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No-show Cops and Dysfunctional Courts Keep Cook County Jail Prisoners Waiting Years for a Trial

Chicago police missed more than 11,000 court dates since 2010, causing months or years of unnecessary delays for prisoners awaiting trial.

by Spencer Woodman, Chicago Reader

June 25, 2012, was a terrible day for Jermaine Robinson. Overall, life was good – the 21-year-old Washington Park resident had been studying music management at Columbia College and was a few weeks into a job working as a janitor at a nearby Boys & Girls Club. But his 13-year-old neighbor had been killed by random gunfire the previous day, and Robinson spent the evening at an emotional memorial service.

After the service ended around midnight, Robinson repaired to his girlfriend's house on Rhodes Avenue to hang out with friends and to see his one-year-old daughter, he says. But just after midnight, he says, several Chicago police officers rammed down the side door of the house and burst into the living room.

Police would later say that they had spotted Robinson dashing from the front porch into the house holding a revolver. According to police reports, the officers found a handgun in the house, which they claimed belonged to Robinson. They arrested him and two other young men. At the precinct, in a cinderblock interrogation room, Robinson says he told police he was only visiting the home and knew nothing about the gun.

But by the time of his arrest, Robinson was well acquainted with Cook County's criminal justice system. He had grown up poor in the Ida B. Wells Homes in Bronzeville, where his great-grandmother, a retired CTA bus driver, struggled to raise him, his mother and a dozen other grandchildren. "It was sometimes seven of us in one bed," Robinson recalls. At times he'd skip school because he feared that his student uniforms were so smelly and unclean they'd draw derision from his classmates.

By his midteens, he'd started dealing cocaine and heroin, and at 17, he was arrested on drug and weapons charges. Although still a minor, he was charged with a felony and booked into the Cook County Jail. After entering a guilty plea, he says, he spent the rest of his teens downstate in the Vienna Correctional Center. In 2011, Robinson says, he spent another several months in prison after being caught with a small amount of marijuana.

But upon his release later that year, Robinson says he was striving toward a different path. He'd taken two courses in music management at Columbia that spring, and he hoped to return. His dream, he said, was to cultivate the talent of musicians he knew across the south side. His girlfriend was seven months pregnant with a second child, and the future seemed to hold promise.

The arrest at the house in Washington Park marked a sudden end to Robinson's hopes. He feared his past convictions would cast him in a suspicious light in front of a judge and jury.

"My case was basically my word against the police's word," he says. "So by my being a convicted felon, my credibility was already shot."

In the early hours of the morning, Robinson recalls, he was transferred from the police precinct to the Cook County Jail, a 96-acre complex of bleak concrete cell blocks stretching along California Avenue on the southwest side.

Although no court documents indicate that the state had any physical evidence linking Robinson to the gun, a judge denied his request for electronic monitoring and set his bond at $7,500 – the amount he'd

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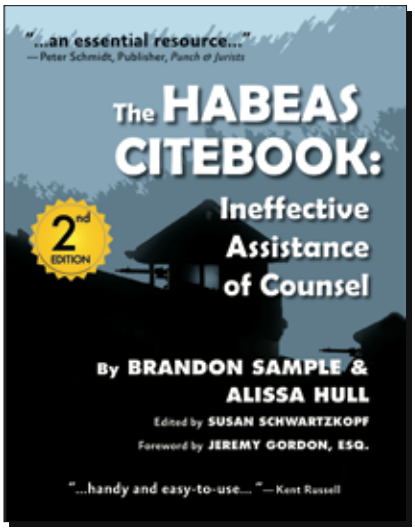

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Cook County Prisoners Wait (cont.)

have to pay in order to be released from jail and resume work and school as he awaited trial. It was a sum neither Robinson nor his family had at their disposal. Robinson's family set out on the first of numerous failed attempts to raise the money while Robinson stayed in jail waiting for his case to be resolved.

As Robinson reacclimated to life behind bars, he noticed something that dismayed him: a few of the prisoners he'd met during his first spate in jail as a teenager were still there now, awaiting trial.

"There were guys there still fighting their cases from when I first came to the county in 2007," Robinson said. "These guys were in there for six, seven years."

He didn't yet know it, but Robinson was about to join their ranks. Although formally innocent in the eyes of the law, he would spend 1,507 days in jail – more than four years – awaiting trial for the weapon-possession charges.

The Sixth Amendment of the Constitution grants anyone accused of a crime the right to a speedy trial. But a 2014 *New Yorker* profile of Kalief Browder, who was incarcerated as a teenager in New York's Rikers Island jail and held for three years awaiting trial, catapulted the issue of pretrial detention into the national spotlight and demonstrated that this constitutional mandate isn't always enough. In June 2015, two years after his release, Browder committed suicide at age 22. In April of that year, the *New York Times* reported that Browder's case wasn't an isolated occurrence. Of the approximately 10,000 prisoners at Rikers at that time, more than 400 people had been awaiting trial for at least two years.

Now, a joint investigation by the *Chicago Reader* and the Investigative Fund at the Nation Institute has found that although Cook County Jail has fewer prisoners than Rikers did then – roughly 8,000 – it holds more than double the number of prisoners awaiting trial for multiple years. More than 1,000 Cook County prisoners have been awaiting trial for more than two years, according to the Cook County sheriff's department. In some extreme cases, some have been held without trial for more than eight years. Minorities account for 93 percent of these long-waiting prisoners, an even higher percentage than the jail's overall population. Only 11.5 percent of Cook County prisoners are white, as are a mere 7 percent of its long-term pretrial detainees. (The racial breakdown of the jail's population is already strikingly disproportionate to the county's population as a whole, which is 42.6 percent white.)

Most prisoners awaiting trial for multiple years in Cook County face charges for violent crimes such as murder, rape or assault. But, according to the sheriff's department, nearly half of them have been held not because they've been deemed too dangerous for release, but simply because they couldn't post bond. (The problem of pretrial prisoners being held because they can't afford even small bond amounts is so widespread that Cook County sheriff Tom Dart has proposed abolishing the state's cash bond system altogether.) According to a recent report from the Chicago-based journalism nonprofit Injustice Watch, less than 3 percent of the jail's population is serving a post-conviction sentence; the rest are still awaiting trial or sentencing.

But poverty isn't the only cause of prolonged pretrial detention, our investigation finds. Dozens of attorneys, court administrators and prisoners interviewed for this story – plus a highly critical report from the Department of Justice – paint a picture of a court system plagued by unnecessary delays. Court systems around the country are crippled by overwhelmed public defenders and overscheduled courtrooms, but Cook County defendants also face judges and police commanders who fail to ensure that officers appear in court when needed and a state crime lab so overburdened it can take up to a year to turn around basic DNA samples.

Perhaps most troubling, some defense attorneys who choose to invoke Illinois' speedy trial law – which requires the state to seat a jury within 120 days for defendants in custody – claim to have faced prosecutorial or judicial retaliation.

The Cook County state's attorney's office, which oversees more than 1,500 prosecutors and administrative employees, declined to be interviewed for this story and didn't respond to a list of questions. In a statement, the office of Cook County circuit court chief judge Timothy Evans said that a complicated host of factors contributes to trial delays and that the office had launched a series of initiatives to study the problem

Cook County Prisoners Wait (cont.)

and implement best practices.

Attorneys agree that complex criminal cases may legitimately take a lot of time – sometimes years – to adjudicate.

Nevertheless, the consequences for defendants of such lengthy trial delays are severe, and raise troubling questions about the unequal application of justice in Cook County. Extended trial delays deprive defendants of their liberty for months or years as they await trial, causing them to lose jobs, incur debt, fall behind on schooling and endure separation from loved ones.

Perhaps more disturbingly, numerous studies have shown that lengthy trial delays mean defendants are more likely to plead guilty and less likely to be acquitted at trial as compared with those able to bond out of jail. More than one former Cook County prisoner said that after being held under pretrial detention for years, they'd concluded that their only way out of jail was to plead guilty for crimes they maintain they didn't commit.

"Defendants are much more likely to take pleas just because they want to get out of jail," says Max Suchan, a private defense attorney and a founder of the Chicago Community Bond Fund.

"That," he says, "happens in Cook County every day."

Although formally innocent in the eyes of the law, Jermaine Robinson spent more than four years awaiting trial on weapon-possession charges.

Believing the state had no substantial evidence against him, Robinson hoped that his case would be tossed out quickly – perhaps in time for him to return to his studies at Columbia that fall. But as registration came and went, Robinson remained in jail, struggling to get his defense off the ground. His family hired a private attorney, then began falling behind on payments; this set off several months of uncertainty about who exactly would represent him, according to the Cook County public defender's office, which took up Robinson's case in early 2013.

Roughly once every month or two, guards would wake Robinson up at 4:30 AM, put him in shackles and lead him onto a bus whose windows were mostly covered by steel plates. As the sun began to rise, he would arrive at the courthouse in west-suburban Bridgeview, where he says he would wait with dozens of other prisoners in a cramped basement holding area. As noon approached, Robinson would be called to appear before a judge. Each time, the hearing would last for only a minute or two, Robinson recalls, before the judge would decide, for an array of reasons, that his case wasn't ready to move forward.

"Then it would be another continuance," Robinson says – and another month or two in jail.

As he faced continuance after continuance, Robinson tried to readjust to life inside the jail. His cell was infested with spiders and cockroaches, he says, that crawled on him at night and made it difficult for him to sleep. Yet jail's greatest indignities, Robinson says, came from people. To Robinson, the jail felt like a concentrated version of the rivalries and violence of Chicago's streets.

"They take those old-fashioned shampoo spray bottles and make a concoction with their feces, urine and all kinds of other stuff, and spray it on people or throw it on people," he says of his fellow prisoners. "I

guess it's the next best weapon to a gun in Cook County Jail. They do it to disrespect people; it makes you feel real low."

When he was drawn into tussles, guards would send him into "the hole" – solitary confinement – for weeks at a time, Robinson recalls. There, he was alone, with nothing to distract him from the incessant screams and moans of prisoners in neighboring isolation cells. (According to the Cook County sheriff's office, typically 25 to 30 percent of Cook County Jail prisoners suffer from mental illness.) Periodically, his neighboring prisoners would cover their cells with their own feces, filling the block with a smell so intense that it would make the guards vomit. Once, Robinson says, he saw a shackled prisoner attempt suicide by throwing himself over a stairwell banister.

As Robinson's case meandered through the court system, weeks turned into months, and then a whole year passed, yet he wasn't any closer to trial.

When I reached out to Robinson's family in January 2016, he had been awaiting trial for nearly four years. His great-grandmother had passed away in 2008, leaving his mother, Lasheena Weekly, to battle her son's prolonged trial delays. Robinson had spent four months in jail as his public defender fought to obtain personnel records on his arresting officer, Anthony Bruno, records that his judge then took months to review. Before that, Robinson had waited five months just for the court to hear, and reject, a motion to reduce his bond.

Although she believed that the facts of the case were going Robinson's way, Weekly faced a problem that has particularly vexed many Cook County defendants: although under subpoena to testify at a hearing on a pretrial motion to quash the arrest, Bruno had repeatedly missed court dates, causing months more delays.

In December 2015, Robinson's public defender, Rosemary Costin, issued a subpoena warning Bruno that his failure to appear at the next hearing, scheduled two months from then, would result in him being held in contempt of court. Still, when that court date arrived, Bruno was nowhere to be seen.

Robinson's judge, Thomas Davy, set a new court date six weeks later, to try again. Costin issued another subpoena for Bruno to appear. When that date in late March 2016 arrived, Bruno was in court, according to records – but in a different courtroom, apparently on a different case. This time, one of Robinson's witnesses also failed to appear; she had forgotten the court date altogether. Costin issued another subpoena for Bruno to appear. At the following hearing almost two months later, Bruno was again absent. Costin issued yet another subpoena. Five weeks later, Bruno again failed to appear.

"It's been prolonging and prolonging and prolonging," Weekly said. "They want to get [Robinson] tired of being in that awful place and get him to admit to something that he did not do."

Robinson marveled at how the state handled Bruno's absences.

"Had it been the other way around, and I'd been subpoenaed to court and didn't show up," Robinson told me, "there would be a warrant out for my arrest."

In 2005, the U.S. Department of Justice, with American University, released a study into how the Cook County Criminal Court manages felony cases. Primarily seeking to understand the relationship between lapses in courtroom efficiency

and overcrowding in the jail, the report found that the court system suffered from "a 'legal culture' that facilitates unnecessary delay in case processing." A major driver of this, according to the study, was startlingly simple: as in Robinson's case, police officers were continually failing to show up for court hearings that hinged on their presence as witnesses.

Police absenteeism not only runs afoul of state laws meant to ensure that witnesses appear in court; it also violates the Chicago Police Department's own rules of conduct, which specifically prohibit officers from failing to report promptly when called to court. Yet the study noted that police absenteeism "does not appear to generate any sanctioning" of the officers themselves. Daniel Coyne, a defense attorney and clinical law professor at Chicago-Kent College of Law at the Illinois Institute of Technology, confirmed the DOJ findings on no-show officers in a 2007 paper.

More than a decade after the DOJ study was published, little appears to have improved in Cook County when it comes to reliably getting officers to show up to testify. Officers failing to appear in court continues to be a stubborn contributor to pretrial delay.

"I haven't seen any change in this problem," says Coyne, who mainly represents defendants facing serious felony charges. "It really hasn't been getting much better."

Defense attorneys and court administrators echoed Coyne's concern over police witnesses failing to appear.

"Lately, it's worse than it's ever been," adds Bill Murphy, a private defense attorney who's been practicing in Chicago for nearly 50 years.

In fact, the backlogged dockets of Cook County's overburdened courtrooms mean that, when an officer fails to appear at a hearing, it can take months to try again.

"It's rarely like, 'OK, let's meet next week,'" says Michael Bianucci, a private defense attorney who has worked in Cook County's criminal courts for 26 years. "No, you're often talking three months later. If that happens a couple of times, nine months is gone. It's unbelievable."

"These are not witnesses like other witnesses," says Keith Ahmad, a top supervisor in the Cook County public defender's office. The court is "very reluctant" to issue warrants for police witnesses who repeatedly fail to come to court, Ahmad says – warrants that would often be standard issue for other witnesses who fail to appear. "I've never seen a warrant issued for a police officer."

In interviews, several other long-serving pretrial prisoners and their families cited police truancy as a factor in prolonged jail stays. Some also said it had contributed to a feeling of pressure to give up on getting their day in court and simply enter a guilty plea in order to return home from jail.

Falandis Brown, a former security guard, spent 16 months in Cook County jail awaiting trial on a burglary charge, accused of taking a GPS device from a Ford Explorer parked along the Midway Plaisance near the University of Chicago campus. Brown says that the failure of a police officer to appear at his trial was part of why he pleaded guilty in January 2016, despite privately maintaining his innocence, in order to free himself from jail. In exchange for his plea, prosecutors allowed Brown's 488 days of pretrial detention to count toward his sentence, which would also include several weeks in state prison. (The CPD declined to comment on Brown's case, and a spokesperson for the University of Chicago Police Department, which assisted Brown's arresting officers, said that its officers appeared at all of Brown's court dates.)

"They told me the police weren't there, and they weren't ready for trial, and I was looking at, I think, a 94-day continuance," Brown says. "I couldn't sit any longer, man. I just took the plea."

Twenty-nine-year-old Chante Johnson has been awaiting trial for more than five years – 2,040 days as of press time [in November 2016] – facing charges in connection with the armed robbery of a liquor store in the suburb of Blue Island. His family cites no-show police as one of many factors delaying his trial; court records document multiple notations of "witness ordered to appear," though they don't specify which witness.

"What about Chante's right to a speedy trial, what about the prosecutor proving and presenting a case without all these holes in it?" his grandmother, Gloria Johnson, asked in a 2015 letter to chief judge Timothy Evans. "They have taken four and a half

years of his life away, and it's like nothing to them."

Meanwhile, in late July 2016, Bruno finally appeared in court in Robinson's case.

Robinson says that, under questioning from lawyers, Bruno provided answers regarding Robinson's arrest that left Judge Davy visibly unsatisfied. After Bruno's testimony, Davy granted Robinson's motion to quash arrest, meaning the police had no grounds to take him into custody in the first place. Two weeks later, the state dropped all charges against Robinson. After being held in jail for more than 1,500 days, Robinson was free to leave.

The *Reader* attempted to contact Bruno for comment, both directly and through the Fraternal Order of Police Lodge 7, the police union. Bruno didn't respond, and the FOP said it was unable to reach him.

CPD also declined to make Bruno available, but provided a statement to the *Reader* about the larger issue of police absenteeism. Between January 2010 and August 2, 2016, CPD recorded 11,698 instances of officers failing to appear in court, according to department spokesman Sergeant Michael J. Malinowski, although the department doesn't distinguish in its record keeping between instances when the officer has permission to be absent and instances where he or she does not.

"Whether it be an excused absence, their presence was required in another courtroom at that time, maybe the officer wasn't notified etc. There are a number of reasons" why an officer might legitimately miss a court date, Malinowski said in a statement.

Still, Malinowski says, the department "takes court absentees very seriously," and investigates each instance.

But when asked what portion of these absences had been investigated and found to be impermissible, and what the consequences were for officers found in violation of the department's court policy, Malinowski declined to comment.

Minorities make up 57.4% of Cook County's population but account for 93% of prisoners waiting more than two years in Cook County Jail.

In extreme cases, defendants have spent years in pretrial detention waiting for their arresting officer to appear in court. This was the case for 56-year-old Kermit Leaks, who on April 20, 2012, was arrested in North Lawndale for having allegedly stolen two semiautomatic rifles the previous day. The rifles and other gear, it turned out, had belonged to then-CPD SWAT team member Johnny Quinones, who says he'd left them in the car. In Leaks' arrest report, police allege that they found Leaks and his codefendant, Michael Calvin, in possession of the stolen guns.

By the time Leaks had spent six months in jail, he was already fed up and filed a complaint with the state. In the letter, Leaks argued that his prolonged pretrial detention appeared to be a tactic on the part of the prosecution that his public defender was doing little to oppose.

"It's only [an] effort to drag their case out in hopes of getting a plea," Leaks wrote. "My due process is being violated."

But for Leaks, who was never able to afford his $30,000 bond, this was only the beginning.

After more than three and a half years awaiting trial, Leaks sent me a letter. Over the past two years, one obstacle had prevented him from getting his case to trial, he says: Leaks' arresting officers repeatedly

failed to appear at more than a dozen of his pretrial hearings, setting off a seemingly endless cycle of continuances. Court records document 15 continuances after unnamed witnesses failed to appear. (More than a dozen officers are listed on Leaks' arrest report, but because there are no subpoenas in Leaks' available court records and the Cook County state's attorney's office declined to comment, the *Reader* was unable to determine which officer or officers had failed to appear in court.)

In November, in a letter to the public defender's office, Leaks again pleaded for help. His court-appointed attorney seemed unable to get his case moving, he said.

"Could you please! have a talk with my public defender about assigning her some help?" Leaks implored the state.

Over the span of his lengthy pretrial incarceration, Leaks' life had changed significantly. He had been beaten by jail guards and forced to sleep on a filth-covered cell floor for weeks at a time, he alleged in a federal complaint. And he had been diagnosed with leukemia.

He was on the brink, he wrote me, of admitting guilt to a crime he still insists he didn't commit – known among prisoners as "copping out" – in order to free himself from jail.

"I wake up every day wanting to [plea]," Leaks wrote, "but my first mind tells me don't cop out for something you know you didn't do."

An attorney in the Cook County public defender's office, who agreed to speak on condition of anonymity because he feared that speaking on the record could cause judges to disfavor his cases, said that Leaks' "storied past" – a criminal record that included convictions for drug charges and manslaughter – would pose a tough hurdle at trial for a defendant many jurors would assume was guilty. The attorney confirmed that there had been an unusually long wait for Leaks' police officer to appear in court.

"We're trying to get him in," the attorney said. "He isn't coming to court, and that delays the case, but it's not sufficient to dismiss the case."

"When you can't get an officer to come to court, you have to keep trying," he added. "Nobody is issuing bench warrants for cops who don't show up."

Starting on February 11, 2014, Leaks' case entered a spiral of repetition. That date marked the beginning of hearing after hearing recorded in Cook County courtroom logs with the bare notation: "Witnesses ordered to appear," indicating that a hearing has been postponed while a no-show witness is subpoenaed.

On January 26, 2016, after two years of these circular court appearances, I sat in Judge Kevin Sheehan's courtroom to watch one of Leaks' hearings. It turned out to be typical. Leaks entered in shackles, and less than a minute later – after an inaudible exchange took place between Sheehan, Leaks' defense attorney, and the prosecutor – Leaks was led back to jail without having said a word. In courtroom logs, the hearing is recorded as yet another "witnesses ordered to appear." Sheehan set Leaks' next court date for eight weeks hence, in the spring.

That June, after Leaks' arresting officers finally came to court, the state offered Leaks a deal: If he would plead guilty to the state's charges, the years he'd served in jail would account for his entire sentence, and he could walk free. So, on June 23, after more than four years of resisting, Leaks entered a guilty plea. (His codefendant, Michael Calvin, with whom Leaks was arrested in 2012, is still incarcerated in Cook County Jail awaiting trial.)

The *Reader* attempted to contact all of Leaks' arresting officers for comment, both directly and through the FOP. They didn't respond to our requests.

Upon his release in late June 2016, Leaks moved in with a lifelong friend, Ray Yarbrough, who says he attended dozens of Leaks' hearings. They had another friend who owned a trucking company across town, and Yarbrough and Leaks talked about going to school together to get truck-driving certification to take advantage of the company's available jobs.

But life on the outside proved difficult for Leaks. The jail had sent him home with only a week's worth of medicine for his leukemia, Yarbrough recalls, and, after this ran out, Leaks struggled to obtain refills on his own. As his days without medication ticked by, Leaks began complaining of pain throughout his body.

Just over a week after Leaks was released, he was found dead at a friend's house in North Lawndale. According to county records, Leaks had overdosed on a mixture of heroin, cocaine and fentanyl.

"He was in a tremendous amount of pain," Yarbrough said. "I think that led him to go get the drugs."

Although the failure of police to appear

in court was central to Leaks' frustrations, for many defendants, it's just one of an array of factors that drag their cases on for years.

Several attorneys cited the Illinois State Police's overburdened crime lab as another routine contributor to unnecessary delays. The problem is so bad that a March 2016 investigation by the *Chicago Sun-Times* revealed a backlog of nearly 3,100 cases with biological evidence – such as hair, blood or semen – that were either untested or in the process of being tested more than 30 days after they had been submitted to the lab, up from just 130 in 2009.

The state often takes months to turn around DNA evidence for serious cases involving murder and rape, says Eric Bell, a criminal defense attorney who has practiced in Cook County for nearly 20 years. "It can take more than a year."

In an e-mail to the *Reader*, the Illinois State Police defended its handling of the backlog, asserting that a state law passed in 2010 mandating the testing of rape kits from old investigations had contributed to significant delays. As those kits have been cleared, the ISP is working, according to agency spokesperson Sergeant Matt Boerwinkle, to reduce its current backlog.

"The total ISP Lab backlog statistics have decreased each year for the last five years," Boerwinkle said, citing a drop from more than 17,000 total backlogged cases pending in 2012 – including not only biological evidence, but evidence related to drugs, guns, prints, tracks and other matters – to 12,568 at the end of 2015. (The *Sun-Times* found that the subset of cases with biological evidence waiting more than 30 days had actually risen by 19 percent from 2015 to 2016.)

Still, state crime lab backlogs have remained severe enough that some Illinois cities have recently delegated funding to outsource their evidence testing to private firms rather than wait hundreds of days for results from the state.

Daniel Coyne, the clinical professor and defense attorney, says he recently represented a man who had been held for five and a half years awaiting trial for murder. (Through Coyne, the client declined to comment, and Coyne declined to share his client's name or records, saying he wanted to protect him from reputational harm.) Coyne says in that case, it took the state lab more than 11 months to conduct DNA tests and produce reports.

At trial in December 2015, Coyne's client was finally acquitted, he says. However, "he lost five and a half years of his life waiting to go to trial."

Several defense attorneys also argue that the state drags its heels during the discovery process, during which time the defense's hands are tied. Going to trial without the ability to review the state's full set of evidence would imperil any defendant. Sometimes prosecutors take more than a year to complete discovery, even for defendants awaiting trial in jail, according to several attorneys.

"After a number of years of practicing in Chicago, I thought that was the norm," says defense attorney Rodney Carr, "until I started going to seminars in California or other jurisdictions and hearing how quickly things are wrapped up, go to trial and discovery is tendered."

In October 2013, Timothy Hooper, now 64, was arrested in his car and charged with more than 100 counts of identity theft: police alleged that he'd been making fake IDs. Hooper claimed that he was innocent

of all charges but, unable to afford his $50,000 bond (later reduced to $25,000), he was booked into the Cook County Jail.

Hooper has an extensive criminal record dating back to the early 70s, including, most recently, a 2010 fraud case in Michigan. He's also an army veteran who suffers from degenerative arthritis, and his arrest came after his wife, Darryl, had undergone a double mastectomy for breast cancer – a time when Hooper said they had come to rely heavily on each other. At first, Hooper says, he believed there had been some mistake, and hoped to be out of jail within days. But weeks turned into months as Hooper waited for the state to turn over any evidence against him to his public defender.

Every so often, Hooper and his lawyer would meet, but instead of discussing his defense, Hooper claims she would encourage him to accept the prosecution's offer and plead guilty to all 105 felony charges in exchange for a reduced sentence, which he recalls was more than ten years. Insisting on his innocence, Hooper refused.

"I'm 64 years old," he said. "That's like a bullet in the head."

A year passed as Hooper waited in jail. Hearing after hearing ended in continuances as the prosecutor repeated that the state needed more time to gather and process evidence, Hooper says. Court records show that Hooper made two motions for discovery.

"The judge told me to not fight the case without having all of my discovery," Hooper recalls. "So I said, 'Your honor, it's been two years – I'm ready for trial, but the state keeps saying they're still getting stuff together. Don't they have a time period they have to meet? Or can they just go on?' It didn't make sense to me. I was saying, 'I only have so much time, why don't they only have so much time?'"

The chief judge's office declined to make the judge in Hooper's case available for comment.

Court records show that, in December 2013, Hooper fired his public defender and began representing himself. (In a statement, the Cook County public defender's office said it was unlikely that Hooper's attorney would've encouraged him to plead to all 105 charges.)

Then, in May 2015, after Hooper had spent 18 months in jail, the state's case began to falter. Hooper still doesn't know what exactly changed, but suddenly, in the middle of that month, prosecutors dropped 104 of the 105 charges against him, according to court records. With his wife struggling at home, Hooper says he felt he had no choice but to plead guilty to his final charge – an admission he claims was false – in order to return home to help her. In December 2015, after serving seven months in the Centralia Correctional Center, he arrived home.

Such delays are not always the fault of the state, some attorneys argue. As cases stretch on, defendants sometimes run out of money to pay a private attorney, necessitating a potentially time-consuming switch to a court-appointed attorney, as happened with Robinson. Although there has been little documentation of this in Cook County, intentional delays by defense attorneys have been detailed on the part of certain defense attorneys in Bronx criminal courts. In fact, defense attorneys may benefit from delays, since "state witnesses can disappear, die, or their memories can fade," says Darren O'Brien, a former prosecutor who spent 30 years in the Cook County state's attorney's office.

But O'Brien, now a private defense attorney, insists that defendants frustrated by long waits in jail can request a trial using the state's speedy trial law.

"The fact is that the defendant holds the key to how long he stays locked up," he says. "Because if he says those words, then 100 percent of the time the case will go to trial or be dismissed."

Numerous other defense attorneys interviewed for this story, however, say that it's almost impossible for the defense to demand trial without jeopardizing a client's interests. Once the defense has demanded trial, judges may not allow defense attorneys to pursue the pretrial motions that are often essential to get a defendant's case dismissed, to get the charges reduced or to properly prepare for trial.

And even if defendants do get to a point where they are ready to demand a speedy trial, they can potentially expect blowback from the prosecution or judges, according to several defense attorneys who practice in Cook County.

"Demanding trial is like calling the state's attorney's mother a bad name," says the public defender who requested anonymity. "Prosecutors take it very personally when you demand trial." A trial demand means that an already busy prosecutor must put everything else aside and focus on preparing for trial, he explained, or else face potentially serious repercussions for exceeding the term.

"It's considered the nuclear option," Coyne says. "In my 32 years of practice, I can count on two hands the number of

times I've demanded."

One of the stipulations in Illinois' speedy trial law is that, once a defendant begins the 120-day clock on a trial demand, the defendant and his or her attorney must appear in court for all scheduled appearances; if a defense attorney misses a single court date, the speedy trial clock can stop. To prevent these constitutional demands from advancing, several public defenders and private defense attorneys allege, some prosecutors will purposely schedule a trial on a date when they happen to know that the defense team has an irreconcilable conflict.

Even a former prosecutor acknowledges that this happens. "I have heard of that and I always thought that was a rotten thing to do," O'Brien says. "I've heard guys saying they've done it or are going to do it. I've never seen it done, and I've never done it."

In rarer instances, some Cook County judges have reacted to defendants' use of the speedy trial law with hostility, according to several public defenders. They say that these judges have sometimes required a prisoner who makes such a demand to return to court with his or her attorney every single day, first thing in the morning, for the entire 120-day duration of the demand. This forces a prisoner to be dragged out of bed at 4:30 AM daily to go wait in the courthouse's underground holding pen for hours to appear at one useless hearing after another. For public defenders, with their packed schedules, such a time commitment is simply untenable.

It's meant to "punish the inmate in order to dissuade them from demanding or to make them back off the demand," according to Carr, the Cook County public defender. "I have seen that happen."

"The speedy trial is more of a fiction than anything," said Murphy, the private defense attorney, who says prosecutors' moves to thwart a trial demand are inevitable. "It just can't be done."

