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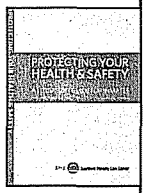
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Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A., by Mumia Abu Jamal, City Lights Publishers, 280 pages. **$16.95**. In *Jailhouse Lawyers*, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned-advocates who have learned to use the court system to represent other prisoners, and in some cases have won their freedom. Must-read for jailhouse lawyers! 1073

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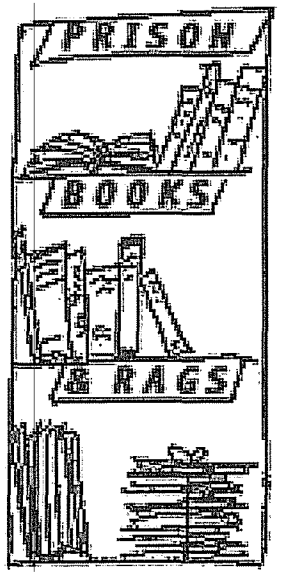
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Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It, by Terry Kupers, Jossey-Bass, 245 pages. ***Hardback only; prisoners please include any required authorization form.*** **$32.95.** Psychiatrist writes about the mental health crisis in U.S. prisons and jails. Covers all aspects of mental illness, prison rape, negative effects of long-term isolation in control units, and more. 1003 ☐

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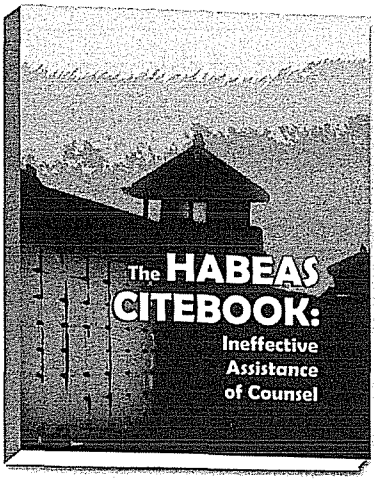
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The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an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

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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

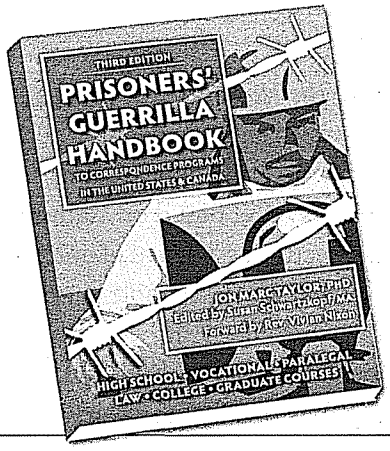
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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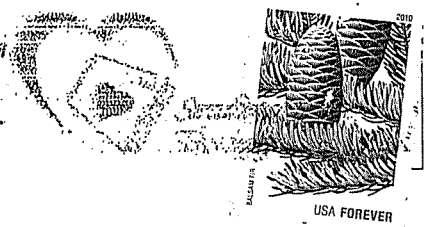
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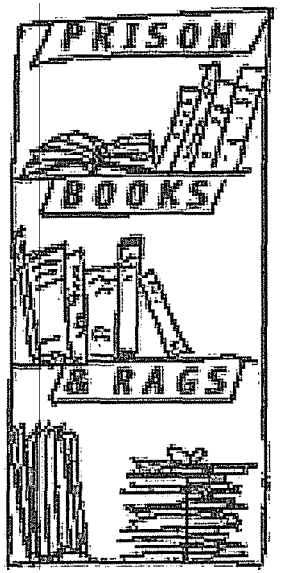
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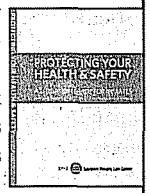
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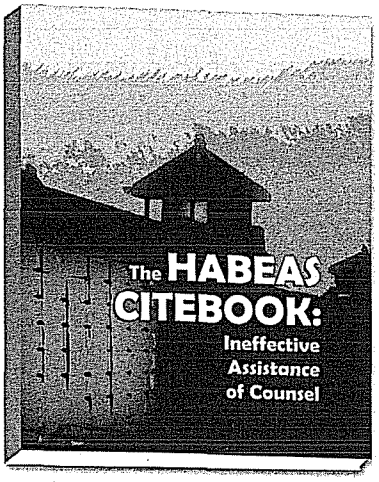
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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

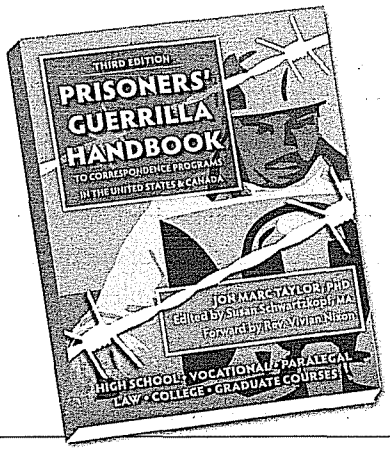
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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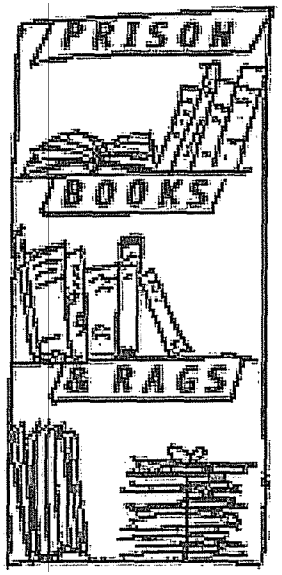
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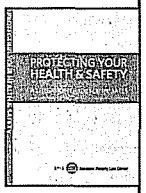
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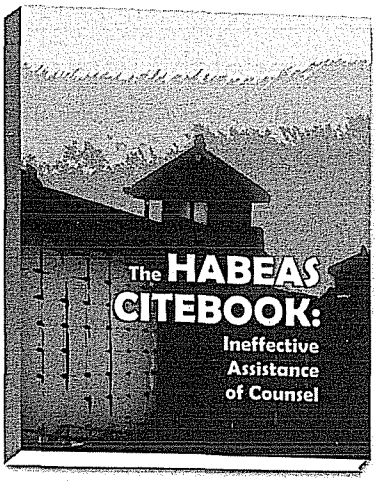
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The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an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

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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

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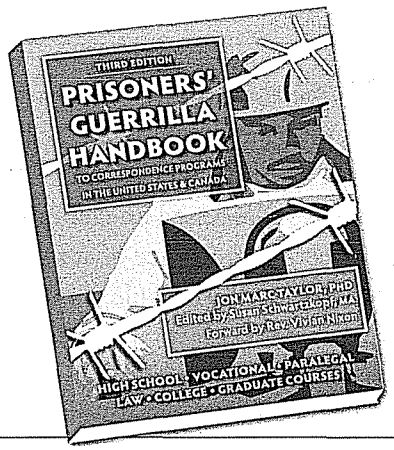
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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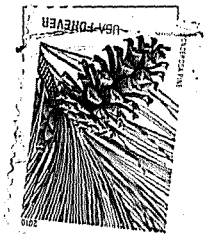
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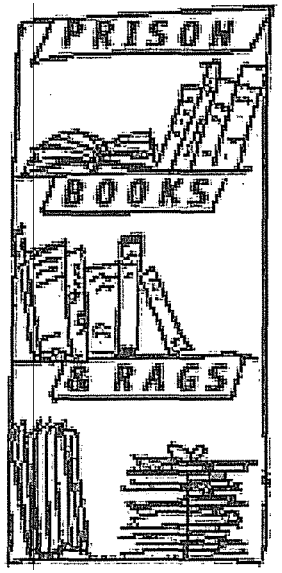
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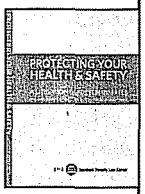
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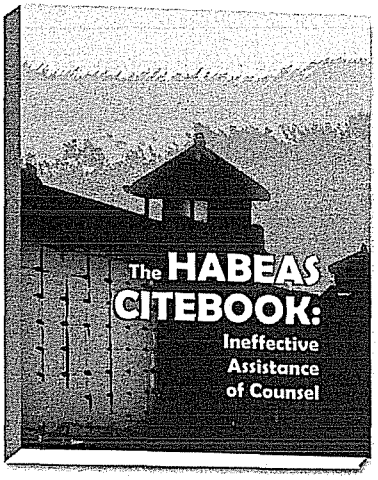
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The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an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

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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

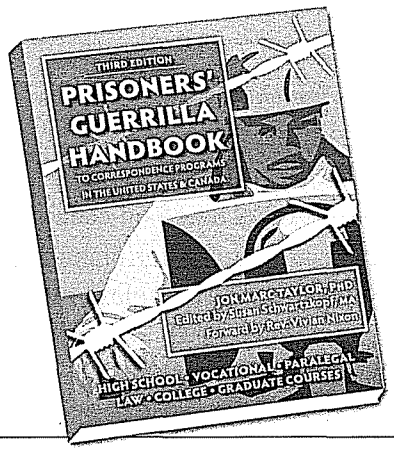
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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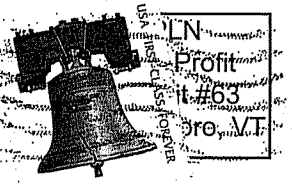
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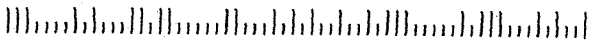
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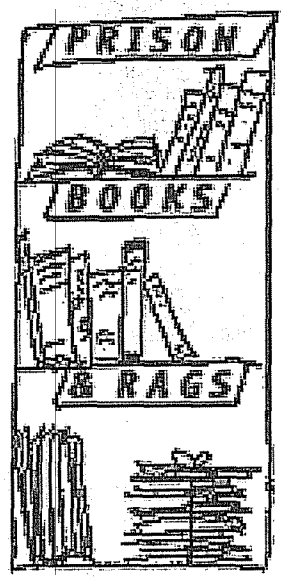
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Women Behind Bars, The Crisis of Women in the U.S. Prison System, by Silja J.A. Talvi, Seal Press, 295 pages. **$15.95.** Best book available that covers issues related to imprisoned women, based on interviews with hundreds of women behind bars. 1066 ☐

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Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It, by Terry Kupers, Jossey-Bass, 245 pages. ***Hardback only*; prisoners please include any required authorization form. $32.95.** Psychiatrist writes about the mental health crisis in U.S. prisons and jails. Covers all aspects of mental illness, prison rape, negative effects of long-term isolation in control units, and more. 1003 ☐

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The Prison and the Gallows: The Politics of Mass Incarceration in America, by Marie Gottschalk, Cambridge University Press, 451 pages. **$29.99.** Great political analysis of the confluence of events leading to 2.3 million people behind bars in the U.S. 1069 ☐

The Habeas Citebook: Ineffective Assistance of Counsel, by Brandon Sample, PLN Publishing, 200 pages. **$49.95.** This is PLN's second published book, which exclusively covers ineffective assistance of counsel-related issues in federal habeas petitions. Great resource for habeas litigation, and contains hundreds of case cites! 1078 ☐

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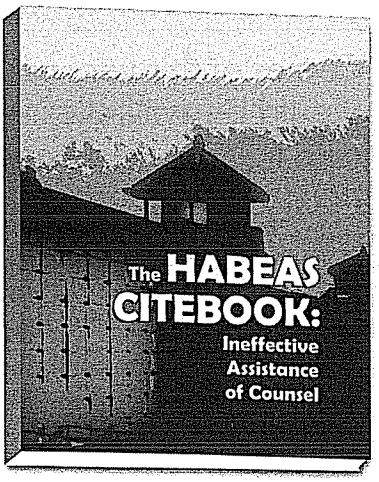
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The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an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

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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

"*The Habeas Citebook* is a nifty and concise self-help guide for prisoners seeking habeas relief based on claims of ineffective assistance of counsel. Navigating the complex and treacherous terrain of habeas law is never easy; but claiming that your lawyer screwed up is even more difficult — especially from the confines of an ill-equipped prison law library.

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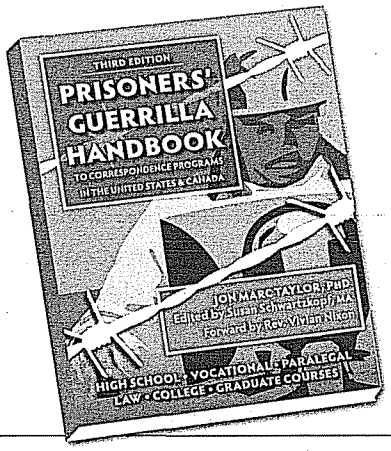
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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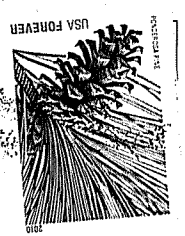
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PLN's many thousands of subscribers and readers include civil and criminal trial and appellate attorneys, judges, public defenders, journalists, academics, paralegals, prisoners' rights activists, students, family members of prisoners, concerned individuals, politicians, other government officials, and numerous local, state and federal prisoners nationwide.

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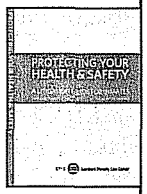
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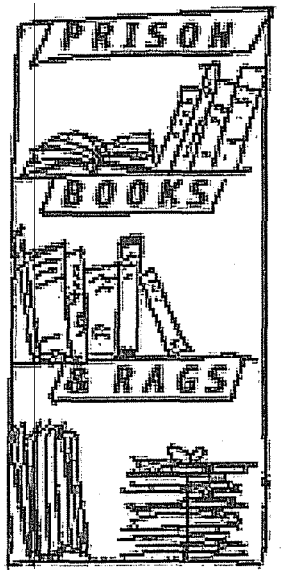
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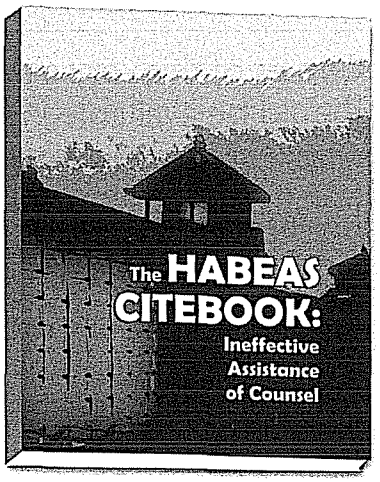
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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

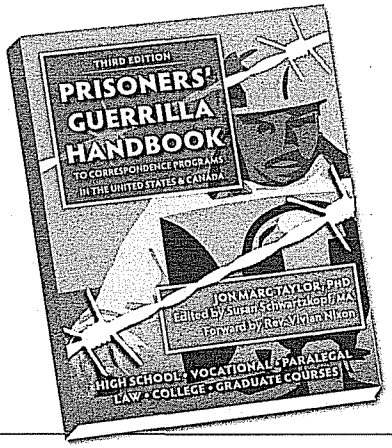
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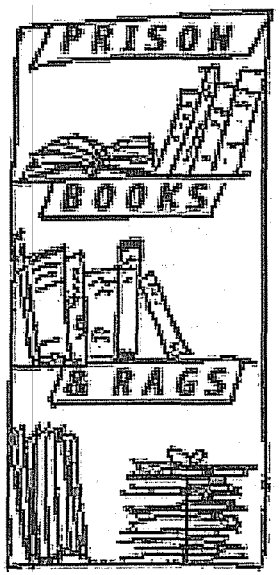
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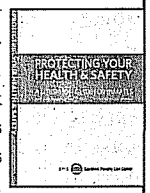
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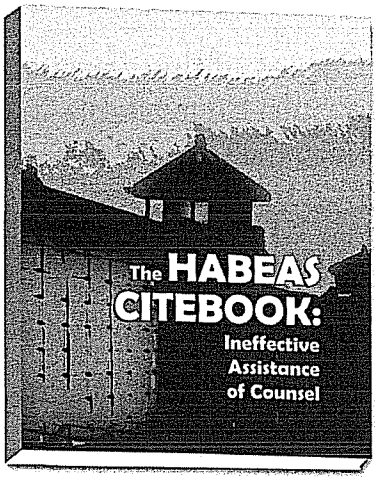
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Case 3:12-cv-00071-SI Document 8-1 Filed 01/31/12 Page 54 of 65

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

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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

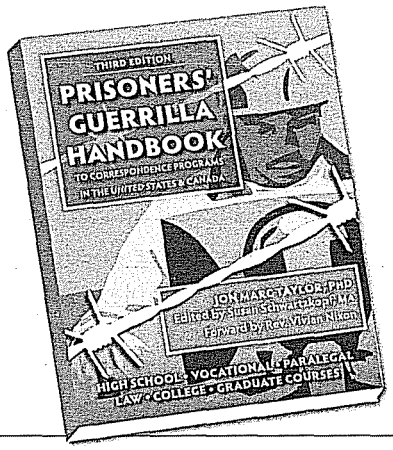
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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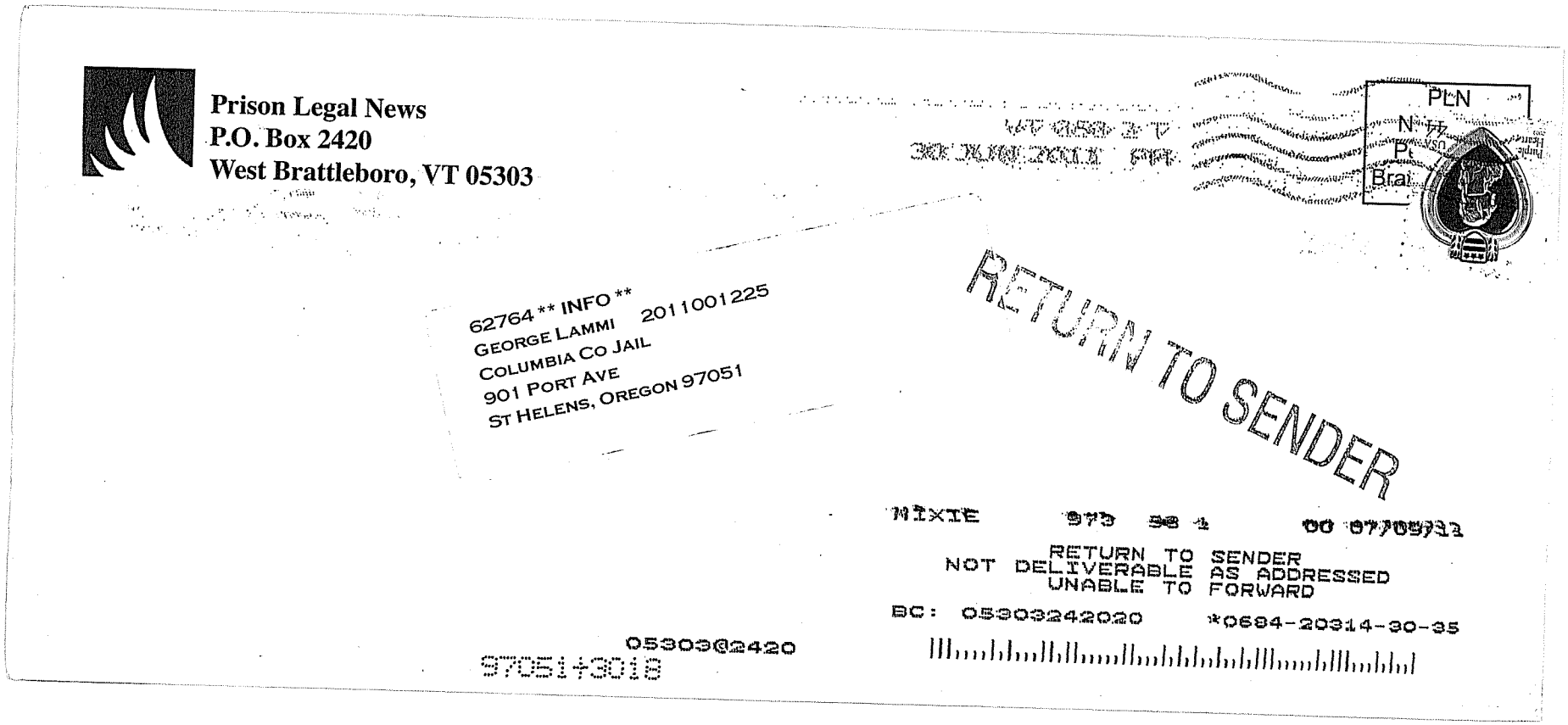
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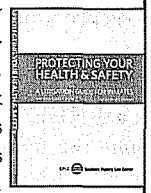
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Starting Out! The Complete Re-Entry Handbook, edited by William H. Foster, Ph.D. & Carl E. Horn, Ph.D., Starting Out Inc., 446 pages. **$22.95**. Complete do-it-yourself re-entry manual and workbook for prisoners who want to develop their own re-entry plan to increase their chances of success after they are released. Includes a wide variety of resources, including a user code to the Starting Out website that can be accessed following release. 1074

Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A., by Mumia Abu Jamal, City Lights Publishers, 280 pages. **$16.95**. In *Jailhouse Lawyers*, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned-advocates who have learned to use the court system to represent other prisoners, and in some cases have won their freedom. Must-read for jailhouse lawyers! 1073

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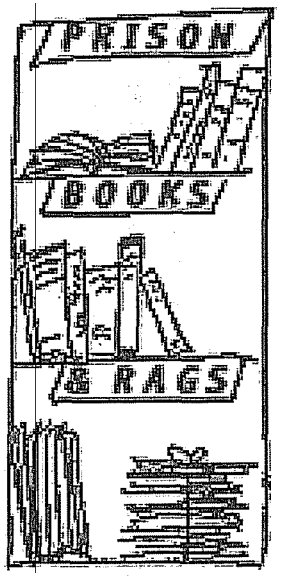
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The Prison and the Gallows: The Politics of Mass Incarceration in America, by Marie Gottschalk, Cambridge University Press, 451 pages. **$29.99.** Great political analysis of the confluence of events leading to 2.3 million people behind bars in the U.S. 1069 ☐

The Habeas Citebook: Ineffective Assistance of Counsel, by Brandon Sample, PLN Publishing, 200 pages. **$49.95.** This is PLN's second published book, which exclusively covers ineffective assistance of counsel-related issues in federal habeas petitions. Great resource for habeas litigation, and contains hundreds of case cites! 1078 ☐

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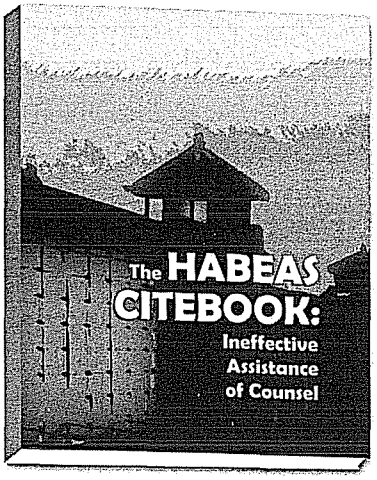
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The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an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

It will save litigants thousands of hours of research and it focuses on the WINNING cases criminal defendants need to successfully challenge their convictions.

Well organized into 52 concise chapters, this easy to use book puts the law at the reader's fingertips. The Appendix includes pleadings and forms from successful habeas corpus cases that



demonstrate formatting and show how to frame a winning argument that will persuade a court to grant habeas relief. *The Habeas Citebook* explains the procedural and substantive complexities of federal habeas corpus litigation with the goal of identifying and litigating claims involving ineffective assistance of counsel.

Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

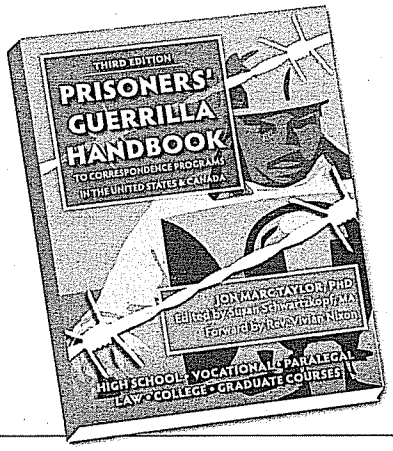
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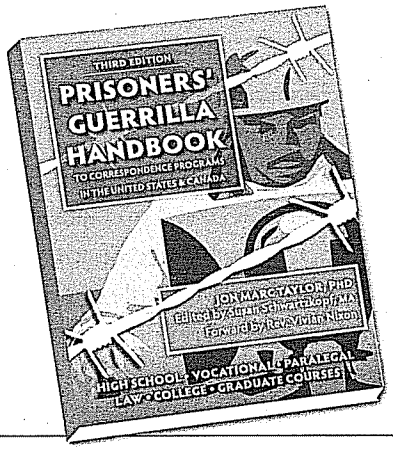
Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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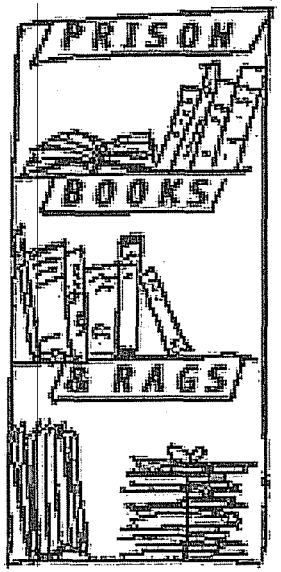
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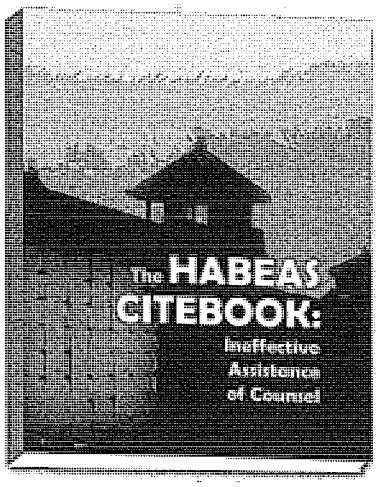
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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

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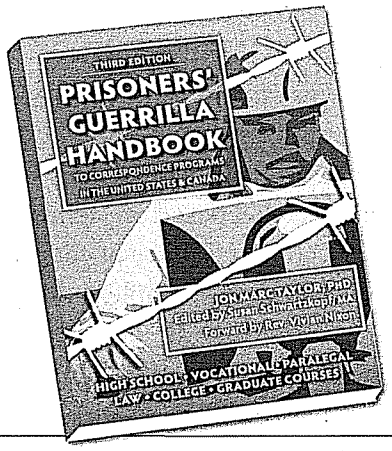
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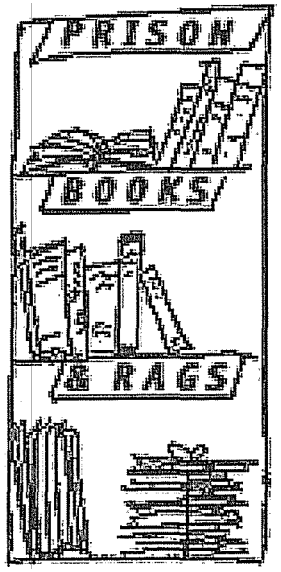
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Page 98 PLNCOL-00123

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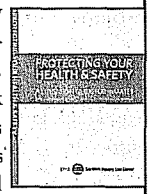
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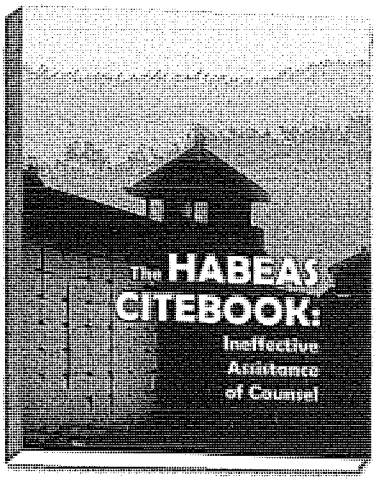
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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

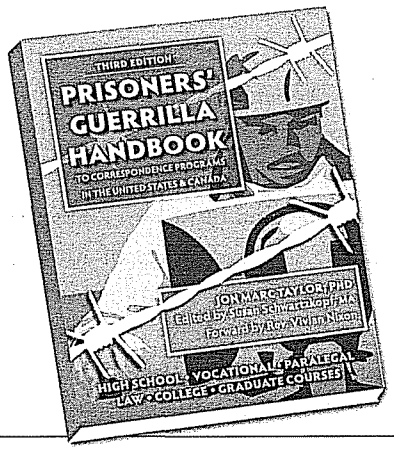
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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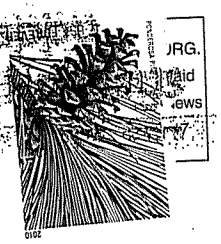
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Case 3:12-cv-00071-SI Document 8-2 Filed 01/31/12 Page 19 of 64

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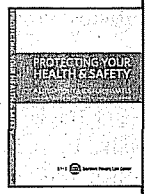
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Prison Profiteers: Who Makes Money from Mass Incarceration, edited by Paul Wright & Tara Herivel, New Press (2007). **$24.95 (free with a 4-year sub!).** This is the third in a series of PLN anthologies that examines the reality of mass imprisonment in the U.S. *Prison Profiteers* is unique from other books on the market because it exposes and discusses who profits and benefits from mass imprisonment, rather than who is harmed by the prison industrial complex and our nation's reliance on over-incarceration. Buy separately: _____

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Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, published by PLN, 221 pages. **$49.95.** Written by Missouri prisoner Jon Marc Taylor, who obtained a B.S. degree, an M.A. degree and a Doctorate, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, paralegal and college courses available through correspondence study. Great resource for prisoners who want to further their education. 1057

Protecting Your Health and Safety, by Robert E. Toone, Southern Poverty Law Center, 325 pages. **$10.00.** This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how you can enforce your rights within the facility and, if necessary, in court through litigation. 1060

Starting Out! The Complete Re-Entry Handbook, edited by William H. Foster, Ph.D. & Carl E. Horn, Ph.D., Starting Out Inc., 446 pages. **$22.95.** Complete do-it-yourself re-entry manual and workbook for prisoners who want to develop their own re-entry plan to increase their chances of success after they are released. Includes a wide variety of resources, including a user code to the Starting Out website that can be accessed following release. 1074

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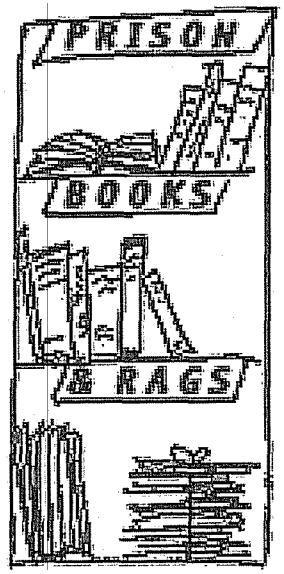
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Crime and Punishment In America, by Elliott Currie, 230 pages. **$16.95.** Effective rebuttal to right-wing proponents of prison building. Fact-based argument shows that crime is driven by poverty. Debunks prison myths and discusses proven, effective means of crime prevention. 1019 ☐

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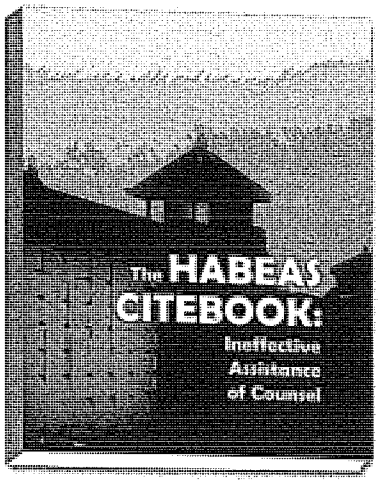
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The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an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

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demonstrate formatting and show how to frame a winning argument that will persuade a court to grant habeas relief. *The Habeas Citebook* explains the procedural and substantive complexities of federal habeas corpus litigation with the goal of identifying and litigating claims involving ineffective assistance of counsel.

Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

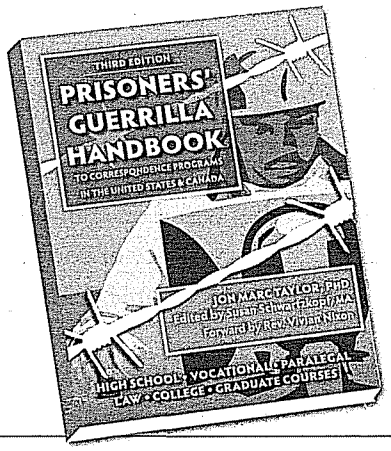
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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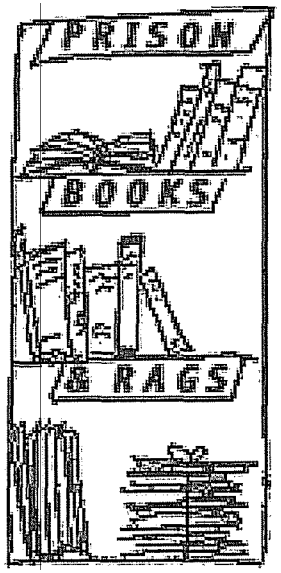
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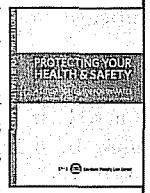
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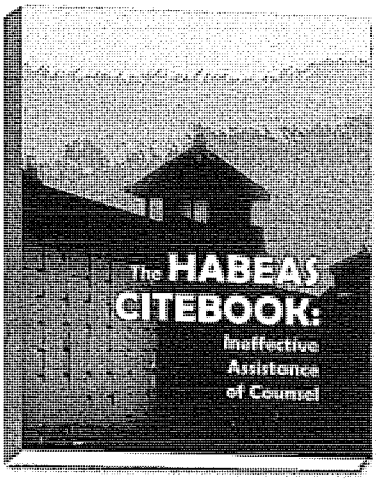
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The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an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

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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

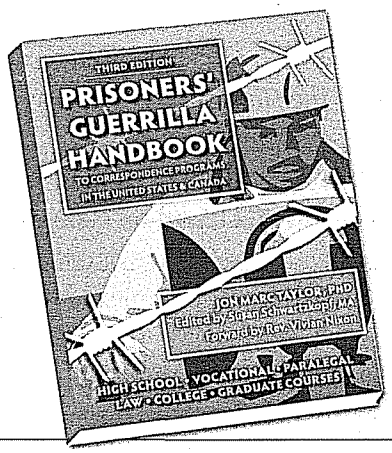
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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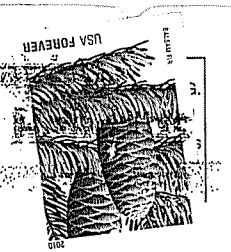
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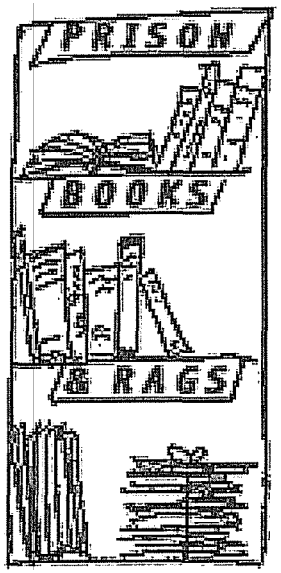
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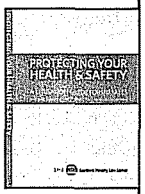
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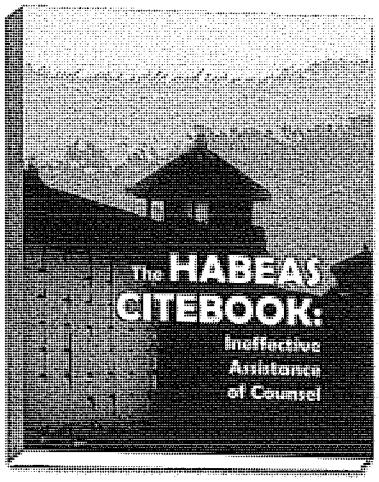
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Case 3:12-cv-00071-SI Document 8-2 Filed 01/31/12 Page 38 of 64

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

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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

> *The Habeas Citebook* is a nifty and concise self-help guide for prisoners seeking habeas relief based on claims of ineffective assistance of counsel. Navigating the complex and treacherous terrain of habeas law is never easy; but claiming that your lawyer screwed up is even more difficult — especially from the confines of an ill-equipped prison law library.
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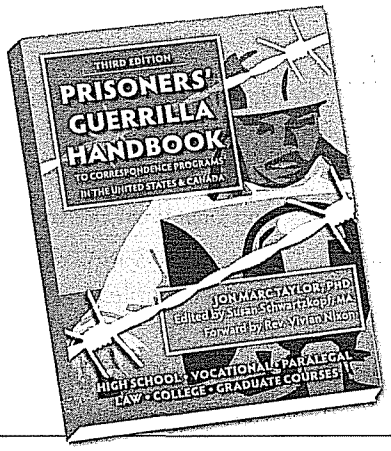
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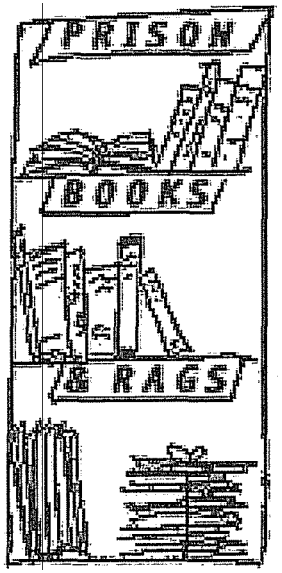
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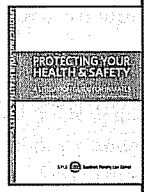
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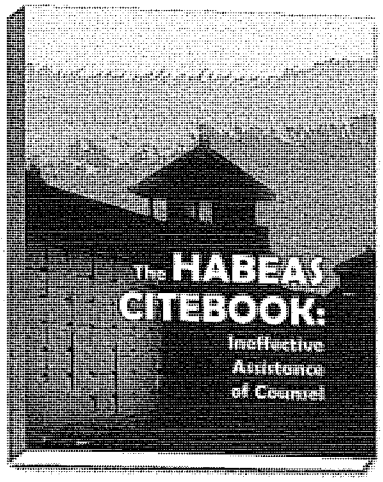
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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

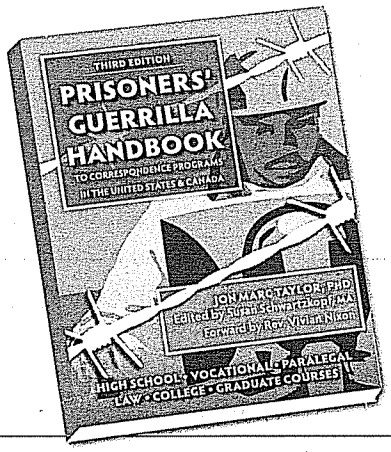
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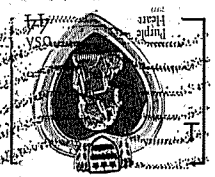
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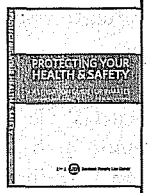
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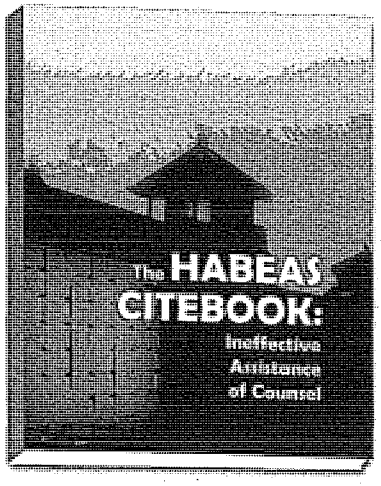
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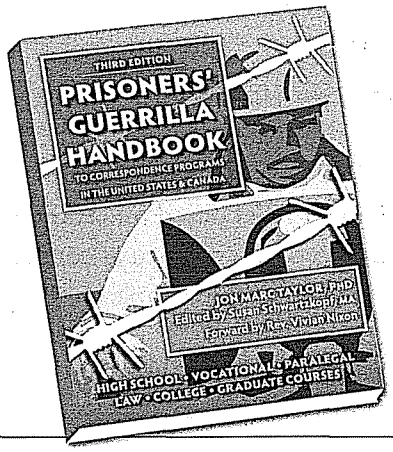
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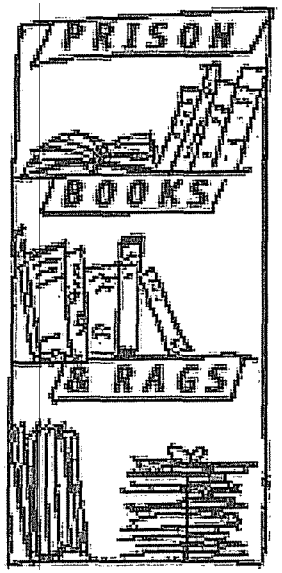
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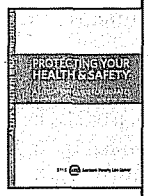
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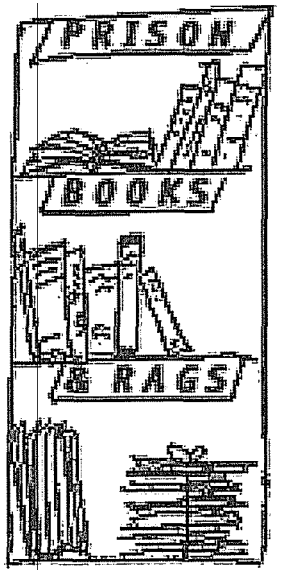
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Crime and Punishment In America, by Elliott Currie, 230 pages. **$16.95.** Effective rebuttal to right-wing proponents of prison building. Fact-based argument shows that crime is driven by poverty. Debunks prison myths and discusses proven, effective means of crime prevention. 1019 ☐☐

Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It, by Terry Kupers, Jossey-Bass, 245 pages. ***Hardback only; prisoners please include any required authorization form.*** **$32.95.** Psychiatrist writes about the mental health crisis in U.S. prisons and jails. Covers all aspects of mental illness, prison rape, negative effects of long-term isolation in control units, and more. 1003 ☐☐

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The Prison and the Gallows: The Politics of Mass Incarceration in America, by Marie Gottschalk, Cambridge University Press, 451 pages. **$29.99.** Great political analysis of the confluence of events leading to 2.3 million people behind bars in the U.S. 1069 ☐☐

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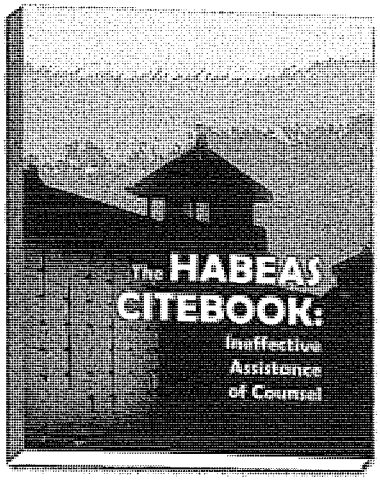
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Case 3:12-cv-00071-SI Document 8-2 Filed 01/31/12 Page 62 of 64

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

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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

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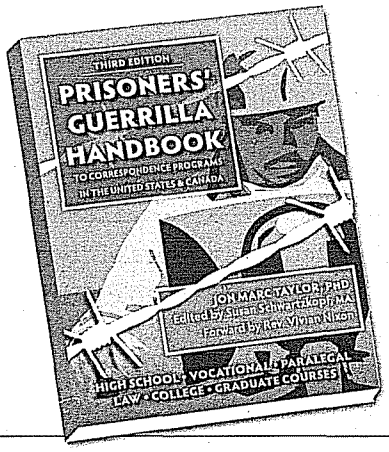
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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PLN's many thousands of subscribers and readers include civil and criminal trial and appellate attorneys, judges, public defenders, journalists, academics, paralegals, prisoners' rights activists, students, family members of prisoners, concerned individuals, politicians, other government officials, and numerous local, state and federal prisoners nationwide.

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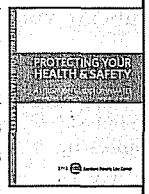
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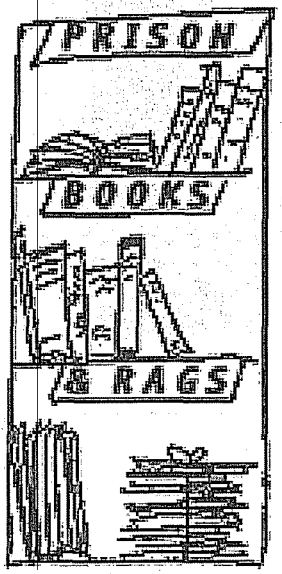
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Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It, by Terry Kupers, Jossey-Bass, 245 pages. ***Hardback only; prisoners please include any required authorization form.*** **$32.95.** Psychiatrist writes about the mental health crisis in U.S. prisons and jails. Covers all aspects of mental illness, prison rape, negative effects of long-term isolation in control units, and more. 1003 ☐

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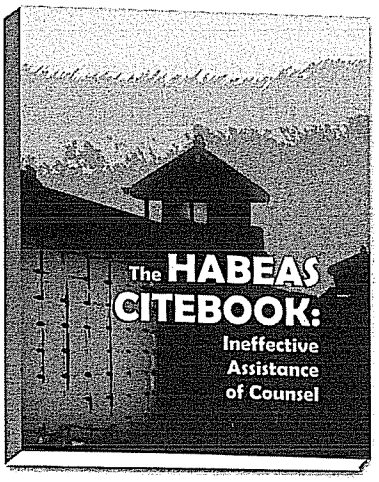
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The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an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

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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

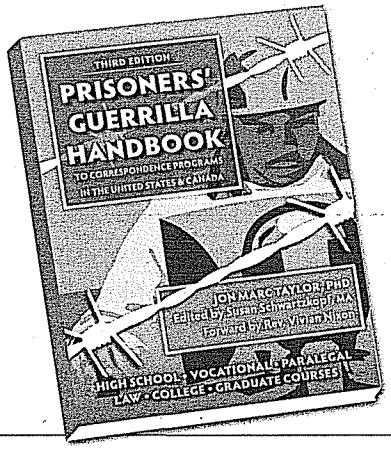
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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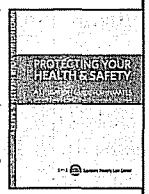
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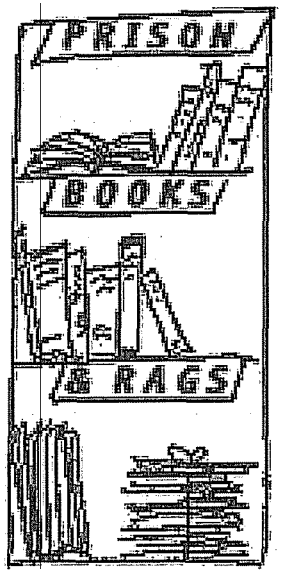
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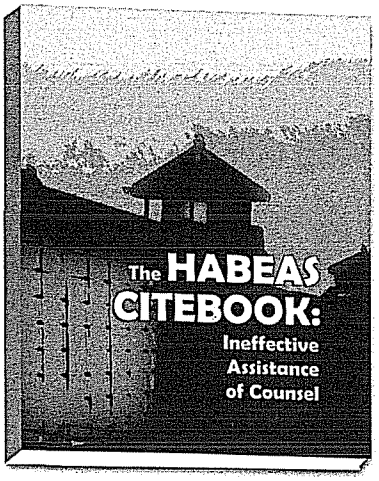
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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

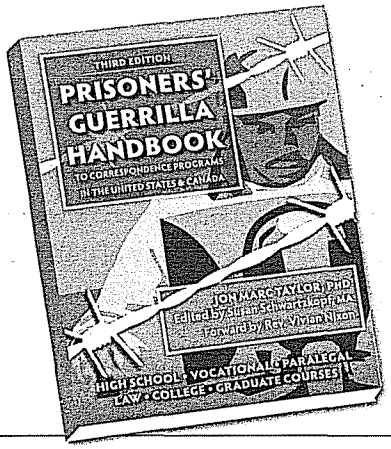
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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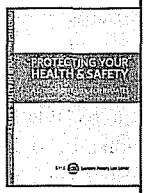
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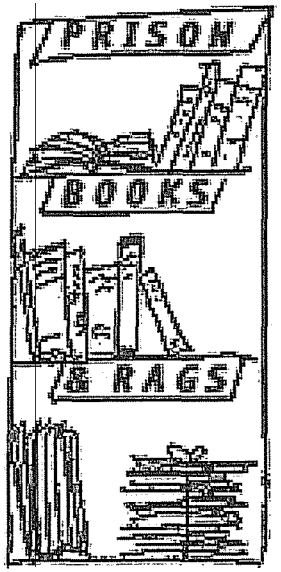
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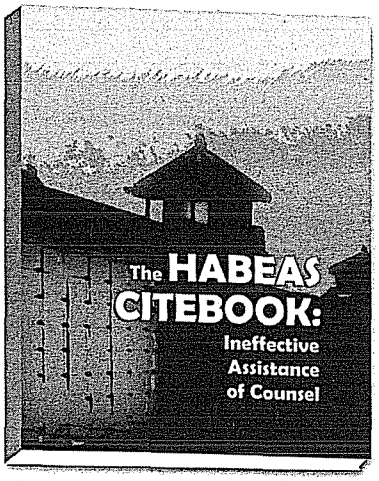
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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

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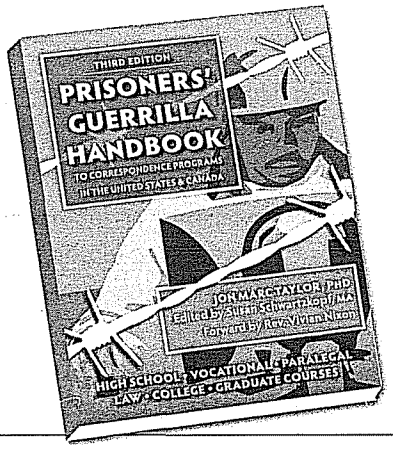
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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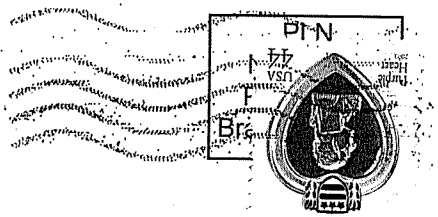
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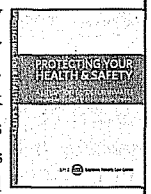
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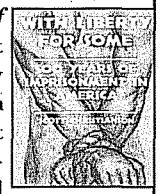
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Protecting Your Health and Safety, by Robert E. Toone, Southern Poverty Law Center, 325 pages. **$10.00.** This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how you can enforce your rights within the facility and, if necessary, in court through litigation. 1060

Starting Out! The Complete Re-Entry Handbook, edited by William H. Foster, Ph.D. & Carl E. Horn, Ph.D., Starting Out Inc., 446 pages. **$22.95.** Complete do-it-yourself re-entry manual and workbook for prisoners who want to develop their own re-entry plan to increase their chances of success after they are released. Includes a wide variety of resources, including a user code to the Starting Out website that can be accessed following release. 1074

Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A., by Mumia Abu Jamal, City Lights Publishers, 280 pages. **$16.95.** In *Jailhouse Lawyers*, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned-advocates who have learned to use the court system to represent other prisoners, and in some cases have won their freedom. Must-read for jailhouse lawyers! 1073

How to Win Your Personal Injury Claim, by Atty. Joseph Matthews, 7th edition, NOLO Press, 304 pages. **$34.99.** While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents — including dealing with doctors, attorneys and insurance companies. 1075

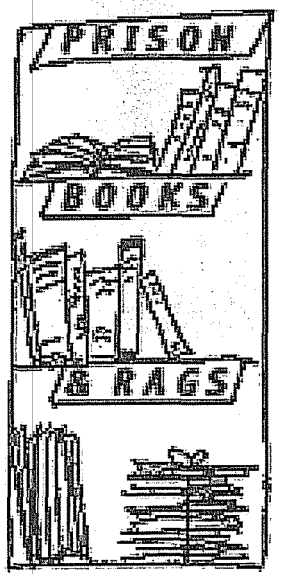
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Represent Yourself in Court: How to Prepare & Try a Winning Case, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 528 pages. **$39.99.** Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. The authors explain what to say in court, how to say it, etc. 1037 ☐

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Women Behind Bars, The Crisis of Women in the U.S. Prison System, by Silja J.A. Talvi, Seal Press, 295 pages. **$15.95.** Best book available that covers issues related to imprisoned women, based on interviews with hundreds of women behind bars. 1066 ☐

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Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It, by Terry Kupers, Jossey-Bass, 245 pages. ***Hardback only; prisoners please include any required authorization form.*** **$32.95.** Psychiatrist writes about the mental health crisis in U.S. prisons and jails. Covers all aspects of mental illness, prison rape, negative effects of long-term isolation in control units, and more. 1003 ☐

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The Prison and the Gallows: The Politics of Mass Incarceration in America, by Marie Gottschalk, Cambridge University Press, 451 pages. **$29.99.** Great political analysis of the confluence of events leading to 2.3 million people behind bars in the U.S. 1069 ☐

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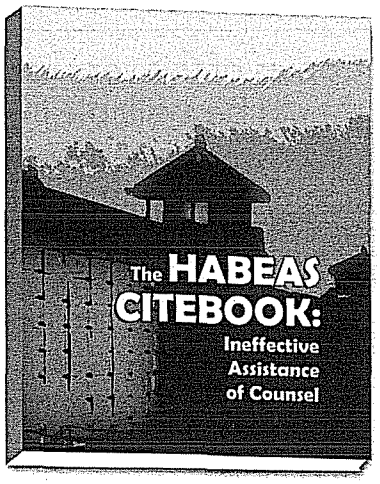
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The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an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

It will save litigants thousands of hours of research and it focuses on the WINNING cases criminal defendants need to successfully challenge their convictions.

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demonstrate formatting and show how to frame a winning argument that will persuade a court to grant habeas relief. *The Habeas Citebook* explains the procedural and substantive complexities of federal habeas corpus litigation with the goal of identifying and litigating claims involving ineffective assistance of counsel.

Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

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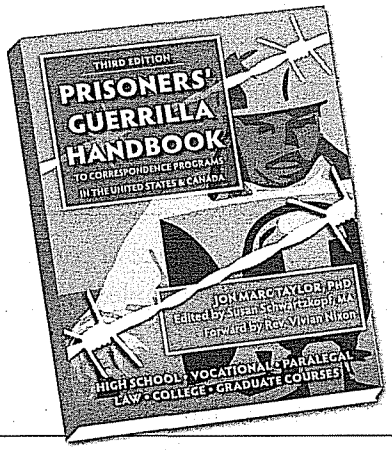
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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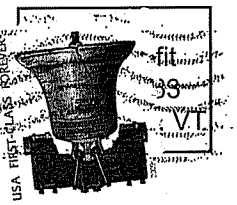
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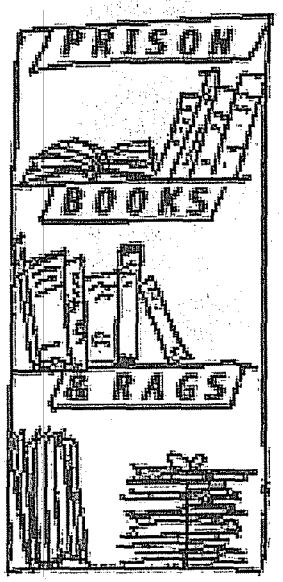
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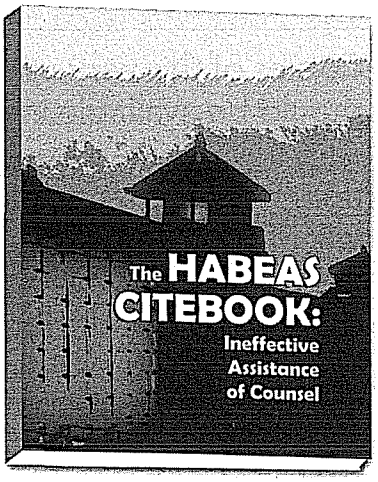
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The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an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

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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

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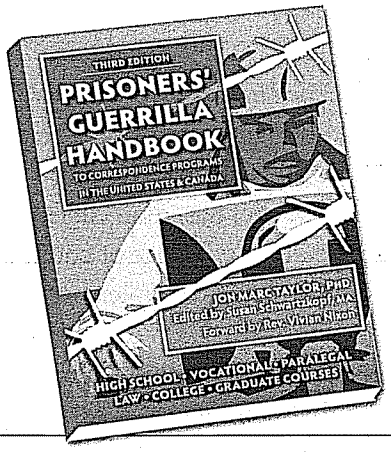
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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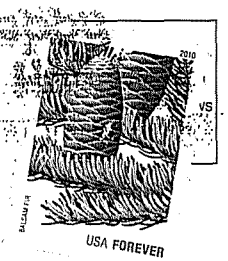
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Page 192 PLNCOL-00114

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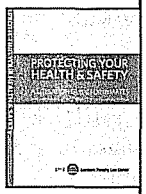
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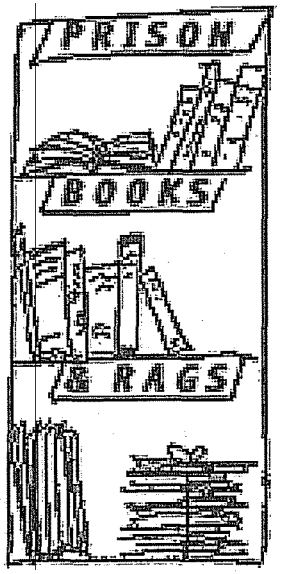
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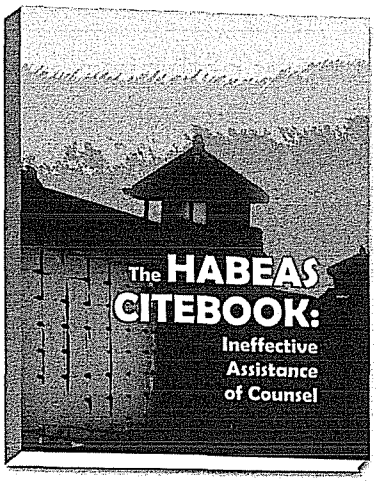
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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

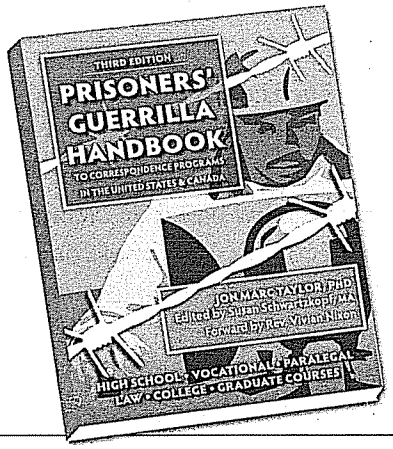
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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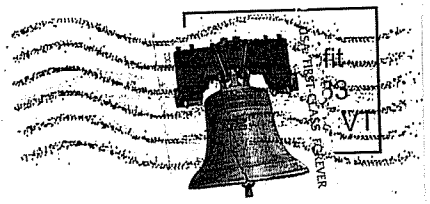
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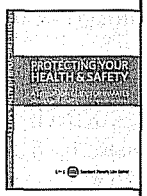
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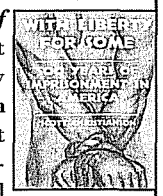
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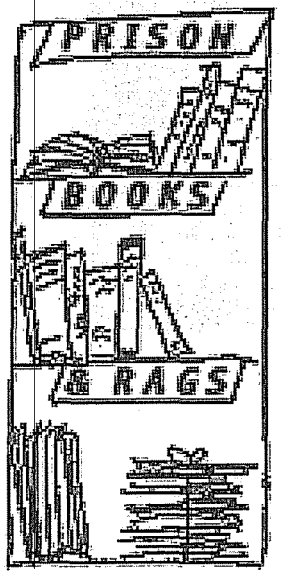
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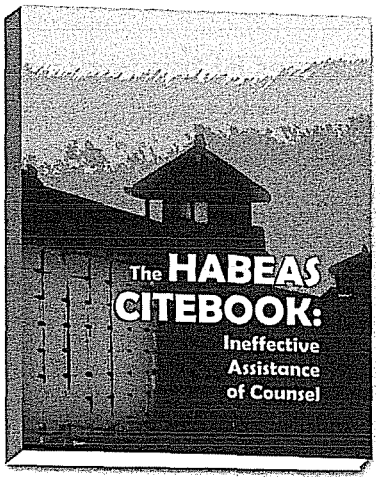
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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

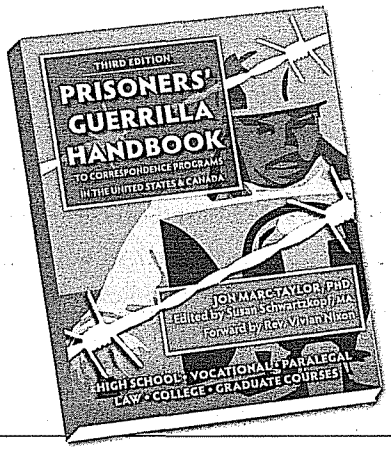
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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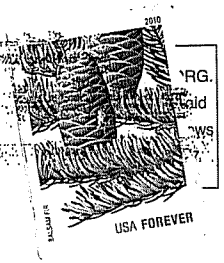
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Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, published by PLN, 221 pages. **$49.95.** Written by Missouri prisoner Jon Marc Taylor, who obtained a B.S. degree, an M.A. degree and a Doctorate, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, paralegal and college courses available through correspondence study. Great resource for prisoners who want to further their education. 1057 ☐

Protecting Your Health and Safety, by Robert E. Toone, Southern Poverty Law Center, 325 pages. **$10.00.** This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how you can enforce your rights within the facility and, if necessary, in court through litigation. 1060 ☐

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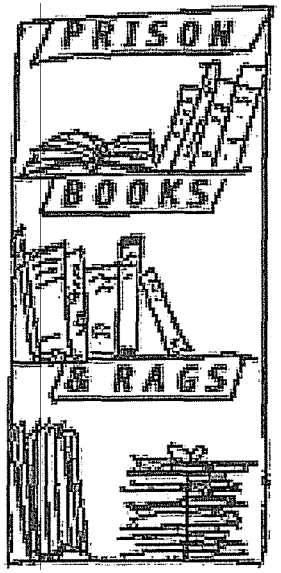
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The Prison and the Gallows: The Politics of Mass Incarceration in America, by Marie Gottschalk, Cambridge University Press, 451 pages. **$29.99.** Great political analysis of the confluence of events leading to 2.3 million people behind bars in the U.S. 1069 ☐

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Case 3:12-cv-00071-SI Document 8-3 Filed 01/31/12 Page 61 of 64

"I truly appreciate all the efforts you put forth to safeguard our Constitutional Rights. From the heart I say 'Thank You' on Behalf of us All!"
~BL, Washington prisoner

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PLN's many thousands of subscribers and readers include civil and criminal trial and appellate attorneys, judges, public defenders, journalists, academics, paralegals, prisoners' rights activists, students, family members of prisoners, concerned individuals, politicians, other government officials, and numerous local, state and federal prisoners nationwide.

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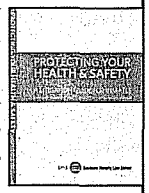
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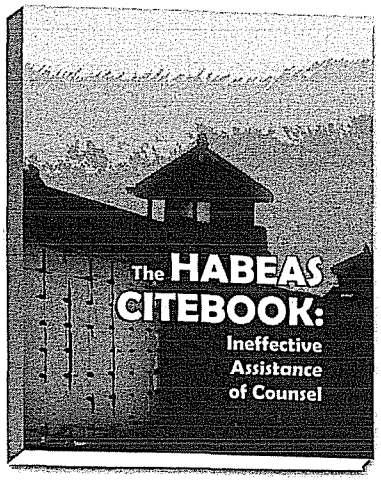
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Case 3:12-cv-00071-SI Document 8-3 Filed 01/31/12 Page 62 of 64

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

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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

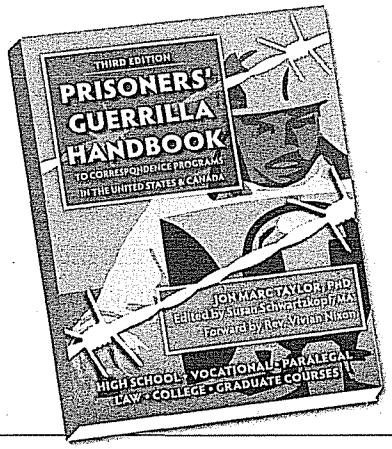
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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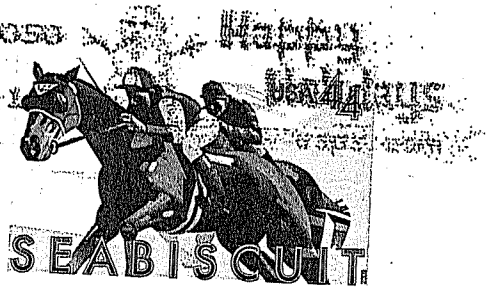
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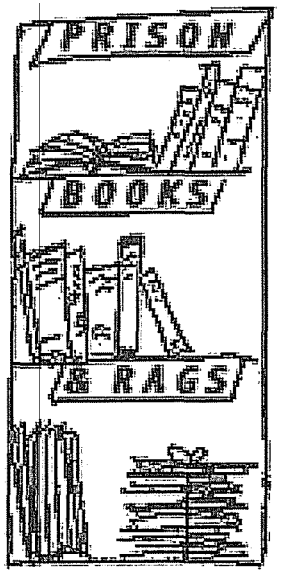
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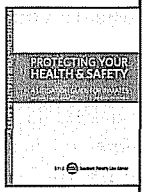
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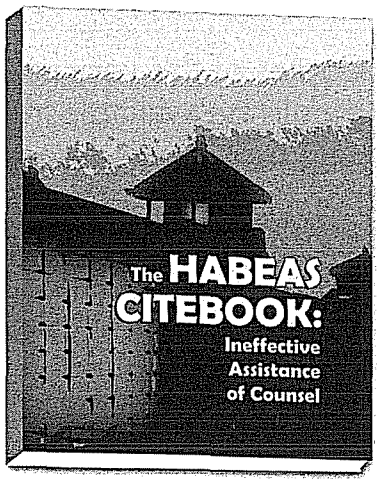
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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

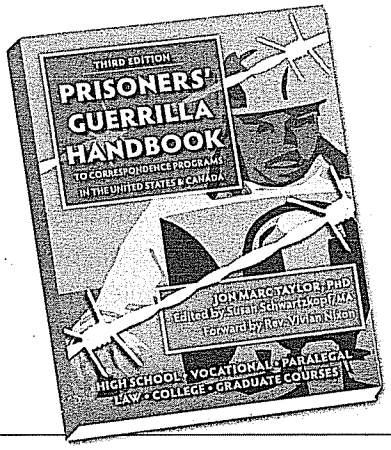
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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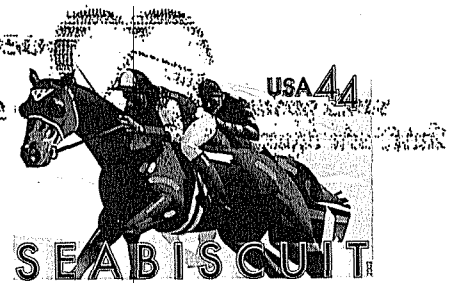
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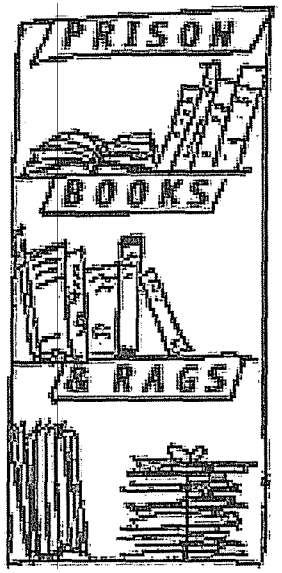
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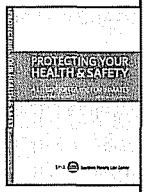
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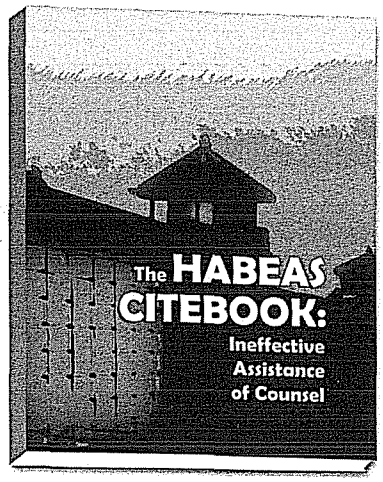
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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

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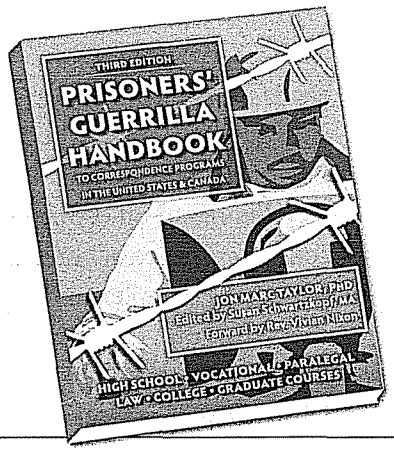
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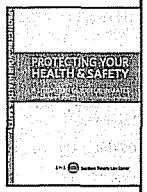
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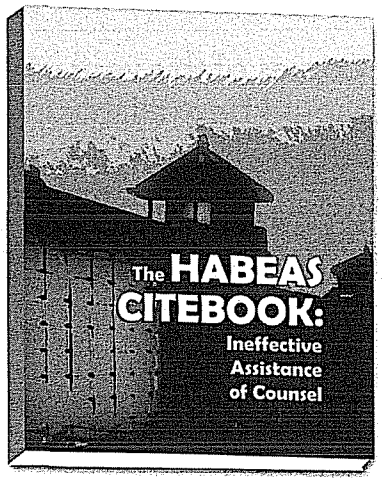
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It will save litigants thousands of hours of research and it focuses on the WINNING cases criminal defendants need to successfully challenge their convictions.

Well organized into 52 concise chapters, this easy to use book puts the law at the reader's fingertips. The Appendix includes pleadings and forms from successful habeas corpus cases that



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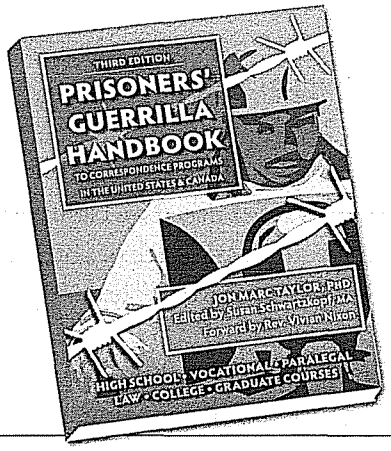
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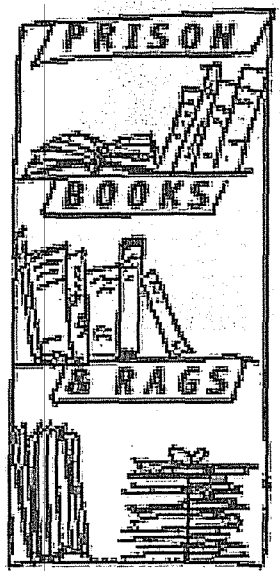
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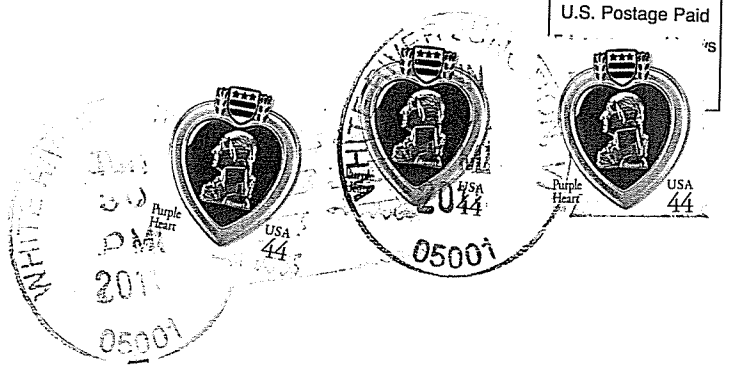
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Inside

From the Editor	10
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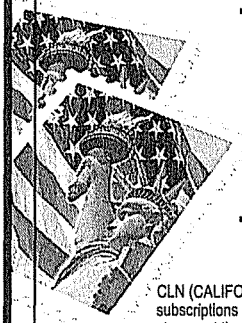
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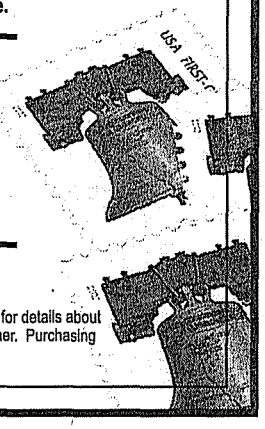
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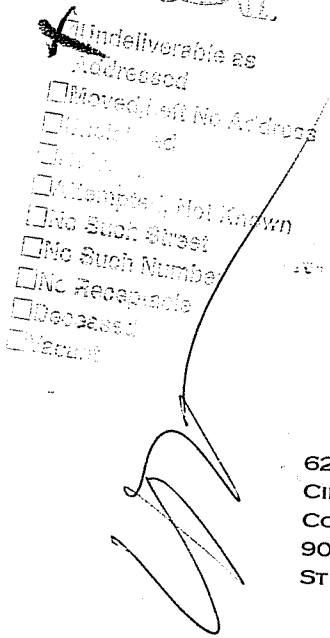
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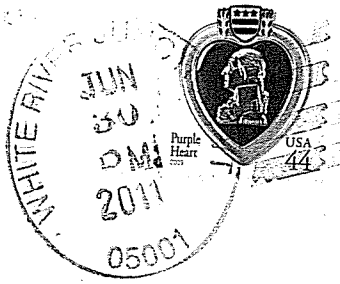
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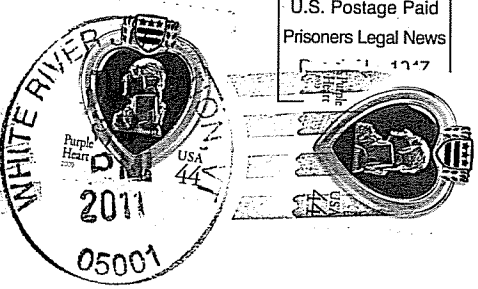
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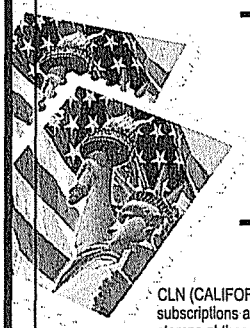
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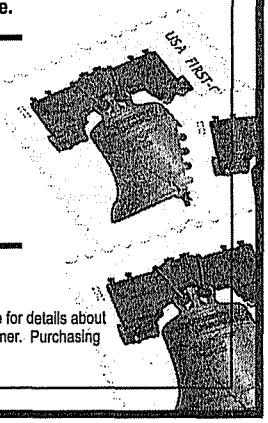
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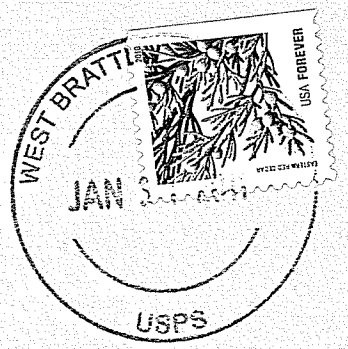
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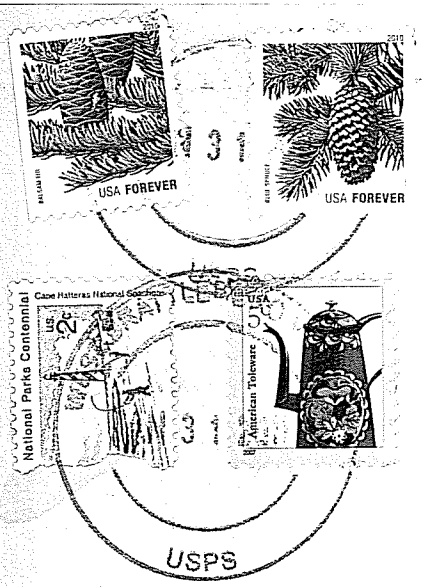
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Case 3:12-cv-00071-SI Document 8-4 Filed 01/31/12 Page 38 of 60

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Inside

Women Behind Bars Review	7
From the Editor	8
Mississippi Jail Abuse Continues	10
Geo Group Expands	16
Preventable California Deaths	18
Sex Offender Internet Bans	19
Medical Research Guide	22
PLN Wins Kansas Suit	25
Vita Pro Acquittal	27
Immigrants Prisons Growing	30
Virginia DNA Evidence	34
Texas Guard Shortage	38
News in Brief	42

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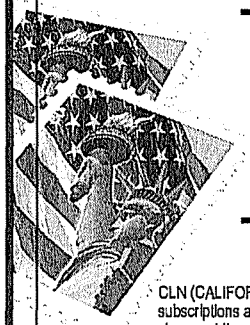
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Inside

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From the Editor	8
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Geo Group Expands	16
Preventable California Deaths	18
Sex Offender Internet Bans	19
Medical Research Guide	22
PLN Wins Kansas Suit	25
Vita Pro Acquittal	27
Immigrants Prisons Growing	30
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News in Brief	42

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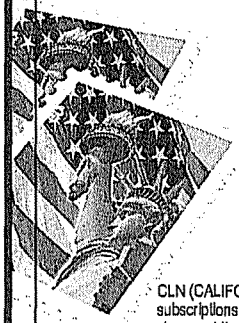
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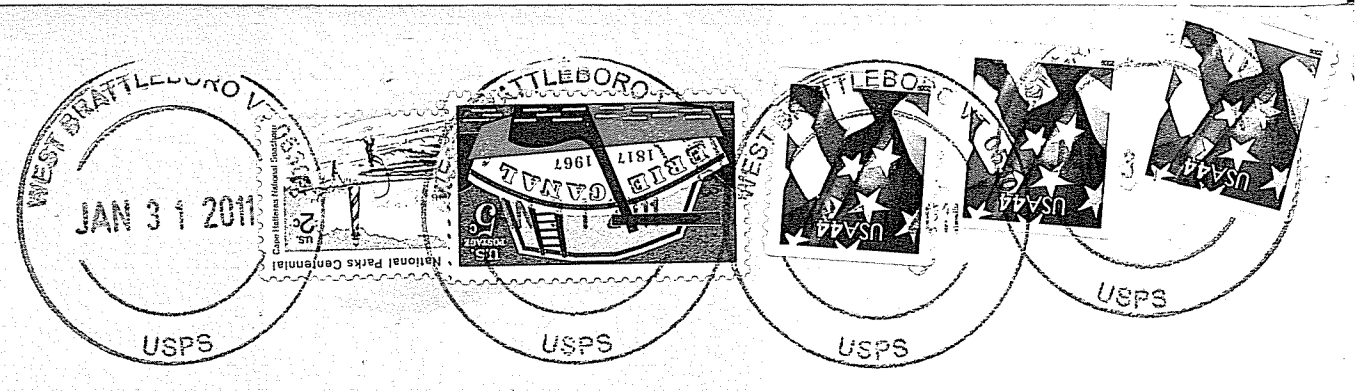
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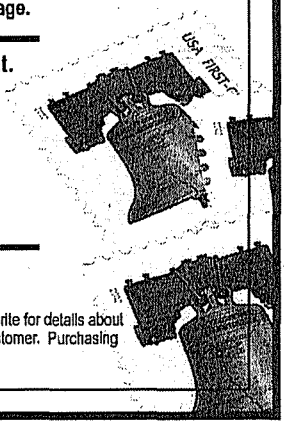
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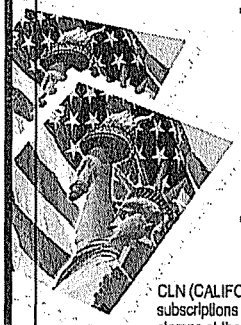
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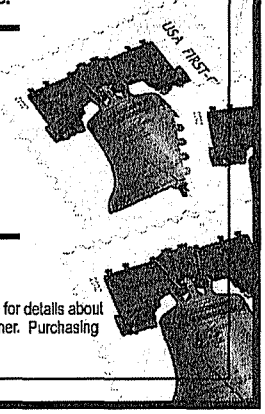
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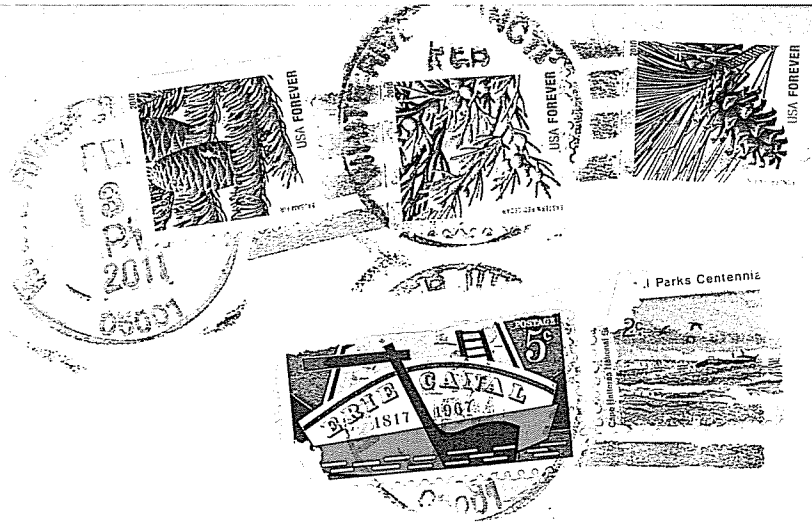
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ST HELENS. OREGON 97051

