacco, a lighter, a flat blade screwdriver, crazy glue and a cell phone. Investigators also found 49 love letters, including one where the couple planned a tryst in a medical cell and another where they talked about a plan for Clark to walk out of the jail.

Oklahoma: Tulsa County jail guard Cory Laddel Jones, 22, was arrested on September 21, 2013 on charges of bringing contraband into the facility for a $100 payment. The arrest report said a prisoner told jail officials that Jones was paid to smuggle packages he obtained from a woman he arranged to meet at a convenience store. Jones was jailed on more than $25,000 bond.

Pennsylvania: On September 17, 2013, Warden John Walton of the Westmoreland County Prison announced a new policy instituted by the facility's contract healthcare provider that requires all female prisoners to submit to pregnancy tests. The policy was created after an unidentified prisoner lied about not being pregnant and not being addicted to drugs. In order to protect the well-being of their unborn children, pregnant prisoners will receive obstetrics care and be weaned off drugs. Four percent of female prisoners at the Westmoreland County Prison were pregnant in the first nine months of 2013.

Pennsylvania: During a preliminary hearing on September 27, 2013, details emerged about why a Bucks County prison guard fired two gunshots in the direction of an acquaintance, Pearson Crosby, following an early morning altercation in June 2013. Anthony Pekarski, 26, free on $50,000 unsecured bail, was charged with simple assault, reckless endangering, disorderly conduct and possession of a weapon. He admitted firing the shots because his girlfriend, who had been sitting beside Crosby in the backseat of Pekarski's car, had an "uncomfortable look" and he wanted to scare Crosby away.

Saudi Arabia: On September 25, 2013, a prisoner returned after a 24-hour family visit wearing an explosive belt and threatened to detonate it, taking 200 prisoners hostage in the process. Prison officials in Madinah said the man was not mentally ill and made no demands during the six-hour standoff. According to a prison source, Saudi media reports about the incident were not accurate; the man had a gun as well as explosives. There were no reports of damage or casualties.

South Carolina: Tyheem Henry, convicted as the ringleader of a 2011 mob beating, was serving a 15-year sentence at

the Lee Correctional Institute. On September 8, 2013, the website Charleston Thug Life published Facebook postings Henry had made using a contraband cell phone, prompting a shakedown at the prison. Henry was charged with disciplinary violations, placed in segregation and lost good time credits and canteen, telephone and visitation privileges.

South Dakota: Robert Corsini was serving a seven-day jail term with work release after being caught in two separate online prostitution stings. In court on September 10, 2013, a judge found it "implausible" that Corsini had invited yet another prostitute he found online to meet him at his home while he was on work release. Judge John Schlimgen sentenced Corsini to 90 more days in jail – this time without the option of work release.

Tennessee: Hawkins County jail guard Scott Winkle "laid hands" on a prisoner while walking him back to a cell following a disturbance. Although the physical contact did not rise to the level of assault and no criminal charges were filed, Winkle was fired on September 19, 2013 for violating county regulations. He had recently attended a training session on appropriate physical contact in response to a February 2013 staff-on-prisoner assault incident. In that case, jailer Roy Junior Mathes was charged with misdemeanor assault.

Criminal Justice Resources

ACLU National Prison Project

Handles state and federal conditions of confinement claims affecting large numbers of prisoners. Publishes the *NPP Journal* (available online) and the *Prisoners' Assistance Directory* (write for more information). Contact: ACLU NPP, 915 15th Street NW, 7th Fl., Washington, DC 20005 (202) 393-4930. www.aclu.org/prisoners-rights/aclu-national-prison-project

Amnesty International

Compiles information about prisoner torture, beatings, rape, etc. to include in reports about U.S. prison conditions; also works on death penalty issues. Contact: Amnesty International, 5 Penn Plaza, New York NY 10001 (212) 807-8400. www.amnestyusa.org

Center for Health Justice

Formerly CorrectHELP. Provides information related to HIV in prison – contact them if you are not receiving proper HIV medication or are denied access to programs due to your HIV status. Contact: CHJ, 900 Avila Street, Suite 301, Los Angeles, CA 90012 (213) 229-0985; HIV Hotline: (213) 229-0979 (collect calls from prisoners OK). www.centerforhealthjustice.org

Centurion Ministries

Works to exonerate the wrongfully convicted, in both cases involving DNA evidence and those that do not. Centurion only takes 1-2 new cases a year involving actual innocence. They do not consider accidental death or self-defense murder cases, he said/she said rape cases, or child abuse or child sex abuse cases unless there is physical evidence. All case inquiries must be from the prisoner involved, in writing. Contact: Centurion Ministries, 1000 Herrontown Road, Princeton, NJ 08540 (609) 921-0334. www.centurionministries.org

Critical Resistance

Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in Florida, California, New York, Texas and Louisiana. Publishes *The Abolitionist* newsletter. Contact: Critical Resistance, 1904 Franklin Street #504, Oakland, CA 94612 (510) 444-0484. www.criticalresistance.org

The Exoneration Project

The Exoneration Project is a non-profit organization dedicated to working to free prisoners who were wrongfully convicted. The Project represents innocent individuals in post-conviction legal proceedings; typical cases involve DNA testing, coerced confessions, police misconduct, the use of faulty evidence, junk science, faulty eyewitness testimony and ineffective assistance of counsel claims. Contact: The Exoneration Project, 312 North May Street, Suite 100, Chicago, Illinois 60607 (312) 789-4955. www.exonerationproject.org

Family & Corrections Network

Primarily provides online resources for families of prisoners related to parenting, children of prisoners, prison visitation, mothers and fathers in prison, etc. Contact: F&CN, 93 Old York Road, Suite 1 #510, Jenkintown, PA 19046 (215) 576-1110. www.fcnetwork.org

FAMM

FAMM (Families Against Mandatory Minimums) advocates against mandatory minimum sentencing laws with an emphasis on federal laws, and works to "shift resources from excessive incarceration to law enforcement and other programs proven to reduce crime and recidivism." Contact: FAMM, 1100 H Street, NW #1000, Washington, DC 20005 (202) 822-6700). www.famm.org

The Fortune Society

Provides post-release services and programs for prisoners in the New York City area and occasionally publishes *Fortune News*, a free publication for prisoners that deals with criminal justice issues, primarily in New York. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. www.fortunesociety.org

Innocence Project

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

Just Detention International

Formerly Stop Prisoner Rape, JDI seeks to end sexual violence against prisoners. Provides resources for imprisoned and released rape survivors and activists for almost every state. Contact: JDI, 3325 Wilshire Blvd. #340, Los Angeles, CA 90010 (213) 384-1400. www.justdetention.org

Justice Denied

Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, which includes all back issues of the Justice Denied magazine and a database of more than 4,500 wrongfully convicted people. Contact: Justice Denied, P.O. Box 68911, Seattle, WA 98168 (206) 335-4254. www.justicedenied.org

National CURE

Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters (such as federal prisoners and sex offenders) that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the *CURE Newsletter,* $2 annual membership for prisoners. Contact: CURE, P.O. Box 2310, Washington, DC 20013-2310 (202) 789-2126. www.curenational.org

November Coalition

Advocates against the war on drugs and previously published the *Razor Wire*, a bi-annual newsletter on drug war-related issues, releasing drug war prisoners and restoring civil rights. No longer regularly published, back issues are available online. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 684-1550. www.november.org

Prison Activist Resource Center

PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. www.prisonactivist.org

Prison Legal News Book Store

Fill in the boxes next to each book you want to order, indicating the quantity and price. Enter the Total on the Order Form on the next page.
FREE SHIPPING on all book / index orders OVER $50 (effective 3-1-2014 until further notice). $6.00 S/H applies to all other book orders.

SUBSCRIBE TO PLN FOR 4 YEARS AND CHOOSE ONE BONUS!
1. **SIX (6) FREE ISSUES FOR 54 TOTAL!** OR
2. **PRISON PROFITEERS (A $24.95 VALUE!)** OR
3. **THE HABEAS CITEBOOK (A $49.95 VALUE!)**

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

The Habeas Citebook: Ineffective Assistance of Counsel, by Brandon Sample, PLN Publishing, 200 pages. **$49.95**. This is PLN's second published book, written by federal prisoner Brandon Sample, which covers ineffective assistance of counsel issues in federal habeas petitions. Includes hundreds of case citations! 1078

Prison Nation: The Warehousing of America's Poor, edited by Tara Herivel and Paul Wright, 332 pages. **$35.95**. PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. 1041

The Celling of America, An Inside Look at the U.S. Prison Industry, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. **$22.95**. PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. 1001

Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, PLN Publishing, 221 pages. **$49.95**. Written by Missouri prisoner Jon Marc Taylor, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, paralegal and college courses by mail. 1071

The Criminal Law Handbook: Know Your Rights, Survive the System, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 608 pages. **$39.99**. Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy to understand question-and-answer format. 1038

Represent Yourself in Court: How to Prepare & Try a Winning Case, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 528 pages. **$39.99**. Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. The authors explain what to say in court, how to say it, etc. 1037

Law Dictionary, Random House Webster's, 525 pages. **$19.95**. Comprehensive up-to-date law dictionary explains more than 8,500 legal terms. Covers civil, criminal, commercial and international law. 1036

The Blue Book of Grammar and Punctuation, by Jane Straus, 110 pages. **$14.95**. A guide to grammar and punctuation by an educator with experience teaching English to prisoners. 1046

Legal Research: How to Find and Understand the Law, by Stephen Elias and Susan Levinkind, 568 pages. **$49.99**. Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. 1059

Deposition Handbook, by Paul Bergman and Albert Moore, Nolo Press, 352 pages. **$34.99**. How-to handbook for anyone who conducts a deposition or is going to be deposed. 1054

Criminal Law in a Nutshell, by Arnold H. Loewy, 5th edition, 387 pages. **$43.95**. Provides an overview of criminal law, including punishment, specific crimes, defenses & burden of proof. 1086

SUBSCRIBE TO PLN FOR 3 YEARS AND CHOOSE ONE BONUS!
1. **FOUR (4) FREE ISSUES FOR 40 TOTAL!** OR
2. **PROTECTING YOUR HEALTH AND SAFETY (A $10.00 VALUE!)**

Protecting Your Health and Safety, by Robert E. Toone, Southern Poverty Law Center, 325 pages. **$10.00**. This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how to enforce your rights, including through litigation. 1060

Spanish-English/English-Spanish Dictionary, 2nd ed. Random House. **$15.95**. Spanish-English and English-Spanish. 60,000+ entries from A to Z; includes Western Hemisphere usage. 1034a

Writing to Win: The Legal Writer, by Steven D. Stark, Broadway Books/Random House, 283 pages. **$19.95**. Explains the writing of effective complaints, responses, briefs, motions and other legal papers. 1035

Actual Innocence: When Justice Goes Wrong and How to Make it Right, updated paperback ed., by Barry Scheck, Peter Neufeld and Jim Dwyer; 403 pages. **$16.00**. Describes how criminal defendants are wrongly convicted. Explains DNA testing and how it works to free the innocent. Devastating critique of police and prosecutorial misconduct. 1030

Webster's English Dictionary, Newly revised and updated, Random House. **$8.95**. 75,000+ entries. Includes tips on writing and word usage, and has updated geographical and biographical entries. Includes recent business and computer terms. 1033

Everyday Letters for Busy People, by Debra Hart May, 287 pages. **$18.99**. Hundreds of sample letters that can be adapted for most any purpose, including letters to government agencies and officials. Has numerous tips for writing effective letters. 1048

Roget's Thesaurus, 717 pages. **$8.95**. Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. 1045

Beyond Bars, Rejoining Society After Prison, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alpha, 240 pages. **$14.95**. *Beyond Bars* is a practical and comprehensive guide for ex-convicts and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more. 1080

Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A., by Mumia Abu Jamal, City Lights Publishers, 280 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. 1073

With Liberty for Some: 500 Years of Imprisonment in America, by Scott Christianson, Northeastern University Press, 372 pages. **$18.95**. The best overall history of the U.S. prison system from 1492 through the 20th century. A must-read for understanding how little things have changed in U.S. prisons over hundreds of years. 1026

Complete GED Preparation, by Steck-Vaughn, 922 pages. **$24.99**. This useful handbook contains over 2,000 GED-style questions to thoroughly prepare students for taking the GED test. It offers complete coverage of the revised GED test with new testing information, instructions and a practice test. 1099

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

Hepatitis and Liver Disease: What You Need to Know, by Melissa Palmer, MD, 457 pages. **$17.95**. Describes symptoms & treatments of hepatitis B & C and other liver diseases. Includes medications to avoid, what diet to follow and exercises to perform, plus a bibliography. 1031

Arrested: What to Do When Your Loved One's in Jail, by Wes Denham, 240 pages. **$16.95**. Whether a defendant is charged with misdemeanor disorderly conduct or first-degree murder, this is an indispensable guide for those who want to support family members, partners or friends facing criminal charges. 1084

Prisoners' Self-Help Litigation Manual, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 960 pages. **$39.95**. The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Highly recommended! 1077

How to Win Your Personal Injury Claim, by Atty. Joseph Matthews, 7th edition, NOLO Press, 304 pages. **$34.99**. While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents. 1075

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

Advanced Criminal Procedure in a Nutshell, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **$43.95**. This text is designed for supplemental reading in an advanced criminal procedure course on the post-investigation processing of a criminal case, including prosecution and adjudication. 1090

Our Bodies, Ourselves, by The Boston Women's Health Book Collective, 944 pages. **$26.00**. This book about women's health and sexuality has been called "America's best-selling book on all aspects of women's health," and is a great resource for women of all ages. 1082

Arrest-Proof Yourself, by Dale Carson and Wes Denham, 288 pages. **$14.95**. This essential "how not to" guide written by an ex-cop explains how to act and what to say when confronted by the police to minimize the chances of being arrested and avoid additional charges. Includes information on basic tricks that police use to get people to incriminate themselves. 1083

Nolo's Plain-English Law Dictionary, by Gerald N. Hill and Kathleen T. Hill, 496 pages. **$29.99**. Find terms you can use to understand and access the law. Contains 3,800 easy-to-read definitions for common (and not so common) legal terms. 3001

Criminal Procedure: Constitutional Limitations, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **$43.95**. Intended for use by law students, this is a succinct analysis of constitutional standards of major significance in the area of criminal procedure. 1085

A Dictionary of Criminal Law Terms (Black's Law Dictionary® Series), by Bryan A. Garner, 768 pages. **$33.95**. This handbook contains police terms such as preventive detention and protective sweep, and phrases from judicial-created law such as independent-source rule and open-fields doctrine. A good resource to help navigate your way through the maze of legal language in criminal cases. 1088

PLN Cumulative Index. $22.50 each. PLN Article Indexes provide detailed information about all PLN articles, including title, author, issue, page number, topics covered, citations, and if it is state, BOP or jail specific. Can be searched on over 500 subjects such as medical neglect or sexual assault. Circle the index(es) you are ordering: **1990-1995, 1996-1998, 1999-2001, 2002-2004** (more recent indexes not yet available)

Subscription Rates

	1 year	2 years	3 years	4 years
Prisoners	**$30**	**$ 60**	**$ 90**	**$120**
Individuals	**$35**	**$ 70**	**$105**	**$140**
Professionals (Attorneys, agencies, libraries)	**$90**	**$180**	**$270**	**$360**

Subscription Bonuses

2 years - 2 bonus issues for 26 total issues
3 years - 4 bonus issues (40 total) or a bonus book as listed on pg. 61
4 years - 6 bonus issues (54 total) or a bonus book as listed on pg. 61

(All subscription rates and bonus offers are valid as of 3-1-2014)

Purchase with Visa, MasterCard, AmEx or Discover by phone: **561-360-2523**
Or buy books and subscriptions online: **www.prisonlegalnews.org**

Mail Payment and Order to:

Prison Legal News
P.O. Box 1151
Lake Worth, FL 33460

All purchases must be pre-paid. Prisoners can pay with new first-class stamps (strips or books only, no loose stamps) or pre-stamped envelopes, *if allowed by institutional policies.*

Please **Change my Address** to what is entered below ☐

Mail Order To:

Name: _____

DOC #: _____

Suite/Cell: _____

Agency/Inst: _____

Address: _____

City/State/Zip: _____

Subscribe to Prison Legal News **$ Amount**

6 month subscription (prisoners only) - $18 _____
1 yr subscription (12 issues) _____
2 yr subscription (2 bonus issues for 26 total!) _____
3 yr sub (*write below which FREE book you want*) _____
or 4 bonus issues for 40 issues total!
4 yr sub (*write below which FREE book you want*) _____
or 6 bonus issues for 54 issues total!
Random sample issue of **PLN** - $3.50 each _____

Books or Index Orders (No S/H charge on 3 & 4-year sub free books OR book orders OVER $50!) **Qty.**

_____ ____ _____
_____ ____ _____
_____ ____ _____
_____ ____ _____

Add $6.00 S/H to Book Orders **UNDER $50** _____
FL residents ONLY add 6% to Total Book Cost _____
Total Amount Enclosed: _____

***No refunds on PLN subscription or book / index orders after orders have been placed** *

Prison Legal News
PO Box 1151
Lake Worth FL 33460

Change Service Requested

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

Subscription Renewal

Subscriptions expire after the issue shown on the label is mailed. For example, if the label says: EXPIRES 02/2015, then the subscription expires after the February 2015 issue is mailed. Please renew at least 2 months before the expiration date. IF THE LABEL SAYS **EXPIRES: 04/2014** THIS IS YOUR LAST ISSUE. Please renew immediately to avoid missing any issues.

Change of Address

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

EXHIBIT E

ARIZONA DEPARTMENT OF CORRECTIONS

Notice of Result-Publication Review

Review Date	Name Of Publication	ISBN or Vol/N	Publication Date
11/25/2014	Prison Legal News	V. 25 N. 4	april 2014

The Office of Publication Review has reviewed the above-mentioned individual publication and has determined that the individual publication will be:

[ ] Allowed [X] Excluded

Per DO 914.08 Inmate Mail - Unauthorized Publications and Material, it is determined that this individual publication is excluded.

For the complete exclusion explanations, refer to DO 914 directly. The "X" indicates the specific violation(s).

X	Policy #	Description	X	Policy #	Description	X	Policy #	Description
	1.1.1	Riots/Work Stoppages/Resistance		1.1.12	Survival Skills		1.1.24	Violation of Policy/Law
	1.1.2	Sending/Receiving Contraband		1.1.13	Gambling		1.1.25	Scent/Canine Search
	1.1.3	Street Gang/STG		1.1.14	Tatoo/Skin Modification		1.1.26	Making of Incense
	1.1.4	Locks/Security Devices		1.1.15	Cipher/Code		1.1.27	Sale/Manufacture/ Concealment of Tools
	1.1.5	Hands, Feet, or Head as Weapons/Fighting Techniques/Self-Defense		1.1.16	Promote Violence		2.2	Advertisement Promotion
	1.1.6	Drug Promotion/Manufacture or Cultivation of Drugs, Narcotics, Poisons/Brewing Alcohol		1.1.17	Graphic Violence		914.07	Sexually Explicit Material
	1.1.7	Superiority of One Group Over Another/Promotes Racism/Degradation	X	1.1.18	Unacceptable Sexual or Hostile Behaviors		Other	
	1.1.8	Sale/Manufacture/ Concealment of Weapons		1.1.19	Intelligance/Investigative Techniques			
	1.1.9	Computer/Electronics/ Communications Systems		1.1.20	Military/Strategy			
	1.1.10	Identity Theft		1.1.21	Medical Publications			
	1.1.11	Escape/Elude Capture		1.1.22	Health/Fire Risk			
				1.1.23	Crime Scene/Autopsy			

- Refer to the revised DO 914, Inmate Mail for information on Second Reviews as the policy has changed to include two separate Second Review processes. Second Review decisions are not grievable through the traditional grievance process and exhaust inmates' administrative remedies.
- Inmates must go to the assigned Complex/Stand-Alone Unit Publication Review staff for all Publication Review-related questions/concerns including requesting Second Reviews prior to writing to the Office of Publication Review. Letters to the Office of Publication Review that do not indicate that the inmate first addressed the issue with Complex/Stand-Alone Unit Publication Review staff may be returned unprocessed or forwarded to the Complex/Stand-Alone Unit Publication Review staff for response.
- To prevent from ordering previously excluded publications or publications that may be in violation of policy, inmates can write to their Complex/Stand-Alone Unit Publication Review staff concerning up to 10 individual publications providing the publication information.
- If your copy of a publication was used by the Office of Publication Review in the determination that an individual publication is excluded, your copy will be held for 90 days if no Second Review is requested or 3 years if a Second Review was requested and the exclusion was upheld. If you are to be released prior to this 90 day or 3 year period, please inform your Complex/Stand-Alone Unit Publication Review staff 6-8 weeks prior to the release date.

OTHER EXCLUSION:

ELECTRONICALLY SENT

Original Signature for file

914-6
9/1/11

EXHIBIT F

ARIZONA DEPARTMENT OF CORRECTIONS

Notice of Result-Publication Review

Review Date	Name Of Publication	ISBN or Vol/N	Publication Date
3/18/2015	Prison Legal News	V. 25 N. 4	april 2014

The Office of Publication Review has reviewed the above-mentioned individual publication and has determined that the individual publication will be:

[X] Allowed [ ] Excluded

Per DO 914.08 Inmate Mail - Unauthorized Publications and Material, it is determined that this individual publication is excluded.

For the complete exclusion explanations, refer to DO 914 directly. The "X" indicates the specific violation(s).

X	Policy #	Description
	1.1.1	Riots/Work Stoppages/Resistance
	1.1.2	Sending/Receiving Contraband
	1.1.3	Street Gang/STG
	1.1.4	Locks/Security Devices
	1.1.5	Hands, Feet, or Head as Weapons/Fighting Techniques/Self-Defense
	1.1.6	Drug Promotion/Manufacture or Cultivation of Drugs, Narcotics, Poisons/Brewing Alcohol
	1.1.7	Superiority of One Group Over Another/Promotes Racism/Degradation
	1.1.8	Sale/Manufacture/ Concealment of Weapons
	1.1.9	Computer/Electronics/ Communications Systems
	1.1.10	Identity Theft
	1.1.11	Escape/Elude Capture

X	Policy #	Description
	1.1.12	Survival Skills
	1.1.13	Gambling
	1.1.14	Tatoo/Skin Modification
	1.1.15	Cipher/Code
	1.1.16	Promote Violence
	1.1.17	Graphic Violence
	1.1.18	Unacceptable Sexual or Hostile Behaviors
	1.1.19	Intelligance/Investigative Techniques
	1.1.20	Military/Strategy
	1.1.21	Medical Publications
	1.1.22	Health/Fire Risk
	1.1.23	Crime Scene/Autopsy

X	Policy #	Description
	1.1.24	Violation of Policy/Law
	1.1.25	Scent/Canine Search
	1.1.26	Making of Incense
	1.1.27	Sale/Manufacture/ Concealment of Tools
	2.2	Advertisement Promotion
	914.07	Sexually Explicit Material
	Other	

- Refer to the revised DO 914, Inmate Mail for information on Second Reviews as the policy has changed to include two separate Second Review processes. Second Review decisions are not grievable through the traditional grievance process and exhaust inmates' administrative remedies.
- Inmates must go to the assigned Complex/Stand-Alone Unit Publication Review staff for all Publication Review-related questions/concerns including requesting Second Reviews prior to writing to the Office of Publication Review. Letters to the Office of Publication Review that do not indicate that the inmate first addressed the issue with Complex/Stand-Alone Unit Publication Review staff may be returned unprocessed or forwarded to the Complex/Stand-Alone Unit Publication Review staff for response.
- To prevent from ordering previously excluded publications or publications that may be in violation of policy, inmates can write to their Complex/Stand-Alone Unit Publication Review staff concerning up to 10 individual publications providing the publication information.
- If your copy of a publication was used by the Office of Publication Review in the determination that an individual publication is excluded, your copy will be held for 90 days if no Second Review is requested or 3 years if a Second Review was requested and the exclusion was upheld. If you are to be released prior to this 90 day or 3 year period, please inform your Complex/Stand-Alone Unit Publication Review staff 6-8 weeks prior to the release date.

OTHER EXCLUSION:

ELECTRONICALLY SENT

Original Signature for file

EXHIBIT G

Prison Legal News

VOL. 25 No. 7
ISSN 1075-7678

Dedicated to Protecting Human Rights

July 2014

Systemic Changes Follow Murder of Colorado Prison Director

by John Dannenberg

Just over a year after Colorado Department of Corrections Director Tom Clements was killed by former prisoner Evan Ebel, who had been released directly from long-term solitary confinement, there have been significant and far-reaching changes in Colorado's prison system.

Following a police chase, Ebel, 28, was killed in a shootout with Texas law enforcement officers on March 21, 2013. Autopsy results later obtained by *The Denver Post* confirmed that he died from a gunshot wound to the forehead. Prior to the chase, Ebel had been stopped in his 1991 black Cadillac DeVille for a traffic offense and shot Texas deputy James Boyd multiple times, hitting him in the shoulder and chest and grazing his head.

Ebel spent nearly all of his eight years in prison in solitary confinement, known in Colorado as administrative segregation (ad-seg). His father, well-known attorney Jack Ebel, who was close to Colorado Governor John Hickenlooper, had previously said his son suffered from behavioral problems as a child, and that solitary damaged him even more.

"What I have seen over six years is, [Evan] has a high level of paranoia and [is] extremely anxious," Jack Ebel said at a state Senate Judiciary Committee hearing in 2011, when he testified about the effects of solitary confinement. "He may have had mental conditions going on. But they are exacerbated to the point that I hardly recognize my son sometimes. We are creating mental illness. We are exacerbating mental illness."

Murders and Aftermath

Colorado authorities said Ebel first lured Domino's pizza deliveryman Nathan Leon to a truck stop in Denver on March 17, 2013, supposedly to deliver a pizza, then shot him to death. Before killing Leon, Ebel forced him to read a statement into a tape recorder criticizing the prison system's use of solitary confinement.

"[Y]ou didn't give two [expletive] about us or our families and you ensured that we were locked behind a door, to disrespect us at every opportunity, so why should we care about you and yours," a transcript of the recording stated. "In short, you treated us inhumanely, and so we simply seek to do the same, we take [comfort] in the knowledge that we leave your wives without husbands, and your children fatherless. You wanted to play the mad scientist, well they [prisoners held in solitary] will be your Frankenstein."

Ebel took Leon's pizza delivery uniform and, two days later, on March 19, wore it to the Clements' secluded home in Monument, Colorado, about an hour south of Denver. Lisa Clements, director of the Colorado Human Services' Behavioral Health Office, said she and her husband were watching TV when the doorbell rang. Tom Clements answered the door and Ebel shot him at point-blank range. Lisa said he died in her arms.

Ebel then hid out in Colorado Springs for two days before heading to Texas, where he was killed by officers following his shooting of Deputy Boyd, who survived.

In an August 26, 2013 article, *The Denver Post* quoted a source who described details of the investigation into Clements' death, based on sealed court documents. The newspaper said the source, who spoke on the condition of anonymity, had "direct access to and knowledge of the documents and the investigation itself."

The source said investigators traced Ebel to a white supremacist prison gang known as the 211 Crew, and the gang might have orchestrated Clements' killing. Federal and state authorities thought Ebel may have been recruited by gang founder Benjamin Davis to kill Clements to repay a debt, the source said. Both men had served sentences at the same time at the Sterling prison where Ebel, reportedly a member of 211 Crew, was targeted by a rival gang.

"Ebel had been threatened," the source told the *Post*. "Davis stepped in and saved him."

According to the source, Davis then told Ebel that he expected a favor in return once Ebel was released from prison. Clements had ordered 211 Crew members to be separated and transferred to other facilities, which may have made him a target of the gang.

Another theory considered by investigators was that Clements' killing might

INSIDE

From the Editor	10
Bonnie Kerness & Solitary Confinement	12
PLN Suit vs. Ventura County, CA	16
Oregon Parole Board Answers to Nobody?	18
New Hepatitis C Treatment	20
Prison Phone Issues in Louisiana	26
LA County Probation Officer Arrests	32
Same-Sex Marriage for Prisoners	38
Spoliation of Evidence in NY Suit	42
NC Repeals Racial Justice Act	44
Legally Innocent in North Carolina	48
Do Faith-Based Prisons Work?	50
News in Brief	56

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

EDITOR
Paul Wright
MANAGING EDITOR
Alex Friedmann
COLUMNISTS
Michael Cohen, Kent Russell,
Mumia Abu Jamal
CONTRIBUTING WRITERS
Matthew Clarke, John Dannenberg,
Derek Gilna, Gary Hunter,
David Reutter, Mark Wilson,
Joe Watson, Christopher Zoukis
RESEARCH ASSOCIATE
Mari Garcia
ADVERTISING DIRECTOR
Susan Schwartzkopf
LAYOUT
Lansing Scott
HRDC LITIGATION PROJECT
Lance Weber—General Counsel
Robert Jack—Staff Attorney
Sabarish Neelakanta—Staff Attorney

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

A one year subscription is $30 for prisoners, $35 for individuals, and $90 for lawyers and institutions. Prisoner donations of less than $30 will be pro-rated at $3.00/issue. Do not send less than $18.00 at a time. All foreign subscriptions are $100 sent via airmail. PLN accepts Visa and Mastercard orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without an SASE. PLN is a section 501 (c)(3) non-profit organization. Donations are tax deductible. Send contributions to:

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

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

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

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

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

Colorado DOC Murder (cont.)

have been linked to his decision to deny a request by a Saudi Arabian prisoner to return to his native country to serve out the remainder of his prison sentence.

Attorneys for Homaidan al-Turki, who was sentenced on charges of sexually assaulting his maid, denied that their client was involved in Clements' murder, but investigators said they were looking into whether there are any connections, financial or otherwise, between al-Turki and the 211 Crew.

Investigators suspected that Ebel was headed to Texas after the killings, to the home of a paroled 211 Crew member who lived south of Dallas. After Ebel was killed in the Texas police shootout, authorities found his cell phone and tracked calls he had made while on parole. He also had a hit list with the names of 20 other prison and law enforcement officials; the names on the list have not been disclosed.

Phone records confirmed that Ebel frequently contacted other 211 Crew members who had been released from prison, and that he made or received 23 calls in one 24-hour period, including the hours just before and after Clements was murdered, the source said. According to El Paso County Sheriff's Lt. Jeff Kramer, Ebel made the calls to fellow gang members.

"There's a pretty logical chain of evidence in this case," the source told *The Denver Post*. "It would be highly coincidental if [Ebel] had done all this on his own and there were 23 calls between him and other gang members around [the time of] Clements' murder. There is just too much there, and they are all 211 Crew members. It sounds like everything points to 211."

Then again, it's equally possible that Ebel was simply contacting people he had known in prison, which included gang members, because he had no one else to reach out to after he was released.

In March 2014, Lisa Clements said she was frustrated at how slowly the investigation into her husband's murder was progressing. She said she was concerned that the various agencies involved in the investigation were not doing enough to coordinate their efforts: "Each of them have a piece of the picture, but the whole picture is missing."

She also stated she didn't want people in Colorado to forget that authorities have not solved the case. "I realize that as impactful as Tom's life and his death was for our family, that it's human nature for the public, for us as individuals, to sort of get on with life."

"Grief takes a while," she continued. "In the days and months that followed Tom's murder, we had our hands full with all that we could do to get through days. As we've begun to address our trauma from that night, and the grief since, we perhaps in our healing process have more space to recognize anger, as well."

El Paso County Sheriff Terry Maketa said his department is determined to get to the bottom of Clements' murder.

"I want her to know that we are not going to give up. It would be really easy to say, 'We know who pulled the gun and shot Dr. Clements,'" Maketa said. "We could easily close out our case and move down the road. But that isn't the responsible thing to do."

He added, "It's just a very slow process. This isn't Hollywood."

The El Paso County Sheriff's Office is the lead agency in the investigation, which also involves the Department of Corrections (DOC), the FBI and other law enforcement officials. According to an unnamed source, in August 2013, El Paso County Judge Jonathan L. Walker, who had issued search warrants as part of the investigation into Clements' death, went into hiding due to allegations that 211 Crew leaders had placed a "hit" on him.

Who Was Evan Ebel?

Ebel had a well-documented history as a violent and troubled individual both before and during his time in prison. According to public records, Ebel went on a crime spree as a teenager, then a second spree which included a carjacking in 2005 that resulted in an eight-year prison sentence. After he was incarcerated his criminal behavior escalated.

On September 17, 2005, Ebel threatened to kill a female prison guard, telling her "that he would kill her if he ever saw her on the streets and that he would make her beg for her life."

Later in 2005 and again in 2006, Ebel threatened to kill staff members in two different prisons. In another incident, he threatened to beat guards if they didn't handcuff him. Overall, Ebel received 28 disciplinary charges, including four for as-

Colorado DOC Murder (cont.)

sault and three for fighting, as well as two for disobeying direct orders. According to prison reports, he sometimes injured himself and smeared feces on his cell door and the door of another prisoner.

While in solitary, Ebel came to be known by other prisoners as "Evil Ebel." Prison records showed he was tattooed with Nazi symbols and had the word "hopeless" tattooed across his stomach and "hate" inked on his right hand.

He expressed his frustrations with the prison system through letters and poems sent to his mother and to a project called Incarcerated Voices, which provides "free speech radio by and for prisoners."

In a June 2012 poem titled "Life," Ebel wrote: "I've looked in the mirror and don't even recognize / This thing staring back at me / Though I see your death implicit in its eyes / And really that's all I care to see."

"It's clear that solitary changed him. He didn't recognize himself in the mirror," noted Dr. Scott Washington, director of advocacy for Incarcerated Voices. "Ideally, somebody would have been working with him to address those problems before he was released."

Ebel filed several grievances with prison officials while he was in solitary. "Do you have an obligation to the public to re-acclimate me, the dangerous inmate, to being around other human beings prior to being released and, if not, why?" he asked. Prison staff responded to his last grievance after he was already out, writing, "you claim that you are just looking for answer [sic] to questions about policy. Grievance Procedures is not the appropriate method for debating policy questions nor is it designed to address the policy questions you have posed."

Colorado state prisoner Troy Anderson, who served time with Ebel, said Ebel "was consumed by what they did to him."

"You know, what they do through their solitary policies is akin to rape. They steal such a precious part of our souls, our humanity, our ability to be," he added. "They committed such hateful acts on us. Through contempt and disdain they breed rage. They stole his chance at any real future."

Anderson is no stranger to solitary himself. On August 24, 2012, a Colorado federal district court held that Anderson's long-term confinement in ad-seg violated his constitutional rights. "With the exception of approximately one month in 2001 ... [Anderson] has not been out of doors for 12 years," the court wrote. Prison officials were ordered to provide him with at least one hour of outside recreation three times a week. The state did not appeal. See: *Anderson v. Colorado DOC*, U.S.D.C. (D. Col.), Case No. 1:10-cv-01005-RBJ-KMT.

Solitary Confinement Connection

Ebel was released from prison directly from solitary confinement when he reached his mandatory parole date on January 28, 2013. A prerelease assessment said he was considered a "very high risk" for recidivism. Two months later, he cut off the ankle monitor he wore as a condition of his parole before killing Nathan Leon and then Tom Clements.

Although the investigation into Clements' death still remains open, including whether Ebel acted alone, it appears that his murder was not related to the 211 Crew or Saudi prisoner Homaidan al-Turki. Rather, the evidence points to Ebel's lengthy stay in solitary confinement and its impact on his mental health as the catalyst for Clements' murder.

According to former prisoner Ryan Pettigrew, who served time with Ebel, "This is what he planned to do as his final get-back at the system."

Ironically, Tom Clements had pushed hard for reforms during his slightly more than two-year tenure as director of the Colorado DOC. Colleagues said he was especially concerned about finding ways to eliminate the DOC's reliance on solitary confinement, particularly when it was used to control dangerous and violent prisoners

such as Ebel, and to provide prisoners being released from solitary with counseling and therapy to help them successfully transition back into society.

"Evan Ebel was exactly what Tom warned us about every single day," said Roxane White, chief of staff for Governor Hickenlooper.

Indeed, the damaging effects of solitary confinement on prisoners' mental health are both well-documented and well-known; long-term isolation worsens existing psychological problems and can drive the sane insane. [See: *PLN*, Oct. 2012, p.1].

The American Civil Liberties Union of Colorado heaped posthumous praise on Clements for his efforts as a reform-minded prison director.

"Mr. Clements never saw a contradiction between protecting human rights, fiscal responsibility and protecting institutional security," stated ACLU staff attorney Rebecca Wallace. "He thought they all could be met simultaneously. That belief is no more clear than in his work on ad-seg."

Wallace said the ACLU, which has a history of litigation against the Colorado DOC, "didn't file a single lawsuit against the Department during Mr. Clements' tenure."

Paul Herman, a colleague and longtime friend of Clements, remarked, "Here you had two people [Ebel and Clements], one who suffered significantly from solitary confinement and the other who was trying to do something about it."

"If what happened to Tom isn't the ultimate irony," he said, "I don't know what is."

Changes Follow Clements' Death

There have been several major changes in the Colorado DOC as a result of Clements' death. As one example, *The Denver Post* reported on March 16, 2014 that the state's prison population has been rising due to fewer paroles being granted – an 8% decrease in paroles since before Clements was murdered. Meanwhile, the number of technical parole violations has increased and the Fugitive Apprehension Unit has captured over 400 parolees who had absconded.

Rick Raemisch, who replaced Clements as director of the Colorado DOC, said it was "human nature" that parole officials would be stricter in the wake of Clements' death. After Ebel removed his ankle monitor and absconded from parole, it took almost a week before officials sought a warrant for his arrest.

"I don't like it, but I understand it," stated Michael Dell with Colorado-CURE, a prisoners' advocacy group. "When parole board members see what happened to Tom Clements, they are not going to take a gamble on someone else."

State Parole Chief Tim Hand was placed on paid administrative leave following Clements' murder and later fired.

Further, the investigation into Clements' death determined that Ebel had been released from prison four years early due to a clerical error. A district court had failed to specify that his four-year sentence for assaulting a prison guard was to be served consecutive to his 8-year sentence for carjacking. As a result the sentences were run concurrently, leading to Ebel's early release in January 2013. His sentence had also been reduced by about four months under a law, SB11-176 – approved of by Clements – that allowed prisoners to earn good behavior credits during time spent in ad-seg.

The American Friends Service Committee is seeking testimony from men, women, and children in US prisons. Both the United Nations Periodic Review of the US and the Shadow Report for the UN Convention Against Torture are due within the next few months. Both need input from you on "no touch" (solitary), physical and chemical torture, rape, racism, brutality, sexual and other violence, lack of medical care and other aspects of prisoner treatment that violate human rights. We will be accepting testimonies until September 2014. Although we are unable to respond, you will receive confirmation of receipt of testimony. The writing should be no more than two pages describing what you have experienced or seen. Send to Bonnie Kerness, AFSC, 89 Market St. 6th floor, Newark, NJ 07102. We appreciate your courage in sharing your voice. Thank you.

Colorado DOC Murder (cont.)

However, Clements had opposed provisions in the original bill that would have placed restrictions on the DOC's ability to hold mentally ill prisoners in solitary.

"[Clements] was concerned about the administrative segregation population, and he asked Sen. Carroll and I to scale the bill back a little because it featured a number of requirements for the DOC to change administrative segregation," said state Rep. Claire Levy. "The original bill, for example, wanted [the DOC] to have more psychiatric resources available. They would have had to make more checks on mental health. We scaled the bill back at Clements' request."

In May 2013, Governor Hickenlooper signed into law legislation that requires the Department of Corrections to seek clarification from the court if a sentencing order does not indicate whether a sentence is to be served concurrently with or consecutive to another sentence. The DOC has two business days to request clarification and the court has two days to respond.

Hickenlooper also ordered an audit to determine whether clerical errors had resulted in other erroneous early releases. By August 2013, judges had reviewed 1,514 cases and corrected the sentences for 267 prisoners. Nine who had already been released were returned to prison to serve out their full terms.

Most notably, there have been changes in the Colorado DOC's use of ad-seg and the number of prisoners released directly from solitary to the community. According to Raemisch, the DOC's ad-seg population has declined from 1,511 in 2011 to 590 as of March 2014. The number of prisoners released from prison directly from solitary has dropped from 70 last year to just one or two a month in early 2014.

"We have people that are well trained on how to handle dangerous people, and yet we felt they are too dangerous to be in general population, so we'll put them in administrative segregation and then, 'oh by the way,' release them into the community. It just doesn't make any sense," Raemisch said.

In fact, Raemisch spent a day locked in an ad-seg cell at the Colorado State Penitentiary to see what it was like – an experience that led him to curtail the use of solitary confinement, particularly for prisoners with mental health problems. [See article in this issue of *PLN*, p. 8].

There was still room for improvement, however.

A report issued by the Colorado ACLU in July 2013 found that prison officials continued "to rely on long-term solitary confinement to manage mentally ill prisoners, often for months or even years." The report, titled "Out of Sight, Out of Mind," noted that during Tom Clements' tenure the Colorado DOC started the Residential Treatment Program (RTP) to provide treatment to mentally ill prisoners. However, according to ACLU public policy director Denise Maes, "The information that we're getting is that RTP looks very much like ad-seg."

A December 10, 2013 memo issued by the DOC stated that wardens were no longer allowed to place prisoners with a "major mental illnesses" in solitary.

"This is an enormous foundational step toward getting seriously mentally ill prisoners out of solitary confinement and into treatment," stated ACLU staff attorney Rebecca Wallace. "There is still more important work to be done, but we want to take this moment to recognize something we have been asking the Department of Corrections to do for years."

Still, the policy change did not apply to prisoners who have mental health problems

but have not been diagnosed with a "major" mental illness.

"As an initial matter, we remain concerned that the definition of major mental illness adopted by the [Colorado DOC] is too narrow and that there are still prisoners in administrative segregation who are seriously mentally ill and should not be placed in prolonged solitary confinement," the ACLU stated.

In April 2014, the Colorado General Assembly passed a bill, SB14-064, that would make it more difficult to place mentally ill prisoners in solitary absent exigent circumstances; the bill had passed the senate unanimously.

"Today's vote moves Colorado one step closer to realizing the former director's stated desire of bringing greater safety to the public and humanity to the prisons by ending our state's historic over-reliance on solitary confinement," the Colorado ACLU said in a statement.

The bill was signed into law by Governor Hickenlooper on June 6, 2014. "[A]s of today, we have no offenders with mental illness in solitary confinement," said a spokesman for the DOC. Colorado was the second state – after New York – to enact legislation to remove mentally ill prisoners from solitary.

Conclusion

As a postscript to Clements' murder, authorities investigated where Ebel had obtained the 9mm handgun he used to kill Clements and Leon. They discovered the gun had been purchased by Stevie Marie Anne Vigil, a childhood friend of Ebel's, who gave it to him shortly before the killings. Vigil pleaded guilty to providing a firearm to a convicted felon, and on March 3, 2014 she was sentenced to 27 months in federal prison. These was no evidence that she knew Ebel had planned to use the gun to commit the murders.

Ultimately, no one escaped the damaging consequences of Ebel's actions – not Vigil, nor the families of Tom Clements and Nathan Leon, nor Texas deputy James Boyd or the Colorado prisoners who now have a more difficult time making parole, nor Ebel himself and his family members.

"I'm angry at the horrific senselessness," said Lisa Clements. "I'm angry that it impacted not just one individual [but also] our entire family, our community, our friends, our neighbors, our loved ones."

While "Evil" Evan Ebel has been vilified for murdering Clements, and an investigation continues into the possible involvement of the 211 Crew prison gang, few have condemned the Colorado DOC's treatment of mentally ill prisoners and use of long-term ad-seg as factors that directly contributed to Clements' death. As Ebel himself had said, the prison system creates monsters; thus, society should not be surprised when those monsters are released with predictable results.

"In Colorado, by using solitary confinement as the default for mentally ill prisoners, we're doing the least safe thing for the most amount of money," observed state Senator Jessie Ulibarri. "The case of Evan Ebel and Tom Clements is the most extreme example of that."

Sources: *CNN, The Denver Post, Colorado Independent, Associated Press, www.officer.com, www.gazette.com, www.rawstory.com, Huffington Post, www.aclu.org, www.acluco.org, The Atlantic, Los Angeles Times, www.incarceratedvoices.com*

Two Corrections Chiefs Serve Time in Segregation

by Christopher Zoukis

Rick Raemisch, Colorado's new corrections director, wanted to better understand the experience of solitary confinement – so he spent a night in segregation at a state prison.

Raemisch had been on the job for seven months when he decided to stay overnight in an ad seg cell at the Colorado State Penitentiary. "I thought he was crazy," said Warden Travis Trani, who added, "I also admired him for wanting to have the experience." Trani received only nine hours notice that his boss was arriving for an extended visit.

On January 23, 2014, just after 7:00 p.m., Raemisch, handcuffed and shackled and wearing a prison uniform, entered cell 22. He was classified as "RFP," or "Removed From Population." After being uncuffed through the food slot he was left alone in the 7-by-13-foot cell.

In an editorial published in *The New York Times* on February 20, Raemisch said the experience was challenging.

"First thing you notice is that it's anything but quiet. You're immersed in a drone of garbled noise: other inmates, blaring TVs, distant conversations, shouted arguments. I couldn't make sense of any of it, and was left feeling twitchy and paranoid," he wrote. "I kept waiting for the lights to turn off, to signal the end of the day. But the lights did not shut off. I began to count the small holes carved in the walls. Tiny grooves made by inmates who'd chipped away at the cell as the cell chipped away at them. For a sound mind, those are daunting circumstances. But every prison in America has become a dumping ground for the mentally ill, and often the 'worst of the worst,' some of society's most unsound minds, are dumped in Ad Seg."

Raemisch then described some of the day-to-day routine that prisoners in solitary endure for years – sometimes decades.

"[T]here were the counts. According to the Ad Seg rules, within every 24-hour period there are five scheduled counts and at least two random ones. They are announced over the intercom and prisoners must stand with their feet visible to the officer as he looks through the door's small window. As executive director, I praise the dedication, but as someone trying to sleep and rest my mind, forget it. I learned later that a number of inmates make earplugs out of toilet paper.... When 6:15 a.m. and breakfast finally came, I brushed my teeth, washed my face, did two sets of push-ups, and made my bed. I looked out my small window, saw that it was still dark outside, and thought, now what?"

Raemisch said that by 11:30 a.m. the next day, he broke a promise to himself and asked a guard what time it was. "I felt like I had been there for days. I sat with my mind. How long would it take before Ad Seg chipped that away? I don't know, but I'm confident that it would be a battle I would lose," he wrote.

After Raemisch, 61, took over as Colorado's top prison official following the murder of his predecessor, Tom Clements, by a prisoner who was released directly from solitary, he decided to continue Clements' efforts to curtail the use of long-term segregation. Clements had reduced Colorado's solitary population from about 1,500 to 726; Raemisch has since cut that number to under 600.

Raemisch shared his experience at a U.S. Senate subcommittee hearing on the topic of solitary confinement in February 2014, saying segregation was "overused, misused, and abused" in America's prisons. His comments were received by many well-wishers, including officials with the ACLU, who joked that other corrections commissioners might want to take "the Colorado challenge."

Predictably, some criticized Raemisch for being "soft" on criminals or for trying to grandstand through his brief stint in solitary.

Raemisch said he was moved by the experience. "Everything you know about treating human beings, [segregation's] not the way to do it," he stated. "When I finally left my cell at 3 p.m., I felt even more urgency for reform. If we can't eliminate solitary confinement, at least we can strive to greatly reduce its use. Knowing that 97 percent of inmates are ultimately returned to their communities, doing anything less would be both counterproductive and inhumane."

Raemisch spent just 20 hours in segregation – a short time, but long enough to make a lasting impression. On average, Colorado prisoners sent to solitary stay 23 months.

At least one other corrections chief has served time in segregation to gain empirical experience of what it's like. On May 2, 2014, New Mexico Corrections Department Secretary Gregg Marcantel, 53, entered cell 106 in E pod at the state penitentiary in Santa Fe for a 48-hour visit.

"I can tell you, pacing it, I had five large paces from the edge of my bed to the door. I traveled that route quite a bit," he said. "It's where I ate, where I exercised, where my toilet was. I didn't, for 48 hours, speak a word. I did internal dialog, but I didn't speak a word to another person."

Marcantel said he wanted the experience to be as authentic as possible, even though he knew it was for only a short time. He spent the first day under conditions of adminstrative seg and the last day in disciplinary segregation.

"There are just things sometimes that you gotta feel, you gotta taste, and you gotta hear and you gotta smell," he noted.

Although he tried to play the part – arriving in restraints, wearing prison clothes, growing a beard to hide his appearance and pretending to be deaf and mute so he wouldn't have to speak – other prisoners in the unit became suspicious and assumed he was a cop.

Marcantel said it got "ugly" and "tense."

His brief time in solitary was recorded on a video camera as he paced, read books, looked out the cell window and ate prison food.

"You start after a while to count everything, because that's how you kind of grab a little bit of control," he observed. "You become a lot more detail-oriented about what your environment looks like."

Marcantel said he made several policy changes based on his experience in segregation; according to one news report, 60 to 80 New Mexico state prisoners have since been moved from solitary confinement to the general prison population.

Sources: *www.nytimes.com, www.abqjournal.com, Wisconsin State Journal, www.kob.com*

WELCOME TO KRASNYA BABES & KRASNYA STUDS WORLD

TENS OF THOUSANDS OF THE HOTTEST AND MOST SCANDALOUS BABES&DUDES FOUND ON THE PLANET.
EACH CATALOG PAGE HAS 120 BEAUTIFUL GIRLS OR BOYS POSING JUST FOR YOU!
ORDER ONE CATALOG PAGE FOR ONLY $4.50 OR FOR 10 U.S. FOREVER STAMPS WITH AN SASE ENCLOSED.
WE WILL SEND YOU VOLUME ONE. EACH ADDITIONAL VOLUME THE SAME PRICE!

HELP US TO HELP YOU!

WE ARE MORE THAN HAPPY TO ANSWER E-MAIL INQUIRES HOWEVER, DUE TO MAILING COST AT $0.46 CENTS A LETTER, PLEASE ENCLOSE AN SASE WITH YOUR QUESTIONS, OTHERWISE NO REPLIES!

WHAT ABOUT OUR PRICES AND POLICIES

COLOR PRINTS ON 4x6 GLOSSY PHOTO PAPER AS LOW AS $0.35 CENTS PER PRINT ON ORDERS OVER 500 SHIPPED ACCORDING TO POLICY: 25 PICTURES PER ENVELOPE EVERY 24 HOURS. S&H $2.00 PER ENVELOPE.

METHOD OF PAYMENT/CONTACT INFORMATION

U.S. POSTAL SERVICE MONEY ORDERS-STATE & FEDERAL CORRECTIONAL INSTITUTIONAL CHECKS

PAYABLE ONLY TO: KRASNYA L.L.C.

EQUATION FOR FIRST CLASS U.S. FOREVER STAMPS
BRAND NEW FLAT BOOK FOR ALL ORDERS AT THE RATE OF $6.00 PER FLAT BOOK.
WE RESPOND TO OUR CLIENTS NEEDS AND TRY TO HELP THE BEST WE CAN.

OUR SEASONAL SPECIALS MEAN A KICKOFF OF SAVINGS!

COLOR CATALOG DISCOUNT SALE
ONE COLOR CATALOG OF 120 BABES IN CLASSIC OR NUDE LINES $4.50
PLEASE INCLUDE A SELF-ADDRESSED STAMPED (2-FIRST CLASS STAMPS) ENVELOPE.
QUANTITY BUYS:

5-14 CATALOGS	=10% OFF OUR REGULAR PRICE
15 CATALOGS	=15% OFF OUR REGULAR PRICE
20 CATALOGS	=20% OFF OUR REGULAR PRICE
25 CATALOGS	=25% OFF OUR REGULAR PRICE
30 CATALOGS	=30% OFF OUR REGULAR PRICE
35 CATALOGS	=35% OFF OUR REGULAR PRICE
40 CATALOGS	=40% OFF OUR REGULAR PRICE
45 CATALOGS	=45% OFF OUR REGULAR PRICE
50 CATALOGS	=50% OFF OUR REGULAR PRICE

BE SURE TO SPECIFY CLASSIC OR NUDE BABES!

150 VOL. OF KRASNYA BABES CLASSIC LINE
150 VOLUMES OF KRASNYA BABES NUDE LINE

LOOSE STAMPS FOR LOOSE BABES
KRASNYA LOOSE STAMP GRAB BAG SPECIAL
10 LOOSE BABES.....30 STAMPS
25 LOOSE BABES.....75 STAMPS
50 LOOSE BABES.....150 STAMPS
ALL STAMPS MUST BE 1ST CLASS STAMPS IN LIKE NEW CONDITION!
SPECIFY NUDE OR BOP-SAFE (NO VISIBLE NUDITY) WE WILL PICK SELECTION FOR YOU

KRASNYA BABES HAS SPRUNG SALE!
FREE SAMPLE CATALOG FROM KRASNYA!
120 BABES IN EACH CATALOG
ENCLOSE ONE SASE WITH TWO FIRST CLASS STAMPS! 1 CAT PER CUSTOMER
PLEASE SPECIFY MALE OR FEMALE BABES NUDE OR BOP-FRIENDLY

WE'D LIKE TO START THE HOLIDAYS RIGHT THIS YEAR!
THE WAY TO DO THAT IS BY SENDING YOU INCREDIBLE VALUES
IT'S ONE THING TO TALK THE TALK, ANOTHER TO WALK THE TALK

50 GREAT BABES 0.50 CENTS EACH—$25.00
100 GREAT BABES 0.45 CENTS EACH!—$45.00
200 GREAT BABES 0.40 CENTS EACH!—$80.00
300 GREAT BABES 0.40 CENTS EACH!-$120.00
500 GREAT BABES 0.35 CENTS EACH!-$175.00

STANDARD TERMS & CONDITIONS APPLY – $2.00 PER ENVELOPE (25 PHOTO) FOR SHIPPING AND HANDLING!

$24.95 S&H FREE
FOR GRAB BAG OF
50 PHOTOS
FROM ALL OUR CATALOGS
SPECIFY RACE AND MAIN AREA OF YOUR INTERESTS
WE WILL PICK SELECTION FOR YOU
BONUS 1 COLOR CATALOG PAGE OF 120 BABES

3 BRAND NEW FLAT BOOKS OF FOREVER STAMPS FOR GRAB BAG OF 45 PHOTOS FROM ALL OUR CATALOGS. SPECIAFY RACE AND MAIN AREA OF YOUR INTERESTS WE WILL PICK SELECTION FOR YOU
BONUS 1 COLOR CATALOG OF 120 BABES
PLEASE INCLUDE 6 FOREVER STAMPS WITH YOUR ORDER FOR S&H

KRASNYA L.L.C.
P.O.BOX 32082
BALTIMORE, MD 21282
EMAIL AND CORRLINKS REQUESTS ACCEPTED AT:
KRASNYABABES@HOTMAIL.COM

WAIT!
YOU SAY YOU DON'T HAVE ENOUGH BABE CHOICES OR CATALOGS? YOU NEED CATALOGS?
PREPAY YOUR ORDER AND WE WILL SEND YOU FREE COLOR CATALOGS!
GREAT DEAL, BUT HOW MANY CATALOGS?

FOR EVERY 100 BABES WE'LL SEND YOU 240 BABES TO CHOOSE FROM!

ORDER

50 BABES————————ONE SINGLE CATALOG
100 BABES————————--ONE DOUBLE CATALOG
200 BABES————————TWO DOUBLE CATALOGS
300 BABES————————--THREE DOUBLE CATALOGS
500 BABES————————FIVE DOUBLE CATALOGS

KRASNYA IS PROUD TO INTRODUCE AT FANTASTIC INTRODUCTORY PRICES

THE CONNOISSEUR'S COUTURE "CACHE TWO-FIVE COLLECTION" OF INTERNATIONAL ADULT FILM STARS

TWELVE PACKAGES OF 25 NUDE AND NON-NUDE POSES,
AVAILABLE ONLY IN OUR "CACHE TWO-FIVE" COLLECTION.

"CACHE TWO-FIVE"

"CACHE TWO-FIVE" IS AVAILABLE IN TWELVE (12) SPECIALLY PRICED PACKAGES OF 25 POSES IN NUDE AND NON-NUDE POSES.

PLEASE SPECIFY ON YOUR ORDERS IF YOU WANT NUDE OR NON-NUDE PACKAGES AND WHAT COLLECTION NUMBER YOU'D LIKE.

COLLECTIONS ARE NUMBERED 01-12 FOR EXAMPLE ON YOUR ORDER YOU'D WRITE:
NUDE CACHE TWO-FIVE PACKAGE 01 & 02

REMEMBER THERE ARE TWELVE (12) COMPLETELY DIFFERENT PACKAGES OF 25 BABES, THERE ARE NO DUPLICATES IN ANY OF THE 12 PACKAGES.

600 BEGUILING BEAUTIES, ALL BRAND NEW ADDITIONS TO OUR LINE AND AVAILABLE ONLY IN OUR CACHE "TWO-FIVE" PACKAGES! 300 NUDES AND 300 NON-NUDE BEAUTIES CAPTURE YOUR OWN COLLECTION OF KRASNYA'S "CACHE TWO-FIVE" SELECTIONS IN INDIVIDUALIZED PACKAGING OF 25 RARE AND EXQUISITE BREATH-TAKING BEAUTIES.

THE CONNOISSEUR'S COUTURE COLLECTION OF "CACHE TWO-FIVE" BRINGS YOU 25 BEAUTIES IN EACH "CACHE TWO-FIVE" PACKAGE FOR ONLY $12.95 PER PACKAGE

LIMITED TIME SPECIAL ***** $59.95*****

PLUS S&H FOR 6 "CACHE TWO-FIVE" PACKAGES OF THE NUDE OR NON-NUDE COLLECTIONS 150 BEAUTIES

IMAGINE 150 OF THESE EXCITING AND EXQUISITE BEAUTIES FOR A RIDICULOUSLY LOW PRICE OF
*****$59.95***** PLUS $12.00 SHIPPING AND HANDLING CHARGE.

ADD $2.00 FOR SHIPPING AND HANDLING PER "CACHE TWO-FIVE" PACKAGE ORDERED.

YOU MUST SPECIFY NUDE OR NON-NUDE PACKAGES
IF NOT SPECIFIED NON-NUDE WILL BE SHIPPED AUTOMATICALLY
ALL OF OUR NORMAL POLICIES APPLY

FOR KRASNYA CLIENTS WHO WORK THE YARDS;
HAVE WE GOT A GREAT OPPORTUNITY FOR YOU...GRAB BAG

MR. HUSTLE GRAB BAG BARGAIN DAY$

ONLY $0.25 CENT$ PER BABE
5 GRAB BAG MINIMUM PURCHASE REQUIRED
$2.00 SHIPPING AND HANDLING PER BAG
25 AWESOME BABES PER BAG AT ONLY $6.25 PER BAG
YOU MUST BUY AT LEAST 5 GRAB BAGS OR 50 GRAB BAGS.
THIS*GRAB BAG BARGAIN*** IS NOT GOING TO BE OFFERED AGAIN THIS YEAR. *$O STOCK UP NOW!***
AS YOU KNOW YOU GET AN ARRAY OF 25 GORGEOUS BABES
YOU CAN ONLY CHOOSE EITHER MALES OR FEMALES,
ALL NUDES OR BOP SAFE...THE INDIVIDUAL SELECTIONS COME FROM OUR BEST CATALOGS!!!
YOU MAY WANT TO SIT DOWN FOR THIS BONUS BARGAIN!
OUR BABES CATALOGS SPECIAL OF THE DECADE
—- 5 COLOR CATALOGS FOR $6.00 —-
—- 10 COLOR CATALOGS FOR $12.00 —-
—- 15 COLOR CATALOGS FOR $18.00 —-
—- 20 COLOR CATALOGS FOR $24.00 —-
OUR CATALOGS SPECIAL AVAILABLE WHEN YOU PURCHASE THE 5 GRAB BAG MINIMUM!
THIS PRICE INCLUDES FREE SHIPPING ON THE CATALOGS
BECAUSE OF SHIPPING TERMS ALL CATALOGS SOLD IN MULTIPLES OF 5 FOR $6.00 ONLY.
YOU CHOOSE EITHER MALE OR FEMALE CATALOGS AND IF YOU WANT NUDE OR BOP SAFE!!

From the Editor

by Paul Wright

Since we began publishing *PLN* in 1990 we have documented the horrific effects of solitary confinement and its overall goal and purpose of psychologically destroying prisoners subjected to long-term isolation. It's not a coincidence that the rise of solitary confinement in the U.S. began in the 1970s just as American courts were ending the use of corporal punishment as a form of discipline by prison officials. For example, as recently as the early 1970s prisoners were still being flogged with leather straps in Tennessee and Arkansas.

The rise of solitary confinement also coincided with the successful use of long-term isolation and sensory deprivation by the U.S. as a torture and interrogation technique against freedom fighters and anti-imperialists in Vietnam, South America and elsewhere. What began as a counter-insurgency tactic overseas is now routinely used against an estimated 80,000 U.S. prisoners on a daily basis – the vast majority of whom harbor no animus toward the government that imprisons them but are simply a little too poor, a little too mentally ill, not law abiding enough or not subservient enough to stay out of prison or, once incarcerated, to avoid being placed in solitary. As states and the federal government spent billions to build supermax prisons, it was no surprise they would be filled with whoever was available to fill them.