Leaning into a small conference table in his fifth floor corner office – with its floor-to-ceiling tinted windows overlooking a lunar expanse of cell blocks – Peter Coolsen, the administrator of the criminal division of Cook County's court system, cautioned against oversimplifying the issue of trial delay.

"It's not any one thing," Coolsen said of the problem's causes. "It's the whole combination of factors working together."

Coolsen's job is to help the division's presiding judge, LeRoy Martin, come up with ways to efficiently move thousands of cases through the court system each year. Coolsen says the issues that lead to trial delays – including the changing of defense attorneys and prosecutors on a case, the backlogged state crime lab and no-show police officers – have been the subject of much discussion within the court system. (The chief judge's office didn't respond to a request for an interview with Martin.)

"I've been absolutely preoccupied with this for the past few years," Coolsen says.

"The culture of the judiciary is really important," he adds. "Everyone has to feel a sense of urgency."

The Chicago Community Bond Fund's Suchan, who's studied the court system extensively, agrees with Coolsen but singles out judges as the players with the most power to effect the necessary reforms.

"The chief judge and the presiding judge of the criminal division – both of those judges have the ability to push back on this culture of disregarding the urgency of how long cases take," Suchan says.

He also emphasizes that judges have a disproportionate influence over the pace at which a case moves through the system. "The judges set the schedules for the courtroom," he says. "They can say: this is when something must happen."

In charge of a judicial bench that oversees more than a million pending criminal and civil cases on any given day, the job of Cook County's chief judge, Timothy Evans, certainly has its challenges, and Evans' tenure has not been an easy one. In September 2016, after a judicial misconduct scandal and a critical assessment from the state supreme court on the county's criminal case management, Evans narrowly prevailed in a judicial election that the *Chicago Tribune* characterized as unusually acrimonious, fueled by widespread discontent with Evans' leadership.

A 2010 study on pretrial delay in Cook County published by the Chicago Appleseed Fund for Justice, a court-reform advocacy organization, found that "no internal policy enforces the use of" informal standards created by the chief judge's office on how quickly various types of cases should be resolved. In its recommendations, the report focused on the role of judges. In particular, the study suggested that judges receive mandatory training and mentorship to become better at moving cases with appropriate speed.

In a statement to the *Reader*, Evans' office emphasized the shared responsibility between all parts of the court.

"In order for case delays to be reduced in this complex, interdisciplinary criminal justice system, it would take more than the judges of the Circuit Court of Cook

County to effect significant changes," said spokesman Pat Milhizer. "All stakeholders in the system would need to examine their internal processes as they relate to case-flow management."

Milhizer also touted several initiatives intended to speed up cases, including efforts to reduce time from arrest to arraignment and the streamlining of aspects of bond court, as well as recent grants the court has received to study and improve its case management.

Citing the results of a 2013 review initiated by the chief judge, Milhizer indicated that CPD has itself acknowledged, and is taking steps to solve, its contribution to case delays.

"The Chicago Police Department is addressing issues that can cause delays," Milhizer said, "such as the time needed for producing 911 tapes and video, prompt notice to the court by officers who are witnesses of schedule conflicts with dates for testimony, assuring officers bring required evidence to court, and the time needed to produce final police reports."

Nicole Gonzalez Van Cleve, an assistant criminal justice professor at Temple University who has extensively studied the Cook County Court system, believes that the police department could do a better job enforcing its rules of conduct when it comes to court absences, a problem which she says prosecutors can find themselves helpless to address.

"This really impacts people's lives and liberty and one would think that such power would be concentrated in the hands of prosecutors," she said, "but what we see is that police officers wield a lot of power, and there's certainly not enough consequences coming from the police department itself when these types of violations occur."

Coolsen stopped short of criticizing the police department, but suggested that a more robust system of communication between prosecutors and police precincts about court dates could be a starting point in addressing police absenteeism.

Yet even if this solved the problem of police absences, it would constitute only a sliver of the reforms necessary to tackle pretrial delay in Cook County. Coolsen says the sprawling court system will need to adopt new, lasting attitudes and practices guided by the need to fulfill the constitutional imperative of a speedy trial. He also claims the court is already taking steps to tackle the problem.

In July 2015, the court received federal funding for a wide-ranging study of case-flow management in its criminal division. Part of this will include testing the efficacy of a judge giving an order at the outset of some cases, laying out how much time it should take to be resolved based on how complex a given case is, according to Coolsen.

"[T]he main emphasis is on the court building an expectation among the various players that cases will take as much time as they need for a fair and just resolution of a case, but not more," Coolsen said in an e-mail. "It is that 'culture of expectation' that we are trying to build in the Criminal Courthouse."

"We can certainly do better," Coolsen added. "But it's only going to happen if we get a regular, sustainable, and systemic approach where we're all sharing the same vision."

But while potential fixes to Cook County's court system crawl forward, they may not be fast enough for the hundreds of prisoners stuck in jail for years awaiting trial. In 2013, Robinson's younger sister died in a house fire. His inability to mourn with his family remains one of the worst traumas he says he suffered during his grim years awaiting trial.

After his release in August 2016, Robinson moved in with his girlfriend on a quiet block in South Chicago, just across the street from the grassy, overgrown expanse of the old U.S. Steel South Works plant. When I met Robinson at their home in September, he mentioned that one of the only places he'd ever been outside of Chicago was the downstate penitentiary where he spent the last two years of his teens. Now that he's free again, he hopes to eventually travel the country, perhaps to visit New York City and get his first glimpse of the Atlantic Ocean.

For now, however, Robinson's focus is getting back on his feet in Chicago. He says he plans to reenroll in college – at Columbia, he hopes. But his most immediate priority is earning a living: in recent weeks, Robinson has applied for a cashier job at a nearby Dunkin' Donuts and for several temporary positions at janitorial agencies. He's also been attempting to make up for lost time with his children, now four and five years old.

"I've been through a lot," Robinson says. "I'm just happy to be back here."

Marc Daalder, Maya Dukmasova, Jack Ladd, Jaime Longoria and Sharon Riley contributed reporting to this story.

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Stop Prison Profiteering: Seeking Debit Card Plaintiffs

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

Please contact Jeff McCabe at jmccabe@humanrightsdefensecenter.org, or call (206) 257-1355, or write to: HRDC, SPP Debit Cards, P.O. Box 1151, Lake Worth, FL 33460.

HRDC FUNDRAISER 2017

Please Help Support the Human Rights Defense Center!

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

HRDC conducts only 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 vital work, then please do so. Every dollar counts and is greatly appreciated and will be put to good use. No donation is too small, including books of stamps!

Where does your donation go? Here's some of what we accomplished last year:

- HRDC continued to pursue our Campaign for Prison Phone Justice to reduce the cost of prison and jail phone calls, despite setbacks with the FCC and the DC Circuit Court; we also continued to manage our Stop Prison Profiteering project to stop financial exploitation of prisoners and their families, and expanded our Prison Ecology Project.
- HRDC filed censorship lawsuits against private prison company MTC and the Cook County Jail in Chicago. We also filed a wrongful conviction case in Illinois on behalf of a prisoner who spent a decade in prison before his conviction was overturned, and filed a public records lawsuit against Corizon. We settled censorship suits against jails in Oklahoma, California, Tennessee and Illinois, and against the Nevada Department of Corrections.
- HRDC published the second edition of the *Habeas Citebook: Ineffective Assistance of Counsel*.

With your help we can do much more! Please send your donation to:

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Or call HRDC's office at 561-360-2523 and use your credit card to donate.
Or visit our website at www.prisonlegalnews.org and click on the "Donate" link.

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

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

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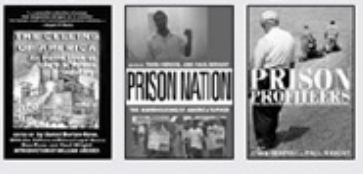
As a thank you gift for your support, we are providing the entire PLN anthology of critically acclaimed books on mass imprisonment signed by editor Paul Wright! (The Celling of Amercia, Prison Nation and Prison Profiteers) plus the PLN hemp tote bag to carry the books in when making a donation of $250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



From the Editor

by Paul Wright

Over the past 27 years we have reported extensively on abuses in local criminal justice systems in the United States, including jails, to the point that they are more ongoing sagas of abuse and corruption that we update with the latest developments. This month's cover story on the justice system in Cook County, Illinois is no different. *Prison Legal News* and the Human Rights Defense Center are also suing the Cook County jail for its ban on books and magazines; it should come as no surprise that facilities which routinely violate the 8th and 14th Amendments also have little regard for the First Amendment right to free speech.

If you have experienced delays in your communications with HRDC/PLN in September, we apologize. Hurricane Irma swung by our main office in Lake Worth, Florida and paid us a visit. The good news is that all of our Florida staff are fine and our office was not physically damaged, though we were without electricity for several days and had no Internet or phone service for a week. The post office also was closed and did not deliver mail for almost a week. As this issue goes to press, our office is open again and we are getting caught up.

As mentioned in previous editorials, HRDC is planning to publish a new magazine, *Criminal Legal News*. We have hired a managing editor, Richard Resch, and are currently busy putting together the first issue. We expect the premiere issue to be published in November, and all *PLN* subscribers will receive a free sample copy. *CLN* will cover all aspects of litigation and news around police and prosecutors, including criminal case law, civil rights litigation, parole litigation, sentencing, the death penalty and more.

Initially we will be publishing a 40-page magazine, but expect the page count to grow as more advertisers join. *CLN* will be covering and reporting the front end of the criminal justice system with a focus on policing and prosecution, while *PLN* will continue to focus on conditions of confinement, litigation involving prisons and jails, consequences of incarceration, etc. Like most publishing projects, *CLN* initially will be a work in progress but we have a good idea of what information prisoners, criminal defense attorneys and activists need to better advocate against the police state.

By now *PLN* subscribers should have received our annual fundraiser, which includes our most recent annual report and some of the news coverage we have garnered over the past year. Publishing *PLN* is a small part of the work that HRDC carries out every day, every week, every month and every year on behalf of prisoners, their families and the victims of our dysfunctional criminal justice system. For almost three decades, every penny donated to HRDC has gone to improve and expand our operations and increase our capacity for effective advocacy. We receive virtually no funding from foundations; our operating budget comes from magazine subscriptions, advertising, litigation and individual donations from readers like you.

As far as bang for the buck, no other criminal justice organization gets as much done with as little as we do – there is a direct cause and effect between your financial support and what we are able to accomplish on behalf of prisoners. If you believe in the work that HRDC does, whether it's fighting for the free speech rights of prisoners and publishers, seeking transparency and accountability from the American police state, trying to stop the financial exploitation of prisoners and their families by prison telecom companies and their government collaborators, fighting the private prison industry and much more as detailed in our annual report, then please make a donation and encourage your friends, family and social network to do so as well.

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

Kansas Supreme Court: Four Years of Pretrial Detention too Long

In December 2016, the Kansas Supreme Court ordered the release of a man who had been held in jail more than four years awaiting trial under the Kansas Sexually Violent Predator Act (KSVPA). The state's high court held that the unusual length of pretrial detention was a deprivation of liberty requiring due process protections.

Todd Ellison, a convicted sex offender, was subjected to involuntary commitment proceedings under the KSVPA following completion of his prison sentence. To civilly commit him, the state was required to convince a jury that Ellison suffers from a mental abnormality or personality disorder which makes him likely to engage in acts of sexual violence.

If probable cause is found, a trial must be held within 60 days. However, state law allows for continuances at the request of either party for good cause or by the court on its own motion. The state of Kansas filed a KSVPA petition against Ellison on June 1, 2009, and probable cause was found 24 days later. Thereafter, the record reflects numerous continuances were requested and granted, though many were unclear as to which party had sought them.

In addition, three different judges were assigned to the case, and at one point three years into his pretrial detention, Ellison filed a habeas corpus petition along with several motions seeking his immediate release.

The state district court eventually heard Ellison's motion for release, at which time it tried to attribute to each party their portion of the delay in the case. In the end, however, the court found the state was ultimately responsible for bringing Ellison to trial and that the 1,705 days between the probable cause hearing and the scheduled trial date was "a presumptively prejudicial delay," as Ellison was confined with no chance for bail or other means of securing his release. The state moved to amend the order but the court denied the motion and directed that Ellison be freed.

The state appealed and, after the Court of Appeals reversed the district court, Ellison filed a petition for review. The Kansas Supreme Court overturned the appellate decision and ordered Ellison's release from custody.

"[A] person's due process rights can be violated by an excessive delay in making the required findings while a KSVPA respondent is confined awaiting" trial, the high court wrote. "When the state seeks to impose physical restraints of significant duration on a person it must afford him fair procedure to determine the basis and legality of such a deprivation."

The state Supreme Court analyzed the length of and reasons for the four years of Ellison's pretrial confinement, and held that the "delay in bringing his case to trial was so unreasonable that it violated his due process rights."

The Court concluded that while there was "no evidence of any improper motive lurking behind the State's role in the delay, ... the State had an obligation to bring Ellison's case to trial. It cannot fulfill that obligation by remaining passive year after year. The extraordinary length of the delay to provide Ellison with his day in court and the obvious prejudice he suffered being incarcerated during that time compels the result as the district court determined."

Accordingly, the judgment of the district court was affirmed and the case remanded for further proceedings to facilitate Ellison's release. See: *In re Care and Treatment of Ellison*, 305 Kan. 519, 385 P.3d 15 (Kan. 2016).

Former Mississippi DOC Commissioner, Co-defendants Sentenced in Massive Bribery Scheme

In January 2017, U.S. District Court Judge Henry T. Wingate sentenced Sam Waggoner, 62, to five years in prison for his role in a bribery scheme involving Mississippi's former corrections commissioner. The sentence also included two years of supervised release.

Waggoner admitted to giving then-Mississippi DOC Commissioner Christopher B. Epps a portion of the money he earned as a prison telephone contractor. Waggoner told federal agents that before their investigation started, he wrote to Epps saying he wanted to end the payments.

"I don't want the FBI knocking on my door in the middle of the night," Waggoner said in the letter.

But Epps ripped the letter into "teeny, tiny pieces," flushed it down a toilet and told him their arrangement would continue, Waggoner said. "He was basically my boss. He could hurt my business."

At the time, in addition to serving as Commissioner of the Mississippi DOC, Epps was president of both the American Correctional Association (ACA) and Association of State Correctional Administrators (ASCA). [See: *PLN*, July 2016, p.1]. In 2011, the ASCA honored Epps with an award for Outstanding Corrections Commissioner.

Judge Wingate saw Waggoner's attempt to end his involvement in the scheme as the result of a mix between remorse and fear of being investigated. The five-year sentence, recommended by prosecutors, was a compromise.

The FBI charged Waggoner with one count of bribery related to his payments and kickbacks to Epps from sometime in 2012 until at least August 2014. Waggoner worked as a consultant for Global Tel*Link, which provided phone services at Mississippi state prisons; he received 5 percent of the revenue generated from that contract as his fee. He acknowledged he "corruptly gave" kickbacks to Epps twice in 2014. [See: *PLN,* Oct. 2015, p.42].

Waggoner entered a guilty plea in August 2015 and agreed to forfeit $200,000.

In early February 2017, Judge Wingate handed down a 102-month sentence in the same bribery scheme to Cecil McCrory, a businessman who was a central figure in the Epps corruption case.

McCrory, 66, a former state legislator, and Epps were charged in November 2014 in a 49-count federal indictment that accused Epps of taking at least $1.4 million in bribes and kickbacks over eight years to steer more than $800 million worth of Mississippi prison contracts – mostly to companies owned or associated with McCrory, including American Transition Services.

McCrory's attorney, Carlos Tanner, said his client received about $3 million in commissions and other revenue from such contracts. The U.S. Attorney's office claimed he received about $4.6 million.

In sentencing McCrory in February 2017, Judge Wingate said the corruption case had tarnished the reputation of Mississippi and its penal system. McCrory, who had initially tried to withdraw his guilty plea, received 8½ years in prison and was ordered to pay a $150,000 fine (later reduced to $20,000) and forfeit $1.7 million. Wingate said he was sentencing McCrory to a light prison term due to his early cooperation with prosecutors, including meeting with them without an attorney for several months.

"I have extreme remorse," McCrory said. "I can't make this right, but whatever I can do to offset the wrong, I will do it."

He agreed to cooperate in cases pending against other defendants accused in the scandal, and depending on the value of that cooperation his sentence may be reduced.

In March 2017, Judge Wingate sentenced a third defendant in the Epps bribery case, former Mississippi legislator Irb Benjamin, to 70 months in prison plus a $100,000 fine and forfeiture of $261,000. As with McCrory, Benjamin's sentence could be reduced based on his future cooperation with federal officials.

"I'm so sorry that I destroyed all the history and character that my family stood for," Benjamin, 70, said when he was sentenced. "I have no one to blame but myself."

Benjamin, who represented Alcorn County as a state representative and senator, was ordered to report to federal prison in May 2017. He had pleaded guilty to one count of bribery and said Epps threatened to withhold state prisoners from regional jails that Benjamin helped develop in several counties unless he received bribes. Such a move could have made the jails money-losers.

"I should have just walked away," Benjamin said. "I was pressured."

Benjamin estimated he paid Epps between $180,000 and $225,000 in cash bribes to secure the MDOC Commissioner's support for the regional jails, as well as for drug and alcohol rehabilitation programs his company ran at work centers.

He added that Epps also threatened to withhold prisoners from Chickasaw County unless officials signed a prison phone contract with a business affiliated with Waggoner.

Attorney Joe Hollomon argued leniency was justified considering Benjamin's age, health problems and legislative achievements. More than 40 people submitted letters asking the court to show mercy.

"He has led a life of accomplishment and a life he can be proud of up until the time he met Chris Epps and this situation developed," Hollomon said.

Judge Wingate rejected that argument but sentenced Benjamin to the minimum prison term under federal sentencing guidelines.

In May 2017, another guilty plea was entered in the Epps scandal by a physician with contracts to treat state prisoners. Dr. Carl Reddix pleaded guilty to one count of bribery before U.S. District Judge Daniel Jordan, who has not yet imposed sentence.

Reddix, 58, remains free on $10,000 bail. He faces up to 10 years in prison and $250,000 in fines. Prosecutors also want him to forfeit assets. A July 2016 indictment accused Reddix of six counts of bribery and one count of conspiracy to commit honest services wire fraud.

Starting in 2012, Reddix allegedly paid Epps $2,000 a month for each state prison contract held by his company, Health Assurance. That amount was initially $6,000 a month, then increased to $8,000 a month in 2013 and peaked with a final $9,500 payment in October 2014.

Assistant U.S. Attorney Darren LaMarca said FBI agents watched or recorded at least six monthly meetings where Reddix passed cash to Epps. It's unclear how much Reddix paid, but it was more than $170,000.

Reddix's lawyers had suggested in court filings that Health Assurance won contracts honestly, without Epps' corrupt assistance, but that Reddix later fell prey to the Commissioner's avarice.

However, LaMarca said wiretapped conversations from 2014 recorded Epps telling Reddix he was steering contracts to Health Assurance. Further, Epps had called Reddix before a bid was due and encouraged him to pad the fee with money for Epps' bribe, and quoted Reddix as responding, "We always got you. You know that part ain't never an issue."

According to LaMarca, Epps called back after bids were collected to tell Reddix that Health Assurance was the low bidder, but that he would not have approved any company that outbid Reddix. Reddix reportedly admitted his misconduct when FBI agents confronted him in October 2014. There have also been questions about payments made by Health Assurance to counties in Mississippi and Alabama.

In April 2017, Alabama health care consultant Michael Goddard pleaded guilty to making a false statement to the FBI by lying about money he received from Health Assurance. Goddard falsely told agents that the funds weren't related to a contract to provide health care for prisoners in Jefferson County, Alabama. Goddard was sentenced on August 2, 2017 to two years of probation and a $1,000 fine.

In a related prosecution, Alabama busi-

nessman Robert Simmons was sentenced in April 2017 to more than seven months in prison after pleading guilty to passing bribes from Health Assurance to a Mississippi Gulf Coast official in exchange for a jail medical contract.

Simmons' indictment accused him of giving kickbacks on consulting fees – from companies doing business with the MDOC and Harrison County – to Epps and an unnamed Harrison County Supervisor.

Although unnamed, former Harrison County Supervisor William Martin was implicated in the case. He committed suicide in 2015, hours before he was due to appear in federal court to answer to bribery charges.

Reddix became the seventh person to plead guilty in the bribery scheme, after Epps, Waggoner, McCrory, Benjamin, Goddard and Simmons. Mark Longoria, the CEO of the Texas-based Drug Testing Corp., later entered an eighth guilty plea; he had paid almost $230,000 in bribes to McCrory in exchange for securing sales of drug testing supplies to the MDOC. McCrory kicked back $60,000 of the bribes to Epps. Longoria was sentenced in February 2017 to five years in prison, and ordered to forfeit $131,000 and pay $368,000 in restitution.

Finally, in May 2017, Judge Wingate sentenced former MDOC Commissioner Epps, who once called himself "the tallest hog at the trough," to 235 months – almost 20 years – in prison.

Rejecting prosecutors' recommendation for a 13-year sentence, Wingate said Epps' decision to break into his former house to retrieve outdoor lights in October 2016 – after Epps had pleaded guilty, resulting in an additional burglary charge – made him question whether the former MDOC Commissioner truly took responsibility for his crimes. Epps was also ordered to pay a $100,000 fine and forfeit over $1.7 million in assets. See: *United States v. Epps,* U.S.D.C. (S.D. Miss.), Case No. 3:14-cr-00111-HTW-FKB-1

"This is the largest graft operation that certainly I have seen, and I have seen a lot," said Wingate, who has served as a federal judge since 1985. "[Epps] has bruised tremendously the image of the state of Mississippi."

Governor Phil Bryant ordered all the contracts implicated in the criminal cases to be canceled and rebid; he also appointed a task force to review all other MDOC contracts "to ensure they were both legally procured and in the best interest of taxpayers."

Epps pleaded guilty in 2015 to charges of money laundering and filing false tax returns related to the bribes he extracted from contractors doing business with the state prison system. He had been jailed since his bail was revoked in November 2016 following the house break-in. In shackles and a jail jumpsuit at his sentencing hearing, the former MDOC Commissioner told Judge Wingate that he had been motivated by greed.

"I've made some stupid mistakes I will regret for the rest of my life," Epps said, reading from a statement.

The bribes allowed Epps, Mississippi's longest-serving corrections commissioner, to pay off the mortgage on his more than $300,000 house in a gated suburban subdivision, buy a beachfront condo on the Gulf Coast, acquire two Mercedes and accumulate hundreds of thousands of dollars in investments and cash – all of which was forfeited to the federal government as part of Epps' plea agreement. His wife, Catherlean Epps, who did not face criminal charges, was allowed to keep $200,000.

Evidence showed that Epps had accepted monthly cash payments, then tried to deposit cash in banks in amounts small enough to escape scrutiny. At one point, he even had McCrory take a bag containing $40,000 in dirty money, label it as proceeds from a tractor sale and wire it to Epps' investment account.

Unbeknownst to Epps, however, Leake County Sheriff Greg Waggoner had reported concerns about the MDOC Commissioner to investigators in 2009, after Epps allegedly tried to cover up a sex scandal involving a warden and a female prisoner at the Walnut Grove Transition Center. [See: *PLN,* July 2013, p.54; Aug. 2012, p.45].

By June 2014, when FBI agents asked Epps to come to their office on the pretext that someone had threatened his life, they had been collecting evidence for years – including tapping his phone. Once confronted, Epps agreed to help prosecutors, secretly recording conversations and enticing corrupt contractors to pay higher bribes.

FBI Agent Ty Breedlove told Judge Wingate that Epps was the best source he had had in 15 years as an agent.

Defense attorney John Colette denied that Epps had extorted bribes from contractors, despite testimony from the other defendants. Wingate questioned how much leniency he should show Epps for turning in others involved in the bribery scandal.

"You're asking he get credit for revealing the involvement of conspirators who he may have brought into the conspiracy," the judge said. "In this instance, we have an elaborate scheme which allowed your client to lead an extravagant lifestyle while

his criminal conduct made a mockery of his position as head of the Department of Corrections."

Two other co-defendants still face charges of bribing Epps: insurance broker Guy E. "Butch" Evans and Teresa Malone, the wife of former House Corrections Commission Chairman Bennett Malone and a consultant for AdminPros, LLC, a medical contractor. Teresa Malone entered a guilty plea in July 2017 and awaits sentencing. Discussions during Epps' sentencing indicated that investigations remain active against six or seven other people in Mississippi and Louisiana, including one who has already been indicted under seal.

On February 8, 2017, Mississippi Attorney General Jim Hood filed RICO lawsuits seeking damages against all of the defendants charged in connection with the Epps bribery scandal, as well as Michael Reddix and Andrew Jenkins, who were not indicted, and the following companies: Management & Training Corp. (MTC); The GEO Group, Inc.; Cornell Companies, Inc.; Wexford Health Sources, Inc.; The Bantry Group Corporation; AdminPros, LLC; CGL Facility Management, LLC; Mississippi Correctional Management, Inc.; Branan Medical Corp.; Drug Testing Corporation; Global Tel*Link Corporation; Health Assurance, LLC; Keefe Commissary Network, LLC; Sentinel Offender Services, LLC and AJA Management & Technical Services, Inc.

Hood claims in the civil actions that the companies violated Mississippi's public ethics, racketeering and antitrust laws, along with several other claims. In addition to compensatory and punitive damages he is seeking forfeiture of all funds the defendants received that were involved in the alleged conspiracies.

"The state of Mississippi has been defrauded through a pattern of bribery, kickbacks, misrepresentations, fraud, concealment, money laundering and other wrongful conduct," Hood stated. "These individuals and corporations that benefited by stealing from taxpayers must not only pay the state's losses, but state law requires that they must also forfeit and return the entire amount of the contracts paid by the state."

Two of the firms – MTC and The GEO Group – are among the largest private prison contractors in the country; both denied wrongdoing. Hood took note that only three of the companies named in the lawsuits are based in Mississippi.

"Out-of-state corporations were eager to take advantage of Mississippi taxpayers and secure MDOC contracts through bribery and fraud. It is critical for the state to use the remedies at its disposal to recover damages and get back the money exchanged in these schemes," he said. "I have a duty to protect the integrity of the public contracting process, as well as to vindicate the rights of the state when it is a victim of public corruption and other wrongful conduct."

In August 2017, Global Tel*Link, the largest prison phone provider in the nation, agreed to settle the RICO lawsuit for $2.5 million while admitting no wrongdoing. *PLN* will report the settlement in that case in greater detail in a future issue. Previously, in May 2017, Alere, Inc., which had purchased Branan Medical Corp., settled the suit filed by the Attorney General's office for $2 million.

Sources: *WJTV, The Clarion-Ledger, Meridian Star, www.msnewsnow.com, Associated Press, www.usnews.com*

Tattoo Recognition: Law Enforcement's Newest Identification Tool

by David M. Reutter

New technology is giving law enforcement agencies the ability to identify people by taking a photo of their tattoos; it can also group people with others who have the same type of body art.

Federal researchers at the National Institute of Standards and Technology (NIST) have launched a program to accelerate tattoo recognition technology. In 2014 and 2015, the Institute initiated its Tatt-C program, which stands for Tattoo Recognition Technology Challenge.

The project started with an FBI database containing 15,000 images of prisoner tattoos. The biometric database was shared by NIST with 19 participating organizations: five research institutions, six universities and eight private companies; the objective was to use their algorithms to create a database for law enforcement officials.

Five tests were involved in the Tatt-C project. The first was determining if an image contained a tattoo. With a reported 90% accuracy rate, it is evident that technology is already highly sophisticated. The highest result came from biometric technology company MorphoTrak.

Next, the participants were asked to match images of the same person's tattoo. Overall, they reported more than 95% accuracy. MorphoTrak reported an accuracy rate of 94.6%, while Purdue University reported 91.6%.

Another test required matching tattoos to a similar image in another medium; in other words, matching tattoos to street graffiti or a drawing. Here, the results were poor with the best reported accuracy coming from the MITRE Corporation, at 36.5%.

There was also a tattoo similarity test, which was the most controversial for its ability to group people according to their religion, politics or other affiliations based on their tattoos. In this test, the participants grouped people with tattoos of religious symbols such as crucifixes, praying hands holding a rosary or gang symbols. The results were very poor, with MITRE reporting the highest accuracy rate of 14.9%.

Tattoos have long been recorded by law enforcement officials during arrests or incarceration; for example, mug shots of arrestees' body art have been taken since the turn of the century. Typically, photographing tattoos resulted in investigators having to spend hours going through telephone book-size portfolios to find an image.

Tattoo recognition technology aims to achieve the same result as facial recognition. In fact, plans are in place to meld the two technologies – the FBI's Next Generation Identification System calls for an automatic retrieval system for scars, marks and tattoos.

The use of prisoners' tattoos in the Tatt-C project was highly controversial, as they were not freely given the ability to consent to the use of their personal identifying information. In several cases, the tattoos had names and birthdates, or were located in intimate places.

The Electronic Frontier Foundation (EFF), a civil rights advocacy group that broke this story, has called for an end to the use of prisoners' body art to create a tattoo-matching database. The EFF, which calls tattoos "unique biometric identifiers," noted that the NIST project has expanded to 100,000 images gathered by Florida's Pinellas County Sheriff's Office, the Michigan State Police and the Tennessee Department of Correction.

With increased tattoo recognition, people could be tracked or identified while walking down the street based solely on their body art.

Private company Face Forensics announced in January 2016 that its system can do just that – it can identify scars, marks and tattoos. Once a match is made, it then displays the face and name of the owner from a database. This is all done in a matter of seconds, allowing law enforcement officers to match a person to an image of their tattoo. Of course, as with any identification system, tattoo recognition is subject to errors.

According to a January 10, 2017 online news report, the National Institute of Standards and Technology stated, "The goal of the NIST project is to help ensure tattoo matching technologies are evaluated using sound science to improve accuracy and minimize mismatches."