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incoming and out going mail

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Case 3:12-cv-00071-SI Document 8-4 Filed 01/31/12 Page 54 of 60

PRISON
Legal News

VOL. 19 No. 9
ISSN 1075-7678

Dedicated to Protecting Human Rights

September 2008

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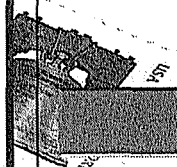
Inside

Women Behind Bars Review	7
From the Editor	8
Mississippi Jail Abuse Continues	10
Geo Group Expands	16
Preventable California Deaths	18
Sex Offender Internet Bans	19
Medical Research Guide	22
PLN Wins Kansas Suit	25
Vita Pro Acquittal	27
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Virginia DNA Evidence	34
Texas Guard Shortage	38
News in Brief	42

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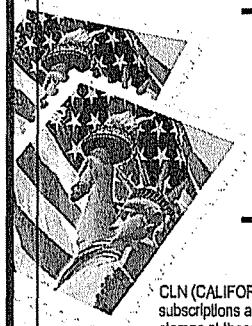


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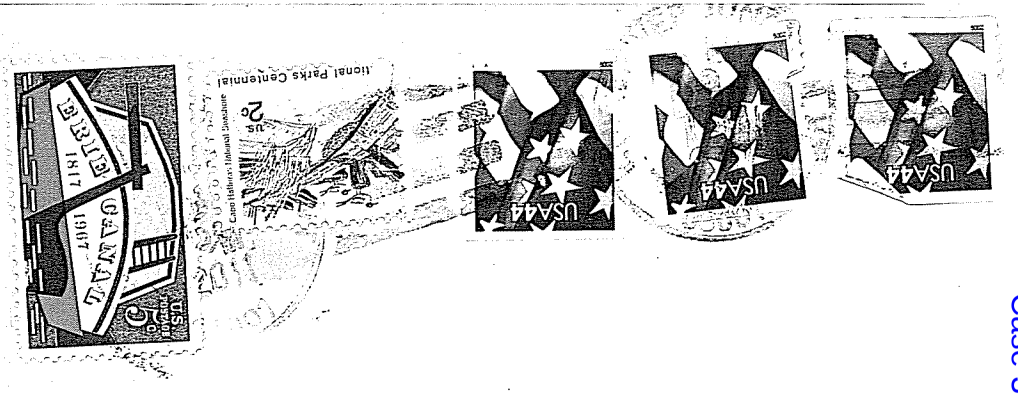
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Case 3:12-cv-00071-SI Document 8-4 Filed 01/31/12 Page 58 of 60

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Inside

Women Behind Bars Review	7
From the Editor	8
Mississippi Jail Abuse Continues	10
Geo Group Expands	16
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Virginia DNA Evidence	34
Texas Guard Shortage	38
News in Brief	42

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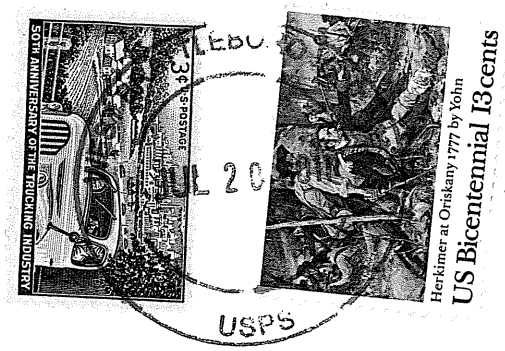
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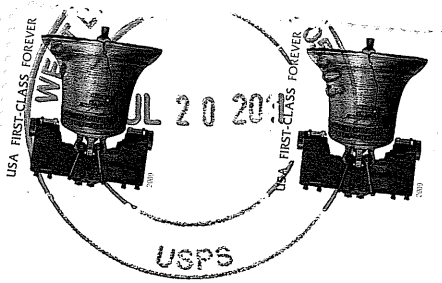
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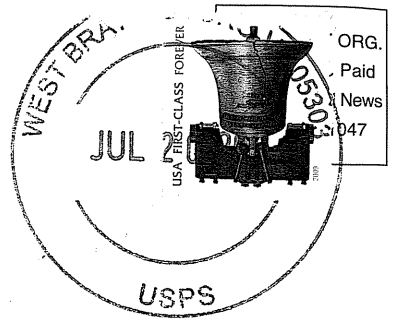
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047

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PERSON NOT HERE
CONTRABAND
INTER-FACILITY
REFUSE/VIOLATES SECURITY X

63208 ** EXPIRES: 1/2012
MARK GIFT 201000410
COLUMBIA CO JAIL
901 PORT AVE
ST HELENS, OREGON 97051

☐Moved,
☐Uncla
☐Refus
☐Attempted,
☐No Such
☐No Su
☐N
☐D
☐Ba

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Case 3:12-cv-00071-SI Document 8-5 Filed 01/31/12 Page 2 of 60

PRISON
Legal News

VOL. 20 No. 5
ISSN 1075-7678

Dedicated to Protecting Human Rights

May 2009

Sexual Abuse by Prison and Jail Staff Proves Persistent, Pandemic

by Gary Hunter

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What has not changed in the past several years is the continued rape and sexual exploitation of prisoners by prison and jail employees who are supposed to ensure their safety. All 50 states have enacted laws criminalizing sex between prisoners and prison staff; thus, employees who engage in sexual misconduct can no longer claim consent as a defense.

Due to the nature of prisons as "total institutions," it is impossible for prisoners to voluntarily consent to sexual advances by staff members who exert complete control over their lives – and in some cases over their release from prison.

Past issues of *PLN* have pushed this significant problem to the forefront. We would like to report that exposure of this issue has eased the problem. It hasn't. We would like to say our continued coverage on this subject has deterred sexual abuse by prison staff. It didn't.

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This time we bring you recent reports from 39 states, which constitute only a fraction of the tragic truth about rape and sexual abuse by prison and jail workers. Indeed, it would easily be possible to publish a monthly magazine consisting of nothing but substantiated reports of the sexual assault of prisoners by their captors. It also illustrates the shortcomings of the PREA which contains no real enforcement mechanism to stop or deter sexual assaults, merely the collection of data self reported by the agencies holding the prisoners. But one result is we may now have slightly better data than we did before in a central location.

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Inside

California Parole Law Passes	12
Maryland Prison Problems Persist	14
Kids Jailed by Bribed Judges	20
Texas Youth Prisons Grow	24
Phoenix Jail Still Unconstitutional	28
Hawaii Trust Fund Ruling	29
Prisoners Get Out the Vote	34
Prison Television Switchover	37
Missouri Abortion Ban Illegal	40
Bivens Suits Barred Against CCA	46
Unicor Wins Copyright Suit	48
News in Brief	50
BOP Guards Sentenced in Beating	52

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Prisoners Get Out the Vote	34
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Missouri Abortion Ban Illegal	40
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Legal News

VOL. 20 No. 5
ISSN 1075-7678

Dedicated to Protecting Human Rights

May 2009

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Inside

California Parole Law Passes	12
Maryland Prison Problems Persist	14
Kids Jailed by Bribed Judges	20
Texas Youth Prisons Grow	24
Phoenix Jail Still Unconstitutional	28
Hawaii Trust Fund Ruling	29
Prisoners Get Out the Vote	34
Prison Television Switchover	37
Missouri Abortion Ban Illegal	40
Bivens Suits Barred Against CCA	46
Unicor Wins Copyright Suit	48
News in Brief	50
BOP Guards Sentenced in Beating	52

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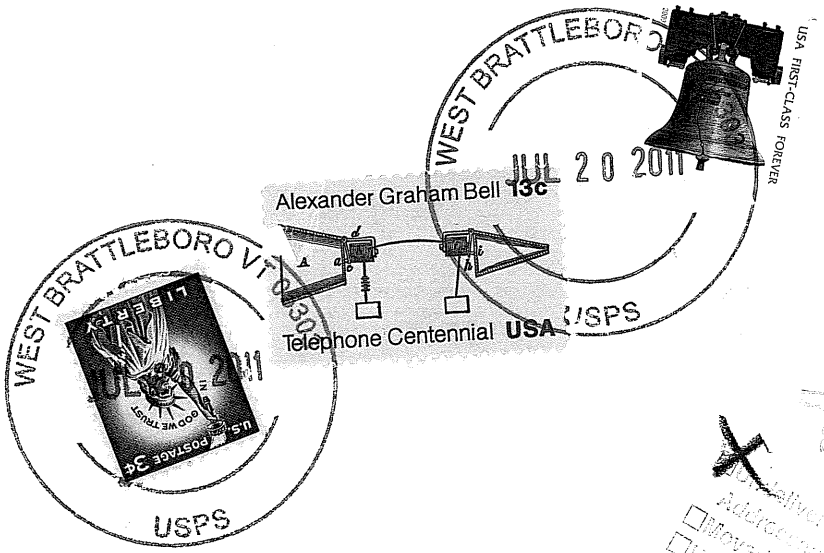
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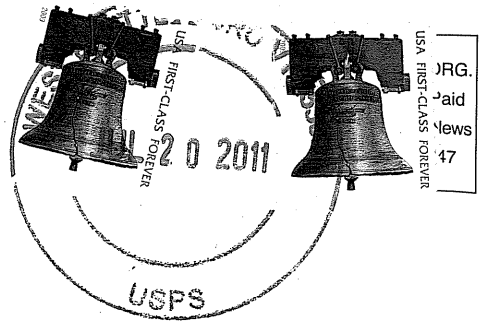
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VOL. 20 No. 7
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Dedicated to Protecting Human Rights

July 2009

Preserving the Rule of Law in America's Jails and Prisons: The Case for Amending the Prison Litigation Reform Act

*by Margo Schlanger and Giovanna Shay***

Prisons and jails pose a significant challenge to the rule of law within American boundaries. As a nation, we are committed to constitutional regulation of governmental treatment of even those who have broken society's rules. And accordingly, many of our prisons and jails are run by dedicated professionals who care about prisoner welfare and constitutional compliance. At the same time, for prisons-closed institutions holding an ever-growing disempowered population-most of the methods by which we, as a polity, foster government accountability and equality among citizens are unavailable or at least not currently practiced. In the absence of other levers by which these ordinary norms can be encouraged, lawsuits, which bring judicial scrutiny behind bars, and which promote or even compel constitutional compliance, accordingly take on an outsize importance. Unfortunately, over the past twelve years, it has become apparent that a number of provisions of the Prison Litigation Reform Act ("PLRA")[1] cast shadows of constitutional immunity, contravening our core commitment to constitutional governance. The PLRA's obstacles to meritorious lawsuits are undermining the rule of law in our prisons and jails, granting the government near-impunity to violate the rights of prisoners without fear of consequences.

This damage to the rule of law in America's prisons is occurring even as those prisons have grown in their importance-both because of the nation's increasing incarcerated population (the world's largest) and the sharpening international focus on American treatment of prisoners, both domestically and abroad. Amendment is urgently needed. In recent months numerous advocates and organizations have urged reform.[2] Indeed, a bill offered in the last Congress, the Prison Abuse Remedies Act of 2007, H.R. 4109, 110th Cong. (2008), would offer some moderate fixes to the most pressing problems created by the PLRA. In this Article, we discuss three of these problems. First, the PLRA's ban on awards of compensatory damages for "mental or emotional injury suffered while in custody without a prior showing of physical injury" has obstructed judicial remediation of religious discrimination, coerced sex, and other constitutional violations typically unaccompanied by physical injury, undermining the regulatory regime that is supposed to prevent such abuses. Second, the PLRA's provision barring federal lawsuits by prisoner plaintiffs who have failed to comply with their jails' or prisons' internal grievance procedures-no matter how difficult, futile, or dangerous such compliance might be for them-obstructs rather than promotes constitutional oversight of conditions of confinement. It strongly encourages prison and jail authorities to come up with ever-higher procedural hurdles in order to foreclose subsequent litigation. Third, the application of the PLRA's limitations to juveniles incarcerated in juvenile institutions has rendered those institutions largely immune from judicial oversight because so few young people are able to follow the complex requirements imposed by the statute, and compliance by their parents or guardians on their behalf has been deemed legally insufficient. Each of these three problems disrupts accountability and enforcement of constitutional compliance.

Below, we discuss these issues in some depth. But it is important to mention in preface what we see as the primary salutary effect of the PLRA-its lightening of the burdens imposed on jail and prison officials by frivolous litigation. Pro se prisoner lawsuits in federal court are numerous, often lack legal merit, and pose real management challenges both for courts and for correctional authorities. Congress passed the PLRA in order to deal with this problem.[3] This has in fact

Inside

From the Editor	10
Texas Exonerates Dead Man	12
The ADA and Deaf Prisoners	14
Immigrant Criminality Exposed	16
USSC Rules on Supervisory Liability	18
Corrupt Oregon Food Manager Flees	20
Habeas Hints	24
New Mexico Abolishes the Death Penalty	28
Female Informant Raped by BOP Guards	36
PLN Sues Los Angeles County	39
PA Sex Offender Ordinance Enjoined	46
Texas Parole Law Upheld	48
News in Brief	51

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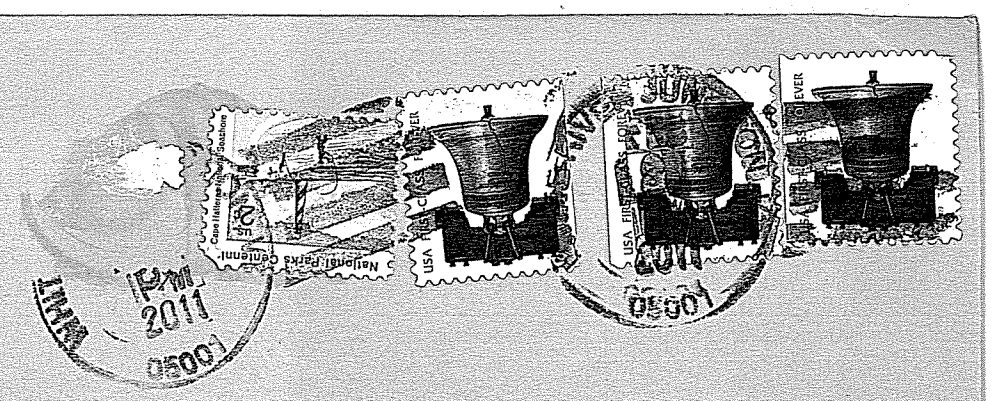
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Inside

From the Editor	10
Texas Exonerates Dead Man	12
The ADA and Deaf Prisoners	14
Immigrant Criminality Exposed	16
USSC Rules on Supervisory Liability	18
Corrupt Oregon Food Manager Flees	20
Habeas Hints	24
New Mexico Abolishes the Death Penalty	28
Female Informant Raped by BOP Guards	36
PLN Sues Los Angeles County	39
PA Sex Offender Ordinance Enjoined	46
Texas Parole Law Upheld	48
News in Brief	51

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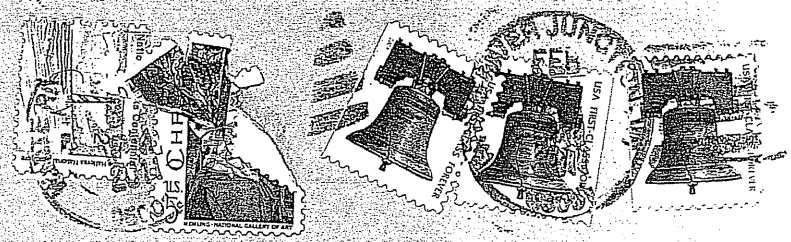
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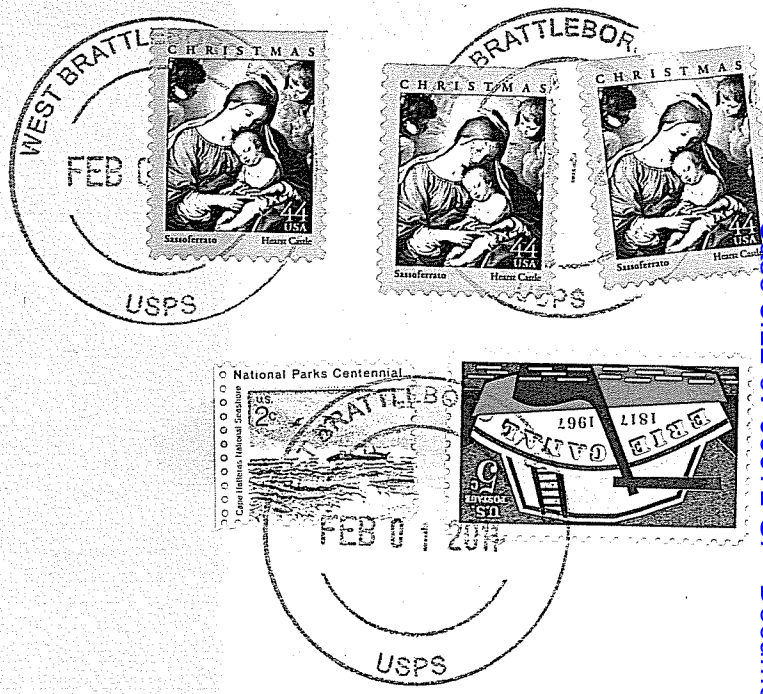
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Inside

From the Editor	10
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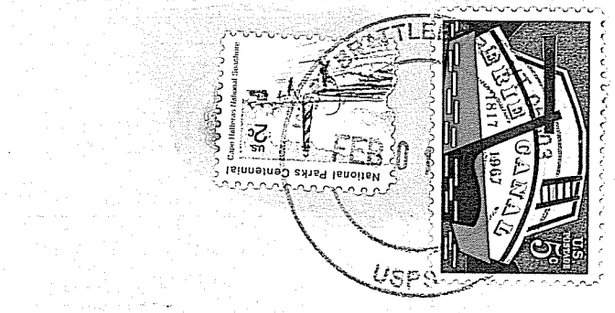
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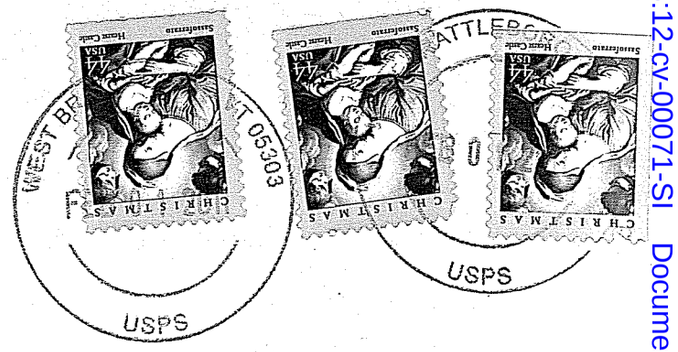
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This damage to the rule of law in America's prisons is occurring even as those prisons have grown in their importance-both because of the nation's increasing incarcerated population (the world's largest) and the sharpening international focus on American treatment of prisoners, both domestically and abroad. Amendment is urgently needed. In recent months numerous advocates and organizations have urged reform.[2] Indeed, a bill offered in the last Congress, the Prison Abuse Remedies Act of 2007, H.R. 4109, 110th Cong. (2008), would offer some moderate fixes to the most pressing problems created by the PLRA. In this Article, we discuss three of these problems. First, the PLRA's ban on awards of compensatory damages for "mental or emotional injury suffered while in custody without a prior showing of physical injury" has obstructed judicial remediation of religious discrimination, coerced sex, and other constitutional violations typically unaccompanied by physical injury, undermining the regulatory regime that is supposed to prevent such abuses. Second, the PLRA's provision barring federal lawsuits by prisoner plaintiffs who have failed to comply with their jails' or prisons' internal grievance procedures-no matter how difficult, futile, or dangerous such compliance might be for them-obstructs rather than promotes constitutional oversight of conditions of confinement. It strongly encourages prison and jail authorities to come up with ever-higher procedural hurdles in order to foreclose subsequent litigation. Third, the application of the PLRA's limitations to juveniles incarcerated in juvenile institutions has rendered those institutions largely immune from judicial oversight because so few young people are able to follow the complex requirements imposed by the statute, and compliance by their parents or guardians on their behalf has been deemed legally insufficient. Each of these three problems disrupts accountability and enforcement of constitutional compliance.

Below, we discuss these issues in some depth. But it is important to mention in preface what we see as the primary salutary effect of the PLRA-its lightening of the burdens imposed on jail and prison officials by frivolous litigation. Pro se prisoner lawsuits in federal court are numerous, often lack legal merit, and pose real management challenges both for courts and for correctional authorities. Congress passed the PLRA in order to deal with this problem.[3] This has in fact

Inside

From the Editor	10
Texas Exonerates Dead Man	12
The ADA and Deaf Prisoners	14
Immigrant Criminality Exposed	16
USSC Rules on Supervisory Liability	18
Corrupt Oregon Food Manager Flees	20
Habeas Hints	24
New Mexico Abolishes the Death Penalty	28
Female Informant Raped by BOP Guards	36
PLN Sues Los Angeles County	39
PA Sex Offender Ordinance Enjoined	46
Texas Parole Law Upheld	48
News in Brief	51

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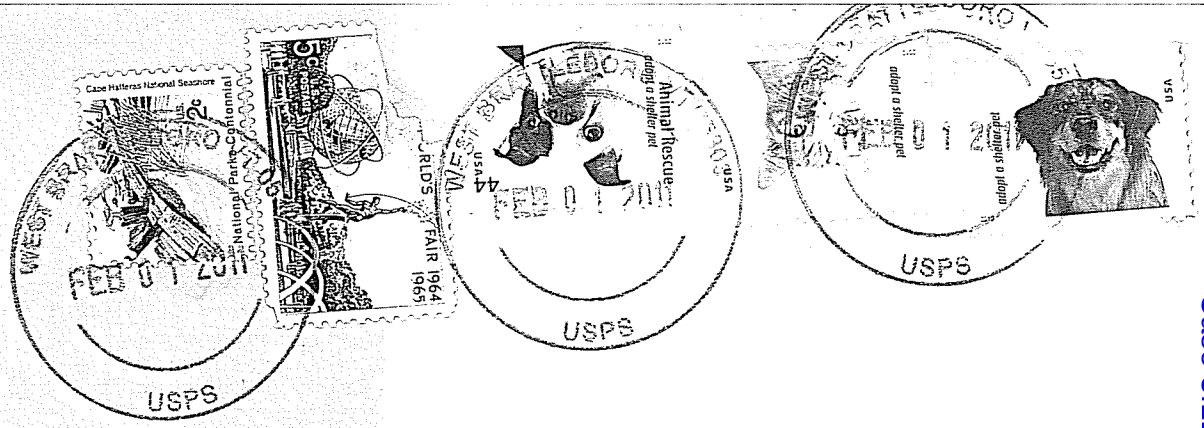
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Inside

From the Editor	9
Prison Radio Shows	10
American Methods Book Review	14
Mississippi Medical Care	16
Texas Prison Legislation	18
Erie County Jail Conditions	20
$1 Million Washington Rape Suit	24
ICE Detainee Death Cover Up	26
Colorado Lockdown	28
PLN Sues Virginia DOC	32
$21 Million Wrongful Conviction	40
Philadelphia Strip Search Settlement	46
News in Brief	50

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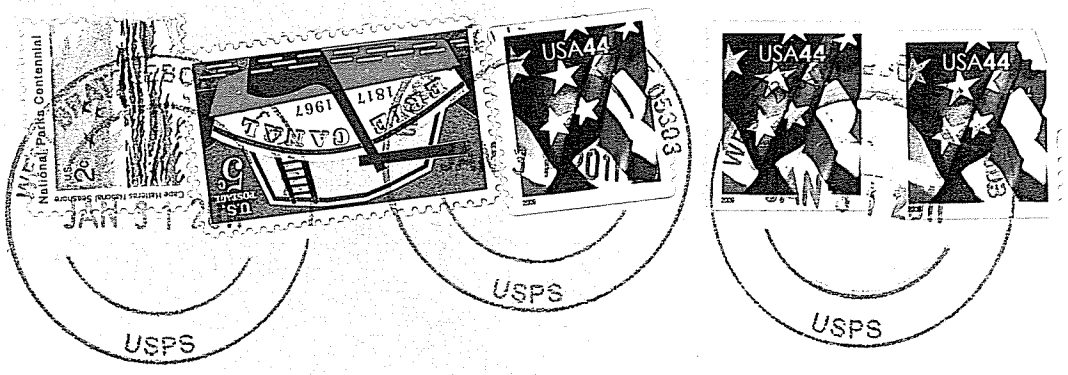
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Inside

From the Editor	9
Prison Radio Shows	10
American Methods Book Review	14
Mississippi Medical Care	16
Texas Prison Legislation	18
Erie County Jail Conditions	20
$1 Million Washington Rape Suit	24
ICE Detainee Death Cover Up	26
Colorado Lockdown	28
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Case 3:12-cv-00071-SI Document 8-5 Filed 01/31/12 Page 54 of 60

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Inside

From the Editor	9
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American Methods Book Review	14
Mississippi Medical Care	16
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Erie County Jail Conditions	20
$1 Million Washington Rape Suit	24
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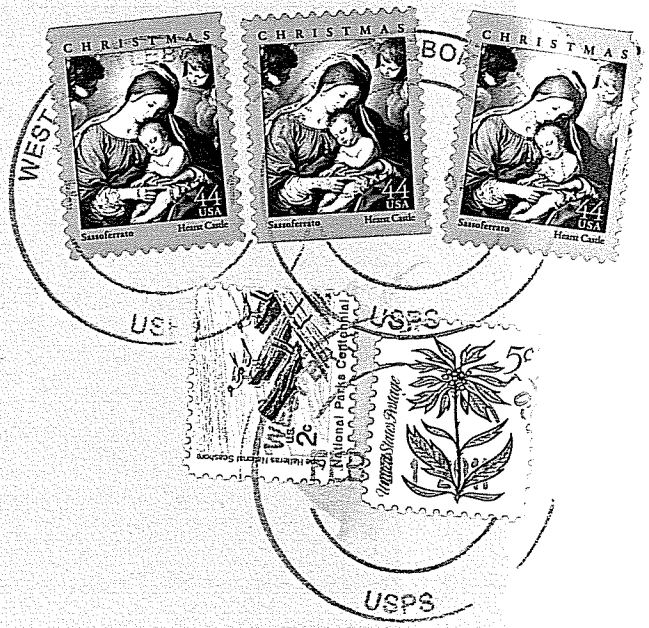
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Case 3:12-cv-00071-SI Document 8-5 Filed 01/31/12 Page 58 of 60

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Erie County Jail Conditions	20
$1 Million Washington Rape Suit	24
ICE Detainee Death Cover Up	26
Colorado Lockdown	28
PLN Sues Virginia DOC	32
$21 Million Wrongful Conviction	40
Philadelphia Strip Search Settlement	46
News in Brief	50

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PRISON
Legal News

VOL. 20 No. 11
ISSN 1075-7678

Dedicated to Protecting Human Rights

November 2009

Pennsylvania County Prisons Mired in Conditions Litigation

by David M. Reutter

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Guarini is correct that most prisoners' lawsuits are tossed out. The reasons for such dismissals include inexperience, an inability to procure evidence to overcome summary judgment motions, having to face skilled defense counsel with better legal and monetary resources, and a reluctance by attorneys to take prisoner lawsuits due to limits on attorney fees under the PLRA, among other factors.