Colorado was among the states that invested in solitary confinement as a means of controlling – and torturing – prisoners. After decades of using long-term segregation, it appeared there was some modest hope for change when Tom Clements was appointed director of the Colorado DOC and began to curtail the use of solitary.

I met Clements at a conference on supermax prisons several years ago at Columbia Law School, where we were both speakers. He discussed his efforts to reduce the use of isolation in Colorado, which had already been moderately successful. He seemed genuinely committed to the notion of reform; therefore, it was all the more shocking and ironic that he would be killed by a prisoner recently released from solitary confinement. This month's cover story delves behind the headlines of Clements' death into the background of his killer, Evan Ebel, and the repercussions that followed.

This issue of *PLN* also includes a poem by renowned poet Maya Angelou, who passed away on May 28, 2014. In addition to being a poet she was at various times homeless, a lounge singer, a pimp, a prostitute, a victim of child rape – all of which influenced her work – and had demonstrated by the time of her death that she was much more, by serving as a powerful voice for the voiceless. Several of her poems are especially meaningful for people behind bars, such as "Prisoner" and "Caged Bird." The world will be a more somber place without her poetry but is more illuminated because of it.

Each year we spend a great deal of money sending sample copies of *PLN* to potential subscribers in the hope they will subscribe. From now until the end of the year we are running our Subscription Madness campaign, whereby people can purchase multiple one-year subscriptions to *PLN* for individuals who have not subscribed before, at reduced rates. Our hope is that after receiving *PLN* for a year, people will want to renew at our regular rates. The Subscription Madness rates do not apply to current or former subscribers – only those who have never subscribed previously. The goal is to introduce new people to *PLN*. This is a great time to purchase subscriptions for your favorite judges, legislators, corrections officials, prisoners, family members or anyone else who you think needs to learn more about the realities of mass incarceration and its impact on our nation. See the ad on p. 51.

Our fight against prison and jail censorship continues. As this issue goes to press we are awaiting a decision in our challenge to system-wide censorship of *PLN* by the Florida DOC that has been ongoing since 2009. We are currently litigating the censorship of *PLN* books by the Nevada DOC and are challenging postcard-only policies and book and magazine bans by jails in Florida, Georgia, California, Washington, Tennessee, Michigan, Arizona and Virginia. Within the past month we have successfully concluded lawsuits against jails in Wisconsin and Texas. If you are a *PLN* subscriber or purchase books from *PLN*, please let us know if you experience censorship of any *PLN* reading materials. We are dedicated to ensuring that prisoners anywhere in the U.S. can receive *PLN* and the books we distribute. All too often, prison and jail officials fail to notify us of censorship decisions; thus, we rely on our readers to keep us informed so we can take appropriate action.

Enjoy this issue of *PLN*, and please encourage others to subscribe and to participate in Subscription Madness!

In Remembrance of Maya Angelou

(April 4, 1928 – May 28, 2014)

Caged Bird

by Maya Angelou

A free bird leaps
on the back of the wind
and floats downstream
till the current ends
and dips his wing
in the orange sun rays
and dares to claim the sky.

But a bird that stalks
down his narrow cage
can seldom see through
his bars of rage
his wings are clipped and
his feet are tied
so he opens his throat to sing.

The caged bird sings
with a fearful trill
of things unknown
but longed for still
and his tune is heard
on the distant hill
for the caged bird
sings of freedom.

The free bird thinks of another breeze
and the trade winds soft through the sighing trees
and the fat worms waiting on a dawn bright lawn
and he names the sky his own.

But a caged bird stands on the grave of dreams
his shadow shouts on a nightmare scream
his wings are clipped and his feet are tied
so he opens his throat to sing.

The caged bird sings
with a fearful trill
of things unknown
but longed for still
and his tune is heard
on the distant hill
for the caged bird
sings of freedom.

Bonnie Kerness: Pioneer in the Struggle Against Solitary Confinement

by Lance Tapley

In 1986, Ojore Lutalo, a black revolutionary in Trenton State Prison – now the New Jersey State Prison – wrote to Bonnie Kerness' American Friends Service Committee (AFSC) office in Newark. His letter described the extreme isolation and other brutalities in the prison's Management Control Unit (MCU), which he called a "prison within a prison."

"I could not believe what he was telling me" about the MCU, Kerness says. She reacted by becoming "this lunatic white lady" calling New Jersey corrections officials about Lutalo.

She immediately went to work trying to stop MCU guards from harassing prisoners by waking them at 1 a.m. to make them strip in front of snarling dogs leaping for their genitals – to arbitrarily have them switch cells. She got this practice stopped.

Lutalo's letter also began to open her eyes to the torture of solitary confinement, which in the mid-1980s was just starting to spread across the country as a mass penological practice. Coordinator of the AFSC's national Prison Watch Project, Kerness had worked on prison issues since the mid-1970s. Now she became an anti-solitary confinement activist. She has been one longer and more consistently than, possibly, anyone else.

"I try not to use the word 'pioneer' lightly," says David Fathi, director of the American Civil Liberties Union's National Prison Project, "but it certainly applies to Bonnie. She did the groundwork for the progress and success we are now having."

Corey Weinstein, a California physician who also was a pioneering activist against solitary confinement, says Kerness made a huge contribution early on by bringing a human rights vision to the effort. It provided "the intellectual framework that we could grasp onto" to understand what was happening.

Reflecting on how difficult it has been for solitary confinement to be publicly recognized as torture, Stuart Grassian, a Massachusetts psychiatrist – another trailblazer who is credited with identifying long-term isolation as the cause of a devastating psychiatric syndrome – observes: "How frightening it is to see people choose not to see what's in front of them."

Many years ago Bonnie Kerness chose to see what was in front of her.

A Child Shocked by Injustice

Kerness is very slim, looks much younger than 69, and dresses stylishly – though her wardrobe is purchased at thrift shops, she says. She makes sweeping gestures when she speaks in her East Coast urban twang.

Born in Manhattan, she grew up in the Bronx and Queens. Her working-class family was not political, but at 12 years old she was shocked to see on the television news "kids my own age" being beaten for trying to integrate schools in the South. This glimpse of injustice would lead to her life's work.

When she was 14, in 1956, she began doing volunteer social work in the Lower East Side, where for the first time she met community organizers. Five years later she became one herself, traveling the South for the civil rights movement, working with the NAACP and other groups.

She portrays herself then as "a young white kid who went south with very little political understanding." But in addition to on-the-job training, she received what might be called an elite community-organizing graduate-school education: a year in the mid-1960s at Tennessee's Highlander Research and Education Center, formerly the Highlander Folk School, a legendary social justice leadership school which Rosa Parks and Martin Luther King had attended.

"I have a special feeling for my generation," Kerness says – the activist sixties' generation. "We each had something outside of ourselves" to be devoted to.

In the early 1970s she went up from

the South to New Jersey and got work with the AFSC in a housing campaign. She and others noticed that many poor people had a father or other family member in prison. This perception led to the founding of a New Jersey prisoner-rights effort that ultimately morphed into the Prison Watch Project.

In her teenage years in Queens, she had completed two years of college. She began taking courses again, eventually getting a master's in social work from Rutgers. She also became active in the women's, gay rights and anti-Vietnam War movements.

And she married and divorced. She has three biological children, an adopted child and "one of my lovers had three African-American children" she helped raise. Now she attends to seven young people she all calls her grandchildren – one of whom interrupts an interview in the tidy AFSC office in gritty downtown Newark with a call to grandma to ask if she will pay for a pizza with her credit card.

Kerness' life outside her work – half-time, theoretically, now that she's officially retired – revolves around her grandchildren.

The Discovery of Solitary Confinement

After Lutalo's letter revealed the horrors of the Trenton MCU, to better understand the control-unit phenomenon Kerness got in touch with the Committee to End the Marion Lockdown. In 1983 the United States Penitentiary in Marion, Illinois became the first prison in modern times to adopt near-total confinement of all prisoners to their cells – thus, the first supermax.

Kerness credits Nancy Kurshan, a prominent sixties' and seventies' radical and founder of the Marion anti-lockdown group, with helping guide her initial work, as did several former Marion prisoners. Kerness soon founded the AFSC's Control Unit Monitoring Project, focusing first on the 80 to 90 African-American politicized prisoners in the Trenton unit.

As she began getting letters from prisoners in other states who told stories similar to Lutalo's, she contacted organizations around the country that were beginning to be alarmed by the rise of these draconian units. This new kind of imprisonment seemed so bizarre, "People weren't sure what they were looking at," Kerness says.

And while she worked to build opposition to solitary confinement, she saw it rapidly become common. Only a handful of sizeable control units existed in the mid-1980s, but fewer than 15 years later more than 40 states had them. Many were large, free-standing supermax prisons.

Kerness also watched in dismay as control units and supermaxes became dumpsters into which society threw the mentally ill. The arbitrariness of the supermax regimen became clear. "You're there because we want you there," she says of the ultimate criterion for who is put into isolation.

As citizen campaigns specifically against control units began popping up spontaneously, Kerness made connections with them and helped them – in California, Wisconsin, Illinois, Massachusetts. In 1994, she helped bring 40 activists from around the country to the AFSC offices in Philadelphia to found the National Campaign to Stop Control Unit Prisons, which held public meetings on solitary confinement in several states.

Bonnie Kerness (cont.)

Solitary: First Among Other Issues

Kerness has been involved with many other prison issues, including sexual abuse, restraint chairs and beds, the overuse of stun guns and pepper spray, and prison privatization.

Her work has been particularly devoted to solitary confinement, she says, because "we're so well known on this issue." Her daily duties include answering mail and telephone calls, sending out reams of requested material, contacting the news media, mentoring student interns, giving talks to college and community groups, and writing articles and reports.

Her AFSC reports include, as editor or author: "The Prison Inside the Prison: Control Units, Supermax Prisons, and Devices of Torture" (with Rachael Kamel, 2003); "Survivors Manual: Surviving in Solitary" (4th Printing, 2008); and "Torture in United States Prisons: Evidence of Human Rights Violations" (Second Edition, 2011).

Although she praises several Quaker activists who encouraged her, she expresses frustration with the AFSC for starting national anti-solitary confinement campaigns only to shut them down.

After four years the AFSC unaccountably "pulled the plug," she says, on the National Campaign to Stop Control Unit Prisons. Similarly, after a well-attended "StopMAX" conference in Philadelphia in 2008, the substantial national effort that was supposed to grow out of it never materialized.

An official at the AFSC's national headquarters in Philadelphia, Clinton Pettus, says the organization, "like most nonprofits, went through a period of financial constraint a few years ago," and was forced "to do more with less" in its solitary confinement work. The result: "We partner with like-minded groups and individuals to form state-based coalitions that build grassroots campaigns."

Kerness also generally faults the national organizations involved with prison reform for not making better connections between the American domestic prison system and the American foreign war machine. The organizations don't recognize, she says, that there's a worldwide class and racist oppression coming from the top of the economic pyramid.

"The people who run the country own the means of production," she says, and this rich elite is ultimately responsible for the "war against the people here" – which she sees as a campaign of social control – and American wars against the people of other countries. Both here and abroad, the primary targets are black and brown people. [*Ed. note*: Plus poor people in general].

A Partner in Activism

Kerness began helping Ojore Lutalo in 1986, but he has been, during the many years he spent on the inside, and since 2009, when he was released from prison, a professional partner in conveying to the world the horrors of solitary confinement.

He has vast knowledge of the subject. He spent 22 of his 28 years behind bars in isolation in the Trenton MCU. Now 66 – strong-looking, with a shaved head – he volunteers twice a week in the AFSC Newark office at a desk across a small room from Kerness. And he speaks beside her when she goes to colleges and community groups.

Lutalo got in touch with Kerness to protest what he says were the prison's "corrupt" practices, including inadequate food and medical care and arbitrary denials of visitors. But the corruption also was more fundamental. Lutalo spent so many years in solitary, he says in an interview, not because he broke prison rules but for "entertaining political thoughts the administration didn't approve of."

He presents proof, showing a 2008 letter from prison officials stating he was being kept in the MCU because his "radical views and ability to influence others poses a threat to the orderly operation of this Institution." Serving time for armed robbery and assault with intent to kill, he had been a member of the Black Liberation Army, an underground, revolutionary offshoot of the Black Panthers.

Kerness has written of Lutalo: "During the quarter century that we monitored Ojore Lutalo in isolation, he was never assaulted either physically or chemically. The 'no-touch' torture he endured consisted of sleep deprivation, screeching sounds, extreme silence, extreme cold and heat, intentional situational placement, humiliation – a systematic attack

on all human stimuli."

"The goal was to break me psychologically," Lutalo says.

He didn't break. But maintaining sanity during decades of solitary confinement is exceedingly difficult, he says. He saw many prisoners "wiped out" by the isolation. He says his political commitment kept him sane. His creation of political art – collages that combine drawings and newspaper clippings – was especially helpful.

With Kerness' assistance, Lutalo's plight and the conditions at the MCU became known. Reporters interviewed him; documentary films appeared; a class-action lawsuit was filed on behalf of the unit's African-American prisoners. In 1995 the lawsuit was settled, and the court appointed a special master to review each prisoner's case.

Eventually, after years, most prisoners were released into the prison's general population. Lutalo spent several years in general population, but was put back into the MCU because, Kerness says an official told her, of a request by the federal Department of Homeland Security. He was released from isolation only when his prison term ended.

A Harsh State

Although Kerness' work has often been on the national stage, the Trenton MCU has continued to be a major concern. The state's prison system has "always been one of the toughest" on prisoners, she says, and the MCU is still being used "unconscionably" for mentally ill prisoners. But, she adds, it's difficult to know what's going on in it and anywhere else in "an extremely closed" New Jersey system.

As if to prove that point, when the New Jersey Department of Corrections is asked about the number of prisoners held in solitary confinement, a spokesman replies by email: "New Jersey does not utilize solitary confinement in any of its prisons."

This is a common response from corrections departments, since "solitary confinement" is not a bureaucratic phrase. Further inquiry produces an admission that "administrative segregation (ad seg) ... is utilized as a punishment for inmates and entails the loss or reduction of certain privileges." The spokesman, Matthew Schuman, adds that "the vast majority of inmates in ad seg are double-bunked. Even those in single cells have opportunities to interact with other inmates, so ad seg is distinctly different from solitary confinement."

Kerness, however, counts over 329 ad seg beds at the Trenton prison that "we're pretty sure are isolation cells." In addition, she's "positive" there are 96 solitary confinement cells in the MCU. Ad seg beds in four other prisons total 994, she says. These may or may not be doubled-bunked, but they're "locked down." Then there are special needs and protective custody housing units about which, she says, little is known.

Jean Ross, a volunteer prisoners' rights attorney based in Princeton, agrees with Kerness that New Jersey's prison system is unhelpful in providing information, isolates many prisoners and is a harsh system.

Ross has specifically challenged, in a class-action lawsuit on behalf of prisoners, the conditions in the "falling apart" West Compound of the 178-year-old Trenton facility. Ross says it has poor ventilation, excessive heat and cold, leaking pipes, rodent and insect infestations, and fire-safety deficiencies, among other problems.

Kerness also was involved in bringing to light the particularly vicious conditions that alleged gang members suffered in a "high risk" Security Threat Group Management Unit of Newark's huge Northern State Prison. Reports of the "use of physical, chemical, and psychological abuse" came to her "during the entire 12 years" the gang unit remained open, she writes in "Torture in United States Prisons."

The unit was shut down in 2010 after prisoner Omar Broadway, a Bloods gang member, used a camera smuggled in by a guard to secretly film abusive treatment of prisoners. His video, with scenes of guards pepper-spraying and beating prisoners, was shown at the 2008 Tribeca Film Festival and, in 2010, on HBO. Kerness says many of the Northern State prisoners were transferred to ad seg units in other New Jersey prisons.

The Future of Anti-solitary Work

Kerness welcomes the embrace in recent years of the anti-solitary cause by mainstream groups such as the National Religious Campaign Against Torture – "they're doing dynamite." She believes

Bonnie Kerness (cont.)

describing solitary confinement as torture is the angle to accentuate. She has written that American legitimization of torture presents the country with "a spiritual crisis."

She sees welcome developments, too, in law schools, especially with their students. She hopes "we will begin to see lawyers with a more progressive" bent. At present, progressive lawyers are "still a very small group."

But most important to the anti-solitary battle, she says, are "the people inside," such as Lutalo, who stimulated her activism.

As for her future, "I wouldn't know how else to live," Kerness says, other than a life of activism, despite the slowness of change. Years ago, "I almost did give it up because I was alone." That was "right at the moment I met Ojore."

Hers has been a difficult crusade, too, because it's "always been a struggle financially." To be an activist for social change "costs money personally" – those collect calls received at home from prisoners, for example.

In a telephone interview, Ross, who has worked with Kerness on prison issues for 10 years, sums her up: "She's very smart. She's very articulate. She writes very well because she thinks very well. She has a passion for justice. She's not afraid to confront the most difficult problems."

Later, by email, Ross adds: "Because she has persisted in this difficult and stressful work for so long, she brings the wisdom of memory."

Kerness says she's not discouraged, but she's no Pollyanna about ending widespread solitary confinement. During her decades of work on prison issues she saw the American prison system become ever more repressive. "I can only hope," she says of the future.

Whatever the future, "I will spend as much time as I can" working on these issues. "If there's activism in you, you do it until you drop."

Lance Tapley is a Maine-based freelance writer. This article was first published by Solitary Watch (www.solitarywatch.com) in November 2012; it is reprinted with permission.

Preliminary Injunction Entered in PLN Censorship Suit Against Ventura County, California

On May 29, 2014, in a significant victory for the First Amendment rights of prisoners and those who correspond with them, the U.S. District Court for the Central District of California granted a preliminary injunction barring Ventura County's jail system from enforcing a "postcard only" policy that prohibits prisoners from receiving mail in envelopes.

"We are very pleased the judge is upholding the constitution," said *Prison Legal News* editor Paul Wright.

The preliminary injunction was the latest in a series of successful legal actions filed by PLN challenging unduly restrictive mail policies implemented in jails nationwide, which courts have repeatedly found are not justified by a rational penological purpose. [See: *PLN*, Jan. 2014, p.42; Nov. 2013, p.24; Sept. 2013, p.40].

After considering the parties' arguments, the federal district court found that Ventura County's "restrictive mail policies violate [PLN's] First Amendment right to communicate with inmates," and that the jail system's "practice of rejecting mail without providing notice and an opportunity to appeal" violates the Fourteenth Amendment.

The court ordered the defendants to "suspend enforcement of the postcard-only policy for incoming mail within 21 days" and "give senders of rejected mail written notice and an opportunity to appeal the rejection decision." Further, the jail "shall not reject mail for containing 'suggestive' content, Xeroxed material, or subscription order forms."

The district court noted that "[p]ublishers have a First Amendment right to communicate with prisoners by mail," citing *Prison Legal News v. Lehman*, 397 F.3d 692 (9th Cir. 2000).

In analyzing PLN's motion for a preliminary injunction, the court applied the test set forth in *Turner v. Safley*, 482 U.S. 78 (1987), examining four factors to determine whether a regulation is "reasonably related to legitimate penological interests."

Although Ventura County cited security concerns to justify its postcard-only policy, the district court wrote that "our deference to the administrative expertise and discretionary authority of correctional officials must be schooled, not absolute."

The court noted the county jail system had allowed prisoners to receive mail in envelopes until 2011, and had presented no evidence indicating it could not do so again because, as with letters, it still had to inspect postcards for contraband. Further, most other federal, state and county correctional facilities allow prisoners to receive mail in envelopes without compromising institutional security.

The district court held the county had not met its burden to show a rational basis for its postcard-only policy in light of the policy's obvious impact on PLN's First Amendment rights, citing *Prison Legal News v. Columbia County*, 942 F.Supp.2d 1068 (D. Or. 2013) [*PLN*, June 2013, p.42].

In granting the preliminary injunction, the court determined, based upon the evidence presented, that PLN was likely to prevail on the merits in the case – a clear victory for the First Amendment rights of not only prisoners and publications such as PLN, but also for the free-flow of information and correspondence between people who are incarcerated and their friends, family members and others on the outside.

PLN is represented by the San Francisco law firm of Rosen Bien Galvan & Grunfeld, LLP and attorney Brian Vogel. The case remains pending. See: *Prison Legal News v. County of Ventura*, U.S.D.C. (C.D. Cal.), Case No. 2:14-cv-00773-GHK-E.

Additional source: *Ventura County Star*

Stay in touch with a good Magazine!
Get **5** Full One Year Subscriptions **ONLY $20!** + $4.99 p&h

Check your **5** magazines and underline three backup choices (in case of unavailability) **"BEST DEAL ON THE POUND!"**

July 4 Special!
July 1-Sep 31, 2014
*1 **FREE** Subsciption*
per paid 5 for20 order!!
Check 6 magazines instead of 5!

- ☐ ALLURE (12)
- ☐ AMERICAN PHOTO (6)
- ☐ ARTHRITIS SELF MANAGEMENT (6)
- ☐ ARTHRITIS TODAY (6)
- ☐ AUTOMOBILE (12)
- ☐ BACKPACKER (9)
- ☐ BETTER HOMES & GARDENS (12)
- ☐ BLACK ENTERPRISE (12)
- ☐ BOATING (10)
- ☐ BOATING WORLD (9)
- ☐ BON APPETIT (12)
- ☐ BOWHUNT AMERICA (6)
- ☐ BOWHUNTING WORLD (9)
- ☐ BRIDAL GUIDE (6)
- ☐ CABELA'S OUTFITTER JOURNAL (6)
- ☐ CAR & DRIVER (12)
- ☐ CHARISMA (12)
- ☐ COMPLEX MAGAZINE (6)
- ☐ CONDE NAST TRAVELER (12)
- ☐ COSMOPOLITAN (12)
- ☐ CRUISING WORLD (12)
- ☐ CYCLE WORLD (12)
- ☐ DETAILS - FASHION (10)
- ☐ DIABETES SELF MANAGEMENT (6)
- ☐ DIGITAL PHOTO (7)
- ☐ DIRT RIDER (12)
- ☐ EBONY (12)
- ☐ ELLE (12)
- ☐ ELLE DECOR (10)
- ☐ ENTREPRENEUR (12)
- ☐ ESQUIRE (10)
- ☐ EVERY DAY WITH RACHAEL RAY (10)
- ☐ FAMILY CIRCLE (12)
- ☐ FAMILY FUN (10)
- ☐ FAST COMPANY (10)
- ☐ FIELD & STREAM (12)
- ☐ FITNESS (10)
- ☐ FLORIDA SPORT FISHING (6)
- ☐ FLYING (12)
- ☐ FOUR WHEEL & OFF ROAD (12)
- ☐ FOUR WHEELER (12)
- ☐ FREESKIER (6)
- ☐ GLAMOUR (12)
- ☐ GOLF DIGEST (12)
- ☐ GOLF TIPS (7)
- ☐ GOLFWEEK (38)
- ☐ GOOD HOUSEKEEPING (12)
- ☐ HARPERS BAZAAR (10)
- ☐ HOT BIKE (12)
- ☐ INC (12)
- ☐ INSTRUCTOR K - 8 (6)
- ☐ ISLANDS MAGAZINE (8)
- ☐ LATINA (10)
- ☐ LIFE EXTENSION (13)
- ☐ LOG HOME LIVING (9)
- ☐ LUCKY (10)
- ☐ MARIE CLAIRE (12)
- ☐ MARLIN (8)
- ☐ MEN'S FITNESS (10)
- ☐ MEN'S JOURNAL (12)
- ☐ MIDWEST LIVING (6)
- ☐ MINISTRY TODAY (6)
- ☐ MORE (10)
- ☐ MOTOR TREND (12)
- ☐ MOTORCYCLIST (12)
- ☐ NATURAL HEALTH (6)
- ☐ NYLON GUYS (6)
- ☐ NYLON MAGAZINE (10)
- ☐ OK! MAGAZINE (52)
- ☐ OLD HOUSE JOURNAL (8)
- ☐ OUTDOOR LIFE (12)
- ☐ OUTDOOR PHOTOGRAPHER (11) NR*
- ☐ OUTSIDE (12)
- ☐ PARENTS (12)
- ☐ PLANE & PILOT (12) NR*
- ☐ POPULAR PHOTOGRAPHY (12)
- ☐ POPULAR SCIENCE (12)
- ☐ PREDATOR EXTREME (6)
- ☐ RED BULLETIN MAGAZINE (12)
- ☐ REDBOOK (11)
- ☐ ROAD & TRACK (10)
- ☐ ROLLING STONE (26)
- ☐ SALT WATER SPORTSMAN (10)
- ☐ PARENT & CHILD (8)
- ☐ SELF (12)
- ☐ SEVENTEEN (10)
- ☐ SHAPE (12)
- ☐ SIEMPRE MUJER (6)
- ☐ SKI MAGAZINE (6)
- ☐ SNOWBOARD (4)
- ☐ SPORT RIDER (10)
- ☐ TEEN VOGUE (10)
- ☐ TENNIS (6)
- ☐ THE ATLANTIC MONTHLY (10)
- ☐ TIMBER HOME LIVING (6)
- ☐ TOWN & COUNTRY (10)
- ☐ UPTOWN (6)
- ☐ US WEEKLY (52)
- ☐ VERANDA (6)
- ☐ W MAGAZINE (10)
- ☐ WATERFOWL & RETRIEVER (2)
- ☐ WEIGHT WATCHERS (6)
- ☐ WHITETAIL JOURNAL (6)
- ☐ WIRED (12)
- ☐ WOMAN'S DAY (12)
- ☐ WORKING MOTHER (6)
- ☐ YACHTING (12)
- ☐ PREDATOR EXTREME (6)
- ☐ YOGA JOURNAL (9)

OK TO COPY

** No Renewal*

"Tell your Friends and Families!"

****DUE TO PUBLISHER PROCESSING TIMES, WE WILL NOT UNDER ANY CIRCUMSTANCES CHECK WITH ANY PUBLISHER ABOUT THE STATUS OF ANY MAGAZAINE SUBSCRIPTION UNTIL AFTER 90 DAYS HAVE PASSED FROM THE DATE OF PROCESSING YOUR ORDER! NO EXCEPTIONS!****

Name and Inmate # (please print, maximum 24 characters):
Address:
City: State: Zip:

P.O. Box 2063, Fort Walton Beach, FL 32549
www.InmateMagazineService.com

Allow 6-8 weeks for delivery. Pay by Check, Money Order or ***Order Online*** and use Credit Card or PayPal. Keep Address Short!

Stay in touch with a good Magazine!
Get **5** Full One Year Subscriptions **ONLY $20!** + $4.99 p&h

Check your **5** magazines and underline three backup choices (in case of unavailability) **"BEST DEAL ON THE POUND!"**

July 4 Special!
July 1-Sep 31, 2014
*1 **FREE** Subsciption*
per paid 5 for20 order!!
Check 6 magazines instead of 5!

- ☐ ALLURE (12)
- ☐ AMERICAN PHOTO (6)
- ☐ ARTHRITIS SELF MANAGEMENT (6)
- ☐ ARTHRITIS TODAY (6)
- ☐ AUTOMOBILE (12)
- ☐ BACKPACKER (9)
- ☐ BETTER HOMES & GARDENS (12)
- ☐ BLACK ENTERPRISE (12)
- ☐ BOATING (10)
- ☐ BOATING WORLD (9)
- ☐ BON APPETIT (12)
- ☐ BOWHUNT AMERICA (6)
- ☐ BOWHUNTING WORLD (9)
- ☐ BRIDAL GUIDE (6)
- ☐ CABELA'S OUTFITTER JOURNAL (6)
- ☐ CAR & DRIVER (12)
- ☐ CHARISMA (12)
- ☐ COMPLEX MAGAZINE (6)
- ☐ CONDE NAST TRAVELER (12)
- ☐ COSMOPOLITAN (12)
- ☐ CRUISING WORLD (12)
- ☐ CYCLE WORLD (12)
- ☐ DETAILS - FASHION (10)
- ☐ DIABETES SELF MANAGEMENT (6)
- ☐ DIGITAL PHOTO (7)
- ☐ DIRT RIDER (12)
- ☐ EBONY (12)
- ☐ ELLE (12)
- ☐ ELLE DECOR (10)
- ☐ ENTREPRENEUR (12)
- ☐ ESQUIRE (10)
- ☐ EVERY DAY WITH RACHAEL RAY (10)
- ☐ FAMILY CIRCLE (12)
- ☐ FAMILY FUN (10)
- ☐ FAST COMPANY (10)
- ☐ FIELD & STREAM (12)
- ☐ FITNESS (10)
- ☐ FLORIDA SPORT FISHING (6)
- ☐ FLYING (12)
- ☐ FOUR WHEEL & OFF ROAD (12)
- ☐ FOUR WHEELER (12)
- ☐ FREESKIER (6)
- ☐ GLAMOUR (12)
- ☐ GOLF DIGEST (12)
- ☐ GOLF TIPS (7)
- ☐ GOLFWEEK (38)
- ☐ GOOD HOUSEKEEPING (12)
- ☐ HARPERS BAZAAR (10)
- ☐ HOT BIKE (12)
- ☐ INC (12)
- ☐ INSTRUCTOR K - 8 (6)
- ☐ ISLANDS MAGAZINE (8)
- ☐ LATINA (10)
- ☐ LIFE EXTENSION (13)
- ☐ LOG HOME LIVING (9)
- ☐ LUCKY (10)
- ☐ MARIE CLAIRE (12)
- ☐ MARLIN (8)
- ☐ MEN'S FITNESS (10)
- ☐ MEN'S JOURNAL (12)
- ☐ MIDWEST LIVING (6)
- ☐ MINISTRY TODAY (6)
- ☐ MORE (10)
- ☐ MOTOR TREND (12)
- ☐ MOTORCYCLIST (12)
- ☐ NATURAL HEALTH (6)
- ☐ NYLON GUYS (6)
- ☐ NYLON MAGAZINE (10)
- ☐ OK! MAGAZINE (52)
- ☐ OLD HOUSE JOURNAL (8)
- ☐ OUTDOOR LIFE (12)
- ☐ OUTDOOR PHOTOGRAPHER (11) NR*
- ☐ OUTSIDE (12)
- ☐ PARENTS (12)
- ☐ PLANE & PILOT (12) NR*
- ☐ POPULAR PHOTOGRAPHY (12)
- ☐ POPULAR SCIENCE (12)
- ☐ PREDATOR EXTREME (6)
- ☐ RED BULLETIN MAGAZINE (12)
- ☐ REDBOOK (11)
- ☐ ROAD & TRACK (10)
- ☐ ROLLING STONE (26)
- ☐ SALT WATER SPORTSMAN (10)
- ☐ PARENT & CHILD (8)
- ☐ SELF (12)
- ☐ SEVENTEEN (10)
- ☐ SHAPE (12)
- ☐ SIEMPRE MUJER (6)
- ☐ SKI MAGAZINE (6)
- ☐ SNOWBOARD (4)
- ☐ SPORT RIDER (10)
- ☐ TEEN VOGUE (10)
- ☐ TENNIS (6)
- ☐ THE ATLANTIC MONTHLY (10)
- ☐ TIMBER HOME LIVING (6)
- ☐ TOWN & COUNTRY (10)
- ☐ UPTOWN (6)
- ☐ US WEEKLY (52)
- ☐ VERANDA (6)
- ☐ W MAGAZINE (10)
- ☐ WATERFOWL & RETRIEVER (2)
- ☐ WEIGHT WATCHERS (6)
- ☐ WHITETAIL JOURNAL (6)
- ☐ WIRED (12)
- ☐ WOMAN'S DAY (12)
- ☐ WORKING MOTHER (6)
- ☐ YACHTING (12)
- ☐ PREDATOR EXTREME (6)
- ☐ YOGA JOURNAL (9)

OK TO COPY

** No Renewal*

"Tell your Friends and Families!"

****DUE TO PUBLISHER PROCESSING TIMES, WE WILL NOT UNDER ANY CIRCUMSTANCES CHECK WITH ANY PUBLISHER ABOUT THE STATUS OF ANY MAGAZAINE SUBSCRIPTION UNTIL AFTER 90 DAYS HAVE PASSED FROM THE DATE OF PROCESSING YOUR ORDER! NO EXCEPTIONS!****

Name and Inmate # (please print, maximum 24 characters):
Address:
City: State: Zip:

P.O. Box 2063, Fort Walton Beach, FL 32549
www.InmateMagazineService.com

Allow 6-8 weeks for delivery. Pay by Check, Money Order or ***Order Online*** and use Credit Card or PayPal. Keep Address Short!

Oregon Parole Board: "Don't Have to Explain Nothing to Nobody"

For at least the fifth time, a state court has ordered the Oregon Board of Parole and Post-Prison Supervision (Board) to provide more than boilerplate reasons for its decisions. There is little reason to believe, however, that the Board has any intention of complying.

Oregon law requires the Board to "state in writing the detailed bases of its decisions." The Board is exempt, however, from a statutory requirement to make findings of fact and conclusions of law.

The Oregon Court of Appeals reversed a Board decision in 1997, holding that despite the statutory exemption, the Board was required to "make findings of fact and provide an explanation as to why its findings lead to the conclusions that it reaches." See: *Martin v. Board of Parole*, 147 Ore. App. 37, 934 P.2d 626 (Or. Ct. App. 1997). The Oregon Supreme Court affirmed, holding that the Board must provide "some kind of an explanation connecting the facts of the case (which would include the facts found, if any) and the result reached." See: *Martin v. Board of Parole*, 327 Ore. 147, 957 P.2d 1210 (Or. 1998). This is commonly referred to as "the substantial-reason requirement."

In 1999, the Board asked the Oregon legislature to overrule *Martin*. The proposed law change expressly relieved the Board of a duty to "explain how [its] order is supported by the facts and the evidence in the record."

The Oregon judiciary, however, did not appreciate such overt disrespect for its authority. James Nass, appellate legal counsel for the Oregon Supreme Court and Court of Appeals, opposed the Board's proposed legislation, SB 401.

As the bill advanced through the legislature, the judiciary's opposition grew "more vociferous." Nass called the bill "bad public policy" and warned it "will decrease the quality of judicial review" and "increase the work load of the appellate courts."

He pulled no punches. "There is nothing subtle about this bill," he said. "The bill starkly presents this policy issue: Should any governmental agency be exempt from explaining how its decisions are supported by the evidence in the record? Apparently these Boards would say yes. Under SB 401, their motto would be: 'We're the Board. We don't have to explain nothing to nobody.'"

Nass continued: "According to these Boards, they shouldn't have to explain their decisions to inmates whose fates lie in their hands. No problem there, of course, because few people have sympathy for criminals. But, this bill also means that the Boards would not have to explain their decisions to victims or victims' families. They would not have to explain their decisions to the media. They wouldn't have to explain their decisions to any legislator who might be interested in a particular case. And, they wouldn't have to explain their decisions to the courts to aid in judicial review of those decisions."

In the end, a compromise was struck between Oregon's Attorney General, the Chief Justice of the Oregon Supreme Court and the judge who authored the *Martin* decision. The proposed bill was gutted and replaced with a single sentence that was added to ORS 144.335(3): "The order of the board need not be in any special form, and the order is sufficient for purposes of judicial review if it appears that the board acted within the scope of the board's authority."

Apparently believing the legislation allowed it to conduct business as usual, the Board continued to offer only boilerplate reasons for its parole decisions.

On December 28, 2007, the Oregon Supreme Court again reminded the Board of its responsibility under *Martin* – i.e., to set forth in its orders the reasoning that leads from the facts it has found to the conclusions it draws from those facts. See: *Gordon v. Board of Parole*, 343 Ore. 618, 175 P.3d 461 (Or. 2007).

Just fourteen days later, a trial court granted a victim's request to vacate a decision by the Board to release the man imprisoned for raping her. Relying in part on *Gordon*, the court held that the Board's "bare conclusions are simply not enough... the Board's findings, reasoning, and conclusions must demonstrate that it acted in a rational, fair, and principled manner, and not on an arbitrary or ad hoc basis."

Steven R. Powers, then Board Chair-

man and now Deputy General Counsel to Oregon Governor John Kitzhaber, defended the Board's standard language in its decisions, claiming that detailed findings could give prisoners more ammunition for appeals.

Bronson James, the public defender who represented the prisoner whose release was vacated following a legal challenge by the rape victim, said that offenders and their attorneys shared the objections voiced by the victim and her lawyer.

"We have been complaining for decades with nobody taking us seriously," James said in August 2008.

He argued then that the Board should "issue detailed rulings that explain why it denied parole rather than the typical two-sentence decision that includes nothing but boilerplate reasoning."

The Board's response, however, indicated that it still took the position that it didn't "have to explain nothing to nobody."

On November 18, 2009, the Oregon Court of Appeals again reversed a parole decision, finding the Board had violated the substantial-reason requirement. Citing the same boilerplate language that was found in every Board order, the appellate court said, "the board has provided only a conclusion: 'Based on the doctor's report and diagnosis, coupled with all the information that the board is considering,' it is reasonably probable that petitioner would violate his parole or a law.... That is an announcement, not an explanation. It gives us nothing to judicially review. Our duty is to evaluate the board's logic, not to supply it." See: *Castro v. Board of Parole*, 232 Ore. App. 75, 220 P.3d 772 (Or. Ct. App. 2009).

Of course, nothing changed – the Board did not make even the slightest variation in its standard language.

On September 5, 2013, the Court of Appeals once again held that the Board is required "to provide an inmate with some explanation of the rationale for concluding that" release on parole should be postponed.

Rejecting the Board's argument that the 1999 "*Martin* amendment" exempts it from the substantial-reason requirement, the appellate court concluded that the Board's "reading of the statute runs counter to its text, context, and legislative history."

Following *Martin*, *Gordon* and *Castro*, the Court of Appeals wrote "that the board used the same boilerplate wording rejected in *Castro*," and held "it is apparent that the board's order references the contents of the entire record, as opposed to particular parts of the record that were pivotal." As such, "the order ... offers a mere conclusion and does not permit us 'to determine if the board's findings, reasoning, and conclusions demonstrate that it acted in a rational, fair, and principled manner in deciding to defer petitioner's parole release.'" One appellate judge dissented from the majority opinion. See: *Jenkins v. Board of Parole*, 258 Ore. App. 430, 309 P.3d 1115 (Or. Ct. App. 2013).

Given that the Board has repeatedly ignored two state Supreme Court decisions, a previous Court of Appeals decision and a trial court order on this very issue, there is little reason to believe that yet another judicial ruling is going to alter its behavior.

Apparently the rule of law and the authority of the courts mean little when you're the Board and believe you "don't have to explain nothing to nobody."

However, the Oregon Supreme Court, which granted review in *Jenkins* on January 30, 2014, may have the final word regarding the Board's reasoning for its decisions.

Prisoners Unlikely to Benefit from New, Highly Effective Hepatitis C Treatment

by Greg Dober

Hepatitis C (HCV) is a blood-borne virus that is typically spread through intravenous drug use (i.e., sharing needles), tattooing with non-sterile needles, and sharing razors, toothbrushes, nail clippers or other hygiene items that may be exposed to blood. It is often a chronic disease and, if left untreated, can lead to severe liver damage.

Recent good news in the battle against HCV, in the form of two new drugs that are highly effective in eliminating the virus, is tempered by the fact that the companies that produce the drugs have priced them at $60,000 to $80,000 per 12-week course of treatment. This high cost prices the medications beyond the reach of most prison and jail systems – which is especially troubling considering that a substantial number of prisoners are infected with HCV.

The new drugs, approved by the FDA in late 2013, are simeprevir, branded as Olysio and manufactured by Janssen Therapeutics (a Johnson & Johnson company), and sofosbuvir, branded as Sovaldi and manufactured by Gilead Sciences. Based on clinical trials, Sovaldi has an 84-96% cure rate while Olysio has an 80-85% cure rate. Both drugs are used in combination with other HCV anti-viral medications, peginterferon alfa and/or ribavirin, and their cure rates vary depending on HCV genotype – specific variations of the virus.

Unlike the current treatments for hepatitis C, Olysio and Sovaldi have fewer side effects, greater efficacy and reduce treatment durations by up to 75% (12 to 24 weeks rather than 48 weeks). In addition, the new drugs are administered orally rather than by injections. However, given tight corrections budgets and the high cost of the new HCV medications – Sovaldi costs approximately $1,000 per pill – getting them into prisons and jails ranges from difficult to impossible.

According to the Centers for Disease Control, "The prevalence of HCV infection in prison inmates is substantially higher than that of the general U.S. population. Among prison inmates, 16%-41% have ever been infected with HCV, and 12%-35% are chronically infected, compared to 1%-1.5% in the uninstitutionalized U.S. population."

Josiah Rich, director of the Center for Prisoner Health and Human Rights at the Miriam Hospital Immunology Center in Rhode Island, noted that "With more than 10 million Americans cycling in and out of prisons and jails each year, including nearly one of every three HCV-infected people, the criminal justice system may be the best place to efficiently identify and cure the greatest number of HCV-infected people."

Despite the need for improved drugs to treat prisoners with hepatitis C, the cost of the new medications is prohibitive for prisons and jails. Rich estimated that treating all prisoners currently infected with HCV would cost $33 billion.

"I agree with the premise that prisons are an important point to address this problem," said Dr. Joe Goldenson, director of health services for San Francisco's jail system. "But this has to be addressed from an overall strategy of public health and the funding has to come out of that system. Corrections is not a place that can handle these costs."

Since 2011, spending on HCV treatment in correctional settings has climbed rapidly. The increase has been attributed to the introduction of two HCV drugs produced by pharmaceutical companies Merck and Vertex. However, with the recent introduction of the new and more effective treatments, costs are expected to rise again.

The federal Bureau of Prisons (BOP), which houses approximately 216,800 prisoners, may have an easier time affording the drugs. Through a U.S. Department of Veterans Affairs program, the BOP will receive a 44% discount on Olysio and Sovaldi. In February 2014, the federal prison system began making the new HCV medications available to some prisoners.

According to a May 2014 BOP clinical practice guidelines report, titled "Interim Guidance for the Management of Chronic Hepatitis C Infection," the use of sofosbuvir and simeprevir in combination with peginterferon and/or ribavirin is the "preferred treatment regimen." State prisoners, however, may not be as fortunate.

In Washington State, prison officials have established a committee of healthcare providers that meets twice a month to review HCV cases for treatment eligibility with the new drugs. In April 2014, Kevin Bovenkamp, the Washington DOC's assistant secretary for health services, said that of ten cases reviewed by the committee, none were approved for treatment.

Dr. Lara Strick, an infectious disease specialist for the Washington DOC, told a reporter from *The News Tribune* that HCV is a progressive disease and not all prisoners need immediate treatment. She also noted that it might be better for certain patients to wait until newer treatments, with even fewer side effects, are available.

However, it is likely that future HCV treatments that are more effective and have fewer side effects than Olysio and Sovaldi will demand an even higher price, and patients who are currently denied treatment due to fiscal constraints will eventually face the same cost-based roadblocks in the future. On the other hand, additional HCV drugs may lead to greater competition and thus lower prices. Merck, for example, is currently developing a two-drug hepatitis C regimen that reportedly has a 98% cure rate.

Dr. Strick acknowledged that future pricing of new HCV treatments may dictate whether the epidemic of hepatitis C among prisoners can be eradicated as a public health issue.

Since 2010, before Olysio and Sovaldi were available, the cost of HCV treatment for the Washington DOC had more than doubled by 2013 – rising from approximately $834,000 per year to $1.8 million annually. The DOC is trying to determine if a discount from the manufacturers of the new HCV drugs can be negotiated. Gilead

HCV Treatment (cont.)

has defended its pricing for Sovaldi, citing the drug's potential to prevent longer-term costs resulting from HCV such as liver transplants and treatment for cirrhosis or cancer.

In Illinois, prison officials estimate there are approximately 100 to 150 prisoners afflicted with HCV in each of the state's prisons. They acknowledge that not every HCV-positive prisoner will receive the new drugs; consideration will be given to severity of medical condition, length of sentence and overall health of each prisoner. Still, state corrections officials indicated that even if one-third of the prisoners with HCV receive the new medications, treatment costs would increase to $61 million annually from the current $8 million.

Other states like New York and Wisconsin are dispensing the new HCV drugs on a limited case-by-case basis. A spokesperson for the New York DOC told the *Wall Street Journal* that nearly 60 prisoners with the most serious cases of HCV had begun treatment with the new drugs. Oregon is reportedly providing the new medications to HCV-positive prisoners with a life expectancy of under one year.

Although prison officials must provide adequate healthcare to prisoners with serious medical needs, as required by the Eighth Amendment pursuant to *Estelle v. Gamble*, 429 U.S. 97 (1976), failing to supply the new HCV drugs might not be considered deliberate indifference. Many of the court decisions regarding prison healthcare have required corrections officials to provide adequate treatment that meets minimal constitutional standards – which is not necessarily the best care available. If the new drugs become the community standard of care for hepatitis C, though, the argument can be made that that standard should equally apply to prisoners.

Critics of making the new HCV medications available to prisoners argue the drugs may not be covered under health insurance plans for people who are not incarcerated; thus, prisoners would receive better treatment than those in the general population. Yet this ignores the reality that the less costly and older treatments for HCV currently available to prisoners are routinely denied. [See: *PLN*, July 2013, p.16; March 2013, p.36].

Prison medical officials can deny HCV treatment for a variety of reasons, including the length of a prisoner's sentence, if they have recently used or been found in possession of illegal drugs or alcohol, or have recently received tattoos. Thus, even should Olysio and Sovaldi become available in prison systems, it is unlikely that many prisoners will actually receive the costly medications.

Gilead has been criticized for pricing Sovaldi based on a scale relative to a country's per-capita income. For example, the drug is offered in Egypt at a 99% discount to the U.S. list price, resulting in treatment costs of approximately $900. Therefore, a U.S. nongovernmental organization based in Egypt could more readily afford to treat Egyptian prisoners using Sovaldi than state prison officials could treat prisoners in the U.S. The company fails to take into account that many of the people infected with HCV in the United States live below the federal poverty level or are incarcerated, on Medicaid or otherwise under the average per-capita income in the U.S.

Janssen Therapeutics spokesman Craig Stoltz said the company continues to "work with public and private payers and health systems" to make simeprevir available to "marginalized and underserved populations," including prisoners.

Eventually, the question of public health ethics must be asked and answered. By not providing the most effective treatment to HCV-positive prisoners, are we endangering the health of the general public? According to a study published in the March-April 2014 issue of *Public Health Reports*, prisoners represent 28.5-32.8% of the total HCV cases in the United States, based on 2006 data. Prisoners who are untreated, or not effectively treated, are more likely to infect others after they are released.

For Gilead Sciences and Janssen Therapeutics, however, that may be welcome news, because they can then sell their high-priced HCV drugs to even more patients. Until affordable HCV medications are made available to everyone who needs them – including prisoners – the hepatitis C epidemic might be slowed but will not be stopped.

Gregory Dober has been a contributing writer for PLN since 2007.

Sources: *KOVR-TV, http://sacramento.cbslocal.com, www.cbsnews.com, www.pewstates.org, Public Health Reports (March-April 2014), www.kuow.org, Quad-City Times, Wall Street Journal, The News Tribune, www.cdc.gov, Forbes, Reuters, www.olysio.com, www.sovaldi.com, BOP Clinical Practice Guidelines (May 2014)*

Eighth Circuit: No Qualified Immunity for Detainee's Overdose Death

by Mark Wilson

The Eighth Circuit Court of Appeals held on September 20, 2013 that an Arkansas jail guard was not entitled to qualified immunity for his deliberate indifference to a detainee's serious medical condition which resulted in the detainee's death.

On December 18, 2008, Saline County deputy sheriff Stephen Furr arrested Johnny Dale Thompson, Jr. During the arrest, Deputy Furr discovered an empty Xanax bottle that indicated it had been filled with 60 pills two days earlier. Thompson, who was slurring his words, admitted to taking medication and slept in the patrol car, but was easily awakened at the jail.

Jail guard Ulenzen C. King conducted Thompson's booking process. King noted that Thompson appeared intoxicated; he asked to sit down but nearly fell out of the chair. He was unable to sign his name and "couldn't even answer questions that Officer King was asking him." King wrote "Too Intox to Sign" on the booking sheet.

Sometime after Thompson was placed in a cell at 7:42 p.m., another detainee alerted King that Thompson needed help, but King did nothing.

At 9:09 p.m., King and another jailer entered Thompson's cell and discovered he was "cool to the touch, not breathing, and non-responsive." He was pronounced dead at a hospital around 20 minutes later.

An autopsy revealed that Thompson had ingested a cocktail of drugs, including hydrocodone, methadone and alprazolam. The medical examiner classified his death as accidental.

Thompson's mother filed suit in federal court against Saline County and several individual defendants. The district court granted qualified immunity to all the defendants except Furr and King; both then filed an interlocutory appeal.

The Eighth Circuit observed that its review was limited to determining whether Furr and King knew that Thompson had a serious medical need but deliberately disregarded that need.

The appellate court followed *Grayson v. Ross*, 454 F.3d 802 (8th Cir. 2006) in holding that Furr lacked subjective knowledge that Thompson required medical attention. As such, it concluded that Furr was not deliberately indifferent to Thompson's medical needs and was entitled to qualified immunity.

The Court of Appeals found, however, that "*Ross* does not compel the same conclusion for Officer King." Rather, Thompson "presented a noticeably more intoxicated condition during his encounter with Officer King than the detainee in *Ross*."

Given the information available to King when Thompson was booked into the jail, the Eighth Circuit affirmed the district court's denial of qualified immunity, holding that "a reasonable jury could find that ... King had subjective knowledge of a serious medical need and deliberately disregarded that need." See: *Thompson v. King*, 730 F.3d 742 (8th Cir. 2013).

Following remand, the case went to trial in January 2014 and the federal jury found in favor of King, resulting in no recovery for Thompson's estate.

Ninth Circuit: Damages Required for Compelled Religious-Based Treatment

by Mark Wilson

The Ninth Circuit Court of Appeals has held that damages are required, as a matter of law, when a parolee is incarcerated for objecting to compelled participation in a religious-based drug treatment program.

Citing "uncommonly well-settled case law," the Court of Appeals found in 2007 that the First Amendment is violated when the state coerces an individual to attend a religious-based substance abuse program. See: *Inouye v. Kemna*, 504 F.3d 705 (9th Cir. 2007).

The California Department of Corrections and Rehabilitation (CDCR) contracts with Westcare, a private entity, to provide drug and alcohol treatment for parolees in Northern California. Westcare, in turn, contracts with Empire Recovery Center, a non-profit facility. "Empire uses a 12-step recovery program, developed by Alcoholics Anonymous and Narcotics Anonymous, that includes references to 'God' and to 'higher power.'"

Barry A. Hazle, Jr., an atheist, was incarcerated due to California drug convictions. His parole conditions required him to complete a 90-day residential drug treatment program.

Prior to his February 26, 2007 release from prison, Hazle had asked prison and Westcare officials to place him in a non-religious treatment program. Westcare officials directed Hazle to Empire.

When Hazle realized Empire was a religious-based program, he repeatedly objected to Westcare officials. They responded "that the only alternative to Empire was a treatment facility whose program had an even greater focus on religion."

Hazle asked parole agent Mitch Crofoot for a transfer to a secular treatment program, and was ordered to remain at Empire while Crofoot looked into the issue.

Westcare claimed that it had no secular programs; Crofoot then informed Hazle that no alternative programs were available and he needed to complete the Empire program or his parole would be revoked and he would return to prison.

On April 6, 2007, Empire informed Crofoot that Hazle was being "disruptive, though in a congenial way," and that his demeanor was "sort of passive aggressive." Crofoot and parole supervisor Brenda Wilding were aware of Hazle's religious objections, but recommended revocation of his parole for refusing to participate in the treatment program. Hazle's parole was revoked and he was returned to prison for 100 days.

Hazle then sued Westcare and several state officials, alleging they had violated his First Amendment rights by requiring his participation in a 12-step program as a condition of parole, rejecting his requests for a secular program and revoking his parole for refusing to participate in the 12-step program. He sought compensatory damages – for loss of liberty and emotional distress – as well as punitive damages and injunctive relief.

After Hazle filed suit, the CDCR issued a directive in response to *Inouye*, stating that parolees who refuse to participate in religious-based programs may not be compelled to attend such programs and must "be referred to an alternative non-religious program."

The district court entered summary judgment against the defendant state officials, finding them liable for violating Hazle's First Amendment rights. The court granted summary judgment to Westcare, however, holding that "Hazle had not established the necessary causal connection between Westcare's actions and the

violation of his rights."

A trial was then held to determine damages. The district court informed the jury it had previously found "that each defendant violated plaintiff's First Amendment Establishment Clause right by ... arresting and incarcerating plaintiff because of [his] failure to participate in the program."

At the request of the defendants, however, the court instructed the jury to decide if they were jointly and severally liable or whether damages should be apportioned among them. In the latter case, the jury was to apportion damages.

The jury returned a damages verdict finding the defendants were not jointly and severally liable, and awarded Hazle no damages against each defendant.

Hazle moved for a new trial under FRCP 59(a), arguing that the zero damages verdict was contrary to the law and evidence. The district court denied the motion, holding that Hazle had waived his objection by failing to raise it before the jury was discharged, and that the jury's finding that damages could be apportioned among the defendants was consistent with its finding that none of the defendants had caused Hazle's constitutional injuries.

The Ninth Circuit reversed, holding that Hazle did not waive his objection and the district court had improperly denied his motion for a new trial.

"The jury's verdict, which awarded Hazle no compensatory damages at all for his loss of liberty, cannot be upheld," the Court of Appeals concluded. "Given the indisputable fact of actual injury resulting from Hazle's unconstitutional imprisonment, and the district judge's finding that the state defendants were liable for that injury," the Court held that "an award of compensatory damages was mandatory. The jury simply was not entitled to refuse to award any damages for Hazle's undisputable – and undisputed – loss of liberty, and its verdict to the contrary must be rejected."

The district court had also "erred in putting the question of apportionment to the jury in the first place," the Ninth Circuit wrote. That "is a legal [issue] to be decided by the judge, not the jury." The jury's resolution of that issue was "simply inconsistent with the district judge's order holding defendants liable for Hazle's false imprisonment."

In addition, the appellate court reversed the district court's grant of summary judgment in favor of Westcare, finding "a genuine issue of material fact as to whether Westcare's policy of contracting solely with religious facilities was a proximate cause of [Hazle's] constitutional injuries." The Ninth Circuit noted that "*Inouye* leaves little room for Westcare to argue that constitutional injuries of the sort suffered by Hazle were not a foreseeable result of its actions."

Lastly, the Court of Appeals reversed the dismissal of Hazle's state law claim for injunctive relief to enjoin the CDCR from "carrying on any unlawful actions." The Court said the facts in this case established "that, notwithstanding the state's directive [to provide alternative nonreligious programs], the defendants do not appear to have taken any concrete steps to prevent other parolees from suffering the same constitutional violations Hazle suffered."

The case was reversed and remanded, and remains pending on remand. See: *Hazle v. Crofoot*, 727 F.3d 983 (9th Cir. 2013).

Louisiana Public Service Commission Considers Prison Phone Issues

The Advocate reported in March 2014 that tensions were high between Louisiana Public Service Commission (PSC) Chairman Eric Skrmetta and PSC Commissioner Foster Campbell during a hearing on issues related to prison and jail phone rates.

Previously, in December 2012, the PSC voted to lower the cost of phone calls made by Louisiana prisoners by cutting the rates of some calls by 25% and prohibiting surcharges. The ban on surcharges went into effect on February 28, 2013, while the rate reduction – which only applies to calls made to family members, clergy, attorneys and certain other parties – was postponed until 2014. [See: *PLN*, April 2013, p.29; Jan. 2013, p.14; Feb. 2012, p.36].

Two prison phone service providers, City Tele-Coin and Securus Technologies (which also has the phone contract for Louisiana's state prison system), were subsequently cited by the PSC for contempt for charging additional fees in spite of the prohibition on surcharges.

Commissioner Campbell had championed the prison phone reforms, including the 25% rate reduction. City Tele-Coin and Securus have since petitioned the PSC to rescind the rate cut and ban on surcharges.

Additionally, City Tele-Coin hosted a fundraiser for PSC Chairman Skrmetta's election campaign, and the company's owner, Jerry Juneau, and his wife donated $10,000 to Skrmetta's campaign fund in December 2013.

Although the contempt citations against Securus and City Tele-Coin were pending before administrative law judges, Chairman Skrmetta asked the PSC to settle the cases.

The City Tele-Coin surcharges at issue include an "administrative cost" of up to $10 when opening a direct-pay account; a "processing cost" on direct-pay refunds of $5; a "transfer fee" of up to $2.50 to move balances on direct-pay accounts to a different phone number; and a monthly "inactivity fee" of up to $10 for accounts with no activity in a six-month period.

Securus charges a "processing fee" of $6.95 for credit card and check-by-phone payments; a "wireless administrative fee" of up to $2.99 a month when a user lists a wireless number authorized to receive prison phone calls; and a "processing fee" of $4.95 on refunds from unused accounts.

On April 2, 2014, the PSC held a hearing to address issues related to the contempt citations. Commissioner Campbell had asked the PSC to hire a technical consultant to audit the books of the two prison phone companies, but the Commission rejected his request. Chairman Skrmetta sought to go into a behind-closed-doors executive session to settle the citations against Securus and City Tele-Coin, which also was rejected by the full Commission; consequently, the administrative law process will continue and the verdicts will be reviewed by the PSC. A number of prison phone justice advocates and community faith leaders testified at the hearing as to how the surcharges and high phone rates hurt prisoners' families and the local community.

Another PSC hearing, held in May 2014, was attended by Caddo Parish Sheriff Steve Prator, who criticized the Commission's actions to reduce prison and jail phone rates, saying they compromised security at his jail.

"I'm not getting in your business about what the phone rates are. That's not what I'm here to tell you. I'm just going to emphasize they've got to be monitored and we've got to have the technology, and it's expensive to do. Government has to pay for it. We have to pay for it," Prator said.

The rate reductions also have been criticized by an organization called "Crimefighters," founded by a retired New Orleans police officer, which took out a full-page ad in the *Shreveport Times* accusing Commissioner Campbell of "fighting for the rights of criminals" and "being soft on crime."

Similarly, Keith Gates, an attorney who is challenging Campbell's seat on the PSC in elections this fall, accused him of helping "jailbirds."

On June 6, 2014, in a monthly news column, Commissioner Campbell noted that high prison phone rates have troubled him for more than a decade. "This issue involves millions of dollars collected by monopoly telephone companies, the correctional facilities they do business with, and the families of 40,000 people in jail in Louisiana," he said.

"The Public Service Commission must assure that monopoly utility companies don't abuse their customers," Campbell added. "Inmate families have few advocates to defend them against corporations charging outrageous phone rates and questionable fees."

PLN will report future developments concerning prison phone rates in Louisiana. If City Tele-Coin and Securus are found guilty of the contempt citations, they face thousands of dollars in fines and the potential loss of their licenses to operate in the state.

Sources: *The Advocate, www.shreveporttimes.com, Commissioner Foster Campbell's monthly news column (June 6, 2014), www.kcbd.com, www.fox8live.com*

State of Washington
Prison Phone Justice Campaign

Prison Phone Justice Project needs your help for statewide campaign!

While much progress has been made in reducing the costs of long distance prison calls, we are still fighting to reduce the high costs of in-state prison and jail calls at the local level. In January 2014, the Human Rights Defense Center (HRDC), the parent organization of Prison Legal News, reopened its Seattle office to launch the Washington Prison Phone Justice Campaign.

This is our first statewide phone justice campaign, and we're excited to have people involved on both the local and national levels who are dedicated to ending the exorbitant phone rates and kickbacks associated with the prison phone industry. We have already been obtaining the phone rates and contracts from all 39 county jails in the state and the Washington DOC.

We hired a local campaign director, Carrie Wilkinson, who manages our office in Seattle and is coordinating the statewide campaign. Washington prisoners and their families pay some of the highest phone rates in the nation, and we need your help to win this battle!

Here's how you can help – first, please visit the campaign website:

www.wappj.org

There you can see all the ways you can make a difference. The site allows you to sign up for the campaign and upload videos and share blog entries about how high prison phone rates make it difficult for you to stay in touch with your incarcerated loved ones. You can even call in your story to **1-877-410-4863**, toll-free, at any time! We need to hear how you and your family have been affected by high prison and jail phone rates. If you don't have Internet access, you can mail us a letter describing your experiences. Send letters to HRDC's main office at: **HRDC, Attn: WA Phone Justice Campaign, P.O. Box 1151, Lake Worth, FL 33460**. Washington state prisoners can send a copy of this notice to their family members so they can get involved.

We especially need copies of telephone bills that show prison and jail phone charges!

By choosing to participate in the Washington Prison Phone Justice Campaign, you will be playing a key role in ending the unfair phone rates that prisoners' families have to pay. We cannot win this battle without your help, so please visit the campaign website and share your experiences! Donations are also welcome and greatly appreciated, and can be mailed to the above address or made online via the campaign website. Thank you for your support!