For now the focus is on tattoos from arrestees and prisoners, but technological advances potentially allow authorities to include photos taken from surveillance videos. The technology is being touted as a

way to not only identify criminals, but also victims of crime or natural disasters. Yet tattoo identification has already been used for more questionable purposes.

California's prison system has long used prisoners' ink to classify them as gang members or associates and add them to gang databases. Tattoos have also been used by the U.S. State Department to deny visas to applicants because it was believed they had gang-related tattoos. And in one case in Tennessee, state prison officials mistakenly identified a prisoner's military patch tattoo as a gang symbol.

"The number of people getting tattoos is rapidly growing. About 20 percent of the population has at least one tattoo, and this percentage is even higher [among] delinquents," said Anil Jain, a Professor of Computer Science and Engineering at Michigan State University. "This system has huge implications for helping law enforcement with suspect and victim identification."

The larger issue, however, is the impact of tattoo recognition on civil rights by using people's body art to associate them with religious, political, criminal or other groups, and to create databases for use – or misuse – by law enforcement agencies.

Sources: *Electronic Frontier Foundation, www.sciencecodex.com, www.fusion.net, www.hdiac.org, www.constitutionproject.org, www.oneworldidentity.com*

Misdemeanor Trespassing Arrest Leads to Permanent Impairment

by Christopher Zoukis

In March 2015, 53-year-old Ralph Karl Ingrim suffered a seizure at a Dollar General store in Amarillo, Texas. A store clerk was kind enough to call the police to have him removed. When they arrived, Ingrim allegedly became argumentative, placed his hand on an officer's chest and was promptly arrested on a misdemeanor trespass charge.

When Ingrim's mother, Serena Kincanon, became aware of her son's arrest, she immediately traveled to the Randall County Jail and alerted guard Nick Wright of Ingrim's medication needs. While she provided a list of her son's necessary medications, Wright allegedly wadded up and threw away the notes. According to Kincanon, Wright told her the only recourse was to post Ingrim's bond.

Kincanon left to arrange for her son's release. But before she returned to the jail a few hours later, Ingrim had suffered a seizure in his cell. During the seizure he fell, fractured his skull and suffered a brain bleed. According to a lawsuit filed on Ingrim's behalf on March 24, 2017, the seizure and fall resulted in "permanent and extremely severe" impairments. After two years of therapy, Ingrim's reading ability didn't surpass the third-grade level; he was declared legally incompetent and Kincanon was named as his guardian.

The lawsuit alleged a "systemic failure" to provide adequate medical care at the jail, and cited two other incidents in which prisoners were denied anti-seizure medication and suffered injuries as a result. One of those prisoners, 52-year-old Wendell Carl Simmons, died in April 2015, ten months after he had a seizure, fell face-first onto a metal grate and experienced a subdural hemorrhage. Randall County settled a wrongful death suit brought by Simmons' family in February 2017, for $50,000.

The complaint filed by Ingrim's mother remains pending; the jail's for-profit medical contractor, Correct Care Solutions, LLC, is named as a defendant. See: *Kincanon v. Randall County,* U.S.D.C. (N.D. Tex.), Case No. 2:17-cv-00055-C.

Source: *www.amarillo.com*

Florida Lawmaker Visits Prisons, Audits Private Prison Contracts

by David M. Reutter

In prison after prison across the state, over a period of two years, Florida state Representative David Richardson found that toilet paper, toothbrushes, toothpaste, pillows, sheets, shirts and soap were often withheld from prisoners, especially those in solitary confinement. Further, food had been denied as a form of punishment and medical conditions went untreated.

Richardson, a retired forensic auditor, has used his legislative authority to enter state prisons unannounced to view conditions without the "dog and pony show" typically provided to official guests. He presented his findings to his colleagues in the state House in April 2017 and urged them to require more accountability over Florida's private prison contracts, offering a level of scrutiny not often seen on the floor of a legislative chamber.

"All nine contracts that I had audited had the numbers fudged," Richardson declared moments before the House voted 89-26 for its draft of the 2017-2018 fiscal year budget.

Part of the problem, Richardson said, is that the agency in charge of monitoring private prison contracts – the Department of Management Services (DMS) – had no experience in corrections, making it susceptible to being "hoodwinked" by for-profit prison companies.

"I want one agency accountable, and we will call them when things go wrong," Richardson said in March 2017, as the House Criminal Justice Subcommittee voted to shift oversight of the state's private prisons from DMS to the Florida Department of Corrections (FDOC).

In the audience sat lobbyists for private prison firms GEO Group, Management & Training Corp. and CoreCivic (formerly known as Corrections Corporation of America). None spoke out against the bill, but they had been urging members of the committee to reject it.

"I understand why the private prison operators wouldn't want it because for years they have had DMS hoodwinked," Richardson said after the hearing. "We have found inflated pricing, tremendous performance problems and cost-cutting measures that were unsafe and wasting taxpayer money."

Richardson described how the state's private prison contracts are audited when they come to an end, but "they never have an end" as they are routinely renewed without being rebid. He spoke about how he had audited numerous contracts, made 90 prison visits, met 300 prisoners and devoted 700 hours to investigating Florida's prison system.

"My audits have shown that the money is not being spent the way we think we're spending it," he said.

Richardson's review of the FDOC occurred the same year that House Speaker Richard Corcoran and his deputies made a point of calling out "corporate welfare" and questionable contracts at two much smaller state agencies, Enterprise Florida and Visit Florida.

But when Richardson addressed his legislative colleagues, his concerns about the state's prison system were greeted with polite stares from leaders in the Republican-controlled House – and no reaction.

"What I would like to see is some provisional language in this budget that would allow more safeguards and more oversight because what I have found is that we have a lot of spending going on but we have very little oversight," Richardson said. "Many of you may not know this, but in the entirety of the life of private prisons there has never been one financial audit of a private prison operator. Not one."

He had just completed a review of six contracts with non-profit vendors hired to manage prison work release facilities; in 2012, Governor Rick Scott had recommended privatizing the facilities to cut costs.

The FDOC privatized the work release programs by 2014 and promised $550,000 per year in savings. But a review of the contracts led Richardson to a different conclusion.

"We are not saving a dime," he stated, noting instead that the agencies engaged in a "shell game that perpetrated this little trick."

When a work release prisoner is employed in the community, the work release facility keeps 55 percent of their net earnings to recover the cost of room and board, and the prisoner keeps the rest, Richardson said.

But during the recession that began in 2008, the Florida legislature seized the revenue from the FDOC's work release programs and used it to fund other agencies and projects in general revenue. So the state's general revenue grew but the FDOC fell further into the red. Then the equation changed when the governor and legislature decided to privatize the work

release facilities.

"They gave away the general revenue," Richardson explained. "The six facilities were bringing in $2.1 million into the state coffers every year – our share of the 55 percent of net income," but the contracts with the vendors allowed them to keep those funds.

So rather than saving $550,000, the state was losing millions.

"How could so many people knowledgeable about these contracts not see that?" he asked. "And it's a nice little shell game that got played because people didn't talk about that little bucket of money."

Adding to the problems in Florida's prison system, a November 2015 study by a private auditor found that many of the FDOC's operational deficiencies "can be directly or indirectly tied to the lack of an adequate work force that possesses the experience and skills to consistently carry out the mandates of the FDOC as outlined in policy and procedure."

It was June 2016 when Richardson visited the Sumter Correctional Institution and began questioning youthful prisoners held at that facility.

"How's your day going?" he asked one of them.

"Not very good," was the reply. "We were just at the lunch room and a couple of people were talking and the guard told us to go dump all our food in the trash."

The FDOC guard in question, Denzel Alexander, previously had been identified by Richardson for twice assaulting prisoners, but since he didn't actually witness the assaults, no action had been taken.

"All officers on duty were counseled that withholding food can never be utilized as a form of discipline and that the department and facility will not condone it," said Michelle Glady, an FDOC spokeswoman.

"I am proud of the swift action taken, but I wonder if I had not been present if the incident would have been disclosed," Richardson wrote on his Facebook page. "Unfortunately, we still have a few bad officers, and they taint the integrity of the department and all the fine officers who serve our state with distinction."

Richardson was on a January 19, 2017 visit to the Baker Correctional Institution in northern Florida when he found dozens of prisoners without toilet paper, toothbrushes and other supplies. He asked the warden to open the storage unit just feet away from the dorms, and they delivered hygiene products to more than 50 prisoners.

"It is behavior that is intended to dehumanize them – treating them like an animal," Richardson said, while also noting that the warden was embarrassed. He complained to the FDOC and "they were apologetic and put out an all-points bulletin that this was wrong."

But problems continued. During his fourth visit to the Tomoka Correctional Institution near Daytona Beach, Richardson said the situation was "deplorable." He detailed deficiencies in 37 cells, and found one prisoner so sick he was throwing up. Another had an "open, weeping wound" that had not been treated for days. Windows in many of the dorms that lacked air conditioning wouldn't crank open for proper ventilation. Several prisoners wore shirts and pants that were torn or threadbare.

Richardson said he had not gone public with his findings about the lack of hygiene products and other issues, hoping his reports and complaints to the FDOC would result in reforms.

"I'm not seeking publicity for myself. I'm seeking change," he noted. "I wanted to work with them and see if they could get their problem under control and change behavior without being publicly shamed."

But his audits of the private prison contracts apparently changed his mind.

"We have got to take a serious look into these contracts," Richardson told other state lawmakers. "I have now audited nine contracts ... and all nine contracts that I had audited had the numbers fudged to justify privatization. And it's time for this body and this legislature to take a serious look at how we are spending the taxpayers' money."

Sources: *Miami Herald; Tampa Bay Times; "Study of Operations of the Florida Department of Corrections," by the Florida Legislative Office of Program Policy Analysis and Government Accountability (Nov. 2015)*

Electronic Monitoring Becomes More Widespread, but Problems Persist

by Derek Gilna, Christopher Zoukis

The use of wearable electronic tracking devices for defendants and people on community supervision has risen sharply over the past decade. Cash-strapped municipalities like the reduced cost, which is much lower than a prison or jail bed and is often passed on to the device wearer. Those on electronic monitoring and their families prefer the freedom it grants them to remain together. And defense attorneys say non-incarcerated clients receive better criminal justice outcomes.

But there are difficulties with electronic monitoring. If the technology fails, a person can end up unfairly jailed. The devices are also startlingly easy to foil or remove, and when they are lost or damaged, or when a wearer fails to pay the monitoring fees, the costs for municipalities begin to eat away at the savings anticipated from electronic tracking systems. In addition, the practice of passing on monitoring fees to the wearers can leave them in a sort of debtor's prison; in some cases, it's more economical to stay in jail than run up a large monitoring bill.

According to a September 2016 report by Pew Charitable Trusts, more than 125,000 people were on electronic monitoring in 2015. That's a small fraction of the 4.65 million on parole or probation in the United States, but is also 140 percent higher than just a decade earlier.

"That's fairly rapid growth of a new technology throughout the system without a solid research base that shows when and how the technology would be most effective," noted Adam Gelb, director of Pew's Public Safety Performance Project, which produced the report. "There are some indications that electronic monitoring can reduce recidivism, but at this point it's not clear for which offenders or at what stage of the process."

Driving the trend of increased electronic monitoring is the fact that the technology is enticing in its effectiveness: the person to be tracked is fitted with a waterproof, impact-resistant device about the size of a smart phone, usually worn around the ankle. It uses either radio frequency (RF) or GPS via satellite through cell phone towers to monitor an offender's movement – in the case of GPS devices, it is accurate within seven feet. If the device is removed or tampered with, or if the person being monitored strays from the area in which he or she is supposed to be confined, an alert is sent to law enforcement officials.

The projected cost savings over jails are attractive, too. In La Crosse County, Wisconsin, for example, GPS monitors cost $800 each to purchase and $6 each per month to monitor – versus a jail bed which can cost tens of thousands of dollars to build and up to $83 a day to maintain. In most municipalities that use them, the cost of the monitoring device is passed on to the wearer, through weekly or monthly fees.

The benefits to people on electronic monitoring who can remain employed and with their families, instead of in jail, are obvious. Less obvious, but equally important, is the potential for a better outcome in court. Research by the Arnold Foundation published in 2013 found that defendants who are incarcerated before trial plead guilty more often and receive harsher sentences. San Francisco attorney Kevin Mitchell said he has a better chance of winning a case if his client can walk freely into court in a coat and tie rather than under guard or in an orange jumpsuit.

"I always prefer having a client come through the front door," Mitchell stated. "Judges and the prosecutors treat them better that way."

But what happens when tracking devices malfunction? Some people who have been fitted with GPS devices claim they are not reliable. In Indianapolis, Indiana, Community Corrections client Nakiea Theus said her device is difficult to charge and often doesn't hold a charge. It malfunctioned while she was getting dialysis, resulting in her being jailed for five weeks in the summer of 2016. The problem was ultimately traced to a defective cord.

Videos available on YouTube show how to remove the monitoring devices using readily available household supplies. And while cheaper than prison or jail, monitoring wearers' movements still incurs costs for new and replacement devices, plus monitoring manpower – which is often outsourced to private firms.

In La Crosse County, the cost of lost monitoring units was $35,000 in 2015 alone; further, officials collected only 44 percent of monitoring fees in 2014 and 2015 combined, often due to the indigency of offenders, which cost the county another $171,000.

The ability of someone on electronic monitoring to pay the fees can have dramatic effects. In January 2017, Mitchell convinced a judge to let his client, William Edwards, out of jail with a bulky GPS monitor attached to his ankle. Then Edwards received a bill.

"I didn't know it was going to cost that much money," he said. "The cost was about $900 a month or roughly $26 a day."

While on electronic monitoring, Edwards was able to get his job back, but he doesn't make much money. The case dragged on so long that he began looking for a way out of the mounting bills, even if that meant pleading guilty.

"I had to convince him, 'Don't take any deal, you're not guilty, don't take a deal just to get out of this financial bind. You'll pay that money back, alright? But you can't get back your guilty plea,'" Mitchell stated.

After three months, prosecutors dropped the case due to lack of evidence. But Edwards said he's still paying back family members who loaned him the money he had to pay Leaders in Community Alternatives (LCA) — the company that provides electronic monitoring for Alameda County.

LCA and similar firms stand to benefit from California's proposed SB10, which would mandate the use of bail alternatives, including electronic monitoring. The bill was referred to an appropriations committee in September 2017.

Leslie Summers, the director of community and government relations for LCA, said the company was founded in the 1980s when Jack Love, a judge in New Mexico, was reading a Spider-Man comic.

"The villain put some type of a tracking device on Spider-Man," Summers stated. "He wanted to know where he was at all times."

The judge was struck by that concept and thought, "Hmm, why can't we do that

with offenders?'"

In the case of convicted sex offenders, GPS tracking devices are used to monitor those on lifetime supervision. A 2013 study in California, sponsored by the U.S. Justice Department's National Institute of Justice, found high-risk offenders released on parole and fitted with GPS devices had a recidivism rate 38 percent lower than those without the devices.

"With appropriate protections and oversight, this kind of monitoring can sometimes be a useful alternative to incarceration," Nathan Freed Wessler, a staff attorney with the ACLU, wrote in an email.

But two convicted sex offenders in Southern California raped and killed four women after being released on parole in 2014, despite both wearing GPS monitors. And there have been other cases where people being monitored have committed crimes both while wearing tracking devices or after removing them.

The U.S. Supreme Court weighed in on the issue of electronic monitoring in *Grady v. North Carolina*, 135 S.Ct. 1368 (2015) [*PLN*, June 2015, p.51], and found that the attachment of a GPS tracking unit to a sex offender qualified as a "search" for Fourth Amendment purposes. However, the Court left open the question of when such a search would be reasonable.

One convicted pedophile, Michael J. Belleau, a 72-year-old Wisconsin resident, challenged his state's policy of requiring sex offenders to wear tracking devices on Fourth Amendment grounds, and a district court judge ruled in his favor. However, the Seventh Circuit Court of Appeals called the lower court's ruling "absurd," saying the requirement to wear the device does not violate the Fourth Amendment's prohibition against unreasonable searches and seizures.

The appellate court wrote that Belleau's right to privacy was more directly impacted by the fact that his conviction was published on an online sex offender registry, finding that any burden on his privacy "must in any event be balanced against the gain to society." See: *Belleau v. Wall*, 811 F.3d 929 (7th Cir. 2016).

"It is important to understand how onerous, restrictive, and privacy-invasive it can be to have a GPS monitor attached to your body 24 hours a day," said Wessler, with the ACLU. "GPS tracking of people should only be used when truly necessary in a particular case, and only when its effectiveness has been convincingly demonstrated to a court."

Additionally, critics have noted that electronic monitoring often expands the number of people involved in the criminal justice, and thus does little to curb mass incarceration – since people who violate the terms of their supervised release while being monitored are funneled back into prisons and jails. [See: *PLN*, April 2015, p.22].

Further, the Electronic Frontier Foundation (EFF), a leading advocate of electronic privacy, notes on its website that "All too often, new police surveillance tools are initially applied only to the 'worst of the worst' and then slowly – but surely – expanded to include an ever-growing number of less culpable individuals. We've seen it with DNA collection. And now we're starting to see it with GPS tracking."

Sources: *Pew Trusts, U.S. News & World Report, www.kqed.org, www.govtech.com, www.fox59.com, www.arstechnica.com, Detroit Times-Free Press, www.bjs.gov, www.eff.org*

Correctional Health Report Suppressed by Bush Administration Finally Released

A "prophetic" U.S. Surgeon General's report that warned of a coming crisis with mentally ill prisoners and prison health care in general, suppressed by the Bush administration, was only released in mid-2016.

The 2006 document, titled "The Surgeon General: Call to Action on Corrections and Community Health," was prepared by then-Surgeon General Richard Carmona. It urged action by the government and community leaders to develop a treatment strategy for sick and addicted prisoners following their release, or face worsening public health care burdens.

The 49-page report recommended enhanced medical screenings for arrestees and their victims; better surveillance of diseases in prisons; and ready access to community-based medical, mental health and substance abuse prevention programs for released prisoners.

"The correctional health report is pointing out the inadequacies of health care within our correctional health care system," Dr. Carmona said. "It would force the government on a course of action to improve that."

However, as *PLN* reported at the time, the report was mothballed by the government and not publicly released. [See: *PLN*, Aug. 2007, p.6]. In recent years, *PLN* has also reported on the burgeoning population of prisoners who suffer from mental illness.

Substance abuse was cited as "the most prevalent ailment" among prisoners in the Surgeon General's report, but it also found that mental illness was up to three times higher in U.S. prisons than in the general population. "The nation's largest mental health facilities are in large urban jails," the report stated.

"We deny the American public essential information that they need when this information is suppressed," Dr. Carmona said in 2016, when the report was finally disclosed. "We missed an opportunity to take appropriate action to protect the public health."

According to the former Surgeon General, the report was not publicly released because the Bush administration did not want to spend more money on prison health care.

"If this study had seen the light of day, there is no telling how much money would have been saved," said Chicago's Cook County Sheriff Tom Dart. "This is why people have complete disgust with the way government operates."

The "Surgeon General['s] report was prophetic, to say the least," added Ronald Serpas, a former Nashville and New Orleans police chief – particularly considering the increasing number of prisoners who have mental health and substance abuse problems.

Sources: *New York Times, Washington Post, USA Today*

Vermont Supreme Court Invalidates Sex Offender Probation Conditions

Last year the Vermont Supreme Court vacated four sex offender probation conditions, finding that they improperly delegated judicial authority to probation officers and were overbroad, unconstitutional or based upon insufficient findings.

In 2013, Owen Cornell was convicted of a sex offense and sentenced to two to six years in prison. The trial court suspended all but 20 months with credit for time served, and imposed a term of probation with 21 supervision conditions. Cornell appealed six of those conditions.

The Vermont Supreme Court invalidated four of the probation conditions; it also instructed that a fifth condition should be revised.

The Court first vacated a condition that required Cornell to participate in any treatment ordered by his probation officer, noting that the same condition had been struck down in *State v. Putnam,* 2015 VT 113, 130 A.3d 836 (Vt. 2015) as impermissibly delegating "open-ended authority" from the trial court to a probation officer.

"While it is permissible under *Putnam* to delegate authority to a probation officer to select among a predetermined list of programming options relevant to a defendant's particular needs," the state Supreme Court held it could not "approve the delegation of 'full authority' to impose counseling or training purely on the grounds that defendant may falter in his commitment to pre-existing programming."

The Court remanded for the trial court to either revise the language of the condition or strike it entirely.

It also invalidated a condition requiring probation officer approval of Cornell's residence and employment. The Supreme Court agreed with Cornell that "the sentencing court's findings ... were insufficient to justify the imposition of this broad condition." In reaching that conclusion, the Court followed its earlier rulings in *State v. Freeman,* 2013 VT 25, 70 A.3d 1008 (Vt. 2013) and *State v. Campbell,* 2015 VT 50, 120 A.3d 1148 (Vt. 2015).

As in *Campbell*, the Court found "that the [trial] court could craft a narrower condition that anticipated future issues while still providing flexibility." As such, it struck the condition and remanded "for additional justification, revision, or removal."

The Supreme Court then turned to a condition that required Cornell to give blanket permission to his probation officer for warrantless searches and seizure privileges. The Court concluded "that the condition is impermissible in the absence of any requirement of reasonable suspicion." The condition "should be redrafted to eliminate the specification that the state's search powers are based on some kind of waiver by defendant," it instructed. That condition also "should state explicitly that the State's search rights are dependent on its having reasonable suspicion, that evidence of a violation of probation conditions would be found."

Additionally, the Court instructed that "the condition should clearly state the constitutional requirement to make the probationer aware of his or her rights and the State representative aware of the limitations of its power."

The Supreme Court further invalidated a condition prohibiting Cornell from owning a computer in his home or accessing the Internet without approval from his probation officer.

The Court held "that 'without evidence that [Cornell's] offense involved the use of a computer

or the internet,' the condition is unconstitutionally overbroad and fails to meet Vermont's individualized sentencing requirements."

While upholding a condition that prohibited "violent or threatening behavior," the Supreme Court recognized "that the wording of the condition has frequently caused it to be narrowly interpreted to ensure that the probationer has fair warning of its meaning." As such, the Court asked "trial judges to clarify this probation condition by incorporating language that 'anticipates the interpretation difficulties and defines more specifically the coverage of the condition.'" See: *State v. Cornell*, 2016 VT 47, 146 A.3d 895 (Vt. 2016).

Seventh Circuit: Rodent Infestation Claims Survive Summary Judgment

The Seventh Circuit Court of Appeals held that an Illinois prisoner's claims regarding a rodent infestation were prematurely dismissed because he presented triable issues of fact for a jury.

Illinois state prisoner Marcos Gray was confined at the Stateville Correctional Center for 15 years, in apparently deplorable conditions.

"He sees cockroaches at least every other day, and sometimes as often as every few minutes. Birds fly and nest all over the prison, leaving their droppings on the floors and wall," he alleged in his federal lawsuit, writing in the third person. "Mice are often in Gray's cell, where they eat his food. The cell house is also infested with ants, spiders, flies, gnats, moths, and mosquitoes."

The birds and other pests entered through broken windows and holes in the walls that prison officials had not bothered to repair, according to Gray.

Prison officials also denied prisoners adequate cleaning supplies. "Gray receives only one towel, which is replaced every eight months; he also gets some watered-down disinfectant spray. He does not have access to mops, brooms, or buckets, and he is not permitted to store chemicals such as soap in his cell," he wrote. "He is allowed to purchase soap or detergent at the commissary, but because he may not store it, he must use it all at once."

Gray had not been bitten or directly harmed by any type of pest or rodent. He argued, however, that the pest dander aggravated his asthma and he developed skin rashes within eight months of his arrival at Stateville.

Gray was far from alone. On February 11, 2014, a federal class-action suit was certified in *Dobbey v. Weilding*, U.S.D.C. (N.D. Ill.), Case No. 13-cv-01068, alleging infestations of birds, mice and cockroaches, as well as a failure to provide cleaning supplies at Stateville. That suit, which remains pending, seeks only injunctive relief. Gray is a member of the *Dobbey* class and may not opt-out, as it was certified under Federal Rule of Civil Procedure 23(b)(2).

The district court granted summary judgment to the defendant prison officials on Gray's individual damage claims, finding that none of the conditions he described, standing alone, were so bad as to violate the Eighth Amendment. He appealed.

"Reading the record in the light most favorable to Gray," the Seventh Circuit reversed. Gray "has shown enough to avoid summary judgment on his claim that the myriad infestations and his lack of access to adequate cleaning supplies, taken together, deprived him of the basic human need of rudimentary sanitation in violation of the Eighth Amendment," the appellate court held.

"Hygienic supplies sufficient to meet basic needs are constitutionally required," the Court of Appeals added. "It is not enough for the prison to 'allow' inmates to purchase them."

Recalling "Winston's unreasoning fear of rats in *Nineteen Eighty-Four*, a fear exploited by his torturers to break his spirit without actually touching him," the Seventh Circuit acknowledged that the "potential psychological harm from living in a small cell infested with mice and cockroaches is pretty obvious," citing *Thomas v. Illinois*, 697 F.3d 612 (7th Cir. 2012).

Gray's summary judgment pleadings "present triable issues of fact for a jury, which must determine the degree of both physical and psychological harm he suffered as a result of the infestation and dirt," the appellate court concluded. "If the jury finds that Gray suffered only psychological harm, he will be limited to nominal and punitive damages."

Gray was represented on appeal by appointed counsel Thomas Shriner. See: *Gray v. Hardy*, 826 F.3d 1000 (7th Cir. 2016).

The case remains pending on remand, where Gray moved on August 7, 2017 to tax the appellate costs to the defendants. Attorney Thomas B. Underwood was appointed by the district court to represent Gray after the appellate ruling.

Environmental Protection Agency Finally Recognizes Prisons in Screening Tool

by Panagioti Tsolkas

Two years ago, the Human Rights Defense Center (HRDC), which publishes *Prison Legal News*, introduced the concept of prison environmentalism, building off the work of jailhouse lawyers, scholars and activists around the country. On many occasions spanning the last four decades of mass incarceration in the U.S. – in which prison populations increased nationally by 700% – prisoners and their advocates had noted environmental concerns in local battles involving prison operations and efforts to stop new prison construction.

In 2015, HRDC decided that the problem was far beyond the scope of local campaigns and launched the Prison Ecology Project to address the issue on a national level.

This summer, the Office of Environmental Justice, part of the Environmental Protection Agency (EPA), formally announced that it would be including the location of correctional facilities in its updated EJSCREEN mapping tool.

In August and September 2017, the EPA hosted online webinars about the agency's new EJSCREEN map which, at the request of the Prison Ecology Project and over 130 other groups and activists, now includes more than 6,000 prisons, jails and other detention facilities.

This is a major victory; it means that anyone can now easily see where prisons are in proximity to sites of industrial pollution and other environmental concerns. The government agencies that rely on the EPA's mapping tool to review environmental permits will have no excuse not to do the same.

Using this new feature, agencies and organizations can create reports, journalists can use the data for articles, and activists can organize around prisons and jails located near known environmental hazards.

But what the EJSCREEN map does not have is an accompanying narrative that includes input from prisoners' letters, news articles and public records requests concerning many of the facilities listed on the map – such as those built on landfills, former coal mining sites and in areas with contaminated water supplies. The Prison Ecology Project is in the process of creating such a map, which will be populated with data collected primarily by HRDC.

An annotated map could even link scanned files of hand-written letters from prisoners, giving a personal connection to a direct source of information to which so few people outside of prison have access.

Therefore, please contact us if you have relevant information related to prisons or jails and the environment that belongs in the map that's under development by the Prison Ecology Project and the Campaign to Fight Toxic Prisons. Email to: ptsolkas@prisonlegalnews.org or FightToxicPrisons@gmail.com, or write to: HRDC, Attn: Panagioti / PEP Project, P.O. Box 1151, Lake Worth, FL 33460.

For those who can't attend EPA webinars, the agency's Office of Environmental Justice staff have said they can offer trainings for smaller groups upon request. Perhaps the next step will be getting them to take those trainings into prisons, where prisoners can learn to use the EJSCREEN tool – which needs to be available as a resource in prisons and jails nationwide.

Source: *www.epa.gov/ejscreen*

DOJ Audit Rips Privately-operated Federal Facility; Trump Administration Presses Forward

by Derek Gilna

In December 2016, the Office of the Inspector General (OIG), a watchdog agency within the U.S. Department of Justice (DOJ), issued an audit of the federal Bureau of Prisons' contract with private prisoner company CoreCivic, formerly known as Corrections Corporation of America, to operate the Adams County Correctional Center.

That 2,232-bed facility, located in Natchez, Mississippi, gained notoriety in May 2012 following a major riot that left one prison employee dead. [See: *PLN*, June 2014, p.48]. A post-riot report recommended changes, which the OIG's 2016 audit found still hadn't been completed. Further, according to the audit, CoreCivic had not been held accountable by the Bureau of Prisons (BOP). The Inspector General wrote it was "deeply concerned" that the Adams facility remained "plagued by the same significant deficiencies" that had sparked the deadly riot.

The audit directly echoed the findings of a multi-part investigation released earlier this year by *The Nation*, in partnership with the Investigative Fund of the Nation Institute, which uncovered serious problems at the Adams facility and 10 other privately-operated federal prisons used to incarcerate non-citizens convicted of crimes. The investigation found that CoreCivic had failed for years to correct inadequacies in the provision of medical care, and prisoners had died as a result.

Prison Legal News has published numerous articles exposing the deficiencies essentially built into the for-profit prison industry's business model, including chronic understaffing, inadequate training of correctional employees, substandard health care, and dangerous conditions for both prisoners and staff. [See, e.g.: *PLN*, Jan. 2012, p.20].

Federal monitoring reports obtained by *The Nation* through a Freedom of Information Act lawsuit revealed that BOP monitors had documented 34 prisoner deaths following shoddy care at privately-run federal prisons between January 2007 and June 2015. Fourteen of those deaths occurred in facilities managed by CoreCivic, including at least seven at the Adams County Correctional Center.