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Prison guard Bob Barley said he hears of 7 to 10 fights per month among prisoners, but most are minor and not reported "because of fear of retaliation from other inmates." Assaults on guards occur regularly, too. "If you're here long enough, eventually [every guard] is going to get assaulted," he said. Barley acknowledged that some of the difficulties at LCP are caused by prison staff. "Ten percent of the [guards] create 90 percent of the problems," he stated.

Squeezing too many prisoners into LCP is the root cause of most violence. "When you start putting a bunch of people into a small area, you start getting into other people's space," Barley explained. "Sooner or later it's going to erupt, because they want their space back."

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Inside

From the Editor	9
Prison Radio Shows	10
American Methods Book Review	14
Mississippi Medical Care	16
Texas Prison Legislation	18
Erie County Jail Conditions	20
$1 Million Washington Rape Suit	24
ICE Detainee Death Cover Up	26
Colorado Lockdown	28
PLN Sues Virginia DOC	32
$21 Million Wrongful Conviction	40
Philadelphia Strip Search Settlement	46
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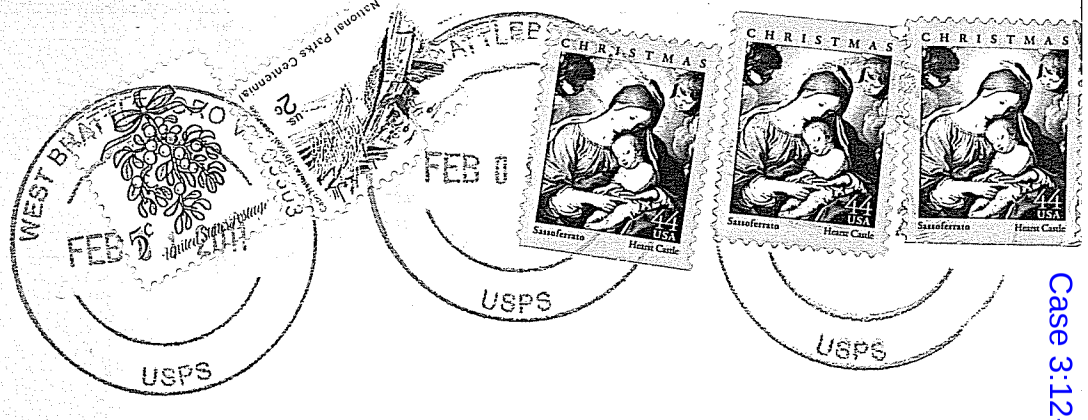
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Case 3:12-cv-00071-SI Document 8-6 Filed 01/31/12 Page 6 of 61

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Mississippi Medical Care	16
Texas Prison Legislation	18
Erie County Jail Conditions	20
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VOL. 21 No. 1
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Dedicated to Protecting Human Rights

January 2010

Prison Health Care, Political Choice and the Accidental Death Penalty in Michigan

by Elizabeth Alexander[1]

In *Hadix v. Caruso,* I represent a class of prisoners in a decades-long case challenging conditions of confinement, including medical care, at various Michigan prison facilities.[2] Since August 2006 I have been haunted by the death of one of those prisoners, because in retrospect his death appears to be the inevitable by-product of a prison system swollen beyond any historical precedents or its ability to manage such a huge number of people safely. Prisons are in fact extraordinarily difficult to operate safely and humanely, and the United States will continue to fail to do so absent a fundamental change in criminal justice policy. This article seeks to trace some connections between a dysfunctional criminal justice policy and the death of one man.

Prison systems like Michigan's have been allowed to operate unsafe prisons because the Eighth Amendment fails to provide an effective form of oversight, and no other form of serious oversight exists in the United States. In a series of decisions, the Supreme Court has preserved the form of Eighth Amendment challenges to conditions of confinement but little of the substance, by allowing severely overcrowded prisons,[3] suggesting that considerations of cost can defeat an Eighth Amendment claim,[4] and allowing Eighth Amendment claims to be defeated even when prison conditions are objectively intolerable and deny prisoners basic human needs, including health care.[5] Unfortunately, Michigan may ultimately illustrate that the only real restraint on prison growth is its cost, not the Constitution.

I. The Lonesome Death of Timothy Souders

Timothy Souders arrived at the Southern Michigan Correctional Facility in March 2006 with medical problems that included a thyroid disorder and cardiac risk factors.[6] He also had been diagnosed with bipolar disorder and depression, and had attempted suicide multiple times. It was duly noted in his medical record that, because of his medications and medical problems, he was at very high risk of injury if exposed to excessive heat.

In March 2006, the prison psychiatrist at the Southern Michigan Correctional Facility where Mr. Souders was confined changed his medications, prescribing lithium for his bi-polar disorder and subsequently increasing his lithium. However, there are no records of laboratory monitoring of the level of lithium in his blood for the relevant period, although elevated lithium levels are toxic and can cause symptoms ranging from mental confusion to life-threatening side effects such as kidney failure. Monitoring lithium levels in the blood is considered absolutely necessary when lithium is prescribed, and high lithium levels are particularly dangerous in someone who is dehydrated.

Near the end of May 2006, the psychiatrist went on medical leave and thereafter there was no psychiatrist on-site for the 1,400 prisoners at the prison. In July Mr. Souders was involved in a fight with another prisoner and was ordered to punitive detention. After 30 days he was released, but he was sent back to the segregation unit for taking an unauthorized shower during an August day in which the heat index was over 90.

He was put in a boxcar cell, meaning an essentially unventilated cell with no window and a solid metal door, rather than an open barred cell front, on the sixth level of the prison. When staff opened the food slot in one of the solid doors, which is how staff talked to people in those cells, on hot days they could feel a blast of hot air from inside the cell. During the next few days the heat index in the cells rose to around 100.

On August 2, 2006, Mr. Souders damaged the metal stool in his cell and was put into standing restraints. When he tried to flood his sink, according to prison records, a supervisory nurse approved cut-

Inside

From the Editor	10
Houston Jail Deaths Grow	14
Prisons as Economic Boon	16
CCA Modifies Guard Settlement	20
Prison Video Visits Expand	22
California Sex Offenders	24
Education as a Right for Prisoners	29
$10 Million Illinois Verdict Upheld	34
PLN Texas Lawsuit Update	38
China Reduces Executions	40
Starting Out Book Review	44
BOP Fails Drug Treatment	45
News in Brief	50

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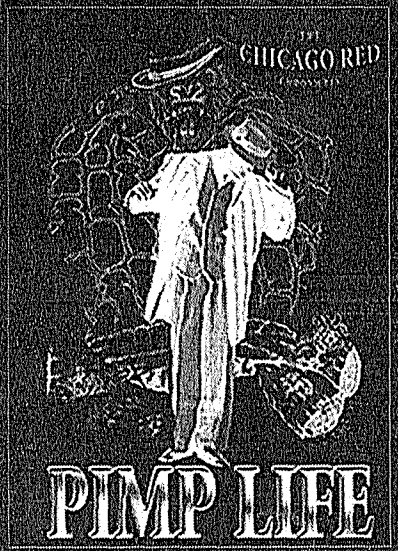
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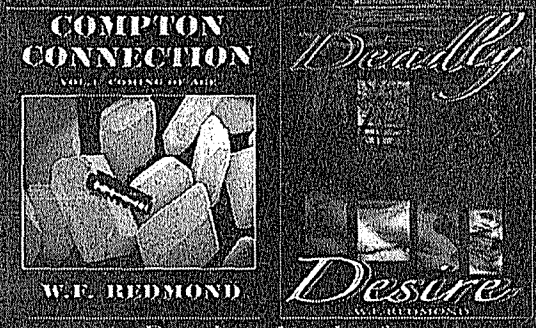


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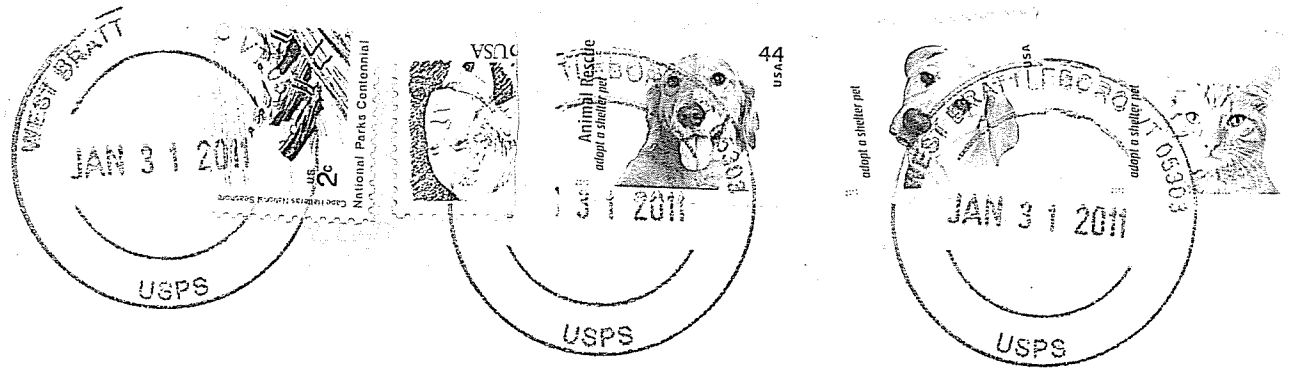
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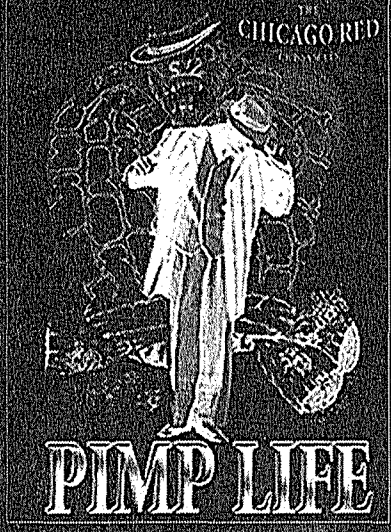
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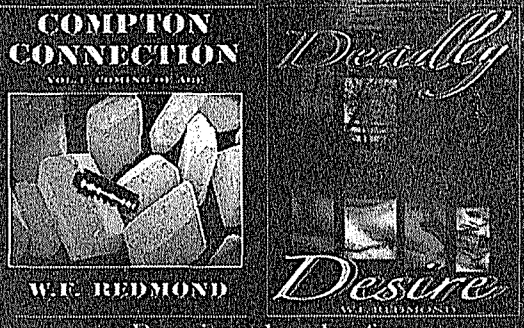
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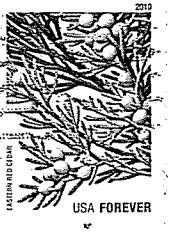
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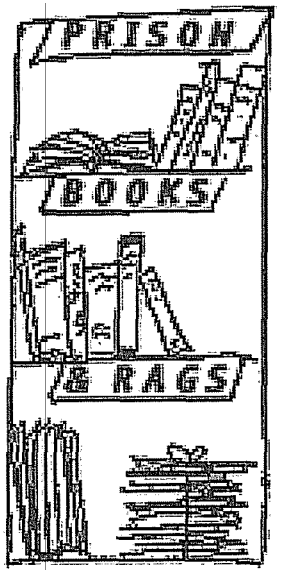
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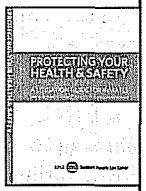
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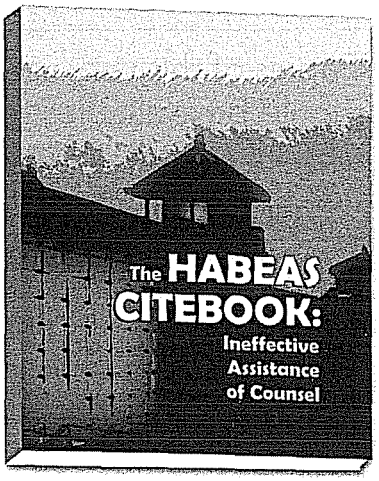
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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

"*The Habeas Citebook* is a nifty and concise self-help guide for prisoners seeking habeas relief based on claims of ineffective assistance of counsel. Navigating the complex and treacherous terrain of habeas law is never easy; but claiming that your lawyer screwed up is even more difficult — especially from the confines of an ill-equipped prison law library.

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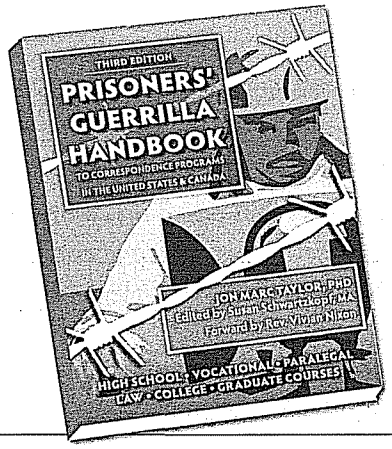
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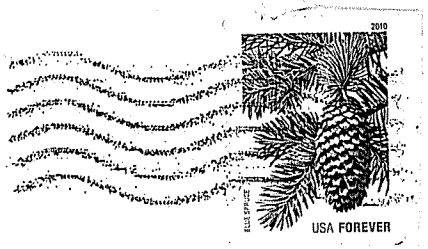
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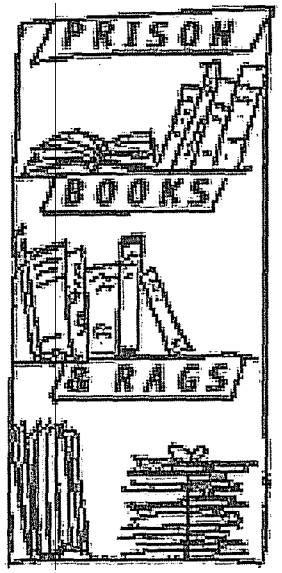
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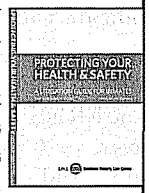
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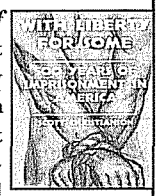
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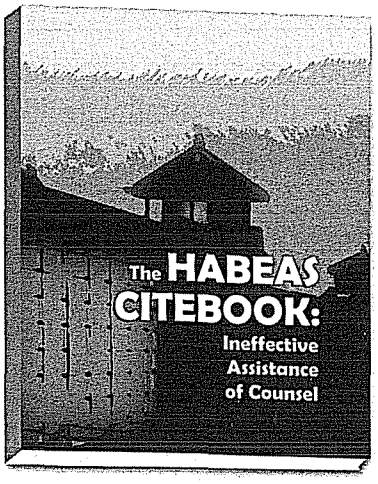
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The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an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

It will save litigants thousands of hours of research and it focuses on the WINNING cases criminal defendants need to successfully challenge their convictions.

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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

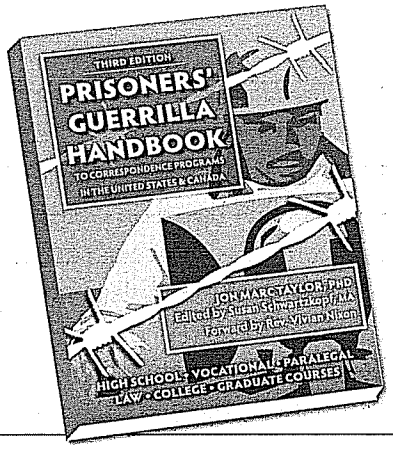
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The *Prisoner's Guerrilla Handbook* is the only book on the market for the non-traditional prisoner-student. It includes detailed listings of the quality, cost, and course offerings for all correspondence programs available to prisoners. In a time when so many academic opportunities in prisons have been eliminated, this book is an invaluable re-entry tool for prisoners who seek to further their education while incarcerated and to help them prepare for life and work following their release.

Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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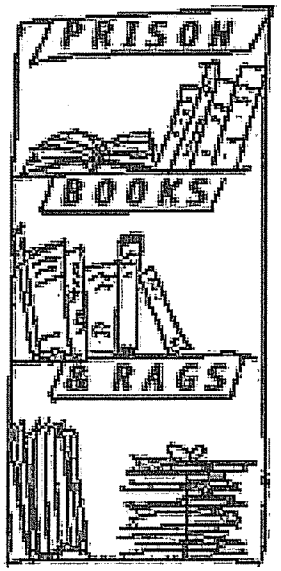
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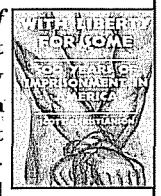
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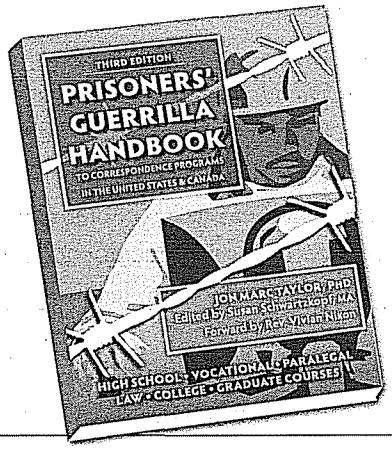
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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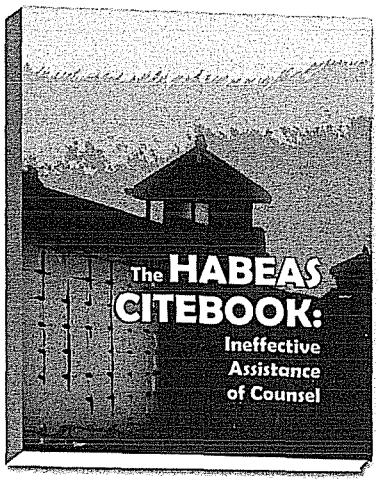
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The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an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

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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

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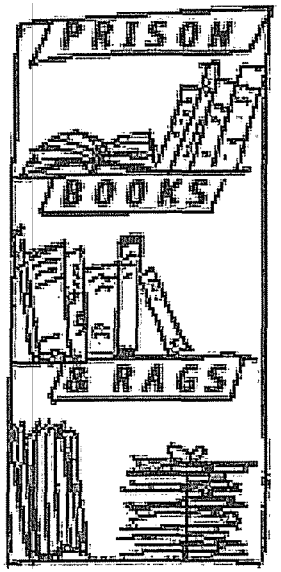
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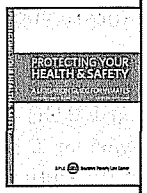
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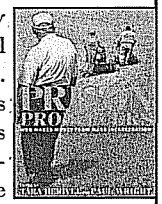
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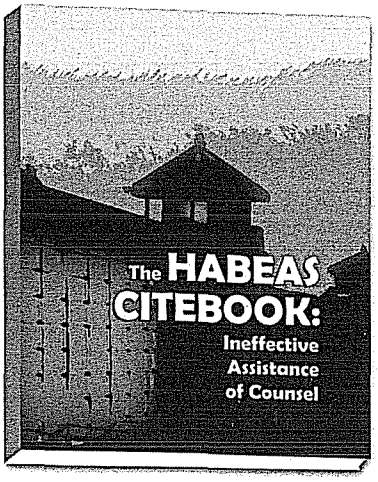
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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

> *The Habeas Citebook* is a nifty and concise self-help guide for prisoners seeking habeas relief based on claims of ineffective assistance of counsel. Navigating the complex and treacherous terrain of habeas law is never easy; but claiming that your lawyer screwed up is even more difficult — especially from the confines of an ill-equipped prison law library.
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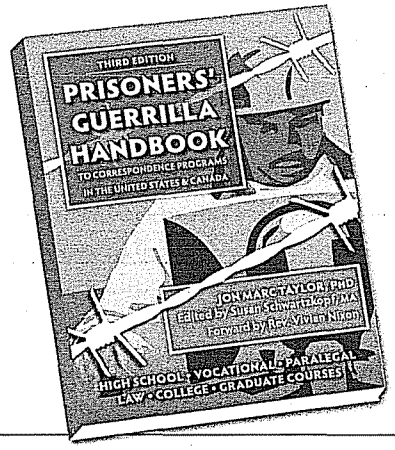
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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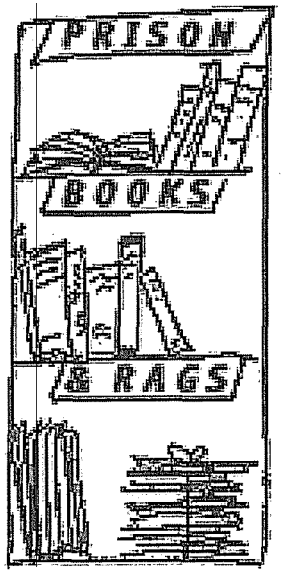
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No Equal Justice: Race and Class in the American Criminal Justice System, by David Cole, The New Press, 218 pages. **$19.95.** Explains how the criminal justice system perpetuates race and class inequality, creating a two-tiered system of justice. 1028 ☐

The Prison and the Gallows: The Politics of Mass Incarceration in America, by Marie Gottschalk, Cambridge University Press, 451 pages. **$29.99.** Great political analysis of the confluence of events leading to 2.3 million people behind bars in the U.S. 1069 ☐

The Habeas Citebook: Ineffective Assistance of Counsel, by Brandon Sample, PLN Publishing, 200 pages. **$49.95.** This is PLN's second published book, which exclusively covers ineffective assistance of counsel-related issues in federal habeas petitions. Great resource for habeas litigation, and contains hundreds of case cites! 1078 ☐

Factor 8 (DVD), a film by Kelly Duda, Concrete Films. **$21.95.** Movie about the Arkansas prison blood scandal, in which prison officials sold infected blood harvested from prisoners. **Note: This is a DVD and cannot be shipped to prison.** 1076 ☐

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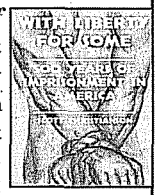
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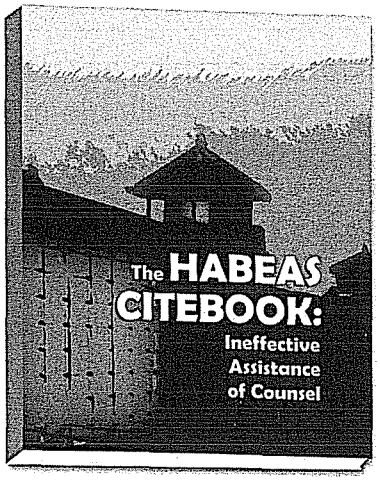
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The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an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

It will save litigants thousands of hours of research and it focuses on the WINNING cases criminal defendants need to successfully challenge their convictions.

Well organized into 52 concise chapters, this easy to use book puts the law at the reader's fingertips. The Appendix includes pleadings and forms from successful habeas corpus cases that



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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

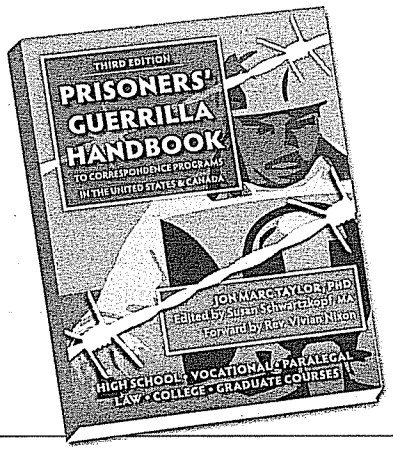
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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Case 3:12-cv-00071-SI Document 8-7 Filed 01/31/12 Page 4 of 27

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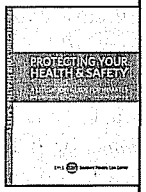
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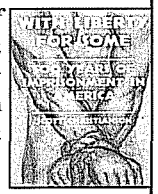
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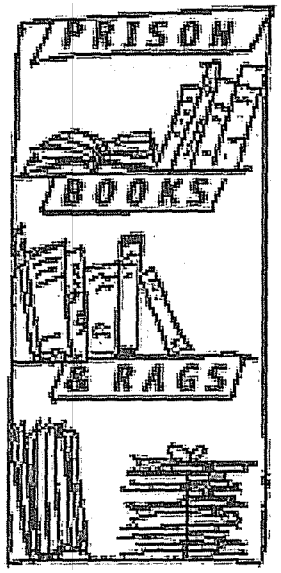
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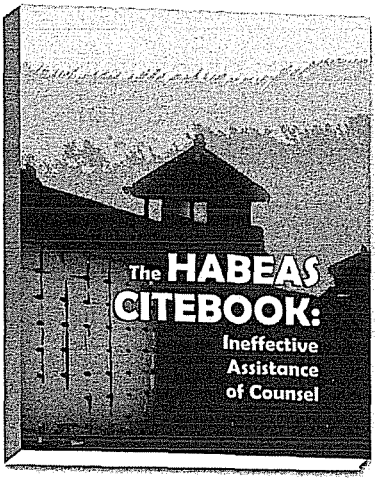
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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

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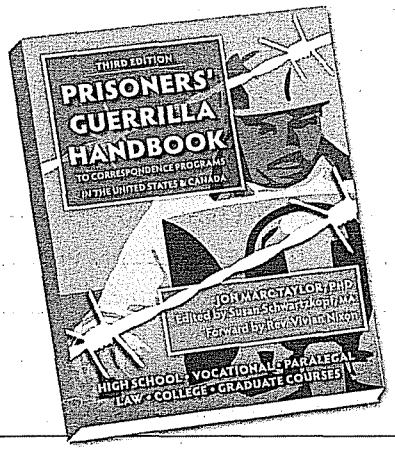
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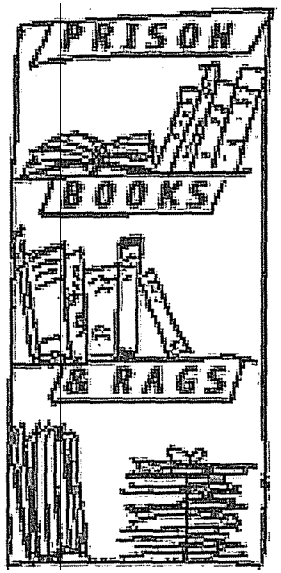
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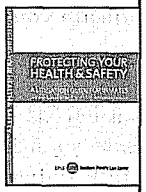
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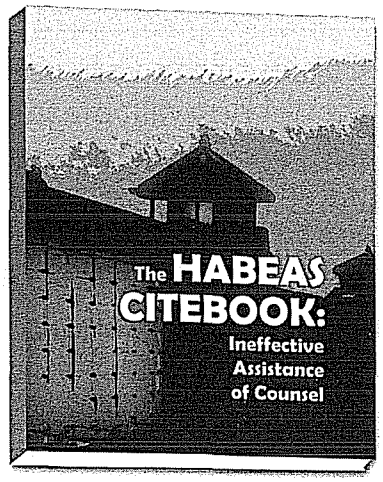
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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

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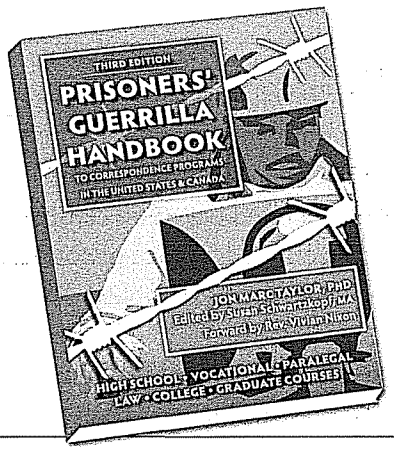
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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, published by PLN, 221 pages. **$49.95.** Written by Missouri prisoner Jon Marc Taylor, who obtained a B.S. degree, an M.A. degree and a Doctorate, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, paralegal and college courses available through correspondence study. Great resource for prisoners who want to further their education. 1057 ☐

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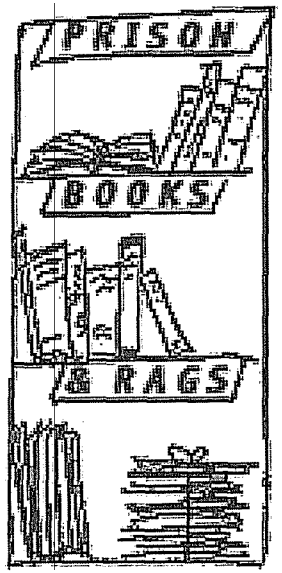
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PLN's many thousands of subscribers and readers include civil and criminal trial and appellate attorneys, judges, public defenders, journalists, academics, paralegals, prisoners' rights activists, students, family members of prisoners, concerned individuals, politicians, other government officials, and numerous local, state and federal prisoners nationwide.