Two Murders in Seven Months at CCA-run Prison in Tennessee

On May 23, 2014, the Medical Examiner's Office in Nashville completed an autopsy report on Tennessee state prisoner Jeffery Sills, 43, who was murdered at the South Central Correctional Facility in Clifton, Wayne County on March 28. The facility is operated by Corrections Corporation of America (CCA), the nation's largest for-profit prison company.

Sills' death was classified as a homicide caused by "blunt and sharp force injuries." He was allegedly beaten and stabbed to death by his cellmate, Travis Bess, who was later transferred to the Riverbend Maximum Security Institution.

Jeffery Sills was at least the second prisoner murdered at the CCA-run prison since September 1, 2013, when Gerald Ewing, 28, was killed during a series of fights at the facility. Comparably, according to the Tennessee Department of Correction there were no homicides at state-run prisons in calendar year 2013 and to date this year.

Jeffery Sills' death was particularly brutal, according to the autopsy report. He suffered lacerations, abrasions and contusions to his head and neck, fractured cheek and nasal bones, cutting and stab/puncture wounds, and hemorrhages in the "posterior cervical spinal muscles" and "skeletal muscle of back and intercostal muscles of posterior thorax."

Prison Legal News managing editor Alex Friedmann, who also serves as associate director of PLN's parent organization, the Human Rights Defense Center (HRDC), said both prisoners and a CCA staff member employed at South Central contacted HRDC after Sills was murdered.

"Several prisoners said Bess had publicly stated he would kill Jeffrey Sills if they were placed in a cell together, and that CCA guards were present when he made that statement. Regardless, they were both put in the same cell with predictable results." Additionally, "the CCA employee who contacted us reported that Sills had asked to be placed in protective custody, but prison staff failed to act on his request before he was murdered," said Friedmann, who served six years at South Central himself prior to his release in 1999.

The Tennessee Bureau of Investigation is investigating Sills' death and has reportedly indicated that an indictment will issue soon.

"Two murders within seven months is extremely disturbing," Friedmann stated, "especially considering that CCA houses about 5,000 [Tennessee] state prisoners in three facilities while around *15,000* prisoners are held in 11 state-run facilities. Yet despite holding one-third as many prisoners, none of whom are classified maximum-security, two murders occurred at a CCA facility and zero in state prisons within the same time period."

According to research conducted by HRDC, historically there have been higher rates of violence at the three CCA-operated facilities in Tennessee than in state prisons. Based on the most recent data provided by the Department of Correction, during the first five months of 2013 the average rate of violent incidents at the CCA-run prisons – including prisoner-on-prisoner assaults, prisoner-on-staff assaults and institutional disturbances – was 24.6% higher than at state facilities.

"Other studies have also found higher levels of violence at privately-managed prisons," said Friedmann. "This is presumably due to the business model of the private prison industry, which must cut costs in order to generate profit. Those cuts, particularly in regard to staffing costs, lead to high staff turnover rates, understaffing and thus less security at private prisons. Consequently there are higher rates of violence – up to and including murder, evidently."

The FBI is currently investigating fraudulent staffing reports at a CCA prison in Idaho. [See: *PLN*, Oct. 15, 2013, p.28; May 2013, p.22].

There have been two other recent homicides at CCA-operated prisons in other states, including the November 2013 murder of Michael Patrick McNaughton, 55, who was beaten to death at a CCA facility in Florence, Arizona, and the March 2014 murder of California prisoner Todd Bush, 33, at the CCA-run North Fork Correctional Facility in Oklahoma.

Source: *HRDC press release (June 12, 2014)*

Visitors Fingerprinted at Alabama Prisons

Alabama's prison system is the first – and currently only – in the nation to require visitors to be fingerprinted. In late 2012, the Alabama Department of Corrections (ADOC) implemented the new policy due to what officials claimed was a need for greater efficiency. A new computer system had the capacity to scan fingerprints, something the old system was not able to do. The fingerprinting procedure was "part of the upgrade" and the brainchild of the ADOC's IT department, according to prison system spokesman Brian Corbett.

The old system required guards to review each visitor's driver's license to verify their identity before allowing them into a state prison.

"That was a time-consuming task," Corbett told the *Montgomery Advertiser*. "Now, the verification process is much faster, so visitors are moved through the process much faster."

"We still require visitors to have a government-issued photo ID, and that requirement will remain in place," he added. "But there are times when someone else resembles the photo on an ID. Scanning the fingerprint of visitors verifies they are who they say they are."

The program prompted an immediate response from the American Civil Liberties Union. David Fathi, director of the ACLU's National Prison Project, didn't buy the ADOC's purported security concerns.

"Alabama prison officials can't say with a straight face that it is a security issue, not when the remaining 49 state prison systems do not require the scanning of visitors' fingerprints," he stated. "It is an unnecessary barrier to visiting inmates."

Fathi called the fingerprint scan "extreme" – especially since visitors to Alabama state prisons already have to undergo a criminal background check.

"If showing a driver's license is all that is required to get on an airplane that will fly you near the White House," he said, "it should be enough to get you inside a prison

to visit someone."

ADOC officials claimed that visitors' fingerprints will not be shared with local, state or other law enforcement agencies, nor will they be used to check for outstanding warrants.Alabama is the first state to require visitor fingerprinting at all state prisons, but other correctional facilities have considered similar policies.

In March 2011, the *Topeka Capital-Journal* reported that the El Dorado Correctional Facility in Kansas was going to fingerprint visitors when leaving the prison. Captain Dale Call, then the administrative officer at El Dorado, said visitors would be required to place an index finger on a scanner before they exit as a security measure to help prevent prisoners from inadvertently being released. Their fingerprints would not be kept on file, however.

In the nation's capital, officials with the District of Columbia Department of Corrections (DC DOC) announced in early 2011 that they were considering fingerprinting visitors at the D.C. jail to check for outstanding warrants.

The proposal prompted concerns that the fingerprinting would be overly intrusive, even though DC DOC officials said they never intended to digitally store the fingerprints and the Metropolitan police would decide what to do if a visitor's fingerprints revealed an outstanding warrant.

Corrections officials told the *Washington Examiner* that they wanted to use "live scan" technology to take an image of the visitors' fingerprints – the same technology used on prisoners to confirm their identity when they enter and leave the jail. The District planned to use federal grant money to pay for the system.

"Through a $134,000 grant from the Office of Justice Grants, we will be [using] the technology in our visitors control area to assist [D.C. police] in the identification of individuals with outstanding warrants," corrections spokeswoman Sylvia Lane told the *Examiner*. "If a match is made, DOC will detain the visitor and contact the police department and the visitor will be taken into custody," she said.

The DC DOC's plan to fingerprint visitors faced sharp criticism, however, and officials announced in March 2011 that they were reevaluating the proposal due to a "host of legal, financial and operational concerns that have been raised."

In Maryland, a public protest accompanied the March 2013 implementation of a policy requiring all visitors to the Baltimore City Detention Center to be fingerprinted. The warden at the jail said if the fingerprinting reveals that a visitor has been incarcerated, then he or she will not be allowed to visit.

Sources: *USA Today, www.correctionsone.com, www.allgov.com, Associated Press, http://cjonline.com, www.nbcwashington.com, www.wbaltv.com, Montgomery Advertiser*

Prison Industries in India Compete in Open Market

The government of the Indian state of Tamil Nadu is expanding a program that allows prison industries to compete in the open marketplace under the ironic brand name "Freedom." Prison industry programs already exist at nine central prisons, three women's prisons and nine district jails scattered across Tamil Nadu, located in the southern tip of the Asian nation. The facilities hold a combined total of about 11,000 prisoners.

Prison authorities are adding open-air bazaars to market fresh produce grown by prisoners to shoppers from neighboring communities. The bazaars are in addition to current prison industries that include the production of soap, leather, textiles, books and baked goods. Traditionally, those products have been sold only to other government agencies and are considered substandard.

"So far, we were manufacturing goods for the police and other departments. Such government clients are not very demanding in terms of pricing, delivery schedule and quality, although we ourselves try to maintain this," said S.K. Dogra, Additional Director-General of Police in Tamil Nadu. "But once you operate in the open market, you have to adopt the best commercial practices. So, naturally the entire process of manufacturing will have to move up the scale in terms of efficiency and quality."

Providing prisoners with skills they can use to obtain jobs after their release is a major objective of the program. Prison officials said they have identified individuals who are qualified to provide training to prisoners in the use of modern manufacturing technology. Additionally, a portion of the revenue generated by the sale of prison-made goods on the open market is earmarked for prisoners' accounts.

The expansion of the "Freedom" label includes a jail in Ondipudur, in the western part of the state, where prisoners have taken to farming. Under the watchful eye of guards, they sell their produce in a newly-created bazaar on the facility grounds.

P. Govindarajan, Deputy Inspector General of Prisons in nearby Coimbatore, said the bazaar is an effort to both rehabilitate and re-socialize prisoners. One of the prisoners at the facility said the program has allowed him to pursue his goal of becoming a farmer. "Life took me elsewhere, but I am finally living my childhood dream," said "Madhu," a prisoner whose real name was not disclosed, in February 2014.

Another prisoner said the program gave him a sense of fulfillment. "It was a very proud moment to see something I'd planted give fruit," he said, holding an ear of corn he had grown.

Prison officials said the profits from the bazaar are shared among prisoners, prison staff and the Tamil Nadu government, with each receiving 20% of the net proceeds. The remaining 40% is placed in a state prison fund.

On February 23, 2014, Chief Minister J. Jayalalithaa inaugurated a "Freedom Shop" in the Puzhal prison complex in eastern India, to serve as a market for prisoner-produced goods; the shop includes a bakery, a waiting hall for visitors and other facilities.

A press release said the Chief Minister directed that "Freedom Shops" be opened in all central Indian prisons to market goods made by prisoners. The initiative is part of the state's effort to reform prisoners and provide them with training to help them live a decent life after they complete their sentences.

Products for sale include garments, bakery items, footwear, soaps, candles, mosquito nets, rain coats and more, all manufactured by prisoners. In addition, the program is providing agricultural training to prisoners at two other facilities in Singanallur and Salem.

"I do not see any difficulty in marketing the products," said Dogra. "Many of the prison inmates are highly skilled. Since they do not have any diversions within the prison, they usually work with greater focus."

Taken from a different perspective, however, Dogra's comments could portend abuse of the system. Because prisoners "do not have any diversions," which makes them good workers, prison authorities may have an incentive to prevent the introduction of any "diversions" – such as educational, treatment or other rehabilitative programs – to ensure that prisoners focus on their profit-generating prison industry jobs.

Sources: *www.thehindu.com, http://m.newindianexpress.com*

Jury's Tasteless Gag Gifts to Judge and Bailiff Fail to Demonstrate Unfair Trial

The Eleventh Circuit Court of Appeals has affirmed the denial of a death row prisoner's habeas corpus petition that contended he was denied a fair trial by an impartial judge and jury because the jurors gave inappropriate gag gifts to the judge and one of the bailiffs.

The habeas proceeding involved Georgia death row prisoner Marcus A. Wellons, who was convicted of the murder and rape of a fourteen-year-old girl in 1989. During his trial, Wellons did not dispute that he had killed and raped the victim; rather, he claimed he was either not guilty by reason of insanity or guilty but mentally ill. After finding him guilty, the jury recommended a sentence of death for the murder and life for the rape.

Defense counsel learned during post-trial interviews that some jurors gave gag gifts to the judge and a bailiff either near the end of or immediately following the penalty phase of the trial. The judge received chocolate candy in the shape of a penis while the bailiff received chocolate in the shape of female breasts. Wellons' counsel

also learned that when the sequestered jurors dined at a local restaurant, the judge had spoken to them.

Motions for a new trial and for recusal of the judge were denied, Wellons' convictions were affirmed on appeal and the Supreme Court denied review. Likewise, a state habeas petition was denied. After the federal district court denied Wellons' habeas petition, the Eleventh Circuit affirmed. This time, however, the Supreme Court granted certiorari and the matter was subsequently remanded for an evidentiary hearing on the "disturbing facts of this case." The district court again denied relief and Wellons again appealed.

As for the encounter at the restaurant, most of the jurors testified that the judge had waved or nodded or made a brief comment. One juror recalled the encounter occurred on the day the jury saw the autopsy photos, and the judge commented that she understood the jurors were upset.

Four of the jurors said they did not become aware of the gag gift to the judge until later. As it turned out, a friend of one of the jurors owned a confectionery shop, and the juror asked her husband to ask the friend to make chocolate turtles for the jury. The friend, who was unaware of the serious nature of the case, included the gag gifts to "lighten things up." On the last day of the trial, the gifts were given to the judge and bailiff.

The Eleventh Circuit cited precedent holding that an ex parte communication alone is insufficient to overturn a conviction. Additionally, the record did not indicate the trial judge had showed partiality during the brief encounter with the jurors at the restaurant, so habeas relief on that issue was properly denied.

Further, the Court of Appeals found the gag gifts did not call into question the impartiality of the jury. It held the "unfortunate giving of these tasteless gifts" was "inconsequential to the verdict" and played no role in the judge's or jury's consideration of the case. The jurors testified that the gifts, which were given at the conclusion of the case, had nothing to do with anything that occurred during the trial.

The appellate court noted judges or bailiffs should not receive gifts from the jury. "Trial judges are expected to handle these situations, sternly admonish or discipline those involved, and disclose such occurrences to each party so that timely objections can be considered and made," wrote the Eleventh Circuit. While the judge had failed to do so in this case, the Court of Appeals found the jurors' testimony did not indicate Wellons had received an unfair trial.

"We also acknowledge that the ill-advised actions of a few thoughtless jurors could create the perception that this jury was too busy joking around rather than deciding Wellons's fate," the appellate court stated. "But these were two isolated incidents in the span of a multi-week trial and we cannot say, on the basis of this record, that the verdicts were tainted."

Accordingly, the district court's denial of Wellons' habeas petition was affirmed.

A petition for writ of certiorari, filed with the U.S. Supreme Court, was denied on October 7, 2013. Wellons remains on Georgia's death row. See: *Wellons v. Warden, Georgia Diagnostic and Classification Prison*, 695 F.3d 1202 (11th Cir. 2012), *cert. denied.*

Decline in Arrests of Los Angeles County Probation Officers

The Los Angeles County Probation Office has cited tougher self-policing and stricter hiring standards for a dramatic decrease in the number of employees arrested for driving under the influence and various other crimes, but the union representing probation officers complained the changes have led to understaffing.

Probation Office Chief Jerry Powers said the number of probation employees arrested for crimes both on and off the job fell from a high of 74 in 2011 to just 32 in 2013. Nearly half the arrests last year – 15 – were for DUI offenses. Most of the remaining charges were theft and assault.

"We've come light years from where we were to where we are today," Powers said at a news conference.

But the president of AFSCME Local 685, the union representing the county's probation officers, disputed Powers' claim that the drop in the number of arrests was the result of hiring standards and self-policing.

"It's like crime statistics, they go up and down all the time," union president Ralph Miller said. "Taking credit for those numbers going down is like taking credit for the sun rising and setting."

Powers said stricter hiring standards, including polygraph tests and more extensive background checks of job applicants, were responsible for the decline. The Probation Office has also become more aggressive with internal investigations.

"The amount of discipline has almost tripled, so we're holding employees accountable," Powers stated. "I think that sends a message to all employees in the department that you're going to behave, on duty and off duty, and if you fail to meet our standards, we're prepared to see that you correct your behavior or you find another employer."

The Los Angeles County Board of Supervisors heaped praise on the Probation Office in late 2013 for implementing the new standards, but the union said the changes jeopardized public safety. By January 2014, the union noted, more than 1,000 of the Probation Office's 6,600 job positions remained vacant, while probation officers were required to monitor some 80,000 adult and juvenile offenders – a number that has increased under California's Realignment initiative. [See: *PLN*, June 2014, p.1].

AFSCME Local 685 complained that the new hiring standards are not realistic, and in a letter to the Board of Supervisors accused Powers of having "seriously mismanaged the hiring and promotional process, resulting in a grave public safety crisis."

Arrests of probation officers fell from 74 in 2011 to 44 in 2012, but included some high-profile cases, including one high-ranking employee who was charged with defrauding banks by falsely claiming his identity had been stolen.

On September 17, 2012, FBI agents arrested Carl Edward Washington, a division chief of intergovernmental relations. In announcing the arrest, the FBI said Washington faced "three counts of bank fraud and three counts of making a false statement to a federally insured financial institution."

Washington is also an ordained minister and a former lawmaker who was elected three times to the state Assembly. As a Probation Office employee, he reportedly received loans and credit cards to purchase airline tickets and hotel rooms and to obtain cash advances totaling "several thousand dollars," according to investigators.

Washington eventually stopped paying his debts and claimed to be a victim of identity theft. On July 22, 2013, he was sentenced to one day in federal prison with credit for one day already served, plus three years of supervised release and $193,898.25 in restitution.

Of the 44 Los Angeles County probation officers arrested in 2012, dozens were charged with drunk driving, drug possession and theft. Charges were also filed against a six-year veteran employee for filing false workers' compensation claims, and against a probation officer for allegedly shooting a man in a bar.

"They shouldn't have 40 arrests in any department," said Connie Rice, a civil rights attorney and police watchdog who has been critical of the Probation Office. "If you have 40 arrests, that ought to be a sign that something is very wrong. It's like, 'Houston, we have a problem.'"

The number of probation employees charged with crimes fell again to 32 in 2013.

"We don't want any arrests, but reducing the numbers by half in two years shows our new policies are having an impact," said Assistant Chief Probation Officer Don Meyer. "If we could reduce it to zero – which is unrealistic – that would be nice, but we've obviously done a good job. It's not by accident that those numbers have gone down."

Still, some high-profile arrests have continued. In August 2013, probation officer Frank Elliott Boyd III, 48, pleaded not guilty to charges arising from a scheme to defraud the state of $1.6 million in phony childcare payments.

According to prosecutors, Boyd, his ex-girlfriend and four other co-defendants allegedly set up a number of licensed home-based childcare centers, then urged parents to file fake documents with county and state agencies for childcare that was never provided. Boyd was charged with conspiracy, grand theft and perjury.

Also in 2013, a former probation officer was arrested on misdemeanor charges of using his iPad to take photos up a woman's skirt. Julio Mario Medal was sentenced to five years' probation and ordered to perform 120 days of community service after pleading guilty to secretly videotaping for sexual gratification, unlawful loitering and attempted videotaping for sexual gratification.

Arrests have continued into 2014. For example, former Los Angeles County probation officer Robyn Palmer, 29, was arrested on felony charges of insurance fraud, forgery, grand theft and wire fraud on May 16, 2014. She had received over $29,000 in workers' comp payments for an injury allegedly received while restraining a juvenile offender. However, it was later learned she was not at work on the day she claimed the injury occurred. Palmer was jailed on $100,000 bond.

Meyer noted that most of the Probation Office employees who have been arrested were hired in 2005-2008, when the office did not conduct background checks on job applicants.

Sources: *Los Angeles Times, www.scpr.org, http://losangeles.cbslocal.com, www.examiner.com, www.dailynews.com*

States Renewing Their Prison Phone Contracts

As state DOCs renew or rebid their prison phone contracts, you can help urge them to lower intrastate phone rates and eliminate commission kickbacks!

The Campaign for Prison Phone Justice needs your help in:

**** *Utah, Arkansas and Nevada* ****

The Departments of Corrections in the above states are in the process of re-bidding or renewing their prison phone contracts. Most DOCs receive a commission (kickback) on revenue generated from calls made by prisoners, which results in excessively high phone rates. Although the FCC voted last year to cap the costs of interstate (long distance) prison calls, which went into effect on February 11, 2014, the order does not apply to intrastate (in-state) calls. An estimated 85% of prison phone calls are in-state. This is an opportunity to ask DOCs to forgo commissions and ensure their new prison phone contracts are based on the lowest cost to those who pay for the calls – mostly prisoners' families.

Take Action NOW! Here's What YOU Can Do!

Ask your family members and friends to write, email, call and fax the DOC and the governor's office (addresses and contacts are listed below), requesting that the DOC: 1) forgo commission payments when re-bidding or renewing its prison phone contract, and 2) base the new contract on the lowest calling costs. Lower prison phone rates should apply not just to long distance calls but also to in-state calls. For a sample letter or to easily send an email, visit the Campaign for Prison Phone Justice's website and click on the "Take Action" tab:

www.phonejustice.org

Prison phone contract information & Contacts:

Utah: Receives a 55% kickback; existing contract expires on 7-31-2014. Charges $4.60 for a 15-minute collect intrastate call and $3.15 for a collect local call. **Contacts:** Utah DOC, Director Rollin Cook, 14717 South Minuteman Drive, Draper, UT 84020; ph: 801-545-5513, fax: 801-545-5726, email: musher@utah.gov. Governor Gary R. Herbert, State Capitol, Suite 200, Salt Lake City, UT 84114; ph: 801-538-1000 or 800-705-2464, fax: 801-538-1557, email: sdeakin@utah.gov

Arkansas: Receives a 45% kickback; existing contract expires on 8-15-2014. Charges $4.80 for a 15-minute collect intrastate and local call. **Contacts:** Arkansas DOC, Director Ray Hobbs, Arkansas Department of Correction, P.O. Box 8707, Pine Bluff, AR 71611-8707; ph: 870-267-6200, fax: 870-267-6244, email: ray.hobbs@arkansas.gov. Governor Mike Beebe, State Capitol, Room 250, Little Rock, AR 72201; ph: 501-682-2345, fax: 501-682-1382, email: tonya.mercer@governor.arkansas.gov

Nevada: Receives a 54.2% kickback; existing contract expires on 8-28-2014. Charges $2.95 for a 15-minute collect intrastate and local call. **Contacts:** Nevada DOC, Director James Cox, 3955 West Russell Road, Las Vegas, NV 89118; ph: 702-486-9910, fax: 702-486-9961, email: gcox@doc.nv.gov. Governor Brian Sandoval, State Capitol Building, 101 North Carson Street, Carson City, NV 89701; ph: 775-684-5670, fax: 775-684-5683, email: scheduling@gov.nv.gov

Kentucky Prisoner's Due Process Rights Violated in Disciplinary Hearing

by Robert Warlick

On August 29, 2013, the Kentucky Supreme Court affirmed an appellate decision that found an Adjustment Committee (AC) in a prison disciplinary proceeding had violated a prisoner's due process rights by not meeting the "some evidence" standard as applied to confidential informants (CIs).

Ontario Thomas, imprisoned at the Northpoint Training Center in Kentucky, was found guilty by the AC in June 2009 of assaulting another prisoner, based solely on statements from at least two CIs.

On December 16, 2009, Thomas filed a petition in the Lyon Circuit Court alleging that the AC's reliance on the CI information violated his due process rights. However, before the court ruled on his petition, two AC reviews were conducted which determined that the CI statements were reliable, reaffirming the guilty finding. The AC stated it had "review[ed] the confidential information and believe it to be true and reliable according to policy." The Circuit Court subsequently dismissed Thomas' petition, finding that his rights had not been violated.

The Court of Appeals reversed due to the AC's failure to meet the "some evidence" standard during Thomas' disciplinary hearing. The appellate court relied primarily on *Hesley v. Wilson*, 850 F.2d 269 (6th Cir. 1988), which requires a court to assess the reliability of a CI and the CI's information to determine whether it qualifies as "some evidence." The record on appeal provided no details as to the credibility of the CIs; consequently, the Court of Appeals held that Thomas' due process rights were violated and remanded the case for a new AC hearing.

The state appealed and the Kentucky Supreme Court affirmed. Citing supporting federal cases from the Third, Seventh, Eighth and Ninth Circuits, the Court noted that the record "simply begs for some corroborating factors" of the CIs' reliability, which could be done by stating for the record, "without divulging identities, why witnesses are reliable."

The state Supreme Court concluded that "there is plainly no evidence to support the Adjustment Committee's determination that the informants' information was reliable. We know nothing of these informants and their information – whether they were eyewitnesses or whether there was any corroborating evidence. It would be helpful if the investigating officer, after being duly sworn, gave written details of what was related. This would not only bolster the observation of the witnesses, but would also provide the inmate charged with a better opportunity to rebut the evidence against him." See: *Haney v. Thomas*, 406 S.W.3d 823 (Ky. 2013).

Brady Violations Result in Habeas Relief for Pennsylvania Death Row Prisoner

by David Reutter

To correct a "grave miscarriage of justice," Pennsylvania U.S. District Court Judge Anita Brody granted a writ of habeas corpus to a state prisoner and vacated his conviction and death sentence for a murder that "in all probability he did not commit." The court found violations under *Brady v. Maryland*, 373 U.S. 83 (1963) due to the state's withholding of evidence.

James A. Dennis was convicted in Philadelphia for the October 22, 1991 killing of high school student Chedell Williams. Williams, 17, and a friend, Zahra Howard, were approached by two men who demanded they give up their earrings. The girls fled; Howard hid behind a fruit stand while Williams ran into the street.

The men chased Williams. One of them held a gun to her neck and shot her; they then jumped into a car and sped away. Williams was pronounced dead shortly after her arrival at a hospital.

Dennis' conviction was "based on scant evidence at best," the district court wrote in an August 21, 2013 ruling. "It was based solely on shaky eyewitness identifications from three witnesses, the testimony of another man who said he saw Dennis with a gun the night of the murder, and a description of clothing seized from the house of Dennis' father that the police subsequently lost before police photographed or catalogued it."

The police never recovered a weapon, never found the car used by the assailants and never found two accomplices described by witnesses. Judge Brody said confidence in Dennis' conviction was significantly diminished by flaws with the investigation and prosecution of the case, and noted "There was virtually no physical evidence presented at trial."

All five of the nine witnesses who provided estimates of the shooter's height put him at 5'7" to 5'10", with four describing him as 5'9" or 5'10". Dennis, however, is only 5'5". None of the witnesses confidently identified Dennis right away, but three ultimately became the only testifying witnesses for the state. The other witnesses did not testify – a fact the district court found to be a troubling flaw in trial counsel's investigation and trial preparation.

Of the witnesses not called to testify, four did not identify Dennis as the shooter, three did not pick him from a photo array and another chose a different suspect from a line-up. A witness who had looked the shooter in the eye definitively said Dennis was not the shooter, but the state never informed defense counsel of that fact.

Upon considering Dennis' habeas petition, the federal district court found several *Brady* violations. First, it found violations in the suppression of six documents. The state did not dispute that it failed to disclose the documents to Dennis until a decade after his trial.

One of those documents was a statement from a jail prisoner who had corroborated evidence in the case and pointed to two other suspects. Another involved a witness who saw Dennis on the day of the murder; she gave police an original receipt from the Department of Public Welfare that would have corroborated Dennis' alibi that she had seen him on a bus at the time of the murder.

The prosecution also suppressed statements from Zahra Howard's aunt and uncle, who said she had recognized the shooter from her high school and two people she knew were present during the shooting.

As for the witness who said he had seen Dennis with a gun on the day Williams was killed, he only made that statement after being arrested "for a violent assault of his pregnant girlfriend that left her in the hospital," and six months later prosecutors dropped the felony assault charges against him "without explanation."

The district court found that Dennis was prejudiced under *Brady* by the prosecution's withholding of documents related to the two witness statements and the receipt that would have corroborated his alibi. It also held the cumulative effect of the *Brady* violations provided a basis for granting habeas relief.

"[T]here can be no question" that the state had violated Dennis' right to due process by withholding exculpatory evidence that would have made a material difference at his trial, Judge Brody wrote. "As a result, after serving over 20 years in prison, Dennis is entitled to receive either a new trial or his freedom."

As of July 2014, however, he has received neither. The state appealed the district court's judgment, which has been stayed pending a decision by the Third Circuit. Meanwhile, Dennis remains on Pennsylvania's death row. He is represented pro bono by the law firm of Arnold & Porter, LLP. See: *Dennis v. Wetzel*, 966 F.Supp.2d 489 (E.D. Pa. 2013).

Additional sources: *www.jimmydennis.org, www.metro.us, www.dailymail.co.uk, www.arnoldporter.com*

New York Jail Guard Sentenced for Sexually Abusing Seven Prisoners

A former guard at the Monroe County Correctional Facility in Rochester, New York received six months in jail plus 10 years' probation and was required to register as a sex offender after he pleaded guilty in April 2013 to sexually abusing seven female prisoners.

Former Sgt. Robert Wilson, 41, was sentenced after entering the plea to a 21-count indictment that accused him of engaging in criminal sexual contact with the prisoners for two years, from 2010 to July 2012. The charges included rape, sexual abuse and official misconduct. [See: *PLN*, Nov. 2013, p.56].

Four of the seven victims filed suit in federal court in October 2013 against Wilson and Monroe County Sheriff Patrick O'Flynn for unspecified compensatory and punitive damages, joining a previous lawsuit that was filed in July. The five suits, which also name Monroe County as a defendant, contend that O'Flynn and the county knew as early as 2010 that Wilson had an "inappropriate relationship" with a female prisoner but did nothing to stop his misconduct.

"These are five women that are at the lowest point in their life," said attorney Robert King, who is representing the victims. "What we know is that this happened time after time after time, woman after woman after woman, inside the jail and in some instances outside the jail after they were released."

Each of the lawsuits claims that "other members of the Monroe County Sheriff's Office allowed Sergeant Wilson to be alone" with the women, and one victim alleged the Sheriff's Office was "alerted to the inappropriate relationship" but "did not investigate.... If they did investigate, the investigation was not sufficient," and officials "did not take action to remedy the situation and prevent future harm."

At the time of his indictment, Wilson was a 17-year veteran and supervisor at the jail; investigators said that for more than two years he used his position to sexually abuse female prisoners. He resigned after being charged.

"I find that Wilson's actions were obviously reprehensible and disturbing, and they are an embarrassment to our organization and to the community we serve," said Sheriff O'Flynn. "He was a supervisor in charge so he had access to the entire facility, and he had very calculated actions to be able to manipulate the system to accommodate his actions."

Investigators said they believe Wilson had relationships with many of the women before they entered the jail; he apparently did not take any of the prisoners off jail property, but did take them out of secure areas at times.

Monroe County District Attorney Sandra Doorley stated the victims deserve justice. "Regardless of what they've done in the past and where they are and what their situation in life is, if they are victims and a law is violated, we will represent their interest in court," she said.

The prisoners' lawsuits allege numerous sexual encounters involving Wilson. One of the victims said Wilson encouraged her "to strip tease in her cell while he watched," then later directed her to perform oral sex. In another case, the victim claimed Wilson called her away from her cell for "unscheduled medical appointments" and led her into an office where he engaged "in personal, flirtatious and sexually explicit conversation."

The same victim's lawsuit also alleges that Wilson told her to "write sexually explicit letters to him, which she did," and "Wilson wrote a sexually explicit letter" back. She also claims that after she was released from jail, Wilson took her to his apartment and "tried to force" her to have sex "but allowed her to give him oral sex instead."

Another of the prisoners said Wilson came to her cell, sat on her bunk and "directed her to show him her breasts." The lawsuit filed by a fourth victim alleges that Wilson took her to a private room for sex after calling her into a hallway with the excuse that he had cleaning chores for her to do.

Authorities said Wilson was not reported by any of the prisoners he victimized; rather, an investigation was initiated after another staff member at the jail reported Wilson for improper use of computers, which led to the discovery of his sexual misconduct. The five lawsuits filed by Wilson's victims all remain pending. See: *Goodison, Jansen, Andrews, DiStefano and Knapp v. Monroe County*, U.S.D.C. (W.D. NY), Case Nos. 6:13-cv-06342, 6:13-cv-06566, 6:13-cv-06567, 6:13-cv-06568 and 6:13-cv-06569.

Sources: *www.corspecops.com, www.whec.com, Associated Press, Rochester Democrat and Chronicle, www.13wham.com*

BOP Grievance System Contributes to "Compliance or Defiance" by Prisoners

by Derek Gilna

A 2013 study found that the grievance system utilized by the federal Bureau of Prisons (BOP) appears to have become an important tool to defuse prisoner complaints, supporting the belief that the failure of BOP officials to adequately respond to grievances contributes to higher levels of violence in federal prisons.

The research study determined that another benefit of the BOP's grievance system is deflecting or reducing potential litigation. Indeed, many federal court decisions have been decided in the BOP's favor based upon prisoners' failure to exhaust administrative remedies as required by the Prison Litigation Reform Act.

The study, "Procedural justice and prison: Examining complaints among federal inmates (2000-2007)," was conducted by David M. Bierie with the U.S. Marshals Service and the Department of Criminology and Criminal Justice at the University of Maryland. Although it concentrated on what it termed the "procedural justice paradigm," the study also revealed what Bierie called an unexpected finding: "violence grew as the number of support staff per inmate (e.g., teachers, counselors) declined within a given prison. However, the opposite effect was found with respect to increases in custody staff per inmate within a given prison."

The study appears to validate the BOP's grievance system. "Generally speaking, people feel a process is more 'just' when their voice is heard before decisions are made, decision makers treat everyone equally, outcomes are proportionate, and there is a process of appeal or challenge if they don't agree with an outcome." The opposite is also true if the system is perceived to be unfair; thus, the grievance process plays "a central role in generating compliance or defiance" by prisoners.

The study makes liberal use of other research into the U.S. criminal justice system to lend weight to its conclusions. Several previous studies had found that a grievance system was not only about directly resolving problems, but also allowing prisoners to vent their frustrations and anger about perceived injustices by prison officials without resorting to violence.

According to the 2013 study, prisons "present an environment optimized to magnify the likely impacts of perceived injustice by presenting environments that are characterized by verbal threats and insults, physical pain, unpleasant odors, disgusting scenes, noise, heat, air pollution, personal space violations and high density."

Therefore, "[p]erceived injustice is serious, especially in the eyes of inmates, and the impact and relevance is further magnified by the environment they live in, delivering a near constant state of elevated and clustered strain."

The study found that the BOP's grievance system is perceived by some prisoners as overly formal and more concerned with procedural practices and deadlines than the substance of a complaint. Accordingly, "data suggest a higher volume of late or rejected [grievance] responses will increase violence."

Bierie examined data from the BOP's Sentry system, staffing levels in federal prisons, and other BOP documents showing the number and classification of prisoner grievances over a seven-year period from January 2000 through December 2007.

The research revealed that most complaints concerned issues related to discipline, medical care and staff, with food, housing and use of force at the bottom of the list. The number of procedural grievance rejections and prisoner density (i.e., overcrowding) were tracked, as well as the ratio of prisoners to BOP employees, to determine if a relationship existed between those factors and levels of prisoner violence.

Interestingly, according to the study, the number of grievances appeared to peak in 2004 while assaults and serious violence within BOP facilities increased from 2000 through 2007, perhaps reflecting increased overcrowding in the federal prison system.

In addition to its other findings, the study concluded that "most features of the grievance process ... did not impact violence. Neither the volume of current complaints, nor the distributive justice outcomes predicted violence." However, "[t]wo features of the grievance process consistently predicted ... violence: the proportion of responses which were late, and the proportion of responses which were substantively rejected."

Source: "*Procedural justice and prison: Examining complaints among federal inmates (2000-2007)," by David M. Bierie. Psychology, Public Policy and Law, Vol. 19(1), Feb. 2013*

England, Increasing Number of States Allow Same-Sex Prisoner Marriages or Civil Unions

Prisoners in England, including those in the highest security classification, are being allowed to enter into same-sex civil partnerships due to a policy change that mirrors changes to same-sex marriage laws in an increasing number of states in the U.S.

Prison Service Order 4445 outlines the requirements for prisoners in England and Wales seeking to enter into same-sex civil unions. The Order requires that both prisoners be of the same gender, over 16 years old, not related, not currently married and have at least three months remaining on their sentences. The Order also covers transsexual prisoners.

Prisoners are responsible for making all arrangements for the civil partnership ceremony and must pay all associated costs. They are allowed to invite guests, but only a reasonable number as determined by the prison governor. Before authorizing the civil partnership, prison authorities are required to make a risk assessment determination.

The Order applies to the Prison Service's population of around 86,000 prisoners.

In the United States, the Department of Justice announced in a February 2014 memo that it will grant full recognition to same-sex marriages to "the greatest extent possible under the law." U.S. Attorney General Eric Holder said the federal government is committed to equal protection.

"In every courthouse, in every proceeding and in every place where a member of the Department of Justice stands on behalf of the United States – they will strive to ensure that same-sex marriages receive the same privileges, protections, and rights as opposite-sex marriages under federal law," Holder stated.

For federal prisoners, the policy change means that same-sex spouses now have visitation rights, and prisoners can seek furloughs for a crisis involving a same-sex spouse. In federal court, same-sex couples now have the right to refuse to testify against their spouse, even in states that do not recognize same-sex marriages.

Gay rights advocates praised Holder's announcement, saying it will "change the lives of countless committed gay and lesbian couples for the better." Human Rights Campaign President Chad Griffin told the *Washington Post*, "While the immediate effect of these policy decisions is that all married gay couples will be treated equally under the law, the long-term effects are more profound."

In August 2013, the California Department of Corrections and Rehabilitation (CDCR) issued a memo extending to state prisoners the right to marry same-sex partners. The memo followed a Supreme Court ruling that overturned Proposition 8, which had prohibited same-sex marriages in the state.

"Effective immediately, all institutions must accept and process applications for a same sex marriage between an inmate and a non-incarcerated person in the community, in the same manner as they do marriages between opposite sex couples," M.D. Stainer, director of the CDCR's Division of Adult Institutions, wrote in the memo.

However, "a currently incarcerated inmate shall not, at this time, be permitted to marry another currently incarcerated inmate" due to security concerns.

In Illinois, prison officials said a policy regarding same-sex marriages will be in place when a statute legalizing such marriages in the state takes effect on June 1, 2014. "The Illinois Department of Corrections will be prepared to implement a policy regarding this law when it goes into effect," said spokesman Tom Shaer. Illinois state prison policy bans the marriage of two prisoners, but prisoners will be able to marry non-prisoners of the same gender.

Marriages between prisoners are also prohibited in Minnesota, but Minnesota Public Radio reported in September 2013 that state prison officials are considering how they will handle marriage requests by sex offenders who have finished their prison sentences but are considered too dangerous to be released. According to the news report, two male prisoners who have been civilly committed contacted local officials to request a marriage license. State law requires marriage license applicants to apply in person, however, and the Minnesota Department of Human Services denied the offenders' request for transportation to the licensing office.

In New York, the State Department of Corrections and Community Supervision held its first same-sex marriage at the Auburn Correctional Facility in December 2011, when a male prisoner married a former prisoner in a civil ceremony. [See: *PLN*, May 2012, p.37; April 2012, p.50].

Sources: *www.dailymail.co.uk, New York Daily News, www.pbs.org/newshour, www.pantagraph.com, www.mprnews.org*

Oregon Victim's Right to Restitution Survives Prosecutor's Statutory Violation

by Mark Wilson

The Oregon Court of Appeals held that a prosecutor's failure to comply with state restitution laws did not deprive a trial court of authority to impose restitution after sentencing.

Oregon law requires the prosecutor to "investigate and present to the court, prior to the time of sentencing, evidence of the nature and amount" of a victim's damages resulting from a crime.

Cindie Wagoner was charged with identity theft. On October 15, 2009, the victim provided proof of her economic losses to Flores, a victim advocate assigned to her case by the Washington County District Attorney's Office. However, Flores did not forward that information to the prosecutor.

Wagoner pleaded guilty and was sentenced in December 2009. The prosecutor noted that the time had passed for the victim to request restitution, and the trial court did not award any restitution. The January 5, 2010 judgment in Wagoner's case indicated that the restitution amount was zero.

Flores was terminated the following month. When other employees cleaned out Flores' desk they found the victim's October 15, 2009 proof-of-loss documents.

In March 2010, the victim filed a mo-

tion asserting that she had a right to receive prompt restitution under Article I, section 42(1)(d) of the Oregon Constitution.

After a hearing, the trial court agreed that the victim was entitled to restitution; the court then issued a May 24, 2010 supplemental judgment requiring Wagoner to pay restitution of $800.

Wagoner appealed, arguing that because the prosecutor had failed to present evidence of the victim's loss before sentencing as required by ORS 137.106, the trial court had no authority to subsequently impose restitution.

The Oregon Court of Appeals noted that it had "recently addressed a very similar question" in *State v. Thompson*, 257 Ore. App. 336, 306 P.3d 731 (Or. Ct. App. 2013), and found the ruling in *Thompson* controlled. The violation of ORS 137.106 "did not prevent the court from imposing restitution in order to provide the victim a remedy by due course of law, after it was discovered that her constitutional right to restitution was violated."

Accordingly, the trial court's order requiring Wagoner to pay restitution was affirmed. See: *State v. Wagoner*, 257 Ore. App. 607, 307 P.3d 528 (Or. Ct. App. 2013).

Habeas Petitioner Cannot Avoid Payment of Appellate Filing Fees

by Michael Brodheim

The Seventh Circuit Court of Appeals has held that a prisoner seeking collateral relief cannot avoid paying appellate filing fees.

Following a murder conviction, Indiana prisoner Kelly S. Thomas was sentenced to 65 years in prison. After his appeal and collateral attack were rejected in the state courts, he filed a federal petition for writ of habeas corpus under 28 U.S.C. § 2254. When that was denied he filed a notice of appeal. The district court judge declined to issue a certificate of appealability, instead certifying that the appeal was not taken in good faith.

Based on that certification, Thomas was required to pay appellate fees of $455 before the Seventh Circuit would consider entertaining his appeal, unless he could persuade the appellate court to allow him to proceed in forma pauperis. Even then he would still owe the fees – if he won, they would be shifted to the state as part of the appeal costs; if he lost, the fees would be "payable like any other debt."

Thomas filed a motion requesting that the Court of Appeals disregard the district court's certification of bad faith. He contended that prisoners are simply not required to pay appellate fees assessed under the Prison Litigation Reform Act (PLRA).

The Seventh Circuit rejected his argument, noting that appellate fees are authorized by 28 U.S.C. § 1913, which long predates the PLRA. The Court of Appeals gave Thomas 21 days to file a motion for permission to proceed in forma pauperis (which depends on demonstrating that he cannot pay the fees and his appeal is not frivolous) and a certificate of appealability (which is dependant on a "substantial showing of the denial of a constitutional right").

The Seventh Circuit noted that an appeal can be non-frivolous and still fail to meet the standard for a certificate of appealability. Thomas filed a petition for writ of certiorari, which was denied on November 18, 2013. See: *Thomas v. Zatecky*, 712 F.3d 1004 (7th Cir. 2013), *cert. denied*.

Prison Officials Liable for Private Employer ADA Violations

by Mark Wilson

The Ninth Circuit Court of Appeals held last September that prison officials are liable for violations of the Americans with Disabilities Act (ADA) committed by private employer contractors.

Arizona law requires state prisoners to work 40 hours per week. Most are employed in the Arizona Department of Corrections' Work Incentive Pay Program (WIPP), earning from 10 to 50 cents per hour. Prisoners who work for Arizona Correctional Industries (ACI), which provides prison labor for private company contractors, earn significantly more.

One of those companies is Eurofresh, "America's largest greenhouse operation," which boasts that it can produce 200 million pounds of hydroponic tomatoes annually.

In July 2008, Arizona prisoner William W. Castle was hired by Eurofresh as a tomato picker, earning more than $2.25 an hour. He was required to push a 600-pound tomato cart and stand or walk during his entire seven-hour shift.

Castle soon began suffering ankle swelling and pain when he stood longer than two hours. Decades earlier, Castle had received a 20% service-connected disability rating for an ankle injury sustained in an Army parachute accident.

After a Eurofresh supervisor told Castle he would be fired for taking breaks to rest his ankle, Castle asked ACI and Eurofresh to be reassigned to a different position. His request was denied and he was told his only option was to quit. Prison officials then moved Castle to a WIPP job in the motor pool, which paid only 50 cents an hour.

Castle filed suit against Eurofresh and state prison officials, claiming they had violated the ADA and the Rehabilitation Act by failing to accommodate his disability. The district court granted summary judgment to the defendants and Castle appealed.

The Ninth Circuit reversed summary judgment as to the prison officials, rejecting their argument that they lacked authority over Eurofresh employment decisions.

Following *Armstrong v. Schwarzenegger*, 622 F.3d 1058 (9th Cir. 2010) [*PLN*, Nov. 2011, p.28], the appellate court observed that government officials are liable for ADA violations committed by private contractors.

Since ACI admittedly contracted with Eurofresh to provide "benefits" to prisoners, including paid labor and vocational training, the Court of Appeals concluded that "one benefit State Defendants may not harvest is immunity for ADA violations: State Defendants are obligated to ensure that Eurofresh – like all other State contractors – complies with federal laws prohibiting discrimination on the basis of disability."

Noting that the en banc court in *Hale v. Arizona*, 993 F.2d 1387 (9th Cir. 1993) [*PLN*, Sept. 1993, p.8] had held that prisoners are not "employees" entitled to minimum wage under the Fair Labor Standards Act, the Ninth Circuit found that "Castle is not Eurofresh's employee under the ADA because his labor belongs to the State of Arizona." Therefore, Eurofresh was not liable for its ADA violations and was entitled to summary judgment.

"Castle's claims against Eurofresh were properly dismissed because Castle and Eurofresh were not in an employment relationship, and Eurofresh does not receive federal financial assistance. However, judgment was improperly granted to the State Defendants. The State Defendants are liable for disability discrimination committed by a contractor," the Court of Appeals concluded.

"A profit-seeking firm that hires convicts at its own worksite should not be shielded from the costs of compliance with the ADA," Circuit Judge Marsha S. Berzon wrote in a concurring opinion, encouraging reconsideration of *Hale*. "Permitting private employers to escape those costs while profiting from the use of prison labor markets undermines the enforcement of the statutory requirements generally, by creating incentives for competing employers to shirk compliance with regard to non-prison labor – and thereby economically disadvantaging competitors of those employers using prison labor."

Nevertheless, noting that precedent "forecloses consideration of such concerns," Judge Berzon reluctantly concurred that *Hale* precludes a finding that Castle was an "employee" under federal law. Thus, his only remedy is against Arizona prison officials. See: *Castle v. Eurofresh*, 731 F.3d 901 (9th Cir. 2013).

The case remains pending on remand, with the Arizona Department of Corrections filing a renewed motion for summary judgment on April 14, 2014. Castle, who has been released from prison, is proceeding pro se.

Seventh Circuit Reverses Summary Judgment in Dental Care Suit

by David M. Reutter

On July 19, 2013, the Seventh Circuit Court of Appeals reversed a grant of summary judgment to three defendants, holding there was sufficient evidence for a jury to find they acted with deliberate indifference to a prisoner's serious dental needs.

Richard M. Smego, a civil detainee at Illinois' Rushville Treatment and Detention Center, filed suit in federal court alleging that a dentist, two doctors and a dental hygienist had violated his constitutional rights.

When Smego arrived at Rushville, Dr. Jacqueline Mitchell, a dentist who contracts with Wexford Health Sources, examined him in December 2005 and found he had twelve teeth with cavities. She promised to begin filling them in early 2006.

Yet it was not until June 24, 2007 – eighteen months later – that Dr. Mitchell saw Smego again. She provided no care during that visit, and it was not until the next month that she installed a temporary filling in one tooth but did nothing for his most painful tooth. In August 2007, she extracted the painful tooth and prescribed Motrin, a painkiller to which Smego was allergic.

Smego complained to his therapist about his persistent dental pain in November 2007, almost two years after he first

saw Dr. Mitchell. The therapist informed Dr. Michael Bednarz, Rushville's Medical Director, and Mitchell assured him that Smego was receiving appropriate care.

Dr. Hughes Lochard, a Wexford physician who saw Smego for an unrelated medical issue, examined Smego's teeth. While he said he did not want to get involved in dental issues, he prescribed Motrin for the pain and refused to prescribe any other medication.

Dr. Mitchell did not see Smego again until 2008, when she placed fillings in three of his teeth; three days after that visit, Smego filed his federal civil rights action. The district court granted summary judgment to the defendants and he appealed.

The Seventh Circuit disagreed with the district court's conclusion that Smego had failed to state viable claims or only alleged negligence by the defendants. The Court of Appeals found a jury could conclude that Mitchell failed "to spare Smego thirty months of serious dental pain by providing the treatment she herself already decided was necessary." Moreover, "Dr. Mitchell admitted that even five years after she had diagnosed Smego's cavities she still had not begun treating at least two of them," the appellate court noted.

There was ample evidence of Mitchell's personal contact with Smego, which made her aware of his tooth decay and pain. A jury could also conclude, the Seventh Circuit wrote, that what little care Dr. Mitchell provided was inappropriate.

The dental hygienist, Kelly Lawshea, told Smego to not be a "pest" when he spoke to her about his pain and difficulty in obtaining dental treatment. While she could not be held liable for failing to schedule treatment or obtain supplies that were blamed as the cause of the delay in treatment, a jury could find her "pest" statement "discouraged Smego from taking more aggressive steps to receive treatment from the dental office."

As to Dr. Bednarz, the Court of Appeals found that Smego failed to present sufficient evidence of deliberate indifference. Bednarz took action by contacting Dr. Mitchell, and he was allowed to rely on her representations absent clear evidence that those representations were false. The opposite conclusion was reached as to Dr. Lochard, however. He never contacted Mitchell and did not defer to her, and had also prescribed the ineffective treatment of Motrin. In the latter regard, the Seventh Circuit noted that in a different case, another "Wexford physician repeatedly prescribed ibuprofen (the active ingredient in Motrin) despite a known allergy," citing *Olive v. Wexford Corp.*, 494 Fed. Appx. 671 (7th Cir. 2012).

The district court's summary judgment order was vacated as to Mitchell, Lawshea and Lochard, and remanded for further proceedings. See: *Smego v. Mitchell*, 723 F.3d 752 (7th Cir. 2013).

Following remand, Smego moved to disqualify U.S. District Court Judge Harold A. Baker from presiding over the case. He pointed out that Judge Baker had dismissed two of his lawsuits, both with findings that an appeal would be in bad faith. Both times, Smego appealed and the Seventh Circuit remanded the cases to the district court. Further, in one of those cases, Judge Baker had stated during a hearing that he wouldn't believe Smego "on a stack of Bibles." The judge also told the jurors after they ruled for the defendants that they had "vindicated" him, apparently referring to his prior dismissal of the case.

Judge Baker granted Smego's motion and recused himself on January 31, 2014. Smego subsequently settled his claims against Lawshea and Dr. Lochard in May 2014, while his claims against Dr. Mitchell are scheduled for trial on July 15, 2014. Notably, Smego litigated this case pro se, including on appeal. See: *Smego v. Adams*, U.S.D.C. (C.D. Ill.), Case No. 3:08-cv-03142-SEM-TSH.

Judge May Resolve Exhaustion Issue; No Policy on Grievance Non-decisions Means Remedies Unavailable

by David Reutter

The Third Circuit Court of Appeals held on August 26, 2013 that a judge may resolve factual disputes relevant to the exhaustion of administrative remedies without the participation of a jury. It also held the district court had erred in finding a failure to exhaust where a prisoner did not receive a response to his grievances and appeals were not required in such circumstances.

Robert L. Small, a pretrial detainee at New Jersey's Camden County Correctional Facility (CCCF) and a paraplegic, filed a civil rights complaint alleging excessive force, denial of medical treatment, and confiscation of his wheelchair and its replacement with one without leg rests. The suit concerned events during two stints that Small served at CCCF between June and September 2004 and again between May 2005 and January 2008.

The lawsuit, originally filed in 2006, was amended by pro bono counsel in January 2008. The defendants moved for summary judgment in late 2009, claiming Small had failed to exhaust administrative remedies under CCCF's grievance policy. The district court dismissed all but one of Small's claims following an evidentiary hearing, and he appealed.

Small argued the Prison Litigation Reform Act requires that a jury, not a judge, determine factual disputes related to administrative exhaustion issues because Seventh Amendment rights are implicated.

The Third Circuit disagreed, joining the Second, Fifth, Seventh, Ninth and Eleventh Circuits in concluding "that judges may resolve factual disputes relevant to the exhaustion issue without the participation of a jury."

The appellate court then turned to the exhaustion issue itself. First, it found "Small knew of, and was able to access, CCCF's grievance procedures." Having concluded that administrative remedies were available to him, the Court of Appeals considered whether he had substantially complied with the jail's grievance process.

Small argued he had complied by submitting sick call requests and letters of complaint, some of which were sent to people outside CCCF. The Third Circuit held those efforts were not substantially compliant with CCCF's grievance procedure.

However, as to two grievances that Small filed concerning incidents in 2005, the Court of Appeals held the district court had erred in finding Small did not comply with CCCF's grievance policy because he failed to appeal.

It was undisputed that neither of the grievances had resulted in a decision by jail staff, and the appellate court said it disagreed "that substantial compliance with CCCF's procedures requires appealing non-decisions." Rather, the jail's grievance policy addressed "only the appeal of a *decision* with which the inmate is not satisfied," and did not "mention what must be done or even could be done by the inmate when a decision is never made."

As CCCF's grievance procedure "did not contemplate an appeal from a non-decision ... the appeals process was unavailable" to Small. The Third Circuit thus affirmed in part and reversed and remanded as to claims related to the two grievances that did not result in decisions by jail staff. See: *Small v. Camden County*, 728 F.3d 265 (3d Cir. 2013).

Following remand, the district court appointed counsel to represent Small on February 21, 2014. This case, now eight years old, remains pending.

New York Prisoner Awarded Sanctions for Spoliation of Evidence; Case Settles for $500,000

by Mark Wilson

On September 4, 2013, a New York federal district court held that a jail official was precluded from testifying in a prisoner's lawsuit about what she supposedly witnessed on surveillance video footage that had been erased. The court also granted the prisoner's request for an adverse inference jury instruction and attorney's fees.

In May 2011, guards did not intervene as New York City jail detainee Dwaine Taylor was savagely beaten by several gang members, including Batise Boyce, in a courthouse holding cell. He wasn't removed from the cell for approximately three hours.

When Taylor was finally taken to an emergency room, he was diagnosed with "jaw fractures on both ... sides of his face," an impacted tooth and another loose tooth. During surgery the next day, doctors closed the "jaw fractures with a metal plate and screws," removed one of his teeth and wired his jaw shut. Taylor was hospitalized for three days and then returned to the infirmary at the Rikers Island jail, where he remained for another month.

Within 15 days, officials prepared "an investigation 'package' recommending that Boyce be 're-arrested' for assaulting" Taylor. That package included copies of surveillance video footage. One week later, Boyce was indicted.

Taylor served notice of his intent to sue and on July 31, 2012 filed a failure to protect suit against jail officials in federal court. He alleged that the assault was sanctioned by guards "under a widespread practice called 'the Program,'" which permitted gang members to attack other non-gang-associated prisoners as a means of control.

"A ceiling-mounted, twenty-four hour surveillance camera" captured events in the holding cell during the assault. Assistant Deputy Warden Executive Officer Jacqueline Brantley reviewed the entire three hours of the video but saved just eight minutes, and the remaining footage was erased.

On June 7, 2013, Taylor moved for spoliation of evidence sanctions. The defendants claimed they had no duty to preserve the remaining three hours of video footage and that Brantley should be allowed to

testify as to what the rest of the footage depicted.

The district court disagreed, holding that Brantley was precluded from testifying about what she observed on the deleted surveillance footage. The court also granted Taylor's request for an adverse inference jury instruction and an award of reasonable attorney's fees and costs in connection with the motion for sanctions.

The case settled in October 2013, with the defendants agreeing to pay $500,000 inclusive of fees and costs. Taylor was represented by the Legal Aid Society and the law firm of Emery Celli Brinckerhoff & Abady, LLP. See: *Taylor v. City of New York*, U.S.D.C. (S.D. NY), Case No. 1:12-cv-05881-RPP.

Seventh Circuit Admits Prisoner is Right but Denies Relief, Suggests Clemency

The Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e), mandates sentence enhancements for certain federal defendants who commit crimes with firearms; those who have three or more prior "violent felonies" or "serious" drug offenses face a minimum 15-year prison term.

In some cases, however, prior state convictions should not quality as "predicate" offenses for the purpose of triggering an ACCA sentence enhancement.

In April 2014, the Seventh Circuit Court of Appeals issued a ruling in a case involving federal prisoner Cody F. Ellerman, who had challenged his ACCA enhanced sentence for being a felon in possession of a firearm.

The appellate court noted that "Ellerman's frustration with his inability to obtain relief is understandable given that he is correct, on the merits, that he never should have been sentenced as an armed career criminal." The Court of Appeals found that "His prior drug convictions were all for selling marijuana in Kansas, ... and as level 3 felonies, did not subject him to a statutory maximum of at least ten years.... Accordingly, those convictions did not qualify as 'serious drug offenses' under 18 U.S.C. § 924(e)(2)(A)(ii), and Ellerman should not have been sentenced as an armed career criminal."

However, he had not filed a direct appeal to his 2003 conviction, his post-conviction appeals were untimely and the Seventh Circuit wrote it was "not empowered to correct the sentencing error."

The appellate court concluded: "Having fallen victim to the procedural complexity of collateral attacks, Ellerman is out of judicial remedies. But he may consider asking the President for a pardon or to commute his sentence." See: *Ellerman v. Walton*, Seventh Circuit Court of Appeals, Case No. 14-501 (April 21, 2014).

In cases raising similar issues, scores of federal prisoners convicted in North Carolina have been found legally innocent in firearm possession cases, including cases involving ACCA enhancements. Yet some of those prisoners have been denied relief and remain incarcerated, too. [See related article in this issue of *PLN*, p. 48].

Ellerman informed PLN in June 2014 that, following the suggestion of the Seventh Circuit, he had filed a petition for commutation with the Office of the Pardon Attorney. That may be an even longer shot than trying to obtain judicial relief, however, considering President Obama's paltry track record of granting requests for clemency. [See: *PLN*, Jan. 2013, p.32; May 2011, p.36].

In February 2014, the U.S. Department of Justice announced an expanded clemency initiative; the administration apparently has taken the change seriously, replacing Pardon Attorney Ronald Rodgers in April 2014.

The initiative may not help Ellerman's chances for commutation, though, as it only applies to federal prisoners who have served at least 10 years of their sentence, have no significant prior convictions, and were convicted of a nonviolent crime that would have resulted in a lower sentence had they been sentenced today. The expanded clemency initiative will be covered in greater detail in a future issue of *PLN*.

Additional source: *www.aclu.org*

North Carolina Repeals Racial Justice Law

In June 2013, North Carolina Governor Pat McCrory signed legislation repealing the state's Racial Justice Act of 2009 (the Act), a controversial law that supporters said was an effort to address racism in death penalty cases. Opponents, however, argued it merely clogged the legal system and denied justice to victims of the state's 154 prisoners sentenced to death.

"Nearly every person on death row, regardless of race, has appealed their death sentence under the Racial Justice Act," Governor McCrory said in a statement that accompanied his repeal of the law. "The state's district attorneys are nearly unanimous in their bipartisan conclusion that the Racial Justice Act created a judicial loophole to avoid the death penalty and not a path to justice."

The Act was passed following the exoneration of three North Carolina prisoners who had been wrongfully convicted and sentenced to death. All were black. [See, e.g.: *PLN*, Aug. 2010, p.32].

The Racial Justice Act allowed condemned prisoners to challenge a death sentence "sought or obtained on the basis of race" if they could prove that race was a factor in their prosecution, jury selection or sentencing, and to petition to reduce their sentence to life in prison without the possibility of parole. According to the North Carolina Department of Public Safety, slightly more than half – approximately 53% – of the state's death row prisoners are African-American. U.S. Census Bureau statistics indicate that blacks only comprise around 22% of the state's population.

When the Act was passed in 2009, opponents contended it was a thinly-veiled attempt by a Democratic governor and a Democrat-controlled state legislature to essentially do away with capital punishment. Due to various legal appeals, North Carolina has not carried out an execution since 2006. Republicans took control of the legislature in 2010, and McCrory, a Republican, was elected in 2012.

"It [the Act] tries to put a carte blanche solution on the problem," said Republican state Rep. Tim Moore. "A white supremacist who murdered an African-American could argue he was a victim of racism if blacks were on the jury."

Colon Willoughby, the district attorney in Wake County, which surrounds Raleigh, the state capital, said death row prisoners can already petition to reduce their sentences on the basis of racial bias under a U.S. Supreme Court ruling. He said the Racial Justice Act "came about and set up new artificial obstacles and barriers that were designed simply to put a moratorium on the death penalty and not to promote justice for anyone." As a result, he argued, the Act did nothing but clog North Carolina's courts.

"The premise of it is that somehow, because juries were white, that they discriminated against people, both white and black," he said. "The whole underlying concept of it is ridiculous."

"It's incredibly sad," countered Democratic state Rep. Rick Glazier, a long-time supporter of the Act. "If you can't face up to your history and make sure it's not repeated, it lends itself to being repeated."

Four prisoners have had their death sentences reduced to life without parole under the Act, all in 2012. In Cumberland County, the court cited a study which strongly suggested racial bias in jury selection. Researchers from Michigan State University who studied North Carolina cases between 1990 and 2010 found that prosecutors removed black citizens from juries in murder trials at more than twice the rate of other races.