The Adams facility first came under scrutiny by federal investigators after the 2012 riot left guard Catlin Carithers dead and 20 other employees and prisoners with injuries. The after-action report for the riot determined that it was a consequence of what prisoners perceived to be "inadequate medical care, substandard food, and disrespectful staff members."

The OIG's December 2016 audit found little had changed in the four years since the riot. Nonetheless, the BOP had continued to renew its contract with CoreCivic, extending it to July 2017 and increasing the total contract value to approximately $468 million. The company is still operating the facility following another contract renewal.

The audit noted that CoreCivic continued to have difficulty hiring and retaining Spanish-speaking employees for the prison's largely Hispanic population, while it also continued to suffer high staff turnover – in part due to a salary structure lower than that at comparable federal facilities.

In addition, the OIG said CoreCivic had failed to adequately report the status of five critical health service positions, including two dentists, two physicians and one advanced registered nurse practitioner at the Adams prison.

Even more troubling was the lack of adequate oversight of the facility by federal prison officials, with OIG investigators stating they found "several aspects of the BOP's control and oversight of the contract performance to be inadequate," noting the BOP "did not implement appropriate performance standards to measure and evaluate CoreCivic's performance."

The audit made recommendations for improvements, similar to the suggestions that the BOP allowed CoreCivic to ignore following the after-action riot report issued four years earlier.

In August 2016, the DOJ had released a memo directing the BOP to begin ending its use of for-profit prisons. The memo followed a contemporaneous OIG report that described a litany of problems at privately-managed federal prisons, including violence between prisoners and staff, poor security and misuse of solitary confinement. The report concluded private prisons were less safe and no less costly than those operated by the BOP. [See: *PLN*, Oct. 2016, p.22].

The DOJ ordered the federal private prison population to shrink from 22,000 to roughly 14,000 prisoners by May 2017, and in five years the total private federal prison population was to reach zero.

However, on February 21, 2017, the U.S. Attorney General for the Trump administration, Jeff Sessions, rescinded the memo phasing out for-profit facilities. [See: *PLN*, April 2017, p.30].

Bob Libal, executive director of Grassroots Leadership, a Texas-based civil rights organization that opposes the private prison industry, called Sessions' announcement "a significant step backwards for criminal justice reform and a sign that the administration wants to cozy up to the private prison industry, which gave it a lot of money in terms of campaign contributions."

"This is a sign that under President Trump and Attorney General Sessions, America may be headed for a new federal prison boom," added Carl Takei, a staff attorney with the ACLU's National Prison Project.

Trump spoke favorably of private prisons while on the campaign trail, and private prison companies donated generously to one of his affiliated political action committees and his inauguration. Further, Sessions has long touted himself as a criminal justice hard-liner throughout his career, and he apparently intends to continue along that tough-on-crime path as Attorney General.

Sources: *www.oig.justice.gov, The Nation, Forbes, www.shadowproof.com, www.news.vice.com, "Audit of the Federal Bureau of Prisons' Contract with CoreCivic, Inc. to Operate the Adams County Correctional Center in Natchez, Mississippi," by OIG, Audit Division 17-08 (Dec. 2016)*

HRDC Lawsuit: Kentucky DOC Guilty of Censorship, Violations of Due Process and Equal Protection

On July 20, 2017, the Human Rights Defense Center (HRDC) filed a federal lawsuit against the Kentucky Department of Corrections for violating its free speech, due process and equal protection rights.

HRDC, a Florida-based non-profit organization and publisher of *Prison Legal News*, contended that the Kentucky DOC was guilty of censoring books sent to prisoners, violating equal protection laws by selectively blocking some materials but not others, and infringing upon the organization's due process rights by not allowing HRDC to appeal censorship decisions.

Specifically, HRDC stated in its complaint that prison officials had unconstitutionally blocked the delivery of numerous books mailed to Kentucky state prisoners, including the *Prisoner Diabetes Handbook*, the *Merriam-Webster Dictionary of Law* and the *Prisoners' Self-Help Litigation Manual*, among others. Dozens of books sent to prisoners over a 12-month period were censored. On several occasions, HRDC received notices indicating the books were rejected for a variety of reasons, such as having "colored paper/envelope/ink," "stickers," being a "free book" or "not directly [sent] from publisher or authorized distributor."

Kentucky DOC policies ban books not directly purchased by prisoners; they also ban books from publishers not included on a pre-approved vendor list. Those practices violated HRDC's rights under the First Amendment as well as its Fourteenth Amendment right to due process notice, the organization argued in its complaint.

"The actions taken by the Kentucky Department of Corrections violate the free speech rights of not only the Human Rights Defense Center, but all other constitutionally-protected publishers that have an absolute right to communicate with prisoners held by the department," said HRDC executive director Paul Wright. "While it seems preposterous that a book offering information about diabetes would be banned, the fact is that the content of the books doesn't matter. The Kentucky DOC's disregard for free speech and due process rights is reckless and intentional."

Prior to filing suit, HRDC contacted Kentucky prison officials three times but never received a response; those efforts included two letters sent directly to the General Counsel for the Department of Corrections.

"Prisoners have already been stripped of many of their freedoms, but the [Kentucky DOC] isn't stopping there. It is illegally denying prisoners constitutionally-protected, free speech materials that might actually teach them about their rights while behind bars," Wright stated.

HRDC, which has successfully litigated dozens of other First Amendment censorship cases nationwide, is seeking damages, attorney fees and costs in addition to injunctive relief. It is represented by attorneys Camille Bathurst, Gregory Belzley, Bruce Johnson with the law firm of Davis Wright Tremaine LLP, and HRDC attorneys Sabarish Neelakanta, Dan Marshall and Masimba Mutamba. See: *HRDC v. Ballard*, U.S.D.C. (E.D. Ken.), Case No. 3:17-cv-00057-GFVT.

Compensation for Wrongful Convictions in Massachusetts Not Easily Obtained

by Christopher Zoukis

Kevin O'Loughlin was wrongfully convicted of raping an 11-year-old girl in 1983. He spent almost four years in prison, where he endured multiple assaults – all for a crime he did not commit.

Then a convicted rapist confessed that he was "99 percent sure" he had committed the sexual assault for which O'Loughlin was convicted. O'Loughlin filed for compensation from the State of Massachusetts, but despite the confession and other evidence pointing to his innocence, the state refused to pay and the case will soon go to trial.

At stake is a payment of up to $500,000 provided under Massachusetts' wrongful conviction compensation statute. Since the law was passed in 2004, 27 people have received a total of $8.34 million, in sums ranging from $60,000 to the half-million maximum.

But unlike the criminal trial that landed O'Laughlin in prison – in which prosecutors had the burden of proving his guilt – a claimant under the state's compensation law must prove his or her innocence, following a multi-step process.

Initially, a court must agree either that the claimant received a full pardon or had his or her conviction overturned in a manner that "tends to establish the innocence of the individual." Prisoners freed solely due to prosecutorial misconduct or on technicalities are not eligible under the law.

Next, former prisoners must prove a series of claims: that they never pleaded guilty to the offense, that they were sentenced to at least a year in prison and, crucially, that they did not commit the crime. The process involves a higher burden than obtaining a not-guilty verdict at trial.

Compensation cases are also not subject to rules of evidence typical in criminal cases. Evidence cannot be excluded, even if it was obtained in violation of the Fourth, Fifth and Sixth Amendments, according to the compensation statute.

Cases can take a long time to resolve, with two years allowed for evidence discovery under the trial schedule used for compensation requests.

"This process is designed to last at least three years," said attorney John Thompson. "That means that the guy who's coming out of prison has to wait at least three years to get the benefits from this, if he ever gets them."

Thompson's client, Mark Schand, was wrongfully convicted in 1986 of murdering Victoria Seymour. He served nearly 27 years in prison before being granted a new trial in 2013, after eyewitness Anthony Cooke recanted his identification of Schand and three new witnesses testified that he was not at the crime scene that night – the same testimony offered in vain at Schand's original trial by his wife.

Then-Hampden County District Attorney Mark Mastroianni, who is now a federal judge, dropped the murder charge, sparing Schand another trial and clearing

the path for his release from prison.

However, in addition to 27 years with no income or career advancement, plus the steady expense of his wife's weekly visits, the record of his conviction still costs him job opportunities due to criminal background checks, Schand said.

"I'm sure I wouldn't be working a $14, $15 an hour job at this point in my life. I'm 200 percent sure that's because of my incarceration," he stated. "I don't think that's OK. I definitely feel that I was held back."

Amol Sinha, state policy advocate for the New York-based Innocence Project, declared the Massachusetts law is too restrictive.

"[Y]ou may be preventing people who are actually innocent from compensation" by setting the evidentiary bar so high, she said.

While 27 people have received compensation from Massachusetts, 36 others have filed claims under the law without success. Just three cases have gone to trial, with two decided in favor of the Commonwealth. Ulysses Charles, who served 17 years before DNA evidence cleared him of rape and robbery charges in 2001, is the only former prisoner to win a judgment against the state at trial. He was awarded $500,000.

State Senator Pat Jehlen, the sponsor of the law as it currently stands, introduced new legislation in January 2017 that would allow released prisoners to seek $50,000 in immediate financial assistance if they can show they will likely win their compensation case.

"There is a saying, justice delayed is justice denied," Jehlen stated. "I feel pretty strongly we owe them – people wrongfully or erroneously incarcerated. It's a moral debt."

The legislation would also entitle successful plaintiffs to attorneys' fees and prohibit the state from requiring recipients to return compensation funds if they win damages from other parties. The bill failed to pass during the legislative session.

The University of Michigan's National Registry of Exonerations counts 54 overturned convictions in Massachusetts due to wrongful convictions as of September 21, 2017, though the actual number is likely higher.

O'Loughlin intends to see his case through, hoping justice will eventually prevail. "I don't think they have any right to put me through any more," he said.

Sources: *Boston Globe, www.masslive.com, www.eye.necir.org, www.theweek.com, www.law.umich.edu*

Parole Remains Elusive for Virginia Prisoners

by David M. Reutter

Virginia has more than 3,500 prisoners eligible for parole, representing over 9% of its prison population of 38,000 – a significant number considering that the state abolished parole over 20 years ago. Still, even for those long-serving prisoners who are still eligible, the odds of being granted parole are slim.

Virginia ended parole in 1995 during the heyday of the "tough on crime" era. Prisoners sentenced since then have been required to serve their full prison term, less good time credits. This is one of the more restrictive examples of punitive "truth in sentencing" laws that were enacted in exchange for federal prison construction grants under the 1994 Violent Crime Control and Law Enforcement Act. The Act provided funding to states that required certain prisoners to serve at least 85% of their sentences, on average.

The over 3,500 offenders in Virginia's prison system sentenced before the 1995 law went into effect have been subject to a parole board that emphasizes "self protection" by making "cautious" decisions. The chairwoman until recently was Karen Brown, a prosecutor for 16 years; the four current members include a former public defender, a city councilman and prison official, an attorney and state legislator, and a Baptist minister. Prisoners must obtain votes from three of the board members to obtain parole, or four if the conviction was for first-degree murder resulting in a life sentence.

University of Minnesota law professor Kevin Reitz, who is also a national expert on parole, commented on the board's composition and the way it carries out its mission.

"The original model of the parole board is that this would be a group of experts who really knew something about human behavior and changing human behavior," he said.

However, Reitz argued that fear has been driving the board's decisions.

"There is a feeling that if I let this person out today, and God forbid, he or she goes on to do something terrible, then, that's on me. On the other hand, if I make the cautious decision and keep the person in, then there's no risk to me," he stated. "They have a reasonably nice job, but if they make a mistake and let the wrong person out, that job could be gone tomorrow."

According to the Virginia chapter of Citizens United for Rehabilitation of Errants (VA CURE), of the 3,156 cases the board reviewed in 2012, only 116 resulted in a grant of parole – or just 3.7%. The board refused to grant parole in 536 of the 547 cases it considered in December 2015 and 2016 – a 98% denial rate. During that time period, every prisoner over 50 was denied parole.

The Virginia statute that abolished parole also provided for "geriatric release" by requiring annual parole hearings for prisoners over age 60 who have served at least ten years, or five years for those over 65. But parole is rarely granted in those cases; of 1,417 elderly prisoners considered between January 2014 and March 2017, just 68 – 4.7% – were paroled.

In 2017, Governor Terry McAuliffe appointed Adrianne L. Bennett to chair the Virginia parole board. Bennett said that because the population of elderly prisoners is growing so fast, many younger prisoners are serving their sentences in city, county and regional jails scattered across the state.

"You've got people spending two or three years in a local jail because our prisons are now stuffed with old men taking up bed space," she stated.

She cited statistics showing that young offenders are more likely to recidivate than older men whose criminal history "is long gone" – yet because there isn't room for younger prisoners in state facilities, they are being released back into the community from local jails without the benefit of rehabilitative programs intended to reduce recidivism.

"Do we keep somebody warehoused who is no longer a threat to the community and has already served decades in prison?" Bennett asked. "A 60-year-old in prison or a 70-year-old in prison who committed an offense decades ago is a huge tax liability and is not making our community safer. We are warehousing old men who are no longer a threat. In fact, what it's doing is making our communities less safe."

The parole board's dismal grant rate for elderly offenders, however, stands in sharp contrast to such comments.

The percentage of Virginia's prison population over 50 grew from 4.5% in 1990 to 20% by 2015. A Department of Corrections report that year found 22% of prisoners who were supposed to be in state prisons were instead being held at local jails.

"We have a different culture in this country than exists in Canada or Europe where people who have committed very bad crimes serve 20 years or so, and that is pretty significant punishment," said criminal defense attorney Steve Rosenfield. "Supporting that are our own studies in this country that show that once people reach their 30's and start aging into their 50's and 60's, the rate and incidence of crimes that are committed by them when they are released is exceedingly small."

That applies especially to those serving time for the most violent crimes. An often-cited Stanford University study of 860 murderers released on parole in California found only five returned to prison for new crimes, none of which were for homicide.

The high parole denial rate in the face of statistics that show it's safe to parole certain offenders costs taxpayers $28,000 per year per prisoner. The cost for older prisoners is even higher due to medical expenses. In Virginia, the 9% of state prisoners over 60 years old account for 22% of the prison system's budget for medical care.

Often, the focus during parole hearings is more on the original crime than an offender's degree of rehabilitation.

"Many model prisoners are getting turned down for 'nature of the crime.' The door has been slammed on 'old law' prisoners," said Stephen Northrup, executive director of Virginians for Alternatives to the Death Penalty and a retired attorney who dedicated a portion of his career to parole reform. "Many [prisoners] have good records but are made to rot in prison at the taxpayer's expense. It isn't cheap to keep a 70 year old in jail. It has gotten to the point where the governor is the only person that can change this."

The public seems to support parole reform. A survey of 1,000 Virginians found 75% believe the state prison system costs too much. Two-thirds of those surveyed thought parole should be reinstated for most prisoners. Those who identified themselves as conservatives supported the idea

by a 2-1 margin, yet Republican lawmakers have ignored the public's wishes and opposed bills aimed at oversight of the parole board and reform efforts.

"In politics, if it takes time to explain an issue, you are losing. No one takes the time to learn the facts," said Virginia Delegate Mark Sickles. "Saying you are tough on crime may go over well on the campaign trail, but in reality, crime isn't lower now than in 1995 before parole was abolished. In many cases, new prisoners are committing the same crimes as old prisoners, and are getting out of jail faster than the pre-1995 inmates."

Even prosecutors have expressed shock at the outcome of the law that abolished parole.

"I recently came across the commonwealth's attorney who prosecuted my husband," said the wife of a 73-year-old prisoner who has served 25 years on a parole-eligible sentence, "and he was astonished when I told him he was still in jail."

Until 2000, judges were not required to inform juries during sentencing hearings that the state had ended parole in 1995. A bill introduced in the General Assembly in 2016 sought to make all prisoners sentenced by juries between 1995 and June 2000 eligible for parole, which would have applied to about 400 offenders. But it was narrowed by a Senate panel to apply only to nonviolent offenders, of which only 17 were still incarcerated, according to prison officials.

Regardless, the amended bill died in the Criminal Law Subcommittee of the House Courts of Justice Committee. Delegate Robert B. Bell, chairman of the subcommittee, said there was no evidence to suggest that juries would have handed down different sentences had they known that offenders were not eligible for parole.

Sources: *WVTE Public Radio, Capital News Service, Daily Press, www.richmond.com*

TV Production Company has Friends in Low Places

by Christopher Zoukis

Lucky 8 TV is a production company that produces "Behind Bars: Rookie Year" – a reality show about first-time prison guards – and thus requires access to a prison for filming. What better way to gain access than to hire someone from the corrections department to help facilitate such arrangements?

A recent report released by the New Mexico State Auditor's Office found that Alex Sanchez, former deputy secretary and public information officer for the New Mexico Corrections Department, was hired by Lucky 8 for about 5 months and then returned to work for the department. Upon her return, Sanchez participated in the determination of what Lucky 8 owed for filming rights in a state prison. According to the February 24, 2017 audit, that arrangement amounted to a conflict of interest.

All told, at least $20,000 in fees were waived by Sanchez after her short stint as a Lucky 8 employee. The audit specifically referenced emails between Sanchez and the production company concerning the fees.

"The involvement of this employee in the determination of amounts billed and fees waived appears to be a conflict of interest as not all of the decisions appear to be in the best interests of the state," the audit noted.

Sanchez, now deputy superintendent of the New Mexico Regulation and Licensing Department, denied any conflict and told the *Albuquerque Journal* that all of her decisions regarding Lucky 8 had been approved by former Corrections Secretary Gregg Marcantel.

"After my return to Corrections from employment with Lucky 8 I had a very clear conversation with Secretary Marcantel to ensure that there would not be a conflict of interest in the dealings with Lucky 8 productions," Sanchez wrote. "That conversation included ensuring I would not be making decisions on any dealings with Lucky 8 and the department."

But according to the audit, "No evidence was provided to support" the claim that anyone other than Sanchez made financial decisions related to Lucky 8 TV's fee determination.

Source: *www.abqjournal.com*

Waging War on the Poor: Unpaid Fines Lead to Jail

by Christopher Zoukis

Stung by a series of lawsuits filed across the nation challenging the practice of jailing people unable to pay court fees and fines, Texas legislators passed a law that requires judges to offer community service alternatives to low-income defendants convicted of offenses where the maximum punishment is a fine. The law went into effect on September 1, 2017.

One lawsuit, filed on behalf of five indigent plaintiffs in June 2017, alleges that Lexington County, South Carolina has been engaging in the equivalent of modern-day "debtors' prisons" by issuing arrest warrants for people unable to pay court-ordered fees or fines for minor infractions such as parking tickets, then jailing them without offering them legal counsel or determining whether they have the ability to pay in the first place.

Another suit, filed in September 2015, seeks to overturn the entire system of court-ordered fines and fees in Orleans Parish, Louisiana, which are used to finance court operations. In an attempt to resolve the class-action case, Orleans Parish judges voided $1 million in unpaid fines in July 2017, hoping to satisfy the plaintiffs while leaving the current system intact.

Although the U.S. Supreme Court outlawed debtor's prisons in the 1980s, the new law in Texas will help to reinforce that ban. According to the Texas Judicial Council, 95 percent of warrants issued in the state in 2016 were for fine-related offenses, and more than 640,000 people spent at least one night in jail on charges that typically carry no jail time.

"If the court has someone not able to make a fine, but is trying to repay their debt to society then this is a good option," explained Bowie County Attorney John Delk.

The class-action lawsuit filed by the ACLU in South Carolina stems from an incident involving Lexington County resident Twanda Marshinda Brown.

The single mother of seven children, five of whom live with her, was working at Burger King, living in Section 8 housing and earning less than $7,200 per year when she was ticketed by a Lexington County sheriff's deputy for driving on a suspended license with no tag light.

At Brown's initial court hearing, Judge Rebecca Adams, one of the defendants named in the suit, did not inform Brown that she had the right to a court-appointed attorney, or that she could claim financial hardship and seek a waiver of the $40 public defender application fee.

Without being told about her rights, Brown pleaded guilty to the charges and was ordered to pay a total of $2,407.63 in fines. Judge Adams required her to pay in $100 monthly installments, though Brown said she could only afford $50.

"I don't care what happens," Adams said, according to the complaint. "I want my money on the 12th [of the month]."

After making five payments, Brown could no longer continue because her checks from Burger King kept bouncing, she told *Rewire* in a phone interview.

About four months later sheriff's deputies showed up at Brown's door on a Saturday morning and served her with a bench warrant requiring her to pay $1,907.63 – the remainder of the balance she owed – or serve 90 days in jail. She couldn't pay and was arrested.

Brown ultimately spent 57 days in jail, and thinks she was released early because she earned time off her sentence by cleaning at the facility. In addition to being separated from her children, she lost her job as a result of her time behind bars. See: *Brown v. Lexington County*, U.S.D.C. (D. SC), Case No. 3:17-cv-01426-MBS-SVH.

In Louisiana, the judges in Orleans Parish who agreed to waive $1 million in fines were responding to a lawsuit filed by Alec Karakatsanis, founder and executive director of the Civil Rights Corps. He told the *Louisiana Record* that the suit seeks a declaration that financial conflicts of interest permeate the judges' debt-collection system in violation of the Due Process Clause of the U.S. Constitution.

The plaintiffs allege a conflict of interest exists when state judges who find defendants guilty impose costs or fines that help finance court operations. (The fees and fines are not used to pay the judges' salaries.)

"For many years, impoverished people were routinely jailed in brutal conditions simply because they could not pay debts set by [Orleans Parish] judges who have a financial interest in that money," Karakatsanis said. "Those practices are flagrantly unconstitutional."

The plaintiffs were each reportedly jailed for over 72 hours and did not receive a hearing as to their ability to pay court costs and fines. According to the complaint, "the courts created an unconstitutional debtors' prison by jailing the defendants for failure to pay without giving them a hearing."

Karakatsanis said the root of the case is the reality that Orleans Parish judges depend on convicting defendants and collecting fines and fees to fund their own courthouse budgets.

"We want to see a legal system that doesn't depend on convictions to fund itself and a society in which no human being is placed in a jail cell just because they cannot make a monetary payment," he added.

The suit remains pending, with summary judgment motions filed in June 2017. See: *Cain v. New Orleans City*, U.S.D.C. (E.D. La.), Case No. 2:15-cv-04479-SSV-JCW.

The practice of jailing the poor who are unable to pay court costs and fines is a nationwide problem. [See: *PLN*, April 2017, p.48; Jan. 2017, p.42; July 2016, p.52]. It has become so pervasive that under the Obama administration, the U.S. Justice Department sent a letter to state court administrators to clarify that imposing jail time for unpaid fines can violate federal law and may be unconstitutional.

Incarcerating the poor for their inability to pay fines is more than just a potential violation of federal law, though, then-Attorney General Loretta Lynch said in a statement.

"The consequences of the criminalization of poverty are not only harmful – they are far-reaching," she declared. "They not only affect an individual's ability to support their family, but also contribute to an erosion of our faith in government."

Court-ordered fines and fees are often an important part of a municipality's budget. New York City alone collected $1.9 billion in such costs during fiscal year 2015. California has over $10 billion in outstanding court fees and fines.

The revenue generated from court-related costs does not always stay in the judicial system. In California, for example, funds from such penalties can end up in the

California Beverage Container Recycling Fund, Cigarette Tax Fund, Underground Storage Tank Cleanup Fund, State Fire Marshal Fireworks Enforcement and Disposal Fund, Private Security Services Fund, or the Fish and Game Propagation Fund.

In Oklahoma, according to the *New York Times,* indigent defendants are billed for requesting a public defender; the money collected from such fees is used to fund the District Attorney's office. On the day that a *Times* reporter visited the county jail in Tulsa, he found 23 people who were imprisoned for failure to pay fines or fees.

Tulsa County District Attorney Stephen Kunzweiler thinks that billing someone who cannot afford an attorney for the appointment of a public defender is not sensible.

"It's a dysfunctional system," he said.

Legislators and judges have also expressed concerns over revenue from court-ordered costs being used to balance budgets.

"It brings me a great deal of discomfort, I must say, when I look at all the buckets hanging off our fines and fees," noted California Supreme Court Chief Justice Tani Cantil-Sakauye.

According to the *Sacramento Bee,* only 12 percent of defendants who were incarcerated were also ordered to pay fines in 1986. Less than two decades later, in 2004, that number had increased to 37 percent. Today it is likely much higher.

Massachusetts state Senator Michael Barrett, chair of the Senate Committee on Post Audit and Oversight, expressed concerns over the continued practice of collecting large amounts of money from poor defendants through court fines and fees.

"The fact that we're making substantial money off people who have otherwise paid their debt to society and have no money, that's the troubling aspect of this broader question about criminal justice reform," Barrett stated.

A report issued by his committee found more than 100 incidents where defendants were jailed because they couldn't afford to pay fines. And in some cases, the cost of incarceration exceeds the cost of the unpaid fine – resulting in a net loss for taxpayers.

Sources: *Associated Press, Boston Globe, The New York Times, Sacramento Bee, www.usnews.com, www.louisianarecord.com, www.thecrimereport.org, www.rewire.news, www.wbur.org, www.kvia.com, www.ktbs.com*

Prisons, Jails Combat Smuggling by Shredding Mail, Requiring Fresh Underwear

by Christopher Zoukis

The regional jail system in West Virginia receives and screens about 300,000 pieces of mail per year. Some letters contain illegal substances being smuggled into facilities for prisoners, particularly subuxone; in response, the West Virginia Department of Military Affairs and Public Safety has implemented a new rule meant to foil such attempts.

The rule, which was reported by *USA Today* on March 27, 2017, is simple and straightforward: All incoming mail is shredded.

Of course, prisoners have a constitutional right to receive mail. So West Virginia regional jail officials are photocopying all incoming mail, shredding the original and distributing the copies to prisoners.

The Virginia Department of Corrections instituted a similar rule on April 17, 2017. According to VDOC official Lisa Kinney, nine prisoners have died since 2015 due to heroin overdoses; she also noted that drugs were intercepted in the mail a dozen times last year.

"These policy updates are a result of what we've seen," Kinney said.

In an attempt to curtail smuggling during contact visitation, the VDOC also implemented a new policy that requires prisoners to strip out prior to a visit and put on state-issued clothing, including fresh underwear and socks.

A number of other jails and state prison systems are adopting rules designed to thwart contraband smuggling, including the Arkansas Department of Correction, which also is now photocopying correspondence and shredding the originals. The AR DOC's new policy, effective August 21, 2017, also restricts letters to just three pages and bans large greeting cards, among other provisions.

According to prison spokesperson Solomon Graves, "This policy change was a result of intelligence received by the Department that inmates were introducing drugs into the facility by having mail soaked in liquefied drugs or having the drugs placed under stamps. These types of activities have been seen throughout the country in jails and prisons."

Sources: *www.usnews.com, www.richmond.com, www.arktimes.com*

$200,000 Settlement for Restraint of Pregnant Prisoner after Ninth Circuit Vacates Summary Judgment

The Ninth Circuit vacated a summary judgment order in favor of Arizona jail officials in a case that involved a pregnant prisoner who was restrained while she was in labor and after she gave birth.

Miriam Mendiola-Martinez was six months pregnant when she was arrested for forgery and identity theft in Maricopa County in October 2009. When she could not prove she was a legal resident of the United States, Mendiola-Martinez was detained under the Arizona Bailable Offenses Act, ARS 13-3961(A)(5), a law that was later ruled unconstitutional in *Lopez-Valenzuela v. Arpaio*, 770 F.3d 772 (9th Cir. 2014) (en banc).

While Mendiola-Martinez was in custody, Maricopa County's written restraint policy required restraints anytime a prisoner was outside the jail, unless medical procedures required the absence of restraints during treatment.

Two weeks before her expected delivery date, Mendiola-Martinez began having contractions and was transported to a hospital in handcuffs and shackles. She remained in restraints as hospital staff used a fetal monitor to check her baby; she was then discharged and returned to the jail two hours later.

The next day, Mendiola-Martinez was again transported to the hospital "to rule out active labor." Once again she was handcuffed and shackled in the ambulance and during an examination by medical staff. Doctors confirmed that she was in labor.

Mendiola-Martinez gave birth later that day via cesarean section. She was not restrained during the procedure, but restraints were reapplied when she was taken to a recovery room.

Four days before Mendiola-Martinez gave birth, the county issued a "Restraints and Labor" directive dictating when guards could use restraints on prisoners in labor. The policy mandated removal of restraints during epidurals and the stage of active labor in order "to protect the mother and baby," and to avoid "liability of a restrained inmate giving birth which resulted in any injury to the mother and child."

The next day, a friend took custody of Mendiola-Martinez's son during the remainder of her confinement. The day after, Mendiola-Martinez was escorted to court in restraints. Within two days of leaving the hospital, she pleaded guilty to solicitation to commit forgery, was sentenced to time served for the 62 days she had spent in jail and then released.

Mendiola-Martinez filed suit in federal court in 2011, alleging that jail officials had violated the Eighth and Fourteenth Amendments by restraining her during labor and postpartum recovery. The district court granted summary judgment to the defendants and dismissed the case.

The Ninth Circuit reversed on September 12, 2016, finding that then-Sheriff Joe Arpaio and Maricopa County were not entitled to qualified immunity. The appellate court held that Mendiola-Martinez had "presented sufficient evidence for a reasonable jury to conclude that by restraining [her] when she was in labor and postpartum recovery, the County Defendants exposed her to a substantial risk of serious harm."

The Court of Appeals concluded that "a jury could find in this case that the restraints used on Mendiola-Martinez were an 'exaggerated' response to the County Defendants' safety concerns." See: *Mendiola-Martinez v. Arpaio,* 836 F.3d 1239 (9th Cir. 2016).