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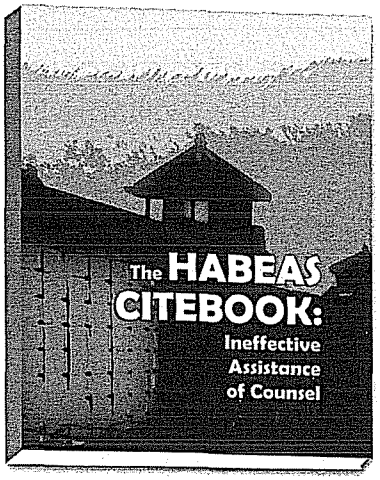
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The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an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

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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

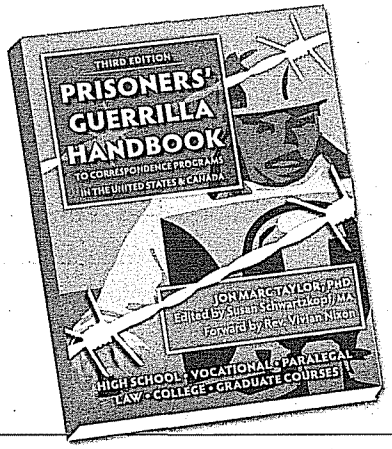
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Invaluable re-entry tool

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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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March 2011

Legacy of Corruption: GEO Buys Off the Florida Political Establishment

by Beau Hodai

U.S. Senator Marco Rubio's unsettling history of extremely close ties to private prison operator GEO Group and the possible federal investigation into Florida's private prison giveaway of more than $120 million

Newly minted U.S. Senator Marco Rubio (R-FL) was sworn in on January 5, 2011 with unfinished business back home.

Rubio, as former speaker of the Florida House of Representatives (R-Miami, 2006-2008) – as well as other state GOP lawmakers and party contributors – are currently the likely subjects of multiple wide-ranging state and federal investigations conducted by the FBI and the Florida Department of Law Enforcement (FDLE) into improper use of credit cards issued by the Republican Party of Florida, as well as tax evasion and improper budgetary appropriations.

One such set of appropriations and legislative actions reportedly being investigated by federal authorities are those which led to the development of the state's largest private prison, the Blackwater River Correctional Facility (Blackwater CF), which opened its gates for business in November 2010. The prison was designed and is operated by Florida-based GEO Group, Inc., the nation's second-largest private prison firm.

To date, investigations into members of the Florida Republican Party, and into party donors, have resulted in multiple indictments. And on November 2, 2010 – election day – federal investigators subpoenaed the party's financial records.

Perhaps the most notable individual charged to date is former Rep. Ray Sansom (R-Destin), who, while serving as Rubio's budget chief, inserted language into the state's 2008-2009 budget for what was to become Blackwater CF.

While Sansom has not yet been indicted or officially charged with any wrongdoing relative to the development of Blackwater CF, in February 2010, Sansom, while serving as successor to Speaker Rubio, resigned amid criminal and ethics investigations – chief of which is the allegation that he falsified the 2007-2008 budget by inserting a $6 million appropriation into the state spending bill for the construction of an aircraft hangar for Destin businessman and prominent Florida Republican Party contributor Jay Odom.

Indicted on charges of lying to a grand jury, official misconduct, grand theft and conspiracy in connection with the Odom case, Sansom is currently awaiting trial.

Cash that Rings the Till

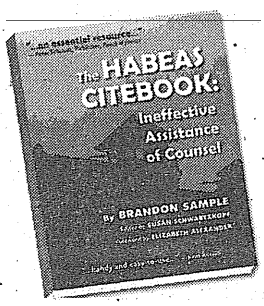
On March 30, 2010, Elva McCaig, a nurse employed at the Florida Department of Corrections' (FDOC) Santa Rosa Correctional Institute, and treasurer of Nurses Behind the Gate, an advocacy group for prison nurses, wrote a letter addressed to both U.S. Attorney for the Northern District of Florida Thomas Kirwin and State Attorney for Florida's Second Judicial District Willie Meggs.

In essence, the letter laid out McCaig's concerns that the development of Blackwater CF was yet another legislatively-mandated handout to yet another prominent Florida Republican Party contributor, GEO Group. GEO consistently reports annual revenue in excess of one billion dollars – all of which it earns through state, county and federal contracts for the detention of both criminal offenders and immigrant detainees.

Indeed, GEO is a top Florida Republican Party contributor; through two political action committees (PACs), Florida GEO Group, Inc. PAC and GEO Group, Inc. PAC, the corporation gave $85,000 to the Republican Party of Florida from 2006 through 2009, along with tens of thousands of dollars in additional contributions to other state Republican Party PACs and campaigns of individual Republican candidates.

Inside

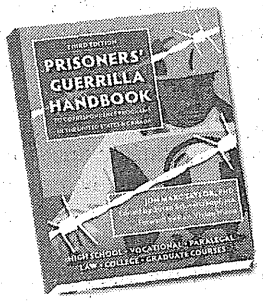
Florida Sex Offenders	13
From the Editor	14
Prisoner Rights Lawyer Speaks	16
Supreme Court Prison Rape Ruling	18
Virginia Censorship Ruling	22
Arizona Private Prison Escape	24
Cellphone Surgical Search	26
PHS Doctor Scandal Continues	30
Prisoners Clean Up BP Oil Spill	32
Prison and Jail Bond Defaults	34
PLN Settles Jail Suit	36
Supreme Court California Lifer Case	40
News in Brief	50



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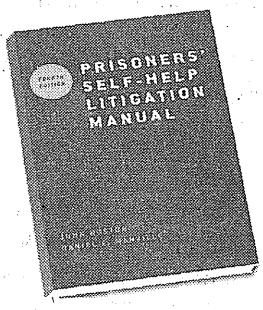
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GEO Legacy of Corruption (cont.)

It is also worth noting that from 2005 through 2010, GEO, through its PACs, dispensed an additional $15,000 to the National Republican Congressional Committee, an additional $32,000 to the National Republican Senatorial Committee, and an additional $10,000 over 2009 and 2010 directly to the Marco Rubio for U.S. Senate PAC.

GEO's PAC spending, however, is not the limit of the appreciation the company has shown to Rubio.

On September 13, 2010, several top GEO corporate executives, along with GEO lobbyists and subcontractors, gave a total of $33,500 in individual contributions to the Florida Victory Committee, a PAC created for the benefit of three other PACS: Marco Rubio for U.S. Senate, the National Republican Senatorial Committee and the Republican Party of Florida.

All-in-all, the Florida Victory Committee received $113,500 – all on September 13, 2010 – during its most active period (August 20 through September 30, 2010). Of that amount, $51,735.90 was disbursed to the National Republican Senatorial Committee (which, in turn, contributed an amazing $2,509,644 to Rubio's campaign throughout the 2010 election cycle); further, $13,305 was disbursed to the Republican Party of Florida and $31,458.15 was disbursed to the Rubio PAC.

In addition, GEO Chief Executive Officer and founder George Zoley gave Rubio $4,800 in personal contributions over the course of 2009 and 2010 – half of which Zoley gave to the Rubio campaign on September 13, 2010 – putting his own personal disbursements to the Rubio campaign for that single day at $7,400.

Notably, GEO was the most generous single-interest/corporate donor to contribute to the Florida Victory Committee during this period. It is also worth noting that, of the $33,500 contributed by GEO and its affiliates to this particular PAC, $10,000 came directly from Guy and Neel White, owners and chief executive officers of White Construction Company, the GEO subcontractor awarded a $114 million contract for the construction of Blackwater CF.

It should also be noted that GEO largesse is not, by any means, restricted to the Republican Party, though Republicans are by and large the corporation's top beneficiaries.

One example of GEO showing its appreciation to a Democrat is that of former U.S. Congressman Ciro Rodriguez (D-TX), who, on March 16, 2009, received nearly $10,000 when several senior GEO executives, lobbyists and regional administrators decided to contribute to his campaign. Rodriguez's district, Texas' 23rd Congressional District, contains the longest stretch of U.S.-Mexico border of any district in the U.S. GEO is the nation's second-largest private immigrant detention center operator.

GEO also supports independent candidates. On June 19, 2009, George Zoley and his wife, Donna, both gave two checks for $2,400 each – the maximum individual contribution to a federal candidate allowable by law – to independent U.S. Senatorial candidate, former Florida governor (and former Republican) Charlie Crist. The grand total of this combined contribution was $9,600.

Prison nurse Elva McCaig's letter went on to lay out points of the legislative history and perceived "backroom transactions" behind the development of Blackwater CF, as well as the odd "relationships and conflicts" in the proximity of both Rubio's economic consultant, Donna Arduin, and former Senate President Jeff Atwater's Chief of Staff Robert "Budd" Kneip to lawmakers working to push the development of Blackwater CF.

Both Arduin and Kneip have deep ties to the GEO Group and its parent company, Wackenhut Corporation.

Without going into too much detail on the claims and concerns outlined in McCaig's letter (for all of the factual background provided in the letter, it contained a number of errors – including erroneous claims that Xe Services, LLC/Blackwater USA were involved in the deal), the point was essentially that budgetary provisos which called for $110 million to be appropriated as a giveaway to the GEO Group were inserted into the state budget under very questionable circumstances.

The letter apparently contained enough salient, solid information that it sparked the interest of federal investigators.

According to multiple sources, federal investigators began making house calls in and around Santa Rosa County (home of Blackwater CF) and around the capitol buildings of Tallahassee during the summer of 2010, asking questions about the origins of the Blackwater prison project.

GEO Legacy of Corruption (cont.)

FBI spokesman Special Agent Jeff Westcott declined to either confirm or deny reports of the agency's interest in Blackwater CF.

Origins of Blackwater in the Florida House of Representatives

In November 2006, Donna Arduin, president of Arduin, Laffer and Moore Econometrics (ALME, incorporated in Florida, February 2005), as well as of Arduin Associates, Inc. (incorporated in Florida, January 2005), was hired as an economic consultant by former Florida House Speaker Allen Bense (R-Panama City) for work on the 2007-2008 House General Appropriations Bill under incoming Speaker Marco Rubio (Bense signed this contract in his last days as speaker, while Rubio was speaker-designate). The contract commenced on December 1, 2006 and expired in May 2007 with the finalization of the appropriations bill. Under this contract, Arduin's rate of pay was $10,000 per month.

Arduin was again contracted in September 2007 as an economic consultant for work on the 2008-2009 House General Appropriations Bill under Speaker Rubio. The contract again ran through May of the following year, terminating with the finalization of the appropriations bill. Her rate of pay was again $10,000 per month.

At the time of Arduin's initial contract under Rubio, as well as during her work over the course of 2006 on the Florida Property Tax Reform Committee, she was also a compensated trustee of Correctional Properties Trust (AKA CentaCore Properties Trust, CPT), a real estate investment trust (REIT) established by Wackenhut Corrections in 1998.

Wackenhut Corrections, a subsidiary of Wackenhut Corporation, spun off as a separate entity (GEO Group) following the purchase of Wackenhut by Denmark-based Group 4 Falck (currently G4S) in 2003.

It is worth noting that Arduin's ALME partners, Arthur Laffer and Stephen Moore, were both economic advisors to President Ronald Reagan; Moore served on Reagan's Commission on Privatization, which established policy resulting in the rebirth of the American private prison industry in the 1980s. Additionally, both Laffer and Moore are members of the American Legislative Exchange Council's (ALEC) board of scholars.

Both GEO Group and Corrections Corporation of America (CCA) are ALEC corporate members. [*Ed. Note: ALEC and private prison companies have been tied to legislation that resulted in the expansion of prison populations in the U.S., and more recently to a controversial Arizona law that would increase the number of immigrant detainees, which would benefit private prison firms. See: PLN, Nov. 2010, p.1*].

On February 19, 2008, GEO Group Vice Chairman, President and Chief Operating Officer Wayne Calabrese, along with GEO Senior Vice President of North American Operations John Hurley, GEO Vice President of Business Development Cloid Shuler, and GEO lobbyist Damon Smith, delivered a presentation before the Florida Senate Committee on Criminal and Civil Justice Appropriations.

The presentation was straightforward, with two primary objectives: 1) GEO would take on more prisoners and would discount per diem rates of incarceration of state prisoners in exchange for longer contracts with the state, and 2) GEO sought appropriations for two expansions to one of their existing private facilities, Graceville CF, in the form of a 384-bed expansion coupled with the development of a 1,500-bed "special needs annex" (for the "chronically mentally ill").

To illustrate the scope of this proposal, the GEO executives were essentially seeking to sell the Florida legislature on an expansion of the existing Graceville CF (which contained 1,884 beds at that time) by up to 1,884 additional beds. In exchange for this concession – as well as increased contract lengths at other existing facilities – GEO would offer the state a "discounted rate."

Then-House Policy and Budget Chief Ray Sansom did not seem like a man happy in his work. Reports filed with the Florida House of Representatives for travel and other expense reimbursements by Sansom during this period are marked at the outset of each legislative session with the foreboding words "session subsistence begins," scrawled in Sansom's hand over travel reports detailing his commutes from Destin to Tallahassee. A Florida state representative doesn't make much – less than $30,000 per year. As such, Sansom filed meticulous reports seeking reimbursement for travel, copier toner and other office expenses.

One such report shows Sansom embarking, on March 27, 2008, on a rare trip out of his district in the Florida Panhandle (or outside of the capital) to Boca Raton, nearly 400 miles away at the southern tip of Florida, for "personal business." Boca Raton is home to GEO Group's corporate headquarters.

Notably, this single trip to Boca Raton is the only one of its kind found on travel reimbursement forms filed by Sansom (for himself or his staff) from 2007 to his resignation in February 2010.

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Neither Sansom nor any representative of GEO Group responded to requests for comment.

While it is unclear what business Sansom had in Boca Raton, it is clear that he returned to Tallahassee and inserted a proviso in the initial draft of the 2008-2009 House General Appropriations Bill (filed with the Policy and Budget Committee on April 4, 2008) which called for "$110,000,000 in non-recurring general revenue ... for the planning, design, permitting, equipping and construction of a state-owned, privately operated 2,000 bed correctional institution ... for the housing of 2,000 medium and close custody inmates as a stand-alone annex to the Graceville Correctional Facility in Graceville, Florida."

On April 7, following the insertion of this proviso – which was never run by any committee for approval – Representative Curtis Richardson (D-Tallahassee) amended the budget to strike the proviso, as it was obviously a legislatively-mandated giveaway to GEO Group.

Sansom responded on April 8, 2008 with a revised proviso stripped of all Graceville-specific language. In other respects the new proviso was identical: $110 million for a new 2,000-bed private prison to be constructed somewhere in the state.

On June 11, 2008, the budget was approved by then-Governor Charlie Crist.

The following month, on July 15, the Florida Department of Management Services (DMS) issued an "Invitation to Negotiate" (ITN) for the development of the proposed private prison. Responses to the ITN were due by September 9, 2008.

Interestingly, although no binding agreement had been reached between GEO Group and DMS, on November 26, 2008, GEO Group purchased 126 acres of land outside of Milton, Santa Rosa County, for $2.65 million – 59 acres of which GEO would later resell to the state of Florida through the Florida Correctional Finance Corporation (FCFC, an instrumentality of DMS) for $1.6 million on March 24, 2009, as the site of what would become Blackwater CF – after being awarded the development contract by DMS on March 18, 2009.

It is worth noting that while DMS had issued a "notice of intent" to award the development contract to GEO on October 21, 2008, GEO had apparently selected the prospective Blackwater acreage prior to the issuance of the ITN on July 15, 2008.

According to documents submitted to DMS as part of GEO's ITN response, the corporation had already assessed the feasibility of using the selected land as early as July 7, 2008. The following month, the Santa Rosa Board of County Commissioners approved a resolution to provide $1.8 million in funding for additional infrastructure for the proposed facility.

Under the terms of the design/build agreement entered into between DMS and GEO, the corporation was awarded $115,364,828 in state project financing, along with another $2,081,984 for payment to Georgia-based "program manager" Carter Goble Lee.

Following the contract award to GEO, construction began on the facility – slated for completion in July 2010.

Further exacerbating the appearance that the Blackwater deal had been sewn up long before the 2008-2009 General Appropriations Bill had been passed – let alone the issuance of the DMS ITN – according to documents released by TEAM Santa Rosa, the economic development arm of Santa Rosa County, Sansom and Senator Don Gaetz (R-Destin) had been discussing the idea of a new prison as a means of economic development (code name "Project Justice") with TEAM members as early as February 2008. Santa Rosa County was partially represented by both Sansom and Gaetz.

Strangely, Arduin denies that she ever worked with Sansom or his Policy and Budget Committee staff during the formation of the 2008-2009 budget, insisting that she only worked with Rubio.

Work invoices filed by Arduin pursuant to the terms of her September 2007 through May 2008 contract with the House tell a different story.

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"ALME provided consulting services to the House as directed by the Speaker relating to property tax reform, economic development and budget issues," reads the invoice for April 2008. "Those services included participating in meetings, planning sessions and conferences with Legislators and staff of the Speaker's Office and Policy and Budget Committee on economic development initiatives, spending reductions and policy development for the 2008 Florida Legislative session.... ALME continues to provide ongoing economic and policy advice to the staff of the Speaker's Office and Policy and Budget Committee on Florida's budget and economy."

Or, as stated by the "scope of services" section of Arduin's contract with the House, "services include advisory services to the House, as directed by the Speaker of the House, to the Policy and Budget Committee, as directed by the Chairman of the Committee [Sansom], or as directed by the Chief of Staff."

Nevertheless, public records requests submitted to the Florida House of Representatives for reports authored or submitted by Arduin, as well as for written communications between Arduin and her employers, Rubio and Sansom, turned up empty.

According to then-Florida House of Representatives Communications Director Jill Chamberlin (who retired in September 2010), there simply are no records of work performed by Arduin – no reports, no audits, no presentations, no memos ... nothing – during her time in the House under Rubio.

And Chamberlin, who served as spokeswoman for both Speaker Rubio and later for Speaker Sansom, says that it is not likely Arduin ever filed any reports of any kind as she was hired on as a consultant more for her connections in both the public and private sector. As such, said Chamberlin, most of Arduin's consultations took the form of face time with those in her immediate circle.

Rubio did not respond to multiple requests for comment.

Consummating Blackwater in the Senate, 2010

In early 2010, Arduin was contracted for work as an economic consultant in the Florida Senate under the purview of the office of then-Senate President Jeff Atwater (R-North Palm Beach), tasked with "providing analytical review of state government agency operations, including overlapping agency jurisdictions and functions, the financial structure of agencies, sources and uses of agency revenue, and agency expenditure patterns that will aid in economic and budgetary decisions associated with the development of Florida's budget."

This laundry list was broken down into three key functions, as itemized in the 2010 contract: 1) work with and advise the chair of the Senate Ways and Means Committee, Senator J.D. Alexander (R-Lake Wales); 2) coordinate with staff during development of the budget and during the conference committee on appropriations; and 3) serve as otherwise directed by Chairman Alexander and Senate President Atwater.

As such, Arduin was contracted for employment in the Senate from February 4 through June 30, 2010, not through ALME but through Laffer Associates (a Tennessee corporation founded by partner Arthur Laffer in October 2006). The rate of pay for the duration of this contract was $7,000 per month.

As a private consultant under contract with the office of Senate President Atwater, Arduin worked under Atwater's Chief of Staff, Robert "Budd" Kneip.

Over the course of the past two decades, prior to becoming a public servant, Kneip served as "senior vice president of corporate planning and development" for Wackenhut Corporation, and as president and chief executive officer of several Wackenhut subsidiaries: Oasis Outsourcing, Oasis Outsourcing II, III, IV, V, VI, VII, VIII and IX, Oasis Outsourcing of Colorado, Oasis Outsourcing of Georgia, Oasis Outsourcing of Ohio, and of several other corporations operating under the banners of Oasis Outsourcing Benefits, Workforce Alternative and Wackenhut Resources, Incorporated (WRI).

While Kniep had been employed as chief of staff for the Office of the Florida Senate President from 2007 through 2010 (following Atwater's election to the office of Florida's Chief Financial Officer in November 2010, Atwater appointed Kneip as chief of staff for the CFO office), incorporation papers for Oasis Outsourcing II on file with the New Mexico Public Regulation Commission show that Kneip had been acting as president of that Wackenhut subsidiary as recently as December 31, 2005.

To further illustrate the cycle of influence between Wackenhut/GEO and the Florida Senate, it is important to note that nearly all of the Wackenhut subsidiary corporations over which Kneip had control were offshoots of King Employee Services, Inc., as well as related companies King Staffing and King Benefits, which were purchased in 1997 from former Florida Senate President Jim King (2002-2004) by Wackenhut for $16 million. King's personal cut of this deal was reportedly $5 million; he died in July 2009 while still serving in the Senate.

In May 2010, during the last week of the Florida Legislature's conference to finalize the state budget bill, Ways and Means Chair Alexander slipped a proviso into the spending bill's section on criminal justice and corrections appropriations.

The proviso called for a cut of over $24 million to FDOC's budget to close an unspecified number of state facilities in order to open and fill Blackwater.

This $24 million cut to FDOC was essentially written in as compensation, or displacement of funds, for an additional $22 million written into the budget for the sole purpose of "the operation [of] 2,224 adult male beds at Blackwater River Correctional Facility to be operational by November 1, 2010."

The state budget bill also called for FDOC to identify some 1,350 male adult custody psychological and medical care beds for potential privatization. Additionally, the budget bill stated that FDOC was required to develop a plan to reduce the operating costs of 6,400 additional prison beds by five percent – using private beds if necessary.

And, just as the 2010-2011 budget bill was generous in its cuts to the state's public prison system, it was equally generous in handouts for private prison operators.

All-in-all the 2010-2011 budget bill contained over $1.2 million in state funds to be paid to local government taxing authorities in lieu of property taxes for the state's six existing private correctional facilities.

As such, the criminal justice corrections section of the 2010-2011 budget bill was met by stiff criticism – most audibly from FDOC officials and the Florida Police Benevolent Association (Florida PBA, the state's prison guard union), and from Sen. Paula Dockery (R-Lakeland), chair of the Senate Criminal Justice Committee.

Dockery noted in her criticism of the Blackwater-related provisions that, as was the case with Sansom's 2008 proviso, the appropriations and mandates concerning FDOC and Blackwater had never been discussed or approved in any committee.

According to FDOC Communications Director Gretl Plessinger, the issue most difficult to reconcile with the 2010-2011 budget was the fact that the state's prison system was actually running under capacity. Put simply, there was no need to push through the opening of Blackwater CF.

Whereas state prisoner growth projections in 2008 had actually suggested that there may be a need for the facility by 2010, Plessinger said prison population growth had slowed to the point where construction/expansion projects underway at state-owned and operated facilities had ceased.

Regardless of the fact that there was no need on the part of the state to open Blackwater at the time, or the fact that by mandating the facility's opening by November 2010 through the closure of existing state facilities, lawmakers were in effect mandating the possible loss of thousands of state jobs, there was a very real need on the part of GEO Group to have Blackwater CF opened as soon as possible.

In April 2010, DMS announced that it had awarded contracts for the management of both Moore Haven CF (985 beds) and Graceville CF (1,884 beds) – both of which had been operated by GEO up to that point – to CCA, thereby reducing GEO's holdings in its home state to 1,861 beds at South Bay CF by the end of the year, unless Blackwater CF could be filled.

For her part, Arduin says that the idea of opening or building a private prison was never run by her in the House or the Senate in either 2008 or 2010.

When asked about the facility and the provisions in the 2010-2011 budget bill which called for its immediate opening, Arduin, who was paid $7,000 per month by the Senate as an economic consultant – and who, as stated by the terms of her contract, was to know the business of the state of Florida inside and out, down to the last dime – responded, "was that something that was in the 2010 budget?"

Ghosts of Private Prisons Past (Cash that Rings the Till, Part 2)

Beginning in January of 1999 through November 2003, Arduin served as director of the Office of Policy and Budget under Florida Governor Jeb Bush. Prior to her appointment under Bush, Arduin had served in similar roles under Michigan Governor John Engler and New York Governor George Pataki.

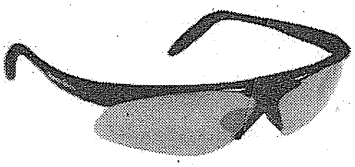
From November 17, 2003 through October 15, 2004, Arduin served as director of the California Department of Finance under Governor Arnold Schwarzenegger. As director of finance, Arduin was Gov. Shwarzenegger's chief fiscal advisor – with purview over 70 state boards and governmental authorities.

It is worth noting that, while Arduin has earned a reputation for herself as being a tough opponent of government spending – even referred to as an "ogre" by a California state lawmaker for her cuts to the state's public health care system – this tough posture on governmental spending does not seem to apply to Arduin's rate of pay.

For example, just as Arduin was paid $10,000 per month by the Florida House under Rubio, and $7,000 per month in the Florida Senate under Atwater, she was paid $10,248 per month at the time she left the administration of Governor Jeb Bush. What's more, the state of Florida disbursed an additional $25,913 to Arduin for 438 hours of vacation pay on December 8, 2003 – at which time she was employed as director of the California Department of Finance.

Other sets of monetary disbursements surrounding the commencement of Arduin's work under Gov. Schwarzenegger are equally interesting.

On October 10, 2003, three days following Schwarzenegger's election and a little more than a month prior to Arduin's appointment to the Schwarzenegger ad-



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ministration, Wackenhut Corrections paid out $5,000 to the Californians for Schwarzenegger 2003 PAC.

On November 17, 2003, Arduin assumed her role as director of finance.

Three days later, Wackenhut Corrections paid out an additional $16,200 to the Californians for Schwarzenegger 2003 PAC. Also on November 20, 2003, Wackenhut Corrections paid out $36,800 to Schwarzenegger's "Total Recall Committee, Vote Yes to Recall Gray Davis," a PAC established by the Schwarzenegger campaign in 2003 that remained active through 2005, which was intended to drive the 2003 ballot initiative to recall the election of former California Governor Gray Davis.