"We think that essentially this legislature is sweeping evidence of racial bias under the rug, and it's really disappointing," said Sarah Preston, policy director for the ACLU of North Carolina. "Instead of looking at the cases that have passed as evidence of the necessity for the law, they have decided that it's evidence that the law should be repealed."

Preston and other legal experts said the question now is whether appeals still pending under the now-repealed Act will go forward or be dismissed. "Everyone who has made a claim under the Racial Justice Act is probably going to have to litigate over whether or not they continue to have a claim," Preston said.

The North Carolina legislature had been chipping away at the law ever since Republican control in the state government grew stronger. In 2012, the state House and Senate overrode then-Democratic Governor Bev Perdue's veto of legislation gutting the Act, replacing it with an amended law that made it more difficult for prisoners to challenge their death sentences. Instead of using race-related statistics from the entire state or region, appeals under the Act were limited to statistical data from the judicial district where the crime occurred. The amended law also specified that statistics alone were not enough to prove racial bias, and that the race of the victim could not be considered.

The amended Act was written by Republican House Majority Leader Paul "Skip" Stam, who touted the measure as a means of ending the lengthy halt to executions in North Carolina.

"With [the] override of the governor's veto, the end of the moratorium is in sight," Stam said following the July 2, 2012 vote to amend the Racial Justice Act. "The basic principal of justice is restored: individual responsibility."

In debate leading up to the vote, local district attorneys and other supporters of the death penalty said changes to the Act would allow defendants to rely less on statistics that could mislead judges into finding that racism played a role in convictions and death sentences.

"I don't trust statisticians or people who came in after the fact to find some way to get cold-blooded killers off of death row," said state Senator Thom Goolsby, who is also a defense attorney.

"We should not allow racism to come into our courtrooms," countered state Senator Floyd McKissick during the veto debate. "Race still impacts the minds and the hearts and the consciences of many people who serve on our juries."

The Senate easily overrode then-Governor Perdue's veto, but in the House the vote was 72-48 – exactly the 60% majority needed. After using her veto power, Perdue said she supported the death penalty. "But it has to be carried out fairly – free of prejudice," she added.

In December 2012, following the legislative amendment to the Act, then-Superior Court Judge Gregory A. Weeks reduced the death sentences of three prisoners – two black and one Native American – to life without parole.

According to the American Bar Association, "Judge Weeks found that the prisoners met their burdens of proof ...

through the use of statewide and county-specific statistical evidence, as well as non-statistical evidence. This 'powerful evidence of race consciousness and race-based decision making' included hand-written notes from the Cumberland County prosecutor that noted the race of potential jurors who were black, sometimes associating them with drug or alcohol abuse. The prosecutor also repeatedly noted which potential jurors lived in predominantly black neighborhoods.... The prosecutor's notes did not indicate which potential jurors were white or lived in predominately white neighborhoods. Judge Weeks' ruling also noted that prosecutors had a 'cheat sheet' that instructed prosecutors how to deflect charges of racial bias in jury strikes. In one case, the prosecution struck black jurors at twice the rate of white jurors; in the other two cases, the rate was four times as high."

The court's ruling was "based primarily on the words and deeds of the prosecutors involved in these cases," Judge Weeks said. "Despite protestations to the contrary, their words, their deeds, speak volumes. During presentation of evidence, the court finds powerful and persuasive evidence of racial consciousness, race-based decision making in the writings of prosecutors long buried in the case files and brought to light for the first time during this hearing."

Now that the Racial Justice Act has been repealed, however, whether death penalty cases in North Carolina will be "free of prejudice" – the phrase used by former Governor Perdue – is again a matter of debate.

On April 14, 2014, the North Carolina Supreme Court agreed to hear appeals in the cases of the four prisoners whose death sentences were reduced to life without parole under the Act – Marcus Robinson, Tilmon Golphin, Christina Walters and Quintel Augustine. Prosecutors are seeking to have their death sentences reinstated. The state Supreme Court is composed of seven justices; one is black and the other six are white. Not that race matters, of course.

Sources: *www.journalnow.com, Raleigh News & Observer, www.cnn.com, The New York Times, www.wral.com, www.americanbar.org, Associated Press, www.ncapd.org*

Prison Closures Cause Economic Turmoil

Shrinking state budgets across the country are leading to prison closures that in turn have a negative impact on communities that depend on the facilities as a source of jobs and revenue. [See: *PLN*, June 2013, p.1; April 2009, p.1]. Small towns in Kentucky, Georgia and New York are among those facing recent adjustments to this new economic reality, but some local residents and lawmakers have fought back with campaigns to keep the prisons open.

The city of Wheelwright, Kentucky was hit hard by the closure of the 600-bed Otter Creek Correctional Center, a prison owned and operated by Corrections Corporation of America (CCA). Officials said over 170 jobs were lost, although CCA pledged to relocate as many employees as possible to other facilities. The company said the June 2012 closing of Otter Creek was necessary after Kentucky did not renew its contact to house state prisoners at the facility.

"A lot of them [the employees] live within the city and a lot of them live in the community, you know," said Andy Akers, Wheelwright's mayor. "We're a tight knit community around here." Just before the closure of the prison, Akers had predicted a devastating impact on local businesses, fearing the city's economy would suffer.

"If you don't have jobs you can't spend money at them. Money keeps rolling over and over when you spend it," he said. "I hate to see it closing, but if there's any way we can help we're trying."

Kentucky also declined to renew its last contract with CCA in June 2013, to house prisoners at the company's 826-bed Marion Adjustment Center in St. Mary. State officials said the decision would save $1.5 to $2.5 million per year, and the prisoners will be moved to other facilities. CCA vice president Steve Owen said the non-renewal of the contract, resulting in the closure of the prison, was "disappointing" – though he was likely referring to the economic impact it would have on the company rather than the local community.

Kentucky DOC spokesperson Jennifer Brislin said the state would assist the 166 CCA employees whose jobs were eliminated due to the facility's closure.

"We understand that this creates uncertainty for them," she stated. "We're mindful that this creates an enormous challenge." However, "It's just to help with applications and the like," she clarified. "Obviously, that doesn't guarantee a job" elsewhere.

Additionally, CCA announced in December 2013 that it would be closing the North Georgia Detention Center in Gainesville, Georgia due to a decline in the number of immigration detainees held at the facility. The closure will affect around 130 employees.

City Manager Kip Padgett said they "will be exploring all options for future use of the facility"; Gainesville had expected to receive $825,000 in rent from the CCA-operated detention center for fiscal year 2014. The facility also had a $7 million payroll and CCA spent around $295,000 with local businesses.

"It was news to us," Gainesville Mayor Pro-Tem Bob Hamrick said, in regard to CCA's unexpected announcement that it was closing the detention center. "Obviously, it is a blow to our employment here. But, hopefully, we can come up with some way to not only absorb the employees that will be laid off but also to find some use for that facility."

In New York, a community group organized to prevent the state from closing the Chateaugay Correctional Facility as scheduled on July 26, 2014, which will eliminate up to 111 jobs with a $5.8 million annual payroll. The Save Chateaugay Correctional Facility Task Force published a 30-page booklet describing the impact the closure will have on the community and Franklin County.

For example, the booklet compares the number of jobs lost in Chateaugay to the equivalent of 6,000 jobs lost in Brooklyn. It also notes that Chateaugay is the state's newest medium-security prison, and that it will cost less to operate once the facility starts using natural gas instead of fuel oil, taking advantage of a pipeline project in the county.

Chateaugay is one of four prisons scheduled to close under a proposal announced by New York Governor Andrew Cuomo in July 2013, but state lawmakers questioned whether the closures are truly justified. State Senator Kathleen Marchione, who has been critical of the plan, said "misplaced priorities" are to blame for closing 15 New York correctional facilities since 2011. She said she will fight to keep open the Mt. McGregor prison, a medium-security facility located in the legislative district she represents.

"The closure of Mt. McGregor would cost our community 320 public safety positions and hurt the local economy," Marchione argued. "I disagree with the administration's closure proposal that would impact the public safety professionals who serve New York with honor and work in some of the toughest, most stressful and dangerous conditions imaginable."

In addition to Chateaugay and Mt. McGregor, the Cuomo administration has announced the closure of the Butler Correctional Facility in Red Creek and Monterey Shock Facility in Beaver Dams. Closing the four prisons will save an estimated $30 million.

Groups that represent prison employees have mounted opposition to the closures, claiming that shutting down the four facilities does nothing to alleviate the condition of more than 10,000 state prisoners who are still double-bunked due to steps taken by former Governor Mario Cuomo in the 1990s to address prison overcrowding.

The New York State Correctional Officers & Police Benevolent Association called the state's decision to close the prisons "political posturing," "insulting" and "a show of disrespect." The association called on its members to hold rallies, sign petitions and contact their legislators to oppose the closures, urging them to "Stand with your brothers and sisters and stop the closures of more prisons and mental health agencies! Enough is enough! Your facility could be next!"

Local resolutions have been passed by officials in the cities and counties affected by the prison closures, including the towns of Wilton and Chateaugay as well as Chemung, Franklin, Wayne and Saratoga Counties.

Contending that the legislature was blindsided by the Cuomo administration's plan, Senator Marchione and State Assemblyman James Tedisco both introduced bills that would require approval by state lawmakers before any prisons could be closed. The legislation would also require the state to announce closings at least a year in advance.

Although the four facilities are expected to close as planned, the legislature imposed a two-year moratorium – until July 2016 – on any further prison closures.

Officials with the state Department of

Corrections and Community Supervision (DOCCS) said the crime rate in New York has fallen 13% over the past decade, reducing the need for prison capacity. Further, the state's prison population has dropped nearly 24% since 1999, from 71,600 to around 54,100.

"As the inmate population has continued to decline, prisons that are no longer needed can close," stated DOCCS Commissioner Anthony J. Annucci. "By pursuing policies that are tough, smart and fair, we can maintain or improve public safety on the outside, so there is less need to put offenders on the inside, delivering great savings to New York."

Meanwhile, prison officials pledged to do what they can to soften the impact on state employees. "At the time of the closure announcement there were 673 employees at the four facilities," according to a DOCCS statement. "As of February 3, 2014, there were 386 staff remaining, and DOCCS personnel have been holding another round of meetings with those staff members to assist in planning their transitions."

State officials noted that since the closings were announced there has been "a gradual transition of staff to other prisons, other state agencies or retirement."

Sources: *www.wkyt.com, www.floydcountytimes.com, www.pressrepublican.com, www.legislativegazette.com, www.gainesvilletimes.com, www.abc12.com, www.mlive.com, www.corrections.com, Associated Press, www.kentucky.com, Atlanta Journal-Constitution, www.nyscopba.org*

Administrators Fired at Privately-Run Texas Jail

The warden and head of security at the Liberty County Jail (LCJ) in Liberty, Texas have been fired in the wake of allegations that the chief of security sexually assaulted a female prisoner at the facility. The 285-bed jail is operated by the New Jersey-based Community Education Centers (CEC), a for-profit company.

Warden Timothy New and Chief of Security Kenneth Reid Nunn were fired in September 2012, just days after the county received a notice of claim from attorney Paul Houston LaValle on behalf of former LCJ prisoner Brandy Nichole O'Brien. O'Brien had been incarcerated at LCJ for failing to make timely child support payments.

According to the notice of claim, O'Brien "was repeatedly subjected to assault and battery, sexual assault, deviant sexual assault, humiliation, degradation and intentional infliction of emotional distress at the hands of Chief of Security Kenneth Reid Nunn and others" while incarcerated at the privately-run lock-up.

"Further, when Chief Nunn was repeatedly caught violating my client's rights by other members of the jail staff or sheriff's office, my client was threatened, coerced and coached on the statements she gave to investigators by Warden Tim New and others," LaValle wrote.

In a statement announcing the terminations of New and Nunn, CEC said it was working with law enforcement to investigate staff at the jail.

"The allegations, which have just come to the company's attention, apparently began approximately a year ago when, as a weekender, [O'Brien] encountered the jail's former employees and began cooperating with law enforcement," said CEC representative Christopher Creeder.

Liberty County has a $4 million annual contract with CEC to operate the jail. CEC manages eight secure facilities in Ohio, Pennsylvania and Texas, and "provides a full range of therapeutic residential and non-residential reentry services with a documented record of reducing recidivism," according to the company's website.

Sources: *www.yourhoustonnews.com, www.cecintl.com, www.libertytxsheriff.com*

North Carolina: Hundreds of Federal Prisoners Legally Innocent, Some Still Incarcerated

by Derek Gilna

Following a 2011 federal appellate court ruling, the U.S. Department of Justice (DOJ) initially tried to delay the release of federal prisoners who were wrongly convicted in North Carolina. The government later announced that it would halt such tactics, but has continued to oppose challenges filed by some offenders who are legally innocent.

The DOJ's actions followed a review of prosecutions in three federal courts in North Carolina. DOJ spokesman Wyn Hornbuckle said "many more" cases could surface when all of the state's federal court cases are examined.

The prisoners were convicted of possessing firearms in what the Fourth Circuit Court of Appeals held was a misapplication of the sentencing criteria, a circumstance unique to North Carolina due to the state's system of "structured sentencing." Adopted by the state legislature in 1993, the system mandates that the maximum prison term for any given crime is based on the offender's criminal record. As a result, sentences for even minor crimes can extend for years if a defendant has numerous prior offenses.

Federal law provides that anyone convicted of a crime punishable by more than a year in prison is considered a felon, and thereby prohibited from possessing a firearm or ammunition. However, that provision of federal law, as imposed by North Carolina federal courts, conflicted with the state's structured sentencing.

For example, an offender convicted of a minor crime in a North Carolina state court – writing a bad check, for example – would be considered a felon under federal law if his or her prior record was serious enough to warrant a prison sentence longer than a year. Federal courts proceeded under the notion that if one person convicted of writing a bad check was considered a felon, then all offenders convicted of writing bad checks were felons ... even if a defendant's record warranted a sentence of less than one year under the state's structured sentencing system. Consequently, offenders found in possession of a firearm were charged with violating federal law even if their prior state offenses should not have been considered felonies.

The Fourth Circuit held in August 2011, in *United States v. Simmons*, 649 F.3d 237 (4th Cir. 2011) (en banc), that federal courts had been misapplying the law. Only those offenders who could have actually faced a prison sentence of longer than a year, the appellate court held, should be considered felons under federal law. As a result, scores of federal defendants should not have been prosecuted for being felons in possession of a firearm, because they didn't meet the legal definition of "felon" at the time they were charged.

The ruling in *Simmons* meant that about half of the convictions in North Carolina state courts over the past decade should no longer be considered felonies under federal law. A 2012 investigation by *USA Today* concluded that "none of them [prisoners serving time for firearm possession] had criminal records serious enough to make them felons under federal law."

USA Today's investigation examined firearm possession convictions in western North Carolina between 2005 and 2011, and "was limited to people who had been convicted only of gun possession and included only those cases in which federal prosecutors had specifically identified the prior offense that made possession a crime."

In the wake of *Simmons*, the DOJ initially did little to address the problem of offenders serving federal prison terms despite being legally innocent. In fact, the Department of Justice did not try to identify or notify the affected prisoners, and even argued in individual prisoners' cases that they should not be released.

DOJ officials claimed it wasn't their responsibility to inform prisoners who were serving sentences for what the Fourth Circuit had determined was no longer a crime. While federal prosecutors conceded the prisoners were innocent, they maintained that offenders affected by *Simmons* had to follow federal court rules and file motions challenging their convictions and sentences.

"We can't be outcome driven," said Anne Tompkins, the U.S. Attorney in Charlotte. "We've got to make sure we follow the law, and people should want us to do that." She added that her office was "looking diligently for ways, within the confines of the law, to recommend relief for defendants who are legally innocent."

That effort apparently was not a high priority, however. Ripley Rand, the U.S. Attorney in Greensboro who conducted the DOJ's review of cases affected by *Simmons*, conceded that more than a third of the firearm cases prosecuted by his office might be called into question. "We're going to be addressing this for a while," he remarked. In fact, the 20 prosecutors in his office were so inundated by prisoners challenging their sentences that other prosecutions were placed on hold. "It's definitely been a huge burden," Rand said.

"No one wants anyone to spend time in jail who should not be there," noted one prosecutor in Raleigh, but convictions that are already final "are in a totally different posture and require us to follow the existing statutory habeas law." Rand added that he was "not aware of any procedural mechanism by which [the affected prisoners] can be afforded relief."

Defense attorneys disagreed, saying federal prosecutors should assume a greater role in identifying cases for review. "We're doing it with our hands tied," said Eric Placke, a Greensboro public defender. "I appreciate the compelling considerations they have to deal with. But I do think in cases of actual innocence that it would be nice, to say the least, if they would be a little more proactive." He said his office was handicapped by limited access to records in closed cases.

Legal experts agreed that the procedural approach to such cases was not an easy one. Saying "I'm innocent" may not be sufficient for a successful challenge, according to Nancy King, a law professor at Vanderbilt University. Nevertheless, she noted, "innocent people should be able to get out of prison."

Following *Simmons*, federal judges have freed numerous prisoners and removed others from post-release supervision. Some had been incarcerated for up to eight years. Since *Simmons* was decided, it has been cited in over 200 Fourth Circuit decisions and more than 960 rulings in North Carolina district courts as of July 1, 2014.

One of the first federal prisoners to have his conviction vacated was Terrell McCullum. Prosecutors had opposed his release. "At most, [McCullum] has become legally innocent of the charges against him," federal prosecutors stated in an April 2012 court filing, arguing that he still had a criminal record and possessed a gun, and should not be freed.

In August 2012, U.S. District Court Judge James Fox rejected the prosecution's arguments and reversed McCullum's conviction "in the interests of justice," even though he had already completed his sentence and been released a month earlier.

"After careful consideration, the Department of Justice has decided to take a litigating position designed to accelerate relief for defendants in these cases who, by virtue of a subsequent court decision, are no longer guilty of a federal crime," DOJ spokeswoman Adora Andy said shortly before the court ruled in McCullum's case. "We are working with the court, the probation office and the federal public defenders to ensure that these matters are addressed as effectively and quickly as possible."

Another federal prisoner, Marion Howard, was freed on December 5, 2012 after appealing to the court in a letter to "please rule on my case before the holidays" so he could be home with his family. Many other prisoners have since been released as a result of the *Simmons* decision, and cases are still working their way through the court system.

On May 23, 2014, for example, U.S. District Court Judge Martin Reidinger ruled on a pro se habeas petition filed by federal prisoner Marvin Barnette. "The Government concedes that the Petitioner's motion has merit, and although the motion was untimely presented, the Government agrees to waive the defense of the statute of limitations to Petitioner's claims," the court said.

"Petitioner's sentence was enhanced based on his prior convictions for breaking and entering.... As the Government concedes, and as reflected by the state-court judgments relevant to these convictions, these offenses were Class H felonies, and at the time Petitioner was convicted of these offenses, Petitioner was a prior record level II," Judge Reidinger wrote. "As such, the maximum sentence Petitioner could have received for either of these offenses was 10 months. Because Petitioner could not have received a sentence of more than one year in prison based on these convictions under North Carolina law, *Simmons* dictates that these convictions no longer qualify as 'violent felonies' for purposes of the ACCA [Armed Career Criminal Act]."

Judge Reidinger vacated Barnette's sentence and granted a resentencing hearing. See: *Barnette v. United States*, U.S.D.C. (W.D. NC), Case No. 3:08-cr-00124-MR-1; 2014 U.S. Dist. LEXIS 71118.

On April 8, 2014, the Fourth Circuit held that a defendant sentenced as a career offender before *Simmons* was decided, but who could not be designated a career offender after *Simmons*, constituted a "fundamental miscarriage of justice" that warranted equitable tolling of the statute of limitations and habeas relief. See: *Whiteside v. United States*, 748 F.3d 541 (4th Cir. 2014).

However, others have not been as fortunate. Federal prisoner Clyde Dial, Jr. filed a motion to vacate under 28 U.S.C. § 2255 challenging his guilty plea to two charges with an Armed Career Criminal Act enhancement, arguing that "the convictions used to apply the enhancement no longer qualify as felonies" after *Simmons*. He had received a 176-month prison sentence. However, as part of his plea agreement Dial waived his right to challenge his conviction or sentence under 28 U.S.C. § 2255.

The DOJ opposed Dial's motion and sought to enforce the terms of the plea agreement. The district court agreed with the government, finding in a June 18, 2014 order that Dial had knowingly waived his right to seek relief – even though he was legally innocent with respect to the ACCA enhancement. See: *Dial v. United States*, U.S.D.C. (E.D. NC), Case No. 7:02-cr-00090-F1; 2014 U.S. Dist. LEXIS 83017.

The ACLU of North Carolina estimated in 2012 that more than 3,000 federal prisoners may be entitled to relief as a result of *Simmons*, including reduced sentences or release from prison, because they are legally innocent. In some cases, though, such innocence means little to federal prosecutors.

Sources: *USA Today, www.whiteandhearne.com, www.reason.com, Associated Press, www.pagepate.com*

Do Faith-Based Prisons Work?

by Alexander Volokh

There are a lot of faith-based prison programs out there. As of 2005, 19 states and the federal government had some sort of residential faith-based program, aimed at rehabilitating participating prisoners by teaching them subjects like "ethical decision-making, anger management, victim restitution" and substance abuse in conjunction with religious principles.

One of them – the InnerChange Freedom Initiative program in Iowa – was struck down on Establishment Clause grounds in 2006, but various faith-based prison programs still exist, including InnerChange programs in other states. InnerChange programs, which are explicitly motivated by Christian and Biblical principles, are probably more vulnerable to constitutional challenges; programs that are more interfaith and have less explicitly religious content, like Florida's Faith- and Character-Based Institutions or the federal Life Connections Program, are probably less so.

Faith-based prisons continue to be promoted as promising avenues for reform, chiefly on the grounds that they improve prison discipline and reduce recidivism. Unfortunately – even if we ignore the constitutional issues – most of the empirical studies of the effectiveness of faith-based prisons have serious methodological problems and, to the extent they find any positive effect of faith-based prisons, can't be taken at face value. Those few empirical studies that approach methodological validity either fail to show that faith-based prisons reduce recidivism, or provide weak evidence in favor of them.

* * *

The most serious problem with studies of the effectiveness of faith-based prisons is the self-selection problem. Prisoners obviously choose faith-based prisons voluntarily. And the factors that would make a prisoner choose a faith-based prison may also make him less likely to commit crimes in the future. (One such factor might be religiosity itself). Also, a prisoner who takes the trouble to choose a rehabilitative program may be more motivated to change, and this may make him more likely to change.

As a result, faith-based programs might *appear* to have better results because its participants have lower recidivism rates – but this might have nothing to do with whether the programs actually "work." A program with zero effect that successfully attracts better prisoners will appear to have better results – in fact, even a program that's slightly *harmful* (i.e., has a negative "treatment effect") might appear to have better results, as long as it attracts prisoners who are sufficiently better (i.e., has a positive "selection effect"). If the positive selection effect is greater than the negative treatment effect, the program might fool naïve observers into thinking it's a success.

Therefore, what we certainly don't want to do is just compare the results of participants in a faith-based program with those of non-participants. (Nonetheless, some studies do this!). This presents the self-selection effect in its most naked form – and the results of such a study can't be taken seriously.

Other studies are slightly more sophisticated. They compare the group of participants with a matched group of non-participants, where non-participants are matched to participants based on various observable factors like race, age, criminal history and the like. Thus, suppose there are 100 participants and 1,000 non-participants. As stated above, we shouldn't just compare the 100 with the 1,000 – the 100 are systematically different from the 1,000, because the 100 chose to participate and the 1,000 didn't. The 100 have some sort of motivation that sets them apart from everyone else, even apart from any effectiveness of the program. Instead, what these studies do is take the 1,000 non-participants and identify 100 who "look like" the 100 participants – each of the 100 non-participants is as close as possible to one of the participants in race, sex, age, education and other observable factors. The hope is that comparing the 100 participants with the 100 *matched* non-participants will make for a more valid comparison.

Alas, this hope is probably unjustified. Even if you could perfectly match the 100 participants with 100 non-participants who looked very similar, you can only match prisoners based on *observable* factors like race, sex, age and so on. But one of the most important factors – motivation to change – is unobservable. So, in my view, these studies, though somewhat more sophisticated, still aren't good enough to overcome the self-selection problem.

The third type of study uses a more sophisticated statistical technique called "propensity score" matching. Participants are matched to participants not based on observable factors directly, but based on their propensity score, that is, their estimated probability of participating in the program. But these propensity scores are generated using observable characteristics like race, sex, age, education and so on. Motivation remains unobservable, and that's still one of the most important factors in whether a released prisoner reoffends. So propensity scores still don't solve the self-selection problem.

So far, we've seen three types of studies – naïve comparisons of participants to non-participants, matching based on some observable characteristics, and matching based on propensity scores. None of these three types of studies are credible because they don't account for self-selection. Prisoners who are motivated enough to choose to participate in a rehabilitative program are already less likely to reoffend. So any study that compares voluntary participants and voluntary non-participants may just be picking up the effect of being a good person, not the effect of the program itself. (Some of these studies are subject to even further sources of bias. For instance, in addition to self-selection in the decision whether and how intensively to participate, there can be selection by the program staff in the decision of whom to admit or whom to kick out, as well as "success bias" in the consideration only of those who completed the program without dropping out).

In my view, the only credible studies so far fall into a fourth category – those that compare (voluntary) participants in faith-based programs with people who volunteered for the program but were rejected.

Finally, a class of statistically valid studies! Unfortunately, the results from these studies generally aren't good. In a 2003 evaluation of the Texas Inner-

Change program, there was no significant difference between how well accepted and rejected volunteers did in terms of two-year arrest or reincarceration rates. Same goes for a 2003 evaluation of the Biblical Correctives to Thinking Errors program at Indiana's Putnamville Correctional Facility, a 2004 evaluation of the Kairos Horizon Communities in Prison program at Florida's Tomoka Correctional Institution and a 2009 evaluation of Florida's dorm-based "faith and character" programs.

I've looked at two evaluations of an *after-care* program for ex-prisoners, the Detroit Transition of Prisoners program. This program may confer some benefits, though it's hard to say because the results aren't reported in a form that would make this easy to determine. But even if this program is successful, we still have to grapple with the "resources problem": The studies compare participation in the program either with the alternative of no program at all or with the "business as usual" alternative of whatever other programs happen to be available, rather than with participation in a comparably funded secular program. Thus, even if a religious program is better than nothing at all, it could be because of the greater access to treatment resources (for instance, mentors and counselors) and not because of the religious content of the program.

* * *

In the end, this article has bad news and good news.

The bad news, as explained above, is that most studies are low-quality and the results of the higher-quality studies aren't promising. There seems to be little empirical reason to believe that faith-based prisons work.

The good news is that there's also no proof that they don't work. The absence of statistically valid or statistically significant findings isn't the same as the presence of negative findings. And while the self-selection problem is real and important, the resources problem may not even be a problem at all: maybe the "zero alternative" or the "business as usual" alternatives really are proper empirical baselines, since they reflect both reality and, perhaps, political feasibility. So the picture isn't uniformly bleak; there are some programs that seem to show some statistically significant effects, even if they're weak and even if we're not sure how well they compare to the hypothetical effects of a hypothetical, comparably funded secular program.

Perhaps future research will shed light on these questions. In the meantime, clearly some groups want to have faith-based prisons, some prisoners want to attend them and they probably do little if any harm. If some programs don't work, this is an indication to future practitioners that something needs to be changed; if some programs work, maybe they can be replicated elsewhere. Better results won't emerge unless they're allowed to emerge by a process of experimentation.

Alexander Volokh blogs at the Volokh Conspiracy (www.washingtonpost.com/news/volokh-conspiracy) and is an Associate Professor of Law at the Emory University School of Law; this is a synopsis of his research on faith-based prisons, which was published in the Alabama Law Review *(Vol. 63, 2011). He provided this article exclusively for Prison Legal News.*

SEC Rejects CCA, GEO Group Shareholder Resolutions to Reduce Prison Phone Rates

On February 18, 2014, the Securities and Exchange Commission (SEC) granted a request filed by for-profit prison company GEO Group to exclude a shareholder resolution that sought to reduce the high cost of phone calls made by prisoners at GEO-operated facilities. Ten days later, the SEC granted a request by Corrections Corporation of America (CCA) to exclude a similar shareholder resolution.

The resolutions, filed by Alex Friedmann, managing editor of *PLN* and associate director of the Human Rights Defense Center (HRDC), would have required the companies to forgo "commission" kickbacks from prison phone service providers. [See: *PLN*, Jan. 2014, p.44]. Such kickbacks are typically based on a percentage of revenue generated from inmate telephone services (ITS) – revenue that is mostly paid by prisoners' families.

Specifically, the shareholder resolutions stated that GEO and CCA "shall not accept ITS commissions" at their facilities, and that when the companies contract with prison phone service providers they "shall give the greatest consideration to the overall lowest ITS phone charges among the factors [they consider] when evaluating and entering into ITS contracts." CCA and GEO both filed no-action requests with the SEC seeking to exclude the resolutions from their proxy materials.

According to its SEC filings, GEO Group received $608,108 in prison phone kickbacks in 2012. The shareholder resolution submitted to CCA noted that one of the company's jails, the Silverdale Detention Facility in Chattanooga, Tennessee, received a commission of 48% of prison phone revenue, and that a 15-minute call from that facility cost as much as $9.75.

On February 11, 2014, a Federal Communications Commission (FCC) order went into effect that caps the cost of long distance prison phone calls nationwide at $.25 per minute for collect calls and $.21 per minute for debit and prepaid calls. The order does not apply to intrastate (in-state) prison phone rates, however, which remain high at many correctional facilities. [See: *PLN*, Feb. 2014, p.10; Dec. 2013, p.1].

Research has consistently found that prisoners who maintain close connections with their families while incarcerated have better post-release outcomes and lower recidivism rates. As stated by FCC Commissioner Mignon Clyburn: "Studies have shown that having meaningful contact beyond prison walls can make a real difference in maintaining community ties, promoting rehabilitation, and reducing recidivism. Making these calls more affordable can facilitate all of these objectives and more." [See: *PLN*, April 2014, p.24].

GEO Group objected to the shareholder resolution by arguing that Friedmann had a "personal grievance" or would personally benefit from reducing prison phone rates at the company's facilities; that the resolution did not address an issue significantly related to the company's business; that it lacked the power or authority to implement the resolution; that the proposal concerned GEO's ordinary business operations; and that the resolution constituted "multiple proposals."

"GEO Group basically threw the kitchen sink at the resolution seeking to exclude it, and was ultimately successful," said Friedmann. "This is what happens when essential public safety and criminal justice services, such as operating prisons, are contracted out to a private corporation without a conscience that is only interested in making money."

He added, "Make no mistake, when GEO claims it is interested in rehabilitating offenders, as it does on its website, it is merely providing lip-service. GEO Group had an opportunity to make a real difference in terms of increasing the ability of prisoners to stay in touch with their families, which would benefit our communities through lower recidivism rates and thus less crime and victimization. Instead, the company protected its profits from prison phone kickbacks."

Similarly, with respect to CCA, Friedmann said: "The company claims that it's interested in rehabilitating offenders, but when faced with a resolution that would have reduced phone rates at its for-profit facilities, thereby having a rehabilitative effect on prisoners and resulting in less recidivism, CCA decided its profits from prison phone kickbacks were more important. Which demonstrates that despite its corporate PR rhetoric, CCA cares little about rehabilitation or public safety."

Friedmann was ably represented before the SEC by attorneys Jeffrey Lowenthal and Jon Burke with the New York-based law firm of Stroock, Stroock & Lavan.

Source: *HRDC press releases (March 3, 2014 and Feb. 19, 2014)*

Seventh Circuit: No Qualified Immunity for Diabetic Detainee's Death

by Mark Wilson

On August 20, 2013, the Seventh Circuit affirmed a district court's denial of qualified immunity in a case concerning an Illinois pretrial detainee's death due to medical neglect.

Phillip Okoro, 23, was arrested for a misdemeanor property offense in October 2008 and held at the Williamson County Jail. Although *Gerstein v. Pugh*, 420 U.S. 103 (1975) requires a probable cause hearing to be held within 48 hours, Okoro was incarcerated for 69 days without such a hearing.

As a teenager, Okoro was diagnosed with Type I diabetes, which he controlled by carefully monitoring his blood sugar levels. In college, however, Okoro's health deteriorated when he suffered from schizophrenia and stopped monitoring his diabetes.

Williamson County contracts with Health Professionals, Ltd. (HPL) to provide medical care at the county jail. Immediately after his arrest, Okoro's family alerted jail and medical staff about his mental illness and diabetes.

While incarcerated, Okoro was confined in an isolation cell under the care of HPL employees Dr. Jogendra Chhabra and Nurse Marilyn Ann Reynolds. He was dependent on jail and medical staff to monitor his blood sugar levels, provide insulin shots and deliver other necessary medical treatment.

On December 23, 2008, Okoro collapsed in his cell and died from diabetic ketoacidosis, a buildup of acidic ketones in the bloodstream that occurs when the body runs out of insulin.

Okoro's sister, Jaclyn Currie, filed a federal lawsuit against jail officials, HPL, Dr. Chhabra, Nurse Reynolds and others. She alleged the defendants were deliberately indifferent to Okoro's medical needs and his death was "completely preventable" with adequate medical care, regular blood sugar monitoring and sufficient insulin.

Currie initially claimed violations of the Eighth and Fourteenth Amendments. "At the close of discovery, however, in response to the defendants' motion for summary judgment, Currie argued for the first time that the Fourth Amendment's 'objectively unreasonable' standard should govern," since Okoro was a pretrial detainee. The district court granted Currie leave to amend her complaint to allege a Fourth Amendment violation.

Shortly after that ruling the county and jail officials settled with Currie, leaving HPL and its employees, Chhabra and Reynolds, as the only remaining defendants.

The HPL defendants then moved to dismiss, claiming they were entitled to qualified immunity because the Fourth Amendment has not been applied to medical professional subcontractors. When the district court denied their motion, Chhabra and Reynolds filed an interlocutory appeal.

"A jailer might violate an arrestee's Fourth Amendment rights by unreasonably denying the arrestee access to insulin," they argued, "but a health care professional who unreasonably withholds insulin does not."

The Seventh Circuit found their argument lacked "support in law or logic," noting that "from the perspective of the arrestee, it matters not a whit whether it is the jailer or the doctor whose conduct deprives him of life-saving medical care."

Following the Sixth Circuit's reasoning in *McCullum v. Tepe*, 693 F.3d 696 (6th Cir. 2012), the appellate court found "the contours of Okoro's Fourth Amendment rights were 'sufficiently clear that a reasonable official would understand that what he is doing violates that right' throughout the period of Okoro's detention."

The Court of Appeals also rejected the defendants' argument that they were entitled to qualified immunity because they were unaware of Okoro's legal status as a pretrial detainee.

Such an argument "assumes that health care providers calibrate the level of medical care they provide to a jail inmate based on their assessment of the inmate's legal status, taking advantage of the right to be sloppy where the standard is lower," the Seventh Circuit observed. "We sincerely hope that this is not how Chhabra, Reynolds, and Health Professionals, Ltd. go about caring for those in the State's custody." The appellate court concluded that "if the defendants truly tailor their care (or lack thereof) in this fashion, then their failure to ascertain Okoro's correct status cannot be characterized as a 'reasonable' mistake, and their qualified immunity claim still fails." See: *Currie v. Chhabra*, 728 F.3d 626 (7th Cir. 2013).

Following remand, Dr. Chhabra agreed to settle the case in December 2013 for $775,000, resolving claims related to the remaining HPL defendants. Okoro's sister was represented by the Chicago law firm of Loevy & Loevy.

Update on PLN Suit Against Nevada DOC

Prison Legal News continues its efforts to defend its First Amendment right to communicate with prisoners in the Nevada Department of Corrections (NDOC). In 1999 the NDOC banned all copies of PLN, claiming the publication constituted "inmate correspondence." PLN filed suit and was granted a preliminary injunction requiring delivery of PLN subscriptions and mail to Nevada prisoners. The state entered into a consent decree in September 2000, agreeing that prisoners "shall be permitted to subscribe to the publications of their choice," subject only to specified security concerns.

However, ongoing censorship of PLN's monthly magazine and books resulted in a June 2013 lawsuit in which PLN seeks to enjoin the unconstitutional censorship of its publications by prison officials. [See: *PLN*, Nov. 2013, p.18]. In conjunction with the lawsuit, PLN also filed a motion for an order to show cause in the prior suit, seeking to hold the NDOC in contempt for violating provisions of the 2000 consent decree by enacting and enforcing policies that continue to censor PLN's monthly publication and book orders sent to Nevada prisoners. The federal district court later consolidated the two cases.

On June 17, 2014, the NDOC filed a motion to dismiss PLN's suit, claiming a revised mail policy (AR 750) resolved any constitutional issues with the old mail policy. The court has not yet ruled on the motion; a jury trial in the case is scheduled for January 27, 2015. See: *PLN v. Cox*, U.S.D.C. (D. Nev.), Case No. 3:00-cv-00373-HDM-WGC.

PLN relies on information we receive from prisoners to assist us in our litigation, and we invite Nevada readers to contact us concerning censorship of mail and books at NDOC facilities. Specifically, whether prisoners receive notice when mail is withheld or censored, whether they have participated in an appeals process, and if they are receiving book orders without "pre-approval." Nevada prisoners can contact us in these regards at: Prison Legal News, Attn: NV DOC Suit, P.O. Box 1151, Lake Worth, FL 33460.

Flimsy Reasons for Prolonged, Frequent Lockdowns State Eighth Amendment Claim

by David Reutter

The Seventh Circuit Court of Appeals has held that an Illinois prisoner's complaint that frequent lockdowns for substantial periods of time deprived him of exercise and caused him various health problems stated an Eighth Amendment claim. However, the Court found that he failed to state a due process claim concerning the loss of his monthly stipend due to the lockdowns.

The appellate ruling followed a district court's dismissal, under 28 U.S.C § 1915A, of a civil rights complaint filed by Menard Correctional Center (MCC) prisoner Gregory J. Turley. The dismissal addressed Turley's Eighth Amendment claims but not his Fourteenth Amendment claim.

The Seventh Circuit determined that Turley had exhausted his administrative remedies and had brought his action in a timely manner, noting that Illinois has a "two-year statute of limitations, which is tolled while the prisoner exhausts the administrative grievance process." As he was not procedurally barred, the Court of Appeals turned to the merits of the case.

Turley, serving a life sentence, was classified as a "low-aggression offender" and housed in a unit of similarly classified prisoners. Between January 7, 2008 and October 4, 2010, there were 25 lockdowns imposed at the MCC. The longest lasted 81 days and there were 534 total lockdown days, which amounted to lockdown status for "more than 50% of the period in question."

The lockdowns, Turley argued, were "often imposed for non-penologically-related purposes, such as isolated fights between two inmates from other cellhouses, rumors of a potential fight or for no reason at all." He further contended "the excessive use of lockdowns arose out of a conspiracy among prison officials and union employees to create a staff shortage and negotiate a pay raise."

Additionally, he alleged "a conspiracy to exaggerate prison response to minor incidents, or no incidents at all, in order to allow staff to take vacation and/or to psychologically punish all prisoners for the misconduct of a few." Finally, he claimed the lockdown periods resulted in his $10 monthly idle pay stipend to be withheld, depriving him of due process.

The Seventh Circuit initially found the district court had wrongly concluded that Turley failed to list the specific periods of lockdown confinement at issue. It then rejected the state's reliance on a lockdown case involving a single prisoner, *Pearson v. Ramos*, 237 F.3d 881 (7th Cir. 2001) [*PLN*, Oct. 2001, p.18]. In doing so, the appellate court rejected the notion of "an ironclad rule that a denial of yard privileges shorter than 90 consecutive days cannot be the basis for an Eighth Amendment claim."

Rather, the Court of Appeals wrote it had previously explained the "norm of proportionality" should be applied in such cases, and that a lockdown not exceeding 90 days could violate the norm if it were "imposed ... for some utterly trivial infraction of the prison's disciplinary rules."

In this case, the Court said it was "confronted with a pattern of prison-wide lockdowns, which Turley alleges occurred for flimsy reasons or no reason at all." He alleged serious injuries resulting from the inability to exercise outside or in his small cell, in the form of "irritable bowel syndrome, severe stress, headaches, and tinnitus."

While the appellate court held that prison officials were made aware of Turley's Eighth Amendment claims through his grievances and prior lawsuits by other MCC prisoners, it found he had a post-deprivation remedy for the stipend claim through the Illinois Court of Claims, thus his due process claim failed. The district court's judgment was reversed in part as to Turley's Eighth Amendment claims and affirmed as to his due process claim, and the case remains pending on remand. See: *Turley v. Rednour*, 729 F.3d 645 (7th Cir. 2013).

Illinois $50 State's Attorney Fee Applies Only to Habeas Proceedings

by Mark Wilson

The Illinois Supreme Court held in September 2013 that a $50 State's Attorney fee authorized in habeas corpus cases does not apply to non-habeas collateral proceedings.

After an Illinois trial court dismissed a post-conviction petition filed by state prisoner Omar Johnson, he submitted a petition for relief from judgment under section 2-1401 of the Illinois Code of Civil Procedure.

The state moved to dismiss the petition and requested that Johnson be assessed filing fees and court costs under section 22-105(a) of the Code of Civil Procedure, for filing a frivolous petition.

The trial court granted the state's motion to dismiss and assessed fees and costs against Johnson, including a $50 State's Attorney fee pursuant to section 4-2002.1(a) of the Counties Code, which authorizes the fee in habeas corpus cases. Johnson appealed, lost in the appellate court and the Illinois Supreme Court granted review.

The Supreme Court interpreted section 4-2002.1(a) to determine whether the legislature had intended the fee to extend beyond habeas cases to all collateral proceedings.

"Giving the term 'habeas corpus' ... its plain and ordinary meaning," the Court concluded the fee "only applies to the various types of habeas corpus proceedings." The Court held that "collateral proceedings such as a section 2-1401 petition and a post-conviction petition" are not habeas proceedings, and the legislature did not intend for the fee to "apply 'generically' to all collateral proceedings."

As such, the state Supreme Court reversed in part the judgment of the trial and appellate courts, and remanded with instructions to vacate the $50 State's Attorney fee. See: *People v. Johnson*, 2013 IL 114639, 995 N.E.2d 986 (Ill. 2013).

Although a legal victory, the ruling may be small consolation for Johnson, who is serving natural life plus at least 60 years.

The Habeas Citebook: Ineffective Assistance of Counsel **$49.95**
Brandon Sample
ISBN: 978-0-9819385-1-6
Paperback, 224 pages

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

Prisoners' Guerrilla Handbook to Correspondence Programs in the United States and Canada, 3rd Edition **$49.95**
Jon Marc Taylor
ISBN: 978-0-9819385-0-9
Paperback, 224 Pages

The greatly anticipated and newly updated third edition of the Prisoner's Guerrilla Handbook to Correspondence Programs in the United States and Canada has finally arrived! Author Jon Marc Taylor's brand new version is the latest in this unique and highly successful guidebook for the prisoner-student. This invaluable tool and how-to handbook provides the reader with step-by-step instructions to find the appropriate education program for correspondence high school, vocational, paralegal, undergraduate, and graduate courses offered in the U.S. and Canada today.

Prisoners' Self-Help Litigation Manual, 4th Edition **$45.95**
John Boston & Dan Manville
ISBN: 978-0-1953744-0-7
Paperback, 960 pages

Prisoners' Self-Help Litigation Manual, in its much-anticipated fourth edition, is an indispensable guide for prisoner litigants and prisoner advocates seeking to understand the rights guaranteed to prisoners by law and how to protect those rights. Clear,comprehensive, practical advice provides prisoners with everything they need to know on conditions of confinement, civil liberties in prison, procedural due process, the legal system, how to actually litigate, conducting effective legal research, and writing legal documents. It is a roadmap on how to win lawsuits.

☐ Habeas Citebook, Ineffective Assistance of Counsel $49.95

☐ Prisoners' Guerrilla Guide to Correspondence Programs 3rd edition $49.95

☐ Prisoners' Self-Help Litigation Manual 4th edition $45.95

Shipping included in all prices

Order by mail, phone, or on-line. Amount enclosed _____

By: ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name _____

DOC/BOP Number _____

Institution/Agency _____

Address _____

City _____ State ___ ZIP _____

PUBLISHED BY
PRISON LEGAL NEWS
Dedicated to Protecting Human Rights

PO Box 1151 • Lake Worth, FL 33460
Tel 561-360-2523 • www.prisonlegalnews.org

News in Brief

Arizona: A prisoner serving time for gang- and drug-related offenses, as well as his attorney-wife, mother, sister, ex-wife and another woman have been indicted on more than 250 charges following a two-year investigation into the New Mexican Mafia prison gang. Angel Lopez Garcia is accused of being a gang leader who has, since at least 2007, directed drug sales, extortion, money laundering and gang violence from behind bars with assistance from the women named as co-defendants. His wife, Phoenix criminal defense attorney Carmen Fischer, and the four other women accused in the conspiracy, Rosio Robles Gonzales, Oralia L. Garcia, Tanya Garcia-Ochoa and Rosemary Ann Garcia, were arrested on October 4, 2013. Fischer pleaded guilty on March 31, 2014 and was sentenced to three years in prison.

Arkansas: St. Francis County deputies have filed a number of new charges against Jonathan Paulman, 22, who was in jail for burglary when he set fire to his cell on October 15, 2013. Paulman told jail officials that he had started the fire as a way to get out to attend his young son's birthday party. He used a contraband cigarette lighter to torch a mattress, towel and laundry bag in the cell he shared with four other prisoners. Paulman told deputies that he planned to blame the arson on someone else. No one was injured in the blaze.

California: A licensed bail agent in Modesto was arrested on November 26, 2013 on various charges related to his soliciting gang members at the Stanislaus County Jail to carry out violent crimes, including murder. Praveen Singh, who is also known as "Prajeer Singh," was arrested following a lengthy joint investigation by the Modesto, Turlock and Ceres Police Departments, Stanislaus County Sheriff's Department and Stanislaus County District Attorney's Office.

Colorado: Former deputy Matthew Andrews initially pleaded not guilty to helping prisoner Felix Trujillo escape from the downtown Denver Detention Center. [See: *PLN*, Nov. 2013, p.56]. On November 22, 2013, however, he pleaded guilty to a felony charge of attempting to influence a public servant. "What you did is not only a dishonor to yourself but the whole sheriff's department," the judge told Andrews when he sentenced him on January 24, 2014 to the maximum six years in prison.

Delaware: State police announced on November 20, 2013 that Christopher Peck, a guard at the Sussex Correctional Institution, had been arrested and charged with sexual misconduct. Peck, 39, faces 11 counts of sexual relations in a detention facility. A 19-year-old prisoner reported that she had sex with Peck, and in the course of the investigation police learned that two other prisoners, aged 27 and 28, had also been victimized by the guard. Peck entered a guilty plea to six of the charges and was sentenced to three years in prison on June 6, 2014.

District of Columbia: Trey Radel – now known as the "Cocaine Congressman" – voted to allow states to drug test food stamp recipients. It turns out that he should have been the one tested for drugs. Radel pleaded guilty to buying cocaine in an FBI and DEA sting operation, and was sentenced in November 2013 to one year of probation and residential substance abuse treatment. According to the Associated Press, Radel's guilty plea to the misdemeanor drug possession charge was the first by a sitting congressman in 31 years. Radel is fortunate to have been sentenced in D.C., where a special drug court handles certain drug offense cases.

Florida: Two Orange County jail guards were fired on October 11, 2013 after fighting on a charter bus while headed home from a charity event. Michael Dean and Donald Casey had been drinking when Dean thought Casey made comments about his girlfriend, also a jail guard. Investigators said Dean initiated the fight by throwing a punch, and afterward Casey threatened to stab him. The bus driver said all of the jail employees were "very drunk and very rude," and had trashed the bus. Dean was reinstated to his job in January 2014 but demoted.

Florida: Alexander Lansky, a property clerk at the Pinellas County Jail, admitted to having an addiction to prescription pills when detectives interviewed him following complaints from two prisoners who said their legally-prescribed painkillers were missing from their property when they were released from jail. The sheriff's office accused Lansky of stealing Vicodin, Percocet and morphine pills from five prisoners, and he was charged with five counts of grand theft and five counts of possession of prescription drugs on October 22, 2013.

Idaho: The Idaho Department of Correction announced on November 13, 2013 that it was suspending visitation for all prisoners in Unit 2 at the Pocatello Women's Correctional Center after a prisoner tested positive for hepatitis A. Prison staff also suspended all prisoner transfers into and out of the facility while health care providers watched for more possible cases. Unit 2 prisoners were scheduled to receive hepatitis A vaccine and immune globulin as a precaution.

Illinois: Former Wills County courthouse bailiff Jerome W. Henry was sentenced in August 2013 to three years in prison for possession of child porn. On November 14, 2013, Judge Sarah Jones granted his motion to reconsider and resentenced him to 147 days in jail, three years' probation, 130 hours of public service and $2,999 in fines and costs. The 130 hours of public service was later waived. Henry, 63, is registered as a sexual predator in the state's online sex offender database.

Illinois: On November 26, 2013, Illinois DOC spokesman Tom Shaer said officials at the minimum-security Taylorville Correctional Center were trying to control an outbreak of a skin rash, with at least 17 prisoners reporting symptoms of intense itching. One prisoner was diagnosed as having scabies. One wing of a housing unit was placed on quarantine, and prisoners showing signs of the rash were isolated before being returned to a special quarantine room.

Iran: Reza Heydarpour, arrested by the Ministry of Intelligence on November 4, 2013, has not been heard from since being transferred to Evin Prison. Heydarpour was the physician who completed a report on the death of Internet blogger Sattar Beheshti, who died at Evin Prison in October 2012. Beheshti's death was reported by many as the result of severe beatings and torture following his arrest for his online activities. In 2009, another Iranian prison physician, Ramin Pourandarjani, died under suspicious circumstances.

Libya: A Libyan security official who spoke with the Associated Press on condition of anonymity said unknown gunmen had attacked the prison in Sabha on November 29, 2013 and succeeded in releasing 40 prisoners. The gunmen helped

the prisoners escape by opening fire and threatening the guards; prison director Shaaban Nasr said scores of escapees later surrendered.

Montana: Former prison nurse Tisha Ann Brunell, 45, was facing 53 charges for engaging in sexual misconduct with a prisoner. [See: *PLN*, Sept. 2013, p.17]. A jury trial was held on March 22, 2014 and Brunell was found guilty of 48 of the charges. After she is sentenced, she faces another trial for trying to threaten a witness while she was out on bond.

New York: On November 7, 2013, prisoner Armando Ortiz was subjected to a random frisk search at the Marcy Correctional Facility and guards found a handmade sharp instrument attached to his prosthetic leg. A local prosthetics company called in to disassemble the leg found four more razor weapons and a small amount of Suboxone. Ortiz, who was serving 1½ to 3 years for attempted felony assault, faced disciplinary charges but no new criminal charges were filed.

North Carolina: Matthew Ethelbert Toney was fired and charged with a felony on November 22, 2013. Toney, a Durham County sheriff's jailer since 1996, is accused of engaging in sexual activity with a prisoner; he posted a $30,000 bond following his arrest and was released.

Ohio: James Miracle was fired from his job at the Mansfield Correctional Institution on November 22, 2013. As a building construction supervisor at the prison he was required to properly supervise tools that were used during the July 2013 escape of prisoner James David Myers. Myers, who was serving a life sentence, used a pickax to break into a storage area to get three ladders, which he then used to climb over security fences. He was captured one day later by customers at a convenience store. Miracle also was accused of falsifying forms and forging signatures on maintenance inventories, which "compromised or undermined the security of the institution."

Oklahoma: A former guard at the Corrections Corporation of America-operated Cimarron Correctional Facility was charged in November 2013 with bringing contraband into the prison. Alyson Frances Posey was approached by prisoner Reeco Cole, who told her that the father of one of her children, who was incarcerated at another prison, owed him money. She agreed to bring tobacco into the facility to pay off the debt, then began smuggling other contraband for cash payments. She also gave nude photos of herself to Cole. Investigators said Cole denied having any relationship with Posey.

Oklahoma: On November 23, 2013, Mayes County jailer Aaron Peters appeared in court to enter a not guilty plea to a charge of rape by instrumentation. Peters, 23, was assigned to supervise a female prisoner during her stay at a hospital. He allegedly entered the bathroom where the prisoner was showering and performed sexual acts on her; she subsequently passed out from the medication she was taking, and awoke to find Peters engaging in sex acts with her. The prisoner's complaint interview was conducted while she was wearing Peters' shirt; she had also stolen his handcuff key.

Oklahoma: The Associated Press reported on November 23, 2013 that seven state prisoners were hospitalized over a three-week period with symptoms of salmonella poisoning. Nearly 100 prisoners at the Eddie Warrior, Jim E. Hamilton, Joseph Harp and Bill Johnson correctional centers reported symptoms. Department of Corrections spokesman Jerry Massie said it was uncommon for so many prisoners to fall ill at different facilities. The state Department of Health is investigating the source of the outbreak.

Pennsylvania: After a traffic stop on November 11, 2013, John Vincent was arrested on an outstanding warrant. When he was booked into the Northampton County Prison, a strip search revealed that he had attached 18 packets of heroin to his penis with a rubber band. Vincent was charged with possession of drug paraphernalia, possession of heroin and providing false identification to a law enforcement officer. His bail was set at $50,000.

Pennsylvania: Six members of the group Citizens for Social Justice were told by Delaware County officials that they did not need a permit to peacefully protest across from the George W. Hill Correctional Facility. When the group gathered on November 5, 2013 at the Community Education Centers-operated prison to highlight issues of abuse and improper releases, they were met by a large show of force and told to move more than a mile away. "They had about 20 guards, K-9s, county police; it looked like a whole Gestapo troop," said

News In Brief (cont.)

Pastor Keith Collins, one of the protest organizers. Collins said the group would like to meet with both CEC and the County Prison Board, and encourages the formation of a citizen advisory board to enhance accountability at the prison.

Texas: On October 31, 2013, fourteen former workers from the McConnell Unit were sentenced in federal court on racketeering and drug charges. Eleven other people also were convicted for their roles in the scheme. The large-scale criminal enterprise was uncovered when the Texas Department of Criminal Justice and federal agencies began investigating the McConnell Unit in 2009. The Aryan Circle and Mexican cartels were involved in the scheme, which included organizing drug deals outside the prison.

Texas: Among other responsibilities, former Winkler County Attorney Steve Taliaferro prosecuted misdemeanor cases. He resigned from his position and pleaded guilty on November 6, 2013 to solicitation of prostitution and official oppression. Taliaferro was audio-recorded propositioning a woman and telling her he would settle her case if she consented to having sex with him. Under the terms of his plea agreement, Taliaferro was ordered to serve 45 days in the Winkler County Jail.

Texas: On November 6, 2013, an East Texas parole officer pleaded guilty and was sentenced to 42 months in federal prison for using his state computer to view child pornography. Barry Porter Griffith was arrested after Texas Department of Criminal Justice computer engineers detected an unusual amount of bandwidth being accessed by a system in Griffith's office. Officials were able to remotely view the websites he was visiting and discovered the presence of child porn. Griffith also surrendered two personal computers that contained child pornography.

United Kingdom: The Ministry of Justice was fined £140,000 on October 22, 2013 after it emailed confidential personal information about HMP Cardiff's 1,182 prisoners to families of other prisoners. A spreadsheet containing names, addresses, offense details, sentence length, ethnicity and release dates was mistakenly sent to three families, according to the Information Commissioner's Office. "The potential damage and distress that could have been caused by this serious data breach is obvious," said Director of Data Protection David Smith.

Utah: Former Salt Lake City Judge Virginia Ward, who had presided over countless misdemeanor drug cases, was sentenced on November 19, 2013 to 90 days in

jail and three years of probation after pleading guilty to possession of Oxycodone with intent to distribute. Although Ward had initially faced up to 15 years in prison, her attorney said the sentence was "disappointingly harsh." Courtroom observers thought differently; one man reportedly commented "slap on the wrist," while another said, "I would have gotten the same sentence for a speeding ticket."

Virginia: Sometime between September and November 2012, former federal prison guard Jeffery T. Jones accepted bribes of at least $1,500 to smuggle over a quarter pound of marijuana and at least 10 cartons of cigarettes into FCC Petersburg. He pleaded guilty to receiving bribes and providing contraband on November 12, 2013. Two prisoners at the facility, Alvin Dewayne Hall and Patrick Gregory, also pleaded guilty to charges in connection with the smuggling scheme.

Virginia: Following an internal affairs investigation, a former Henrico County Sheriff's Deputy was arrested on November 21, 2013 and charged with three felony counts of carnal knowledge of an inmate by an employee. Jennifer Ann Baran, 33, resigned from the sheriff's department in May 2012, when the investigation began. She is accused of having a sexual relationship with a prisoner at Henrico Jail West; the prisoner, who was not identified, was discovered with a cell phone that he then flushed down a toilet. A search of his cell revealed 25 handwritten love letters from Baran.

Virginia: Samah Yellardy died at the Powhatan Correctional Center on November 7, 2013. The prison did not notify his mother, who learned of her son's death through posts from other prisoners' families on Facebook. Janice Yellardly said several prisoners and even a guard who was on duty at the time her son died had contacted the family. "My son complained about his side, not his heart. It ain't right. The warden told me he had a massive heart attack and I said no sir, my son did not have a heart attack. My son was 29 years old and had no medical problems." She added, "They messed with the wrong one. If I have to fight until the day I die, I'm going to get justice for my son."

Washington: On November 21, 2013, Sean Wright, 34, was charged with felony first-degree custodial sexual misconduct. The Snohomish County jail guard is accused of forcing a female prisoner to perform a sex act on him inside a broom closet. The incident was discovered during an unrelated investigation that found Wright had let several other women have time out of their cells or other privileges if they allowed him to watch them shower or change clothes.

Washington: Facing embezzlement and possible harassment charges, a 16-year veteran jail guard, Sgt. Bruce Benscoter, resigned on September 30, 2013 after being on paid leave for several months. Benscoter, 43, was the subject of separate investigations into improper financial dealings as a director of the Wapato Youth Athletics League and for improper sexual conduct with a former prisoner while on duty at the Wapato City Jail. Benscoter allegedly threatened two prisoners who cooperated in an internal investigation into the sexual misconduct allegations. He was charged in the embezzlement case with second-degree theft and misappropriation and falsification of accounts by a public officer.

West Virginia: Jason Noel Squires, a former federal prison guard, and his girlfriend, Nikole Monique Watkins, were both sentenced on November 25, 2013. Squires and Watkins raked in approximately $40,000 in cash payments from prisoners' family members for tobacco that Squires

smuggled into FCI Gilmer. Squires, 28, was sentenced to 18 months in prison and two years of supervised release, while Watkins, 24, received 12 months in prison and two years of supervised release.

Wisconsin: On October 22, 2013, criminal complaints were released by Racine County prosecutors that detailed allegations of sexual misconduct by two health care workers at the Racine Correctional Institution. Lisa M. Hawkins, 33, and Karina Herrera, 40, were both charged with felony sexual assault by correctional staff; Hawkins faces an additional charge of obstructing an officer and Herrera faces another felony count of delivering illegal items to an inmate. The women are accused of performing sex acts on the same prisoner at different times in the bathroom of the Health Services Unit at the facility. Because Hawkins worked for a private medical contractor, her defense attorneys argued she was not a DOC employee and thus did not meet the definition of "correctional staff." Prosecutors disagreed, saying the statute also applies to contractors.

Wisconsin: The Wisconsin Employment Relations Commission released data in November 2013 that indicated a prison guard union had failed to reach the required number of member votes to remain certified. Collective bargaining restrictions instituted by Governor Scott Walker require members of public employee unions to vote annually on whether they want the organization to continue to represent them. A union representing about 7,000 prison guards failed to meet the 51% majority vote needed to retain its certification.