Following remand, the case settled in December 2016 with the county agreeing to pay $200,000 to resolve Mendiola-Martinez's claims.

Meanwhile, former Sheriff Arpaio, who lost his reelection bid last year, is facing his own legal troubles – specifically, being found guilty of criminal contempt by a federal district court on July 31, 2017 for his "flagrant disregard" of a court order related to the racial profiling of Latinos by the Maricopa County Sheriff's Office. Arpaio will not face any jail time, however, as he was pardoned by President Trump in August 2017.

Additional source: *www.azcentral.com, CNN*

$60,000 Settlement in GEO Group Employee's Sexual Harassment Case

The GEO Group – one of the nation's largest private prison firms, which is frequently the subject of scandal arising from repeated human rights violations at its for-profit facilities – has agreed to settle a lawsuit brought against the company in 2015 by the U.S. Equal Employment Opportunity Commission (EEOC).

The suit was filed on behalf of Roberta Jones, a former guard at the Central Arizona Correctional Facility (CACF), who accused the company of workplace sexual harassment and retaliation. CACF, located in Florence, is privately owned and operated by the GEO Group under contract with the Arizona Department of Corrections.

According to the lawsuit, Jones was routinely subjected to sexual harassment by her male superiors and coworkers at CACF. Her repeated complaints about the abuse were ignored by corporate officials; however, she alleged the complaints prompted her supervisors to retaliate by assigning her to undesirable work posts, issuing arbitrary "write-ups" for fabricated attendance issues and eventually firing her. Additionally, following her termination, Jones' former managers continued to harass her by initiating contact with her new employer and providing a searingly negative performance review regarding her prior employment with GEO Group.

The case settled with the parties entering into a consent decree, which was approved by the district court on August 24, 2017. GEO Group will pay damages to Jones in the amount of $60,000, which will cover back pay and all accrued interest. The company further agreed to fulfill certain requirements as a preventative measure against future allegations of sexual harassment, which include conducting a review of corporate policies and providing additional training to staff members and managers at CACF, among other provisions.

Though GEO Group did not expressly oppose the terms of the settlement as set forth in the consent decree, the company did not admit to wrongdoing. See: *EEOC v. The GEO Group, Inc.*, U.S.D.C. (D. Ariz.), Case No. 2:15-cv-01909-SPL.

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Eighth Circuit Greenlights Jail Detainee's Excessive Force Claim, but Loss at Trial Affirmed on Appeal

by Christopher Zoukis

The Court of Appeals for the Eighth Circuit reversed a district court's ruling that held a jail detainee's excessive force and assault and battery claims could not go forward.

Henry M. Davis was arrested in Ferguson, Missouri for driving while intoxicated between 3 and 4 a.m. on September 20, 2009. During the booking process, he was instructed to enter an occupied, one-person cell without a mat. Davis refused unless provided a mat from a nearby stack. Officers John Beaird and Christopher Pillarick called for backup and Officers Michael White, Kim Tihen and William Ballard responded. A "short, bloody fight" ensued, and Davis and White were hospitalized.

Later testimony indicated that White, Beaird and Tihen beat and kicked Davis after he was handcuffed and subdued on the floor. After the incident, Beaird drafted four complaints, each charging Davis with the offense of "property damage" for getting blood on the officers' uniforms.

Following his release from the hospital, Davis sued the officers and the City of Ferguson. He asserted 42 U.S.C. § 1983 claims against the officers for use of excessive force; he sued the city for municipal liability and Beaird individually for filing false complaints. He also sued the officers individually for assault and battery.

The district court applied an "objective reasonableness" test to the facts related to the excessive force claim. The court then found that "as unreasonable as it may sound, a reasonable officer could have believed that beating a subdued and compliant Mr. Davis while causing only a concussion, scalp laceration, and bruising with almost no permanent damage did not violate the Constitution."

Perhaps a "reasonable" officer in today's militarized police forces would think beating a handcuffed prisoner bloody was reasonable if it didn't result in significant injuries; thankfully, however, the Eighth Circuit did not find that to be reasonable at all, and reversed the district court.

The appellate court also reversed the denial of Davis' assault and battery claims. The lower court had dismissed those claims after finding that officers "acting within the scope of their authority are not liable in tort for injuries arising from their discretionary acts or omissions," and that the decision to use force against Davis was a valid exercise of discretion.

While the Eighth Circuit agreed that was true, it pointed out that official immunity from allegations such as Davis' assault and battery claims "does not apply to discretionary acts done in bad faith or with malice." As it would be impossible to determine at the summary judgment stage that the beating was without bad faith or malice, the district court's order dismissing the case was reversed. See: *Davis v. White,* 794 F.3d 1008 (8th Cir. 2015).

Following remand, the case proceeded to a jury trial that began on February 29, 2016 and concluded two days later. During jury selection, the defendants used a peremptory strike to remove the only black juror from the panel. The jury subsequently found for the defendants and David again appealed.

On June 9, 2017 the Eighth Circuit held the district court had not erred in rejecting Davis' *Batson* challenge to the striking of the only black juror; further, the Court of Appeals found that racist emails sent by one of the officers had been properly excluded because that officer was not involved in the excessive use of force incident. Also, the district court did not error when it declined to give an adverse inference instruction after the defendants failed to preserve video footage of the incident, finding they had acted negligently but not maliciously. The judgment of the district court was affirmed. See: *Davis v. White,* 858 F.3d 1155 (8th Cir. 2017).

The defendants subsequently sought litigation costs of almost $5,000 from Davis, but the district court awarded them only $74.98.

Seventh Circuit Upholds Jury Award for Illinois Prisoner Beaten by Guards

by Derek Gilna

Charles Murphy, an Illinois state prisoner housed at the Vandalia Correctional Center, raised the ire of several guards on July 25, 2011 when he refused to eat at a dining hall table and chair he maintained were wet. Cuffed without incident and led to segregation, he was reportedly beaten while restrained, choked into unconsciousness and thrown into a cell, striking his head on a metal toilet and suffering shattered facial bones.

Unconscious and bleeding heavily, he was eventually examined by a prison nurse who ordered him transported to a hospital, where he underwent emergency surgery to repair the orbital bones around his eye. Murphy claimed that in addition to the pain he experienced, he continues to suffer from blurred and double vision.

He filed a federal civil rights suit under 42 U.S.C. § 1983 against the guards who beat him and also raised state law claims. Following a jury trial, he prevailed on four of his claims and was awarded around $410,000 in compensatory and punitive damages against guard Robert Smith and Lt. Gregory Fulk. The district court reduced that amount to $307,734.82, and also awarded $110,643.66 in attorney fees with the provision that 10 percent of the damages award be applied toward the fees.

Smith and Fulk appealed, raising both sovereign immunity and waiver arguments in the Seventh Circuit. However, as stated in the appellate court's December 21, 2016 opinion, although waiver did not apply, "the district court said that sovereign immunity did not shield the defendants because the jury, in ruling on the battery claim, necessarily determined that they acted outside their authority ... Illinois courts hold that the immunity statute does not apply to claims against the individual official.... [since Murphy] proved the factual elements of the Illinois criminal offense of aggravated battery."

The Court of Appeals also noted that the Prison Litigation Reform Act (42

U.S.C. § 1997e(d)(2)) requires successful prisoner-plaintiffs to pay a "portion of the judgment (not to exceed 25 percent).... to satisfy the amount of attorney's fees awarded against the defendant." In this case, the district court ordered Murphy to contribute only 10 percent of his damages award toward the attorney fees.

After reviewing the facts, the Seventh Circuit remanded the case to the district court to "modify its judgment to require Murphy to pay from the judgment the sum of $76,933.46 toward satisfying the attorney fee the court awarded" – that is, 25 percent of the total damages award as modified by the district court. See: *Murphy v. Smith*, 844 F.3d 653 (7th Cir. 2016), *cert. granted*.

Following remand and another appeal, on July 24, 2017 the appellate court held that Murphy was not entitled to attorney fees on appeal, as he had prevailed on only one appellate claim which related to a state law claim and not a federal claim. See: *Murphy v. Smith*, 864 F.3d 583 (7th Cir. 2017).

With respect to whether Murphy had to pay 25 percent of his damages toward the attorney fee award pursuant to the PLRA, rather than a lesser percentage as initially ordered by the district court, the U.S. Supreme Court granted cert on that issue on August 25, 2017. Murphy is represented before the high court by Stuart Banner with the UCLA School of Law's Supreme Court Clinic.

Additional source: *www.courthousenews.com*

State Closes Kentucky Jail for Failure to Properly Maintain Facility

by Derek Gilna

After numerous failed inspections and failures to perform necessary maintenance, the jail in Estill County, Kentucky was forced to close by order of state correctional officials on March 31, 2017. Approximately two dozen prisoners were transferred to other facilities. This is the second time the county jail has been involuntarily closed; the first was for health code violations.

Approximately two weeks before the most recent closure, state correctional officials said the jail had failed its final inspection, largely due to its inability to make repairs to its sprinkler and smoke evacuation systems. Jailer Bo Morris said the facility simply lacked the funds needed to make those repairs.

According to Estill County Judge-Executive Wallace Taylor, the county is able to place prisoners at other jails, including in Bourbon, Clay, Jackson, Lee and Powell counties, for $25 to $35 a day excluding transportation costs.

Morris was critical of the jail's closure, saying, "I need my job. I've got bills to pay. But if he don't want to give me what I need to do this and do it right, I'll give him my keys and walk out the door."

Judge Taylor indicated he had appealed to the Kentucky Department of Corrections in an attempt to work out a solution that will allow the jail to reopen.

Source: *www.wkyt.com*

Louisiana Corrections Secretary: More Private Prisons Won't Save Money

Privatizing more prisons will not save Louisiana money now or in the long run, according to the state's Public Safety and Corrections Secretary, Jimmy LeBlanc. LeBlanc is opposed to House Concurrent Resolution 30, proposed by state Rep. Jack McFarland, which would require the prison system to report by the end of 2017 whether turning over the management of five additional prisons to for-profit companies would result in cost savings.

Much of the assumed savings would come from paying guards and other staff lower wages, LeBlanc said, which would make it harder to recruit and retain good employees. The state already struggles to retain staff due to low wages; the starting salary for a Louisiana prison guard is $24,300 per year. A privately-operated prison would likely reduce wages even more, he noted.

News of more privatization unnerved staff at some facilities. "It doesn't help with the morale of the prison system," LeBlanc said in a May 17, 2017 statement. Prison guards already have the highest turnover rate among state employees.

Private companies operate two Louisiana state prisons: the Allen Correctional Center, run by GEO Group, and the Winn Correctional Center, managed by LaSalle Corrections. McFarland's bill would add another five for-profit prisons.

In mid-2016, Louisiana downgraded its privatized prisons to "jail" status – an administrative maneuver that let state officials cut education and rehabilitation programs. The move also reduced payments to the companies running the facilities from $31.51 per prisoner per day to $24.39, and cut 100 jobs at each location.

McFarland introduced his legislation because he thought privatization would relieve the state's budget crisis, and the estimated savings would go toward education and rehabilitative services at local jails. He is also seeking funds to restore services to the downgraded private prisons, especially at Winn, which is in his district.

Corrections Secretary LeBlanc also favors restoring the Winn and Allen facilities to "prison" status, but that would require more money and the state has already cut the prison system's budget.

A recent 10-month study focused on how Louisiana could reduce its highest-in-the-nation incarceration rate. Privatization was not recommended. Rep. McFarland's bill did not pass during the last legislation session, though it may be reintroduced.

Meanwhile, in June 2017 the GEO Group abruptly announced that it was pulling out of its contract to manage the Allen Correctional Center, citing "state budgetary constraints." The move caught local officials by surprise.

"GEO is probably the third largest employer for Allen Parish and it's going to affect our community dramatically with revenue and utilities," said Mayor Wayland LaFargue. "People don't realize the utilities they use. The employees ... where are they going to go? I'm guessing 200 some have been there 20-plus years, that's devastating to a family."

GEO's decision to walk away from its contract to operate the Allen facility illustrates how private prison companies are quick to cut their losses when contracts are no longer profitable – something that Rep. McFarland should keep in mind with respect to his efforts to expand prison privatization.

Sources: *www.nola.com, www.kplctv.com*

Seattle Council Approves Protections for Renters with Criminal Records

by Nathalie Graham, Seattle Weekly

Fifteen months in prison. Three years of probation. A $30,000 fine. Sue Mason paid her debt to society long ago – 14 years, to be exact – yet, it feels like she's still doing her time.

"I get reconvicted over and over," Mason said during public comment on August 14, 2017 at City Hall. "Even after I've had housing, even after I've been employed for years and then to have somebody say, 'no, you don't deserve housing, it hasn't been long enough.' What we're talking about is discrimination. Period."

For Mason, and the other one-in-three people in Seattle with a criminal record, it can be extremely difficult to find housing.

The Seattle City Council hopes that will be changing soon with the unanimous passage of the Fair Chance Housing Ordinance.

The legislation will reduce barriers to housing for people with a criminal record by barring landlords from turning away potential tenants simply because they have past arrests or a criminal conviction.

The bill has a long history, beginning in 2013 when councilmembers Mike O'Brien and Nick Licata addressed the issue by removing barriers at publicly-funded housing. It then reappeared as a recommendation within Mayor Murray's Housing Affordability and Livability Agenda (HALA). Finally, after a year of collaboration and discussions, it has passed.

As councilmember M. Lorena Gonzalez put it, this is a second chance bill.

"Once you pay your debt to society by virtue of spending time in prison or jail or a conviction," Gonzalez said, "at that point you deserve a second chance."

Many councilmembers echoed this sentiment.

Councilmember Lisa Herbold, who spearheaded the legislation, spoke to the importance of the people who came forward to share their lived experiences.

"The reality is that no matter how many facts and figures exist, what actually creates structural change is our collective awareness of these lived experiences. They are worth more than all the studies combined," she said.

Several people, including Mason, helped bring that awareness.

There was Zackary Tutwiler, a former drug dealer who couldn't hold a normal job after suffering a traumatic brain injury. After serving a possession sentence, Tutwiler stopped dealing. But, he quickly found himself on the streets, homeless.

Thanks to employment with Real Change he was able to secure a job and find permanent housing. Others, he knows, aren't so lucky.

"If it wasn't for my current housing situation I would be homeless again because of my criminal past," Tutwiler said. "I deserve housing. We all deserve housing."

Rusty Thomas, similarly, is formerly incarcerated.

Despite going back to school, getting a bachelor's degree in psychology and co-founding the Freedom Project, an organization that provides programming for current prisoners and recently incarcerated people, Thomas still gets turned down for housing.

Within his community, he still is told he doesn't fit in and that he doesn't belong. And he recognizes that, as a white man, he has it relatively easy.

"Look, I say all this because I have the agency of a white male up here," Thomas said. "So if I'm suffering I can't even imagine people of color trying to do the same thing I'm doing."

Before this legislation, councilmember Herbold said, landlords had the ability to reject potential tenants because they had simply been arrested in the last seven years. This is a relatively new development, with the advancement of background checking systems, Herbold said. An arrest, not even a conviction, can stand in the way of people having a home.

"For a criminal justice system that disproportionately arrests people of color," Herbold said, "punishing someone who hasn't been found guilty is a true injustice. For those who have been convicted, the way I see it, you've paid your debt to society if you've served your time."

Sue Mason dabbed happy tears under glasses following the bill's passage.

"It's been 14 years dealing with this," she said. "It's like having a scarlet letter I can take off, it's like I can just be me."

This article was originally published by Seattle Weekly *(www.seattleweekly.com) on August 14, 2017; it is reprinted with permission, with minor edits.*

Family Files Wrongful Death Suit Against County Jail in New York

by Derek Gilna

The family of deceased prisoner Jimmy Richardson filed a federal lawsuit against the Schenectady County Jail in New York in April 2017, alleging that the facility and its medical contractor, Correctional Medical Care, wrongfully withheld medication that could have prevented his death.

The complaint alleges that the defendants knew Richardson, 53, suffered from heart disease, but initially denied him his prescription medication when he was booked into the jail, resulting in his death on January 17, 2016.

"While [Richardson] was obviously not the healthiest person, he had been successfully managing his medical conditions for several years. It was not until the defendants denied him his medication for several weeks ... that [he] died," the complaint states. It also alleges that jail medical records purporting to show Richardson received medication were falsified.

Richardson had submitted various sick call requests, stating, "I am Hurting so Bad I need Help!" Jail records indicate that he did not receive any pain medication other than Tylenol until shortly before he died, when the lawsuit claims that he received excessive doses of morphine. The suit also alleges that on the eve of his death, Richardson sought medical care but instead was threatened with disciplinary action by a jail guard.

The suit was filed by attorney E. Robert Keach on behalf of Richardson's widow, Bernita Richardson. See: *Richardson v. Correctional Medical Care*, U.S.D.C. (N.D. NY), Case No. 9:17-cv-00420-MAD-ATB.

Source: *https://dailygazette.com*

Court Decision Favoring BOP Whistleblower Critical of BOP and OIG

by Derek Gilna

A December 2, 2016 decision by the Federal Circuit Court of Appeals, overturning a finding by the Merit Systems Protection Board, has cast in doubt the operations of the chief internal investigative body of the U.S. Department of Justice – the Office of the Inspector General (OIG) – as well as the federal Bureau of Prisons (BOP).

In its ruling, the appellate court sided with Troy W. Miller, the former chief supervisor of the BOP's prison industries program at a federal facility in Texas, who claimed that his rights under the federal Whistleblower Protection Act (WPA) had been violated after he exposed alleged wrongdoing in the handling of BOP funds and the manufacture of products by prisoners.

According to the Court of Appeals, "Mr. Miller worked as the Superintendent of Industries, level GS-13, at the Federal Correctional Complex, Beaumont, Texas. In this capacity, Mr. Miller oversaw a prison factory that produced ballistic helmets primarily for military use." While serving in that capacity he received numerous accolades that highlighted his talent at managing the use of prisoner labor.

However, as previously reported by *PLN,* the federal prison industries program, also known as UNICOR, has been the subject of criticism over the years, including with respect to shoddy manufacturing practices, dangerous prisoner working conditions and substandard products. For example, *PLN* reported that the UNICOR program at FCC Beaumont was shut down after inspectors found that substandard materials were being used in the manufacturing of ballistic helmets supplied to the U.S. military. [See: *PLN,* May 2017, p.44; Jan. 2011, p.20].

The Federal Circuit wrote that "On October 7, 2009, Mr. Miller disclosed to individuals at UNICOR and to [Beaumont] Warden Upton what he perceived to be mismanagement of funds at the factory. On December 15, 2009, OIG conducted an on-site visit to the factory as part of an investigation into the factory's operations and purported misconduct. Warden Upton asked Mr. Miller to not report to the factory on that day, relaying to him that the investigators did not want the factory staff to feel uncomfortable or intimidated by having their supervisor ... present during the OIG visit."

The day after the OIG investigation, Miller advised Warden Upton that there had been an act of "sabotage" on the UNICOR assembly line.

Shortly after the investigation began, the "OIG told Warden Upton to reassign Mr. Miller because he might interfere with the investigation," the appellate court noted, and shortly thereafter Miller was removed from his position and given assignments that included custodial duties and a position as night supervisor in the Special Housing Unit.

Miller brought an action under the WPA, 5 U.S.C. §§ 2301(b)(8) and 2302(a)(2)(A), and an Administrative Law Judge (ALJ) found that he had made a protected disclosure and suffered adverse employment action. At that point, the burden shifted to the government to show that it would have reassigned him regardless of his whistle blowing. Warden Upton's testimony that Miller would have been reassigned anyway persuaded the ALJ to enter a finding for the government, but that decision was reversed by the Court of Appeals.

As noted by the appellate court, the "Government's evidence is weak, particularly when considered in light of the record evidence endorsing Mr. Miller's character," including from Warden Upton. "The record further demonstrates that [he] was a valued executive, whose expertise and attention to detail made his product line one of the most successful in the Agency." Additionally, Miller, a former Marine, was "concerned about the quality of the advanced combat helmets manufactured by the prison factory."

Although Miller eventually received a favorable ruling from the Federal Circuit, a more serious question remains – which is whether the OIG is in fact the independent investigative body that it claims to be, and an agency capable of properly monitoring the notoriously opaque and misconduct-prone federal Bureau of Prisons. See: *Miller v. Department of Justice,* 842 F.3d 1252 (Fed. Cir. 2016).

Fourth Circuit Reverses Dismissal of Prisoner's Failure to Protect Claim

by Christopher Zoukis

In March 2016, the Fourth Circuit reversed a district court's dismissal of a prisoner's Eighth Amendment failure to protect claim in a case that subsequently settled.

The prisoner, James Herman Raynor, was held at the Sussex II State Prison in Virginia. In November 2012, Raynor, who suffers from seizures, blackouts, heart issues and breathing problems, asked to be moved to a different cell with a "caretaker" who had volunteered to help him with his various medical needs. As is typical, his request was ignored.

Raynor renewed his request on January 10, 2013 with G. Pugh, his Housing Manager. That same day Pugh told Raynor that he was going to move his cellmate, K. Mullins, instead.

Mullins did not take kindly to that plan, and in front of Pugh allegedly told Raynor "it's on," and that they were both "going to seg." According to Raynor, Pugh said he didn't care what Mullins did and ordered the two men into a cell.

Housing Manager Pugh then watched as Mullins pummeled Raynor to the floor and smashed his television. According to Raynor's complaint, Pugh didn't call for assistance or do anything until after the attack was over.

Raynor sued Pugh, alleging that he suffered severe and lifelong injuries from Mullins' assault; he claimed that Pugh violated his Eighth Amendment right to be free from cruel and unusual punishment by

being deliberately indifferent to his safety.

Raynor provided evidence to support his claim, including a verified (signed under penalty of perjury) complaint, a corroborating affidavit from a fellow prisoner who witnessed the attack and medical documentation of his injuries. He also submitted discovery requests.

Pugh denied everything other than the indisputable fact that Mullins had attacked Raynor. He contended he was somewhere else at the time of the incident, that prison policy would have prevented him from intervening even if he was there and that Raynor's injuries were minor.

Pugh moved for summary judgment, despite the existence of factual disputes and the outstanding discovery requests. The district court granted Pugh's motion anyway and dismissed the case.

The Fourth Circuit reversed, finding that several genuine issues of material fact precluded a grant of summary judgment to Pugh. From an objective standpoint, Raynor had provided evidence (which Pugh disputed) that he suffered a serious physical injury. From a subjective perspective, Raynor submitted evidence (once again, disputed by Pugh) that Pugh had actual knowledge of the risk to his safety yet did nothing.

Those types of factual disputes, as well as the outstanding discovery requests, should have precluded the grant of summary judgment by the district court, leading the Fourth Circuit to reverse and remand the case. See: *Raynor v. Pugh,* 817 F.3d 123 (4th Cir. 2016).

Following remand and shortly before trial, the case settled in November 2016. Pursuant to the settlement, the defendants agreed to transfer Raynor to another facility where he would be "housed in an ADA compliant cell and provided access to an ADA Coordinator to determine his appropriate needs, including, but not limited to toilet access, durable medical equipment, and physical therapy." Further, he would receive his prescribed medication for his seizures and back pain, or substitute medication would be agreed upon.

The Virginia DOC also agreed to provide Raynor with a CPAP machine and to schedule appointments with an oral surgeon and a board-certified gastroenterologist. In addition, the settlement provides that the DOC director shall "issue a written communication to the heads of all VA DOC correctional facilities ... regarding record retention, including the retention of video surveillance evidence, and transparency of public records."

The defendants agreed to pay $50,000 to the *pro bono* law firm that represented Raynor, McGuireWoods LLP, in lieu of attorney fees and costs. Of that amount, the firm will donate $42,325.64 to Greater Richmond Stop Child Abuse Now and $7,674.36 to the Central Virginia Legal Aid Society. The defendants will also pay $18,501.39 to the U.S. District Court Clerk, to reimburse costs incurred by McGuireWoods during the litigation, plus pay an additional $11,000 to the law firm "to satisfy any and all additional costs."

Finally, the Virginia DOC agreed to waive "any required payments by Raynor for any and all future medical co-pays for medical treatment visits, prescription medications, and/or medical devices of any kind," and to remove all prior debts from his prison trust account – including past medical co-pays and legal charges. See: *Raynor v. Pugh,* U.S.D.C. (E.D. Va.), Case No. 1:15-cv-00842-LMB-TCB.

Corizon Loses Indiana DOC Medical Contract Amid Lawsuits

by David M. Reutter

In 2005, at the urging of then-Governor Mitch Daniels, the Indiana Department of Correction (IDOC) awarded a contract to privatize medical care for prisoners. The winning bidder, Prison Health Services, merged in 2011 with Correctional Medical Services to form Corizon Health, which later won renewal of a three-year, $300 million contract to provide medical, dental, vision, mental health and substance abuse treatment services to IDOC's 28,000 prisoners.

In February 2017, however, state prison officials declined to renew Corizon's contract, instead awarding it to Wexford Health Sources. Consequently, Corizon announced the following month that it planned to lay off almost 700 employees in 22 IDOC facilities. [See: *PLN,* Sept. 2017, p.32].

PLN has reported extensively on Corizon and the company's business model, which appears to consist of delaying or denying medical care and reducing staffing costs to increase profits; in turn, that has resulted in numerous prisoner deaths and injuries. [See, e.g.: *PLN,* Oct. 2015, p.20; March 2014, p.1].

Yet the IDOC's watchdog over Corizon's contractual performance was a former Corizon employee.

Dr. Michael Mitcheff was working as an emergency room physician at two Indiana hospitals when, in 1994, he was investigated for buying illegal drugs. He ultimately admitted that over a three-year period he had bottles of a cough syrup containing hydrocodone illegally delivered to his home. Mitcheff agreed to participate in a treatment program and was ordered not to practice medicine during treatment.

In 1998, Mitcheff's license was suspended for 90 days after he wrote prescriptions in other people's names and picked the drugs up from pharmacies. Documents from the state medical board indicated Mitcheff had admitted to a state police officer that he picked up 57 pints of a drug that contained hydrocodone.

When his license was reinstated in October 1999, records show Mitcheff was sober for a year – he passed 100 drug tests. The medical board agreed to let him work again, but "only in the Indiana state prison system" – which allowed Mitcheff to serve as Corizon's regional medical director in Indiana. He said his personal experiences gave him a unique perspective.

"There's nobody more empathetic to the patient population we serve," Mitcheff stated. "Addiction is a disease, and who better to understand that?"

In 2014 he became the IDOC's chief medical officer, overseeing Corizon's contract. Responding to complaints, Mitcheff said he did not see medical staff "withholding care." In fact, he added, "we watch that carefully." Defending the health care provided to IDOC prisoners, Mitcheff proclaimed, "I am confident that our clinical metrics for chronic conditions are better than [in] the free world."

Yet the number of prisoner medical complaints to the IDOC's ombudsman jumped from 153 in 2010 to 509 in 2015. Prisoner deaths, including suicides, increased to 86 in 2015.

Then there were the lawsuits. Indiana prisoners or their families have filed over 300 medical-related suits against Corizon and/or IDOC officials in federal court – 76 in 2016 alone. Corizon has settled nearly three dozen of the cases for more than $1.2 million, in amounts ranging from $300 for a prisoner whose appeal related to his cataracts was denied to over $300,000 in a wrongful death case. The settlements are not admissions of guilt, the state Attorney General's office emphasized, but "avoid the uncertainties of further litigation where taxpayer dollars would be at stake."

Indianapolis civil rights attorney Michael Sutherlin called Corizon's philosophy of providing health care "a profit model" rather than "a medical model." He said the failure to provide basic care in even obviously dire situations demonstrated serious problems with the company's provision of medical services.

Dr. Mitcheff disagreed, saying, "The question is, 'How do you make money in this industry and provide great service?' There is a way, and we did it in Indiana. That isn't by withholding care, because typically withholding care down the road is going to cost you more money.... The way to be cost-effective and make money in this industry is by providing great-quality preventive care."

IDOC prisoner Jerry A. Gore, 33, claimed in a lawsuit that after he played basketball on a 105-degree day in July 2012, a guard insisted he take a shower. The guard locked him in a small, unventilated stall, and Gore passed out shortly after he showered in hot water. When he came to, he called for a guard. He collapsed after the door was opened and was carried to a large fan; guards placed a cold rag on his head and called for medical help.

In his complaint, Gore said the responding Corizon nurse took his vital signs, pronounced him fine and walked away. "I couldn't move," Gore claimed. "The officers just looked at her."

Shortly thereafter, Gore said he began vomiting, could not see or hear and turned pale. Guards put him in a wheelchair and took him to the infirmary, which is when the nurse noted he had low oxygen levels. Three nurses were unsuccessful in starting an IV. Finally, a Corizon doctor approved Gore's transfer to a hospital, where he was diagnosed with heatstroke.

In another case, the family of prisoner Rachel Wood is seeking to uncover the facts of what happened while she was in Corizon's care. After her death, they learned other prisoners had been helping her to the bathroom, to eat and to fill out forms seeking medical treatment.

Prior to her incarceration, Wood was successfully treated for lupus, a condition that causes blood clotting and other ailments. Corizon, however, did not consult with or arrange for her to see a similar specialist during the two years she was in prison. A lawsuit filed by her family uncovered a series of errors by Corizon that resulted in missed diagnoses, medications that were stopped and started, and tests that were ordered but never performed.

Claude Wood made relentless phone calls to determine his daughter's location and condition. IDOC officials, however, prevented medical staff from communicating with the family and prohibited them from seeing Rachel – even though her condition was dire.

An email dated April 11, 2012 from Rockville Correctional Facility superintendent Julie Stout discussed a phone call from guards watching Rachel that morning, "indicating that the offender has a short time to live. She is receiving blood but it

isn't staying with her. Her kidneys are failing and her feet are changing color. She is also starting to swell. She has not been officially placed in imminent death status.... Information from [a Corizon employee] this morning doesn't match the information we received. The information the [ ] officers received came from nursing staff."