During Arduin's tenure as California's director of finance, two private prisons which had been decommissioned in 2003 by Governor Davis, McFarland Community Correctional Facility (CF) and Mesa Verde CF, were re-appropriated and reopened – with no-bid contracts issued to the GEO Group and another private prison company, Civigenics, for operation of the facilities.

On October 28, 2004, 13 days after her resignation from the Schwarzenegger administration, Arduin was elected to replace George Wackenhut (co-founder of Wackenhut Corp. and Wackenhut Corrections, who had died earlier that year) on the board of trustees of CentraCore Properties Trust (AKA Correctional Properties Trust, CPT), the real estate investment trust (REIT) of Wackenhut/GEO.

CPT was founded in 1998 by Richard and George Wackenhut, along with several other Wackenhut Corrections directors and executives, including current GEO Group director and then-mayor of South Bay, Florida (which incidentally is the site of GEO's South Bay CF), Clarence Anthony.

Additionally, GEO Group/Wackenhut Corrections president and CEO George Zoley was a founding CPT trustee, holding several tens of thousands of shares of common stock in the company.

Over the course of the REIT's existence, Charles R. Jones served as CPT President and CEO. According to court documents, Jones – CPT founding trustee along with Zoley – was Wackenhut's "investment banker" at the time of CPT's inception.

As a REIT, CPT was essentially the entity which held all of Wackenhut/GEO's real estate holdings.

While CPT was technically a separate independent entity outside the purview of Wackenhut/GEO, at the time of its creation the REIT's holdings consisted solely of Wackenhut properties. When it was eventually merged back into GEO Group in 2007 (at which time it became GEO Acquisition II, a Delaware corporation governed by Zoley, Calabrese and GEO General Counsel John Bulfin), the REIT owned 13 properties, 11 of which it "leased" to GEO.

Due to this extremely close relationship to Wackenhut/GEO, Securities and Exchange Commission (SEC) auditors had questioned on at least one occasion whether CPT was in fact an entity independent of Wackenhut/GEO.

In 2006, following the announcement that CPT was set to merge with GEO (effective January 2007), CPT shareholders filed class action suits seeking injunctions against the merger in Maryland and Florida courts, alleging that the merger was an inside deal beneficial to CPT trustees and GEO executives and that there were irreconcilable conflicts of interest between the two. As such, the shareholders alleged that the merger was in essence GEO bringing its real estate holdings back in-house – allegations which Arduin flatly denies.

Both shareholder suits were settled out of court in 2008 under undisclosed terms.

At the time of Arduin's appointment to the CPT board, as well as during her service under Schwarzenegger, McFarland CF was owned by CPT and leased to GEO.

In January 2006, CPT finalized its purchase of Mesa Verde CF, operated by Civigenics, another CPT customer, which also operated a CPT-owned minimum security prison in New Jersey.

Following Arduin's appointment to CPT, the California State Auditor launched an investigation into the appearance of conflicts of interest in the McFarland/Mesa Verde deals.

According to the California State Auditor's investigative report, issued on September 13, 2005, the Schwarzenegger administration had relied on a misleading cost-benefit analysis which did not factor in other potential cost saving measures in awarding the no-bid contracts to Civigenics and GEO.

Additionally, the state found that there were indeed conflicts of interest on the part of Civigenics in that the company did not report that two of its employees in the state were former high-ranking California Department of Corrections and Rehabilitation (CDCR) employees who were still receiving annuities from CDCR. [See: *PLN*, July 2006, p.23].

However, the report found no evidence of wrongdoing on the part of Arduin as per the odd timing of her appointment to CPT, because "since the former finance director is associated with the trust [CPT] and not with GEO, it does not appear that she has a conflict of interest in regards to the McFarland contract."

The report made no mention of the business relationship between CPT and Civigenics, or of the fact that CPT was an offshoot of GEO.

What's more, the report stated that the California State Auditor could find no evidence that Arduin had influenced CDCR's decision to reopen the facilities.

However, the report failed to note that just prior to her appointment as director of finance, Arduin had been commissioned by the Schwarzenegger administration to perform an audit of California's government and state finances.

Whether or not that audit recommended reopening the private prison facilities is unknown, as there are no audit reports authored by Arduin on file with either the Department of Finance or with the Office of Governor Schwarzenegger.

While written communications in the form of emails and memos do exist between Arduin and Schwarzenegger, the administration refused (in July 2010) to release any of those documents for public inspection.

When asked specifically for any written communications between Arduin and the Governor from the month prior to Arduin's sudden resignation and appointment to CPT, Deputy Legal Affairs Secretary to the Office of the Governor Dan Maguire responded that while such documents do exist, any and all communications between Arduin and Schwarzenegger are exempt from public disclosure under executive and deliberative process exemptions to the state's open records laws.

When asked that the administration waive its legal right to withhold executive communications between Arduin and Schwarzenegger in the spirit of transparency and open government – in that there is a definite public interest in

knowing whether or not Arduin advocated for the Mesa Verde or McFarland CF re-appropriations, or whether Gov. Schwarzenegger had knowledge of Arduin's imminent appointment to CPT – the administration refused, stating, "...there are strong policy reasons to protect the confidentiality of communications to and from the Governor's Office. Disclosure of such communications could chill the candid discussion of critical issues, and deprive the Governor of information he needs to discharge his duties.... Therefore we are not producing these documents to you."

It is unclear at what point Arduin became involved in the private prison business, though a statement of financial interests filed with the Florida Commission on Ethics in 2000 may shed some light on that history. The document lists Arduin's primary source of income as being First Clearing Corporation, simply described as a "brokerage."

Documents on file with the Florida Secretary of State, Division of Corporations, reflect that First Clearing Corporation (a North Carolina company doing business in Florida) merged into Corestates Securities Corp. (a Pennsylvania corporation) in 1998.

SEC documents show that in 1996 Corestates Financial Corp. (a corporate relative of Corestates Securities Corp.) purchased 12,000,200 shares, or 54.7055 percent, of Wackenhut Corrections. Under this ownership class, Corestates was considered to be a "parent holding company" of Wackenhut Corrections.

Corestates subsequently merged with Wachovia, which in 2008 merged with Wells Fargo. As of January 20, 2011, Wells Fargo and Company owned 3,623,603 shares, or 5.62 percent, of GEO Group.

Arduin says she has no knowledge of any personal financial interest in First Clearing Corporation or in Corestates and does not know why that entry was made on her 2000 financial disclosure statement – outside the possibility of clerical error on the part of her assistant.

Strange Appearances and Strange Bedfellows

On the evening of Monday, August 22, 2005, a party of high-ranking Florida Department of Corrections officials met up at a bar in Tallahassee. The bar was Clyde and Costello's, an establishment known to cater to the Tallahassee lobbyist/mover-and-shaker crowd. The party that night consisted of FDOC Secretary James Crosby, Washington Correctional Institution Warden Rick Anglin, Gulf Correctional Institution Warden Dale Hughes, and FDOC Region 1 Correctional Services Consultant Brad Tunnell.

According to documents obtained from the Florida Department of Law Enforcement (FDLE), sometime toward the end of the evening, Crosby took Tunnell to the side and told him, "You know, you need to talk to your dad. You need to get him off my boys."

Brad Tunnell's father, Guy Tunnell, was FDLE Commissioner at that time.

At the time of the August 2005 meeting at Clyde and Costello's, FDLE was investigating Crosby, FDOC Region 1 Director Allen Clark and several other FDOC employees in regard to a wide array of charges including assault, steroids distribution, misappropriation of state funds/resources, and a kickback scheme involving two private prison canteen service providers, Keefe Commissary Network and American Institutional Services (AIS). [See: *PLN*, Feb. 2011, p.42].

According to FDLE records, Crosby continued in his threat, putting a fine point on his demands after Brad Tunnell stated that he didn't understand what Crosby was getting at: "AC [Allen Clark], they need to lay off AC. They need to leave him the fuck alone. You need to tell your dad."

Tunnell claimed that he responded by stating he could not tell his father how to do his job, to which Crosby allegedly responded by threatening to open an administrative investigation into a brawl Tunnell had reportedly been a party to at an FDOC event earlier that year.

Subsequent events – namely the

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GEO Legacy of Corruption (cont.)

federal indictments and convictions of both Allen Clark and James Crosby in 2006 and 2007 – shed some light on why Crosby was so eager that the FDLE investigation into Clark end. [See: *PLN*, Dec. 2007, p.32].

Both Clark and Crosby had been involved in a kickback scheme in which two Gainesville area businessmen, Edward Lee Dugger and Joseph Arthur Deese, proprietors of AIS, paid out approximately $130,000 to Clark and Crosby from October 2003 through February 2006 in exchange for Crosby and Clark's facilitating and arranging a partnership between AIS and Keefe Commissary wherein AIS provided visitor canteen services at FDOC Region 1 facilities as a Keefe subcontractor.

Crosby stated under oath to FDLE investigators looking into his alleged threat to Tunnell on August 22, 2005 that he had gone to Clyde and Costello's that evening to meet with the bar's owner, David Ericks, and Ericks' longtime girlfriend, Donna Arduin.

Ericks, aside from being the owner of Clyde and Costello's, is owner of Ericks Consultants, a lobbying firm which has represented Wackenhut/GEO Group for over a decade. Ericks was also the chief lobbyist for Keefe Commissary in Florida from March 2005 through 2009. What's more, Ericks represented Arduin, Laffer and Moore Econometrics (ALME) in 2005.

Additionally, Ericks paid the bar tab of $143.25 for the 31 drinks consumed by the FDOC officials that evening. It is important to note that all of the FDOC employees present at the bar that evening, with the exception of FDOC Secretary Crosby, were high-ranking officials in FDOC Region 1 – the region for which all of the AIS/Keefe bribes were intended to facilitate business.

Court documents filed with the mysteriously late indictments of Deese and Dugger in June 2010 (given the fact that both Crosby and Clark had already been convicted and sentenced for their roles in the kickback scheme) indicate that Keefe was also a recipient of the kickbacks reaped through the AIS/Crosby arrangement in that Deese and Dugger would pay both monetary and non-monetary bribes to unnamed Keefe executives and representatives – most significantly the payment of a Keefe executive's $5,000 credit card bill in October 2005, about a month after the Clyde and Costello's meeting.

Furthermore, a federal civil case (seeking forfeiture of criminally-obtained revenue) based on the testimony of FBI Special Agent Jannet Pellicciotti, which has been stayed pending the outcome of the Deese and Dugger prosecutions, alleges that Keefe Commissary, along with AIS, Crosby and Clark, is guilty of mail fraud because the U.S. Postal Service was used to deliver the criminally-obtained proceeds of the canteen partnership to Keefe's corporate offices in St. Louis, Missouri.

During the FDLE interview following Crosby's threat to Tunnell at Clyde and Costello's, Crosby stated that he, Ericks and Arduin had spent a substantial amount of time that evening speaking privately outside the bar about an undisclosed subject.

Oddly enough, while FDLE investigators had interviewed every person from Ericks to an off-duty cocktail waitress who had been drinking with the men regarding the events of the night of August 22, 2005, they never interviewed Arduin.

Further, it appears that then-Governor Jeb Bush recognized the significance of Clyde and Costello's as the setting for this particular meeting. According to FDLE transcripts, then-FDLE Commissioner Guy Tunnell recalled Bush's dismay during his briefing on the investigation following the threats made by Crosby.

"The Governor was upset Crosby was back at Clyde's again," recalled Tunnell to investigators, suggesting that Crosby had ongoing business at Ericks' bar of which Bush was aware.

Tunnell declined repeated requests for an interview, stating only, "I'm not interested in opening that painful chapter of my family's life again."

Former Governor Bush could not be reached for comment.

For her part, Arduin, who was appointed by Bush to the Florida Property Tax Reform Committee the following year (2006, while still serving as a CPT trustee), denies the meeting ever took place, or that she ever had occasion to meet with Crosby outside of her role as an agency head of the Bush administration. Nor, says Arduin, did she ever have any business with Keefe.

"I never had a meeting with James Crosby. I mean, if he said he went over there to meet us, he might have been – he and Dave [Ericks] might have had something to talk about, but I never had a meeting with him," said Arduin. "I never had any business with him after I left the state of Florida. We were – we both worked for the same administration for a while. I was consulting for Speaker Rubio, but I never did any work for Speaker Rubio that would have had me have a meeting with a corrections secretary.... But obviously, he had reasons to be meeting with Dave."

Interestingly, perhaps indicative of some shared business growth strategy, just as Ericks represented the interests of Keefe, GEO Group and ALME (at a time when Arduin was a trustee of CPT) in Florida in 2005, this pattern of mutual representation was replicated the following year in Texas when Keefe, CPT, Atlantic Shores Healthcare (the entity which would become GEO Group's prison medical service arm, GEO Care) were all represented by Texas lobbyist Scott Gilmore, the former chief of staff to Texas State Rep. Ray Allen.

Crosby, who is currently incarcerated at a federal prison camp in Pensacola, turned down a request for an interview.

Ericks did not return multiple phone calls and emails requesting comment.

It is also worth noting that every single federal campaign contribution – except for one – recorded by the Federal Election Commission (FEC) for Arduin over the past decade lists her place of residence as either Ft. Lauderdale or Tallahassee. The exception is a $1,000 contribution to then-Missouri Senator James Talent, credited to Arduin in 2005, which lists her place of residence as St. Louis, Missouri, home of Keefe Commissary and its parent company, Centric Group.

Arduin says that she has no recollection of any such contribution or any idea why her address would be listed as being in St. Louis.

And while Arduin claims that she never had any involvement with Keefe, FEC records show that Senator Talent was the top pick above and beyond all other candidates for Keefe and Centric Group during the 2006 election cycle – with at least $35,950 in campaign contributions from Keefe and Centric Group executives and employees going to Talent from October 2005 to June 2006.

Of this nearly $36,000 influx of campaign cash, $20,000 was paid directly into Talent's two political action committees

($10,000 to each) by Keefe and Centric Group President Douglas Albrecht. Albrecht retired from his post at the helm of Keefe and Centric Group following the Crosby and Clark indictments. He could not be reached for comment.

Arduin was not alone in her sudden interest in Missouri lawmakers in 2005. Ericks – who, according to data compiled by the National Institute on Money in State Politics, has restricted his campaign finance spending solely to Florida lawmakers from 1998 to present – also broke with his pattern of generosity in 2005 with a gift of $600 to the campaign of Missouri State Senator Brad Lager.

While Ericks and Arduin are no longer romantically involved, it seems that their business relationship is alive and well; Arduin's residential property in Ft. Lauderdale is jointly owned by herself and Ericks.

Incorporation papers on file with the Florida Secretary of State, Division of Corporations from 2005 to present for ALME, and for Arduin Associates, list Arduin's business address as 205 S. Adams in Tallahassee. 205 S. Adams is also the address for Ericks Consultants. The building located at 205 S. Adams is owned by Ericks Consultants. In fact, Arduin's office is the office of Ericks Consultants – the two share the same phone and fax numbers. The receptionist who picks up the phone when you call looking for Arduin says, "Ericks Consultants, how may I help you?"

FBI Special Agent Rick Dent declined to confirm or deny whether the FBI is investigating any other parties in conjunction with the June 2010 indictments of Deese and Dugger.

Steve Cole, spokesman for the U.S. Attorney's Office in Jacksonville, the office which had prosecuted and which continues to prosecute all cases involving the Crosby/AIS kickback scheme, declined to comment on any aspect of any related cases – past or present – or whether further indictments are forthcoming.

As for Arduin, she says she does not know whether or not she currently has any financial interest in the GEO Group or any other private corrections interests.

"My investment guys have me in so many different mutual funds, I can't ... I have no idea," said Arduin. "I don't know."

Over the course of the 2010 midterm election year, Arduin worked as an advisor to the campaign of U.S. Senator Rubio, as well as to the campaign of newly-elected Florida Governor Rick Scott. She currently heads Scott's budget advisory team.

Subsequent Events

On February 7, 2011, Governor Scott unveiled his budget proposal to cut approximately $5 billion in state spending. The proposal is the actuation of Scott's "7-7-7 Jobs" plan ("seven steps, seven years, 700,000 jobs"), which was much touted by the Scott camp over the course of the 2010 campaign as the only real solution for Florida's deep fiscal woes.

The plan was Donna Arduin's key contribution to the Scott campaign as head of Scott's budget advisory team, tasked with assembling the full budget proposal for presentation to the legislature.

Thus, not surprisingly, the Scott budget proposal takes heavy aim at the state's prison system. Prior to revealing the full proposal, Scott's "7-7-7" budget plan advertised a reduction in correctional costs by $1 billion simply by "paying competitive market-based salaries for correction's staff, utilizing inmate labor to grow prison food, and competitively bidding health care contracts resulting in public prison costs that are as low as private prisons...."

In reality, as indicated by the February 7 unveiling of the full budget proposal, the plan calls for the elimination of nearly 8,700 state government job positions – 1,690 of which would be eliminated from the FDOC through $82 million in budget cuts.

The cuts are to be made in favor of increased utilization of services offered by private companies, such as GEO Group. In fact, the budget proposal calls for the placement of up to 1,500 state prisoners in privately-run facilities, the closure of two yet-to-be named public prisons and another $32.5 million to be set aside for the express purpose of renegotiating existing private prison contracts with the goal of maximizing private prison capacity.

Additionally, the budget plan calls for the privatization of all three of Florida's public mental hospitals – which seems ideally suited for GEO Group's correctional and mental health care subsidiary, GEO Care (already the largest private provider of such services in the state).

These proposed budget measures

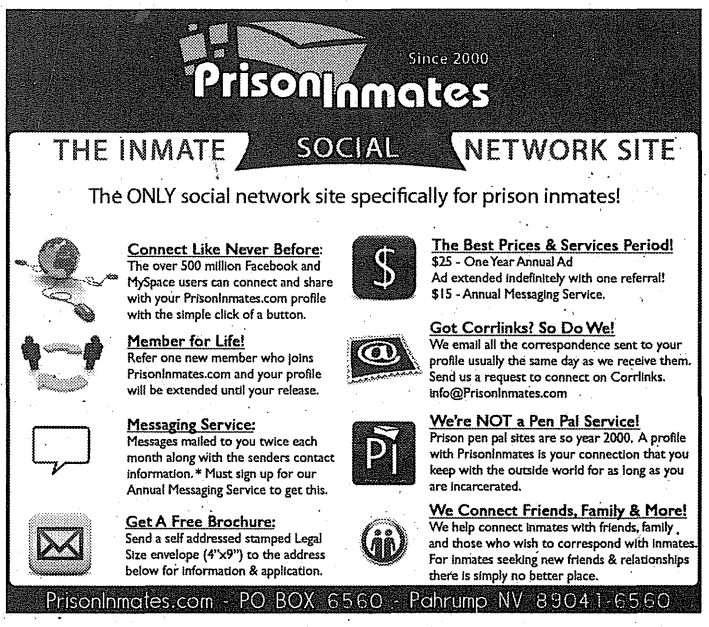
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GEO Legacy of Corruption (cont.)

have not gone unopposed, however. The Florida Police Benevolent Association (PBA), which represents state prison guards, has strongly objected to the job cuts, while a series of heated pre-legislative session exchanges has played out since the revelation of Scott's budget plan.

Sen. Mike Fasano (R-New Port Richey), chairman of the Senate Civil and Criminal Justice Budget Subcommittee, has been the most outspoken legislative critic of the plan, questioning why the Governor would push for increased spending on prison privatization when existing state facilities have thousands of unoccupied beds.

"Private prisons make a profit on the New York Stock Exchange," Fasano noted. "Government should not be in the business of helping companies make a profit, and that's what we're doing here."

As such, Sen. Fasano sharply questioned two Scott administration officials about the governor's proposed budget plan to cut FDOC job positions. Consequently, a Scott spokesman suggested that the governor's staff would boycott future subcommittee hearings, though Scott later denied that was the case.

Nevertheless, Fasano and others seeking answers regarding Florida's continued unprecedented slide towards wholesale prison privatization need look no further than February 6, 2011, Superbowl Sunday, to get an idea of Scott's cozy relationship with the private prison industry.

As reported by the *Orlando Sentinel*, Scott attended a Superbowl party held at the home of lobbyist Brian Ballard the day before the unveiling of the budget proposal. Florida lobbying disclosure records indicate that Ballard is a longtime state legislative lobbyist for Corrections Corporation of America (CCA) and, as of January 14, 2011, an executive branch lobbyist for GEO Group.

According to the *Sentinel*, Ballard helped raise more than $3 million for Scott's inaugural celebration. Additionally, GEO Group – beyond donating more than $400,000 to the Republican Party of Florida during the 2010 election cycle – contributed $25,000 to Scott's inauguration.

Presumably, based on Scott's recently unveiled budget bill, GEO is getting what it's paid for. "It's really just a gift to the private prison industry," PBA director of legislative services David Murrell said of Scott's proposed budget plan. "It's very political. The private corporations have been very helpful to the governor and his people."

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Summary Judgment for Illinois Jail Nurse Reversed in Wrongful Death Suit

by Brandon Sample

The U.S. Court of Appeals for the Seventh Circuit reversed a grant of summary judgment in favor of a nurse at Illinois' Peoria County Jail (PCJ) who was accused of providing deliberately indifferent medical care to a prisoner.

India Taylor was arrested and taken to the PCJ on October 15, 2003. Taylor, who suffered from congestive heart failure, did not feel well during the booking process. She complained of chest pain and told guards the next morning that she was vomiting and suffering from heroin withdrawal.

Around 9 A.M., Taylor saw Pam Hibbert, a contract nurse at PCJ. Taylor's blood pressure was up and she continued to complain of nausea. Hibbert, however, sent Taylor back to her cell. Later, during a video bond hearing, Taylor vomited violently. Guards present during the hearing collected Taylor's vomit and notified Nurse Hibbert.

Rather than see Taylor, Hibbert told guards to have her fill out a sick-call request and she would be seen in the morning. Hibbert was getting off in a few minutes and did not want to take time to deal with Taylor. Besides, Hibbert thought Taylor was faking her illness in order to obtain drugs.

Guards helped Taylor fill out the request, and she was scheduled to see the jail's doctor the next morning. However, Taylor did not make it through the night; she died around 3:40 A.M.

One of the guards who tried to get Nurse Hibbert to see Taylor was so bothered by Hibbert's brush off that she filed a "jail incident report" against Hibbert, accusing her of ignoring a significant medical problem. Taylor's estate sued Hibbert and other jail staff, arguing that Taylor received deliberately indifferent medical care.

All of the medical experts in the case agreed that Taylor had died from heart failure. However, the plaintiff's expert, Dr. Corey Weinstein, attributed Taylor's death to the conduct of jail medical staff. Specifically, Dr. Weinstein concluded that Taylor's vomiting in combination with taking diuretics may have contributed to her heart failure. Dr. Weinstein also suggested that had acceptable medical standards been followed, Taylor's death could have been prevented.

The district court, however, excluded Dr. Weinstein's testimony and granted summary judgment to the defendants. Taylor's estate appealed and the Seventh Circuit affirmed in part and reversed in part.

Concerning the exclusion of Dr. Weinstein's testimony, the Court of Appeals held that the district court erred in deeming the doctor's testimony unreliable. "Dr. Weinstein, based on his medical experience, provided a sufficient scientific basis for his position that, among other things, Taylor's vomiting could have exacerbated her heart condition and hastened her death," the appellate court wrote. And while the district court was critical of Dr. Weinstein's failure to provide another possible cause of Taylor's heart failure, the Seventh Circuit emphasized that "an expert need not testify with complete certainty about the cause of an injury; rather he may testify that one factor could have been a contributing factor to a given outcome."

Finally, the Court of Appeals held that the district court had erred in granting summary judgment to Hibbert. "Given that Nurse Hibbert refused to treat or even see Taylor in spite of her serious medical condition, a jury could easily find that her actions surpassed mere negligence and entered the realm of deliberate indifference."

The judgment of the district court granting summary judgment to Nurse Hibbert was therefore reversed. The Seventh Circuit affirmed the grant of summary judgment to the remainder of the defendants. The case settled following remand. See: *Gayton v. McCoy*, 593 F.3d 610 (7th Cir. 2010), *rehearing denied*.

Band-aid Applied to Florida's Homeless Sex Offender Colony Falls Off

by David M. Reutter

When Florida's Miami-Dade County adopted an ordinance that extended the 1,000-foot state law residency restrictions for sex offenders to 2,500 feet, the estimated 100 sex offenders who return to Miami-Dade each year after being released from prison were left with few options as to where they could live.

One of the few places they could reside was under the Julia Tuttle Causeway bridge. *PLN* has previously reported on this situation and the squalor that released sex offenders had to live in under the bridge to avoid violating conditions of their supervised release. [See: *PLN*, June 2008, p.1; July 2009, p.36; Dec. 2009, p.14].

In July 2009, as many as 140 people were living under the Julia Tuttle bridge. They had erected rickety shanties and installed a generator to provide electricity – for living necessities and to power their GPS monitors – but did not have running water.

Once the sex offender colony grew and began expanding from under the bridge into the public view, an uproar resulted with concerns about public safety and the impact of the county's sex offender residency ordinance. Several lawsuits were filed, to no avail.

In October 2009, the Miami-Dade County Homeless Trust awarded an $818,000 contract to Tampa Bay Lutheran Services to locate available housing, offer employment assistance and pay temporary rent and utilities for 92 sex offenders who were still living under the bridge.

After three years of effectively forcing sex offenders to form a homeless colony under the Julia Tuttle Causeway, officials put up "No Trespassing" signs and tore down the shanties. By March 2010 the entrance to the bridge colony was sealed off and the former residents were moved to alternative housing such as apartments, motels and trailer parks.

"The problem with this solution, it was only temporary; a band-aid," said Jill Levenson, a professor at Lynn University in Boca Raton, Florida who is studying the impact of sex offender residency laws.

The county's solution was to move homeless sex offenders from under the bridge into a few neighborhoods that complied with the residency restrictions, and to pay their rent and utilities for six months. However, the temporary leases began expiring in July 2010 and most of the offenders remain unemployed. "If they can't afford rent, we may be back to square one," said Levenson.

Ironically, the Homeless Trust's chairman, Ron Book, had successfully lobbied to increase sex offender residency restrictions. He realizes the future is bleak for sex offenders in Miami-Dade. "I have deep concerns that these people, who have somehow assumed we are a welfare agency and that we have deep pockets, are going to end up back somewhere on the streets," said Book. "We just don't know where."

Book is firm in his belief that the dilemma of homeless sex offenders is not due to residency requirements but rather their inability to find a job. In any event, they can expect no more assistance from the Homeless Trust. "As far as we're concerned, our help for people under the bridge is done," Book stated.

Upon their temporary leases expiring, the sex offenders from the bridge colony will either have to pay rent or move back onto the streets. They cannot go to homeless shelters because the shelters in Miami-Dade County are all in areas restricted to sex offenders.

Finding a job as an ex-convict is already tough; experts estimate the unemployment rate among former prisoners is 80%. Being without housing or other support makes it virtually impossible to find work, plus there is the added stigma of a sex offense conviction.