Criminal Justice Resources

ACLU National Prison Project

Handles state and federal conditions of confinement claims affecting large numbers of prisoners. Publishes the NPP Journal (available online at: www.aclu.org/national-prison-project-journal-fall-2011) and the Prisoners' Assistance Directory (write for more information). Contact: ACLU NPP, 915 15th St. NW, 7th Fl., Washington, DC 20005 (202) 393-4930. www.aclu.org/prisons

Amnesty International

Compiles information about prisoner torture, beatings, rape, etc. to include in reports about U.S. prison conditions; also works on death penalty issues. Contact: Amnesty International, 5 Penn Plaza, New York NY 10001 (212) 807-8400. www.amnestyusa.org

Center for Health Justice

Formerly CorrectHELP. Provides information related to HIV in prison – contact them if you are not receiving proper HIV medication or are denied access to programs due to HIV status. Contact: CHJ, 900 Avila Street, Suite 102, Los Angeles, CA 90012. HIV Hotline: (214) 229-0979 (collect calls from prisoners OK). www.centerforhealthjustice.org

Centurion Ministries

Works to exonerate the wrongfully convicted, in both cases involving DNA evidence and those that do not. Centurion only takes 1-2 new cases a year involving actual innocence. They do not consider accidental death or self-defense murder cases, he said/she said rape cases, or child abuse or child sex abuse cases unless there is physical evidence. All case inquiries must be from the prisoner involved, in writing. Contact: Centurion Ministries, 221 Witherspoon Street, Princeton, NJ 08542 (609) 921-0334. www.centurionministries.org

Critical Resistance

Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in Florida, California, New York, Texas and Louisiana. Publishes The Abolitionist newsletter. Contact: Critical Resistance, 1904 Franklin Street #504, Oakland, CA 94612 (510) 444-0484. www.criticalresistance.org

The Exoneration Project

The Exoneration Project is a non-profit organization dedicated to working to free prisoners who were wrongfully convicted. The Project represents innocent individuals in post-conviction legal proceedings; typical cases involve DNA testing, coerced confessions, police misconduct, the use of faulty evidence, junk science and faulty eyewitness testimony, and ineffective assistance of counsel claims. Contact: The Exoneration Project, 312 North May Street, Suite 100, Chicago, Illinois 60607 (312) 789-4955. www.exonerationproject.org

Family & Corrections Network

Primarily provides online resources for families of prisoners related to parenting, children of prisoners, prison visitation, mothers and fathers in prison, etc. Contact: F&CN, 93 Old York Road, Suite 1 #510, Jenkintown, PA 19046 (215) 576-1110. www.fcnetwork.org

FAMM

FAMM (Families Against Mandatory Minimums) publishes the FAMMGram three times a year, which includes information about injustices resulting from mandatory minimum laws with an emphasis on federal laws. Recommended donation of $10 for a subscription. Contact: FAMM, 1612 K Street NW #700, Washington, DC 20006 (202) 822-6700). www.famm.org

The Fortune Society

Provides post-release services and programs for prisoners in the New York City area and occasionally publishes Fortune News, a free publication for prisoners that deals with criminal justice issues, primarily in New York. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. www.fortunesociety.org

Innocence Project

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

Just Detention International

Formerly Stop Prisoner Rape, JDI seeks to end sexual violence against prisoners. Provides counseling resources for imprisoned and released rape survivors and activists for almost every state. Contact: JDI, 3325 Wilshire Blvd. #340, Los Angeles, CA 90010 (213) 384-1400. www.justdetention.org

Justice Denied

Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, and includes all back issues of the Justice Denied magazine and a database of more than 3,000 wrongly convicted people. Contact: Justice Denied, P.O. Box 68911, Seattle, WA 98168 (206) 335-4254. www.justicedenied.org

National CURE

Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the CURE Newsletter. $2 annual membership for prisoners. Contact: CURE, P.O. Box 2310, National Capitol Station, Washington, DC 20013 (202) 789-2126. www.curenational.org

November Coalition

Publishes the Razor Wire, a bi-annual newsletter that reports on drug war-related issues, releasing prisoners of the drug war and restoring civil rights. A subscription is $10 for prisoners and $30 for non-prisoners. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 684-1550. www.november.org

Prison Activist Resource Center

PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners, and supports activists working to expose and end the abuses of the Prison Industrial Complex and mass incarceration. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. www.prisonactivist.org

Prison Legal News Book Store

Fill in the boxes next to each book you want to order, indicating the quantity and price. Enter the Total on the Order Form on the next page.
FREE SHIPPING on all book / index orders OVER $50 (effective 4-1-2014 until further notice). $6.00 S/H applies to all other book orders.

SUBSCRIBE TO PLN FOR 4 YEARS AND CHOOSE ONE BONUS!
1. **SIX (6) FREE ISSUES FOR 54 TOTAL!** OR
2. **PRISON PROFITEERS (A $24.95 VALUE!)** OR
3. **THE HABEAS CITEBOOK (A $49.95 VALUE!)**

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

The Habeas Citebook: Ineffective Assistance of Counsel, by Brandon Sample, PLN Publishing, 200 pages. **$49.95**. This is PLN's second published book, written by federal prisoner Brandon Sample, which covers ineffective assistance of counsel issues in federal habeas petitions. Includes hundreds of case citations! 1078

Prison Nation: The Warehousing of America's Poor, edited by Tara Herivel and Paul Wright, 332 pages. **$35.95**. PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. 1041

The Celling of America, An Inside Look at the U.S. Prison Industry, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. **$22.95**. PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. 1001

Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, PLN Publishing, 221 pages. **$49.95**. Written by Missouri prisoner Jon Marc Taylor, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, paralegal and college courses by mail. 1071

The Criminal Law Handbook: Know Your Rights, Survive the System, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 608 pages. **$39.99**. Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy to understand question-and-answer format. 1038

Represent Yourself in Court: How to Prepare & Try a Winning Case, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 528 pages. **$39.99**. Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. The authors explain what to say in court, how to say it, etc. 1037

Law Dictionary, Random House Webster's, 525 pages. **$19.95**. Comprehensive up-to-date law dictionary explains more than 8,500 legal terms. Covers civil, criminal, commercial and international law. 1036

The Blue Book of Grammar and Punctuation, by Jane Straus, 110 pages. **$14.95**. A guide to grammar and punctuation by an educator with experience teaching English to prisoners. 1046

Legal Research: How to Find and Understand the Law, by Stephen Elias and Susan Levinkind, 568 pages. **$49.99**. Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. 1059

Deposition Handbook, by Paul Bergman and Albert Moore, Nolo Press, 352 pages. **$34.99**. How-to handbook for anyone who conducts a deposition or is going to be deposed. 1054

Criminal Law in a Nutshell, by Arnold H. Loewy, 5th edition, 387 pages. **$43.95**. Provides an overview of criminal law, including punishment, specific crimes, defenses & burden of proof. 1086

SUBSCRIBE TO PLN FOR 3 YEARS AND CHOOSE ONE BONUS!
1. **FOUR (4) FREE ISSUES FOR 40 TOTAL!** OR
2. **PROTECTING YOUR HEALTH AND SAFETY (A $10.00 VALUE!)**

Protecting Your Health and Safety, by Robert E. Toone, Southern Poverty Law Center, 325 pages. **$10.00**. This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how to enforce your rights, including through litigation. 1060

Spanish-English/English-Spanish Dictionary, 2nd ed. Random House. **$15.95**. Spanish-English and English-Spanish. 60,000+ entries from A to Z; includes Western Hemisphere usage. 1034a

Writing to Win: The Legal Writer, by Steven D. Stark, Broadway Books/Random House, 283 pages. **$19.95**. Explains the writing of effective complaints, responses, briefs, motions and other legal papers. 1035

Actual Innocence: When Justice Goes Wrong and How to Make it Right, updated paperback ed., by Barry Scheck, Peter Neufeld and Jim Dwyer; 403 pages. **$16.00**. Describes how criminal defendants are wrongly convicted. Explains DNA testing and how it works to free the innocent. Devastating critique of police and prosecutorial misconduct. 1030

Webster's English Dictionary, Newly revised and updated, Random House. **$8.95**. 75,000+ entries. Includes tips on writing and word usage, and has updated geographical and biographical entries. Includes recent business and computer terms. 1033

Everyday Letters for Busy People, by Debra Hart May, 287 pages. **$18.99**. Hundreds of sample letters that can be adapted for most any purpose, including letters to government agencies and officials. Has numerous tips for writing effective letters. 1048

Roget's Thesaurus, 717 pages. **$8.95**. Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. 1045

Beyond Bars, Rejoining Society After Prison, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alpha, 240 pages. **$14.95**. *Beyond Bars* is a practical and comprehensive guide for ex-convicts and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more. 1080

Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A., by Mumia Abu Jamal, City Lights Publishers, 280 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. 1073

With Liberty for Some: 500 Years of Imprisonment in America, by Scott Christianson, Northeastern University Press, 372 pages. **$18.95**. The best overall history of the U.S. prison system from 1492 through the 20th century. A must-read for understanding how little things have changed in U.S. prisons over hundreds of years. 1026

Complete GED Preparation, by Steck-Vaughn, 922 pages. **$24.99**. This useful handbook contains over 2,000 GED-style questions to thoroughly prepare students for taking the GED test. It offers complete coverage of the revised GED test with new testing information, instructions and a practice test. 1099

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

Hepatitis and Liver Disease: What You Need to Know, by Melissa Palmer, MD, 457 pages. **$17.95**. Describes symptoms & treatments of hepatitis B & C and other liver diseases. Includes medications to avoid, what diet to follow and exercises to perform, plus a bibliography. 1031

Arrested: What to Do When Your Loved One's in Jail, by Wes Denham, 240 pages. **$16.95**. Whether a defendant is charged with misdemeanor disorderly conduct or first-degree murder, this is an indispensable guide for those who want to support family members, partners or friends facing criminal charges. 1084

Prisoners' Self-Help Litigation Manual, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 960 pages. **$39.95**. The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Highly recommended! 1077

How to Win Your Personal Injury Claim, by Atty. Joseph Matthews, 7th edition, NOLO Press, 304 pages. **$34.99**. While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents. 1075

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

Advanced Criminal Procedure in a Nutshell, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **$43.95**. This text is designed for supplemental reading in an advanced criminal procedure course on the post-investigation processing of a criminal case, including prosecution and adjudication. 1090

Our Bodies, Ourselves, by The Boston Women's Health Book Collective, 944 pages. **$26.00**. This book about women's health and sexuality has been called "America's best-selling book on all aspects of women's health," and is a great resource for women of all ages. 1082

Arrest-Proof Yourself, by Dale Carson and Wes Denham, 288 pages. **$14.95**. This essential "how not to" guide written by an ex-cop explains how to act and what to say when confronted by the police to minimize the chances of being arrested and avoid additional charges. Includes information on basic tricks that police use to get people to incriminate themselves. 1083

Nolo's Plain-English Law Dictionary, by Gerald N. Hill and Kathleen T. Hill, 496 pages. **$29.99**. Find terms you can use to understand and access the law. Contains 3,800 easy-to-read definitions for common (and not so common) legal terms. 3001

Criminal Procedure: Constitutional Limitations, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **$43.95**. Intended for use by law students, this is a succinct analysis of constitutional standards of major significance in the area of criminal procedure. 1085

A Dictionary of Criminal Law Terms (Black's Law Dictionary® Series), by Bryan A. Garner, 768 pages. **$33.95**. This handbook contains police terms such as preventive detention and protective sweep, and phrases from judicial-created law such as independent-source rule and open-fields doctrine. A good resource to help navigate your way through the maze of legal language in criminal cases. 1088

PLN Cumulative Index. **$22.50 each**. PLN Article Indexes provide detailed information about all PLN articles, including title, author, issue, page number, topics covered, citations, and if it is state, BOP or jail specific. Can be searched on over 500 subjects such as medical neglect or sexual assault. Circle the index(es) you are ordering: **1990-1995, 1996-1998, 1999-2001, 2002-2004** (more recent indexes not yet available)

Subscription Rates

	1 year	2 years	3 years	4 years
Prisoners	**$30**	**$ 60**	**$ 90**	**$120**
Individuals	**$35**	**$ 70**	**$105**	**$140**
Professionals (Attorneys, agencies, libraries)	**$90**	**$180**	**$270**	**$360**

Subscription Bonuses

2 years - 2 bonus issues for 26 total issues
3 years - 4 bonus issues (40 total) or a bonus book as listed on pg. 61
4 years - 6 bonus issues (54 total) or a bonus book as listed on pg. 61

(All subscription rates and bonus offers are valid as of 4-1-2014)

Purchase with Visa, MasterCard, AmEx or Discover by phone: **561-360-2523**
Or buy books and subscriptions online: **www.prisonlegalnews.org**

Mail Payment and Order to:

Prison Legal News
P.O. Box 1151
Lake Worth, FL 33460

All purchases must be pre-paid. Prisoners can pay with new first-class stamps (strips or books only, no single stamps) or pre-stamped envelopes, *if allowed by institutional policies.*

Please **Change my Address** to what is entered below ☐

Mail Order To:

Name: _____
DOC #: _____
Suite/Cell: _____
Agency/Inst: _____
Address: _____
City/State/Zip: _____

Subscribe to Prison Legal News — **$ Amount**

6 month subscription (prisoners only) - $18 _____
1 yr subscription (12 issues) _____
2 yr subscription (2 bonus issues for 26 total!) _____
3 yr sub (*write below which FREE book you want*) _____
or 4 bonus issues for 40 issues total!
4 yr sub (*write below which FREE book you want*) _____
or 6 bonus issues for 54 issues total!
Single back issue or sample copy of **PLN** - $5.00 each _____

Books or Index Orders (No S/H charge on 3 & 4-year sub free books OR book orders OVER $50!) **Qty.**

_____ ____ _____
_____ ____ _____
_____ ____ _____
_____ ____ _____

Add $6.00 S/H to **BOOK ORDERS UNDER $50** _____
(PLN subs *do not count* towards $50 for free S/H for book orders)
FL residents ONLY add 6% to Total Book Cost _____
Total Amount Enclosed: _____

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

Prison Legal News
PO Box 1151
Lake Worth FL 33460

Change Service Requested

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

Subscription Renewal

Subscriptions expire after the issue shown on the label is mailed. For example, if the label says: EXPIRES 02/2015, then the subscription expires after the February 2015 issue is mailed. Please renew at least 2 months before the expiration date. IF THE LABEL SAYS **EXPIRES: 07/2014** THIS IS YOUR LAST ISSUE. Please renew immediately to avoid missing any issues.

Change of Address

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

EXHIBIT H

ARIZONA DEPARTMENT OF CORRECTIONS

Complex Publications Review - Sexually Explicit Material

Inmate Last Name	First Name	(M.I.)	ADC Number

Complex	Unit
ASPC-Tucson	

FROM: AA II Vasquez, Complex-Level Publications Staff or Designee

Publication Name: Prison Legal News / July 2014 / Volume 25 # 7

ISBN or Vol./N: Volume 25 # 7

Publication Date: july 2014

Individual Inmate Arrival Date: 07/16/2014

Refer to the X for information on the processing of your incoming publication:

X	Description
	The publication will be sent to the Office of Publication Review to determine if the publication contains nudity and/or sexual behaviors/acts for artistic, scientific, medical, educational, or anthropological purposes per Department Order 914, Inmate Mail, Section 914.07, Sexually Explicit Material, subsection 1.3. The publication may be approved on an individualized basis.
x	The publication violates Department Order 914, Inmate Mail, Section 914.07, Sexually Explicit Material, subsections 1.1 through 1.2.2.6 and is excluded. Policy prohibits publications that feature nudity and/or sexual behaviors/acts and/or the publication is promoted based on such depictions. Refer to Department Order 914, Inmate Mail, Section 914.07, Sexually Explicit Material, subsection 1.5.2 for second review request requirements.

Inmate Signature	Inmate Notification Receipt Date

COPIES - Inmate - Complex-Level Publications Review Staff - Inmate Property File

914-7
2/24/11

EXHIBIT I

ARIZONA DEPARTMENT OF CORRECTIONS
Office of Publication Review
M E M O R A N D U M

DATE TO INMATE: _____

TO: ADC #

LOCATION:

FROM: Alf Olson, Office of Publication Review

_____ January, 15, 2015

SUBJECT: Prison Legal News, July 2014, V25 N7

A second review of the above-noted publication was conducted due to inmate request(s). Pursuant to procedures set forth in DO 914, this publication was initially EXCLUDED because it contains material in violation of **914.07, SEXUALLY EXPLICIT MATERIAL**

1.2 Prohibited publications include, but are not limited to:
1.2.1 Publications that contain photographs, drawings, cartoons, animations, pictorials or other facsimiles that show nudity of either gender, and
1.2.2 Publications that contain any of the following acts and behaviors either visually, written or in audio (non-lyric) form:
1.2.2.1 Physical contact by another person with a person's unclothed genitals, pubic area, buttocks or, if such person is a female, breast;
1.2.2.2 Sadomasochistic abuse;
1.2.2.3 Sexual intercourse, vaginal or anal, fellatio, cunnilingus, bestiality or sodomy;
1.2.2.4 Masturbation, excretory functions, and lewd exhibition of the genitals;
1.2.2.5 Incestuous sexual activity;
1.2.2.6 Sexual activity involving an unwilling participant, or a participant who is the subject of coercion, or any sexual activity involving children.

Publication reviews are conducted in accordance with ADC policies and procedures. Each review is conducted on an individual issue of any publication for its own specific content. No publication title has been excluded as a whole.

Second review has determined that **this publication does not contain material** that meets the sexually explicit criteria as identified above. On this basis, the decision to exclude this publication is challenged and the prior decision to exclude this publication is rescinded. This publication **shall be distributed** to those inmates who were to receive the edition. Second review decisions are final and exhaust inmates' administrative remedies.

EXHIBIT J

Prison Legal News

VOL. 25 No. 10
ISSN 1075-7678

Dedicated to Protecting Human Rights

October 2014

In Washington State Prisons, Negligent Health Care Turns Illness into a Death Sentence

Ricardo Cruz Mejia went to prison a murderer, he left a victim.

by Rick Anderson

Ricardo Cruz Mejia's final days began with a stomach problem. It was October 2010. After the 26-year-old Walla Walla State Penitentiary prisoner discovered blood in his stool, he signed in at the prison infirmary. A test and exam turned up a severely inflamed colon. The onetime Latino gang member from Skagit County, doing 34 years for seven felonies including murder, was given hydrocortisone enemas and tabs of prednisone, used to treat inflammation. The prison medical staff also gave him sulfasalazine for abdominal pain.

In November, Mejia, a stocky, tattooed prisoner with a closely shaved head, began to experience other symptoms – headaches, sore throat, then vomiting. He also had begun to develop a rash, for which he was given penicillin, though it didn't seem to help.

In the ensuing days, he became a familiar figure to infirmary nurses. From December through the first week of January 2011, he showed up at the infirmary 14 times. Nurses doled out a topical corticosteroid for skin inflammation and tried other drugs to ease his symptoms. Still, none alleviated the persistent, painful irritations and stomach problems.

On January 10, 2011, he arrived to tell medical staffers his sore throat was killing him – "It hurts to breathe," he said, according to notes in his medical record. Staffers seemed stumped. His vital signs weren't taken and no new treatment was offered.

Mejia returned the next day and announced he was having what he called "a medical emergency." In addition to his earlier symptoms, he had developed fever blisters, sore joints and rectal pain. His pulse was racing, his blood pressure rising. He had been unable to eat for three days, he said.

Prison physician Barry Kellog, who examined him, did not find Mejia in any acute distress and prescribed more prednisone and sulfasalazine. He'd later recall he saw Mejia only briefly, and was not informed by the nurse who was assisting him and had treated Mejia earlier that the patient turned out to be allergic to sulfasalazine. Nor did she tell him, Kellog recalled, that Mejia had a rash and had been diagnosed with colitis, an inflamed colon.

On January 13, 2011 at 8 a.m., Mejia was back complaining of similar problems, and a new one – blisters on his anus. He was examined and given an oral antifungal.

The next day, Mejia returned – this time with painful mouth and rectal ulcers and severe abdominal pain. He'd been unable to have a bowel movement for four days, he said. He was given hydrocortisone, milk of magnesia and an anesthetic. A nurse provided moistened gauzes to place on the painful skin ulcers.

Nurse Allison Oleson would later say that it was clear Mejia was "quite sick" that day. "When this kid came into the exam room, he was clearly in distress." She said she called on Kenneth Moore, a physician's assistant, to take a look at Mejia. (Known as PAs, the assistants are not accredited doctors but practice medicine on a team under the supervision of physicians and surgeons; typically they are formally educated to diagnose illness or injury and provide general treatment).

But Moore, like the earlier doctor, did not examine Mejia, Oleson recalled. He didn't even see him. During a phone chat with the nurse, he ordered Lidocaine, a topical pain-numbing gel.

Mejia returned to his cell. But his symptoms grew worse. At 4:30 the next morning, January 15, a medical staffer who visited Mejia in his cell undertook a brief examination and told him to come into the infirmary a few hours later.

When the prisoner showed up at 7:30 a.m., he was seated uncomfortably in a wheelchair. He was unable to sit and was experiencing diarrhea. His pulse, temperature and blood pressure were all rising and

INSIDE

CCA Loses TX Public Records Case	9
From the Editor	10
Women Prisoners in Solitary	12
How Courts View Accreditation	18
JustLeadershipUSA	22
VA Prison Medical Care Suit	26
$8.15 Million in NY Jail Death	32
Jail Video Visits Considered in Dallas	34
Ruling in Ad Seg Lighting Case	40
ICE Limits Solitary Confinement	44
"Ban the Box" Movement Spreads	46
CA Prison Medical Costs Soar	50
News in Brief	55

TAKE ACTION ON PRISON PHONE RATES – CONTACT THE FCC NOW!

After nearly a decade, the Federal Communications Commission (FCC) took action in 2013 and issued an order, effective February 11, 2014, that capped the cost of interstate (long distance) prison phone rates. This led to an almost 80% decrease in interstate phone costs in some states, and those costs are now capped at $.25/minute for collect calls and $.21/minute for debit and prepaid calls. On September 25, 2014, the FCC indicated that it plans to take further action to reduce prison phone rates, including in-state (intrastate) rates – which still remain high in many jurisdictions. In fact, in-state phone rates are now higher than long distance rates in many cases.

You can submit a public comment to the FCC; even if you have sent comments before, you can resubmit them or submit new information. Please write to the FCC as soon as possible, addressing any of the following topics:

- **Positive Impact of the FCC Order Reducing Interstate Calls:** Let the FCC know how the rate caps on interstate prison phone calls have resulted in lower costs or helped you and your family!
- **Negative Impact of Intrastate Phone Calls:** While the FCC capped long distance phone rates, the order did not apply to in-state calls, which make up 85% of all calls from prisons and jails. How much do you or your family pay for in-state phone calls? The FCC needs to hear about this issue so they know why intrastate prison phone rates need to be reduced, too.
- **Ancillary Fees:** Do you or your family have to pay extra fees (ancillary fees) to make or accept calls, such as fees to set up, add money to or cancel a prepaid or debit prison phone account? Are you charged fees but were not told about them before they were charged? How much are these fees? Have they increased?
- **Importance of Prison Phone Reforms:** Tell the FCC why it is important to enact permanent reform of prison phone rates for interstate and in-state calls, including rate caps and the elimination of "commission" payments to corrections agencies. Also, the FCC needs details about fee-based video visitation services.

Comments can be sent by mail to:

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW; Room TW-B204
Washington, DC 20554

Address the letter "Dear Secretary Dortch," and please speak from your personal experience. You must state the following in your letter: "This is a public comment for **WC Docket Number 12-375**." Note that your comment will be made part of the public docket.

People with Internet access can register their comments online with the FCC, by entering Proceeding Number **12-375** and uploading a document at this address: http://apps.fcc.gov/ecfs/upload/display.action?z=nyy6z

For more information about the fight to reduce prison phone rates, visit the Campaign for Prison Phone Justice:

www.phonejustice.org

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

EDITOR
Paul Wright

MANAGING EDITOR
Alex Friedmann

COLUMNISTS
Michael Cohen, Kent Russell,
Mumia Abu Jamal

CONTRIBUTING WRITERS
Matthew Clarke, John Dannenberg,
Derek Gilna, Gary Hunter,
David Reutter, Mark Wilson,
Joe Watson, Christopher Zoukis

RESEARCH ASSOCIATE
Mari Garcia

ADVERTISING DIRECTOR
Susan Schwartzkopf

LAYOUT
Lansing Scott

HRDC LITIGATION PROJECT
Lance Weber—General Counsel
Sabarish Neelakanta—Staff Attorney

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

A one year subscription is $30 for prisoners, $35 for individuals, and $90 for lawyers and institutions. Prisoner donations of less than $30 will be pro-rated at $3.00/issue. Do not send less than $18.00 at a time. All foreign subscriptions are $100 sent via airmail. PLN accepts Visa and Mastercard orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without an SASE. PLN is a section 501 (c)(3) non-profit organization. Donations are tax deductible. Send contributions to:

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

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

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

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

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

Deadly Prison Health Care (cont.)

his buttocks were red with blisters.

At 8:45, Moore, the PA, agreed to examine him. But he initially decided not to admit Mejia to the prison's inpatient unit. Pressed by nurse Vickie Holevinski, who recognized signs of sepsis – indicating Mejia was suffering from widespread infection with a threat of multiple organ failure – Moore relented.

Mejia was treated with antibiotics and given whirlpool baths. Still, two and a half hours into treatment, he was breathing rapidly and his blood pressure had plunged while his heart continued to race. He had skin excoriations over much of his body, particularly down his legs and around his buttocks. In some places, his skin had broken open, turned purple and was draining. He was dizzy and in pain, he told nurses, and suffering from shortness of breath.

Faced with clear indications Mejia was in danger, PA Moore decided he needed to go to an outside hospital. At 1 p.m. on January 15, 2011, an ambulance ferried Ricardo Mejia downtown to Walla Walla's Providence St. Mary Medical Center. It would be his last day in prison. And his last full day of life.

St. Mary doctors, finding a severely ill man in their emergency room, began running tests. Within a short time, they concluded Mejia, now in shock, needed specialized emergency care they were not equipped to deliver. He was a stretcher-ful of ailments, including perianal cellulitis, proctitis, sepsis and ulcerative colitis. Most crucial, doctors discovered necrotizing bilateral tonsillitis. A flesh-eating disease had set in.

Doctors alerted the state medical airlift service, and Mejia was hurried to Walla Walla Regional Airport and put aboard a small plane. By 6 p.m. he was in the air, flying over the prison, headed to Providence Sacred Heart Medical Center in Spokane, one of the region's biggest hospitals and specialty-care centers.

Alerted in advance, Sacred Heart doctors were ready when Mejia was wheeled in. He was immediately prepared for surgery, and doctors realized they'd have to cut away infected sections of his body. He had Fournier's gangrene, a critical infection of the genitalia. Capable of developing quickly, within hours, it causes severe pain in the penis and scrotum and progresses from a spreading redness to necrosis – the death of tissue.

That and contributing conditions were also causing Mejia's kidneys to shut down. The medical team had no alternatives in surgery, and began removing his rectum and large portions of his buttocks.

It was a long, challenging debriding of the infected areas. And it came too late. At 2:02 the next morning, January 16, 2011, state prisoner Ricardo Mejia – a patient who'd been denied admittance to the prison infirmary 16 hours earlier – was pronounced dead.

Mejia's death didn't make the news. But it mattered to his family, at least, including his two children by separate mothers in Skagit County, and his surrogate mom, as April Soria calls herself. A counselor in a Skagit work-training program, Soria first met Mejia – whom she calls "Richard" – when he was a teen in trouble. Born a U.S. citizen, Mejia was abandoned by his birth mom when he was young and raised by others, spending much of his time on the streets. Young Mejia came to confide in Soria, and the two struck up a familial relationship. As his designated outside prison contact, she was first to get the bad-news phone call from Spokane early on the morning he died.

"It was the hospital chaplain," Soria recalls. "At first I didn't know he was saying Richard had died. I couldn't understand what this thing was that had happened. Then he said – I can't forget the words – 'This is the worst case of medical negligence we've ever seen.'"

But, as Soria would find out, it happened within a system not prone to publicize its mistakes or generate public sympathy for its prisoners. After all, Mejia, a onetime street gangster known as Li'l Jokes, entered prison with 17 felonies on his record. He'd already done a two-year prison stretch for discharging a weapon in public during a Mount Vernon gang dispute in 2005. In 2009, he was returned to custody, this time sent to the hard-time Walls for a string of crimes including the murder of an elderly woman.

In September 2007, Mejia, then 23, of Sedro-Woolley, was sought for burglary, assault, car theft and eluding deputies. With two female accomplices, he was looting a home outside Burlington when the homeowner walked in. The three fled

Deadly Prison Health Care (cont.)

in a car and eluded police in a mad chase, hitting speeds of up to 90 mph and crashing the car in a cornfield. The women were nabbed but Mejia got away, running to a nearby home.

There he encountered an 84-year-old woman named Clara Thorp and demanded her car keys. She had no car. An enraged Mejia pushed the frail lady to the floor and ran to a second home nearby, where he was able to commandeer a car and escape. Officers found that car crashed in west Mount Vernon, but Mejia was gone again. Two days later, attempting to break into a vehicle in Mount Vernon, he was spotted by an officer. After a standoff in which Mejia climbed a structure and resisted arrest – he was Tased six times in a struggle – police took him into custody.

Three months later, the elderly woman died. Clara Thorp had been on the floor, undiscovered, for more than an hour, and was hospitalized with a broken pelvis. A few days later she also suffered a heart attack. She ended up disabled, living in a senior care center, turning 85, and never regaining her health. On January 11, 2008 she died from pneumonia stemming from her injuries, the medical examiner ruled, labeling the death a homicide. By law, a death that occurs during the commission of a felony can be charged as a murder. Skagit prosecutors refiled 14 felony charges altogether against Mejia, including first-degree murder, accusing him of exhibiting "deliberate cruelty" in his attack on the defenseless Thorp.

Mejia, who faced the possibility of life in prison, mulled over his chances as the case dragged out for a year. Soria, his adopted mom, says "I told him, 'You have to plead guilty.' He didn't intend to kill her. But he had to take responsibility for what happened." Mejia agreed to a plea bargain. The case was winnowed down to seven felonies and the murder charge dropped to second-degree.

In June 2009, Mejia was sentenced to 34 years. "For a 24-year-old man, this criminal record could be the biggest one I've ever seen," said Skagit County Superior Court Judge John Meyer, according to a report in the *Skagit Valley Herald*. Clara Thorp's son, granddaughter and great-grandson were in the courtroom and read a statement about Thorp's assault and death, recalling the agony of having "watched her go through so much pain she didn't deserve."

Mejia, contrite, apologized for his life of crime, drugs and gang-banging. "I know I'm a monster," he told Thorp's family. "I know you guys hate me. I hate myself for the things I've done." Says mom Soria: "There was never a minute, from the day of her death to the day of his death, that he wasn't sorry for what he did."

As a career criminal, Mejia wasn't a likely candidate to change his life by doing another prison stretch. Still, he had hope: If he'd completed his full term and been released, he'd have been 58. At least he wasn't a lifer, nor had he been condemned to death.

Not officially, anyway. As it turned out, Mejia, like his victim, went through pain he didn't deserve, serving a capital sentence he wasn't given. Unlike Clara Thorp's, however, no one would be punished for his death.

An autopsy ordered by the state determined Ricardo Mejia died of blood poisoning and septic shock resulting from the flesh-eating disease and rectal infection. The death raised concerns at the state Department of Health, and inspectors began perusing prison medical records and asking questions.

In a May 2011 report, the department found the prison had failed to provide "a formalized process for continuity of care and supervision." Medical staff was not prepared, and supervisors were missing in action. There was only informal oversight of mid-level care providers, such as physician's assistants, and a lack of case discussion between line staff and the prison's medical director, Dr. James Edwards.

In Mejia's case, nurses had repeatedly failed to obtain his vital signs or contact the on-call doctor or PA when those signs were out of whack – and even then there was a lack of urgent response, investigators found. On January 15, 2011, the day Mejia ended up being rushed to the hospital, the nurse visiting his cell that early morning recorded his heart rate at 154 – and merely made an appointment for him to see a doctor three hours later. Help should have come immediately.

To critics of the prison medical-care system, the Mejia case sounded eerily familiar. In 2004, Charles Manning, a prisoner at Stafford Creek Correctional Center outside Aberdeen, was diagnosed as having an allergenic reaction to Robitussin, the cold medicine. He endured two days of pain in the prison infirmary, treated with an ice pack and medications. He was then belatedly diagnosed with an infection and transferred to Grays Harbor Community Hospital. There, emergency doctors determined – much as the Walla Walla and Spokane doctors did in Mejia's case – that Manning had Fournier's gangrene.

To save his life, the Aberdeen doctors removed his genitals and pounds of flesh. Unlike Mejia, Manning survived. But he was left disfigured and disabled. As *Prison Legal News* put it in a report, "Charlie Manning, doing 13 months after a drunken argument with a neighbor, left prison with no penis." [See: *PLN*, June 2008, p.20].

Such cases are costly not only to the victims but to taxpayers – Manning, for example, later sued for damages, accepting a $300,000 settlement from the state in 2008. (In one of the most costly state cases, Gertrude Barrow, 41, died at the Washington Corrections Center for Women in Purdy of a perforated chronic peptic ulcer and acute peritonitis. In 1994, her family was awarded $630,000 due to state negligence).

"Prison doctors are not necessarily going to be the best practitioners available," Paul Wright says in a purposeful understatement. "The state DOC has a long history of employing doctors with disciplinary histories and not sanctioning them even when they kill, and keeping them on the payroll."

And Wright would know. Some of those doctors treated him. Wright was a state prisoner for 17 years, convicted of the murder of a drug dealer. Among those who tended him was a dentist named Joel Driven. In one example of his care, according to state investigators, the 72-year-old dentist wrenched out part of a McNeil Island prisoner's jawbone rather than the tooth he intended to pull. That tore open the roof of the prisoner's mouth, causing Driven to panic as the prisoner faced the likelihood of bleeding to death. A second dentist also froze, as did a dental assistant. Another assistant saved the day, taking over Driven's patient, shouting commands to the doctor and calling for emergency aid. She told investigators that what she'd witnessed was "torture ... barbaric." In 2007, Driven was let go and his license revoked.

Wright, who served his time and went on to found *Prison Legal News* and campaign for prisoner rights, says the 10-year-old Manning case should have been a turning point for corrections medical reform. But "Whatever they did [after that settlement], if they did anything, obviously didn't help Ricardo Mejia."

Wright's umbrella organization, the Human Rights Defense Center of Lake Worth, Florida, got interested in Mejia's case. Started on a $50 budget with an all-volunteer grassroots base, the center has today become a 501(c)(3) organization with 13 full-time employees including two staff attorneys. It specializes in litigation and advocacy for prisoners.

"Manning was crippled and Mejia killed because of the sheer neglect and ineptitude of DOC medical staff," Wright says. "This is an ongoing story with the state DOC."

It was a story that Mejia's mom, Soria,

Deadly Prison Health Care (cont.)

wasn't getting in full, she says. "It was so difficult to get at the truth. The state wouldn't provide public records. One state records clerk I got to know said, off the record to me, 'This isn't normal. These records should be available. You need to get an attorney.'" She did.

In April last year, Wright's defense center filed a legal tort claim for damages against the state for the medical failures leading to Mejia's death. It was brought on behalf of Soria and Mejia's two children, ages 12 and 7. Jesse Wing, the lead attorney in the claim, from the Seattle law firm of MacDonald Hoague & Bayless, says "Mr. Mejia's case illustrates something worse than inadequate care. He suffered not just incompetent care, but obvious indifference to his serious pain and illness. This 'I don't care if you live or die' attitude is at odds with the most basic duty of a health-care provider and of the Hippocratic oath."

The claim focused particularly on the role of Moore, the physician's assistant who'd been reluctant to admit Mejia as an inpatient. Prison medical director Edwards told state investigators that Moore "tends not to listen to nurses ... [he] irritates and frustrates" them. Pat Rima, the prison's former health-care administrator, said Moore was "at times ... on the edge with his care decisions," and that at one point she opted not to renew his then-part-time contract. But after Rima moved on to another job, her replacement rehired Moore, with Edwards' approval, full-time.

One nurse recalled that on the day Mejia would eventually be rushed to an outside hospital, she had repeatedly beseeched Moore to admit him as an inpatient. Mejia had arrived in a wheelchair in great pain, his heart racing. Another nurse said Mejia was so obviously septic he "could go south in a hurry," yet "Mr. Moore was sitting there, allowing the patient to wait 45 minutes while no treatment orders or medication was given."

About the time the claim was filed, the state Medical Quality Assurance Commission – responding to a separate complaint filed by Wright's group – lodged charges against Moore, claiming his care may have constituted medical "incompetence, negligence, or malpractice." He failed to recognize a life-threatening condition, the commission said, and lacked concern when urgency was called for.

Moore didn't take much time to settle the complaint. And why not? His penalty was to write a paper about his error. In what it calls an informal disposition, the commission ordered Moore to study up on sepsis, colitis and necrotizing fasciitis, then compose 1,000 words on those topics. He'd also have to make a class-like presentation to others on the prison medical team, and would have to reimburse the commission for costs, $750. "It was a slap on the wrist," says Mejia attorney Wing.

In January of this year the charges against Moore were formally withdrawn, although he still must comply with the writing and educational stipulations of the disposition.

That same month, having received no answer to the claim filed against the state, Wright's group went to court and formally filed a lawsuit against the Department of Corrections on behalf of Mejia's estate. In the suit, attorneys alleged that Mejia "died a horrible and painful death at age 26 ... [his] medical providers ignored obvious signs of infection and serious medical illness, and he literally rotted to death." Timely diagnoses and treatment would have spared his life and the pain he suffered, the suit claimed, citing mistakes turned up by the Health Department probe.

Four months later, in April 2014, the DOC agreed to settle. [See related article in this issue of *PLN*, p.8].

The department conceded some responsibility for Mejia's painful death. It agreed to pay $740,000 to his family, likely a record amount in such a case. The

department also said it had made some changes in its prison medical operations to comply with the Health Department's findings, including assigning prisoners to doctors, expanding dialogue between staff and supervisors, and informing staff in more detail about flesh-eating bacteria. But the state admitted no legal wrongdoing in Mejia's death.

Nonetheless, as in the earlier flesh-eating case, it was a costly mistake in life and money that could have been avoided, says Paul Wright. "The common theme here is the DOC botched the diagnoses until it was too late – and remember, these are deep-tissue bacteria that take at least a week to develop to the killer phase, and as soon as these men were taken to a hospital, the ER doctors diagnosed them almost immediately.

"I think the most compelling story is the bigger issue of inadequate medical care," Wright says. "The DOC spends over $100 million a year on [care] and prisoners still die gruesome deaths from easily diagnosed illnesses."

Wright says his organization expects to bring other suits in the future. Unfortunately, he says, there will be a need for them.

As for April Soria, she didn't share in the settlement. "She is just a very good person who tried to help him and his family," says attorney Wing, "so the settlement money went to his children."

In June 2014, Moore showed up at a medical commission hearing to see how he had complied with settlement stipulations. Wing, who also attended, said "a state lawyer told us afterwards that a purpose of the hearing was for the board to see Mr. Moore's demeanor when discussing care of patients. We pointed out that Mr. Moore's demeanor did not seem appropriate under the circumstances. He did not show any sense of responsibility for the death of Mr. Mejia or even that he was discussing the death of a human being at the hearing."

But apparently Moore received the state's blessings. He remains a practicing, full-time PA at the state pen.

This article was originally published by Seattle Weekly *(www.seattleweekly.com) on July 9, 2014; it is reprinted with permission, with minor edits.*

$750,000 Settlement for Washington State Prisoner's Wrongful Death

by Carrie Wilkinson

Although Prison Legal News and its parent organization, the Human Rights Defense Center (HRDC), are best known for litigation involving censorship by prison and jail officials, HRDC also co-counsels select other cases, mainly involving wrongful deaths on behalf of prisoners' surviving family members.

As detailed in this issue's cover story, one of those cases involved Washington state prisoner Ricardo Cruz Mejia, who died after an untreated infection turned deadly. The medical examiner listed his cause of death as necrotizing fasciitis/Fournier's gangrene, sepsis and septic shock.

Mejia's preventable death was a case of history repeating itself. In 2004, Washington prisoner Charles Manning was initially diagnosed as having a reaction to Robitussin. Hospital staff subsequently found he had Fournier's gangrene, and his genitals were amputated to save his life. Manning survived and filed suit, settling with the state for $300,000 in 2008. [See: *PLN*, June 2008, p.20].

Ricardo Mejia was diagnosed with ulcerative colitis in October 2010 while incarcerated at the Washington State Penitentiary in Walla Walla, and prison medical staff prescribed medication to treat his condition. His symptoms included gastrointestinal problems and blood in his stool. He was seen by medical staff 14 times in the 48 days before he died, and not only reported the treatments were not working but that his symptoms were becoming progressively worse – including headaches, a sore throat, skin rashes, pain and vomiting.

As with Manning, the initial treatment prescribed for Mejia did not remedy his symptoms and DOC medical staff failed to take further action until it was too late and his condition escalated into Fournier's gangrene. Mejia died of the same infection under the care of the same prison medical system that had almost killed Manning seven years earlier.

A DOC incident report prepared by Dr. David Kenney seven months after Mejia's death noted that "the drugs he received to control his symptoms (steroid enemas, aminosalicylates and oral steroids) may not have completely controlled his disease," and that "an ongoing evaluation of his response to these medications was not recorded."

Following an initial tort claim, a complaint was filed in Thurston County Superior Court on December 20, 2013 on behalf of Mejia's estate and his two minor children, alleging that DOC medical staff had "ignored obvious signs of infection and serious illness and he literally rotted to death under their care through negligence and deliberate indifference."

According to the complaint, Mejia's symptoms worsened in January 2011, and on January 14 he sought medical care for mouth and rectal ulcers; a nurse noted he had not had a bowel movement in four days, and his rectum "showed a large, excoriated, blistered area." Physician assistant Kenneth Moore refused to see Mejia or admit him to the prison's inpatient unit, but only ordered Lidocaine for pain over the phone. Moore later agreed to admit Mejia for inpatient care after a nurse voiced concerns.

Following worsening symptoms, Mejia was finally transported to an outside hospital on January 15, 2011, where surgeons "cut away large portions of his buttock and rectum" in a last-ditch effort to save his life. They were unsuccessful and he "died a horrible, grotesque, and painful death, at age 26."

The lawsuit claimed that Washington DOC medical staff had violated standards of patient care by failing to provide adequate treatment to Mejia in spite of his obvious, serious symptoms. The complaint noted that recognizing those symptoms "required only basic health care skills and knowledge; it is 'Medicine 101.'"

The Washington Department of Health conducted an investigation into Mejia's death and found that prison medical staff "did not provide a formalized process for continuity of care and supervision of care," which "may result in inappropriate and unsafe care." Further, the investigation determined that "the facility did not have a formalized process for midlevel providers to discuss complex medical cases with the medical director and did not have [a] formalized process to refer complex cases from the midlevel provider to the medical director."

Dr. Kenney's review recommended ten improvements for DOC medical staff, including a review and assessment of the primary care system "to optimize comprehensive assessment and management of medical conditions, [to] ensure that continuity of that care is maintained and [staff] be accountable for oversight of all care delivered."

Four months after the lawsuit was filed, which named the Washington DOC and six DOC medical practitioners – including Moore – as defendants, the case settled in March 2014 for $750,000. Mejia's estate was represented by the Human Rights Defense Center and Seattle attorney Jesse Wing with MacDonald Hoague & Bayless. See: *Soria v. Washington DOC*, Thurston County Superior Court (WA), Case No. 13-2-02598-9.

Texas Court Finds CCA Subject to State's Public Information Act, Awards Attorney Fees

On September 15, 2014, a Travis County District Court entered a final judgment that found Corrections Corporation of America (CCA), the nation's largest for-profit prison company, is a "governmental body" for purposes of the Texas Public Information Act and is therefore subject to the "Act's obligations to disclose public information."

This was the first time a Texas court had held that a private prison company was required to comply with the state's public records law, joining decisions by courts in Tennessee, Florida and Vermont. [See: *PLN*, July 2013, p.42; June 2013, p.14; June 2010, p.29].

Travis County District Court Judge Gisela D. Triana entered the judgment in a lawsuit brought against CCA by Prison Legal News.

PLN filed suit on May 1, 2013 after the company refused to produce records related to the now-closed Dawson State Jail, including reports and audits concerning CCA's management of the facility. [See: *PLN*, June 2013, p.46]. CCA operates nine facilities in Texas, including four state jails.

PLN had argued that CCA meets the definition of a "governmental body" under the Texas Public Information Act because – among other factors – the company "shares a common purpose and objective to that of the government" and performs services "traditionally performed by governmental bodies."

In the latter regard, PLN noted that "Incarceration is inherently a power of government. By using public money to perform a public function, CCA is a governmental body for purposes" of the state's public records law.

The court agreed, noting that "CCA failed and refused to disclose the documents" requested by PLN, which were "public information" as defined by state law. Accordingly, CCA was ordered to produce the records; Judge Triana also ordered the company to pay $25,000 in PLN's attorneys' fees and costs, plus another $5,000 if it unsuccessfully appeals.

"That is the right result and clearly what the Public Information Act requires," stated Cindy Saiter, one of PLN's attorneys.

CCA has vigorously opposed compliance with state public records laws and has lobbied against the Private Prison Information Act on the federal level. [See: *PLN*, Feb. 2013, p.14].

"Although CCA acts as the functional equivalent of a government agency when it runs prisons and jails, it opposes efforts to hold the company accountable under public records laws to the same extent as government agencies," said PLN editor Paul Wright. "It makes you wonder what the company is hiding, and why it doesn't want to be held accountable to members of the public whose tax dollars pay for CCA's private prison contracts."

"The public saw truly awful things when we began pulling the veil from the CCA-operated Dawson State Jail last year," added attorney Brian McGiverin with the Texas Civil Rights Project. "Today, allegations are coming to light of CCA's complicity in a widespread sexual abuse hazing ritual at the Bartlett State Jail. Is it any wonder CCA opposes greater transparency?"

PLN was represented by attorneys Cindy Saiter with Scott, Douglass & McConnico, LLP and Brian McGiverin with the Texas Civil Rights Project. The case is *Prison Legal News v. CCA*, Travis County District Court, 353rd Judicial District, Cause No. D-1-GN-13-001445.

The hazing ritual mentioned by McGiverin involves allegations in a federal lawsuit that claims prisoners at the Bartlett State Jail were stripped by other prisoners, turned upside down and had their naked buttocks slammed against the window of a guard station – known as "ass on the glass." A prisoner subjected to the hazing said he was sexually assaulted during the incident, and that there was only one CCA guard in the unit, who did nothing to stop it.

The October 2013 "ass on the glass" incident reportedly lasted two hours and involved 55 prisoners. The lawsuit, filed in September 2014, remains pending. See: *Doe v. CCA*, U.S.D.C. (W.D. Texas), Case No. 1:14-cv-00840.

Sources: *HRDC press release (Sept. 18, 2014); www.mysanantonio.com*

From the Editor

by Paul Wright

This month's cover story about the Washington Department of Corrections killing prisoner Ricardo Mejia through medical neglect is in many ways an old one. Over the past 24 years, PLN has run hundreds of articles about prisons and jails murdering prisoners through medical and mental health neglect, malpractice and deliberate indifference.

What is different about this story is that attorneys from the Human Rights Defense Center – the organization that publishes *Prison Legal News* – represented Mr. Mejia's family and estate in obtaining some modicum of justice following his death, with the goal of trying to ensure it does not happen to other prisoners.

When PLN was founded in 1990, one of our goals was to be able to conduct public interest litigation involving the criminal justice system. Between 1993 and 2009, PLN filed a number of censorship and public records lawsuits around the country, many involving cutting-edge legal issues, which helped to ensure that the right of prisoners and publishers to send and receive information was respected, and brought a modest amount of transparency to the secrecy of government institutions.

In 2009 we created our litigation project, which allowed us to employ our first staff attorney to represent PLN in censorship and public records litigation as well as represent others in matters related to HRDC's mission. Today, HRDC's litigation project employs two full-time attorneys including Lance Weber, our litigation director, plus two full-time paralegals.

To date, HRDC attorneys have successfully represented the estates of two prisoners in Tennessee who died due to medical neglect involving private prison companies, the estate of a Pennsylvania prisoner who died from a lack of mental health treatment and the family of a prisoner brutally murdered by other prisoners at a private prison in Arizona. Those cases were all resolved by confidential agreements, which have not allowed us to report the outcomes; several were resolved pre-litigation.

The case involving Mr. Mejia is not subject to a confidentiality provision and is fully reported in this issue of PLN. An upcoming issue will report the results of a lawsuit against Corrections Corporation of America, which HRDC resolved in favor of a former prisoner whose baby was born prematurely and died while she was held at a CCA-run jail.

Due to our very limited resources, HRDC's attorneys can only provide representation in a select number of cases; our current focus is on cases involving deaths, and as the cover story makes clear, where the facts of the case lend to larger public issues related to the need for prison reform. We would like to thank Mr. Mejia's family for choosing HRDC to represent them and also our co-counsel, Jesse Wing at MacDonald Hoague & Bayless (MHB) in Seattle. Carrie Wilkinson, the director of our Washington Prison Phone Justice Campaign, also worked on the case while she was employed at MHB prior to joining HRDC.

We have a lot of exciting news this month. In addition to the resolution of Mr. Mejia's wrongful death suit, we are very happy to announce that we are publishing the *Disciplinary Self-Help Litigation Manual* by Dan Manville within the next few weeks. Since 2009, PLN has published two other books – the *Prisoners' Guerrilla Handbook to Correspondence Courses in the U.S. and Canada (3rd ed.)* and *The Habeas Citebook: Ineffective Assistance of Counsel*. Our goal is to continue to publish high quality self-help, non-fiction reference books which are of interest to prisoners and will help them help themselves.

We are proud to be publishing the second edition of the *Disciplinary Self-Help Litigation Manual*. Dan was HRDC's first staff attorney; we have published his articles for many years, and he has represented PLN in censorship litigation dating back to 1999. Every prisoner in America is subject to prison and jail disciplinary hearings and needs to know his or her rights in order to enforce them. The book is in the final stages of production and we anticipate it

will be available for shipping no later than November 15. If you want to pre-order your copy and have it shipped immediately upon receipt, order it now for $49.95 — see the ad on p. 53.

Additionally, it is time for the annual PLN and HRDC fundraiser. We recently realized that many people, including long-time PLN subscribers, are not aware of the full scope of our activities on behalf of prisoners and their families. This year we are sending everyone a copy of our 2013 annual report and some news articles about PLN that provide a detailed overview of everything we do on an ongoing basis.

Our fundraising goal this year is $75,000 to help cover the costs of the Campaign for Prison Phone Justice. Thanks to the help of our readers and supporters, HRDC was able to play an integral leadership role in getting the Federal Communications Commission to cap the cost of interstate phone calls from prisons and jails. We are currently trying to get the FCC to extend those rate caps to the costs of intrastate (in-state) phone calls, which make up the majority of calls from detention facilities.

We incur extensive costs in obtaining the phone contracts, calling rates, ancillary fees and commission data that have underpinned the FCC campaign, and most importantly, everyone in the advocacy community has relied on our data. Travel expenses for testifying before the FCC, meeting with FCC commissioners and staff, etc. all add up, and we have a full-time staff member working on the campaign.

Donations are urgently needed to support our efforts; your financial help has made the Campaign for Prison Phone Justice possible, and we are close to achieving significant reforms beyond the interstate rate caps. If you and your family are tired of being gouged and ruthlessly exploited by prison telecom companies and the prisons and jails that take kickbacks in exchange for telephone monopolies, then please donate to HRDC so we can continue the fight.

This issue of *PLN* includes an ad describing how to contact the FCC about the high costs of in-state prison phone calls and the negative impact those costs have had on you and your family. Comments can be submitted in writing by prisoners and online by non-prisoners. This is the time to make your voice heard – please let others know about the need to contact the FCC and to donate to HRDC and PLN so we can maintain the Campaign for Prison Phone Justice!

Lastly, as the holidays approach, nothing makes for better gifts than a subscription to PLN and some of the books we distribute, plus you can still take advantage of our Subscription Madness offer (see the ad on page 25).

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

Women in Solitary Confinement: "The Isolation Degenerates Us into Madness"

by Victoria Law

A mass prisoner hunger strike rocked California's prison system last year, drawing international attention to the extensive use of solitary confinement in the United States. Increasingly, solitary is finding its way into the mainstream media and onto activist agendas. Nearly all of the attention, however, has focused on solitary confinement in men's prisons; much less is known about the conditions and experiences inside women's prisons.

During legislative hearing on solitary confinement in California in October 2013, lawmakers asked prison officials about women in solitary confinement. Officials from the California Department of Corrections and Rehabilitation (CDCR) stated that 74 women were held in the Security Housing Unit at the California Institution for Women (CIW) and a handful of women were awaiting transfer from the Central California Women's Facility (CCWF). CDCR does not separate people in the SHU with mental illness from those without mental illness. CDCR officials did not address the number of people in the Administrative Segregation (or Ad Seg) Unit.

According to CDCR statistics, as of September 2013, 107 women were held in Ad Seg at CCWF, which has a budgeted capacity of 38. The average stay was 131 days. Twenty women had been there longer than 200 days, two had exceeded 400 days and another two women had exceeded 800 days. At CIW, 34 women were in Ad Seg with an average stay of 73 days. Two women have exceeded 200 days.

Lawmakers' inquiry prompted advocacy group California Coalition for Women Prisoners to send an open letter to Assemblywoman Nancy Skinner requesting that she investigate conditions of solitary confinement in women's prisons. The group noted that, with the conversion of Valley State Prison for Women to a men's prison and the transfer of several hundred women to California's other two women's prisons, the use of solitary confinement has dramatically increased.

To justify the increase, CDCR has cited "enemy concerns" or a documented disagreement between people that may have led to threats or violence. Those designated as having "enemy concerns" are locked in their cells 22 to 24 hours a day and lose all privileges. CDCR reports do not separate the number of people in Ad Seg or the SHU for rules violations versus those confined because of "enemy concerns." The California Coalition for Women Prisoners has noted that many of these "enemy concerns" are based on incidents that happened years ago and may not be valid today.

Dolores Canales has a son who has spent 13 years in Pelican Bay's SHU. Canales has also had firsthand experience with solitary confinement. While imprisoned at CIW, she spent nine months in Ad Seg, where she was confined to her cell 22 hours a day. "There, I had a window. The guards would take me out to the yard every day. I'd get to go out to the yard with other people," she recalled.

But the isolation still took its toll: "There's an anxiety that overcomes you in the middle of the night because you're so locked in," she described. Even after being released from segregation, Canales was unable to shake that anxiety. She broke into a sweat and panicked each time she saw a group of officers even though she had broken no rules. "I just can't forget," she stated years after her release from prison.

Although the spotlight on solitary has focused largely on California, every women's prison has a solitary confinement unit. Florida's Lowell Correctional Institution for Women has a Closed Management Special Housing Unit (CM SHU) where women are confined to their cells 23 to 24 hours a day. "There is no free movement or social interaction," reported one woman. "We just sit locked in a concrete and steel room the size of a small residential bathroom."

In Indiana, Sarah Jo Pender has spent nearly five years in solitary. "My cell is approximately 68 square feet of concrete with a heavy steel door at the front and a heavily barred window at the back that does not open," she described. "Walls are covered in white; the paint chipped off by bored prisoners reveals another layer of primer white. No family photos or art or reminder notes are allowed to be taped to the walls; they must remain bare. Our windowsills would be a great place to display greeting cards and pictures, but those are off-limits, too....

"There is a concrete platform and thin plastic mat, a 14-by-20-inch shelf and round stool mounted to the floor, and a steel toilet-sink combo unit. We get no boxes to contain our few personal items. Everything must fit on the shelf, bed or end up on the floor."

Her cell is searched daily by guards although, like everyone else in the prison, she is strip searched any time she leaves the unit for a doctor's appointment or a no-contact visit. When she is taken to the showers, she is handcuffed, then locked into a 3-foot-by-3-foot shower stall with a steel cage door for a 15-minute shower. As is the case across the country, visits are conducted behind glass.

Pender was placed in solitary confinement after successfully escaping from prison in 2008. With the assistance of a guard who had been having sex with her and several other women in the prison, she escaped. After 136 days, she was found, re-arrested and returned to prison, where she began her unending stint in solitary confinement.

Because Pender is considered a high escape risk, the administration has taken steps to isolate her even within the segregation unit. "Other women could talk to each other through their doors, but they were instructed to never talk to me or else they'd be punished," she recounted. "The male guards were never to speak to me unless there was a second guard present, and only to give me orders. Female guards

only spoke when absolutely necessary, per orders, except they chatted freely with any other prisoner."

As in many jails and prisons, those with mental health concerns are often placed in segregation. "One of them is going to be released to society this month," Pender wrote. "She has been in solitary for six or eight months because she has repeatedly cut herself with razors, including her throat, several times. Their solution: Lock her in a room and don't give her a razor."

Another woman spent two-and-a-half years in segregation, originally for disruptive behavior. Her stay was extended each time she hurt herself. "She cut her wrists in the shower. They found her, took her to the hospital, stitched her up, put her back in lock and wrote her up for self-mutilation.

"She ripped the stitches out and got another battery write-up. Threw a mop bucket at the sergeant for another assault write-up and was completely maxed out on her sentence, so they let her go home from solitary. She returned that same year with new charges. She never got therapy while here – or any mental health care that she obviously needed."

While Pender did not enter with preexisting mental health concerns, years of little to no human contact has taken its toll. At times she feels lethargic and depressed. In 2010, she had a psychotic break, which lasted nine months. Since then, she has been on and off half a dozen kinds of psychotropic medications.

"I didn't need the meds for the two years I spent in godawful Marion County Jail and didn't need them for five years at Rockville prison," she recalled. "But when you lock people in rooms for long periods of time, the isolation degenerates us into madness, or at least depression."

Others with no preexisting mental health conditions have also been affected. "I watched a woman claw chunks out of her cheeks and nose and write on the window with her blood," Pender said. "My neighbor bashed her head against the concrete until officers dragged her out to a padded cell. Two other women tried to asphyxiate themselves with shoestrings and bras."

In Florida, faced with the prospect of ten months in CM SHU, a woman attempted suicide. "I had hung myself and was quite dead when the guards cut me down. My heart must've stopped because of the loss of involuntary functions, but still they wrapped me in a sheet and rushed me to medical and succeeded in reviving me," she recalled.

Despite being locked in a cell the size of a bathroom for the foreseeable future, Pender hopes the increased outrage about solitary confinement leads to concrete changes. What would she ask people to do?

"They can help by contacting their legislators and judges about their views on long-term solitary confinement. They can help by supporting small groups of activists and organizations who are passionate about this topic.

"Many people don't have the desire to donate two hours of their week or month to a group, but what about two hours of their monthly wages? Or the book of stamps and box of envelopes that has been collecting dust since email was invented?

"There are lots of ways to help change the system. Whatever you choose to do, just DO something. Just having conversations with others about the subject is doing something. Someone else might volunteer to type up and format a newsletter. Help design a website. Circulate the info. Make

Women in Solitary (cont.)

phone calls to organize events. Anything is better than turning the page to the next article and forgetting about us, leaving us alone in our cells," she said.

Sent to solitary for reporting sexual assault

It seems absurd that a person who has been sexually assaulted would be punished for speaking up, especially since prison policy prohibits sexual contact between staff and the people whom they guard. Yet, in many women's prisons, many of those who report rape and other forms of sexual assault by prison personnel are sent to solitary confinement.

After enduring over a year of repeated sexual assaults by a guard, Stacy Barker became one of 31 women incarcerated in Michigan who filed *Nunn v. MDOC*, a 1996 lawsuit against the Department of Corrections for the widespread sexual abuse by prison guards. The following year, Barker was repeatedly sexually assaulted by an officer who was also a defendant in *Nunn*.

After a month of silence, she reported the assaults to a prison psychiatrist. Barker was immediately placed in segregation and then transferred to Huron Valley Center, which was then a psychiatric hospital for prisoners. There, she reported that hospital attendants verbally harassed her.

In October 1997, Barker attempted suicide. She did not receive counseling or psychiatric evaluation. Instead, three male guards stripped her naked, placed her in five-point restraints (a procedure in which a prisoner is placed on her back in a spread-eagle position with her hands, feet and chest secured by straps) on a bed with no blanket for nine hours. She was then placed on suicide watch. She reported that one of the staff who monitored her repeatedly told her he would "bring her down a few rungs."

Placing women in solitary confinement for reporting staff sexual harassment or abuse is far from rare. In 1996, Human Rights Watch found that, in Michigan, incarcerated women who report staff sexual misconduct are placed in segregation pending the institution's investigation of their cases. The placement is allegedly for the woman's own protection. The five other states investigated also had similar practices of placing women in segregation after they reported abuse.

Not much has changed in the 13 years since Human Rights Watch chronicled the pervasive and persistent sexual abuse and use of retaliatory segregation in 11 women's prisons. Former staff at Ohio's Reformatory for Women have stated that women who reported sexual abuse are subjected to lengthy periods of time in solitary confinement, where cells often had feces and blood smeared on the wall.

In Kentucky, a woman who saved evidence from her sexual assault was placed in segregation for 50 days. In Illinois, a prison administrator threatened to add a year onto the sentence of a woman who attempted to report repeated sexual assaults. She was then placed in solitary confinement.

In 2003, the Prison Rape Elimination Act (PREA) became law, ostensibly to address the widespread sexual abuse in the nation's jails and prisons. Among its recommendations was "the timely and comprehensive investigation of staff sexual misconduct involving rape or other sexual assault on inmates."

However, this has not stopped the widespread practice of utilizing solitary to punish those who speak out. An investigation into sexual abuse at Alabama's Tutwiler Prison for Women found that women who report sexual abuse "are routinely placed in segregation by the warden."

Some prison systems have also created new rules to continue discouraging reports of staff sexual assault. At Denver Women's Correctional Facility, a woman reported that prison officials responded to PREA by creating a rule called "False Reporting to Authorities."

"A lot of us do not report any kind of staff misconduct because history has proven that any kind of reports true or false are found [by the administration] to be false," she stated. "When it was found to be false, the people were immediately found guilty and sent to administrative segregation." In some cases, a woman may not even file an official complaint but may only be speaking within earshot of another staff member.