Two days later, Janet Robertson, a Corizon nurse who coordinated care with outside hospitals, wrote an email to the IDOC and her Corizon supervisor, stating, "This is to inform everybody that at the last minute, 2 of the MD's [at the hospital] would not approve the discharge of Rachel Wood to Rockville. They would only approve a discharge to Kindred [Hospital]."

That hospital did not have an ER, nor was it equipped to provide the type of chronic care Rachel required. During the transfer, Rachel coded in the ambulance and died as she reached Kindred, still shackled and handcuffed.

"The dispute there is who made the decision [to discharge Rachel from Terre Haute Regional Hospital] and what was the decision based on," noted Michael Sutherlin, the family's attorney. "It appears Corizon wasn't going to pay anymore." Terre Haute's contract with Corizon did not include long term care, he added.

"I just wish someone would have had a heart," said Sue Williams, Rachel's mother. "We tried so hard to get to her."

Before he went to prison, Nicholas Glisson told his mother, "Mom, I won't see you again." Glisson, 50, survived laryngeal cancer in 2003. The surgeries, however, left him without a larynx, part of his pharynx and part of his left jaw bone. A tracheotomy tube was inserted in his throat and he required a voice prosthesis to speak. He also wore a brace to support his neck, which was weak from surgery and radiation.

At home he was able to keep the tube and hole in his throat clean, but knew he would be unable to do so while serving a 10-year sentence for selling one of his OxyContin pills to a police informant.

Once in prison, Glisson's behavior became erratic. A nurse concluded he had psychiatric issues, but she failed to look for physical causes or seek a psychiatrist's input. An expert witness in a lawsuit filed by his family testified that Glisson was suffering OxyContin withdrawal.

His mental health medication was also changed from its previous prescription, causing further problems. There was evidence that lab reports were ordered but no indication the results had been reviewed. A doctor found one report in his inbox which noted Glisson's kidneys were failing. He was sent to a hospital for a week, then died four days after his return to prison; that was just 37 days after he began serving his sentence. A coroner noted Glisson's "extreme emaciation," while a forensic pathologist found acute respiratory insufficiency/pneumonia, renal failure and dehydration.

The wrongful death suit filed by Glisson's family remains pending, after the district court's grant of summary judgment to the defendants was reversed by the Seventh Circuit in March 2017. See: *Glisson v. IDOC,* U.S.D.C. (S.D. Ind.), Case No. 1:12-cv-01418-SEB-MJD.

"Money is not the issue whatsoever," stated Nicholas' mother, Alma Glisson. "The issue is justice."

Another prisoner said one of Corizon's shortcomings was its refusal to listen. Luis Silveria warned prison officials that he would kill someone in 2006. In May 2009, he hoarded enough pills to nearly

kill himself; he also said he would kill any other prisoner placed in his cell.

During a "medication management" visit with a Corizon psychiatrist in June 2009, Silveria was quoted as saying he would kill other people. "I warned them ahead of time, so it's not my fault," he said. Yet the psychiatrist declined to prescribe medication to Silveria, writing, "The patient does not express homicidal ideation."

In July 2009, IDOC team members noted Silveria was "adjusting well with a cellmate." A month later, prisoner Patrick Whetstone, 25, was found dead in Silveria's cell. Just two months before his release, Silveria had tied Whetstone's hands behind his back, put a plastic bag over his head and strangled him.

In an affidavit, Silveria said he had warned the psychiatrist a week before Whetstone's murder, stating: "'Listen, I need to be back on my medication.' Well, we went back and forth like this for a month. No medication. Well, I unfortunately killed Mr. Whetstone. Two days later, they show up at my door. Guess what? 'We think you need to be back on your medication.'"

Whetstone's family received settlements totaling $1.1 million for his death in 2014, including $330,000 from Corizon. See: *Eutsey v. Corizon,* U.S.D.C. (N.D. Ind.), Case No. 3:11-cv-00327-JTM-CAN.

The family had hoped to achieve policy changes with their lawsuit, and Silveria agreed reforms are needed. He added the only positive thing that could happen with Corizon is not a monetary settlement or punishing him for killing Whetstone. Rather, "It's they gotta listen. That's it."

The Indiana legislature passed a measure that helped boost Corizon's profits with a 2012 law that placed limits on what hospitals can charge for providing medical care to prisoners.

"This arrangement isn't working," said attorney Kent Hull, who represented Jerry Gore in a lawsuit against Corizon and several of the company's employees. "Indiana has a legal responsibility to provide adequate medical care, but it cannot simply walk away and say, 'we've delegated that to Corizon.'"

However, a federal district court entered summary judgment in favor of the defendants in February 2017, dismissing Gore's claims related to Corizon's deficient medical care. See: *Gore v. Corizon,* U.S.D.C. (S.D. Ind.), Case No. 1:13-cv-00241-JMS-DML.

Sources: *South Bend Tribune, Washington Times, Inside Indiana Business*

Private Probation Company Agrees to End Drug Testing Absent Court Order

by David M. Reutter

In a preliminary consent order, Sentinel Offender Services, a private probation company, agreed to stop its practice of drug testing probationers without court approval. The order was entered in a class-action case challenging Sentinel's practices in a Georgia county that uses the company to manage its probation services. [See: *PLN*, May 2017, p.38; Jan. 2014, p.18].

The Southern Center for Human Rights (SCHR) filed the lawsuit on behalf of two women in White County who were placed on probation because they were unable to pay fines imposed for traffic violations – most of which are misdemeanor offenses in Georgia.

Rita Sanders Luse, 62, was fined $775.75 for driving with a suspended license. As she was unable to pay the fine upon sentencing, she was ordered to pay $44 per month in probation supervision fees for one year. Likewise, Marianne Ligocki, 45, pleaded guilty to the same charge and was placed on probation and fined $313.02.

Neither woman was ordered to submit to drug testing, but both were told by Sentinel probation officer Stacy McDowell-Black that they had to take drug tests or their probation could be revoked. Out of fear of going to jail, they signed a document that purportedly allowed the company to test their urine for controlled substances; they were charged $15 for each test.

At the time the suit was filed, Ligocki had paid $90 in drug testing fees. Of the $490 she paid in supervision fees over a six-month period, only $131 went towards her court fine; Sentinel kept $210 for its own fees. Luse paid $60 in fees for drug tests.

The complaint also claimed that Sentinel forced Luse, who lives on a limited income, to provide payment within a matter of hours or face immediate arrest. That threat came after she reported for a probation meeting without any money and said she would pay when she received her paycheck in a few days. To avoid being jailed, Luse rushed to obtain a loan from a relative.

On March 31, 2016, the parties agreed to a preliminary consent order which specified that Sentinel "shall not require probationers sentenced by the Probate Court of White County, Georgia to submit to drug screening unless the screening is specifically authorized by a written order of said Court."

The company argued in other pleadings that Luse and Ligocki had freely agreed to undergo drug tests, and that the matter must be sent to a private arbitrator. The district court granted the plaintiffs' motion to certify the suit as a class-action on January 13, 2017 and the case subsequently settled.

The court granted final approval of the settlement in August 2017, which provided that Sentinel will pay $80,000 into a damages fund plus $25,000 in attorney fees and costs. Also, the company will abide by the terms of a final consent order that prohibits it from subjecting probationers to drug tests unless such testing is ordered by a court.

There are 276 class members in the case who will share in the damages; in total, they had received 964 drug tests from Sentinel. See: *Luse v. Sentinel Offender Services, LLC*, U.S.D.C. (N.D. Ga.), Case No. 2:16-cv-00030-RWS.

This case demonstrates just one of several problems inherent in the profit-driven privatization of criminal justice-related services: "If there is a legitimate government interest in testing [a] probationer's bodily fluids and charging them for it, an impartial judge, not a private company, should make that determination applying constitutional limitations," noted SCHR attorney Sarah Geraghty.

The lawsuit was one of at least 15 federal suits filed against Sentinel in Georgia, Florida and California, according to the *Augusta Chronicle*, in addition to over a dozen cases filed in state court in several Georgia counties.

Sources: *www.schr.org, http://chronicle.augusta.com*

Virginia Governor Grants Full Pardons to the "Norfolk Four"

by Christopher Zoukis

Four former U.S. Navy veterans wrongly convicted of the rape and murder of an 18-year-old woman have been granted full pardons by Virginia Governor Terry McAuliffe.

Eric Wilson, Danial Williams, Derek Tice and Joseph Dick, Jr., known as the "Norfolk Four," were arrested for raping and killing Michelle Moore-Bosko in 1997. Based almost entirely on false confessions, Williams, Tice and Dick were convicted of both crimes and sentenced to life in prison. Wilson, convicted of rape, received eight-and-a-half years.

After an investigation revealed that the confessions were coerced by detective Glenn Ford – who is serving 12 years in prison for lying to the FBI in unrelated cases – and that another man had confessed to the crime, Virginia authorities took another look at the Norfolk Four.

Concluding that crime scene and forensic evidence overwhelmingly pointed to the guilt of Omar Ballard, the suspect who had confessed, then-Governor Tim Kaine conditionally pardoned Williams, Tice and Dick after they had served 11 years. Wilson, who had already been released, was not pardoned at that time.

The failure to pardon Wilson meant that he remained a registered sex offender despite having been wrongfully convicted. As a result he was blacklisted from his son's Boy Scout meetings and barred from all school functions without an escort.

"My wife, I made her stop reading comments on the Internet because she was getting death threats for being with a sex offender," Wilson said.

Governor McAuliffe's full pardons, issued on March 21, 2017, will help resolve such problems; a federal district court had previously vacated Dick's and Williams' convictions.

"These pardons close the final chapter on a grave injustice that has plagued these four men for nearly 20 years," McAuliffe said in a statement.

Wilson declared that he was "over the moon" about receiving the pardon, but would like to see reforms made to the sex offender registry.

"The registry essentially says that you haven't paid for this crime, you can never pay for this crime and will for the rest of your life," he stated.

Meanwhile, Ballard is now serving a life sentence for the crimes that sent the Norfolk Four to prison.

Sources: *www.cnn.com, www.usnews.com*

Profiting Off Mass Incarceration: Detroit Pistons Owner Buys Private Prison Phone Company

by Brian Dolinar, Truthout

The election of Donald Trump has already given an economic boost to those profiting from mass incarceration. The stock prices of the two biggest private prison builders – CoreCivic (formerly Corrections Corporation of America) and GEO Group – doubled after Trump took office.

Companies that charge for expensive phone calls from prisons and jails also won big after Trump's victory. One of the president's first appointments placed Ajit Pai at the helm of the Federal Communications Commission (FCC), who promptly rolled back the agency's 2015 decision to regulate the prison phone industry. The companies hailed it as a victory.

Shortly after the FCC's reversal, Securus, one of the largest prison phone companies, announced it was being sold to Platinum Equity, a large investment firm for a reported $1.5 billion. (To date the deal has not been finalized.) Tom Gores, Platinum's founder and CEO, is an investment mogul who also owns the Detroit Pistons. In 2011, Gores purchased the basketball team with the stated intent of improving the struggling city.

In the United States' current economy, prisons and basketball are growth industries. Both profit from the exploitation of black bodies, pulling in people from poor neighborhoods in major cities like Detroit. Yusef Shakur grew up on these streets. He ran in a gang at a young age and spent nine years incarcerated. He is an activist today working in Detroit's black community. In an interview with *Truthout,* he called Gores' purchase of Securus another "capitalist adventure" taking advantage of the "most marginalized and most oppressed."

Securus, Leading Prison Profiteer

Securus has seen steady economic growth in recent years, trading hands between several large hedge funds. In 2011, Securus was purchased by the investment firm Castle Harlan for an estimated $440 million. Two years later, the company was bought out by another big investor, Abry Partners, which reportedly paid $640 million. In leaked documents, Securus boasted of making $114 million in profit in 2014, a 30 percent increase from the previous year.

Securus is a modern-day carceral conglomerate, a company that is traded by big investment firms and owns a diversity of prison products and services. It is the second-largest prison phone company, behind Global Tel*Link (GTL), although Securus is quickly moving into various new markets. As Securus describes itself in a recent press release, it is "a leading provider of civil and criminal justice technology solutions for public safety, investigation, corrections and monitoring."

The company is responsible for phone calls for more than one million people incarcerated in the U.S., but this is not all. Securus is now installing Skype-style video calling systems that can cost $20-$40 per session. Securus has also acquired two companies in the growing market of electronic monitoring.

In 2015, Securus bought out JPay, an automated billing company that charges families to send money to their loved ones who are incarcerated. Securus, and its parent company Abry Partners, paid $250 million for JPay, a fast-growing business that operates in 33 states and has 1.6 million customers.

Trump's FCC

The prison phone industry has come under intense public scrutiny after a 20-year campaign waged by families of those incarcerated, sympathetic attorneys and prison activists. Retired nurse Martha Wright first filed a lawsuit to cap phone rates, which in 2001 was referred to the FCC. Commissioner Mignon Clyburn championed the issue in front of the communications board. In October 2015, the FCC passed sweeping regulations of these calls.

However, shortly after coming into office, Trump promoted FCC Commissioner Ajit Pai to serve as chairman. Just days into the position, Pai came out with news the FCC would no longer defend its 2015 decision. In June 2017, a U.S. Court of Appeals in Washington, D.C. ruled 2-1 to strike down the FCC's ruling.

Truthout spoke with Lee Petro, one of the attorneys representing the Wright petitioners, who cited Pai's role in undoing the regulations.

"The decision by Chairman Pai to prohibit his attorneys to defend the Commission's authority to regulate intrastate rates was a devastating blow, and was directly cited in the majority decision as a basis for overturning the FCC rules," Petro said.

U.S. Senator Tammy Duckworth introduced a bill that would regulate video calling systems and authorize the FCC to rule on prison phones. Organizing behind this legislation may be the next step for those in the prison phone justice campaign.

During Pai's confirmation process, he revealed in a questionnaire that, during 2011 and 2012, Securus was one of his clients when he was working as an attorney at the law firm of Jenner & Block. He was confirmed as FCC chairman by the Senate on Oct. 2, 2017.

Not long after Pai's appointment, Securus announced that it was up for sale to Platinum Equity. Its reported $1.5 billion price tag is more than double what was paid for Securus five years ago. Prisons promise to be profitable in the Trump era.

How to Win

In 2011, the Detroit Pistons were a struggling basketball team that had a losing record. By that time, Detroit had a reputation as one of the most economically-depressed urban centers in the U.S. Not long after, the city declared bankruptcy. When Platinum's Tom Gores bought the Pistons, it was a risky venture. Gores purchased the team for $325 million, a bargain price that one commentator called "shocking." The same year, Platinum was listed as the 23rd largest private company by *Forbes*. Today, Gores is worth an estimated $3.3 billion.

Gores was raised in Genesee, Michigan, a suburb of Flint, not far from Detroit. He moved to California where he established Platinum Equity in 1995, with headquarters in Beverly Hills. Platinum has bought and sold more than 185 different companies in a variety of industries, including information technology, manufacturing and transporta-

tion. It owns the largest newspaper in San Diego, the *Union-Tribune.* A global company, Platinum also has offices in New York, Boston, London and Singapore.

Growing up near Detroit, Gores professed his desire to use the Pistons to help turn the city around.

"If all I do is make a few bucks," Gores wrote in *Forbes*, "that's not good." A winning team would bring people back to Detroit, he said, "so we have to figure out how to win, how to compete. I know the city needs that."

Also known for his philanthropy, Gores pledged to raise $10 million for residents of Flint after news broke of their toxic water supply.

However, activists who spoke to Truthout questioned Gores' good intentions. Ronald Simpson-Bey is an alumni associate at JustLeadershipUSA who currently lives in Detroit. He did 27 years in Michigan state prisons before having his conviction overturned in 2012. Platinum's purchase of Securus "speaks volumes," he said. "People like Gores need to invest money in people, not prisons."

Truthout attempted to reach Gores, but he did not return a request for comment.

New Detroit

Gores recently announced the Pistons are coming back to the city in a move that is being billed as key to building a "New Detroit." For years, the Pistons have played at The Palace in the suburb of Auburn Hills. A new stadium named Little Caesars Arena is expected to open before the end of the year in downtown Detroit and will host games by the Pistons as well as the hockey team, the Detroit Redwings (owned by Christopher Ilitch, who made his fortune from the pizza chain and acquired the naming rights to the arena). In an interview with the *New York Times* about the team's move downtown, Gores described the Pistons as the missing "family member" in Detroit.

Yet not everyone in Detroit feels they are part of one big happy family. The city's downtown appears to be on a "comeback," said Simpson-Bey, with investment downtown, cultural activities and a new rail system, "but just a mile away you see lots of urban decay."

Dr. David Leonard, author of *Playing While White: Privilege and Power On and Off the Field,* who writes widely on race and sports, told Truthout that basketball has often been sold as a "rebirth for communities." What is lost in these narratives is how "basketball franchises, and the league itself, are so often drivers of gentrification. While owners cash in on the benefits of tax breaks and their celebrity status resulting from fandom, many inside these communalities continue to suffer. Stadium construction and gentrification continues to destroy neighborhoods, displacing families and communities that are overwhelmingly of color."

The new Detroit arena was built with the help of $344 million in taxpayer-backed city bonds. A public-private arrangement, it is technically owned by the city, but will be run by Ilitch's company.

Gentrification and prisons both destabilize poor people. Mass incarceration is a "driving factor" behind poverty in Detroit, commented Dr. Amanda Alexander, Assistant Professor of Afro-American Studies and Postdoctoral Fellow in Law at the University of Michigan, and founder of the Prison & Family Justice Project.

"In buying Securus, Gores and Platinum Equity are profiting off the im-

miseration of incarcerated people and their families," Alexander told Truthout. "Two in three families have difficulty meeting their basic needs when a loved one is incarcerated, in part because of the high costs of phone calls."

Detroit is the poorest major American city, with nearly 60 percent of children living in poverty, she pointed out. A 2016 study called "A Shared Sentence," conducted by the Annie E. Casey Foundation, found that one out of ten children in Michigan has a parent in prison. Detroit teachers and social workers who have reached out to Alexander for assistance estimate that half of the children in their classrooms have had a parent or caregiver in jail or prison.

By building the new stadium, the Pistons and Gores "claim they want to be part of a thriving Detroit," but this move is "completely against the well-being of families struggling to make ends meet in the city," Alexander stated.

African American families are bearing the greatest costs of mass incarceration in Michigan. According to a report by the Prison Policy Initiative, although black people make up 14 percent of the state population, they are 49 percent of those in prisons and jails. Black residents are incarcerated at a rate six times that of whites.

Detroit is also a black city, with a population that is 80 percent African American. On the court, the Pistons are dominated by black players. The Pistons' roster for the 2017-18 season includes 15 players, 10 of whom are African American.

In the New Detroit, Gores has found a way to make a profit from black bodies both on the court and in prison. This is an investment strategy that monetizes successful athletes, as well as those who fail to assume their place in the postindustrial economy. It is reinforced by a powerful ideological message.

"We collectively celebrate Jordan, Kobe, and LeBron, purportedly proving that we are beyond race and racism," Leonard said. "At the same [time] we spotlight their successes, their fulfillment of the American Dream, we suggest that those locked behind bars are there because of bad choices."

Throwing People Away

Speaking from firsthand experience, Ronald Simpson-Bey described phone calls as an "umbilical cord" between those in prison and their families. Yet companies like Securus are "exploiting" the downfall of others. "The people who can least afford it are being charged the most," he said.

Yusef Shakur also testified to the importance of phone calls, saying they were a "lifeline" for those inside. Many people affected by mass incarceration, "inside and out," Shakur noted, are functionally illiterate, making letter writing uncommon. Visiting prisons often located in rural areas is difficult. "Phones are the most realistic option," he said.

Families can rack up hefty monthly bills paying for regular phone communication with a loved one locked up. Securus has the contract for Wayne County, where Detroit is located, and a 15-minute call from the county jail costs $7.50. In nearby Flint, where Securus is also the provider, a 15-minute call costs $17, one of the highest rates in the country.

To date, no local newspapers have picked up the story of Gores' purchase of Securus.

"They are all in cahoots," said Simpson-Bey. "Newspapers are not going to make a peep about it."

The redevelopment of the city also involves plans for a new county jail, which has been contested by grassroots organizations.

"Look at what's being built in New Detroit. What about the criminals?" questioned Yusef Shakur. "They are going to need somewhere to throw them away. That is what's fueling the new county jail."

Race, class and economics are tied together in Detroit, according to Shakur.

"It is a monopoly for the benefit of the wealthy," he said.

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IRS Audit Prompts New Mexico County to Convert Bonds Used for ICE Facility

by Joe Watson

An Internal Revenue Service audit of tax-free bonds used to develop an immigrant detention facility in New Mexico was closed once the bonds were converted to taxable status.

Otero County issued $62.3 million in tax-free revenue bonds in 2007 to finance the construction of an Immigration and Customs Enforcement (ICE) processing center in Chaparral, New Mexico. The facility is operated by a private company, Utah-based Management & Training Corp.

Over the past several years, the IRS has been conducting similar audits at local jails that contract to house prisoners for the U.S. Marshals Service (USMS) or ICE. Under the tax code, the federal government is considered a private party, and private parties do not qualify for tax-free status. USMS and ICE officials have signed contracts with jails nationwide to house detainees in state and local bond-financed facilities, leading to tax disputes between the bond issuers and the IRS. [See: *PLN,* Sept. 2015, p.18].

According to the *Bond Buyer,* a trade publication, "the tax code classifies a bond as a private activity bond (PAB) if more than 10% of the proceeds are used for a private party and more than 10% of debt service payments are made or secured by private parties. PABs are tax exempt only if they fall into one of several categories, none of which include jails or correctional facilities."

Janet White of the Otero County Board of County Commissioners signed a notice that indicated the remaining $44.28 million in outstanding bonds for the ICE facility was converted to taxable status

on August 1, 2017. The IRS' Tax Exempt Bonds Field Office in Houston confirmed three days later that it had closed its audit due to the conversion.

Investors who had purchased the bonds based on their tax-free status are now saddled with taxable bonds.

Source: *www.bondbuyer.com*

Georgia Teen's Suicide from Neglect Results in $1.7 Million Settlement

A settlement was reached last year in a lawsuit brought by the estate of a teenager who hanged himself at a Georgia Department of Juvenile Justice (DJJ) facility. The complaint described a chilling account of neglect of a child known to be a suicide risk.

The suit was brought by the parents of 14-year-old J.D., who was "grossly mistreated and kept in deplorable conditions" at the Metro Regional Youth Detention Center (Metro RYDC).

The DJJ reportedly had a long history of "egregious conditions constituting constitutional violations."

On February 13, 1998, the U.S. Department of Justice issued a report on its investigation into the DJJ. It found "inadequate suicide prevention, inadequate supervision, overcrowded conditions, unsafe conditions, failure to provide adequate mental health care, abusive disciplinary practices, physical abuse by staff and numerous other violations." As a result, the agency entered into an agreement to end the violations.

As of February 2014, however, the DJJ had not come into compliance; in fact, the details of J.D.'s death revealed that deficient practices were still extant in 2015.

J.D. was received at Metro RYDC on February 23, 2015 and labeled as a level 2 suicide risk. Between March 10, 2015 and April 5, 2015, he attempted to kill himself five times and threatened suicide another time. Each of the times prior to his successful suicide, staff intervened and acted to defuse the situation.

J.D. was seen by a staff member on April 2 with a sheet tied around his neck, standing on a sink in the process of attaching the sheet to a sprinkler. Due to that incident, he was placed in solitary confinement on April 3 and denied exercise, leisure time and even a shower in violation of facility policies. The water in his cell was turned off, so he did not even have a functioning toilet.

Policy required J.D. to be removed from solitary within 24 hours and that he receive an evaluation. As of April 5, 2015, neither had occurred. On that morning J.D. knew he should have been released from confinement. Unable to "tolerate his conditions" and believing "he may never be released," J.D. told other children and guard Adrian Cooper that he planned to hang himself.

Cooper learned that J.D. was tying his jumpsuit into a noose, and a call to Lt. Brandon Waters was made to inform him of that situation. Neither Cooper nor Waters intervened. Other children screamed that J.D. was hanging himself, yet it was not until 20 minutes later that Cooper went to his cell. He made no effort to revive J.D. A nurse responded without an emergency bag and made a brief attempt at CPR.

An investigation by the DJJ determined that Cooper had committed child neglect and nine other staff members were guilty of misconduct. Cooper and Nurse Kawana Wires were fired and two other employees demoted.

The federal lawsuit filed by J.D.'s parents alleged tampering of evidence; specifically, the falsified entry of a purported mental health visit with their son on April 3. Further, Clinical Director Lainey Richardson was accused of altering DJJ policy in an effort to avoid responsibility for J.D.'s death, after it became apparent that she "was not familiar" with the policy regarding placement of children in solitary confinement.

The parties eventually reached a $1.7 million settlement to resolve the case. The estate was represented by attorneys Matthew S. Harmon and Eric Fredrickson. See: *Butler v. Niles*, U.S.D.C. (N.D. Ga.), Case No. 1:15-cv-04239-MHC.

South Carolina Prisoners' Wage Grievances not Subject to 15-day Deadline

A South Carolina appellate court held that prisoners' grievances were not subject to a 15-day filing deadline because they did not concern an "incident" but rather challenged the South Carolina Department of Corrections' (SCDC) policies or procedures.

The ruling was issued in a lawsuit brought by 196 current or former prisoners who participated in a prison industry program involving Williams Technologies, Inc. (WTI) at the Lieber Correctional Institution. They had filed grievances arguing they were entitled under state law to receive prevailing wages for the work they performed.

Prison officials denied the grievances on the merits and for failing to file them within 15 days as required by paragraph 12.1 of Policy GA-01.12. An order from the South Carolina Administrative Law Court upheld the denial, and the prisoners appealed.

The contract between WTI and the SCDC required the company to pay prison officials $4.00 per hour per prisoner, with a base wage of $0.35 per hour. Effective July 1, 1995, South Carolina law required that prisoners employed in industry programs receive no less than "the prevailing wage for work of [a] similar nature in the private sector."

However, the legislature changed that law, effective July 1, 2001, to allow the SCDC to pay prisoners less than prevailing wages for "service work," which fit the type of job duties performed under WTI's contract. The plaintiffs sought prevailing wages for their work prior to July 1, 2001, plus other relief related to unsafe working conditions.

The Court of Appeals agreed with the prisoners that the 15-day deadline did not apply to their grievances. It found the exceptions portion in Policy GA-01.12 indicated that "incidents" do not encompass "policies" and "procedures."

The appellate court held the challenge to wages received under the WTI contract related to the SCDC's policies and procedures, therefore applying the 15-day deadline to the prisoners' grievances was "arbitrary and capricious." Accordingly, the Administrative Law Court's order was reversed and remanded to consider the merits of the prisoners' claims. See: *Ackerman v. South Carolina Department of Corrections*, 415 S.C. 412, 782 S.E.2d 757 (S.C. Ct. App. 2016), *rehearing denied*.

Due to the 1995 and 2001 statutes in South Carolina, there has been ongoing litigation over wages paid to prisoners employed in prison industry programs. [See: *PLN*, Aug. 2017, p.38; May 2011, p.47; June 2005, p.35].

Two Federal Courts Find Prison Gerrymandering Unconstitutional

by David M. Reutter

Two federal district courts, one in Florida and the other in Rhode Island, have held prison gerrymandering unconstitutional, though one of the orders was overturned on appeal. The rulings are the first of their kind.

"This is a big win for democracy," said Adam Lioz of the Washington, D.C.-based public policy group Demos, who assisted in representing the Rhode Island plaintiffs. "Prison gerrymandering distorts representation and should no longer be tolerated. This decision should pave the way for other courts to address this long-standing problem."

Both cases were brought alleging violation of the U.S. Constitution's requirement of "one person, one vote." They asserted that prison gerrymandering, in which prisoners are counted as residents of the district where they are incarcerated, watered down the strength of residents' political representation by bolstering the power of residents who lived in the same district as non-voting, unrepresented prisoners. [See: *PLN*, Dec. 2012, p.1].

The Florida case challenged the inclusion of 1,157 prisoners held at the Jackson Correctional Institution (JCI), which is in a rural county in Florida's panhandle. The Rhode Island case took issue with 3,433 prisoners housed at the Adult Correctional Institution (ACI), the state's only prison, being counted as residents of the City of Cranston.

In each case the issue was the inclusion of prisoners as residents of the district where they were incarcerated when local governments drew districting maps following the 2010 U.S. Census. Those maps set voting districts for school boards and the county or city boards of commissioners. The local government agencies argued they had properly relied upon the census data to make districting determinations. Not so fast, said the district courts.

The census, the U.S. Supreme Court has held, may be a starting point, but it does not necessarily produce constitutional outcomes in all cases. The one person, one vote principle protects both representational and electoral equality. "[T]o determine whether one person one vote principles have been violated, it is necessary to look at the population base that's chosen because there is no way to directly measure vote dilution or representational harm," said the Florida district court.

The court in Rhode Island concluded that "the ACI's inmates lack a 'representational nexus' with the Cranston City Council and School Committee." It noted that "Cranston's elected officials do not campaign or endeavor to represent their ACI constituents," and that the prisoners cannot vote; those that can must do so through absentee ballots from their pre-incarceration addresses. In sum, prisoners

are "unable to participate in, benefit from, or contribute to any other aspect of civic life in Cranston."

The Florida court's 86-page ruling held likewise, finding JCI's prisoners live in a "state run enclave" that requires them to "go on with their lives mostly separated from the communities in which their facilities happen to be located." Thus, they have no representation from county officials.

The point the courts made about political power and representation was exemplified by ACLU attorney Nancy Abudu. "If I want to get a road fixed, if I want a law changed, if I want more impact on a school board member or county commissioner, I have more power because my representative has to deal with fewer people" due to prison gerrymandering, she said. "It's about access and the ability to influence, and making sure officials are responsive to their electorate."

On that point, the Florida court found the voters in the district housing JCI had about 3.5 times the voting strength of voters in other districts. In the Rhode Island case, 25% of the population in the district that included Cranston was comprised of prisoners.

The Florida court, in rejecting a slippery slope argument, noted the case dealt with state, not county, prisoners. "In particular, the situation would be quite different if we were dealing with a state legislative district because state prisoners are obviously affected by the policies put in place at the state level," it wrote. While prisoners receive no representation from city or county officials, "[t]he same would not be true of the state senator and representative whose territory includes JCI."

The court concluded by noting it did not decide "that the JCI inmates lack political equality with their 'neighbors' in Jefferson County. The State of Florida "has explicitly deprived them of their representational rights, at least with respect to units of local government."

In both cases, the government agencies were ordered to submit new redistricting plans that did not include prisoners as local residents.

The Florida plaintiffs were represented by the ACLU and the Florida Justice Institute, and that case settled in July 2016. See: *Calvin v. Jefferson County Board of Commissioners,* 172 F.Supp.3d 1292 (N.D. Fla. 2016).

The plaintiffs in Rhode Island were represented by the ACLU, Demos, the Prison Policy Initiative and the ACLU of Rhode Island. See: *Davidson v. City of Cranston,* 188 F.Supp.3d 146 (D. RI 2016). However, the district court's May 2016 ruling in that case was reversed by the First Circuit on September 21, 2016. The appellate court wrote that "The Constitution does not require Cranston to exclude the ACI inmates from its apportionment process, and it gives the federal courts no power to interfere with Cranston's decision to include them." Accordingly, summary judgment was entered in favor of the defendants on remand. See: *Davidson v. City of Cranston,* 837 F.3d 135 (1st Cir. 2016).

Thus, more legal challenges are needed with respect to prison gerrymandering, to build up a body of case law to establish that practice is improper and unconstitutional.

Seventh Circuit Reinstates Prisoner's Lawsuit, Rejects District Court's IFP Concerns

by Derek Gilna

Rahim McWilliams, an Illinois state prisoner, injured his hand in a fall and filed a claim in federal court for damages, claiming lack of proper medical treatment and permanent disfigurement. He alleged he was indigent and sought a waiver of the filing fee with an *in forma pauperis* (IFP) form. The district court, citing the absence of some identifying information on the form, as well as contradictory language as to funds McWilliams had received, denied the IFP request and dismissed the case for failure to pay the filing fee. The Seventh Circuit reversed and remanded.

In a January 5, 2017 ruling, the appellate court noted that McWilliams had used a court-provided IFP form which included various boxes the applicant must check. It also required "prisoner applicants to provide an inmate identification number, the name of the applicant's institution, and records from the applicant's inmate trust account." McWilliams had answered all the questions but neglected to name his institution and identification number.

He had also indicated on the IFP form, in response to a query as to whether he or anyone living at the same residence had received in excess of $200 from other sources not specifically listed on the form, that a "Brittany Smith" had received a "donation" of $188.

After being advised by the district court that his IFP application was insufficient, McWilliams submitted a second application, this time including his prison number and facility, and requesting appointment of counsel. However, instead of checking boxes reflecting his indigency, he merely said he was not employed and wrote "N/A" for all other questions. He also submitted data that showed he had $106.85 in his prison account and received $73.73 per month over the previous four months. The court denied his second IFP application and dismissed his complaint.

On appeal the Seventh Circuit wrote, "the information purportedly missing from [the] first IFP application was already in the court's hands.... And the court's conclusion that the application was inaccurate simply because McWilliams's trust account did not show a deposit of $188 is unpersuasive; even if that amount was donated to McWilliams and not to Brittany Smith.... More importantly, we are not aware of any requirement that all financial resources available to an inmate be deposited into his or her trust account. What matters is disclosure; a district court may dismiss a complaint if a plaintiff's allegation of poverty is untrue."

The Court of Appeals concluded that on remand, "the district court must grant IFP and move the case forward.... [and] should take up McWilliams's request for counsel." See: *McWilliams v. Cook County*, 845 F.3d 244 (7th Cir. 2017).

Prisoner Showed Good Cause for Extension of Time

The Tenth Circuit Court of Appeals held a district court erred in denying a prisoner's motion for extension of time to respond to a dispositive motion.

Oklahoma state prisoner Archie Rachel, 71, filed suit in federal court regarding his medical treatment at the James Crabtree Correctional Center (JCCC). According to the district court, he alleged that "(1) he routinely had to wait outdoors in adverse conditions to receive his medications, (2) he received inadequate care from the prison's medical staff, and (3) the prison's grievance procedure was unfair."

During the litigation, Rachel was given only "21 days to seek discovery, obtain and review responses that were not even due within the 21-day period, and respond to the defendants' motion for dismissal or summary judgment."

He moved for an extension of time, asserting that he only had a few hours in the law library each week. The district court did not rule on his motion so Rachel was forced to respond without the benefit of the requested discovery. The court dismissed his suit and he appealed.

The Tenth Circuit found the issue was whether Rachel showed good cause entitling him to the requested extension of time. It held good cause was shown pursuant to Fed.R.Civ.P. 6(b)(1), and concluded the extension of time should have been granted because the district court's denial was an abuse of discretion. The Court of Appeals upheld the lower court's orders denying appointment of counsel and a medical expert. Rachel litigated the appeal *pro se*. See: *Rachel v. Troutt*, 820 F.3d 390 (10th Cir. 2016).

Following remand, the district court denied Rachel's motion for default judgment against one of the defendants. Then on April 21, 2017, the court adopted a magistrate judge's report and recommendation related to motions to dismiss and for summary judgment, and entered judgment for the defendants.

"First," the district court wrote, Rachel "failed to demonstrate that his delay in medical treatment led to any substantial harm. Second, the record shows that any complaints he had with his medical diagnosis and prescribed treatment and medications were merely disagreements and did not rise to the level of a constitutional violation. Third, he failed to demonstrate his having to wait outside in the JCCC's 'pill-line' to receive his medication qualified as an easily recognizable risk that Defendants should have been aware. Fourth, because the record shows that Mr. Rachel suffered no deliberate indifference at the hands of Defendants, his claims for supervisory liability ... have no legs on which to stand."

Rachel has again appealed the dismissal to the Tenth Circuit, and his appeal remains pending. See: *Rachel v. Troutt*, 2017 U.S. Dist. LEXIS 62662 (W.D. Okla. 2017).

Eleventh Circuit: Procedural Dismissals do Not Count as Strikes Under the PLRA

by David M. Reutter

The Eleventh Circuit held last year that a district court erred in finding the dismissals of a prisoner's prior civil rights actions due to "lack of jurisdiction" and for "want of prosecution" counted as strikes under the Prison Litigation Reform Act (PLRA). The Court of Appeals further held the district court abused its discretion in denying the prisoner *in forma pauperis* status.

That ruling came in an appeal brought by Georgia prisoner Waseem Daker, who alleged that prison officials were violating his civil rights by denying him the use of a law library and time for Muslim religious practices. The district court agreed with the Georgia Department of Corrections that six previous filings by Daker were frivolous and counted as strikes under the PLRA; on that basis, and after finding he was not indigent, his case was dismissed.

On appeal, the Eleventh Circuit acknowledged that Daker was "a serial litigator" serving a life sentence who "has submitted over a thousand *pro se* filings in over a hundred actions and appeals in at least nine different federal courts." To determine whether "Daker's six dismissals for lack of jurisdiction and want of prosecution qualify as strikes under the [PLRA]," the appellate court said it had to apply a "three-part test: '(1) Read the statute; (2) read the statute; (3) read the statute.'"

The PLRA considers the dismissal of a lawsuit or appeal a strike if it is "frivolous," "malicious" or "fails to state a claim upon which relief may be granted." The Court of Appeals found that "[n]either 'lack of jurisdiction', nor 'want of prosecution' are enumerated grounds, so a dismissal on either of those bases, without more, cannot serve as a strike."

Both of those reasons for dismissal "mean [ ] only that the appellant failed to comply with our internal rules." Neither addressed the merits of Daker's claims, only procedural deficiencies.

Frivolous means the action "lacks an arguable basis either in law or fact." While a "dismissing court does not need to invoke any magic words or even use the word 'frivolous,' ... [it] must give some signal in its order that the action or appeal was frivolous."

The Eleventh Circuit found the dismissal orders in the six cases counted as strikes under the PLRA "gave no such signal." Three had been dismissed by a single appellate judge for want of prosecution. Separating itself from the D.C. and Tenth Circuits, which held a strike could be assessed where an appeal would have been found frivolous "but for" the dismissal, the Court of Appeals determined the PLRA precludes such an interpretation.

The appellate court acknowledged its interpretation of the statute "means that a prisoner can file unlimited frivolous appeals and avoid getting strikes by declining to prosecute the appeals after his petitions to proceed *in forma pauparis* are denied."

The plain text of the PLRA, however requires such an outcome.

Finally, the Eleventh Circuit held the district court had abused its discretion by not considering Daker's "arguments about his indigence" contained in his objections to a magistrate's report and recommendation, as his objections were timely filed under the "prison mailbox rule." The district court's order was therefore vacated. See: *Daker v. Commissioner, Georgia Dept. of Corrections,* 820 F.3d 1278 (11th Cir. 2016), *cert. denied.*

Previously, the Georgia Supreme Court had held that a trial court errored in denying Daker's petition for mandamus seeking access to the prison law library. [See: *PLN,* Jan. 2015, p.53].

Seventh Circuit Dissent: "A Dog Would Have Deserved Better Treatment"

by Derek Gilna

William A. Miller, incarcerated at FCC Terre Haute, a Bureau of Prisons (BOP) facility in Indiana, entered prison with a serious health problem – a thalamic brain tumor that required a lower bunk assignment, or "pass," issued by prison medical officials. He was initially given a lower-bunk pass, but for reasons unknown, a year later was assigned an upper bunk. While in that bunk he fell and fractured his back.

Before BOP prisoners can obtain judicial relief they must go through the administrative remedy process and file what are known as "BP's." After his complaints to lead guard Gary Rogers went unanswered, Miller filed administrative remedies, which were all denied, then brought a *Bivens* action that named Rogers, Warden Helen Marberry and a nurse as defendants.

Rogers and Marberry moved for summary judgment, arguing that neither was personally responsible for issuing the lower bunk pass that would have prevented Miller's debilitating fall (nor was the nurse responsible). The district court granted summary judgment to the defendants, dismissing the case, and Miller died in June 2016 while the litigation was pending.

The Seventh Circuit affirmed the dismissal on January 30, 2017, but not without controversy. According to the majority opinion, "Miller has not sued the people responsible for bunk assignments. Miller supposes that it is enough to tell someone about a problem; anyone told must fix the problem, he insists.... To get anywhere, Miller needed to establish that Rogers and Marberry violated his constitutional rights – which for a medical claim under the Eighth Amendment means knowing of (or being deliberately indifferent to) a serious medical condition, then not taking minimally competent steps to deal with that condition."

The dissent was not impressed with that argument, in a case where the BOP was apparently negligent and Warden Marberry took no action even though she saw Miller in his upper bunk wearing a neck brace, and he repeatedly told her he needed a lower-bunk pass.

"Whether Marberry was aware of the serious health risk to Miller from being assigned to an upper bunk is an open question that needs to be addressed at a trial," Judge Richard Posner stated, in dissent. "The record contains facts that support Miller's claim that he had a serious medical need and that the defendants knew it and did nothing despite their responsibilities."

He added, "I note that the Bureau of Prisons is required by law to 'provide suitable quarters and provide for the safekeeping, care, and subsistence of all persons charged with or convicted of offenses against the United States....' The Bureau failed in this case."

In conclusion, Judge Posner – who recently announced his retirement from the federal bench – wrote that "Both Rogers and Marberry were ... complicit in [Miller's] suffering and may have hastened his death. A dog would have deserved better treatment." See: *Estate of Miller v. Marberry*, 847 F.3d 425 (7th Cir. 2017), *rehearing denied, rehearing en banc denied.*

Second Circuit: *Ross* Abrogates "Special Circumstances" Exhaustion Exception

The Court of Appeals for the Second Circuit reversed the non-exhaustion dismissal of a New York prisoner's excessive force suit. Applying *Ross v. Blake,* 136 S.Ct. 1850 (2016) [*PLN,* July 2016, p.22], the appellate court held that no administrative remedies were "available" under the Prison Litigation Reform Act (PLRA) when prison officials failed to process a grievance.

During a search, New York prisoner Mark Williams asked a guard to stop reading his legal work. The guard told Williams to sit down; he did so, but continued to "admonish" her.

Two other guards grabbed Williams and dragged him to another room out of sight of video cameras and other prisoners. They then assaulted him, pushing his forehead against a wall and kicking and stomping him.

One guard, Gammone, allegedly grabbed Williams and said "this is what running your mouth gets you" as he punched him in the right eye. Williams fell to the ground and another guard, Priatno, kicked his face and head.

Williams was confined in the special housing unit (SHU) after being treated for injuries to his head, knee, eye, elbow, lower back, jaw and nose. Since the assault he has received medication for anxiety and panic attacks.

The New York State Department of Corrections and Community Supervision (DOCCS) employs a three-step grievance process. The Inmate Grievance Resolution Committee answers the first grievance, the facility superintendent responds to the second and the Central Office Review Committee answers the third.

A prisoner typically files a grievance with the grievance clerk. Prisoners like Williams who are confined in the SHU must give their grievances to a guard for filing.

On January 15, 2013, Williams gave an SHU guard a grievance that alleged excessive force by Gammone and Priatno. When Superintendent Ada Perez was making rounds in the SHU a week later, she told Williams she had no knowledge of his grievance but would look into it. Williams was transferred to a different prison shortly afterwards; he never received a response to his grievance.

Williams filed suit against Priatno and Gammone but the federal district court dismissed his complaint for failure to exhaust administrative remedies, concluding that he could have appealed the non-response to the grievance he attempted to file.

The Second Circuit reversed. The Court of Appeals first found that *Ross* abrogated its earlier decisions in *Giano v. Goord,* 380 F.3d 670 (2d Cir. 2004) and *Hemphill v. New York,* 380 F.3d 680 (2d Cir. 2004), which held that "special circumstances" may excuse exhaustion. In *Ross,* the Supreme Court stressed that PLRA exhaustion is mandatory, "noting

that the text of the PLRA and its legislative history refute the existence of a special circumstances exception to the statute's exhaustion requirement."

Nevertheless, *Ross* held that only "available" remedies must be exhausted, and that a remedy is not available when: 1) "it operates as a simple dead end – with officers unable or consistently unwilling to provide any relief to aggrieved inmates"; 2) the "administrative scheme might be so opaque that it becomes, practically speaking, incapable of use"; and 3) "prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation." Moreover, the Second Circuit wrote, "the three circumstances discussed in *Ross* do not appear to be exhaustive."

Applying *Ross,* the appellate court concluded that "even if Williams technically could have appealed his grievance, ... the regulatory scheme providing for that appeal is 'so opaque' and 'so confusing'" that no reasonable prisoner could use it.

Accepting as true that the SHU guard did not file Williams' grievance, the Court of Appeals found that "the regulations give no guidance whatsoever to an inmate whose grievance was never filed." As such, it concluded that Williams had exhausted his available administrative remedies when he gave his grievance to the guard.

"To avoid confusion going forward," the Second Circuit recommended "that DOCCS revise its grievance procedure to instruct how to appeal grievances that were not properly filed by prison staff, and how to appeal a grievance, to which the inmate never received a response, after being transferred." See: *Williams v. Priatno,* 829 F.3d 118 (2d Cir. 2016).

Louisiana Parish Jails Lack HIV Treatment and Services

HIV-positive prisoners in Louisiana jails are not provided medication and basic services, which endangers both their health and the communities they return to upon release. That was one of the findings of "Paying the Price: Failure to Deliver HIV Services in Louisiana Parish Jails," a report published by Human Rights Watch (HRW) in 2016.

HRW interviewed over 100 people, including representatives of organizations involved in HIV and health services related to the criminal justice system. It concluded that "Louisiana is 'ground zero' for the dual epidemics of HIV and incarceration."

Baton Rouge and New Orleans lead the country in new HIV infections each year, and the death rate "from AIDS in Louisiana is among the highest in the U.S.," the report found. "As of January 2016, the Louisiana Department of Corrections [LDOC] housed 525 prisoners with HIV."

Louisiana also has the highest state incarceration rate in the nation. "At any given point in time, roughly 1 in 75 Louisiana adults are in jail or prison," according to the report. The intersection between HIV and incarceration occurs because "[o]ne out of seven people living with HIV will enter a jail or prison each year."

The report added that "The same socioeconomic factors that place people at risk for HIV – poverty, homelessness, drug dependence, mental illness – also place them at higher risk of incarceration."

So what happens when people with HIV land behind bars?

While the Centers for Disease Control recommends that all correctional facilities provide routine HIV testing to inform prisoners of their status and provide services if needed, only 5 of Louisiana's 104 parish jails, including the New Orleans Parish Prison, regularly offer HIV tests to all prisoners. The failure is purely budgetary.

"Why don't we do routine HIV testing? We cannot afford to treat someone who was identified as HIV-positive," said S. Wright, nursing director at the Caddo Parish Correctional Center. "It sounds cold, I know, but that is the reality."

The LDOC has decided that HIV is not a reimbursable expense, which means jails that house state prisoners have to cover HIV-related costs. In early 2016 there were about 18,000 state prisoners held in parish facilities; due to the lack of comprehensive testing, it is unknown how many are HIV-positive.

As a result of the LDOC's non-reimbursement policy and budgetary issues, jails provide few HIV services. Even prisoners who self-report having HIV are left in the lurch, which means their "treatment is often delayed, interrupted, or denied altogether."

An interruption in HIV medication can have serious consequences, including making the treatment regimen ineffective. Parish jails not only fail to provide those medications, they refuse to allow them to be retained upon booking if prisoners have them in their possession. Further, upon release, prisoners are not connected with community-based HIV service agencies.

In response to the HRW report, Louisiana Governor John Bel Edwards stated, "I'm concerned about the access to health care in our jails and our prisons, generally speaking," and "It wouldn't be any different with respect to HIV."

The 70-page report is available on *PLN*'s website.

Sources: *www.hrw.org, www.theadvocate.com*

Prisoner Labor Focus of Controversy in Texas, Alabama

by David M. Reutter

The use of prisoner labor and poor prison conditions are behind calls for action in Texas and Alabama, and have led to concerns over the use of prison labor nationwide.

Most people believe slavery was abolished by the Thirteenth Amendment to the U.S. Constitution, but that amendment includes an exception clause which permits slavery "as a punishment for crime whereof the party shall have been duly convicted...."

Prison Legal News has long advocated against the use of prisoner slave labor, including in prison industry programs, where workers toil for scanty wages or none at all, often in unsafe conditions. [See: *PLN,* Sept. 2017, p.60].

Texas Correctional Industries (TCI), which was created in 1963, is one of the most egregious offenders. TCI produces "mattresses, shoes, garments, brooms, license plates, printed materials, janitorial supplies, soaps, detergents, furniture, textile, and steel products," according to its website. It provides prison-made products to a variety of government agencies.

Yet TCI pays most of its prisoner workers nothing – unless they are employed in industry programs that partner with private, for-profit businesses.

"Texas's prisoners are the slaves of today, and that slavery affects our society economically, morally and political[ly]," stated a letter posted on the website for the Incarcerated Workers Organizing Committee (IWOC), an arm of the International Workers of the World, a labor union. "Beginning April 4, 2016 all inmates around Texas will stop all labor in order to get the attention from politicians and Texas's community."

By April 5, the Texas Department of Criminal Justice (TDCJ) confirmed it had placed at least seven prisons on lockdown due to the work strike. In addition to demanding meaningful credit for work time to be used towards parole eligibility dates, Texas prisoners sought repeal of a $100 annual medical co-pay, better prison conditions and effective oversight of the TDCJ.

"Yes the taxpayers do, ostensibly, fund prisons, but the fact of the matter is that private corporations use prison labor to manufacture goods, which then make profits," said Jim Del Ducca with the IWOC. "And these profits don't go back to the prisoners, they don't go back to the prison system to lower the burden on the taxpayers."

TCI is overseen by the Texas Board of Criminal Justice, which has nine members – including former Texas Supreme Court Judge and attorney Dale Wainright. Other board members include R. Terrell McCombs, nephew of billionaire Billy Joe McCombs; corporate attorney Eric Gambrell with the law firm of Akin Gump, which has lobbied for private prison firm CoreCivic (formerly known as Corrections Corporation of America); former police employee Derrelynn Perryman, who also serves as the Victim Advocate Director for the Tarrant County Criminal District Attorney's Office; and former state judge Thomas P. Wingate.

With few exceptions, most of the board members have no background or expertise in corrections or prison operations. And while the Texas Board of Criminal Justice has the ability to establish "an incentive pay scale for work program participants," it has not done so.

Prisoners in Alabama also went on strike, beginning May 1, 2016 – May Day – to protest the prison system's use of what amounts to slave labor. The state's prison industry program, Alabama Correctional Industries, produces a variety of products ranging from clothing and barbecue grills to janitorial supplies. Unlike in Texas, prisoners are paid for their labor – at wages ranging from $.25 to $.75 per hour.

Leaders of the protest movement have advocated for non-violence; prisoners are also seeking better conditions of confinement. Five state prisons were placed on lockdown due to the coordinated work strikes.

The Alabama Department of Corrections (ADOC) incarcerates 29,605 people, which is 220 percent above its design capacity. To complicate matters state prisons are chronically understaffed, maintaining only 3,000 to 4,000 of 6,000 authorized guard positions over the past decade.

According to the wife of one ADOC lifer, conditions at the Holman Correctional Facility (HCF) were "deplorable," citing Grade-D meat fed to prisoners in boxes labeled "not for human consumption." HCF is also a violent facility, with a 2014 homicide rate of 232.4 per 100,000 prisoners in contrast to a national prison homicide rate of 7 per 100,000 prisoners.

The poor conditions at HCF spawned a fight in early March 2016 that turned into a riot after guards and the warden started yelling and cursing at prisoners. One guard and the warden, Carter F. Davenport, were stabbed and received minor injuries. Prisoners then took over "C" dorm and streamed the chaos live using contraband cell phones. [See: *PLN,* May 2016, p.1].

Well before the riot and work strikes, Alabama prisoners and their outside supporters had formed the Free Alabama Movement (FAM).

"Our plan is to have a statewide strike which may in turn have a domino effect on other states," said a prisoner activist identified as Karma, who used a cell phone to communicate with the media. "Our goal is to eliminate slavery altogether. It shouldn't exist just because someone committed a crime ... whether you have stolen a piece of gum or killed someone, you should not be made a slave."

"Slavery is only legal under the criminal justice system," he added. "If we are gonna continue to work for free, we continue to give them power by which they can keep the system going. We have to affect the money. If we affect the money, then they'll have to downsize."

The average citizen may ask, "what do I care about someone in prison who works for little or no pay while serving a sentence for committing a crime?" The IWOC provided an economics-based answer.

"Sixty percent of the 180,000 prisoners [in Texas] work. That's about 100,000 jobs," the IWOC stated. "Texans should be demanding that the state give those jobs to citizens. Those 100,000 new jobs would alleviate the unemployment rate."

Meanwhile, prison officials continue to silence activist prisoners. As the work stoppage involving the Free Alabama Movement occurred in May 2016, the ADOC reportedly began "bird feeding" prisoners by giving them 60% of normal meal servings. "They are trying to starve [us] into compliance," one unidentified prisoner stated.

"We need new language to discuss

this subject," said Pastor Kenneth Glasgow, who directs The Ordinary People Society (TOPS), an Alabama-based organization that advocates for prisoners' rights. "These are people, not just prisoners. And what these labor strikes can do is draw attention to that fact."

The hoped-for domino effect of prison protests may be coming true, as tens of thousands of prisoners participated in a nationwide work strike on September 9, 2016 – the 45th anniversary of the Attica prison uprising. [See: *PLN*, Jan. 2017, p.22]. There is also growing public awareness of the issue of prisoner slave labor, spurred in part by the movie "13th," released in October 2016, which focuses on the exception clause of the Thirteenth Amendment.

Sources: *The Daily Beast, Alabama Political Reporter, www.al.com, Associated Press, The Atlantic City Lab, The Hill Talk, www.rt.com, Austin Chronicle, www.corrections-one.com, The Intercept, www.solitarywatch.com, www.incarceratedworkers.org, http://abcnews.go.com, www.freealabamamovement.com, https://news.littlesis.org, www.texasstandard.org*

Eleventh Circuit: Florida Prisoners Must be Provided Kosher Meals

by David M. Reutter

The Florida Department of Corrections (FDOC) must provide prisoners with the option of receiving kosher meals, the Eleventh Circuit Court of Appeals held in affirming a district court's grant of summary judgment and a permanent injunction.

As previously reported in *PLN,* the U.S. Department of Justice sued the FDOC in 2012 under the Religious Land Use and Institutionalized Persons Act (RLUIPA) to obtain declaratory and injunctive relief requiring state prison officials to provide kosher meals. [See: *PLN,* May 2014, p.14].

The FDOC put its full strength into fighting the suit, costing taxpayers nearly $500,000. In its July 14, 2016 ruling, the Eleventh Circuit began by noting the FDOC's flip-flopping on the provision of kosher meals since 2004, culminating in a pilot program at the Union Correctional Institution in 2011.

"The only choice for prisoners outside the pilot program with [orthodox] religious obligations was, in the words of one prisoner, to '[d]o what a hungry man does, and pray [] for understanding,'" the Court of Appeals wrote.

The district court's December 2013 preliminary injunction, which later became a permanent injunction, changed the legal landscape by ordering the FDOC to provide kosher meals and prohibiting enforcement of its waiting period, doctrinal sincerity test, ten percent missed meal rule and zero tolerance policy on violations. [See: *PLN*, March 2016, p.53].

As of March 2015, the FDOC had approved 9,543 prisoners to receive kosher meals. Participation in the kosher meal program declined over time, "in part because prisoners without sincere religious beliefs tired of the repetitive and cold meals."

Initially, the FDOC used "nationally recognized, religiously certified prepackaged processed foods." It then steadily reduced kosher meals to its current menu of "peanut butter, cereal, bread, sardines, cabbage, beans, carrots, crackers and an occasional piece of fruit; all served cold."

The Eleventh Circuit found the FDOC had failed to show "that the cost of providing kosher meals is so high" that it constituted a compelling reason not to provide that option. The prison system's regular meal menu, which is laden with textured vegetable protein, costs $1.89 per prisoner per day. By contrast, kosher meals cost about $3.55 per day.

While state prison officials contended the $12 million annual cost of kosher meals in its $54 million food budget – out of the FDOC's overall $2.2 billion budget – was unsustainable, the Court of Appeals noted the FDOC's chief procurement officer had said the cost of kosher meals was "sustainable ... going forward."

Objections to mere "costs," without more, required the appellate court to "affirm the summary judgment" and permanent injunction granted by the district court to the Department of Justice. The FDOC had also failed to prove that denial of kosher meals was the least restrictive means of furthering a governmental interest when weighed against prisoners' religious rights under RLUIPA.

The district court's order was affirmed. The case remains pending on remand, with the FDOC submitting monthly reports to the court regarding its kosher meal program. See: *United States v. Secretary, Florida Department of Corrections,* 828 F.3d 1341 (11th Cir. 2016).

Study Shows "Ban-the-Box" Policies May Result in Racial Bias by Employers

by David M. Reutter

Increasingly, criminal justice reformers are pushing for "ban-the-box" policies, ordinances and statutes, which are intended to eliminate from job applications the box that asks, "Have you been convicted of a felony?" [See: *PLN*, March 2017, p.26; Oct. 2014, p.46]. Many jurisdictions have adopted such policies, but a new study found they may help those with felony records while hurting people of color who lack criminal histories.

Twenty-three states have passed ban-the-box laws for public government jobs; nine apply the law to private employers, too. In November 2015, President Obama directed federal agencies to remove the felony question box from their job applications. [See: *PLN*, Jan. 2016, p.41].

Sonja Starr, a professor of law at the University of Michigan, and Amanda Agan, a professor of economics at Princeton, conducted a study to determine the effectiveness of ban-the-box policies. The study examined callback rates for 15,000 job applicants seeking actual low-skill, entry-level positions in a variety of industries at 4,300 businesses.

The job positions were located in New Jersey and New York, both before and after those states enacted ban-the-box laws in 2015. The fictitious applicants were 21-22 years old and randomly assigned race and criminal records with similar educational backgrounds and employment histories. They used real names suggestive of one race or another.

Before ban-the-box laws were enacted, 39 percent of employers asked about the job applicants' criminal history. Of those, employers called black applicants back at a rate of 10.5 percent and whites at 11.2 percent. After the laws went into effect, the study found callback rates for blacks dropped but they rose for whites, widening the racial callback gap from 7 percent to 45 percent.

Without criminal records as an initial indicator of who is a more attractive job candidate under ban-the-box policies, employers may be relying on demographic characteristics such as race and gender. The most recent statistics indicate black men born after 2001 have a 32% chance of serving prison time, compared with 17% for Hispanics and 6% for whites. Thus, employers may be guessing as to a job applicant's criminal history based upon those percentages, which translates into racial bias.

"There's lots of research showing that Americans in general have implicit biases – draw assumptions that associate blackness with criminality," said Prof. Starr. "And we think that assumption is meaning that when a black man with a criminal record isn't able to tell the employer that he doesn't have a criminal record, that at least some employers are going to hold that against him."

The ban-the-box movement, however, has been effective in other ways.

"It clearly has benefits for people with records, and policy makers might decide that those benefits are important enough to justify the law," Starr added. "But our [research] results are very worrisome in terms of the effects for black male applicants, especially those without criminal records."

Sources: *Mother Jones, www.brookings.edu, www.fusion.net*

Victim-centered Sexual Abuse Investigations Abandon Concept of Neutrality

by David M. Reutter

Criminal justice reform advocates are pushing back against a new trend to "always believe the victim" in sexual assault cases, which has given rise to "victim-centered and offender-focused" investigations.