"I didn't want to believe it, but then I experienced it first hand with a close acquaintance of mine. She had conversations with a guard and he asked sexually explicit questions about what she would be able to do in bed because of her disability and it went on for a while.

"She came to me and said she didn't want to be around him and she told an office worker about him and he ended up writing a report on her, before she could do it to him, and she was eventually questioned. I was questioned and I told the investigator that I believed her and that the officer was a pervert and flirted openly with any girl who was desperate for a man's attention.

"I told him I felt like he was a predator and shouldn't be working at a women's prison. I later found out she went to the hole and was going to be Ad Seg'd just like the

others but she left on her mandatory parole to go back to court and was re-sentenced and brought back. Luckily they didn't Ad Seg her when she came back. I'm not sure why they dropped it but maybe it was because she was gone for a while."

Under PREA, those accused of sexual assault are sent to solitary confinement even before the charges are proven. In California, Amy Preasmyer was placed in solitary confinement after being accused of sexual assault by another woman.

"I was abruptly removed from my bed late in the evening to face an extended wait and then a transfer to Ad-Seg," she reported. "Upon entering my newly assigned chambers at 3 a.m., I found the toilet was backed up and a DD3 (EOP) [person with a disability] had urinated everywhere prior to me, leaving extremely unsanitary conditions and aromas." She was not allowed to access supplies that would allow her to clean or disinfect her cell.

Although she was eventually cleared of all charges, being in Ad Seg forced her to miss her final examinations for college. During that time, she also lost the privilege to shop, walk outside or even call home.

Preasmyer reflected on the double standard between prison staff and prisoners accused under PREA: "Had this woman falsely accused an officer, would that officer have been arrested and forced to relinquish rights pending results of the investigation into the accusation? Would the employee suffer a wage loss? Would disciplinary action and consequences be rendered to the accuser once charges turned out to be baseless?"

After reading Preasmyer's article in her segregation cell in Indiana, Sarah Jo Pender, who has spent five years in solitary confinement after an officer helped her escape, agreed. She noted that, although the officer who helped her escape had had sex with her and seven other women in the prison, he evaded a sexual misconduct charge as part of a plea bargain.

He was sentenced to seven years in prison and released after two years. As far as Pender knows, he spent no time in solitary confinement. On the other hand, the superintendent at the Indiana Women's Prison has told her that she will remain in segregation so long as she is incarcerated so that he knows where she is at any given time.

We might know more about the prevalence of isolating those who report sexual abuse if that threat didn't hang over their heads. But it does, bullying who-knows-how-many into silence. As one woman in Texas reported:

"When officers and inmates are found to be involved, the common course of action here is to move her to another facility. If she consented in any way, she will be placed in Ad Seg. Being moved with the jacket of a prior officer relationship can make time very difficult. And, if they found any reason to write the inmate a major case, it also costs her at least a one-year parole set-off. Being moved, time in isolation, a label and a set-off? Those are powerful motivations to keep a girl quiet."

Victoria Law is a writer, photographer and mother. She is the author of Resistance Behind Bars: The Struggles of Incarcerated Women *(PM Press, 2012). Her writings, many of which focus on gender, incarceration and resistance, have appeared in* Bitch, HipMama, The Nation, *SolitaryWatch and Truthout. This article was originally published in two parts by SolitaryWatch (www.solitarywatch.com) in December 2013; it is reprinted with permission of the author.*

Tennessee Senate Judiciary Committee Holds Hearings on Criminal Justice Reform

On September 15 and 16, 2014, while Tennessee's General Assembly was out of session, the Senate Judiciary Committee held hearings on criminal justice reform – the first time a legislative body in the state has comprehensively addressed that topic for at least a decade. The hearings were chaired by Senator Brian Kelsey, and speakers testified on issues ranging from the history of sentencing in Tennessee to the state's growing prison population, high crime rate and potential solutions to those problems.

According to the FBI, Tennessee had the highest violent crime rate in the nation based on 2012 statistics.

Criminal defense attorney David Raybin, a former district attorney and former member of the Tennessee Sentencing Commission (abolished in 1995), who helped develop Tennessee's criminal sentencing statutes, testified about the history of sentencing laws in the state, including the Class X laws and 1989 Sentencing Reform Act. He noted that the Sentencing Commission had made a number of recommendations that were ignored by lawmakers.

Others who testified included officials from the district attorney's office and attorney general's office. The DA's office complained that criminal sentences in Tennessee mislead the public and victims, as a ten-year sentence does not mean defendants will serve 10 years. Rather, they are eligible for parole at 30% of their sentence for standard range 1 offenders, and those with "truth in sentencing" sentences may serve 85% rather than 100% of their sentences. Further, life sentences do not mean life in prison, as life-sentenced prisoners can be paroled after serving 51 calendar years. With respect to parole, the DA's office did not mention that the average parole grant rate in Tennessee is around 36%.

Two members of the Vera Institute of Justice, Rebecca Silber and Nancy Fishman, testified about their review of Tennessee's criminal justice system and offered suggestions for reforms; the Vera Institute provides research and technical assistance to government agencies to help improve justice systems, policies and practices.

Marc Levin, director of the Center for Effective Justice at the Texas Public Policy Foundation and policy director of Right on Crime, spoke about what Texas has done to reduce its prison population through criminal justice reforms – although Texas presently has the largest state prison population in the nation.

Levin observed that 90% of Tennessee's corrections budget goes to the state's prison system instead of probation, drug courts or community supervision programs. "Our view is, the pendulum's swung a little bit too far," he stated.

Other speakers at the Committee hearings included Anderson County Mayor Terry Frank, Tennessee ACLU director Hedy Weinberg, Knoxville police chief David Rausch, commissioners of the Department of Mental Health and Department of Safety, Tennessee Department of Correction (TDOC) Commissioner Derrick Schofield, the director of the Tennessee Association of Professional Bail Agents, Court of Criminal Appeals Judge John Everett Williams, the director of the Heritage Foundation's Edwin Meese III Center for Legal and Judicial Studies, and Tennessee State Employees Association (TSEA) director Tommy Francis.

Commissioner Schofield discussed the need to reduce recidivism rates, while Francis spoke about challenges faced by TDOC employees represented by the TSEA. Charlie White, director of the Association of Professional Bail Agents, mainly addressed the contributions of the for-profit bail industry in terms of providing a means for people to get out of jail (those who can afford to make bond, that is).

Vanderbilt University Professor Chris Slobogin testified three times over the two-day hearings and discussed what other states have done in terms of criminal justice reform – including pretrial release initiatives, de-criminalization, expanding re-entry and community corrections programs, and enacting probation and parole reforms. He also presented recommendations from the Tennessee Consultation on Criminal Justice – a faith-based group working on reform of the state's justice system.

Those recommendations included: 1) ending the practice of sending technical probation and parole violators to prison when short jail stays of 2 to 3 days would be more effective; 2) increasing parole grant rates; 3) developing effective reentry and community supervision strategies; 4) conducting a study to examine successful programs and policies implemented in other states; 5) reinstituting the Tennessee Sentencing Commission to provide guidance to the legislature about changes to sentencing laws; 6) reinstituting the joint legislative Oversight Committee on Corrections, which was disbanded in 2011, to exercise oversight over the TDOC; and 7) ensuring that the TDOC has current and accurate data with respect to recidivism rates and other statistics.

Additionally, Professor Slobogin cited the need to re-evaluate the role of using privately-operated prisons in Tennessee and recommended that the state consider justice reinvestment initiatives, whereby savings from criminal justice policies that reduce the prison population are reinvested in communities affected by high incarceration rates – such as job creation programs and re-entry programs.

Overall, there was consensus that reforms are needed in Tennessee's criminal justice system, including changes in sentencing laws, alternatives to incarceration and the need to address a growing prison population – which is currently around 21,180 in TDOC facilities plus another 8,700 convicted felons in local jails. The state recently contracted with Nashville-based Corrections Corporation of America to house prisoners at a 2,500-bed facility in Trousdale County that is expected to open in 2015. CCA already holds one-quarter of the state's prison population in privately-operated facilities.

PLN managing editor Alex Friedmann, a member of the Tennessee Consultation on Criminal Justice, attended the Senate Judiciary Committee hearings.

Sources: *The Tennessean, USA Today, www.hollinslegal.com, Tennessee Senate Judiciary Committee hearings*

PLN FUNDRAISER 2014

Please Support Prison Legal News and the Human Rights Defense Center!

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

Prison Legal News, a project of the non-profit Human Rights Defense Center, cannot fund its operations through subscriptions and book sales alone. We rely on donations from our readers and supporters – like you!

PLN conducts just one fundraiser a year; we don't bombard our readers with donation requests, we only ask that if you are able to contribute something to our important work, please do so. Every dollar counts and is greatly appreciated and will be put to good use. No donation is too small, even books of stamps!

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

- HRDC, a co-founder and leader of the Campaign for Prison Phone Justice, was instrumental in getting the Federal Communications Commission to reduce the cost of prison phone calls, which the FCC did when caps on interstate prison phone rates went into effect in February 2014!
- PLN settled censorship suits against jails in Ventura County, California; Upshur and Comal County, Texas; and Kenosha County, Wisconsin. In all of those cases, the jails agreed to change their mail policies to allow prisoners to receive PLN and other correspondence.
- PLN has other censorship lawsuits pending against the Nevada DOC, the Florida DOC and jails in Texas, Tennessee, Virginia, Arizona, Michigan, Georgia and Florida.
- PLN settled a wrongful death suit brought by the family of a Washington state prisoner who died due to inadequate medical care, and settled a lawsuit filed on behalf of a former prisoner who lost her baby after guards at a CCA-run jail in Tennessee delayed sending her to a hospital.

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

Prison Legal News, P.O. Box 1151, Lake Worth, FL 33460
Or call PLN's office at 561-360-2523 and use your credit card to donate.
Or visit PLN's website at www.prisonlegalnews.org and click on the "Donate" link.

PLN Support Gifts

Gift option 1

As a token of our gratitude for your support, we are providing the PLN card when making a donation of $50. The card is hand embroidered by women prisoners in Bolivia who are paid a fair wage for the cards to help support their families.

Gift option 2

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

Gift option 3

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

Gift option 4

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

How the Courts View ACA Accreditation

by Alex Friedmann

The American Correctional Association (ACA), a private non-profit organization composed mostly of current and former corrections officials, provides accreditation to prisons, jails and other detention facilities.

According to the ACA, "Accreditation is a system of verification that correctional agencies/facilities comply with national standards promulgated by the American Correctional Association. Accreditation is achieved through a series of reviews, evaluations, audits and hearings."

To achieve accreditation a facility must comply with 100% of applicable mandatory standards and at least 90% of applicable non-mandatory standards. Under some circumstances, the ACA may waive certain accreditation standards. There are different standards for different types of facilities, such as adult correctional institutions, jails, juvenile detention facilities and boot camp programs.

The standards are established by the ACA with no oversight by government agencies, and the organization basically sells accreditation by charging fees ranging from $8,100 to $19,500, depending on the number of days and auditors involved and the number of facilities being accredited. [See, e.g.: *PLN*, Aug. 2014, p.24].

The ACA relies heavily on such fees; it reported receiving more than $4.5 million in accreditation fees in 2011 – almost half its total revenue that year. The organization thus has a financial incentive to provide as many accreditations as possible.

Notably, the accreditation process is basically a paper review. The ACA does not provide oversight or ongoing monitoring of correctional facilities, but only verifies whether a facility has policies that comply with the ACA's self-promulgated standards at the time of accreditation. Following initial accreditation, facilities are re-accredited at three-year intervals.

As a result, some prisons have experienced significant problems despite being accredited. For example, the Otter Creek Correctional Center in Kentucky, operated by Corrections Corporation of America (CCA), was accredited by the ACA in 2009 when at least five prison employees were prosecuted for raping or sexually abusing prisoners. [See: *PLN*, Oct. 2009, p.40]. Kentucky and Hawaii withdrew their female prisoners from Otter Creek following the sex scandal, but the facility did not lose its ACA accreditation. The prison has since closed.

The privately-operated Walnut Grove Youth Correctional Facility in Mississippi was accredited by the ACA even though the U.S. Department of Justice found "systemic, egregious practices" at the facility, including "brazen" sexual activity between staff and offenders that was "among the worst that we've seen in any facility anywhere in the nation." When approving a settlement in a class-action lawsuit against Walnut Grove in 2012, a U.S. District Court wrote that the facility had "allowed a cesspool of unconstitutional and inhuman acts and conditions to germinate, the sum of which places the offenders at substantial ongoing risk." [See: *PLN*, Nov. 2013, p.30].

More recently, the ACA-accredited Idaho Correctional Center, operated by CCA, has been cited for extremely high levels of violence, understaffing and fraudulent reporting of staffing hours. A video of CCA guards failing to intervene while one prisoner was brutally beaten by another has been widely circulated. CCA was held in contempt by a federal court in September 2013 for violating a settlement in a class-action lawsuit against the facility, and a separate suit alleges that CCA employees collaborated with gang members to maintain control at the prison. The state took control of the Idaho Correctional Center on July 1, 2014 and the FBI is currently conducting an investigation into CCA's staffing fraud. [See: *PLN*, Oct. 2013, p.28; May 2013, p.22; Feb. 2012, p.30]. Regardless, the facility remains accredited by the ACA.

Prisoners who litigate prison and jail conditions cases sometimes try to raise claims related to violations of ACA standards, even though the standards

alone do not create enforceable rights. On the other side of such lawsuits, the ACA says the benefits of accreditation for corrections officials include "a stronger defense against litigation through documentation and the demonstration of a 'good faith' effort to improve conditions of confinement."

But how do the courts view ACA accreditation – and comparable accreditation of prison and jail medical services by the National Commission on Correctional Health Care (NCCHC) – both in terms of claims alleging violations of accreditation standards and as a defense by prison officials?

The U.S. Supreme Court noted in *Bell v. Wolfish*, 441 U.S. 520, 543 n.27 (1979) that accreditation does not determine constitutionality. With respect to standards established by organizations such as the American Correctional Association, the Court wrote: "[W]hile the recommendations of these various groups may be instructive in certain cases, they simply do not establish the constitutional minima; rather, they establish goals recommended by the organization in question."

In *Grenning v. Miller-Stout*, 739 F.3d 1235, 1241 (9th Cir. 2014), the defendants contended that the level of lighting in a prisoner's cell "passed the national accreditation standards of the ACA...." However, the Ninth Circuit said it was "unable to determine ... the significance of the 'accreditation' by the ACA. We are not informed of the standards of the ACA, nor are we informed about the thoroughness of the testing performed" at the prison. The mere fact of ACA accreditation did not entitle the defendants to summary judgment on the prisoner's Eighth Amendment claim. [See article on p.40].

The Fifth Circuit stated in *Gates v. Cook*, 376 F.3d 323, 337 (5th Cir. 2004) that it was "absurd to suggest that the federal courts should subvert their judgment as to alleged Eighth Amendment violations to the ACA whenever it has relevant standards. Additionally, the ACA's limited inspections are not be [sic] binding as factual findings on the magistrate or on this court. While compliance with ACA's standards may be a relevant consideration, it is not per se evidence of constitutionality."

Further, in a lawsuit challenging inadequate medical care in the jail system in Maricopa County, Arizona, a federal district court wrote: "The Board Defendants argue that because the parties stipulated to incorporate in the Amended Judgment the 'essential' standards for health services in jails of the National Commission on Correctional Health Care ('NCCHC'), Correctional Health Services adopted policies conforming to NCCHC standards, and Correctional Health Services substantially complies with all of the 'essential' NCCHC standards, they have met their burden in proving there are no current and ongoing violations of pretrial detainees' federal rights."

However, "The Court decides independently whether there are current and ongoing violations of pretrial detainees' constitutional rights and does not rely on any determinations made by an accrediting organization such as the NCCHC. The NCCHC 'essential' standards do not specifically focus on all of pretrial detainees' constitutional rights." Additionally, the district court noted that "Some of the NCCHC 'essential' standards

Courts on ACA (cont.)

address administrative functions and are not narrowly tailored to meet constitutional requirements," and "[a]lthough the NCCHC standards may be helpful for a jail, the Court makes its findings based on the Eighth and Fourteenth Amendments of the United States Constitution."

The court found that healthcare services provided by the defendants remained unconstitutional despite NCCHC accreditation. See: *Graves v. Arpaio*, 2008 U.S. Dist. LEXIS 85935 (D. Ariz. Oct. 22, 2008) [*PLN*, Jan. 2010, p.43; May 2009, p.28].

In Texas, a federal district court commented on accreditation of Texas Department of Criminal Justice (TDCJ) facilities by both the ACA and NCCHC.

"While TDCJ's participation in the ACA accreditation process is to be commended, accreditation, in itself, is not a clear indication that TDCJ is properly following its policies and procedures. Experts from both parties recognized the limitations of ACA accreditation," the court wrote, noting "that ACA accreditation is a tool, but not a constitutional standard."

The district court also remarked that one expert had "testified to a number of examples where a prison system was accredited by the ACA, but was, nevertheless, held by a court to be operating in an unconstitutional fashion, including prisons in Florida and the San Quentin prison in California."

With respect to accreditation by the NCCHC, the district court stated: "Rather than analyze the actual quality of the medical care received by inmates, the NCCHC's evaluation focuses on the written standards, policies, protocols, bureaucracy, and infrastructure that makes up the medical care system [cite omitted]. Further undermining defendants' attempt to use NCCHC accreditation as a proxy for a certification of the constitutionality of its medical care is the fact that at least two of the plaintiffs' experts who testified about profound shortcomings in the quality of care in TDCJ-ID also work as NCCHC accreditors.... While NCCHC accreditation does bolster defendants' claims that its medical care system is functioning constitutionally, the accreditation simply cannot be dispositive of such a conclusion." See: *Ruiz v. Johnson*, 37 F.Supp.2d 855, 902, 924-25 (S.D. Tex. 1999), *rev'd on other grounds*, 243 F.3d 941 (5th Cir. 2001).

A U.S. District Court in Puerto Rico also found that prison medical care was unconstitutional despite accreditation by the NCCHC, with the court noting "the National Commission on Correctional Health Care in 1992 had accredited the medical care programs at four prisons and provisionally accredited four more, with several additional prisons under consideration for accreditation. However, one of the monitor's consultants, Dr. Ronald Shansky, found noncompliance with at least one essential standard at every institution the Commission had accredited." The court further observed that "During this investigation, Department of Health personnel provided the monitor's staff with credible evidence that other employees had falsified documents in support of accreditation." See: *Feliciano v. Gonzalez*, 13 F.Supp.2d 151, 158 n.3 (D.P.R. 1998).

A Florida district court addressed ACA accreditation in *LaMarca v. Turner*, 662 F.Supp. 647, 655 (S.D. Fla. 1987), *appeal dismissed*, 861 F.2d 724 (11th Cir. 1988), stating: "Defendants make much of the relevance to this litigation of the accreditation of prisons and [Glades Correctional Institution] in particular by the American Correctional Association. The Magistrate found that the GCI accreditation had 'virtually no significance' to this lawsuit because accredited prisons have been found unconstitutional by courts. Having considered the GCI accreditation along with the remainder of the evidence, the undersigned district court finds it of marginal relevance in this case."

And in a challenge to the adequacy of the law library at the Buena Vista Correctional Facility in Colorado, a district court stated it was "simply ludicrous" for the defendants to argue they were entitled to summary judgment because "the American Correctional Association formally accredited" the facility and ACA standards address prison law libraries. See: *Boulies v. Ricketts*, 518 F.Supp. 687, 689 (D. Colo. 1981).

However, other courts have taken ACA accreditation into consideration when determining the constitutionality of policies or practices at correctional facilities, such as in *Yellow Horse v. Pennington County*, 225 F.3d 923, 928 (8th Cir. 2000) (suicide prevention procedures) and *Grayson v. Peed*, 195 F.3d 692, 697 (4th Cir. 1999) (death of restrained prisoner).

Therefore, incarcerated litigants should use caution when basing arguments on violations of accreditation standards rather than violations of constitutional or statutory rights, and should note the above case law when corrections officials raise accreditation as a defense in lawsuits related to conditions of confinement in prisons and jails.

Additional source: *www.aca.org*

States Renewing Their Prison Phone Contracts

As state DOCs renew or rebid their prison phone contracts, you can help urge them to lower intrastate phone rates and eliminate commission kickbacks!

The Campaign for Prison Phone Justice needs your help in:

**** *North Dakota, Oklahoma, Washington* ****

The Departments of Corrections in the above states are in the process of re-bidding or renewing their prison phone contracts. Most DOCs receive a commission (kickback) on revenue generated from calls made by prisoners, which results in excessively high phone rates. Although the FCC voted last year to cap the costs of interstate (long distance) prison calls, which went into effect on February 11, 2014, the order does not apply to intrastate (in-state) calls. An estimated 85% of prison phone calls are in-state. This is an opportunity to ask DOCs to forgo commissions and ensure their new prison phone contracts are based on the lowest cost to those who pay for the calls – mostly prisoners' families.

Take Action NOW! Here's What YOU Can Do!

Ask your family members and friends to write, email, call and fax the DOC and the governor's office (addresses and contacts are listed below), requesting that the DOC: 1) forgo commission payments when re-bidding or renewing its prison phone contract, and 2) base the new contract on the lowest calling costs. Lower prison phone rates should apply not just to long distance calls but also to in-state calls. For a sample letter or to easily send an email, visit the Campaign for Prison Phone Justice's website and click on the "Take Action" tab:

www.phonejustice.org

Prison phone contract information & Contacts:

North Dakota: Receives a 40% kickback; existing contract expires on 10-31-2014. Charges $6.00 for a 15-minute collect intrastate call. **Contacts:** North Dakota DOC, Director Leann Bertsch, 3100 Railroad Avenue, Bismarck, ND 58502-1898; phone: 701-328-6362, fax: 701-328-6651, email: lebertsc@nd.gov. Governor Jack Dalrymple, State Capitol, 600 E. Blvd Ave., Bismarck, ND 58505-0001; phone: 701-328-2200, fax: 701-328-2205, email: governor@nd.gov

Oklahoma: Receives an effective kickback of 76.6%; existing contract expires 12-31-2014. Charges $3.00 for a 15-minute collect intrastate call and $3.00 for a local call. **Contacts:** Oklahoma DOC, Director Robert Patton, 3400 Martin Luther King Ave., Oklahoma City, OK 73111; phone: 405-425-2505, fax: 405-425-2578, email: terri.watkins@doc.state.ok.us. Governor Mary Fallin, Capitol Building, 2300 N. Lincoln Blvd. Rm. 212, Oklahoma City, OK 73105; phone: 405-521-2342, fax: 405-521-3353, email: www.ok.gov/governor/# (click "E-mail Governor Fallin" under the "Contact the Governor" tab)

Washington: Receives a 51% kickback; existing contract expires on 12-31-2014. Charges $3.50 for a 15-minute collect intrastate call and $3.50 for a collect local call. **Contacts:** Washington DOC, Secretary Bernard Warner, P.O. Box 41100, Mail Stop 41100, Olympia, WA 98504-1100; phone: 360-725-8213, fax: 360-664-4056, email: doccorrespondenceunit@doc.wa.gov. Governor Jay Inslee, P.O. Box 40002, Olympia, WA 98504-0002; phone: 360-902-4111, fax: 360-753-4110, email: https://fortress.wa.gov/es/governor (use online email form)

Leading with Conviction: JustLeadershipUSA

by Glenn Martin and Sasha Graham

For decades, advocates and scholars alike have publicly decried the crippling financial and human costs of mass incarceration. Today their calls for reform are amplified by an emerging bipartisan consensus that current incarceration trends are unsustainable, ineffective and increasingly harmful to individuals, families, communities and society as a whole.

Several states, including New York, New Jersey and California, have prioritized criminal justice reforms intended to reduce excessive criminalization and incarceration.[1] Last year, 300 bills were introduced on the state level that promoted smarter, healthier approaches to crime prevention and reductions in our overreliance on incarceration.[2] Yet despite this abundance of political will and a growing legion of zealous advocates, we have yet to realize significant and widespread reform of our criminal justice system. In fact, recent successes notwithstanding, the justice system continues to operate at full throttle, consuming millions of individuals, countless families and entire communities.

The problem is that for far too long the individuals and communities directly impacted by mass incarceration have been glaringly absent – or worse, omitted – from the conversation. Ironically, in a movement established in their name, the currently and formerly incarcerated are often relegated to roles of service provision and symbolism. It is not enough that advocates for reform be genuine believers in the depravity and inhumanity of our carceral policies. The failure of policy makers, advocates and service providers to invest time and energy into cultivating meaningful ways to work collaboratively with people and communities most impacted by the criminal justice system has expunged the expertise needed to achieve substantial reform.

No community wants, needs or understands the urgency of sweeping reform more than those held captive by the disastrous policy failures of a broken justice system. These individuals not only bring a valuable and culturally-competent frame to the discussion, but "living closer to the problem" often means that they have given significant thought to possible solutions. In what appears to be a watershed moment for criminal justice reform we need these communities of the currently and formerly incarcerated to instruct us on what needs to change, where we can improve and what strategies we need to implement.

JustLeadershipUSA is dedicated to putting new and authentic drivers in the seat of the reform locomotive. We know that it is not for lack of intelligence or hard work that formerly incarcerated people rarely assume roles of leadership, but a lack of access to resources and opportunities. We believe that everyone has the capacity to lead, though not everyone is exposed to opportunities that teach them critical leadership skills. Through our leadership development training program we instruct formerly incarcerated people with proven leadership capacity in their respective careers and communities, to drive decarceration efforts around the country.

Together with the Center for Institutional and Social Change at Columbia University, JustLeadershipUSA has collaborated with over 50 formerly incarcerated leaders to research, develop and employ a dynamic and inclusive leadership model. Our cohort-based training practices include peer coaching sessions, peer group learning projects and individualized one-on-one sessions, to produce a sustainable leadership community that fosters ongoing development and support long after the program is complete.

While we believe those closest to the problem are closest to the solution, we know this does not exempt the rest of us from playing our part in correcting the wanton harm produced by four decades of failed criminal justice policy. Contrary to popular sentiment, mass incarceration is neither a minority issue nor a poor people's issue, but an American issue. The criminal justice system is a menacing threat to our democracy – squandering the potential of millions of Americans, destroying families and communities, and wasting billions of taxpayer dollars each year.

At JustLeadershipUSA, we know that the presence of allies has been crucial to every movement against systemic injustice (the abolition of slavery, the women's rights movement, the Civil Rights movement, etc.). As such, we employ a membership model to encourage people of all backgrounds, including those who are incarcerated, to band together against policies that are wasteful and ineffective and to incentivize investment in practices that are fairer, smarter and morally aligned with our values.

Our founder, Glenn E. Martin, a national criminal justice reform advocate and formerly incarcerated individual, created JustLeadershipUSA because he believes one of the most unjust features of the existing system is that the millions of men and women in America's prisons have been barred from making decisions regarding their own lives. JustLeadershipUSA knows that systemic change is accelerated and amplified through strength in numbers. We ask that people who are currently incarcerated and the more than 60 million American adults who have criminal records[3] become members of our movement to elevate the voices of those impacted by incarceration and articulate their own salvation, as only they can.

By joining JustLeadershipUSA you are safeguarding against the adoption of policies contrary to your best interests and the health and well-being of your families and communities. As a member your contributions will fund our efforts to replace mandatory sentencing laws with more flexible and individualized guidelines, eliminate the use of "three-strike" laws, eliminate tough-on-crime-era truth in sentencing laws, expand labor market opportunities for formerly incarcerated people and encourage the increased use of prison population reduction strategies such as executive pardons, parole release, clemency and merit time. Together, with a united voice and a united vision for reform, we can halve the U.S. prison population by 2030 and afford those who are incarcerated equal opportunities to be part of the solution.

To become a member of JustLeadershipUSA, please send $10.00 (the cost of annual membership) to JustLeadershipUSA at 112 West 34th Street, Suite 2104, New York, NY 10120. Also, please spread the word about JustLeadershipUSA; ask your family and friends to become members, too! Together we can redefine JUSTICE.

For more information, visit our website: www.justleadershipusa.org.

1 Mauer, Marc, "Fewer Prisoners, Less Crime: A Tale of Three States," The Sentencing Project, July 2014.

2 Cockburn, Chloe, "Ending Mass Incarceration: Progress Report," ACLU, May 28, 2014; www.aclu.org/smart-justice-fair-justice/ending-mass-incarceration-progress-report.

3 Rodriguez, Michelle and Maurice Emsellem, "65 Million Need Not Apply: The Case for Reforming Criminal Background Checks for Employment," National Employment Law Project, March 2011.

Washington State: Injunction Entered Against Lewis County in PLN Censorship Suit

On September 10, 2014 a federal judge entered a preliminary injunction against Lewis County, Washington in a lawsuit challenging a postcard-only mail policy at the county jail.

The lawsuit, filed by Prison Legal News in April 2014, alleged that the jail's policy of restricting incoming and outgoing correspondence to postcards violated PLN's rights under the First Amendment. Further, the complaint argued that the jail's failure to provide notice to the sender when mail was censored or rejected violated the due process clause of the Fourteenth Amendment.

While county officials claimed the jail had changed its mail policy after the suit was filed, "and is now allowing news sources to distribute both publications and other forms of correspondence to prisoners," U.S. Magistrate Judge J. Richard Creatura wrote there was "substantial evidence to believe that this policy has not yet been adopted." Further, "First Amendment rights are too important to be subject to such arbitrariness," he added.

Between September and October 2013, pursuant to the jail's postcard-only policy, jailers had rejected dozens of letters sent to prisoners by PLN, including subscription brochures, book catalogs and copies of court rulings.

"The postcard-only policy drastically reduces prisoners' and other correspondents' ability to communicate. It is more than a mere inconvenience and becomes a substantial barrier to First Amendment rights," Judge Creatura stated, noting that the Washington Department of Corrections and other jail systems in the state, including those in King, Pierce and Spokane counties, do not have postcard-only policies.

The district court enjoined county officials from "restricting incoming and outgoing prisoner mail to postcards only," from "rejecting mail to or from prisoners without providing notice to the prisoner" and from "rejecting mail from non-prisoner correspondents without providing notice to the non-prisoner correspondent." The court also required appeals of rejected mail to be referred to a jail official "other than the person who originally rejected the correspondence."

"We are pleased that the court found the constitutional violations at the jail warranted the entry of an injunction against Lewis County," said PLN editor Paul Wright. "No one is above the law or the Constitution – and sometimes it takes a federal judge to make that clear."

Jesse Wing, one of PLN's attorneys, noted that the jail's restrictive mail policy not only harmed pretrial detainees who have not been convicted, but also people in the community who want to correspond with prisoners. Communicating with the outside world is "essential to maintaining family, employment, educational and other important relationships critical for a person to productively return to society after time in jail," he said. "The court's order has a huge positive effect, helping many people."

PLN is represented by attorneys Jesse A. Wing and Katherine Chamberlain with the Seattle law firm of MacDonald Hoague & Bayless, and by Human Rights Defense Center general counsel Lance Weber. The case remains pending. See: *Prison Legal News v. Lewis County*, U.S.D.C. (W.D. Wash.), Case No. 3:14-cv-05304-JRC.

Sources: *HRDC press release (Sept. 11, 2014); www.courthousenews.com*

Drug Courts Partner with Pharmaceutical Company to Combat Heroin, Alcohol Abuse

The 406th District Drug Court in Webb County, Texas has turned to a new approach for breaking the cycle of addiction related to heroin, opiate and alcohol abuse: The court formed a partnership with Irish pharmaceutical company Alkermes plc to provide a drug called Vivitrol to drug court participants.

Vivitrol is an intramuscular medication delivered once-monthly by injection. It works to block the production of endorphins, which in turn prevents the brain from producing surges of dopamine – the body's pleasure hormone. Essentially, Vivitrol prevents a person from getting high or drunk. As a result, if a heroin addict shoots up or an alcoholic takes a drink, he or she won't feel anything pleasurable – although Vivitrol is only meant to be used after a person has detoxed or stopped drinking.

A primary benefit of the drug compared to other medical treatments, such as Suboxone and methadone, is that Vivitrol is not addictive.

One dose of Vivitrol lasts 30 days, though the drug is expensive; the cost can range from $800 to $1,200 for a single shot. Alkermes agreed to a three-year partnership with Webb County in which the company will provide one free dose of Vivitrol to drug court participants – a $200,000 commitment.

The court also received a $1 million Substance Abuse and Mental Health Services Administration grant to implement a client treatment plan that includes Vivitrol and cognitive intervention. In addition, Webb County Commissioners approved a half-million dollars in November 2012 to build a new adult detoxification and residential treatment facility for drug offenders. Vivitrol will be given to people released from the residential program.

The drug is not without its critics, but has been used for three decades. Known side effects include possible liver damage or hepatitis, risk of overdose if patients continue using drugs or alcohol while taking Vivitrol, and allergic reactions and depression.

The federal government first developed the drug Naltrexone some 30 years ago to prevent heroin relapses. It was approved by the Food and Drug Administration (FDA) in pill form in 1984 as a treatment for heroin addiction, and in 1994 for alcoholism.

But the drug required a strict regimen of daily doses. The National Institute on Drug Abuse funded research in the 1990s to develop a form of Naltrexone that could be delivered by injection. The result was Vivitrol, which was approved by the FDA in 2006 to treat alcoholism and in 2010 to treat opiate addiction.

David McCann, of the National Institute on Drug Abuse's Division of Pharmacotherapies and Medical Consequences, said a Russian study used by the FDA to grant approval found that more than one-third of Vivitrol patients – 36% – stayed drug-free and in treatment for six months, compared to less than one-fourth – 23% – of those not taking the drug.

But John Schwarzlose, who heads the Betty Ford Center in California, is among the skeptics who warn that research on Vivitrol is "spotty."

"The pharmaceutical company will have you believe it is the cure for alcoholism," Schwarzlose wrote in an email to the St. Louis *Post-Dispatch*. "But recovery is learning to live without mood-altering chemicals."

Still, testimonials of Vivitrol's success caught the ear of Gil Kerlikowske, then the head of the White House's Office of National Drug Control Policy. After visiting a clinic in St. Louis, Missouri in August 2012, Kerlikowske told the *Post-Dispatch* that Vivitrol and similar drugs represent the future of addiction treatment, which until now has relied almost exclusively on therapy or medicines that are just as addictive as the drugs they are designed to replace.

St. Louis Circuit Court Judge James Sullivan, who oversees the city's drug court, began referring offenders to Vivitrol centers instead of prison more than three years ago. He said 60 to 70 defendants on his docket are taking Vivitrol in addition to mandatory therapy in the 11-to-16-month program.

"Vivitrol has assisted us in reaching some very difficult long-term addicts and alcoholics who have not been able to benefit from listening to drug treatment programs that are focused on treatment rather than the cravings," Sullivan said.

In 2011, the *Journal of Substance Abuse Treatment* published a study in which researchers examined 64 participants from Sullivan's court plus two Michigan drug courts. Half received monthly Vivitrol injections in addition to therapy; the others received only therapy.

The study, funded by Alkermes, determined that Vivitrol patients were about 57% less likely to miss drug court sessions than those who participated in therapy alone. Additionally, only 8% of those treated with Vivitrol were rearrested compared to 26% of the non-Vivitrol participants. The study estimated that keeping addicts from re-entering the criminal justice system generated savings of between $4,000 and $12,000 per person following an initial arrest.

Four offenders in Hocking County, Ohio are among Vivitrol's success stories. In April 2014, they were recognized for breaking their addictions in an emotional graduation ceremony attended by family and friends.

"This is not something that is easy," said Municipal Court Judge Fred Moses, who spearheaded the drive to create a Vivitrol drug court program. He put together a coalition of state and county agencies to secure funding for the program, which began in late 2012.

"It's not about the court, it's about the community and those seeking help and who want to be helped," Moses said.

Authorities in Warren County, Ohio initiated a Vivitrol pilot program in March 2014, led by Common Pleas Court Judge Robert Peeler, who had been actively seeking the medication for heroin-addicted defendants on his docket. Under an $832,000 grant from the Ohio Department of Rehabilitation and Correction, about a dozen people are already enrolled in the program; the grant will cover a total of 120 participants.

"The goal is to try to find some alternative for these non-violent drug offenders to go somewhere other than prison," Peeler said. "Hopefully, that means back to work; they get their kids back if they've lost them. It's giving people a chance for hope; it's giving people a chance for success."

Butler County, Ohio Common Pleas Court Judge Keith Spaeth, who runs the county's specialty drug court, said state money channeled through the Butler

County Alcohol and Drug Addiction Services Board enabled him to start a Vivitrol pilot program. He observed that the results, while not conclusive, have been extraordinary.

"It's purely anecdotal at this time but there have been amazing results," Spaeth said. "People we have worked with for over a year and can't seem to make progress, suddenly they are on Vivitrol and they are like a different person. Their personality changes, and they stop using, and they get a job, and they become human."

Butler County Sheriff Richard Jones, however, has called Vivitrol programs in jails a "waste of money."

The drug court in Lane County, Oregon was the first in that state to begin a Vivitrol program, in the summer of 2014. The court received a $38,000 grant from the Oregon Community Foundation to pay for enough doses of the drug to help the roughly 115 eligible people in the county's Adult Drug Court and Veterans Treatment Court.

"The one concrete report that they continue to hear [is] that it takes away the cravings for the addiction," stated Lane County Adult Drug Court Director Bonnie McIrvin. "For opiate addicts, that is the biggest draw."

Meanwhile, Webb County, Texas hopes to use its Vivitrol treatment program as a magnet to attract more funding.

"We want to use this as leverage at the state and federal level to bring in more monies for our program," said Jesse Hernandez, a licensed drug counselor, grant writer and drug court consultant.

Currently, Vivitrol programs are available in courts, jails and prisons in at least 21 states; however, as with most drug courts, participants are usually limited to non-violent, low-level offenders – even though those convicted of violent crimes would also benefit, and perhaps have the greatest need for such treatment programs.

In February 2014, Alkermes estimated net sales of Vivitrol to range from $90 to $100 million this year. For fiscal year 2013, net sales of the drug were $58.1 million.

Sources: *Laredo Morning Times*, *www.logandaily.com*, *www.stltoday.com*, *www.thefix.com*, *http://registerguard.com*, *www.daytondailynews.com*, *www.vivitrol.com*, *www.cleveland.com*, *www.rttnews.com*

Class-Action Suit Claiming Inadequate Medical Care at Virginia Prison Set for Trial

A December 2014 trial date has been scheduled in a class-action federal lawsuit that could determine the future of health care for prisoners at the Fluvanna Correctional Center for Women (FCCW) in Troy, Virginia.

The suit was filed in July 2012 on behalf of five women incarcerated at Fluvanna, and names as defendants the Virginia Department of Corrections (VDOC), Armor Correctional Health Services and both VDOC and Armor officials for failing to provide constitutionally adequate medical care at FCCW. The Legal Aid Justice Center (LAJC) in Charlottesville, Virginia; the Washington, D.C. law firm of Wiley Rein, LLP and the Washington Lawyers' Committee for Civil Rights and Urban Affairs are jointly representing the plaintiffs – Cynthia B. Scott, Bobinette D. Fearce, Patricia Knight, Marguerite Richardson and Rebecca L. Scott.

On July 15, 2013, the district court held that Corizon Health, Inc., of Brentwood, Tennessee, which was the contract provider for medical care in VDOC facilities prior to Armor, and which outbid Armor in May 2013 to resume its role as Virginia's correctional health care provider, could be added as a defendant.

The suit does not seek monetary damages, but rather "declaratory and injunctive relief to address and remedy the failure of FCCW, on a systematic, pervasive, and on-going basis," to provide constitutionally adequate medical care.

An LAJC press release said the quality of health care at FCCW is so deficient that it violates the Eighth Amendment's ban on cruel and unusual punishment.

"The women suffer extreme pain for prolonged periods as a result of the refusal to provide for these women who have no other options for securing life-saving medical care," said LAJC litigation director Abigail Turner. "Some spend months confined to wheelchairs because medical staff fail to act promptly. Some have died. The human tragedy is almost all the pain and suffering could have been prevented."

Turner blamed the VDOC's outsourcing of prison health care to private companies as contributing to the problem. "The suffering stems directly from the policies and practices of a for-profit corporation that puts profits over people," she said.

Turner added that she believes at least ten deaths at FCCW over the past 3 to 4 years could have been prevented had prisoners received sufficient medical treatment.

The complaint cites the failure of health care staff to treat the plaintiffs and other prisoners as examples of system-wide failures. As one example, the lawsuit describes the death of FCCW prisoner Darlene White, an acknowledged diabetic.

White went to the prison's infirmary in the early morning hours of December 21, 2011, complaining of severe headache, nausea and diarrhea. A nurse gave her a shot to relieve her nausea and sent her back to her dorm. Later that day she returned to the infirmary. A nurse checked her blood sugar and "found that it was radically elevated above normal levels," the suit claims. She was instructed to lie on a bed, where she remained for the next day vomiting and defecating on herself without receiving care or a medical exam. A nurse did try to administer an IV to White, who was "completely non-responsive," shortly before she died.

A second example cited in the lawsuit involves prisoner Jeanna Wright. Beginning in 2011, Wright complained for months of intense abdominal pain and rectal bleeding, but "for at least one year," medical staff at FCCW assured her that she was "fine." Wright was finally taken to the University of Virginia (UVA) Medical Center, where she was diagnosed with Stage IV abdominal cancer. She died only a few weeks later.

The lawsuit cites numerous other examples intended to demonstrate the inadequate care that prisoners receive – or in some cases don't receive. The LAJC claimed that despite having to pay a $5 co-pay for sick call visits, prisoners often wait several months to see a doctor or nurse practitioner to diagnose and treat their medical needs, and that the denial of access to doctors results in medical staff refusing to examine, diagnose and treat serious medical conditions.

The complaint further alleges that Armor's medical staff have failed to provide the plaintiffs with timely referrals and treatment for specialized care such as degenerative disc disease, severe shortness of breath, recurring throat infections and sarcoidosis – a disease that causes inflammation in the body's organs. Even when a specialist prescribes a specific course of treatment, Armor's staff regularly refuse to carry it out.

The suit also contends that prisoners with chronic illnesses, such as hypertension, diabetes, incontinence, frequent constipation, arthritis and other mobility impairments, are deprived of care as their health deteriorates.

FCCW prisoner Taylor Gilmer, 23, is one such example. When Gilmer was seven years old, doctors diagnosed her with Type 1 diabetes; her mother said that since Gilmer has been incarcerated at FCCW, medical staff have been negligent in her treatment.

Her mother claimed that FCCW health care staff misidentified Gilmer's Type 1 diabetes as Type 2, and prison officials prevented her from routinely checking her blood sugar levels.

"I'm really scared," said her mom. "She cries to me on the phone ... she says 'I'm losing my vision.' She's afraid she's going to lose her feet." She wonders what condition her daughter will be in when she is finally released in 2017. "How bad will she be by then, if she even lives? The outlook is not so good."

Another FCCW prisoner was approved for medical clemency and released in early December 2013, after doctors at the UVA Medical Center gave her only weeks to live. Donna Kidd spent nearly ten years behind bars on charges of fraud and larceny, and suffered from hepatitis C when she was incarcerated. Barbara Kingery, her older sister, said Kidd's health quickly deteriorated once she was in prison due to poor medical care.

"They are in there paying for their mistakes, but they shouldn't have to pay with their life," Kingery stated. "If she had gotten the proper treatment, she wouldn't be where she is now."

The VDOC defendants filed a motion to dismiss the lawsuit, which was denied by the district court in December 2012. The suit alleges that medical care has been equally deficient under both Armor and Corizon, with Corizon underbidding its

rival by around $17 million when the contract was rebid in 2013.

"Everything we've seen so far [indicates] more of the same from Corizon," said LJAC attorney Brenda Castaneda. "I wish the care would be better, but that's not what we're hearing from our clients and it's not what we anticipate based on past experiences." She said LJAC had petitioned to add Corizon to the lawsuit so the court could order the company to provide adequate care in the future.

"It doesn't take a rocket scientist to know that their mission is to make money," noted Hope Amezquita, an attorney with the ACLU of Virginia. "They're a for-profit company. It may be cynical of me to say this, but you can't make more money unless you cut services and treatment and staff."

Attorneys for the plaintiffs said they were left with no other option but to sue. "Each year prisoners at Fluvanna file hundreds of grievances recounting the failure to provide appropriate medical care," said Deborah Golden, an attorney with the Washington Lawyers' Committee. "Yet, [VDOC] has not required [its outside provider] to adopt and improve medical care. By its actions and inactions, [VDOC] has shown deliberate indifference to plaintiffs' serious medical problems and needs."

In April 2014, the district court granted the plaintiffs' motion for $15,980 in attorney's fees for having to file a motion to compel in a discovery dispute in the case, and on July 28, 2014, Corizon was dismissed from the suit upon agreement of the parties.

The company had announced its intention to withdraw from its $76.5 million contract with the VDOC effective October 1, 2014, citing costs as a factor. Armor will resume medical care in Virginia prisons at that time on an interim basis; as Corizon will no longer be subject to declaratory or injunctive relief, it was dismissed as a defendant.

A motion to certify a class in the case remains pending, and a jury trial is scheduled for December 1, 2014. See: *Scott v. Clarke*, U.S.D.C. (W.D. Va.), Case No. 3:12-cv-00036-NKM.

Sources: *www.newsplex.com, www.justice4all.org, www.c-ville.com, www.wvtf.org, www.dailyprogress.com*

Prison and Jail Phone Reforms Needed in New Jersey

by Karina Wilkinson

Two prison phone service providers, Global Tel*Link and Securus, continue to overcharge prisoners and their families for calls made from prisons and jails in New Jersey. While federal regulations capped interstate (long distance) calls from correctional facilities beginning in February 2014, the State of New Jersey has allowed a grave injustice to continue by permitting companies to charge high rates and allowing county jails to accept commissions on in-state calls ranging from 50% to 70%. Such commissions amount to legal "kickbacks" that let phone companies share profits with state and local governments at the expense of those who can least afford it.

Prior to the Federal Communication Commission's order capping interstate phone rates, charges of $.33 per minute from New Jersey state prisons and as high as $15.00 for 15-minute calls from county jails have translated to hundreds and even thousands of dollars of debt for prisoners and their families. New Jersey Advocates for Immigrant Detainees* and other advocacy groups have received reports of parents forgoing calls with their children because they couldn't afford the cost.

"It is absolutely obscene that a private vendor can charge fees that amount to a tax on children, grandmothers and families in crisis," wrote Assemblywoman Bonnie Watson Coleman in the *Trenton Times*.

Following the FCC's order, New Jersey initially lowered phone rates in state prisons to $.19 per minute, and in early September 2014 dropped the rates a second time to $.15 per minute. The most recent contract renewal extends for three months, ending in December 2014. Although the state has lowered both in-state and interstate rates to $.15 per minute, it has not gone far enough in adopting fair and just phone charges. The state could follow New York's example and adopt a flat rate of $.05 per minute; New York contracts with the same prison phone service provider as New Jersey, Global Tel*Link.

County jails are doing the minimum to comply with the FCC's order. They've lowered interstate rates to $.21 per minute for debit and prepaid calls and $.25 per minute for collect calls, but left in place high rates and commissions for in-state calls. It is now less expensive for county jail prisoners to call outside the state than to call one town over.

As examples of some of the phone rates at local facilities, calls from jails in seven counties cost $5.50 for 15 minutes within the same area code (except local calls) and $8.50 outside the area code but still within New Jersey. Seven other counties charge $4.75 for most calls within the same area code and $7.75 outside the area code but still within the state. Out-of-state calls, meanwhile, are capped at $3.15 for debit and prepaid calls and $3.75 for collect calls. This makes no sense.

Limiting calls to family members is only one aspect of this injustice. There are around 2,200 beds in New Jersey for people detained by Immigration and Customs Enforcement (ICE), and the majority are in county jails. These detainees are awaiting immigration hearings for which they have no guarantee of legal representation if they cannot afford it. Many must represent themselves in court, and phone calls are crucial for accessing the necessary documents and information for their cases – yet they are still subjected to high phone rates.

Within the next several months, the Board of Public Utilities is expected to vote on a petition seeking to open a process to regulate phone rates in correctional facilities and lower in-state rates at both county jails and state prisons. For more information on the petition filed by a coalition of advocacy organizations, including New Jersey Advocates for Immigrant Detainees, New York University School of Law Immigrant Rights Clinic, New Jersey Institute for Social Justice, the law firm of DLA Piper and LatinoJustice, visit www.njphonejustice.org.

* New Jersey Advocates for Immigrant Detainees is a statewide coalition which includes organizations that visit detainees in detention and provide immigrants with legal and religious services.

Karina Wilkinson is a co-founder of the Middlesex County Coalition for Immigrant Rights and a member of New Jersey Advocates for Immigrant Detainees and New Jersey Phone Justice.

Pretrial Detainee's First Amendment Retaliation Claim Survives Summary Judgment

by David M. Reutter

In a December 26, 2013 decision, the Eighth Circuit Court of Appeals reversed a district court's grant of summary judgment, holding that a former pretrial detainee had presented sufficient evidence that he was subjected to retaliation for filing grievances and a lawsuit.

Randy G. Spencer filed suit alleging a First Amendment claim related to his stay at the Jackson County Detention Center (JCDC) in Missouri. When he entered the JCDC in January 2005 he faced multiple charges, including tampering with a motor vehicle, assaulting a police officer, theft and resisting arrest.

Despite those charges and a prior criminal record, Spencer was approved for and assigned to the Inmate Worker Program (IWP), also known as the trustee program. The IWP not only provided special privileges such as late nights, contact visits, movies, sodas, popcorn and extra food for kitchen workers, it also paid detainees for each shift worked.

Spencer was commended by the program's supervisor, Margo Carter. He was reentered in the IWP after completing a substance abuse treatment program, and remained in the IWP until he was released from jail. In 2006, Spencer filed a lawsuit against Carter and other JCDC employees, alleging he received inadequate medical and dental care at the facility and faced retaliation by Carter.

Spencer returned to the JCDC in October 2009 on a theft charge. He was again approved for the IWP. About 10 days later, he saw Carter and apologized for filing the

lawsuit against her. After a "few seconds," she advised him that he was being terminated from the IWP.

The next day, Spencer filed a request for administrative remedy, known as a JPO, which is required before filing a formal grievance. Carter denied his request to return to the trustee program due to his "past charges, behavior and actions."

Spencer then filed several other JPOs and requested grievance forms from his case manager, Gale Anthony. He made repeated requests which were denied, and Anthony had him moved to another unit with "younger, aggressive inmates." His new case manager, Brenda Williams, advised him that he "wasn't going to get any grievance forms." Spencer filed suit and the district court granted summary judgment to Carter, Anthony and Williams.

On appeal, the Eighth Circuit held the district court had erred, noting that "In order to demonstrate retaliation in violation of the First Amendment under 42 U.S.C. § 1983, Spencer must 'show (1) he engaged in a protected activity, (2) the government official took adverse action against him that would chill a person of ordinary firmness from continuing in the activity, and (3) the adverse action was motivated at least in part by the exercise of the protected activity.'"

As to the claim against Carter, the appellate court wrote that she had not "explained how Spencer became disqualified from the trustee program when his record was essentially the same as when he entered it originally in 2005." She did not claim he had a disqualifying offense, nor did she present "evidence that Spencer's record changed between his October 2009 approval for the trustee program and his later removal from that program." Thus, a jury could conclude his lawsuit against her was the motivating factor for his termination from the IWP.

A jury could also conclude the actions of Anthony and Williams were motivated by retaliation for Spencer's efforts to file grievances. The Court of Appeals therefore reversed the district court's grant of summary judgment. Following remand the defendants filed a renewed motion for summary judgment on April 22, 2014, which remains pending. See: *Spencer v. Jackson County, Missouri*, 738 F.3d 907 (8th Cir. 2013).

Alaska Filing Fee Statute Denies Prisoners Court Access

by Mark Wilson

On December 6, 2013, the Alaska Supreme Court held that barring an indigent prisoner from filing an appeal due to inability to pay the filing fee deprived him of his fundamental right of access to the courts.

In May 2011, Alaska prisoner James Barber was found in violation of prison rules and placed in segregation. He appealed the violation to the superior court, requesting a partial filing fee exemption under AS 09.19.010 due to his indigency. The superior court granted a partial exemption and reduced the filing fee to $33.86, to be paid within 30 days.

AS 09.19.010 specifies that prisoners "must pay a full court filing fee before commencing litigation against the State. But the statute allows a court to exempt part of the filing fee if the prisoner demonstrates exceptional circumstances."

In September 2011, Barber was found guilty of a second disciplinary violation and again put in segregation. He also attempted to challenge that order in superior court, seeking a partial filing fee exemption due to his inability to pay. The superior court again set the filing fee at $33.86, due within 30 days.

When Barber failed to pay, the superior court dismissed both actions. He then appealed to the Alaska Supreme Court, arguing that the prisoner litigation filing fee statute deprived him of access to the courts. The Supreme Court asked the Alaska Association of Criminal Defense Lawyers to appear as amicus curiae in support of Barber's position.

The Court observed that it had "recited the proposition that 'an inmate's right of unfettered access to the courts is as fundamental a right as any other he may hold. All other rights ... are illusory without it,'" citing *Mathis v. Sauser*, 942 P.2d 1117 (Alaska 1997) (quoting *Adams v. Carlson*, 488 F.2d 619 (7th Cir. 1973)).

Analyzing Barber's court access claim as an issue of procedural due process, the Supreme Court applied the balancing test of *Matthews v. Eldridge*, 424 U.S. 319 (1976) and concluded, following an extensive analysis, that "as applied to prisoners in Barber's circumstances, AS 09.19.010 denies adequate procedural due process."

"Although the state may have a legitimate interest in reducing frivolous prisoner litigation," the Court wrote, "due process cannot allow that interest to be furthered by barring an individual prisoner's court access because of an actual inability to pay." The dismissals of Barber's appeals were reversed and the case remanded for further proceedings. See: *Barber v. Alaska DOC*, 314 P.3d 58 (Alaska 2013).

California: Federal Judge Certifies Class-Action Over SHU Placement, Conditions

by Derek Gilna

California state prison officials could be forgiven for complaining that the federal courts spend a lot of time monitoring their activities, but the facts indicate that such attention is warranted. California's prison system, already singled out by the U.S. Supreme Court for overcrowding and court-ordered population reductions, is currently under additional scrutiny for constitutional violations in the Security Housing Unit (SHU) at Pelican Bay State Prison.

A lawsuit filed by the Center for Constitutional Rights on behalf of ten prisoners who have spent at least ten years in the SHU at Pelican Bay alleges that prolonged SHU confinement constitutes cruel and inhumane punishment.

According to Alexis Agathocleous, one of the attorneys representing the plaintiffs, "Since their 2011 hunger strikes, hundreds of prisoners at the Pelican Bay SHU – and across California – have stood together in solidarity to protest inhumane conditions and broken policies they've been subjected to for decades. This case has always been about the constitutional violations suffered by all prisoners at the SHU...."

The federal judge hearing the case of *Ashker v. Brown* apparently agreed, and on June 2, 2014 certified the lawsuit as a class-action for all similarly situated prisoners held in Pelican Bay's SHU.

The prisoners' tactic of engaging in hunger strikes, uncommon in U.S. prisons, has focused attention on what prisoners' rights advocates argue have been long-term problems in California's prison system. [See: *PLN,* Aug. 2013, p.18; July 2012, p.32].

Following an expansive investigation, Amnesty International (AI) issued a 63-page report in September 2012, concluding that SHU conditions "breach international standards on humane treatment." The SHU at Pelican Bay is intentionally designed to "minimize human contact and reduce visual stimulation," the report stated.

The district court noted that "Plaintiffs allege that SHU inmates live in almost total isolation. They spend at least twenty-two and a half hours per day in windowless, concrete cells with perforated steel doors and typically leave only to shower or exercise alone in an enclosed pen."

According to the AI report, "Under California regulations, SHU is intended for prisoners whose conduct endangers the safety of others or the security of the institution." Yet two-thirds of SHU prisoners are serving "indeterminate" terms in segregation – not due to violent behavior but because they have been "validated" by prison authorities as gang members or associates. [See: *PLN,* May 2014, p.30; Dec. 2013, p.40].

The arbitrariness of such isolation practices has led to an average stay in Pelican Bay's SHU of 6.8 years, AI stated. At least 500 prisoners have spent more than 10 years in solitary confinement, where the conditions "would crush you" according to Tess Murphy, an Amnesty observer who toured Pelican Bay. Disturbingly, nearly 60 prisoners have been held in the SHU for over 20 years, many of them since the facility first opened in 1989.

Now these practices will be subjected to judicial scrutiny in the latest of a long line of federal lawsuits that have mined a seemingly endless vein of questionable conditions of confinement that have exacted an immense cost in unnecessary human suf-

fering in California's prison system.

Although there have been recent efforts by state prison officials to review SHU placements and move certain SHU prisoners into a "step down" program, such efforts have been criticized as inadequate. As of June 9, 2014, prison officials had conducted 828 SHU reviews, resulting in 557 prisoners being moved to general population and 231 placed in various levels of the step down program. Five of the original plaintiffs in *Ashker* have been removed from SHU confinement.

In its class certification order, the district court certified two classes, one consisting of "all inmates who are assigned to an indeterminate term at the Pelican Bay SHU on the basis of gang validation..." and the other of "all inmates who are now, or will be in the future, assigned to the Pelican Bay SHU for a period of more than ten continuous years." Prisoners held in SHUs at other facilities are not included.

The court also assigned five of the original named plaintiffs who remain at Pelican Bay to serve as class representatives, and denied a motion by the California Correctional Peace Officers Association (CCPOA) to intervene in the case. See: *Ashker v. Brown*, U.S.D.C. (N.D. Cal.), Case No. 4:09-cv-05796-CW; 2014 U.S. Dist. LEXIS 75347 (N.D. Cal. June 2, 2014).

In a related matter, a bill that would have required certain reforms in SHUs in California prisons, SB892, died in the state legislature in late August 2014. For example, the bill would have allowed SHU prisoners to have photographs and make phone calls if they maintained good behavior for three months. Fears that Governor Jerry Brown would veto the legislation contributed to its demise.

"I became convinced that to get a bill signed into law would require further weakening it to a point where it could no longer accomplish its goals," said state Senator Loni Hancock.

Thus, it appears that changes in SHU practices will have to be accomplished through the courts, as California lawmakers lack the political will to do so.

Additional sources: *www.townhall.com*, *www.truth-out.org*

$8.15 Million Jury Award for Prisoner's Death at New York Jail

by David Reutter

A New York City jury awarded $8.15 million to the estate of a prisoner who died after being denied access to medical care.

While incarcerated in 1996 at the Vernon C. Bain Correctional Center, part of the Rikers Island complex, Jose Santiago, 25, told a guard he was experiencing symptoms that included a rapid heartbeat, profuse perspiration and difficulty breathing. The guard dismissed Santiago's request for treatment at the facility's clinic.

Just 30 minutes later, moments before he collapsed, Santiago again approached the same guard who again refused to help him. Santiago's pulse could not be detected when medical staff arrived, so they started CPR and summoned emergency medical technicians. The emergency responders did not arrive until 30 minutes later, and pronounced Santiago dead after their life-saving efforts failed.

Following his October 24, 1996 death, Santiago's estate, represented by a public administrator, sued the City of New York and the city's Department of Correction.

The estate's emergency medical expert, Rachael L. Waldron, opined that Santiago's symptoms were caused by atrial fibrillation. She said his symptoms indicated he was receiving insufficient oxygen and his heart could have been stabilized with simple defibrillation, which was available in the jail's clinic but not utilized.

Waldron also opined that medical staff failed to properly administer CPR and delayed treatment by not directing the emergency technicians to Santiago's location. She concluded that Santiago's death was due to lack of proper medical care.

During the litigation, the trial court sanctioned the defendants for failing to exchange information in discovery.

Santiago's death left his 4-year-old son and 2-year-old daughter without a father. The case went to trial in June 2013, and after ten days the jury unanimously found that employees at the jail were negligent.

The jurors awarded $150,000 for past loss of household services and $200,000 for economic losses; $4 million was awarded to Santiago's daughter and $3.8 million to his son for loss of parental guidance. The estate was represented by attorney Michael J. Kuharski. See: *Rodriguez v. City of New York*, Bronx Supreme Court (NY), Case No. 24068/98.

Tenth Circuit Holds "Consensual" Sex Defeats Prisoner's Eighth Amendment Claim

by Mark Wilson

The Tenth Circuit Court of Appeals has held that a female prisoner's "consensual" sex with two guards did not violate the Eighth Amendment.

Stacey Graham was housed in solitary confinement at a jail in Logan County, Oklahoma. Between July and October 2009, jail guard Rahmel Jefferies began talking to Graham over the intercom and their discussions soon became sexual. They also exchanged sexually explicit notes. "I look forward to fucking you," Graham wrote in one note. "Damn, just the thought of that gets my nipples hard. I'm such a nympho!" She also flashed her breasts at Jefferies "for the hell of it."

On October 7, 2009, another jailer, Alexander Mendez, called Graham over the intercom, "asked about her sexual fantasies" and told her about his. "She responded that her fantasy was to 'be with two men at the same time.'... He asked who she would like him to bring. She said, 'Bring Jefferies.'" Graham then agreed to allow Mendez to see her naked when he came by her cell.