The victim-centric trend has led to a 20-point manifesto called the "You Have Options" law enforcement program, which encourages a departure from traditional police investigative techniques.

One of the points allows the "victim or other reporting party [to] remain anonymous" – which makes it hard for the accused to address the claims of their unknown accuser. Another allows victims to "report using an online form or a victim may choose to have a sexual assault advocate report on their behalf."

Disturbingly, another point requires investigators to "collaborate with victims during the investigative process and respect a victim's right to request certain investigative steps not be conducted." For example, the alleged victim may ask that witnesses not be interviewed.

The University of Texas (UT) created a new blueprint to train campus law enforcement officers when conducting sexual assault investigations. According to Samantha Harris of the Foundation for Individual Rights in Education, the most egregious directive in the blueprint is that traditionally "neutral" investigators should actively work to "anticipate" and "counter" defense strategies.

The blueprint instructs officers on the types of defenses that students accused of sexual abuse may use, and what kind of evidence is required to counter them.

"An investigator who is trying to anticipate and counter defense strategies in the course of his/her investigation is not acting as a neutral fact-finder – that is, someone who is trying to find out what actually happened," Harris stated.

Even when an alleged victim changes their story, the UT blueprint says they should be believed, as "inconsistencies and vagueness can become the facts of the case that lend support to the case as they can be a sign of trauma." Investigators are also instructed that an accused suspect who "appears to make more sense" should not be seen as credible.

University of Virginia student Victor Zheng became the subject of a victim-centered sexual abuse investigation. In July 2013, his ex-girlfriend claimed he sexually assaulted her the year before while both were in high school. She did not provide a date or month and denied they had a romantic relationship at the time.

Three months later, Zheng was arrested while in a history class. He proved that a romantic relationship existed and passed a lie detector test. A prosecutor dropped the

rape and abduction charges, but Zheng incurred $60,000 in attorney fees, spent six days in jail and lost a semester in school.

The Center for Prosecutor Integrity (CPI) has launched an initiative "to address the over-criminalization of sexual conduct and to end wrongful convictions of sexual assault." It notes that in the 1980s, a child abuse panic swept the United States; abandoning the concept of "innocent until proven guilty" led to the tragic result of more than "80 parents and child care providers" being wrongfully convicted. Only recently have some of those cases unraveled.

CPI compared victim-centered investigations to rape cases involving black men during the Jim Crow era, and the implications have serious consequences for the accused.

As Zheng asked, "[I]s our society truly safer when we have investigators who are willing to put people behind bars on the flimsiest of evidence?"

Meanwhile, a number of groups continue to promote victim-centered investigations. For example, one of the workshops at the May 2017 Conference on Crimes Against Women, related to domestic violence offenders, emphasized "the importance of a victim centered approach." And a September 15, 2017 webinar presented by EVAWI (End Violence Against Women International) instructed prosecutors and law enforcement officials on "how to incorporate a victim centered approach throughout the life of a case."

If our criminal justice system is in fact supposed to be fair and just, then victim-centered investigations make no more sense than offender-centered investigations.

Sources: *Washington Examiner, www.prosecutorintegrity.org, www.dailycaller.com, www.ovcttac.org, www.reportingoptions.org, www.evawintl.org, www.conferencecaw.org*

Eighth Circuit Vacates Supervised Release Order Barring Wife from Contact with Husband

by Derek Gilna

Cynthia Louis Hobbs was convicted, along with her husband, of aggravated identity theft and conspiracy to commit bank fraud, and sentenced to 56 months in prison and five years of supervised release. After she left prison in November 2014, her supervised release was uneventful until her husband was released. In January 2016, federal officials sought to revoke her supervised release for numerous violations.

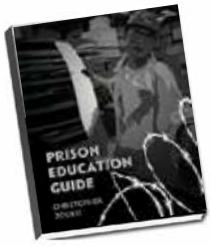
During the subsequent revocation proceedings, the government sought an order of "no contact" with Hobbs' husband, alleging that her violations were somehow linked to her husband's release. The district court judge agreed, noting that "My understanding from speaking with the probation officer and reviewing the record, is that Ms. Hobbs was doing very well on supervision when she was living independently and Mr. Hobbs was still incarcerated.... And then this contact occurs with her spouse, and those positive steps forward cease and, in fact, she absconds from supervision. That time line seems to the court to be instructive."

Probation officials offered no proof, however, that Hobbs had had any contact with her husband after he left prison. Notwithstanding that fact, the district court modified the conditions of Hobbs' supervised release, stating, "The defendant shall have no direct, indirect, or electronic contact with codefendant and husband, Jack Hobbs, during her term of supervised release."

Hobbs appealed and the Eighth Circuit reversed and remanded on December 14, 2016, noting that although "A sentencing judge is afforded wide discretion when imposing terms of supervised release.... [s]entencing discretion is cabined by statute. 18 U.S.C. § 3583(d) ... special supervised-release conditions must reasonably relate to the nature and circumstances of the offense, the defendant's history and characteristics, deterring criminal conduct, protecting the public, and promoting the defendant's correctional needs." Additionally, "the conditions must not constrain the defendant's liberty more than reasonably necessary to deter criminal conduct...."

The appellate court found the no-contact condition imposed on Hobbs was too restrictive, especially when "this case involves another important constitutional right – marriage." The Court of Appeals further noted that the evidence did not support such a sweeping restriction, and took the unusual step of ordering a "closed record," preventing the government from augmenting the record on remand and "limiting it to one bite of the apple," since the "legal issue here was clear, and the government's failure of proof is inexcusable."

The case was remanded to the district court with instructions to vacate the no-contact condition and resentence Hobbs. See: *United States v. Hobbs*, 845 F.3d 365 (8th Cir. 2016).



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News in Brief

Alabama: Kenyatta Ervin was arrested in early March 2017 on a felony fraud charge. She worked as a guard at the Calhoun County jail, and was accused of using a prisoner's jail-issued debit card. According to investigators, Ervin failed to provide a card to an offender who was released on March 1; she subsequently used the card herself to withdraw $172 from an ATM, and admitted to doing so. Calhoun County Sheriff Matthew Wade told the local news media, "If you break the law we will prosecute you, especially if you are in law enforcement. We must ensure the citizens [sic] trust by being honest and transparent." Ervin's bond was set at $2,500.

Arizona: Edward Mendoza, a former senior guard at a federal prison in Phoenix, was sentenced to 16 months on March 22, 2017. Mendoza was responsible for supervising the women's camp at the facility, where he had sex with one prisoner on numerous occasions between February 1 and April 2, 2015. He pleaded guilty to sexual abuse of a ward.

Arkansas: An employee at the Pulaski County jail was arrested on March 6, 2017 on 66 counts of forgery, 66 counts of fraud and one count of theft of property, all of which are felonies. Anna Story, 62, is accused of stealing $18,228.12 from an account containing unclaimed prisoner funds. She was booked into the same facility where she had worked for over eight years and released the following day after posting bail.

California: In 2015, Florin Blaj was fired from his job as a Riverside County correctional deputy for sleeping on duty while collecting $60 an hour in overtime pay. From 2013 through 2014, he took home about $132,000 in overtime, which doubled his base salary. In fact, Blaj collected more overtime pay than any other jail guard in Riverside County during that time period. He was terminated by the Riverside County Sheriff's Department for neglect, negligence and dishonesty, but successfully appealed his firing. As a result, in March 2017, attorneys for the Sheriff's Department filed a lawsuit requesting that a county judge intervene so they were not forced to reinstate Blaj.

California: Santa Clara County jailers Leonel Groba and Sgt. Robert Liddle, who were arrested on separate, unrelated charges in February 2017, are facing criminal prosecution. Groba was arrested after he "struck an inmate in the face without justification" several months earlier, while Liddle was charged with secretly recording his supervisors to gain leverage against them. Both were released on bond. Their arrests followed months of tumult at the Santa Clara County jail, where three guards – Jereh Lubrin, Matthew Farris and Rafael Rodriguez – were convicted of beating to death a mentally ill prisoner, Michael Tyree. [See: *PLN*, Aug. 2017, p.34; Jan. 2017, p.48].

Colorado: Former Boulder County Sheriff's Deputy Tyler Paul Mason, 33, pleaded guilty to misdemeanor official misconduct in a plea deal. In exchange for pleading guilty, prosecutors dropped two felony counts of conspiracy to introduce contraband. Mason's legal problems began when he plotted to smuggle chewing tobacco and marijuana edibles into the Boulder County jail for a childhood friend who was incarcerated at the facility. Undercover investigators witnessed Mason take $160 from a confidential informant in connection with the smuggling scheme; he was sentenced to 18 months of probation on March 3, 2017.

Florida: During his closing argument in a client's arson trial in March 2017, attorney Stephen Gutierrez's pants began to smoke and burn. Although his client was on trial for setting his car on fire and his defense was spontaneous combustion, Gutierrez denied the incident was staged for dramatic effect. Those who were present in the courtroom described the scene as "surreal" as the lawyer made a mad dash to the bathroom with his pants on fire. He doused the blaze with water and returned to the courtroom to finish his closing argument. A spokesperson with the Florida State Attorney's office said he could neither confirm nor deny if there was an investigation into the incident.

Georgia: Alisha Morgan, who worked as a nurse at the Douglas County jail, was arrested on March 14, 2017 on multiple counts related to inappropriate contact with a prisoner. At the time of her arrest she was working under contract for the Douglas County Sheriff's Office. Morgan was charged with conspiracy to commit a felony, participation in criminal gang activity, attempt or conspiracy to violate the Georgia controlled substance act, illegal use of communications facilities and possession of items prohibited for possession by inmates. She was initially held without bond.

Georgia: Dooly State Prison guard Tiffany King was arrested on March 19, 2017 and charged with attempting to smuggle marijuana into the facility. The Georgia Department of Corrections reported that the distinct smell of marijuana was emanating from King as she tried to enter the prison. She was detained but refused to consent to a search; instead, she demanded to meet with the deputy warden in private. At that meeting she revealed she was carrying the drug. King was charged with violating her oath and crossing guard lines with contraband.

Germany: In 2016, prisoners in the small western town of Bergisch Gladbach were fed McDonald's after the contract between the local jail and its food service vendor abruptly fell through. Prisoners were able to choose a hamburger, cheeseburger or veggie burger for lunch, while for breakfast they received a McToast with cheese, ham and bacon. "The location and the round-the-clock availability made us decide in favor of McDonalds [sic]," said a spokesperson for the police department. However, the Ministry of the Interior noted that McDonald's does not meet regulations and was used as an "emergency solution."

Illinois: Cook County detainee Deverick Alex, who was being held at the Kendall County jail, faces additional charges for holding a fellow prisoner hostage using a homemade weapon and threatening to kill him if his demands weren't met. The incident occurred in early March 2017 and resulted in Alex being charged with armed violence, felony forcible detention, aggravated unlawful restraint, possession of contraband in a penal institution and misdemeanor aggravated assault. At the time of the incident he was being held on charges of abducting a 26-year-old woman and sexually assaulting her while he was on parole.

Illinois: Congressman Luis Gutierrez was placed in plastic restraints and detained on March 13, 2017 for refusing to leave an immigration office in Chicago. He was meeting with the regional director for Immigration and Customs Enforcement (ICE) over concerns that he and several protesters accompanying him had about the

fate of detainees facing deportation. After ICE officials failed to provide answers to Gutierrez's questions, he and the protesters refused to leave and staged a sit-in. The group was released later that day. "We must as Americans confront our government when our government is wrong," Gutierrez subsequently told a CNN reporter.

Indiana: After spending nearly 25 years in prison for crimes he didn't commit, William E. Barnhouse, 60, was released on March 8, 2017. Sentenced in 1992 to 80 years in prison for rape and criminal deviate conduct, Barnhouse was convicted in large part on the basis of a single hair recovered from the victim that a so-called expert witness testified could be linked to him, but the FBI has since concluded that such findings are not reliable. Judge Kimberly Dowling granted a joint motion by the prosecution and Barnhouse's attorneys with the Innocence Project to set aside his conviction. In May 2017, prosecutors moved to dismiss the charges; DNA evidence in the case indicated someone else had committed the crime.

Louisiana: On March 17, 2017, twelve prisoners at the MacArthur Justice Center barricaded themselves inside a housing unit. An official statement released by the Orleans Parish Sheriff's Office claimed the disturbance lasted about an hour. However, attorneys representing prisoners in a lawsuit against the jail that resulted in a consent decree said their clients told them it lasted up to eight hours, and that "force [was used] against the unarmed prisoners, including possible deployment of pellet guns, striking prisoners with batons and other devices, and physical force." Rather than a minor disturbance that was under control in a short time, the attorneys claimed the prisoners breached a control room, opened computerized cell doors and started fires that required the fire department to respond. According to the Louisiana ACLU, "It's horrifying. Clearly, somebody wasn't doing their job. There's no other way that this could happen."

Massachusetts: Marlon Juba, 30, a jailer at the South Bay House of Corrections, was arraigned in Suffolk Superior Court on March 28, 2017 on charges of working with a prisoner to smuggle contraband into the facility. According to prosecutors, Juba drove to a nearby fast food restaurant, met the prisoner's associates and took delivery of "'K2' synthetic marijuana, cigarettes, cocaine, [a] cell phone, chargers, and/or Suboxone strips." He then returned to South Bay and provided the contraband to his accomplice on the inside, who distributed the items to fellow prisoners. Separately, Juba was charged last year for having a sexual relationship with a female offender.

Mexico: A group of 29 prisoners escaped from a facility in the northern state of Tamaulipas on March 23, 2017 by digging a tunnel measuring about 5 yards deep and 40 yards long. One of the escapees shot and killed a passing motorist during a carjacking. A spokesperson for Tamaulipas state security said the tunnel was concealed in a hut the prisoners had illegally built in a section of the facility that they effectively controlled. A dozen of the escapees were captured within hours after breaking out.

Mississippi: In March 2017, guards at the East Mississippi Correctional Center discovered that an unidentified prisoner was sitting on a jailhouse fortune – 400 packs of ramen noodles. The unorthodox treasure trove was found in an unclaimed locker. According to Grace Fisher, a Department of Corrections spokesperson, "a large quantity [of ramen] indicates the inmate is using the items for personal gain or in bartering, gambling or extorting." Clifton Collins, Jr., a former prisoner who wrote a cookbook dedicated to the dried noodle delicacy titled "Prison Ramen, Recipes and Stories from Behind Bars," explained that the soups also convey status. Collins added that 20 soups indicate someone is well-to-do by prison standards, meaning the unidentified ramen hoarder was extremely wealthy. Ramen packs are available at the prison commissary for $.53 each.

Missouri: An employee at the Texas County jail, Sheena D. Bolerjack, 33, was arrested on March 3, 2017 by Missouri Highway Patrol troopers for smuggling drugs to prisoners at the facility. She was charged with two counts of felony distribution of a controlled substance. Bolerjack admitted to investigators that while on duty she distributed oxycodone, alprazolam and tramadol to prisoners from September 9, 2016 to February 28, 2017. Her bond was set at $250,000 cash or surety.

Montana: The Public Safety Officer Standards and Training Council filed a notice on February 28, 2017 of its intent to revoke Manuel Zuniga's POST certificate. Zuniga, a guard at the Montana Women's Prison, was fired in 2013 for sexual misconduct with prisoners, who were referred to by other prisoners as "Zuniga's Princesses." One of his so-called princesses told investigators that he took her and two other prisoners to a secluded area above the gym to engage in sexual activities. He gave those whom he favored unapproved items such as Bath & Body Works products, special sneakers and even undergarments from Victoria's Secret. A prisoner told investigators that Zuniga provided her with a razor blade to plant in the cell of another prisoner who had allegedly snitched on one of his favorites. An investigation concluded that Zuniga exhibited favoritism towards certain prisoners while punishing those he disliked.

New Hampshire: Bryant Shipman, 25, was arrested on March 22, 2017 for trying to smuggle heroin into the Strafford County jail, where he was employed as a guard. According to a statement from the sheriff's office, Shipman "was detained before entering the housing area of the facility." Authorities had been investigating him for about a month prior to his arrest; the investigation was a joint effort by the Strafford County Sheriff's Office, Strafford County Department of Corrections, U.S. Marshals Service, Immigration and Customs Enforcement, Dover Police Department and Rochester Police K-9 Unit. Following his arrest, Shipman was held on

$35,000 cash bail.

New Jersey: Erick Melgar, a former senior guard at the Edna Mahan Correctional Facility, agreed in March 2017 to a consent judgment that required him to pay $75,000 to six female prisoners who accused him of physical and sexual abuse. In total, over a dozen women at the facility said he had engaged in varying types and degrees of abuse. Although criminal charges have not been filed against Melgar, an internal investigation substantiated the victims' accusations that he hit, groped and sexually abused them from 2009 to 2010. He was fired as a result of the investigation. The attorney representing the six women who filed suit stressed that his clients had refused to accept any settlement that included a confidentiality agreement because they wanted to alert the public about abuses taking place at the prison.

New Mexico: On April Fools' Day 2017, guards at the Santa Fe County Detention Center were all-too-easily duped. Someone posted bond for an offender named Andrea Quintana. After several announcements were made for her to come forward for release, a prisoner appeared, gathered her belongings, completed the paperwork and walked out of the facility. The only problem was the woman who breezed past multiple checkpoints on her way to freedom wasn't Quintana but another prisoner, Angelina Jinzo. Jinzo was taken into custody within about an hour after fellow prisoners advised guards of their error. "The facility is enhancing its release process to make sure multiple checks and balances are in place," a spokesperson for Santa Fe County told a local reporter.

New York: Rockland County jail guard Jacqueline Millien pleaded guilty on March 17, 2017 in connection with falsifying a logbook about prisoners on suicide watch. He had been fired the previous day by a hearing officer following a civil service disciplinary hearing. Millien accepted a plea deal in which he pleaded guilty to disorderly conduct in exchange for agreeing not to seek reinstatement. In his plea bargain, he admitted to placing false entries in the jail's suicide watch logbook.

New York: On March 3, 2017, former judge Paul M. Lamson entered a guilty plea to a felony charge of receiving a bribe and one count of official misconduct. He was accused of going easy on defendants in exchange for sexual favors. Lamson admitted to keeping a defendant out of prison in exchange for a sexual relationship that lasted from July 2015 to November 2016; additionally, he issued favorable rulings for the defendant during that time period. According to a statement from State Attorney General Eric Schneiderman, "Judges who exploit their positions in exchange for sexual favors show blatant disregard for their victims, the trust of the general public, and the judicial system as a whole."

Ohio: Kamara Austin was arrested by federal agents on March 15, 2017 on several drug charges. He was employed as a guard at the Cuyahoga County jail, and placed on unpaid leave following his arrest. According to authorities, Austin smuggled 16 grams of heroin and 32 unidentified yellow pills into the facility for an offender; he had been working as a jail guard since 1998.

Ohio: Robert Seman, Jr. jumped to his death from a fourth-floor courthouse balcony on April 10, 2017, one day before he was to stand trial in a potential death penalty case. Seman was accused of raping a 10-year-old girl, then setting a fire that killed her and her grandparents. Mahoning County Sheriff Jerry Green said his office would not change its prisoner transport procedures following the incident. Seman, 48, had been taken to court uncuffed and unshackled due to a court order that sought to prevent jurors from seeing him in restraints.

Ohio: On March 10, 2017, Kelly Watkins, 51, a former employee at the Madison Correctional Institution, was sentenced to one year in jail. She was employed as a secretary at the facility when she became romantically involved with a prisoner. The relationship reportedly began on Valentine's Day in 2015 when the prisoner asked Watkins "what her man was doing for her" that day. She admitted to smuggling cigarettes and Xanax into the facility. At her sentencing hearing she tearfully told the judge, "I am not a threat to society. I will not commit another crime." While the judge was convinced she would not reoffend, he noted that handing down lenient sentences for such crimes "sends a message to the people at the institution." In addition to the one-year jail term, Watkins was ordered to pay a $500 fine.

Oklahoma: Three prisoners at the Lincoln County jail escaped through the ventilation system on March 16, 2017.

Upon fleeing, they stole two pickup trucks, one of which had a gun inside. Lincoln County Sheriff Charles Dougherty described the weapon as a .40 Glock that was "loaded and ready to go to work." Following the prison break, investigators began interviewing 21 other prisoners who shared a cell with the fugitives. According to authorities, the escapees climbed into an air conditioning vent, hopped down to a work area and walked out a back door. All three were apprehended by March 29, 2017, with the last being caught by the U.S. Marshals at a residence in Shawnee.

Oregon: On April 3, 2017, the Oregon State Penitentiary was placed on lockdown after multiple brawls broke out in the vicinity of the dining room. A spokesperson with the Oregon Department of Corrections reported that approximately 60 prisoners were involved in the fracas. Guards deployed chemical spray to quell the fights; several participants were confined to restrictive housing and the facility was placed on modified lockdown. No serious injuries to either staff or prisoners were reported.

Oregon: Former criminal defense attorney Christian Day is being sued for $500,000 by a former female client whom he admitted groping during jailhouse visits. The victim filed suit in March 2017, alleging that Day "used his status as an attorney to threaten and intimidate Plaintiff, including the threat to Plaintiff that her failure to cooperate with his demands would result in a negative outcome for her pending court case." In a letter to the Oregon State Bar, Day admitted he had touched the woman's breasts and fondled her vaginal area during attorney-client jail visits. In an apparent effort to garner sympathy, he also revealed that he had participated in sexual addiction counseling, frequented porn theaters and watched porn "sometimes for hours on end." The handsy attorney had his license suspended for three years; he was also convicted of misdemeanor harassment and received two years of probation.

Pennsylvania: On March 20, 2017, approximately 25 members of the Allegheny County Health Justice Project demonstrated outside the Allegheny County jail and Pittsburgh Municipal Court Building. According to a representative at the event, they were protesting the fact that prisoners held at the jail were not receiving proper medical care. However, a spokesperson for the Health Justice Project reportedly told a local news reporter, "I cannot deny or confirm if anyone from our group was a part of the protest, but

we did not organize it." Jail staff called 911, describing the protesters as "rioters" who were throwing rocks and sticks and launching fireworks outside the facility. Eleven people were arrested on various charges ranging from disorderly conduct to resisting arrest.

Tennessee: Nashville judge Casey Moreland was arrested by the FBI on March 28, 2017 for attempting to bribe a woman with $6,000 to recant her accusation that they had sex in his office, and for conspiring with a confidential informant to plant drugs in the woman's residence in an effort to undermine her credibility. Moreland was charged with attempting to obstruct justice through bribery, witness tampering and retaliation against a witness. The federal investigation centered on broader allegations that he used his position as a judge to help people in exchange for, among other things, sexual favors, travel and lodging. Moreland resigned from the bench effective April 4, 2017. A judge subsequently ruled that he had to remain confined to his home and wear an electronic monitor while awaiting trial.

Tennessee: A former guard at the Sullivan County jail turned himself in on March 10, 2017 after being charged with two counts of assault. Edward Smith, Jr., 38, was charged after surveillance video showed him forcing a prisoner to the ground on two separate occasions. He was released on $7,500 bond.

Texas: Former Wood County jail administrator David Jaywane McGee found himself behind bars at the nearby Hopkins County jail after being charged on February 8, 2017 with two counts of tampering with evidence during an investigation, as well as permit/facilitate escape from a correctional facility and tampering with government records. McGee was accused of having inappropriate contact with Samantha Melvin, a former prisoner at the Wood County jail, and forging documents that facilitated her release. He was convicted of tampering with a government record in June 2017 and

sentenced to two years in prison.

Washington: In March 2017, former state prison guard Michael W. Bowden was sentenced to 18 months in federal prison for accepting bribes to smuggle contraband into the Monroe Correctional Complex. He pleaded guilty to extortion. According to federal investigators who monitored Bowden's activities, he was paid up to $1,000 to smuggle chewing tobacco, a SIM card and what he believed to be meth (but was actually supplied by the FBI and was fake) into the facility. In addition, there was a spike in prisoners testing positive for meth during his tenure. Bowden told an undercover informant that he wasn't concerned about losing his job due to his smuggling activities because he was poorly paid, earning about $40,000 a year in base salary. Upon his release he will be under community supervision for three years.

West Virginia: Two guards, Jared Michael Hutchinson and Timothy Lee Cooper, employed at the Southwestern Regional Jail, were arrested in March 2017 for bringing drugs into the facility. Hutchinson was busted after the U.S. Route 119 Drug Task Force received a tip that a guard was smuggling contraband. Investigators determined that he was in possession of marijuana and several packs of cigarettes while on duty. Cooper was arrested after admitting to a State Trooper that he was in possession of Suboxone, a Schedule III substance. A search of his wallet revealed notes bearing names, prisoner numbers and dollar amounts. Also, upon checking his locker, "several 'plugs' prepared for concealment and delivery to inmates containing the following: a green leafy substance believed to be marijuana, Suboxone..., loose leaf tobacco and lighters" were discovered. Cooper's bail was set at $25,000.

Criminal Justice Resources

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

Black and Pink

Black and Pink is an open family of lesbian, gay, bisexual, transgender and queer prisoners and "free world" allies who support each other. A national organization, Black and Pink reaches thousands of prisoners across the country and provides a free monthly newspaper of prisoner-generated content, a free (non-sexual) pen-pal program and connections with anti-prison movement organizing. Contact: Black and Pink, 614 Columbia Rd., Dorchester, MA 02125 (617) 519-4387. www.blackandpink.org

Center for Health Justice

Formerly CorrectHELP. Provides information related to HIV in prison – contact them if you are not receiving proper HIV medication or are denied access to programs due to your HIV status. Contact: CHJ, 900 Avila Street, Suite 301, Los Angeles, CA 90012 (213) 229-0985; HIV Hotline: (213) 229-0979 (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

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 66291, Seattle, WA 98166 (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 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

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Prison Education Guide, by Christopher Zoukis, PLN Publishing (2016), 269 pages. **$49.95**. Authored by *PLN* contributing writer Chris Zoukis, this book includes the most up-to-date information on pursuing educational courses by correspondence, including high school, college, paralegal and religious studies. This title replaces the *Prisoners' Guerrilla Handbook to Correspondence Programs*. 2019

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

Prison Nation: The Warehousing of America's Poor, edited by Tara Herivel and Paul Wright, 332 pages. **$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

The Criminal Law Handbook: Know Your Rights, Survive the System, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 663 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, 543 pages. **$39.99**. Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. 1037

The Merriam-Webster Dictionary, 2016 edition, 939 pages. **$8.95**. This paperback dictionary is a handy reference for the most common English words, with more than 75,000 entries. 2015

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

Legal Research: How to Find and Understand the Law, 17th Ed., by Stephen Elias and Susan Levinkind, 363 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, 368 pages. **$34.99**. How-to handbook for anyone who conducts a deposition or is going to be deposed. 1054

Criminal Law in a Nutshell, 5th edition, by Arnold H. Loewy, 387 pages. **$45.95**. Provides an overview of criminal law, including punishment, specific crimes, defenses & burden of proof. 1086

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Spanish-English/English-Spanish Dictionary, 2nd ed., Random House. 694 pages. **$15.95**. Has 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, 303 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, 407 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

Cell Workout, by L.J. Flanders, L.C. Books, 234 pages. **$35.00**. This book, written by a former British prisoner, describes in detail how to exercise in confined spaces without weightlifting equipment to develop a lean and muscular body. Fully illustrated! 1091

Everyday Letters for Busy People, by Debra Hart May, 288 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, 709 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, 234 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

The Federal Rules of Civil Procedure, Practitioner's Desk Reference 2017, by A. Benjamin Spender, 439 pages. **$49.95**. This concise compilation of the Federal Rules of Civil Procedure and portions of Title 28 of the U.S. Code most pertinent to federal civil litigation provides attorneys and *pro se* litigants with a handy resource that facilitates quick reference to the Rules. 1095

Merriam-Webster's Dictionary of Law, 634 pages. **$19.95**. Includes definitions for more than 10,000 legal words and phrases, plus pronunciations, supplementary notes and special sections on the judicial system, historic laws and selected important cases. Great reference for jailhouse lawyers who need to learn legal terminology. 2018

The Best 500+ Non Profit Organizations for Prisoners and Their Families, 4th edition (2017), 160 pages. **$17.99**. The only comprehensive, up-to-date book of non-profit organizations specifically for prisoners and their families. Cross referenced by state, organization name and subject area. Find what you want fast! 2020

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Criminal Procedure: Constitutional Limitations, 8th ed., by Jerold H. Israel and Wayne R. LaFave, 557 pages. **$45.95**. This book is intended for use by law students of constitutional criminal procedure, and examines constitutional standards in criminal cases. 1085 ☐

Prisoners' Self-Help Litigation Manual, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 928 pages. **$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. Includes detailed instructions and thousands of case citations. Highly recommended! 1077 ☐

How to Win Your Personal Injury Claim, by Atty. Joseph Matthews, 7th edition, NOLO Press, 285 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, 3rd edition, 572 pages. **$45.95**. 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. 1090a ☐

Federal Prison Handbook, by Christopher Zoukis, 493 pages. **$49.95**. This leading survival guide to the federal Bureau of Prisons teaches current and soon-to-be federal prisoners everything they need to know about BOP life, policies and operations. 2022 ☐

Federal Rules of Evidence in a Nutshell, 6th ed., by Paul F. Rothstein, Myrna S. Raeder and David Crump, 816 pages. **$45.95**. This succinct overview presents accurate law, policy, analysis and insights into the evidentiary process in federal courts. 1093 ☐

Civil Procedure in a Nutshell, 7th edition, by Mary Kay Kane, 334 pages. **$45.95**. This comprehensive guide provides a succinct overview of procedural rules in civil cases. 1094 ☐

Nolo's Plain-English Law Dictionary, by Gerald N. Hill and Kathleen T. Hill, 477 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 ☐

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

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

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