During the early morning hours of October 9, 2009, Jefferies and Mendez entered Graham's cell. She "was wearing just her T-shirt. Mendez took it off and Ms. Graham kissed Jefferies.... it was then 'back and forth' between the two men, and both had their hands on her. Jefferies began to have intercourse with Ms. Graham while she simultaneously performed oral sex on Mendez. The two men then switched positions...."

Another prisoner later alerted the assistant jail administrator that something was going on between Graham and the guards. Graham eventually admitted to having consensual sex with Mendez and Jefferies, but said she "didn't really want Mendez there."

Both guards were immediately terminated after they admitted to the sex acts. Graham was transferred to a different facility, where she told a psychologist that two guards had raped her. She "had a history of bipolar disorder and sexual abuse," but neither Jefferies nor Mendez was aware of her mental health issues.

Graham filed suit in federal court, alleging that the sexual encounter with Mendez and Jefferies violated her rights under the Eighth Amendment. The district court granted summary judgment to the defendants, "holding that 'in light of the consensual sexual activity at issue in this case,' there was no Eighth Amendment violation."

The Tenth Circuit affirmed on December 20, 2013, noting that Graham, unsurprisingly, focused "not on whether she consented as a factual matter but on whether a prisoner can legally consent to sex with one of her custodians." The Court of Appeals declined to hold that consensual sex in this context violates the Eighth Amendment.

The Court observed that "it is a matter of first impression in this circuit whether consent can be a defense to an Eighth Amendment claim based on sexual acts." It then noted that other courts had split on the issue, and the Ninth Circuit had recently "adopted a middle ground in *Wood v. Beauclair*, 692 F.3d 1041 (9th Cir. 2012)," creating "a rebuttable presumption of nonconsent." [See: *PLN*, March 2014, p.54].

"Even were we to adopt the same presumption as the Ninth Circuit," the appellate court wrote, in Graham's case "the presumption against consent would be overcome by the overwhelming evidence of consent." See: *Graham v. Sheriff of Logan County*, 741 F.3d 1118 (10th Cir. 2013).

Stay in touch with a good Magazine!
Get **5** Full One Year Subscriptions **ONLY $20!**
+ $5.99 p&h

Check your 5 magazines and underline three backup choices (in case of unavailability) **"BEST DEAL ON THE POUND!"**

- ☐ ALLURE (12)
- ☐ AMERICAN PHOTO (6)
- ☐ ARTHRITIS SELF MANAGEMENT (6)
- ☐ ARTHRITIS TODAY (6)
- ☐ AUTOMOBILE (12)
- ☐ BACKPACKER (9)
- ☐ BETTER HOMES & GARDENS (12)
- ☐ BLACK ENTERPRISE (12)
- ☐ BOATING (10)
- ☐ BOATING WORLD (9)
- ☐ BON APPETIT (12)
- ☐ BOWHUNT AMERICA (6)
- ☐ BOWHUNTING WORLD (9)
- ☐ CAR & DRIVER (12)
- ☐ CHARISMA (12)
- ☐ CONDE NAST TRAVELER (12)
- ☐ COSMOPOLITAN (12)
- ☐ COUNTRY LIVING (10)
- ☐ CRUISING WORLD (12)
- ☐ CYCLE WORLD (12)
- ☐ DETAILS - FASHION (10)
- ☐ DIABETES SELF MANAGEMENT (6)
- ☐ DIGITAL PHOTO (7)
- ☐ DIRT RIDER (12)
- ☐ EATING WELL (6)
- ☐ EBONY (12)
- ☐ ELLE (12)
- ☐ ELLE DECOR (10)
- ☐ ENTREPRENEUR (12)
- ☐ ESQUIRE (10)
- ☐ EVERY DAY WITH RACHAEL RAY (10)
- ☐ FAMILY CIRCLE (12)
- ☐ FAMILY FUN (10)
- ☐ FAST COMPANY (10)
- ☐ FIELD & STREAM (12)
- ☐ FITNESS (10)
- ☐ FLORIDA SPORT FISHING (6)
- ☐ FLYING (12)
- ☐ FREESKIER (6)
- ☐ GLAMOUR (12)
- ☐ GOLF DIGEST (12)
- ☐ GOLF TIPS (5)
- ☐ GOLFWEEK (38)
- ☐ GOOD HOUSEKEEPING (12)
- ☐ HARPERS BAZAAR (10)
- ☐ HOT BIKE (12)
- ☐ INC (12)
- ☐ INSTRUCTOR K - 8 (6)
- ☐ ISLANDS MAGAZINE (8)
- ☐ LATINA (10)
- ☐ LIFE EXTENSION (13)
- ☐ LOG HOME LIVING (9)
- ☐ LOW COST COOKING (1)
- ☐ LUCKY (10)
- ☐ MARIE CLAIRE (12)
- ☐ MARLIN (8)
- ☐ MEN'S FITNESS (10)
- ☐ MEN'S JOURNAL (12)
- ☐ MEXICAN FIESTA (1)
- ☐ MIDWEST LIVING (6)
- ☐ MINISTRY TODAY (6)
- ☐ MORE (10)
- ☐ MOTOR TREND (12)
- ☐ MOTORCYCLIST (12)
- ☐ NATURAL HEALTH (6)
- ☐ NYLON MAGAZINE (10)
- ☐ NYLON GUYS (6)
- ☐ OK! MAGAZINE (52)
- ☐ OLD HOUSE JOURNAL (8)
- ☐ OUTDOOR LIFE (12)
- ☐ OUTDOOR PHOTOGRAPHER (11)
- ☐ OUTSIDE (12)
- ☐ PARENTS (12)
- ☐ PLANE & PILOT (12)
- ☐ POPULAR PHOTOGRAPHY (12)
- ☐ POPULAR SCIENCE (12)
- ☐ PREDATOR EXTREME (6)
- ☐ RED BULLETIN MAGAZINE (12)
- ☐ REDBOOK (11)
- ☐ ROAD & TRACK (10)
- ☐ ROLLING STONE (26)
- ☐ SALT WATER SPORTSMAN (10)
- ☐ PARENT & CHILD (8)
- ☐ SELF (12)
- ☐ SEVENTEEN (10)
- ☐ SHAPE (12)
- ☐ SIEMPRE MUJER (6)
- ☐ SKI MAGAZINE (6)
- ☐ SNOWBOARD (4)
- ☐ SPORT RIDER (10)
- ☐ TEEN VOGUE (10)
- ☐ TENNIS (6)
- ☐ THE ATLANTIC MONTHLY (10)
- ☐ TIMBER HOME LIVING (6)
- ☐ TOWN & COUNTRY (10)
- ☐ TRANSWORLD MOTOCROSS (12)
- ☐ UPTOWN (6)
- ☐ US WEEKLY (52)
- ☐ VERANDA (6)
- ☐ W MAGAZINE (10)
- ☐ WEIGHT WATCHERS (6)
- ☐ WHITETAIL JOURNAL (6)
- ☐ WIRED (12)
- ☐ WOMAN'S DAY (12)
- ☐ WOOD (7)
- ☐ WORKING MOTHER (6)
- ☐ YACHTING (12)
- ☐ YOGA JOURNAL (9)

OK TO COPY

** No Renewal*

"Tell your Friends and Families!"

****DUE TO PUBLISHER PROCESSING TIMES, WE WILL NOT UNDER ANY CIRCUMSTANCES CHECK WITH ANY PUBLISHER ABOUT THE STATUS OF ANY MAGAZAINE SUBSCRIPTION UNTIL AFTER 90 DAYS HAVE PASSED FROM THE DATE OF PROCESSING YOUR ORDER! NO EXCEPTIONS!****

Inmate Magazine Service.com
P.O. Box 2063, Fort Walton Beach, FL 32549
www.InmateMagazineService.com

Name and Inmate # (please print, maximum 24 characters):
Address:
City: State: Zip:

Allow 6-8 weeks for delivery. Pay by Check, Money Order or ***Order Online*** and use Credit Card or PayPal. Keep Address Short!

Colorado Law Grants Immunity to Law Enforcement Officers Transporting Juveniles

by David M. Reutter

The Colorado Supreme Court held on January 13, 2014 that "allegations of negligence alone are not sufficient to overcome the statutory grant of immunity and the presumption of good faith afforded to law enforcement officers" under section 19-2-508(7), C.R.S. (2013) – a statute that pertains to officers who transport juveniles.

The Court's ruling vacated a trial court's order denying a motion to dismiss on immunity grounds in a lawsuit filed against the Jefferson County Sheriff and Deputy John Hodges. While transporting juveniles Daniel Larson and Dylan Bucy on July 28, 2010 from a court hearing to the Mount View Youth Services Center, a collision occurred between the transport van and a car that failed to yield when Deputy Hodges pulled into an intersection.

Larson and Bucy were injured. They filed suit, alleging that Hodges had acted negligently by failing to secure their seatbelts while they were handcuffed and by driving into the intersection without ensuring it was clear. After the trial court denied the defendants' motion to dismiss, the Colorado Supreme Court granted review.

Under section 19-2-508(7), it "shall be presumed" that law enforcement officers "acting under the direction of the court who in good faith transport[] any juvenile" are entitled to immunity for civil or criminal liability.

The trial court found that immunity under the statute did not apply because there was sufficient evidence to "infer that Hodges failed to act in faithfulness to his duty or obligation to secure the [juveniles] and accordingly did not transport the [juveniles] in good faith."

The Supreme Court held that if negligence alone were sufficient to rebut the presumption of good faith, "the immunity afforded by section 19-2-508(7) would be gutted because law enforcement officers would have to demonstrate a complete lack of negligence – meaning they would not be liable in the first place – in order to receive immunity."

The Court therefore concluded "that allegations of negligence alone are not sufficient to overcome the immunity and the presumption of good faith provided by section 19-2-508(7). To hold otherwise would impermissibly defile the legislature's attempt to immunize qualifying law enforcement officers from liability." See: *Young v. Jefferson County*, 2014 CO 1, 318 P.3d 458 (Colo. 2014).

Jail Video Visitation Proposal Considered in Dallas County, Texas

On September 9, 2014, the Dallas County Commissioners Court unanimously rejected a proposal that would have ended all face-to-face visits with prisoners at the Dallas County Jail. The Commissioners Court had been considering bids to equip the jail with a video visitation system. Prison phone service provider Securus Technologies appeared to have the edge on the contract; however, when the company submitted a plan that included the elimination of in-person visits at the jail, it met vigorous opposition from County Judge Clay Jenkins.

Judge Jenkins' outspoken rejection of the plan was a rallying cry for a number of prisoners' rights advocates, including Texas CURE, former state Rep. Terri Hodge and Richard Miles, a former Texas prisoner who was exonerated following a wrongful murder conviction. The Commissioners Court also received hundreds of emails and a petition with over 2,000 signatures objecting to Securus' video visitation plan.

The company's proposal included charging $10 for each 20-minute visit, and tried to sweeten the deal by offering the county a 25% commission on video visitation revenue. The Commissioners Court initially decided to table the issue and allow previous bidders to submit new bids based on revised criteria. Any new bids would be required to 1) retain in-person visits with prisoners, 2) eliminate commissions on video visitation and 3) clarify various details including the number of video visitation terminals that would be installed.

"It is a way to make money ... off the

backs of families," said Judge Jenkins. "I am very pleased with the court today in looking at these commissions and saying that they want to get out of the commission business."

However, in late September, due to legal concerns, the Commissioners Court renewed contract negotiations with Securus to provide video visitation at the Dallas County Jail. The county will require the continuation of in-person visits and will not accept commissions from video visitation revenue. The contract with Securus may also extend to phone services at the jail, which currently include commission payments. In 2013, Dallas County reportedly received $2.8 million in phone commissions – a practice that has also drawn criticism.

"It is very important that we do not profit on the backs of inmates in the jail," stated Commissioner Elba Garcia.

For years, *PLN* has reported on the nationwide epidemic of price gouging by prison and jail phone companies like Securus and Global Tel*Link. [See, e.g.: *PLN*, Dec. 2013, p.1; April 2011, p.1]. Those companies, and a growing number of other firms, are increasingly extending their commission-based business model to video visitation. [See: *PLN*, March 2014, p.50].

Sources: *www.prisonpolicy.org*, *www.dallasnews.com*, *www.statesman.com*

California Exhaustion Requirement Extends to Independent Contractors

by Mark Wilson

On December 6, 2013, the California Court of Appeal, Third Appellate District, held that prisoners must exhaust administrative remedies before suing independent contractors employed by the prison system.

California prisoner Ira Don Parthemore was examined by Dr. Peter R. Col, an optometrist under contract at the Mule Creek State Prison.

Col diagnosed Parthemore with cataracts in both eyes and advised him that he would need surgery. Col later re-examined him and concluded surgery was not necessary. Col prepared a transfer request, incorrectly identifying Parthemore as being "legally blind." He was then transferred to a medical facility.

A different optometrist examined Parthemore and found that he "never should have been diagnosed as legally blind or transferred to the medical facility."

Parthemore fell while at the medical facility, breaking his right kneecap and several bones in his left shoulder. After he recovered, he was sent back to Mule Creek.

Parthemore sued Dr. Col in state court for negligence, alleging that the injuries from his fall were caused by Col's refusal to issue a new eyeglasses prescription. He also alleged that Col intentionally falsified official medical records, resulting in his unnecessary transfer to the medical facility.

Col moved to dismiss, arguing that Parthemore had not exhausted his administrative remedies concerning the claims alleged in his complaint; Parthemore, in turn, argued that exhaustion was not required under the Government Claims Act, Gov. Code § 810 *et seq.*, because Col was an independent contractor and not a government employee. The trial court agreed with Col and dismissed the lawsuit.

The Court of Appeal affirmed, finding that Parthemore did not exhaust administrative remedies. It then observed that California prisoners must exhaust "any policy, decision, action, condition, or omission by the department or its staff." The word "staff" was intended to be defined "as broadly as possible," the appellate court concluded. As such, it includes "independent contractors, like defendant, who are retained by the department to provide services on its behalf."

The Court of Appeal concluded that "plaintiff's obligation to exhaust the administrative remedies available to prisoners concerning the medical treatment they receive is independent of the obligation to comply with the Government Claims Act."

Parthemore sought review by the California Supreme Court, which was denied on March 12, 2014. See: *Parthemore v. Col*, 221 Cal. App. 4th 1372 (Cal. App. 3d Dist. 2013), *review denied*.

Former Wyoming Probation Officer Receives, Violates Probation

by Derek Gilna

A former Wyoming Department of Corrections probation officer was placed on probation herself following her conviction on drug and theft charges.

Ruby Maddox, 36, was enrolled in a rehabilitation center to address her addiction to prescription medication as part of a plea agreement after she admitted to stealing drugs from probationers she was responsible for supervising. She was also charged with stealing a puppy from a probationer and taking money from a charity event.

Maddox received probation plus a suspended prison sentence of three-to-five years in April 2013 after pleading guilty to one felony count of possession of a controlled substance and four counts of petty larceny.

During her initial three-year term of supervised probation, Maddox was ordered to complete a program at the Casper Re-Entry Center. Maddox has Graves' disease, an autoimmune disorder; she was admitted in mid-2013 to Wyoming Recovery for addiction to painkillers.

"A person can get in trouble with it before you know it," her attorney, Tom Smith, said about his client's abuse of prescription drugs.

Maddox was initially arrested in October 2012 following an investigation by the Natrona County Sheriff's Office and the Wyoming Department of Corrections' internal affairs office. Two women probationers supervised by Maddox told investigators how their prescription painkillers turned up missing after she "accidentally" spilled them on the floor.

One woman, who had told Maddox that she was prescribed hydrocodone for dental pain, thought it strange that her pills went missing after a visit by her probation officer.

The same probationer also accused Maddox of stealing her puppy. She told investigators the former probation officer convinced her that the puppy was unsuitable for her and she had to give it away. When she agreed, Maddox took possession of the puppy and said she had found a new home for the dog. That new home turned out to be Maddox's own, an investigator later discovered, and the puppy was returned to its original owner.

A second probationer also reported missing prescription painkillers after Maddox visited her home. Additionally, prosecutors charged Maddox with stealing money she had collected from co-workers for a fundraising event and keeping it for her own use.

When imposing probation and the suspended prison sentence, Natrona County District Judge Catherine Wilking said Maddox had damaged the public's trust by using her position with the Wyoming Department of Corrections to serve her own purposes.

"Without faith and fidelity in the probation and parole system, nothing works in the judicial system," Wilking stated.

"She has abused a position of trust in this community," added Natrona County District Attorney Michael Blonigen. "She had power over these people, and she exploited them."

In May 2013, Maddox was terminated from the Casper Re-Entry Center for violating her probation by taking more than her regular amount of prescription medication. She was arrested due to the violation, but later reinstated on a new three-year probation term.

Sources: *www.correctionsone.com, http://trib.com, http://k2radio.com*

Ninth Circuit: Exhaustion Prior to Amended Complaint Satisfies PLRA

by Mark Wilson

On January 14, 2014, the Ninth Circuit Court of Appeals held that claims raised in an amended complaint satisfy administrative exhaustion requirements under the Prison Litigation Reform Act (PLRA) if they are exhausted before the amended complaint is filed.

On December 4, 2007, Arizona prisoner Erineo Cano filed suit alleging that prison officials were deliberately indifferent to his mental illness and risk of committing suicide. He then moved to submit a first amended complaint, asserting religious diet and court access claims that arose before the original complaint was filed.

Although Cano had exhausted the new claims before seeking to file his amended complaint, prison officials moved to dismiss them, arguing that the PLRA's exhaustion requirement, 42 U.S.C. § 1997e(a), requires exhaustion of all claims before an action is filed. The district court agreed, and since Cano did not exhaust until after the initial complaint was filed, his amended claims were dismissed.

The Ninth Circuit reversed, noting it had recently held "that a prisoner may file an amended complaint and add new claims where the additional cause of action arose after the initial filing, as long as he has exhausted administrative remedies as to those additional claims before filing the amended" complaint. See: *Rhodes v. Robinson,* 621 F.3d 1002 (9th Cir. 2010) [PLN, May 2012, p.28] and *Akhtar v. Mesa,* 698 F.3d 1202 (9th Cir. 2012) [PLN, Dec. 2013, p.42]. Cano presented "a slightly different factual situation," however, in that his amended claims arose prior to his initial complaint but were exhausted before filing the amended complaint.

"Following the logic of *Rhodes* and *Akhtar*," the appellate court held "that claims that arose as a cause of action prior to the filing of the initial complaint may be added to a complaint via an amendment, as long as they are administratively exhausted prior to the amendment." The Ninth Circuit also affirmed the district court's dismissal of Cano's claim related to mental health care.

Cano has since been released from prison, and the case remains pending on remand. See: *Cano v. Taylor,* 739 F.3d 1214 (9th Cir. 2014).

CHEAP LOCAL FEDERAL CALLS

Get a local Number & Save up to 85% on Prison Calls with Sentel.
Save on International Calls with Sentel.

For Packages USA, Canada and Puerto Rico only:

ECONOMY PLAN (USA)	**3-MONTH PLAN (USA)**	**6-MONTH PLAN (USA)**	**12-MONTH PLAN (USA**
Price: $14.99 For the first line ***400 Minutes per Month*** Duration: 1 Month Additional lines @ $2 each Best up to 4lines Monthly	**Price: $41.99** For the first line ***400Mns per Month*** Duration: 3 Months Additional lines@ $4.5 each Best up to 4lines	**Price: $71.99** For the first line **400Mns per Month** Duration: 6 Months Additional lines @ $6 each Best up to 4lines	**Price: $119.99** For the first line **400 Mns per Month** Duration: 12 Months Additional lines @ $12e Best up to 4 lines

For USA & INTERNATIONAL PLANS PER MINUTE RATE

USA & INTERNATIONAL		
Price for 1st line: $1 **Activation Fee: $1** Add a line: 50 cents Rates Based Upon Destination Guaranteed lowest rates Rollover Minutes Great for Multiple Lines	USA: 6 cents for All Mexico landline: 10 cents Mexico Cellphone: 15cents Colombia: 15 cents Nigeria: 22cents Most of Europe: 22 cents Honduras: 22 to 29 cents Guatemala: 22 to 29 cents Jamaica: 29 cents	Dominican Rep: 15 cents Haiti: 35 cents India: 10 cents China: 10 cents Ecuador: 29 to 35 cents Most of our International rates : 22cents For Areas not Cited Please contact us

We accept debit and credit card payments, institutional checks, bank deposits and paypal

Sentel, Sentel

9550 S. Eastern Ave Ste 253
Las Vegas, NV 89123
Ph: 702-430-9445
Email: sentel.nv@gmail.com
Website: www.sentelinmatecall.com
Note : Please do not send any inquiries by mail. Mail is only for orders and payments.
Note: We do not provide service to County Jails and States Prisons

Fifth Circuit Holds Louisiana Commutation Changes Not *Ex Post Facto*

by Matt Clarke

In an opinion filed May 21, 2013, the Fifth Circuit Court of Appeals held that changes to commutation laws and rules in Louisiana, which gave the pardons board the authority to deny a hearing on commutation and increased the amount of time before a prisoner could reapply for commutation, did not violate the constitutional prohibition against *ex post facto* laws.

Robert Howard, a Louisiana state prisoner sentenced to life in 1968, has served over forty years. Life-sentenced prisoners in Louisiana are not eligible for parole; to become eligible, a prisoner serving life must first have his sentence commuted to a fixed number of years.

At the time of Howard's offense, the rules of the Board of Pardons allowed a prisoner to reapply for a pardon or commutation one year after the previous board action. At that time, the governor could grant commutations based upon the recommendation of two of the following officials: the lieutenant governor, attorney general and trial court judge.

A revised state constitution enacted in 1974 created a new Board of Pardons; the governor could only grant pardons upon the board's recommendation. Later changes in state law mandated a five-year period between commutation applications. Subsequent changes in board rules allowed the board to refuse to grant a hearing on an application for commutation, and those changes were applied to Howard to deny him a hearing.

Howard filed a federal civil rights action against the governor and Board of Pardons members, alleging that applying the changes in the laws and rules violated the *ex post facto* clause by creating a significant risk of increasing the length of his incarceration. The district court granted summary judgment to the defendants and Howard appealed.

Assuming arguendo that the *ex post facto* clause applies to changes in commutation procedures, the Fifth Circuit held that the changes in question resulted in only an attenuated and speculative chance of increasing Howard's length of incarceration. The Court of Appeals noted that being granted a hearing did not mean Howard would receive a favorable recommendation, as he had had hearings in the past in which such a recommendation was denied. Further, a favorable recommendation did not mean he would receive a commutation, as he had been favorably recommended previously to three different governors, none of whom granted commutation. Finally, being granted commutation would not mean that he would then be paroled; it would only make him eligible for parole. Thus, it was extremely speculative that the commutation changes created a significant risk of increasing Howard's incarceration, and consequently they did not constitute *ex post facto* violations.

The judgment of the district court was affirmed. Howard petitioned the U.S. Supreme Court for a writ of certiorari, which was denied in November 2013. See: *Howard v. Clark*, 719 F.3d 350 (5th Cir. 2013), *cert. denied*.

Second Circuit: Spraying with Feces Not *De Minimis* Injury; $7,000 Settlement After Remand

by Mark Wilson

The Second Circuit Court of Appeals held on December 20, 2013 that spraying a prisoner with a mixture of feces, vinegar and oil is not a *de minimis* injury.

New York state prisoner John Hogan was confined at the Attica Correctional Facility on February 14, 2009 when he claimed three guards with their faces concealed by brown paper bags sprayed vinegar, feces and machine oil on his body and in his mouth, eyes and nose in retaliation for his having reported several other staff assaults. As a result, he suffered recurring eye and skin problems plus significant psychological harm.

On May 5, 2009, Hogan filed suit in federal court against several named and John Doe guards. Despite numerous discovery and public records requests over a three-year period, he was unable to identify the guards who sprayed him.

Pursuant to FRCP 12(b)(6) and 12(c), the defendants moved to dismiss Hogan's claims against only the named guards in his complaint. The Attorney General's office expressly stated the motion was not brought on behalf of any John Doe defendants. Nevertheless, the district court dismissed the action in its entirety, and denied Hogan's pending discovery motions as moot.

The district court concluded "that spraying a person with feces and vinegar was a *de minimis* use of force and not of a sort repugnant to the conscience of mankind."

The Second Circuit disagreed, holding that Hogan had stated a cognizable Eighth Amendment claim. The appellate court was "unwilling to accept, as a matter of law, the proposition that spraying an inmate with a mixture of feces, vinegar, and machine oil constitutes a *de minimis* use of force." In fact, such an abusive action "in the circumstances alleged here is undoubtedly 'repugnant to the conscience of mankind' and therefore violates the Eighth Amendment."

The Court of Appeals also rejected the defendants' argument that expiration of the statute of limitations barred Hogan from amending his complaint on remand to name the Doe defendants.

The Court found that under FRCP 15(c)(1)(A), the John Doe claims related back to the date the initial complaint was filed, because New York Civil Practice Law and Rules § 1024 permits such substitutions *nunc pro tunc*.

Thus, the Second Circuit concluded that Hogan's Doe claims were not time-barred, and he should be allowed to continue his efforts to identify those defendants and be granted leave to amend to name any unknown defendants he is able to identify. The appellate court further suggested that it may be helpful for the district court to appoint counsel to assist Hogan "in pursuing the necessary discovery, drafting any appropriate amendments to the complaint, and prosecuting his claim." See: *Hogan v. Fischer*, 738 F.3d 509 (2d Cir. 2013).

Following remand, the case settled on September 12, 2014 for $7,000 with no admission of liability by the defendants. Hogan litigated the case pro se, including on appeal.

Ninth Circuit Revives Ad Seg 24-Hour Lighting Claim

by Mark Wilson

On January 16, 2014, the Ninth Circuit Court of Appeals reversed a summary judgment order dismissing a prisoner's claim related to 24-hour lighting in a segregation cell.

While incarcerated at the Airway Heights Corrections Center, Washington prisoner Neil Grenning was placed in administrative segregation (ad seg) for thirteen days "pending investigation" of his alleged involvement in a fight. Ad seg cells are lit by three four-foot-long fluorescent light tubes. Prisoners can turn off two of the tubes, but one remains illuminated at all times.

Grenning stated in a grievance that he could not sleep and suffered headaches due to the constant lighting. When prison officials refused his request to replace the tube with something that produced less light, he filed suit. He alleged that the continuous lighting violated the Eighth Amendment because "the light was so bright he could not sleep, even with 'four layers of towel wrapped around his eyes.'" Grenning also claimed "that the lighting gave him 'recurring migraine headaches' and that he could not distinguish between night and day in the cell." He said the light caused him pain and disorientation.

The district court granted summary judgment to the defendant prison officials, holding that Grenning had not established an Eighth Amendment violation.

The Ninth Circuit reversed. The appellate court first rejected the defendants' argument that Grenning's claims were barred by the "physical injury" requirement of the Prison Litigation Reform Act, 42 U.S.C. § 1997e(e).

Citing *Oliver v. Keller*, 289 F.3d 623 (9th Cir. 2002) [*PLN*, April 2003, p.24], the Court of Appeals noted that § 1997e(e) applies only to claims of mental and emotional injury. "This section does not bar Grenning's case," the Court held, "because he does not seek recovery for 'mental or emotional injury.'"

The Ninth Circuit then observed it had previously "held that continuous lighting can satisfy the objective" prong of a deliberate indifference claim, and that issues of fact as to how bright the light was, its effect on Grenning and whether prison officials were deliberately indifferent precluded summary judgment. Further, the appellate court rejected the defendants' argument that Airway Heights was accredited by the American Correctional Association and complied with ACA standards for cell lighting.

Noting that qualified immunity had not been addressed, the Court of Appeals left that issue "for the district court to determine in the first instance on remand."

Additionally, Grenning was allowed to proceed *in forma pauperis* and the district court withheld 20% of his prison wages to pay court fees pursuant to 28 U.S.C. § 1915(b). The Ninth Circuit also granted Grenning *in forma pauperis* status on appeal, and another 20% of his funds was withheld to pay the appellate filing fee.

Relying on *Torres v. O'Quinn*, 612 F.3d 237 (4th Cir. 2010), Grenning asked the Ninth Circuit to cap the total fee withholdings at 20% under "a method called the 'sequential' or 'per prisoner' approach." The defendants argued that 40% was proper under "a method termed the 'simultaneous' or 'per case' approach." The appellate court declined to decide the issue, however, directing the lower court to consider it on remand.

This case remains pending before the district court, with Grenning now represented by counsel. See: *Grenning v. Miller-Stout*, 739 F.3d 1235 (9th Cir. 2014).

Calling for Essays by Incarcerated Americans, Prison Workers, and Prison Volunteers

The American Prison Writing Archive (APWA) is an internet-based, non-profit archive of first-hand testimony to the living and working conditions experienced by incarcerated people, prison employees, and prison volunteers. Anyone who lives, works, or volunteers inside American prisons or jails can contribute non-fiction essays, based on first-hand experience: 5,000 word limit (15 double-spaced pages); a signed APWA permission-questionnaire must be included in order to post work on the APWA. All posted work will be accessible to anyone in the world with internet access. For more information and to download the permissions-questionnaire, go to: http://www.dhinitiative.org/projects/apwa/, or write to: APWA, 198 College Hill Road, Clinton, NY 13323-1218. Sincerely—The APWA Editors.

Seventh Circuit Extends Appeal Filing Deadline for Prisoner Misled by Court Clerk

by Matt Clarke

In a well-crafted opinion delivered on August 8, 2013, the Seventh Circuit Court of Appeals held that a prisoner who was misled by a court clerk regarding the status of his habeas corpus petition should be allowed to appeal the district court's ruling despite his notice of appeal being filed more than two years after the petition was decided.

Michael Carter, an Illinois state prisoner, filed a petition for writ of habeas corpus in federal court pursuant to 28 U.S.C. § 2254. The district court denied the petition on February 10, 2011 but failed to make a separate judgment or send a copy of the opinion to Carter. On December 5, 2011, Carter wrote to the court clerk inquiring about the status of his petition. The clerk responded that no action had been taken and he would be promptly notified by mail when an order was entered. About a year later, Carter contacted the clerk again. This time he was informed of the judgment in a letter received on March 22, 2013.

Carter filed a notice of appeal less than a month later. The appellate court, in screening new filings for possible jurisdictional problems, noticed the length of time between the judgment and notice of appeal.

The Seventh Circuit held that because the district court had failed to issue a separate judgment pursuant to Federal Rule of Civil Procedure 58(c)(2), the judgment would not be considered rendered until 150 days after the denial of the petition was entered on the docket. A petitioner who did not receive actual notice of the denial would then have 180 days to request reopening of the case in order to file a notice of appeal. The 150 days added to the 180 days would have brought the filing date up to January 7, 2012, about a month after Carter had been erroneously informed by the court clerk that his petition was still pending. Thus, had the clerk not misled him, he could have reopened the case and filed a timely notice of appeal.

The time for filing a notice of appeal is not subject to equitable tolling, "the judge-made doctrine, well established in federal common law, that excuses an untimely filing when the plaintiff could not, despite the exercise of reasonable diligence, have discovered all of the information he needed in order to be able to file his claim on time." However, equitable tolling can be applied to the 150-day period, and it was in the interest of justice to do so since the clerk had misled Carter and "[h]e could not, considering his situation as a prisoner without legal sophistication or a lawyer, have learned this essential information earlier."

Therefore, the Court of Appeals tolled the 150-day period until March 22, 2013, when Carter learned of the judgment. This made his notice of appeal timely and the appellate court therefore declined to dismiss his appeal. See: *Carter v. Hodge*, 726 F.3d 917 (7th Cir. 2013).

Colorado: Sentencing Court May Override Sexually Violent Predator Risk Assessment Score

by Matt Clarke

The Colorado Supreme Court has held that a sentencing court may designate a person convicted of a sexual offense a Sexually Violent Predator (SVP) even if a risk assessment instrument (screening instrument) indicates that the person is unlikely to commit another sex offense. However, the sentencing court must make specific findings on the record to demonstrate the necessity of the SVP designation.

Brandon David Allen, a Colorado state prisoner, pleaded guilty to first-degree sexual assault and other charges related to breaking into his neighbor's home, grabbing her by the throat, threatening to kill her and repeatedly raping her. After the trial court sentenced him to 20 years to life in prison, it considered whether he should be designated an SVP.

Under § 18-3-212.5(1)(a), C.R.S. (2012), an offender who was at least 18 years old at the time of committing an enumerated sexual offense against a stranger or victim with whom the offender established a relationship primarily for the purpose of sexual victimization, and is likely to recidivate based on the results of the screening instrument, can be designated an SVP. A Sex Offender Management Board (SOMB)-trained evaluator administers and scores the screening instrument, then provides the result to the trial court.

The score, which ranges from one to ten, indicates the likelihood of recidivism. It is based upon ten indicators, six of which pertain to the offender's background and four that relate to the crime, acceptance of responsibility and degree of sexual deviancy. The only indicator scored against Allen related to admitting the crime, which he claimed not to remember.

The evaluator scored Allen as a one – below the threshold of being likely to reoffend. However, the trial court re-scored the screening instrument, determined that Allen was likely to recidivate and designated him as an SVP. Allen appealed. The Court of Appeals affirmed, and Allen's petition for review was granted.

The *en banc* Colorado Supreme Court held that the trial court should not have re-scored the screening instrument, but should have substantially deferred to it. Further, if a trial court deviates from the results of the scored screening instrument, it must make "specific findings on the record to demonstrate the necessity of the deviation."

The Supreme Court then examined the record and held that Allen's likely "deviant sexual fantasies," difficulty with relationships, threatening to kill the victim to avoid punishment, denial of the crime and two prior incidents in which women sought restraining orders against him made it likely that he would reoffend. Therefore, his designation as an SVP was upheld. See: *Allen v. People*, 2013 CO 44, 307 P.3d 1102 (Colo. 2013).

Seventh Circuit Upholds Dismissal of Illinois Booking Fee Challenge

by Mark Wilson

In January 2014, the Seventh Circuit Court of Appeals upheld the dismissal of a challenge to a jail's booking fee policy.

The Village of Woodridge, Illinois imposes a $30 booking fee on any person who is arrested and taken into custody. The fee is collected without any hearing, or opportunity to challenge the deprivation or seek reimbursement.

On January 8, 2011, Jerry G. Markadonatos was arrested and booked into jail. He paid the $30 booking fee and was given a receipt, but was not afforded a hearing or any other opportunity to challenge the fee.

After Markadonatos successfully completed a period of supervised release, he was adjudicated "not guilty." Despite this favorable resolution the booking fee was not refunded and he was denied an opportunity to seek reimbursement.

Markadonatos filed suit on behalf of himself and all arrestees who were charged the booking fee, alleging that the fee violates procedural and substantive due process. The district court dismissed the action for failure to state a claim.

The Seventh Circuit affirmed. Applying the balancing test in *Matthews v. Eldridge,* 424 U.S. 319 (1976), the Court of Appeals concluded "that the district court was correct in holding that Mr. Markadonatos cannot state a procedural due process violation based upon Woodridge's booking fee ordinance." The Court reasoned that "the risk of an erroneous deprivation" was "practically non-existent," and "additional safeguards would not in any way reduce the risk thereof."

The appellate court also held that Markadonatos was unable to climb the "steep hill" of proving that collection of the booking fee "shocks the conscience." The Seventh Circuit ultimately concluded "that Woodridge's booking fee does not violate Mr. Markadonatos' right to substantive due process" because no fundamental right was implicated and the fee was rational and not arbitrarily imposed. Accordingly, the district court's order of dismissal was affirmed.

One judge dissented, likening the defense of the booking fee to the Queen of Hearts' philosophy of "sentence first, verdict afterwards" in *Alice in Wonderland*, and to the doublespeak of George Orwell's *1984*, "where language is used to mean the opposite of reality."

"This should be a simple case," the lengthy dissent suggested. "The village's 'booking fee' ordinance is unconstitutional on its face. It takes property from all arrestees – the guilty and innocent alike – without due process of law." *See: Markadonatos v. Village of Woodridge,* 739 F.3d 984 (7th Cir. 2014).

The dismissal of the case was upheld in a divided *en banc* Seventh Circuit opinion on July 21, 2014, with five judges voting to affirm the district court, four voting to reverse and one voting to remand with instructions to dismiss due to lack of standing. See: *Markadonatos v. Woodridge*, 2014 U.S. App. LEXIS 13856 (7th Cir. 2014).

State of Washington Prison Phone Justice Campaign

Fighting the High Cost of Prison and Jail Phone Calls!

The Human Rights Defense Center (HRDC) has been reporting on the high cost of telephone calls from prisons, jails and other detention facilities in the U.S. for over two decades in its monthly publication *Prison Legal News*. An award of funds from the settlement in *Judd v. AT&T*, a prison phone-related lawsuit, has allowed us to launch the Washington Prison Phone Justice Campaign (WA PPJ). The goal of the campaign is to eliminate the kickbacks paid by telephone companies to detention facilities and to regulate the exorbitant rates charged to prisoners, their families and others who accept prison phone calls, including attorneys. Video visitation, which is following closely on the same path as the prison phone industry, has also been incorporated into the campaign.

HRDC co-founded the national Prison Phone Justice Campaign in 2011, which resulted in a historic vote by the FCC in August 2013 that capped the rates for **interstate** (long distance) prison phone calls at $.25/minute for collect calls and $.21/minute for debit and prepaid calls. Those rate caps became effective on February 11, 2014. While this has helped millions of families stay connected across state lines, it did nothing for prisoners incarcerated in Washington State who make local and **intrastate** (in-state) calls, estimated by the FCC to constitute 85% of all prison and jail calls.

Studies show that a prisoner's ability to communicate with family and friends while incarcerated results in a smoother transition upon release and reduces recidivism. However, excessive phone rates hamper and sometimes eliminate the ability of prisoners to stay in touch with their loved ones.

We need everyone affected by this issue, including prisoners' family members and attorneys, to sign on to the WA PPJ Campaign and tell us how they have been impacted by high prison and jail phone rates. This can be done by accessing the Campaign's website: **www.wappj.org**. Testimonials and video can be uploaded to the site, or people can call 1-877-410-4863 to record their comments. Or comments can be written and mailed to: HRDC, Attn: WA PPJ Campaign, P.O. Box 1151, Lake Worth, FL 33460. We also need billing records from prepaid accounts (2012 to current) for phone calls received from detention facilities, to demonstrate the actual rates charged to recipients of the calls. Billing records can be emailed to: cwilkinson@humanrightsdefensecenter.org.

Lastly, any donations to fund the campaign are both needed and appreciated; donations can be made at **www.prisonphonejustice.org**. Only with your support will we be able to end the abusively high costs of prison and jail phone calls in Washington State. Thank you for your support, and please tell others about the Washington Prison Phone Justice Campaign and encourage them to join!

ICE Implements New Directive to Limit Solitary Confinement

Civil rights and immigration advocacy groups are watching closely to see the results of a change in federal policy governing the placement of immigrant detainees in solitary confinement, which was implemented one year following the release of a damning report on that issue.

Immediately after the policy was adopted by Immigration and Customs Enforcement (ICE) on September 4, 2013, the American Civil Liberties Union pledged to "closely monitor the implementation of the new directive," which the ACLU cautiously hailed as a step in the right direction toward ending segregation and solitary confinement for immigrant detainees.

"The new ICE directive sets a good example for the prison system writ large when it comes to monitoring the use of solitary confinement," Ruthie Epstein, an ACLU legislative policy analyst, said in a written statement.

"If strictly enforced throughout the ICE detention system – including at county jails and contract facilities – ICE's new policy could represent significant progress in curtailing this inhumane practice," she added, noting the directive "sets important limits on the use of solitary confinement. Solitary confinement in both immigration detention and the criminal justice system is cruel, expensive, and ineffective."

The policy change reflects a commitment by former Homeland Security Secretary Janet Napolitano to review ICE's segregation practices in the wake of a joint study by two human rights organizations that reported immigrant detainees were increasingly placed into solitary confinement in jails and detention centers simply because they were mentally ill, due to their sexual orientation or because they could not speak English.

The Heartland Alliance's National Immigrant Justice Center and Physicians for Human Rights stated in a September 2012 report that conditions for immigrant detainees placed in isolation not only endangered their health and safety, but also pressured them "to abandon their options for legal relief, their families, their communities, and often the only country they have ever known."

According to the report, the immigrant detainee population grew 85% between 2005 and 2012, as ICE annually imprisoned 400,000 detainees. The report cited the dramatic increase for creating the "fastest-growing incarceration system" in the nation, with nearly 250 state and local facilities – not including detention centers operated by ICE or private contractors – holding immigrant detainees alongside criminal offenders.

Traditionally, the purpose of immigration detention has been not to punish detainees for allegedly violating immigration laws, but to ensure their appearance at court hearings. Yet the report found an alarmingly high number of immigrants were placed in solitary confinement or 23-hour lockdown, where they were deprived of exercise, proper nutrition and human contact.

In a review of local jails that contract with ICE, the report found solitary confinement policies to be "inappropriately punitive," arbitrary and unjust. "This severe form of segregation, especially when it is used for long periods of time," the report stated, "is rarely necessary to achieve order in a jail or detention facility."

The study cited multiple examples of immigrant detainees who were placed in segregation or isolation solely because they belonged to "vulnerable populations," such as being gay, bisexual, transgender or mentally ill.

In southern California's Ventura County Jail, for example, guards segregated "obvious alternative lifestyle inmates." The Washoe County Jail in Nevada had a policy that explicitly stated detainees with "overt homosexual tendencies" were to be placed in administrative segregation, while a jail in Cobb County, Georgia called for the segregation of "gender challenged" prisoners who demonstrate "past or current ... passive-aggressive behavior."

In other facilities, guards justified using segregation and solitary confinement to "discriminate against non-English-speaking immigrants," the report found. Failure to speak English "when able," or watching Spanish channels on television, could lead to 23-hour lockdown at the Nobles County Jail in Minnesota, where English is the "primary" language "to ensure the safety and security of the facility."

The report also found that many jails punished immigrant detainees for violating trivial rules, such as putting their feet on tables or singing loudly. Detainees at the Stewart Detention Center in Georgia stated they were placed in segregation because they complained about the quality of the drinking water. Two detainees in York County, Pennsylvania – who each had cellmates serving criminal sentences – said they were segregated because they didn't notice that their identification wristbands had come off.

A victim of domestic violence who was detained for almost a year at the McHenry County Correctional Facility in Illinois while her visa application was pending was placed in disciplinary segregation on separate occasions for having an extra blanket, bra and pair of socks; for placing a shampoo bottle on her windowsill; and for having newspaper articles in her cell.

And in the Washoe County Jail, detainees must work to avoid isolation, according to the facility's policy manual. Commissary, library access and visitation are privileges that have to be "earned" by working at the facility, the manual states. Refusing to work results in "lockdown and failure to earn any privileges."

The National Immigrant Justice Center and Physicians for Human Rights report also found that solitary confinement was sometimes applied to immigrant detainees "in lieu of mental health treatment." Qualified mental health staff is "rarely on-site" at immigration detention centers, despite "extremely high rates of anxiety, depression, and PTSD (Post Traumatic Stress Disorder) symptoms among detainees."

The report further noted that while detainees already struggle to understand why they've been incarcerated for allegedly violating immigration laws, "the further deprivation of liberty inherent in segregation and solitary confinement might be reasonably expected to compound the psychological stress of detention."

The report called on ICE to end the use of segregation and solitary confinement in immigration detention centers by not contracting with jails or jail-like facilities, and by "placing vulnerable individuals in alternatives to detention (ATD) programs" or releasing them on humanitarian parole. The report also called on Congress to reduce funding for immigration detention and instead enact "binding civil detention standards so that facilities that detain immigrants can be held legally accountable

for improper use of segregation and solitary confinement."

As a result of the firestorm of media coverage generated by the report, a year later ICE announced a new policy that jails and detention centers are required to follow when holding immigrant detainees in solitary confinement.

"Placement of detainees in segregated housing is a serious step that requires careful consideration of alternatives," the policy states. "Placement in segregation should occur only when necessary and in compliance with applicable detention standards." Additionally, "placement in administrative segregation due to a special vulnerability should be used only as a last resort and when no other viable housing options exist."

In issuing the new directive, ICE pledged to "ensure the safety, health and welfare of detainees in segregated housing in its immigration detention facilities," and to quickly review cases involving detainees in vulnerable groups who are held in solitary "for over 14 days" or placed in segregation "for any length of time in the case of detainees for whom heightened concerns exist based on known special vulnerabilities and other factors related to the detainee's health or the risk of victimization."

Those vulnerable groups include detainees with mental illnesses and severe medical conditions or disabilities, pregnant or nursing women, the elderly, and anyone who might be susceptible to harm due to their sexual orientation, gender identity or because they have been victims of sexual assault.

The National Immigrant Justice Center and Physicians for Human Rights faulted the new ICE policy, however, for not eliminating entirely the use of extended solitary confinement, nor allowing independent, third-party oversight of the policy's implementation and enforcement.

The U.S. Senate also acted in the aftermath of the report, in the form of an amendment to an immigration reform bill that placed further restrictions on the use of segregation and solitary confinement for immigrant detainees. The bill, S.744, passed the Senate but the U.S. House of Representatives has failed to act on the legislation.

Sources: "*Invisible in Isolation: The Use of Segregation and Solitary Confinement in Immigration Detention,*" *Heartland Alliance and Physicians for Human Rights (Sept. 2012); www.immigrantjustice.org; www.aclu.org; ICE policy directive 11065.1; www.solitarywatch.com*

"Ban the Box" Movement Spreads Nationwide

by Joe Watson

Prisoner advocacy groups are hailing recent successes in "Ban the Box" campaigns to remove questions related to criminal records from employment applications, and say they hope to expand the movement even further as momentum grows to help ex-offenders find jobs.

San Francisco became the first city in the nation to adopt a Ban the Box policy that includes private employers and affordable housing, when Mayor Ed Lee signed the Fair Chance Ordinance on March 4, 2014. The law bars private companies with more than 20 employees, contractors that hold city contracts worth more than $5,000 and any residential building that has received city funding from asking about a potential applicant's criminal history prior to conducting a job interview or reviewing a housing application.

"Ban the Box" is the catchphrase coined by All of Us or None, a San Francisco-based advocacy organization composed of formerly-incarcerated people and their families, founded in 2003. It refers to the question on job applications, usually accompanied by a check-box, that asks whether an applicant has a criminal history.

Employers can still ask about convictions later in the hiring process and deny job offers based on criminal records, but removing the question from job applications allows ex-prisoners to get their foot in the employment door. During subsequent interviews they can explain their criminal history, how they have changed and why they should be hired.

Under San Francisco's new law, employers are also required to consider whether a job applicant's conviction is relevant to the position they are seeking, how long ago the conviction occurred and any evidence the applicant can provide of rehabilitation.

"San Francisco now has the distinguished honor of being the first legislative body in the country to protect its citizens from discrimination based on their conviction history in both private employment and affordable housing," wrote attorney Noah Frigault, with the San Francisco Human Rights Commission.

In passing the ordinance, the city's Board of Supervisors demonstrated its determination to deal with what it saw as a worsening issue. "In San Francisco, as across the country, individuals are often plagued by old or minor arrest or conviction records.... The problems presented by employers and housing providers who use a person's criminal history to deny that person employment or housing opportunities are growing rather than diminishing," the Board stated.

The Fair Chance Ordinance came on the heels of a law signed by California Governor Jerry Brown that prohibits taxpayer-funded public employers in the state from rejecting prospective job-seekers who have criminal records without first considering the applicants' qualifications for the position.

Effective July 1, 2014, California Assembly Bill 218 requires more than 6,000 local and regional public agencies – all local governments in the state – to remove the check-box question on job applications that asks "Have you ever been convicted of a felony?" The National Employment Law Project (NELP), an advocacy group for low-wage workers, estimates that about 7 million people in California have an arrest or conviction record.

"The Legislature finds and declares," states the bill, written by Assemblyman Roger Dickinson, "that reducing barriers to employment for people who have previously offended, and decreasing unemployment in communities with concentrated numbers of people who have previously offended, are matters of statewide concern."

Exempting public safety jobs, such as law enforcement officers, AB 218 also requires government agencies to delay criminal background checks until after determining that an applicant meets the job qualification requirements.

"The problem of people with criminal records is at a critical point," said Michelle Rodriguez, a staff attorney with NELP. "We have huge numbers of people who can't get work and at the same time more and more people who have gone through the criminal justice system."

Having AB 218 signed into law "was really huge for us, an extremely important victory," stated Dorsey Nunn, director of the San Francisco-based Legal Services for Prisoners with Children, and co-founder of All of Us or None. "At issue is the question of 'how do formerly incarcerated people get back into society?' For someone who is a former prisoner, the law has said it is okay to be three-quarters of a human being once you've been convicted of a crime. We're asking for equal access. For fairness."

Rodriguez hopes the Ban the Box movement will grow through the rest of 2014 and beyond. "This issue has really resonated with so many groups on the ground across a wide spectrum – it's absolutely magnetic," she said.

"This year, we'll focus on what else we can do to build on the momentum," Rodriquez added. "How can we rope in private employers in California, and identify other opportunities? Unions, for instance, were a huge part of this effort, and there are a lot of other criminal justice workforce-related issues they can be helpful with."

AB 218 codifies an executive order establishing the new hiring practices that was first issued by former Governor Arnold Schwarzenegger in 2010. According to NELP, 13 states and almost 70 cities and counties have enacted similar legislation as of September 2014, including Hawaii, which adopted the first Ban the Box law 16 years ago. [See: *PLN*, Sept. 2011, p.32].

In May 2013, Minnesota Governor Mark Dayton signed into law a statute prohibiting private as well as public employers from asking about job-seekers' criminal records until the first interview. The state of Maryland adopted similar legislation in May 2013, and the governor of Illinois, Pat Quinn, issued an executive order removing the question concerning background checks from applications for state employment.

Other states with Ban the Box statutes include Colorado, Connecticut, Delaware, Massachusetts, Nebraska, New Mexico and Rhode Island. Some states extend Ban the Box to private employers, while in others the law only applies to government agencies.

Most recently, New Jersey enacted the Opportunity to Compete Act on August 11, 2014, which will become effective in March 2015. The law applies to businesses with 15 or more employees, and places restrictions on when employers can ask about job applicants' criminal records, such as on job applications and during an initial interview. Employers that violate the law are subject to civil penalties.

Various versions of Ban the Box legislation were unsuccessfully introduced in 2013 and 2014 in ten other states, including Florida, Georgia, Louisiana, Michigan, New

Hampshire, North Carolina, Ohio, South Carolina, Virginia and Washington.

Cities that have enacted Ban the Box policies include Philadelphia, Baltimore, Seattle, Memphis, Cleveland, New York City, Minneapolis, Detroit, Boston, Chicago, New Orleans, Tampa, Newark, Portland and most recently Washington, D.C. in September 2014.

Advocates believe the Ban the Box movement can also prompt private companies to change their hiring practices with respect to ex-offenders. As examples they point to the nation's largest retailer, Wal-Mart, which removed questions about criminal history from initial job applications in 2010, and Minneapolis-based retailer Target, which adopted a Ban the Box policy effective January 2014.

"Target is finally doing the right thing by reforming its hiring policies so that qualified job applicants aren't automatically screened out simply because they have an arrest or conviction from the past," said NELP executive director Christine Owens. "Other large retailers around the nation need to follow suit, because their hiring policies send a strong message about whether they are committed to the communities that support their business."

According to the *Star Tribune*, Greta Bergstrom, communications director for TakeAction Minnesota, noted that Target had changed its hiring policy following "a 200-person public action in the lobby of Target's headquarters, a hundred individuals with past records filing job applications at Target and being rejected, a visit to Target's shareholder meeting and numerous meetings, e-mails and phone calls with Target executives."

"That's why they decided to make this change," she said.

Groups that advocate for former prisoners believe that eliminating questions about criminal records – or pushing background checks until later in the hiring process – are essential to helping people released from prisons and jails succeed in reintegrating into society, thereby reducing recidivism rates. Little research exists as to the results of implementing Ban the Box policies, though there are anecdotal examples of the positive effects.

"There are many employers who knowingly will not hire someone with a criminal record," noted Walter Boyd, executive director of St. Leonard's Ministries in Chicago, a re-entry program that provides released prisoners with free counseling, food, housing and classes.

Victor Gaskins, St. Leonard's program director, agreed. "You fill out that application, you get that box, and if you check it: 'Yes, I've been arrested, or incarcerated,' the person doing the hiring for the job, as soon as he sees that check, he throws [your application] in the garbage."

Advocates acknowledge that extending Ban the Box to other states and cities will take time, and caution against expecting too much too soon. "Our work isn't a sprint, it's a long haul fight," Dorsey Nunn admitted. "Limiting access to jobs and housing not only victimizes formerly incarcerated people, but also generations and generations of children and grandchildren. We don't have the luxury of stopping."

Currently, there are efforts to get the federal government to Ban the Box on initial job applications for federal employment; the U.S. government has around 2.7 million employees, excluding the military – about 2% of the nation's workforce. President Obama has the authority to change federal hiring policies through an executive order.

PLN has previously reported on guidance issued to employers in 2012 by the Equal Employment Opportunity Commission in regard to job applicants with criminal records and criminal background checks. [See: *PLN*, Feb. 2014, p.40; June 2012, p.20].

In formal comments submitted to the EEOC, Prison Legal News wrote it is important to "remove barriers to reentry for ex-offenders, including barriers to employment.... [to ensure] that former prisoners do not face discrimination in the job market due solely to the fact of their criminal record alone when that record has no relationship to or bearing on the job position they are seeking."

Not everyone is in favor of Ban the Box policies, though. "A blanket ban-the-box policy doesn't make good business sense for small business," stated Elizabeth Milito with the National Federation of Independent Business, while Chambers of Commerce in some states have expressed concerns about liability risks for businesses that hire former prisoners.

Sources: *Sacramento Bee, www.bloomberg.com, www.cctv-america.com, www.cleveland.com, www.prisonerswithchildren.org, Daily Journal San Francisco, www.nelp.org, The New York Times, Star Tribune, www.pewstates.org, Wall Street Journal*

Pennsylvania Activists Arrested for Protesting Construction of New Prison Complex

Seven members of Decarcerate PA, a grassroots coalition working to end mass incarceration in Pennsylvania, were arrested while protesting the construction of a new two-prison complex in that state. The protest was to highlight the $400 million cost to build the facilities, which could be better spent on schools.

To make that point, the protestors set up 10 school-style desks with apples and notebooks across the entrance to the construction site for the prisons, which is on the grounds of SCI Graterford. They also set up a mock schoolhouse in what they said was the "first-ever act of civil disobedience to block prison construction in Pennsylvania."

The November 19, 2012 protest began at 6:40 AM. It was short-lived, as the protestors were arrested about an hour later after they ignored orders by the State Police to disperse. They were charged with defiant trespass, failure of disorderly persons to disperse upon official order and persistent disorderly conduct. Following arraignment, they were released on bail.

The seven protestors, all from Philadelphia, were Layne Mullett, 27; Jenna Peters-Golden, 27; Leana Cabral, 29; Erica Slaymaker, 23; Sean Damon, 35; David Fisher, 41; and Robin Markle, 26. Other protestors at the event were not arrested.

"Prisons do not make our communities safer," said Cabral. "Prisons break up families and ruin people's lives. Education, employment, housing and health care make communities safer, yet our governor prioritizes the construction of new prisons over these basic rights. I took part in this action because I believe powerful things happen when people come together and organize."

It was hoped the protest would bring public attention to the $400 million being spent to build the new prison complex, designated SCI Phoenix I and II, which will house approximately 4,100 prisoners and is expected to open in 2015.

The new prisons represent "an expansion of mass incarceration in Pennsylvania and a continuation of policies that lock people up instead of giving our communities the resources they need to thrive," Decarcerate PA wrote in a statement. "The money used to build these prisons is money that is being stolen from our schools, our healthcare, reentry programs, social services, and the environment."

"I believe that it will take more such actions by all those who understand that building more prisons is not the solution to addressing the issues in our communities and this society," said Hakim Ali, with Decarcerate PA and Reconstruction, Inc. "We will need everyone to stand up against oppression and let our voices be heard."

According to a December 5, 2013 article in the *Philadelphia City Paper*, the state's projected cost savings from opening SCI Phoenix and closing SCI Graterford were based on "an analysis, purportedly using data from 2007, that is superficial, unclearly sourced and woefully out of date."

"They're definitely misleading people about the costs of this prison expansion," stated Decarcerate PA member Owen Lyman-Schmidt. "We have to ask: If they're not building these prisons to save us money, as they claim, why are they building them?"

A Decarcerate PA spokesperson told *Prison Legal News* that the seven protestors who were arrested have not yet gone to trial or accepted plea bargains. They are represented by attorneys Michael Lee and Leo Mulvihill.

Sources: *Norristown Patch, Journal Register, Philadelphia Inquirer, The Times Herald, www.decarceratepa.info, www.nbcphiladelphia.com, www.citypaper.net*

New Mexico Guard Sues Over Termination for Medical Marijuana Use

A former New Mexico jail guard and veteran of the Iraq war is suing the county where he was employed after being fired for a positive drug test, even though he had a prescription to use medical marijuana to treat his Post Traumatic Stress Disorder (PTSD).

Augustine Stanley, 32, was terminated from his job as a lieutenant at the Metropolitan Detention Center (MDC) in Albuquerque after testing positive for marijuana in 2013. But his lawyer, who is representing him in a federal lawsuit against Bernalillo County, said he was prescribed medical marijuana for PTSD and has a legal medical marijuana card.

"It's demonstrative of a lot of people's cases," said Stanley's attorney, Paul Livingston. "And a lot of people work for the state or the county or the city and need to have or want to have a medical marijuana card."

Jail officials claimed it was a violation of MDC's anti-drug policy for an employee to use marijuana. They added that Stanley did not report any prescription medication prior to the drug test as required by policy.

However, Livingston said Stanley did not have to report his medical marijuana prescription because New Mexico state law recognizes the medical use of marijuana and protects the privacy of medical marijuana card holders.

"They guarantee him confidentiality, and what's ironic is then they give him a test that's designed to break that confidentiality to show that he is using marijuana and therefore can be fired, and that's what's wrong with this," Livingston said.

MDC officials argued that any drug use is inappropriate due to the safety sensitive environment at the jail. Guards need to be "100% aware" because life and death situations could happen very quickly, noted then-MDC Chief Ramon Rustin.

In response, Livingston contended that simply using medical marijuana does not automatically mean the user's judgment or abilities are impaired.

"They're not impaired in any way, the only thing that impairs them is the drug test that says they're impaired and the conclusion or the presumption that the government makes, which is that if you test positive for marijuana you must be impaired," he said.

In Stanley's termination letter, a jail official wrote that his "actions and conduct were inappropriate, unprofessional and inconsistent with your obligations as a

Bernalillo County employee."

MDC spokeswoman Nataura Powdrell insisted that Stanley was fired because he did not notify his supervisor about his use of a controlled substance, not due to the medical marijuana itself. "He's a lieutenant, and he understands the policy and should have informed his supervisor," she said.

The jail's policy states that "No employee shall ingest any controlled substance unless prescribed directly to them. When taking any prescribed medication ... [an] employee must notify their immediate supervisor when taking any prescribed medication that may impair their ability to perform the essential functions of their job or may cause the employee to be inattentive or drowsy."

Stanley countered that his work performance was not impaired because he smokes medical marijuana off duty and before bed; thus, he was not obligated to inform his supervisor what he was doing on his own time.

The case raises serious questions for other prison and jail guards, as well as police officers, fire fighters and federal, state, county and city employees who are authorized to use medical marijuana but must also undergo random drug testing.

"It seems that it is not appropriate under state law because the State of New Mexico has recognized the right of patients to use medical cannabis for various reasons, in consultation with their doctor and under their doctor's supervision," said attorney John McCall, who helped write New Mexico's medical marijuana statute. "People are going to have to consult with lawyers, unfortunately."

Stanley began working as a guard at MDC in 1999 and, after serving in the military, was promoted to sergeant in 2006 and then to lieutenant. He was a member of the jail's Corrections Emergency Response and Tactical Team, and said his record at the facility was unblemished.

"I served my country, and I served my county," Stanley stated. "But it feels like that meant nothing. It feels wrong."

His federal lawsuit, filed on June 13, 2014, remains pending. See: *Stanley v. County of Bernalillo*, U.S.D.C. (D. N.M.), Case No. 1:14-cv-00550-JB-KBM.

Sources: *www.kob.com, www.krqe.com, www.abqjournal.com*

Fifth Circuit Declares SORNA Unconstitutional in Certain Cases, Reversed by Supreme Court

by Matt Clarke

The full Fifth Circuit Court of Appeals held in July 2012 that Congress did not have the power to enact criminal penalties for failing to register as a sex offender following an intrastate move, as applied to a defendant who had been unconditionally released from a federal prison sentence and military service prior to the enactment of the registration law. Thus, the Court declared the Sex Offender Registration and Notification Act (SORNA) and accompanying statutes and rules, 42 U.S.C. § 16913, 18 U.S.C. § 2250(a) and 28 C.F.R. § 72.3, unconstitutional under those narrow circumstances. The Supreme Court disagreed, however, and reversed the appellate ruling.

In 1999, Anthony James Kebodeaux, 21, was in the military when he was convicted of having sex with a fifteen-year-old girl and sentenced to three months in prison. After serving his sentence, he was no longer in the military; his release from both prison and military service was unconditional.

SORNA requires all federal sex offenders to register with state registration authorities within three days of moving. Texas law requires registration within seven days of moving. When Kebodeaux failed to register his move from San Antonio to El Paso within three days, he was charged, convicted and sentenced to 366 days in federal prison. He appealed.

A panel of the Fifth Circuit upheld his conviction but the *en banc* court reversed, finding that application of SORNA under those circumstances exceeded Congress' authority. The appellate court held that, "[a]bsent some jurisdictional hook not present here, Congress has no Article I power to require a former federal sex offender to register an intrastate change of address after he has served his sentence and has already been unconditionally released from prison."

In a lengthy opinion, the Fifth Circuit held that SORNA, as applied in this case, did not "rationally relate" or "reasonably adapt" to one of the powers of Congress set forth in the Constitution. The application of SORNA was novel and did not reasonably extend well-established laws; it also did not properly account for state interests and was too sweeping, or at least too broad.

Noting that "[t]he Department of Justice cannot find a single authority, from more than two hundred years of precedent, for the proposition that it can reassert jurisdiction over someone it had long ago unconditionally released from custody just because he once committed a federal crime," the Court of Appeals held that Congress had no power to do so under the Necessary and Proper Clause of Article I of the Constitution.

Congress also lacked authority under the Commerce Clause, as an intrastate move by a federal sex offender did not affect interstate commerce. The panel opinion had held that a sex offender might drop off the radar by making an intrastate move prior to making an interstate move, but the Fifth Circuit noted that if the reasoning of the panel was adopted, "it would confer on the federal government plenary power to regulate all criminal activity," including those areas traditionally reserved to the states.

"Neither this court nor the Supreme Court, however, has ever extended Congress's 'police power' over those who use the channels of interstate commerce to punish those who are not presently using them, but might do so," the Court of Appeals wrote.

Therefore, the appellate court reversed Kebodeaux's conviction and ordered the dismissal of the charges against him, with the decision based in part on the fact that he had been released from federal prison prior to SORNA's enactment. See: *United States v. Kebodeaux*, 687 F.3d 232 (5th Cir. 2012).

The U.S. Supreme Court granted certiorari, then reversed the Fifth Circuit's ruling in a split decision in June 2013. The Court held "that the SORNA changes as applied to Kebodeaux fall within the scope [of] Congress' authority under the Military Regulation and Necessary and Proper Clauses," and remanded the case. Accordingly, after remand, the Court of Appeals affirmed Kebodeaux's conviction on August 13, 2013. See: *United States v. Kebodeaux*, 133 S.Ct. 2496 (2013).

California Prison Healthcare Costs Soar Under Federal Receiver

Creating a balance between adequate healthcare for prisoners at a reasonable and affordable cost for taxpayers is at the heart of a debate being argued in legislative offices and behind prison walls in California.

The federal receiver appointed to overhaul the state's prison healthcare says he has worked hard to reform a dysfunctional system that – at its worst in 2005 – claimed the life of one prisoner per week due to negligence, malfeasance or inadequate and substandard medical care. [See: *PLN*, March 2006, p.1].

State officials counter that the reforms have produced a "Cadillac" level of care that has caused medical costs to skyrocket, nearly doubling over the past decade. Statistics indicate, for example, that partly as a result of healthcare costs, California now spends more per year housing a state prisoner than it does to educate a child in public school.

When a federal district court assumed oversight of the state's prison healthcare system and appointed a receiver in 2006 – initially Robert Sillen, who was replaced by J. Clark Kelso in 2008 – the court gave the receiver's office the authority to hire medical staff and set their pay levels. [See: *PLN*, July 2008, p.30]. Immediately after being appointed, the receiver set out to bring medical care in California prisons up to constitutional standards.

To cure the prison system's many problems, the receiver's office, known as California Correctional Health Care Services, hired hundreds of employees to fill longtime vacancies, increased salaries and created new positions at higher pay rates. The number of medical, mental health and dental workers in state prisons increased from 5,100 in 2005 to

12,200 in 2011.

"The problem that we had is that the receiver was not accountable to anybody," complained former state Senator George Runner. "So the receiver could just do or choose to spend whatever amount of money he thought was necessary to solve his problem, and unfortunately, now the state is stuck with that."

Runner neglected to mention that it was the state's decades-long failure to address problems related to deficient prison medical care, largely due to a lack of political will by the legislature in which he served, that led to the *Plata* and *Coleman* class-action lawsuits which in turn resulted in the appointment of the receiver and a federal court order to substantially reduce the state's prison population. [See: *PLN*, July 2011, p.1].

California spent $1.1 billion in fiscal year 2003-04 to provide medical care to the state prison population, which peaked at around 160,000. Under California's realignment initiative, which went into effect in 2011, the number of in-state prisoners has fallen to approximately 127,200. Yet the projected cost of prison healthcare in fiscal year 2013-14 was expected to top $2 billion – an 82.3% increase compared to a decade ago after adjusting for inflation.

In contrast, spending for each public school student in the state grew just 17.9% during the same time period.

"We incarcerate people in California at a rate higher than any other society in the world, including Russia and Iran," noted Michael Bien, an attorney who represents prisoners in the still-pending *Plata* and *Coleman* cases. "One of the things we have to pay for is healthcare. Doctors and nurses only [work] in these places if you pay them."

A survey of salaries for prison physicians found that only Texas has a base salary higher than California's. An analysis of 2011 California payroll data by the Associated Press indicated that of the top 100 highest-paid state employees outside the University of California system, 44 worked in state prisons.

The highest paid prison medical employees in 2013 included staff psychiatrist Rajababu Kurre, who earned $509,000; Hung V. Do, a chief physician and surgeon, who made $439,000; and physician and surgeon Dev Khatri, who received $431,000.

Since 2005, the average cost of prison healthcare in California has soared from $7,747 per prisoner annually to more than $18,000. Governor Jerry Brown has criticized Kelso's efforts to improve medical care in the state's prison system, calling it "Cadillac care." Kelso countered that prisons only provide "minimally necessary medical care." Of course, most prisoners would also likely dispute the notion that they receive Cadillac medical treatment; rather, it is more of a Chevy Cavalier level of care.

Kelso also pointed out that the state had failed to act in the wake of the expiration of a court order that increased prison healthcare workers' salaries. At that point, the state was free to collectively bargain with the union representing the employees.

Joyce Hayhoe, a spokeswoman for the receiver's office, added that contract medical service costs have dropped over the past several years and are now less than when the receiver was appointed. The state has reduced by half the cost of outside medical care at hospitals by having prison doctors provide more treatment, which also reduces transportation costs and the expense of having guards watch prisoners while they are hospitalized.

Although prison medical costs remain high, that is part of the cost of mass incarceration. When public officials enact laws and policies that put more people in prison for longer periods of time, higher costs – including medical expenses – are a predictable result.

Sources: *Associated Press, www.montereycountyweekly.com, http://californiabudgetbites.org, www.sacbee.com*

Probe Reveals Corruption at Pennsylvania Jail

A former guard at Pennsylvania's Erie County Prison and his supervisor, who is also his wife, were accepted into a special diversion program for first-time offenders after being charged in connection with payroll tampering and missing ammunition. Another guard was demoted following an investigation into misconduct at the facility.

Sgt. Daniel S. Danowski, 41, and his supervisor and wife, Capt. Leslie L. Danowski, 40, were fired in October 2012 after being charged in a scheme that netted Daniel Danowski nearly $3,500 in pay he did not earn.

Jim Senyo, the deputy warden of safety and security at the Erie County Prison, was demoted and suspended without pay for five days for his involvement in a separate scheme in which Daniel Danowski sold over 400 rounds of prison ammunition to a former guard. Senyo's duties as deputy warden included overseeing the facility's armory, where the ammunition was stored.

The investigation uncovered a conspiracy between the Danowskis to falsify time-keeping records at the prison, resulting in $3,428 in payments to Daniel Danowski for work he never performed between February and July 2012.

Erie police charged Daniel Danowski with misdemeanor charges of theft by unlawful taking, receiving stolen property and criminal conspiracy to tamper with public records or information. Leslie Danowski was charged with one count of conspiracy to tamper with public records or information; she did not face charges related to the sale of the ammunition.

At a July 16, 2013 hearing, Erie County Judge Stephanie A. Domitrovich accepted the Danowskis' request to be placed in an Accelerated Rehabilitative Disposition program, which is reserved for non-violent, first-time offenders. If they successfully complete the program they can apply to have their records expunged; acceptance into the program did not require pleading guilty to the charges.

The investigation into misconduct at the prison also revealed that Leslie Danowski had signed off on the improper use of compensatory time for Capt. Jason Beasom.

Beasom "was paid as if he was at work, but he wasn't there," said Sue Ellen Pasquale, the county's accounting manager. He was ordered to repay the time, which amounted to $3,811, and also suspended – the seventh suspension at the prison since January 2012.

Erie County Chief Executive Barry Grossman promised reforms. "My administration will not tolerate the misconduct of a few individuals," he said. "It is unfortunate that the behavior of a few overshadows the hard work and dedication of so many of our dedicated prison employees."

Former deputy warden Al Copeland, a "highly respected" 32-year veteran at the facility, was named to fill Senyo's position pending a merit selection committee's decision on a permanent replacement.

The committee may also conduct an independent review of the prison's operations. One proposal under consideration was to create the position of inventory coordinator, whose duties would include keeping track of ammunition, county-issued prisoner clothing and other supplies. The position would have an annual salary of $40,584.

However, Erie County Controller Mary Schaaf, who was involved in the payroll tampering and missing ammunition investigations, opposed the idea as a waste of taxpayer money. "What we really need are honest employees doing their jobs," she said.

Sources: *Erie Times-News, www.goerie.com, www.contracostatimes.com*

Nebraska DOC Obstructing Efforts to Modify Prisoners' Child Support Payments

Excessive enforcement of child support obligations is not only detrimental to incarcerated parents, according to advocates in Nebraska, but also risks increasing recidivism and hindering familial relationships.

Legal Aid of Nebraska, led by managing attorney Muirne Heaney, has attempted to help prisoners modify their child support payments by offering forms and clinics on how to navigate that process. But the state's Department of Correctional Services has obstructed those efforts by prohibiting prisoners from receiving the forms provided by Heaney, saying they haven't been approved by a state attorney.

"Nobody is advocating [incarcerated parents] should be freed of their responsibility," Heaney said. "What I am advocating is that we make [child support] a collectable judgment."

At the end of 2011, Nebraska prisoners – over 4,000 men and women – owed back child support and interest of about $86 million; close to 700 had monthly child support obligations of at least $400. Many had owed back child support before they were incarcerated.

The debts are despite the enactment of a 2007 state law that made imprisonment an involuntary, rather than voluntary, circumstance with respect to child support payments once a prisoner has been incarcerated at least six months. As a result of that law, prisoners are able to apply for modification of their child support obligations while incarcerated.

Mel Beckman, editor of the *Nebraska Criminal Justice Review*, said he doubted that state prison officials are informing prisoners they can seek modifications, which is why Heaney offered to provide the forms and conduct the clinics.

Heaney noted that reentry is made more difficult when ex-offenders have high child support debts upon release. When and if they find jobs, they're usually low-paying positions – not including garnishment for monthly child support payments and back payments.

"It seems counter-productive to me," Heaney observed.

Byron Van Patten, child support administrator for Nebraska's Department of Health and Human Services, said it's not the state's intent to leave prisoners and ex-offenders destitute. HHS supervisors visit prisons to answer questions before prisoners are released so they are aware of their child support responsibilities.

But Heaney argued that if the state makes it hard for ex-offenders to live due to high child support debts that accrued during their incarceration, they will be incentivized to make money in other ways – including through illegal activities.

She added that non-custodial parents

are sometimes ashamed of their inability to support their kids, so they simply stay away from them. As a result, those children are more likely to get into trouble, abuse drugs and alcohol, and drop out of school.

"I used to be a prosecutor," Heaney said. "I am not in favor of people committing crimes. But I am in favor of practicality. And if we want these people to return to society, and be contributing members of society, it behooves us to not erect barriers to that."

The child support modification forms that Heaney produced are still not allowed in state prisons. Legal Aid of Nebraska, which receives funding from Legal Services Corporation (LCS), a publicly-funded non-profit, cannot directly represent prisoners due to restrictions placed on LCS by Congress in 1996.

Source: *Omaha Journal-Star*

New York District Attorney Admits Lying About Acting in Porn Movies

An upstate New York district attorney who lied when questioned during his re-election campaign about being an actor in pornographic movies during the 1970s will not quit, despite public calls for his resignation and at least one expert's view that he may have violated New York State Bar Association rules.

Democratic incumbent Mark D. Suben was re-elected in 2012 as district attorney for Cortland County, near Syracuse. During the campaign he was asked whether he had acted in adult films in the 1970s, and he denied having done so.

Suben accused his Republican opponent, Keith Dayton, of spreading false rumors in a smear campaign to discredit him.

However, WSTM-TV reported on November 17, 2012 that Suben had in fact acted in pornographic movies under his real name and the pseudonym Gus Thomas. An anonymous YouTube video compared images of Suben and Thomas, and presented other evidence.

Suben then decided to come clean.

"Recently, materials have circulated alleging that I was involved in the adult film industry about 40 years ago in New York. Those allegations are true," Suben admitted in a news conference ten days after the election. "I was an actor in adult films for a short period in the early '70s. I was also an actor in other venues including off-Broadway, soap operas, and commercial advertisements."

The post-election admission led to calls for Suben's resignation, and legal expert Jonathan Turley said an "act of dishonesty used to secure a legal position" may constitute misconduct under New York State Bar Association rules.

Suben's spokeswoman, Aimee Milks, said he would not resign. "I think the situation is really irrelevant to the campaign," she said. "His record as the DA for the last four years speaks for itself."

In November 2013 it was reported that Keith Dayton's brother, Kevin, was the person who had uncovered Suben's porn acting past, contacted the media and posted the YouTube video. Kevin Dayton said he did not reveal Suben's past out of any allegiance to his brother, as they had been estranged for many years, nor did he have a vendetta against Suben.

"He's always seemed like a good guy to me," Kevin Dayton said. "Even now, I don't necessarily think he should've resigned." He indicated the issue was hearing a public official blatantly lie.

"It was like Ronald Reagan saying, 'I wasn't in Bedtime for Bonzo,'" Kevin noted. "It was annoying that someone would lie so bluntly and run for public office."

Keith Dayton said he had no control over his brother's actions and, in any case, was unconcerned with Suben's participation in porn movies. "I think the more important part is the lying," he stated, adding he plans to run for DA again in 2016.

"It's ancient history to me," Suben said of the controversy over his appearance in adult films. "It's of no significance in my life. The issue is long since gone. It's a thing that's over, that's quite completely over as far as I can determine."

Sources: *Huffington Post, Syracuse Post-Standard, www.cnycentral.com*

Investigation Uncovers Lost Graves at Former Florida Juvenile Facility

by David M. Reutter

An anthropological team from the University of South Florida investigating the grounds of the now-closed Florida Industrial School for Boys (FISB), a juvenile detention facility in Marianna, has identified the remains of three youths buried in a cemetery on the property and continues to exhume other bodies discovered at the site.

In all, the team found 55 graves – 24 of which were outside the boundaries of the marked cemetery – at the facility, which was formerly called the Arthur G. Dozier School for Boys. Researchers believe another cemetery for black youths is also located on the property.

The FISB came under scrutiny in 2008 after a group of men publicized stories about physical and sexual abuse they had endured while held at the facility as juveniles. They called themselves the "White House Boys," after a small white building where the most serious abuses occurred. Some said they were made to lie down on a bed and severely beaten with leather straps by school officials. [See: *PLN*, March 2009, p.22].

"I came out of there in shock, and when they hit you, you went down a foot into the bed, and so hard, I couldn't believe," said Robert Straley, who was taken to the "White House" the first day he arrived at FISB in the 1960s. "I didn't know what they were hitting you with."

The White House Boys alleged that some juveniles at the facility who went missing were killed by staff members, and their bodies buried on the property.

Former Governor Charlie Crist ordered an investigation after the stories of abuse were made public. In 2009, the Florida Department of Law Enforcement (FDLE) issued a report that accounted for 31 graves with rusted metal crosses in a cemetery on the grounds of the facility. However, the report concluded that investigators could not substantiate or disprove the claims of abuse because too much time had passed.

Straley called the report a whitewash. "All they did was try to do their best to discredit us," he said. "They focused on that instead of focusing on an investigation."

The anthropological research team used ground-penetrating radar to find 31 graves in the marked cemetery plus an additional 24 graves during a four-month excavation in 2013. Some of the grave sites were under roads or in the woods, far from the cemetery.

"We found burials within the current marked cemetery, and then we found burials that extend beyond that," said Dr. Erin Kimmerle. "These are children who came here and died, for one reason or another, and have just been lost in the woods."

As for juveniles who reportedly went missing from the facility, "For the majority, there's no record of what happened to them. So, they may be buried here, they may have been shipped to their families. But we don't know," stated Dr. Kimmerle, who is seeking approval from the Department of Juvenile Justice to locate another cemetery on the property containing the remains of black youths, which existed separately due to racial segregation at the time.

In August 2014, researchers announced that DNA and other tests were used to identify the first body exhumed from the facility's cemetery as George Owen Smith, who was 14 when he disappeared from FISB in 1940. The tests did not reveal how he died.

School officials told Smith's family that he had run away and died from pneumonia while hiding under a house. His family came to get his body.

"They said that the body was so decomposed, you wouldn't be able to identify him.... they took him straight out to the school [cemetery]," said his sister, Ovell Smith Krell, 83. One of the other boys at FISB, however, had told the family a different story.

"He said, 'My brother was running out across a field, an open field, and there were three men shooting at him with rifles,'" Ovell stated. "I believe to this day that they shot my brother that night, and I think they probably killed him and brought him back to the school to bury him."

Ovell hopes to give her brother a proper burial. "I would take him and put him down with my mom and dad in their cemetery," she said. "I hope I get that chance." Families of the boys buried at FISB must seek an exhumation order in state court to obtain their remains.

In September 2014, the university team announced the identities of two more bodies buried at the facility: Thomas Varnadoe, 13, and Earl Wilson, 12.

School officials had reported that Varnadoe died in 1934, allegedly from pneumonia, while Wilson was beaten to death in 1944 while confined in a small cottage on the property known as the "sweat box." Four other boys were eventually convicted in Wilson's death.

Thomas Varnadoe's brother, Richard, was five years old when Thomas was sent to FISB for stealing a typewriter. Richard Varnadoe, now 85, provided researchers with the DNA that allowed them to identify his brother's remains.

"We got the report that he died from pneumonia. We didn't believe that in a minute," he said. "It's been really bad in a way and really good in a way. It's almost unbelievable to go back 80 years," Varnadoe added. "I'm elated."

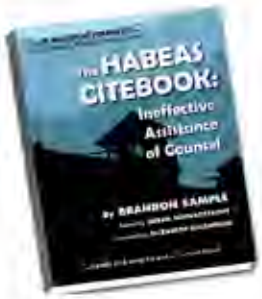
The FDLE's 2009 report said many of the graves at the former juvenile facility contained victims of a 1914 fire, while other boys had died during a 1918 flu outbreak. The FDLE blamed poorly-kept school records for being unable to determine what happened to the other youths who died. The report concluded that two boys were killed by fellow students and another was shot by a deputy sheriff while trying to escape.

Five hundred boys were housed at FISB during its peak in the 1960s. Most had been sent to the facility for minor offenses such as running away from home, skipping school and petty theft.

In 1968, then-Florida Governor Claude R. Kirk, Jr. visited the facility. He discovered cramped sleeping quarters, buckets used as toilets, no heat in the winter, leaks in the ceilings and holes in the walls.

"If one of your kids were kept in such circumstances," Kirk said at the time, "you'd be up there with rifles."

Sources: *CNN, http://staugustine.com, www.wtsp.com, Associated Press*



The Habeas Citebook: Ineffective Assistance of Counsel **$49.95**
Brandon Sample
ISBN: 978-0-9819385-1-6
Paperback, 224 pages

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

Prisoners' Guerrilla Handbook to Correspondence Programs **$49.95**
in the United States and Canada, 3rd Edition
Jon Marc Taylor
ISBN: 978-0-9819385-0-9
Paperback, 224 Pages

The greatly anticipated and newly updated third edition of the Prisoner's Guerrilla Handbook to Correspondence Programs in the United States and Canada has finally arrived! Author Jon Marc Taylor's brand new version is the latest in this unique and highly successful guidebook for the prisoner-student. This invaluable tool and how-to handbook provides the reader with step-by-step instructions to find the appropriate education program for correspondence high school, vocational, paralegal, undergraduate, and graduate courses offered in the U.S. and Canada today.

Prisoners' Self-Help Litigation Manual, 4th Edition **$45.95**
John Boston & Dan Manville
ISBN: 978-0-1953744-0-7
Paperback, 960 pages

Prisoners' Self-Help Litigation Manual, in its much-anticipated fourth edition, is an indispensable guide for prisoner litigants and prisoner advocates seeking to understand the rights guaranteed to prisoners by law and how to protect those rights. Clear, comprehensive, practical advice provides prisoners with everything they need to know on conditions of confinement, civil liberties in prison, procedural due process, the legal system, how to actually litigate, conducting effective legal research, and writing legal documents. It is a roadmap on how to win lawsuits.

☐ Habeas Citebook, Ineffective Assistance of Counsel $49.95

☐ Prisoners' Guerrilla Guide to Correspondence Programs 3rd edition $49.95

☐ Prisoners' Self-Help Litigation Manual 4th edition $45.95

Shipping included in all prices

Order by mail, phone, or on-line. Amount enclosed _____

By: ☐ check ☐ new postage stamps ☐ credit card ☐ money order

Name _____

DOC/BOP Number _____

Institution/Agency _____

Address _____

City _____ State ___ ZIP _____

PUBLISHED BY
PRISON LEGAL NEWS
Dedicated to Protecting Human Rights

PO Box 1151 • Lake Worth, FL 33460
Tel 561-360-2523 • www.prisonlegalnews.org

News in Brief

Alaska: On January 12, 2014, twenty-year-old detainee Jairus Nelson slipped under a garage door at the Dillingham jail and fled wearing nothing but his underwear. He ran into some nearby woods and later attempted to jump into several passing cars to evade officers. Unfortunately for Nelson, after several unsuccessful attempts to find a ride to freedom, he tried to enter the car of off-duty policeman Dan Decker. Decker recognized the escapee and held him until other officers arrived. Nelson was returned to the jail, given a new set of clothes and charged with felony escape.

Arizona: Anthony James Marotta resigned from his job as a guard at ASPC Perryville after he was allegedly caught receiving oral sex from a female prisoner in the back of a transport vehicle. Another prisoner was driving the vehicle when she witnessed the incident in the rearview mirror; she reported it to prison authorities, and Marotta was arrested on December 31, 2013. He admitted to the sex act and to an earlier incident of sexual misconduct.

Arizona: A prisoner being held on death row at the Eyman complex was found dead in his cell on January 27, 2014. According to the Pinal County Medical Examiner's Office, Gregory Dickens, 48, committed suicide. Dickens had been sentenced to death after he and an accomplice robbed and murdered a couple at a rest stop near Yuma in 1991.

Australia: Convicted drug dealer Dino Joseph Antonio Diano was mistakenly released on parole two years early and a warrant was issued for his arrest. He appealed the decision after being returned to prison, but on March 5, 2014 the Western Australia Court of Appeal ruled that his earliest release date was in May 2015. Prior to his drug conviction Diano had been a prominent businessman in Alice Springs, and hosted Prince Charles and Princess Diana at his home during their 1983 tour of Australia.

California: On January 24, 2014, a former Marine who operated a Pasadena youth boot camp was sentenced to four years and four months in state prison and will be required to register as a sex offender. Kelvin Bernard McFarland, 43, who preferred to be called "Sgt. Mac," pleaded no contest to multiple charges stemming from two cases of sexual assault involving three 14-year-old girls. McFarland's offenses included sexual assault, kidnapping, extortion, child abuse, false imprisonment, unlawful use of a badge, sexual penetration by a foreign object, oral copulation of a person under 16, lewd act on a child and unlawful sexual intercourse.

California: Christina Marie Lugo, 31, a Fresno County Superior Court clerk, was arrested on December 31, 2013 and released on bond the same day for allegedly helping jail prisoner Ricky Modesto attempt to intimidate a witness in a 2012 assault case. After Modesto bonded out on felony battery charges, he failed to appear for a court hearing; a warrant was issued and he was subsequently arrested in November 2012. Fresno County sheriff's spokesman Chris Curtice said Lugo then tried to arrange communications between Modesto and three other co-conspirators, all gang members, to intimidate a witness. Lugo and two of the co-conspirators were charged with conspiracy to dissuade a victim and the third was charged with being a felon in possession of a firearm.

Florida: Reports from the Turner Guilford Knight Correctional Center described a brawl between two prison guards on January 13, 2014 that injured a female officer who attempted to break up the fight. The internal reports, obtained by Miami-Dade TV affiliate NBC 6, said a guard identified as "R.W." became angry when asked to replace an item on a prisoner's meal tray. He first pushed the female guard, then began to physically assault another male officer, "K.A." The reports further indicated that R.W. may have been under the influence of alcohol at the time of the incident.

Florida: In the aftermath of the jailhouse beating of prisoner Jody Holland in May 2013, the former commander of the DeSoto County Jail was sentenced on February 10, 2014 to three years' probation and community service. Raymond Kuglar pleaded guilty to lying to an FBI agent in an attempt to cover up the attack. Four jail guards, Cpl. Steven Rizza and deputies Vincent Carlucci, Jonathan Mause and Ashley Cross, were fired for their roles in the beating and engaging in a conspiracy to conceal the incident. Mause and Cross face pending charges, while Carlucci has been convicted.

Georgia: Zel Tirrell Mitchell, 43, a former DeKalb County jail guard, was indicted on February 27, 2014 for having sexual contact with a prisoner in exchange for food and contraband. The prisoner stated he was not forced into the encounter. Mitchell had been fired following an internal investigation; he was charged with violation of oath and sexual assault by persons with supervisory or disciplinary authority. An additional charge of indecent exposure was dropped. [See: *PLN*, Oct. 2013, p.56].

Greece: On January 9, 2014, U.S. State Department spokeswoman Jen Psaki told reporters that the United States was concerned about the escape of Greek prisoner Christodoulos Xiros, 56, who was serving six life sentences for acting as a hitman for the revolutionary group known as November 17. "We call on the Greek government to locate Xiros and return him to prison," Psaki said. November 17 was responsible for the deaths of 23 people, including a CIA station chief, prior to disbanding in 2002; it is still included on the State Department's list of terrorist organizations. Xiros escaped while on an eight-day New Years furlough from prison. The furlough program is now under review.

Idaho: Seanjay Wright, 36, worked as an Ada County jail guard for two years before being arrested on January 1, 2014 on two felony counts of sexual contact with a prisoner. He was booked into the same jail where he was employed after an investigation by the Boise Police Department found evidence that he had sex with a female prisoner on two occasions. Ada County Sheriff Gary Raney said Wright had "violated the trust of the community and let down the other 650 men and women working for the Sheriff's Office who take great pride in their ethical conduct."

Illinois: On January 23, 2014, Sean McGilvery, a heroin dealer who catered to St. Clair County judges, was sentenced to 10 years in prison. One of his regular customers, former judge Michael Cook, was arrested last year in an investigation that included the cocaine-related death of a fellow judge at Cook's hunting cabin. Cook pleaded guilty to federal weapons and heroin charges. On March 28, 2014, a U.S. District Court rejected Cook's plea deal of 18 months in prison and instead

sentenced the disgraced judge to 24 months' incarceration.

Indiana: Prison officials dispatched to a security tower at the Miami Correctional Facility on December 23, 2013 found 56-year-old guard Zane E. Rasmussen dead of an apparent heart attack. Indiana DOC public information officer Ann Hubbard said it was believed that Rasmussen had nitroglycerin pills on hand, but was unable to reach them before he died. He was alone in the tower, and officials first suspected a problem when he failed to make an hourly welfare check call as required by prison policy.

Kansas: On January 22, 2014, Melinda Trusty, 47, pleaded no contest to having sex with a prisoner in a clinic restroom at the Lansing Correctional Facility. The former guard came under suspicion when prison officials noticed that prisoner Nathan M. Cunningham had been receiving letters that appeared to be written by an employee. In an interview, Trusty admitted to having sex with Cunningham, who had been assigned as a clinic worker. She was sentenced on March 19, 2014 to three years' probation.

Libya: Approximately 90 prisoners escaped from Mager Prison in southern Zliten on February 15, 2014. Prison guards are suspected of collusion in the escape, the latest in a series of jailbreaks over the past year in which at least 1,700 prisoners have absconded with a low rate of recapture. In July 2013, 1,200 prisoners broke out from Benghazi's Kuwaifiya Prison during a riot. Mass escapes have also occurred at the Bawabat Al-Jibs, Ajdabiya and Sebha prisons.

Louisiana: On January 6, 2014, a deputy at the Tangipahoa Parish jail was arrested before he could carry out a plan to smuggle contraband into the facility. Patrick Collins, 58, admitted to bringing in the contraband with intent to sell it to prisoners, according to Sheriff Daniel Edwards. Packages containing tobacco and marijuana were found in Collins' work space. He was charged with a single count of malfeasance in office, two counts of introduction of contraband into a penal institution and possession of Schedule 1 narcotics with intent to distribute.

Michigan: Rather than face frigid temperatures outdoors, investigators with the MDOC Absconder Recovery Unit stayed behind their desks and focused on cold cases to pass the time. Their investigation led them to the whereabouts of 60-year-old Judy Lynn Hayman, who had walked away from the Detroit House of Corrections in April 1977 – 36 years earlier. On February 17, 2014, acting on a tip from Michigan authorities, police officers in San Diego, California were able to locate Hayman and take her into custody. The investigators' victory turned to embarrassment, however, when Hayman, who had legally changed her name to Jamie Lewis, produced court documents that proved her sentence had been suspended in 1982.

Nebraska: A 15-year-old jailed on an armed robbery charge attacked and strangled Scotts Bluff County Detention Center guard Amanda Baker, 24, on February 14, 2014, killing her. The juvenile, Dylan Cardeilhac, was charged as an adult with first-degree murder; however, prosecutors later amended the charge to first-degree murder during the commission of a robbery. The state alleges that Cardeilhac killed Baker as he was trying to steal her keys during an escape attempt. Baker's family has since filed a wrongful death claim against Scotts Bluff County. In May 2014, Cardeilhac was sentenced to 8 to 15 years on the original armed robbery charge.

Nevada: An elaborate scheme was uncovered at the Washoe County Jail that involved stolen identities and fraudulent commissary accounts. KOLO TV reported on February 4, 2014 that stolen credit card information was used by outsiders to place money on prisoners' accounts, then the funds were given to the prisoners upon their release. Detectives described the fraud as "using the jail as an ATM." As part of the scheme, at least two people were purposely arrested so they could cash out the stolen funds after leaving the jail.

New Jersey: On February 28, 2014, six pretrial detainees prevailed in a court action requiring the Middlesex County jail to provide computer equipment necessary to view evidence in their cases. Prisoners at the North Brunswick facility did not have access to CD, DVD or flash drive readers, and Superior Court Judge Bradley Ferencz ordered jail officials to "address the issue, kicking or screaming or not." "E-discovery is here," Ferencz told county counsel Benjamin Leibowitz, ruling that the jail had violated prisoners' constitutional

News In Brief (cont.)

rights by preventing them from viewing all the evidence against them. The detainees were represented by the public defender's office.

New Mexico: Albuquerque Metropolitan Detention Center guard Elijah Chavez was suspended with pay in February 2014 following the release of video footage that showed him repeatedly punching prisoner Mark Palacios. Chavez stated in a report that he felt he was in "survival mode" at the time of the assault. He was not charged with any crime, but Palacios, who was also pepper sprayed, was charged with battery on a peace officer. Bernalillo County Sheriff's Office representatives said it was likely that the deputy who charged Palacios with battery did not watch the video.

New York: A love triangle involving three New York jail guards ended in a bloody confrontation on a Queens street corner on January 10, 2014. Jeffrey Ragland died after being shot by his romantic rival, Oniel Linton. The shooting occurred when Linton saw Ragland violently strike the men's paramour, Salees Sales. Linton ran to the scene of the assault and knocked Ragland to the ground, then drew his weapon and shot him twice. Linton claimed Ragland was in the process of pulling a gun on him when he opened fire. Ragland, who had recently retired from the New York City Department of Correction, was carrying a Glock 17. No charges were filed against Linton.

Ohio: On January 27, 2014, Cuyahoga County jail guard Tim Thomas was sentenced to six months in jail for accepting a bribe from a prisoner in the form of $2,000 in cash and a used car valued at $500. Thomas pleaded guilty to bribery and falsification for his role in delaying the transfer of a jail prisoner to state custody; he will serve his time in protective custody.

Oklahoma: A prisoner at the GEO Group-operated Lawton Correctional Facility made several calls to 911 on a contraband cell phone before being found unconscious on the floor of his cell. Christopher Glass, 33, was taken to a hospital where he was pronounced dead on January 30, 2014. Investigators said Glass' body had bruises and scrapes, but an autopsy report released on April 14, 2014 determined his death was caused by a methamphetamine overdose.

Oregon: On January 27, 2014, *The Oregonian* reported details of a prisoner's creative but unsuccessful plot to escape from the Snake River Correctional Institution. Michael J. Norwood crafted a dummy using peanut butter and his own hair, then posed the makeshift mannequin in his bunk with headphones and reading glasses to conceal his absence from his cell. Norwood had also fashioned a rope from rolls of dental floss, which he intended to use to scale security fences; however, he was captured in a prison recreation yard after being missing for only half an hour.

Philippines: A mass jailbreak occurred at the Leyte provincial jail in the town of Palo on January 30, 2014. Nearly 200 prisoners escaped around dawn, but most were recaptured within hours. It was unclear how the mass break-out occurred, though it was very clear why: Prisoners told investigators they escaped due to hunger from limited food and squalid conditions at the facility. They also complained of slow prosecutions in their cases. Each year dozens of escapes occur in the Philippines due to the dilapidated condition of the prisons and lax security.

Puerto Rico: Former prison guard Bernis Gonzalez Miranda, 27, received a 67.5-year prison sentence on January 28, 2014 for his role in providing armed security for drug dealers; he was one of 89 law enforcement officers and 44 other

people arrested in an FBI undercover investigation called Operation Guard Shack. According to court testimony, Gonzalez Miranda received $2,000 each time he participated in a drug transaction. He was convicted of three counts of conspiring to possess with attempt to distribute more than 5 kilos of cocaine, plus three counts of possession of a firearm in furtherance of a drug transaction.

Tennessee: The Tennessee Bureau of Investigation confirmed on January 10, 2014 that Grainger County jailer Jacob Scott Layel, the son of the county's sheriff, was one of five former jail employees indicted on various misconduct charges following the escape of three prisoners from the facility in November 2013. The TBI conducted the investigation to identify security and operational flaws at the jail because the escape had gone unnoticed for several days. Sheriff Scott Layel, a chief deputy and one of the indicted employees were also named as defendants in an unrelated lawsuit filed by three female prisoners who said they were repeatedly raped at the jail.

Texas: On December 3, 2013, U.S. District Court Judge Andrew S. Hanen said corruption in the Cameron County legal system and judiciary was so pervasive that most people probably wouldn't believe it. On that same day, former Texas state district judge Abel C. Limas surrendered to U.S. Marshals to begin serving a six-year federal prison term for accepting bribes to render favorable rulings in civil cases. Criminal charges against 12 defendants, all members of the Cameron County legal community, were brought after Limas' misconduct was discovered. All but one were convicted.

Texas: Travis County District Attorney Rosemary Lehmberg will keep her job despite a drunk driving arrest, some bad behavior while in jail and a civil case intended to force her from office. [See: *PLN*, Sept. 2013, p.56]. On December 11, 2013, Judge David Peeples ruled after three days of testimony that he would not remove Lehmberg as the top felony prosecutor in Travis County. Testimony during the hearing described Lehmberg's drinking habits and medical conditions, but was not enough to convince Peeples to relieve her of her duties. The ruling ended months of speculation as to the future of Lehmberg's role in Texas' criminal justice system. On July 15, 2014, a lawsuit was filed against Lehmberg by a former state prosecutor who claimed he was fired for requesting an investigation into her actions.

Texas: On November 3, 2013, 37-year-old Sarah Tibbetts, an insulin-dependent diabetic, collapsed and died at the Irving jail. Following an investigation into her death, on January 24, 2014 two jail supervisors were fired, two guards were reprimanded and two other employees received counseling. Tibbetts' mother, who lives in California, was contacted by jail officials on November 2, 2013 and asked to bring insulin to Texas. She told them it was impossible for her to travel to the jail, but warned that her daughter would die without insulin. Sarah Tibbetts had been incarcerated at the jail previously but was taken to a hospital for treatment during prior stays at the facility.

United Kingdom: Five guards at HM Prison Parc in South Wales denied wrongdoing in an alleged drug smuggling conspiracy, and, soon afterward, a court case against them fell apart when prisoners at the

facility refused to testify. A sixth defendant, Philip Finselbach, pleaded guilty to involvement in the conspiracy, which according to anonymous sources involved smuggling cell phones, marijuana and heroin. On January 16, 2014, a judge declined to sentence Finselbach, who said he had feared for the safety of himself and his family if he did not participate in the scheme. HM Prison Parc is run by a private company, G4S.

Washington: On January 31, 2014, the *Christian Science Monitor* reported that in an effort to reduce food disposal costs and enrich a gardening program that provides vegetables for the prison's kitchen and local food banks, the Monroe Correctional Complex has turned to vermiculture – the breeding and raising of earthworms. The program began with 200 red wigglers and has grown to a "wormery" which currently holds 5 million of the invertebrates. The worms can process 10,000 pounds of food scraps per month and the byproducts – worm manure and "worm tea" – are used as a rich fertilizer on several acres of gardens at the facility.

Wisconsin: In a Grant County courtroom on January 20, 2014, former parole officer Sherry Buswell pleaded no contest to 21 felonies related to stealing money from parolees and depositing it into her personal bank account. She faced more than 70 years in prison, but was sentenced in March 2014 to 18 months and over $8,000 in restitution. Buswell was also required to write a letter of apology to each of her victims. The thefts were discovered after a co-worker reviewed several of her cases and became suspicious due to "numerous inconsistencies."

Criminal Justice Resources

ACLU National Prison Project

Handles state and federal conditions of confinement claims affecting large numbers of prisoners. Publishes the NPP Journal (available online at: www.aclu.org/national-prison-project-journal-fall-2011) and the Prisoners' Assistance Directory (write for more information). Contact: ACLU NPP, 915 15th St. NW, 7th Fl., Washington, DC 20005 (202) 393-4930. www.aclu.org/prisons

Amnesty International

Compiles information about prisoner torture, beatings, rape, etc. to include in reports about U.S. prison conditions; also works on death penalty issues. Contact: Amnesty International, 5 Penn Plaza, New York NY 10001 (212) 807-8400. www.amnestyusa.org

Center for Health Justice

Formerly CorrectHELP. Provides information related to HIV in prison – contact them if you are not receiving proper HIV medication or are denied access to programs due to HIV status. Contact: CHJ, 900 Avila Street, Suite 102, Los Angeles, CA 90012. HIV Hotline: (214) 229-0979 (collect calls from prisoners OK). www.centerforhealthjustice.org

Centurion Ministries

Works to exonerate the wrongfully convicted, in both cases involving DNA evidence and those that do not. Centurion only takes 1-2 new cases a year involving actual innocence. They do not consider accidental death or self-defense murder cases, he said/she said rape cases, or child abuse or child sex abuse cases unless there is physical evidence. All case inquiries must be from the prisoner involved, in writing. Contact: Centurion Ministries, 221 Witherspoon Street, Princeton, NJ 08542 (609) 921-0334. www.centurionministries.org

Critical Resistance

Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in Florida, California, New York, Texas and Louisiana. Publishes The Abolitionist newsletter. Contact: Critical Resistance, 1904 Franklin Street #504, Oakland, CA 94612 (510) 444-0484. www.criticalresistance.org

The Exoneration Project

The Exoneration Project is a non-profit organization dedicated to working to free prisoners who were wrongfully convicted. The Project represents innocent individuals in post-conviction legal proceedings; typical cases involve DNA testing, coerced confessions, police misconduct, the use of faulty evidence, junk science and faulty eyewitness testimony, and ineffective assistance of counsel claims. Contact: The Exoneration Project, 312 North May Street, Suite 100, Chicago, Illinois 60607 (312) 789-4955. www.exonerationproject.org

Family & Corrections Network

Primarily provides online resources for families of prisoners related to parenting, children of prisoners, prison visitation, mothers and fathers in prison, etc. Contact: F&CN, 93 Old York Road, Suite 1 #510, Jenkintown, PA 19046 (215) 576-1110. www.fcnetwork.org

FAMM

FAMM (Families Against Mandatory Minimums) publishes the FAMMGram three times a year, which includes information about injustices resulting from mandatory minimum laws with an emphasis on federal laws. Recommended donation of $10 for a subscription. Contact: FAMM, 1612 K Street NW #700, Washington, DC 20006 (202) 822-6700). www.famm.org

The Fortune Society

Provides post-release services and programs for prisoners in the New York City area and occasionally publishes Fortune News, a free publication for prisoners that deals with criminal justice issues, primarily in New York. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. www.fortunesociety.org

Innocence Project

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

Just Detention International

Formerly Stop Prisoner Rape, JDI seeks to end sexual violence against prisoners. Provides counseling resources for imprisoned and released rape survivors and activists for almost every state. Contact: JDI, 3325 Wilshire Blvd. #340, Los Angeles, CA 90010 (213) 384-1400. www.justdetention.org

Justice Denied

Although no longer publishing a print magazine, Justice Denied continues to provide the most comprehensive coverage of wrongful convictions and how and why they occur. Their content is available online, and includes all back issues of the Justice Denied magazine and a database of more than 3,000 wrongly convicted people. Contact: Justice Denied, P.O. Box 68911, Seattle, WA 98168 (206) 335-4254. www.justicedenied.org

National CURE

Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the CURE Newsletter. $2 annual membership for prisoners. Contact: CURE, P.O. Box 2310, National Capitol Station, Washington, DC 20013 (202) 789-2126. www.curenational.org

November Coalition

Publishes the Razor Wire, a bi-annual newsletter that reports on drug war-related issues, releasing prisoners of the drug war and restoring civil rights. A subscription is $10 for prisoners and $30 for non-prisoners. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 684-1550. www.november.org

Prison Activist Resource Center

PARC is a prison abolitionist group committed to exposing and challenging all forms of institutionalized racism, sexism, able-ism, heterosexism and classism, specifically within the Prison Industrial Complex. PARC produces a free resource directory for prisoners, and supports activists working to expose and end the abuses of the Prison Industrial Complex and mass incarceration. Contact: PARC, P.O. Box 70447, Oakland, CA 94612 (510) 893-4648. www.prisonactivist.org

Prison Legal News Book Store

Fill in the boxes next to each book you want to order, indicating the quantity and price. Enter the Total on the Order Form on the next page.
FREE SHIPPING on all book orders OVER $50 (effective 8-1-2014 until further notice). $6.00 S/H applies to all other book orders.

SUBSCRIBE TO PLN FOR 4 YEARS AND CHOOSE ONE BONUS!
1. **SIX (6) FREE ISSUES FOR 54 TOTAL!** OR
2. **PRISON PROFITEERS (A $24.95 VALUE!)** OR
3. **THE HABEAS CITEBOOK (A $49.95 VALUE!)**

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

The Habeas Citebook: Ineffective Assistance of Counsel, by Brandon Sample, PLN Publishing, 200 pages. **$49.95**. This is PLN's second published book, written by federal prisoner Brandon Sample, which covers ineffective assistance of counsel issues in federal habeas petitions. Includes hundreds of case citations! 1078

Prison Nation: The Warehousing of America's Poor, edited by Tara Herivel and Paul Wright, 332 pages. **$35.95**. PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. 1041

The Celling of America, An Inside Look at the U.S. Prison Industry, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. **$22.95**. PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. 1001

Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, PLN Publishing, 221 pages. **$49.95**. Written by Missouri prisoner Jon Marc Taylor, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, paralegal and college courses by mail. 1071

The Criminal Law Handbook: Know Your Rights, Survive the System, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 608 pages. **$39.99**. Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy to understand question-and-answer format. 1038

Represent Yourself in Court: How to Prepare & Try a Winning Case, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 528 pages. **$39.99**. Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. The authors explain what to say in court, how to say it, etc. 1037

The Merriam-Webster Dictionary, New Edition, 939 pages. **$8.95**. This paperback dictionary is a handy reference for the most common English words, with more than 65,000 entries. 2015

The Blue Book of Grammar and Punctuation, by Jane Straus, 110 pages. **$19.99**. A guide to grammar and punctuation by an educator with experience teaching English to prisoners. 1046

Legal Research: How to Find and Understand the Law, by Stephen Elias and Susan Levinkind, 568 pages. **$49.99**. Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. 1059

Deposition Handbook, by Paul Bergman and Albert Moore, Nolo Press, 352 pages. **$34.99**. How-to handbook for anyone who conducts a deposition or is going to be deposed. 1054

Criminal Law in a Nutshell, by Arnold H. Loewy, 5th edition, 387 pages. **$43.95**. Provides an overview of criminal law, including punishment, specific crimes, defenses & burden of proof. 1086

SUBSCRIBE TO PLN FOR 3 YEARS AND CHOOSE ONE BONUS!
1. **FOUR (4) FREE ISSUES FOR 40 TOTAL!** OR
2. **PROTECTING YOUR HEALTH AND SAFETY (A $10.00 VALUE!)**

Protecting Your Health and Safety, by Robert E. Toone, Southern Poverty Law Center, 325 pages. **$10.00**. This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how to enforce your rights, including through litigation. 1060

Spanish-English/English-Spanish Dictionary, 2nd ed., Random House. **$15.95**. Spanish-English and English-Spanish. 60,000+ entries from A to Z; includes Western Hemisphere usage. 1034a

Writing to Win: The Legal Writer, by Steven D. Stark, Broadway Books/Random House, 283 pages. **$19.95**. Explains the writing of effective complaints, responses, briefs, motions and other legal papers. 1035

Actual Innocence: When Justice Goes Wrong and How to Make it Right, updated paperback ed., by Barry Scheck, Peter Neufeld and Jim Dwyer, 403 pages. **$17.99**. Describes how criminal defendants are wrongly convicted. Explains DNA testing and how it works to free the innocent. Devastating critique of police and prosecutorial misconduct. 1030

All Alone in the World: Children of the Incarcerated, by Nell Bernstein, 303 pages. **$19.95**. Award-winning journalist Nell Bernstein takes an intimate look at the effects incarceration has on imprisoned parents and their children. 2016

Everyday Letters for Busy People, by Debra Hart May, 287 pages. **$21.99**. Hundreds of sample letters that can be adapted for most any purpose, including letters to government agencies and officials. Has numerous tips for writing effective letters. 1048

Roget's Thesaurus, 717 pages. **$8.95**. Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. 1045

Beyond Bars, Rejoining Society After Prison, by Jeffrey Ian Ross, Ph.D. and Stephen C. Richards, Ph.D., Alpha, 240 pages. **$14.95**. *Beyond Bars* is a practical and comprehensive guide for ex-convicts and their families for managing successful re-entry into the community, and includes information about budgets, job searches, family issues, preparing for release while still incarcerated, and more. 1080

Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A., by Mumia Abu Jamal, City Lights Publishers, 280 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. 1073

With Liberty for Some: 500 Years of Imprisonment in America, by Scott Christianson, Northeastern University Press, 372 pages. **$18.95**. The best overall history of the U.S. prison system from 1492 through the 20th century. A must-read for understanding how little things have changed in U.S. prisons over hundreds of years. 1026

Complete GED Preparation, by Steck-Vaughn, 922 pages. **$24.99**. This useful handbook contains over 2,000 GED-style questions to thoroughly prepare students for taking the GED test. It offers complete coverage of the revised GED test with new testing information, instructions and a practice test. 1099

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

Hepatitis and Liver Disease: What You Need to Know, by Melissa Palmer, MD, 457 pages. **$19.99**. Describes symptoms & treatments of hepatitis B & C and other liver diseases. Includes medications to avoid, what diet to follow and exercises to perform, plus a bibliography. 1031

Arrested: What to Do When Your Loved One's in Jail, by Wes Denham, 240 pages. **$16.95**. Whether a defendant is charged with misdemeanor disorderly conduct or first-degree murder, this is an indispensable guide for those who want to support family members, partners or friends facing criminal charges. 1084

Prisoners' Self-Help Litigation Manual, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 960 pages. **$39.95**. The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Highly recommended! 1077

How to Win Your Personal Injury Claim, by Atty. Joseph Matthews, 7th edition, NOLO Press, 304 pages. **$34.99**. While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents. 1075

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

Advanced Criminal Procedure in a Nutshell, by Mark E. Cammack and Norman M. Garland, 2nd edition, 505 pages. **$43.95**. This text is designed for supplemental reading in an advanced criminal procedure course on the post-investigation processing of a criminal case, including prosecution and adjudication. 1090

Our Bodies, Ourselves, by The Boston Women's Health Book Collective, 944 pages. **$26.00**. This book about women's health and sexuality has been called "America's best-selling book on all aspects of women's health," and is a great resource for women of all ages. 1082

Arrest-Proof Yourself, by Dale Carson and Wes Denham, 288 pages. **$14.95**. This essential "how not to" guide written by an ex-cop explains how to act and what to say when confronted by the police to minimize the chances of being arrested and avoid additional charges. Includes information on basic tricks that police use to get people to incriminate themselves. 1083

Nolo's Plain-English Law Dictionary, by Gerald N. Hill and Kathleen T. Hill, 496 pages. **$29.99**. Find terms you can use to understand and access the law. Contains 3,800 easy-to-read definitions for common (and not so common) legal terms. 3001

Criminal Procedure: Constitutional Limitations, by Jerold H. Israel and Wayne R. LaFave, 7th edition, 603 pages. **$43.95**. Intended for use by law students, this is a succinct analysis of constitutional standards of major significance in the area of criminal procedure. 1085

Win Your Lawsuit: Sue in CA Superior Court without a Lawyer, by Judge Roderic Duncan, 445 pages (4th edition 2010). **$39.99**. This plain-English guide shows you how to prepare a complaint, file and serve papers, participate in settlement negotiations, present a case and much more. The 4th edition has been revised to reflect recent court procedures and includes updated forms. 2014

Coming Soon! **Disciplinary Self-Help Litigation Manual**, by Daniel Manville. By the co-author of the *Prisoners' Self-Help Litigation Manual*, this book provides detailed information about prisoners' rights in disciplinary hearings and how to enforce those rights in court. Published by Prison Legal News Publishing, this title should be available by Nov. 15, 2014.

Subscription Rates

	1 year	2 years	3 years	4 years
Prisoners	**$30**	**$ 60**	**$ 90**	**$120**
Individuals	**$35**	**$ 70**	**$105**	**$140**
Professionals (Attorneys, agencies, libraries)	**$90**	**$180**	**$270**	**$360**

Subscription Bonuses

2 years - 2 bonus issues for 26 total issues
3 years - 4 bonus issues (40 total) or a bonus book as listed on pg. 61
4 years - 6 bonus issues (54 total) or a bonus book as listed on pg. 61

(All subscription rates and bonus offers are valid as of 8-1-2014)

Purchase with Visa, MasterCard, AmEx or Discover by phone: **561-360-2523**
Or buy books and subscriptions online: **www.prisonlegalnews.org**

Mail Payment and Order to:

Prison Legal News
P.O. Box 1151
Lake Worth, FL 33460

All purchases must be pre-paid. Prisoners can pay with new first-class stamps (strips or books only, no single stamps) or pre-stamped envelopes, *if allowed by institutional policies.*

Please **Change my Address** to what is entered below ☐

Mail Order To:

Name: _____
DOC #: _____
Suite/Cell: _____
Agency/Inst: _____
Address: _____
City/State/Zip: _____

Subscribe to Prison Legal News — **$ Amount**

6 month subscription (prisoners only) - $18 _____
1 yr subscription (12 issues) _____
2 yr subscription (2 bonus issues for 26 total!) _____
3 yr sub (*write below which FREE book you want*) _____
or 4 bonus issues for 40 issues total!
4 yr sub (*write below which FREE book you want*) _____
or 6 bonus issues for 54 issues total!
Single back issue or sample copy of **PLN** - $5.00 each _____

Books Orders (No S/H charge on 3 & 4-year subscription free books OR book orders OVER $50!)

	Qty.	

Add $6.00 S/H to **BOOK ORDERS under $50** _____
(PLN subs *do not count* towards $50 for free S/H for book orders)
FL residents ONLY add 6% to Total Book Cost _____
TOTAL Amount Enclosed: _____

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

Prison Legal News
PO Box 1151
Lake Worth FL 33460

Change Service Requested

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

Subscription Renewal

Subscriptions expire after the issue shown on the label is mailed. For example, if the label says: EXPIRES 02/2015, then the subscription expires after the February 2015 issue is mailed. Please renew at least 2 months before the expiration date. IF THE LABEL SAYS **EXPIRES: 10/2014** THIS IS YOUR LAST ISSUE. Please renew immediately to avoid missing any issues.

Change of Address

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

EXHIBIT K

ARIZONA DEPARTMENT OF CORRECTIONS

Notice of Result-Publication Review

Review Date	Name Of Publication	ISBN or Vol/N	Publication Date
2/11/2015	Prison Legal News	V. 25 N. 10	October 2014

The Office of Publication Review has reviewed the above-mentioned individual publication and has determined that the individual publication will be:

☐ Allowed ☒ Excluded

Per DO 914.08 Inmate Mail - Unauthorized Publications and Material, it is determined that this individual publication is excluded.
For the complete exclusion explanations, refer to DO 914 directly. The "X" indicates the specific violation(s).

X	Policy #	Description
	1.1.1	Riots/Work Stoppages/Resistance
	1.1.2	Sending/Receiving Contraband
	1.1.3	Street Gang/STG
	1.1.4	Locks/Security Devices
	1.1.5	Hands, Feet, or Head as Weapons/Fighting Techniques/Self-Defense
	1.1.6	Drug Promotion/Manufacture or Cultivation of Drugs, Narcotics, Poisons/Brewing Alcohol
	1.1.7	Superiority of One Group Over Another/Promotes Racism/Degradation
	1.1.8	Sale/Manufacture/ Concealment of Weapons
	1.1.9	Computer/Electronics/ Communications Systems
	1.1.10	Identity Theft
	1.1.11	Escape/Elude Capture
	1.1.12	Survival Skills
	1.1.13	Gambling
	1.1.14	Tatoo/Skin Modification
	1.1.15	Cipher/Code
	1.1.16	Promote Violence
	1.1.17	Graphic Violence
	1.1.18	Unacceptable Sexual or Hostile Behaviors
	1.1.19	Intelligance/Investigative Techniques
	1.1.20	Military/Strategy
	1.1.21	Medical Publications
	1.1.22	Health/Fire Risk
	1.1.23	Crime Scene/Autopsy
	1.1.24	Violation of Policy/Law
	1.1.25	Scent/Canine Search
	1.1.26	Making of Incense
	1.1.27	Sale/Manufacture/ Concealment of Tools
	2.2	Advertisement Promotion
X	914.07	Sexually Explicit Material
	Other	

- Refer to the revised DO 914, Inmate Mail for information on Second Reviews as the policy has changed to include two separate Second Review processes. Second Review decisions are not grievable through the traditional grievance process and exhaust inmates' administrative remedies.
- Inmates must go to the assigned Complex/Stand-Alone Unit Publication Review staff for all Publication Review-related questions/concerns including requesting Second Reviews prior to writing to the Office of Publication Review. Letters to the Office of Publication Review that do not indicate that the inmate first addressed the issue with Complex/Stand-Alone Unit Publication Review staff may be returned unprocessed or forwarded to the Complex/Stand-Alone Unit Publication Review staff for response.
- To prevent from ordering previously excluded publications or publications that may be in violation of policy, inmates can write to their Complex/Stand-Alone Unit Publication Review staff concerning up to 10 individual publications providing the publication information.
- If your copy of a publication was used by the Office of Publication Review in the determination that an individual publication is excluded, your copy will be held for 90 days if no Second Review is requested or 3 years if a Second Review was requested and the exclusion was upheld. If you are to be released prior to this 90 day or 3 year period, please inform your Complex/Stand-Alone Unit Publication Review staff 6-8 weeks prior to the release date.

OTHER EXCLUSION:

ELECTRONICALLY SENT
Original Signature for file

914-6
9/1/11

EXHIBIT L

$8.15 Million Jury Award for Prisoner's Death at New York Jail

by David Reutter

A New York City jury awarded $8.15 million to the estate of a prisoner who died after being denied access to medical care.

While incarcerated in 1996 at the Vernon C. Bain Correctional Center, part of the Rikers Island complex, Jose Santiago, 25, told a guard he was experiencing symptoms that included a rapid heartbeat, profuse perspiration and difficulty breathing. The guard dismissed Santiago's request for treatment at the facility's clinic.

Just 30 minutes later, moments before he collapsed, Santiago again approached the same guard who again refused to help him. Santiago's pulse could not be detected when medical staff arrived, so they started CPR and summoned emergency medical technicians. The emergency responders did not arrive until 30 minutes later, and pronounced Santiago dead after their life-saving efforts failed.

Following his October 24, 1996 death, Santiago's estate, represented by a public administrator, sued the City of New York and the city's Department of Correction.

The estate's emergency medical expert, Rachael L. Waldron, opined that Santiago's symptoms were caused by atrial fibrillation. She said his symptoms indicated he was receiving insufficient oxygen and his heart could have been stabilized with simple defibrillation, which was available in the jail's clinic but not utilized.

Waldron also opined that medical staff failed to properly administer CPR and delayed treatment by not directing the emergency technicians to Santiago's location. She concluded that Santiago's death was due to lack of proper medical care.

During the litigation, the trial court sanctioned the defendants for failing to exchange information in discovery.

Santiago's death left his 4-year-old son and 2-year-old daughter without a father. The case went to trial in June 2013, and after ten days the jury unanimously found that employees at the jail were negligent.

The jurors awarded $150,000 for past loss of household services and $200,000 for economic losses; $4 million was awarded to Santiago's daughter and $3.8 million to his son for loss of parental guidance. The estate was represented by attorney Michael J. Kuharski. See: *Rodriguez v. City of New York*, Bronx Supreme Court (NY), Case No. 24068/98.

Tenth Circuit Holds "Consensual" Sex Defeats Prisoner's Eighth Amendment Claim

by Mark Wilson

The Tenth Circuit Court of Appeals has held that a female prisoner's "consensual" sex with two guards did not violate the Eighth Amendment.

Stacey Graham was housed in solitary confinement at a jail in Logan County, Oklahoma. Between July and October 2009, jail guard Rahmel Jefferies began talking to Graham over the intercom and their discussions soon became sexual. They also exchanged sexually explicit notes.

On October 7, 2009, another jailer, Alexander Mendez, called Graham over the intercom, "asked about her sexual fantasies" and told her about his.

During the early morning hours of October 9, 2009, Jefferies and Mendez entered Graham's cell.

Another prisoner later alerted the assistant jail administrator that something was going on between Graham and the guards. Graham eventually admitted to having consensual sex with Mendez and Jefferies, but said she "didn't really want Mendez there."

Both guards were immediately terminated after they admitted to the sex acts. Graham was transferred to a different facility, where she told a psychologist that two guards had raped her. She "had a history of bipolar disorder and sexual abuse," but neither Jefferies nor Mendez was aware of her mental health issues.

Graham filed suit in federal court, alleging that the sexual encounter with Mendez and Jefferies violated her rights under the Eighth Amendment. The district court granted summary judgment to the defendants, "holding that 'in light of the consensual sexual activity at issue in this case,' there was no Eighth Amendment violation."

The Tenth Circuit affirmed on December 20, 2013, noting that Graham, unsurprisingly, focused "not on whether she consented as a factual matter but on whether a prisoner can legally consent to sex with one of her custodians." The Court of Appeals declined to hold that consensual sex in this context violates the Eighth Amendment.

The Court observed that "it is a matter of first impression in this circuit whether consent can be a defense to an Eighth Amendment claim based on sexual acts." It then noted that other courts had split on the issue, and the Ninth Circuit had recently "adopted a middle ground in *Wood v. Beauclair*, 692 F.3d 1041 (9th Cir. 2012)," creating "a rebuttable presumption of nonconsent." [See: *PLN*, March 2014, p.54].

"Even were we to adopt the same presumption as the Ninth Circuit," the appellate court wrote, in Graham's case "the presumption against consent would be overcome by the overwhelming evidence of consent." See: *Graham v. Sheriff of Logan County*, 741 F.3d 1118 (10th Cir. 2013).