The Florida Department of Corrections is providing released sex offenders with a map that depicts places they can sleep. "If it's a parking lot or a street corner or a wooded area, we have to make sure they stay there," said FDOC spokeswoman Gretl Plessinger.

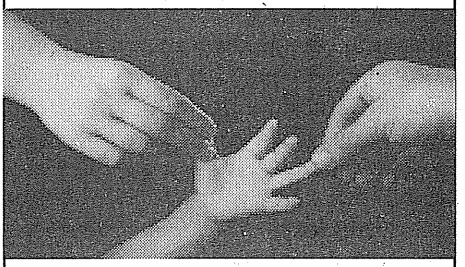
In the typical pass-the-buck mentality of government agencies, the state created the sex offender residency restrictions and the county expanded those restrictions, but neither wants to take responsibility for the resulting problem of homeless offenders living on the streets.

Source: *Miami Herald*

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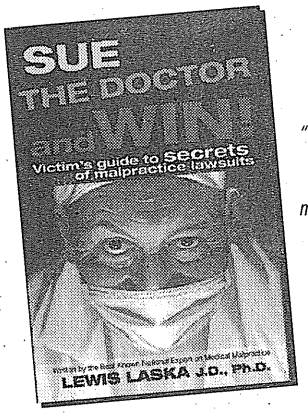
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From the Editor

by Paul Wright

On an ongoing basis PLN conducts sample mailings to the mailing lists of other organizations and publications as part of our efforts to reach new potential subscribers who may not be aware of us and to encourage them to subscribe. Occasionally this causes some confusion when existing subscribers receive sample copies of *PLN* in addition to their subscription copy. If you have received multiple copies of *PLN* simply look at the address label; the copy that is part of your *PLN* subscription will have an expiration date for your subscription on the line above your address. Sample copies will not. If you are already a *PLN* subscriber and receive additional copies please pass them along to friends who may be interested in subscribing. One way to keep costs down is to increase our readership, as the more subscribers we have the lower our per issue costs. You can help in this process by encouraging others to subscribe to *PLN*.

This month's cover story is about the ongoing corruption that permeates the private prison industry in general and the private prison industry in Florida in particular; sadly, Florida prisoners will not be able to read this article because for the past eight months or so the Florida DOC has censored all copies of *PLN* by claiming that our ads for pen pals, phone services and postage stamps are somehow a threat to prison security. Longtime readers may recall the Florida DOC did the same thing in 2003 and when we sued, on the morning of trial, they rescinded their policy claiming they would never again do such a thing. Alas, the district court and appeals court fell for the lie and declared the case moot and a few years later they do the same thing again. I believe that this is a pretext for the fact that they simply dislike *PLN's* content which tells it like it is.

The New York prison system has also banned *PLN* by claiming that our acceptance of postage stamps as payment violates their policies even though we have done so since 1990. All books distributed by PLN as well as *PLN* the magazine are being banned by New York state prisons. Even the free diabetes manual which we distribute free of charge to diabetic prisoners!

We are preparing to challenge these statewide censorship attacks but this requires extensive resources and we rely on reader support to be able to undertake these censorship cases. If you like our news coverage and believe in the notion of a free press that is not censored and controlled by the government and its corporate masters, then please take this opportunity to support our work by sending a donation.

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

Nevada Agrees to Settle Class Action Lawsuit Over Medical Treatment at Ely State Prison

In July 2010, Nevada officials agreed to settle a federal class action lawsuit filed by the ACLU pursuant to 42 U.S.C. § 1983 that alleged constitutionally inadequate medical care at Ely State Prison.

The ACLU initiated the lawsuit after commissioning a medical report to investigate conditions at Ely. The investigation, conducted by Dr. William Noel, found "a pattern of gross medical abuse" that threatened the health and safety of the 1,000 prisoners housed at the facility. According to Dr. Noel, "the medical care provided at Ely State Prison amounts to the grossest possible medical malpractice, and the most shocking and callous disregard for human life and human suffering, that I have ever encountered in the medical profession in my thirty-five years of practice." [See: *PLN*, June 2008, p.18].

Under the terms of the proposed settlement agreement, the State of Nevada and all named defendants denied having engaged in any culpable conduct but agreed to the appointment of a neutral, expert medical monitor, Dr. Ronald Shansky, for a period of not less than two years. The monitor will evaluate the state's compliance with the terms of the settlement in six areas: medications, chronic care, sick call, intra-system transfers, off-site medical services and infirmary care.

The monitor will review pertinent documents related to medical treatment, and will interview staff and a sufficient number of prisoners to assess ongoing conditions at Ely.

The monitoring will end after two years, but only if the state has achieved substantial compliance in each of the six areas cited in the settlement. Disputes regarding the extent of compliance and the need for continued monitoring will be subject to binding mediation before a mediator agreed to by both parties.

The ACLU's lawsuit involved no claim for monetary damages; thus, according to the notice approved by the court, the settlement will not preclude damage claims by individual Ely prisoners. On the other hand, there may be a preclusive effect with respect to medical care-related claims for declaratory or injunctive relief filed before – although, depending on the specific circumstances of the individual prisoner, possibly not after – the lawsuit is dismissed following approval of the settlement.

The terms of the settlement agreement will be implemented via a plan of action based in part on standards established by the National Commission on Correctional Health Care as set forth in the Commission's 2008 publication, "Standards for Health Services in Prison."

In the area of medications, the plan of action calls for the monitor to evaluate and propose any necessary changes to the timely dispensing and administration of medications at Ely. The monitor will consider, for example, whether and to what extent increased oversight and accountability mechanisms may be needed to ensure the safe and timely administration of medication. In consultation with the monitor, the defendants will set up a medication dispensing system that complies with the monitor's recommendations. They shall develop and implement written protocols to help ensure there are no lapses in medication, whether due to a prisoner's transfer, a need to refill or renew a prescription, or other reasons.

The defendants will ensure that patients refusing medication are provided in-person counseling regarding the consequences of incomplete adherence to a prescribed course of treatment. They will develop protocols for the treatment of acute pain that do not involve placement of the patient in the infirmary, and shall ensure that medication is administered at a

medically appropriate time and in a medically appropriate manner, taking dietary considerations into account.

In terms of chronic care, the plan of action calls for the defendants, in consultation with the monitor, to ensure that a health care treatment plan is developed for each chronically ill patient. The treatment plan will include, at a minimum, a written initial evaluation with a plan to achieve good disease control, short and long-range goals that are reviewed and updated at least annually via a face-to-face assessment, regular check-ups at least once every three months, a yearly check-up with a physician if necessary, and laboratory work or other diagnostics as appropriate for the prisoner's medical condition.

In the area of sick call, the plan of action calls for the defendants to implement any changes proposed by the monitor. Nurses and other practitioners will be properly supervised and perform only functions within the scope of their licenses, a medical doctor will be available at least two days a week, sick call will be available every day of the week in all areas of the prison, and medical kites will be picked up on a daily basis from each unit and triaged no later than 24 hours after receipt.

For intra-system transfers, the plan of action calls for all prisoners entering Ely to be medically screened by a registered nurse or higher-level medical practitioner within 12 to 24 hours of admission. The screening will take place in a confidential setting and ensure that a patient's HIV status is not inadvertently disclosed.

Concerning off-site services, the defendants will ensure that, when necessary, patients are provided timely access to an outside specialist.

With regard to infirmary care, the defendants shall ensure that all infirmary patients are within sight or sound of health care staff at all times, and that security staff do not provide any routine medical care.

Following a fairness hearing, the settlement was approved by the district court on October 28, 2010, and the plaintiffs were awarded $325,000 in attorney fees and costs. See: *Riker v. Gibbons*, U.S.D.C. (D. Nev.), Case No. 3:08-cv-00115-LRH-VPC.

Additional source: *www.nevadaappeal.com*

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Safety Concerns of a Prisoner Rights Lawyer

by Jane Kahn

As part of the small talk that happens during holiday gatherings and at other events during the year, people ask me what I do. My work involves representing California prisoners with severe mental illness. I am frequently asked whether I feel safe going inside of the prisons. Sometimes, I am asked how I dress to meet with my clients. Images of Attica seem to hover over the conversations. Since I am at a party, I give the quick answer. I explain that I feel safe because I am visiting my clients and the prisons are well-guarded. If someone insists, I might tell a story. But I keep it simple. It is not simple.

Many of the attorneys and paralegals in our office have traveled regularly to see our clients housed in the 33 California prisons scattered around the state. The attorneys also conduct monitoring tours of the prisons. The risk of harm to advocates entering California prisons to see their clients is primarily the risk of continued exposure to the horrific conditions of confinement that our clients must endure every day. The severe overcrowding in the California prisons, which was declared a state of emergency by Gov. Arnold Schwarzenegger in 2006, has created extreme conditions that are degrading, dangerous and inhumane. Touring prisons and observing the conditions which our clients must endure, while remaining incapable of remedying these conditions, or rescuing our clients from their suffering, can be painful and intolerable.

It is especially difficult for plaintiffs' counsel if the particular shocking prison practice or condition is routine and acceptable to prison officials and fully defended by defense counsel. For example, the widespread use of cages to hold prisoners waiting for admission to suicide watch units, a practice initiated system-wide due to overcrowding and bed shortages, is often not even noticed by local clinicians who have become inured to the practice. Similarly, the observation of patients on suicide watch sleeping naked on the floor is jarring unless you are a psychiatrist or psychologist working within the California prison system where this is now standard practice. I recall a prison visit where I observed suicidal prisoners meeting with their treatment team in the mental health crisis unit. One patient after another was brought into the small room wearing nothing but a blanket wrapped around his naked body. When the first patient, who was sitting within inches of me, kept his eyes averted during the "interview," he was finally asked why he would not look up, and he haltingly replied: "I am naked, I'm embarrassed to sit here like this." No one responded, and when he left, the next naked prisoner was brought into the treatment session. Obviously, any harm to advocates observing these conditions pales in comparison to the harm suffered by our clients as a result of these practices and conditions.

There is a body of literature that discusses "secondary trauma," which can occur among disaster relief workers, firefighters and mental health professionals who provide assistance to those who have experienced trauma. Although "secondary trauma" is accepted as a risk to those working in these fields, advocates such as attorneys and paralegals can also experience secondary trauma responses and symptoms of burnout. (Andrew P. Levin and Scott Greisberg, "Vicarious Trauma in Attorneys," 24 Pace L. Rev. 245 (2003), available at: http://digitalcommons.pace.edu/plr/vol24/iss1/11). When the advocates in our office repeatedly tour the prisons and talk with our clients about their lives inside, and then observe the conditions of confinement (triple bunks in crowded gymnasiums where prisoners are jammed with little personal space; cages in hallways where prisoners waiting for a bed are placed; or suicide watch cells where patients are forced to sleep naked on the floor, in locked down housing units with no programming), and then return to work to read letters from other prisons detailing the same or worse problems, the impact can be overwhelming.

In our office, we have experimented with various strategies for addressing the stress that the prison tours and prisoner mail has on the attorneys and paralegals. We have assigned mentors to new attorneys to check in with them after a prison visit. We have encouraged advocates leaving a prison to call a "buddy" after the visit to discuss anything that comes to mind in a version of "downloading" images. We have held several meetings where advocates can talk about their feelings around the prison tours. And finally, in the midst of the preparation for the overcrowding trial (we recently conducted extensive prison inspections with expert mental health witnesses as part of the discovery phase in the federal overcrowding trial, *Coleman/Plata v. Schwarzenegger*, N.D. Cal./E.D. Cal.), when the tours and visits were extensive, we had a psychiatric expert provide training for the trial team on mental health issues, on spotting suicidal ideation in our clients during visits, and on coping with prison tours. Most importantly, we stress to all staff that entering California prisons is not to be taken lightly. Simply by acknowledging the impact of these tours and the prisoner mail helps attorneys and paralegals know that there is an open door if they need to talk. Sometimes family and friends simply cannot or do not want to hear the actual details of these prison visits or mail, but colleagues involved in similar work can provide significant support.

At the social events when I am asked whether I feel safe in my work, the simple answer is yes because correctional officers accompany me inside the prison, and because the prisoners know that I am their advocate. I rarely, if ever, talk about what makes me feel unsafe: the shocking images that remain with me from my many prison visits. No, then I would have to discuss the real risk of this prison reform work, and it would take all night.

Jane Kahn is of counsel at Rosen, Bien & Galvan LLP, a San Francisco civil litigation firm that is also class counsel in several prison civil rights actions. Photos of California prison conditions introduced as evidence in the overcrowding trial are available at http://tinyurl.com/Coleman-Trial. [Ed. Note: Rosen, Bien & Galvan LLP has represented PLN in several cases]

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Second Circuit: New York's Persistent Felony Offender Statute Held Constitutional in En Banc Ruling

by Matt Clarke

The Second Circuit Court of Appeals found that New York's Persistent Felony Offender Statute (PFOS), N.Y. Penal Law § 70.10 , which allows enhancement of sentences for prior felony convictions, violated the Sixth Amendment to the U.S. Constitution. However, that finding was later reversed by an en banc ruling.

James Besser, William Phillips, Carlos Portalatin, Vance Morris and William Washington (petitioners), New York state prisoners, filed separate federal habeas corpus petitions pursuant to 28 U.S.C. § 2254 that challenged the constitutionality of the PFOS. They alleged that the PFOS violated the Sixth Amendment as clarified and controlled by *Blakely v. Washington*, 542 U.S. 296 (2004) [*PLN*, Aug. 2004, p.14]. The district courts granted relief for Portalatin and Washington but denied relief to the other three petitioners. All five habeas cases were appealed, then consolidated.

The Second Circuit held that application of the PFOS would increase the sentences of the petitioners. The PFOS requires that the state trial judge find a defendant has two prior felony convictions, and that "the history and character of the defendant and the nature and circumstances of his criminal conduct" make it in the public interest to enhance the sentence. If such facts are found by the court, the defendant is given an indeterminate sentence of 15 years to life. The minimum PFOS sentence often exceeds the maximum sentence that could be imposed if the PFOS was not used to enhance the sentence.

Defendants sentenced under the PFOS may appeal the sentence enhancement. The state court of appeals may modify the sentence "in the interest of justice."

The Second Circuit held that making sentencing enhancement dependent upon a ruling by the judge on facts other than the simple existence of previous convictions was contrary to *Blakely*, which requires that a jury make any findings of fact that could result in a sentence enhancement. However, prior to *Blakely*, the law was unsettled on whether this violated the Sixth Amendment.

Because Besser's conviction became final before the Supreme Court decided *Blakely*, he could not receive relief due to the doctrine of nonretroactivity set forth in *Teague v. Lane*, 489 U.S. 288 (1988). However, the other petitioners were eligible for relief.

Yet this type of issue was subject to harmless error analysis pursuant to *Brecht v. Abrahamson*, 507 U.S. 619 (1993). Because none of the district courts had conducted an adequate harmless analysis and the issue had not been adequately briefed on appeal, the Second Circuit vacated the judgments of the district courts in the Portalatin, Washington, Morris and Phillips cases and remanded those cases for a harmless error analysis. The district court's denial of Besser's petition was upheld.

The petitioners were represented by New York City attorneys Richard M. Greenberg (Besser); Martin M. Locente of the Legal Aid Society (Phillips); Joshua Michael Levine (Portalatin); Andrew C. Fine of the Legal Aid Society (Morris); and Jonathan M. Kirshbaum (Washington). See: *Bessler v. Walsh*, 601 F.3d 163 (2nd Cir. 2010).

Upon rehearing en banc, however, the Second Circuit reversed the panel decision on October 18, 2010. The en banc Court of Appeals held that the state courts' rejection of the petitioners' argument that the sentencing courts had engaged in impermissible fact-finding when determining whether imposition of a PFOS sentence was warranted, and rejection of arguments that the PFOS statute required sentencing courts to engage in impermissible fact-finding before imposing a PFOS sentence, did not constitute an objectively unreasonable application of clearly established federal law.

Therefore, New York's PFOS was not unconstitutionally applied and the grant of habeas relief to Portalatin was reversed, while the denials of habeas relief to Phillips and Morris were affirmed. Washington's case was not addressed in the en banc ruling, as he had died while the appeal was pending and his petition was thus rendered moot. See: *Portalatin v. Graham*, 624 F.3d 69 (2nd Cir. 2010), *petition for cert filed.*

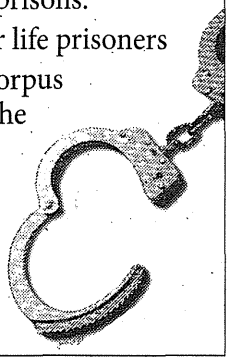
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U.S. Supreme Court Upholds $625,000 Judgment for Female Prisoner Molested by Ohio Prison Guard

by John E. Dannenberg

On January 24, 2011, the U.S. Supreme Court (USSC), ruling on a relatively minor procedural issue regarding the timing of a defense motion for summary judgment, upheld a $625,000 jury verdict awarded to a female prisoner who was sexually abused by an Ohio state prison guard.

Michelle Ortiz was assaulted by prison guard Douglas Schultz, who walked up behind her in the washroom of her living quarters and grabbed one of her breasts. When Ortiz reported this to her case manager, Paula Jordan, Jordan suggested that while Ortiz had a right to file a complaint, she counseled against it because it was Schultz's last day working at the facility. Jordan advised Ortiz to simply stay in the company of other prisoners to avoid further sexual assaults. However, after Ortiz fell asleep in her dorm, she awoke to find Schultz fondling her left breast with one hand while fingering her vagina with the other.

When Ortiz further complained, prison investigator Rebecca Bright put her in solitary confinement, allegedly to prevent her from talking about the investigation with other prisoners. Ortiz claimed she was segregated in retaliation for her complaint.

Ortiz sued Jordan and Bright under 42 U.S.C. § 1983 for failure to protect her from Schultz's repeated assaults. Schultz had resigned and fled to avoid service of process in the suit. The case went to a jury trial, where Ortiz won verdicts of $350,000 against Jordan and $275,000 against Bright.

On appeal to the Sixth Circuit Court of Appeals, the defendants renewed an earlier unsuccessful motion for summary judgment that raised a qualified immunity defense. The Sixth Circuit reversed, finding the district court should have granted qualified immunity to the defendants; the appellate court also held the jury verdict was "against the weight of the evidence." [See: *PLN*, Sept. 2009, p.46].

The USSC reversed the Sixth Circuit on the narrow question of the proper timing for such a motion, holding the defendants had waived their rights by failing to bring the motion in a timely, procedurally correct manner, and that the Sixth Circuit had erred in repairing this failure by permitting resurrection of the procedural defense when it no longer had jurisdiction to do so.

However, the USSC's decision, while restoring Ortiz's well-deserved monetary judgment, is not the highlight of this case. The real story is that an Ohio prison guard, while performing his official duties, sexually assaulted a female prisoner – twice – and that the prisoner was subjected to retaliation for reporting the assaults and no discipline was taken against the guard. Even more egregious, the defendants, Jordan and Bright, shamelessly tried to shield themselves from liability by claiming their conduct "did not violate clearly established statutory or constitutional rights of which a reasonable person would have known," by asserting a qualified immunity defense.

Such is the sad state of justice for prisoners who are victimized by prison staff and then try to hold them accountable in court. See: *Ortiz v. Jordan*, 131 S Ct. 884, 562 U.S. ___ (2011).

Federal BOP's Exclusions from Early Release Incentive for Substance Abuse Program Completion Struck Down

by Stephen G. Yagman

The U.S. Ninth Circuit Court of Appeals has invalidated the federal Bureau of Prisons' (BOP) policy statement, 28 C.F.R. § 550.58(a)(1)(iv)(2000), *see* 65 Fed.Reg. 80745-01 (Dec. 22, 2000), that denies prisoners who have been convicted of the categorical crimes of homicide, forcible rape, robbery, aggravated assault and sexual abuse of a minor, one year off their sentences for successful completion of the BOP's substance abuse treatment program.

Jerry Crickon was serving a 151-month sentence at the federal prison camp in Sheridan, Oregon for conspiracy to possess with intent to distribute methamphetamine. In March 2007, he received notice that he qualified for participation in the BOP's Residential Drug Abuse Program, but was also informed that he was not eligible for the incentive offered in 18 U.S.C. § 3621(e), which ordinarily provides one year's early release for successful completion of the nine-month program. The only reason cited for Crickon's ineligibility for the early release incentive was his 1970 conviction for voluntary manslaughter.

The U.S. District Court denied Crickon's § 2241 habeas corpus petition for an order that he be allowed to receive the early release incentive, despite the fact that his manslaughter conviction was 38 years old, and Crickon appealed to the Ninth Circuit.

The Court of Appeals' unanimous opinion chronicles the history of Congress's directives "to require the BOP to 'make available appropriate substance abuse treatment for each prisoner the Bureau determines has a treatable condition of substance addiction or abuse[.]'" and the later provision of incentives for successful completion of the program, so that "the BOP may reduce the sentence by up to one year for an inmate who successfully completes the program. 18 U.S.C. § 3621(e)(2)(B)."

Beginning in 1995, the BOP promulgated rules to implement the early release incentive and continued to do so until it issued a final rule in 2000. However, the final rule categorically excluded from eligibility for the early release incentive all prisoners who had been convicted of homicide, forcible rape, robbery, aggravated assault and sexual abuse of a minor, no matter how stale the convictions.

In 2008 the Ninth Circuit struck down the categorical exclusion from the early release incentive of prisoners convicted of offenses involving firearms, because the BOP's policy violated the federal Administrative Procedure Act (APA), which required the BOP to have an "administrative record [that] contains [a] rationale explaining the Bureau's decision to categorically exclude prisoners with convictions involving firearms from eli-

gibility for early release under § 3621(e)." See: *Arrington v. Daniels*, 516 F.3d 1106 (9th Cir. 2008) [*PLN*, June 2009, p.44].

With the BOP having learned nothing from *Arrington*, it followed the same path and practice with respect to other categorically excluded convictions, and contended on appeal that it had its reasons for doing so. But the Ninth Circuit found those reasons must have appeared in the administrative record during the time the implementing regulations were being promulgated, not offered afterwards as post hoc rationalizations.

The appellate court's reasoning was simple: "The APA provides that a 'reviewing court shall hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law.' 5 U.S.C. § 706(2)(A)[,]" and since the BOP had made no findings, "we may 'not supply a reasoned basis for the agency's action that the agency itself has not given[,]'" or "'infer an agency's reasoning from mere silence.'"

The Ninth Circuit held that as the BOP had not articulated any reason at all for counting "stale" convictions against prisoners, or for the categorical exclusion of certain convictions from the early release incentive, all such exclusions were illegal. The "BOP rule encompassed in 28 C.F.R. 550.58(a)(l)(iv)(2000) is invalid because the BOP failed to provide any rationale for the categorical exclusion generally, and because the rationale provided for considering any prior conviction, regardless of age, is premised upon a mistake of law."

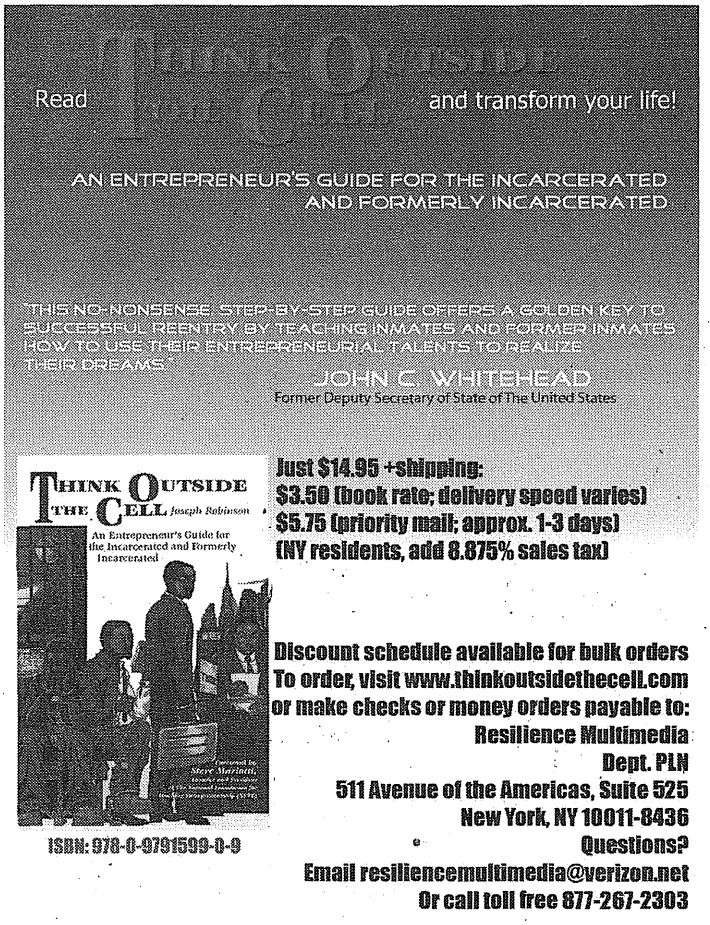
The Court of Appeals also found that "[b]eyond explaining that it decided upon the four identified categories of convictions because of the variation in violence level that may be found in state convictions, ... the BOP provided no explanation for its decision to look to prior convictions as the appropriate basis to determine categorical exclusions."

Further, "the BOP's expressed belief that it was 'acting in accordance with Congressional intent' is difficult to square with Congress's expressed intent to provide an incentive to encourage maximum participation in the BOP's substance abuse treatment programs."

The Ninth Circuit summed up by stating, "Because the BOP failed to articulate in the administrative record the rationale underlying its decision to adopt a categorical exclusion of inmates with specific prior convictions, we conclude that the BOP's promulgation of the categorical exclusion in § 550.58(a)(l)(iv) did not comply with the APA."

The district court's denial of Crickon's habeas corpus petition was reversed and the case remanded for further proceedings, including for "the BOP to reconsider Crickon's eligibility for early release under § 3621(e)(20)(B) without regard to his prior conviction for voluntary manslaughter." See: *Crickon v. Thomas*, 579 F.3d 978 (9th Cir. 2009).







Sixth Circuit Holds Pre-1992 Michigan Lifers Not Entitled to Ex Post Facto Relief

In what may prove to be a major blow to parole-eligible life-sentenced prisoners in Michigan, the Sixth Circuit has rejected an as-applied ex post facto challenge to the retroactive application of changes in Michigan's parole laws.

The prisoners, a class of "parolable lifers" who committed certain non-drug offenses before October 1, 1992, filed suit in federal district court pursuant to 42 U.S.C. § 1983, alleging that changes to Michigan's parole laws in 1992 and 1999, as implemented and applied retroactively, violated the due process and ex post facto clauses of the U.S. Constitution.

Relying on *Sweeton v. Brown*, 27 F.3d 1162 (6th Cir. 1994) (en banc) [*PLN*, Nov. 1994, p.13], the district court dismissed the due process claim on the ground that Michigan prisoners lack a constitutionally protected federal liberty interest in parole.

The Sixth Circuit affirmed the dismissal on appeal.

The bulk of the Sixth Circuit's opinion, however, focused on the district court's ex post facto analysis. As a preliminary matter, the district court had held that *Shabazz v. Garry*, 123 F.3d 909 (6th Cir. 1997) [*PLN*, June 1998, p.19], did not preclude the prisoners' ex post facto challenge. In *Shabazz*, the Sixth Circuit had rejected a facial challenge to the constitutionality of a 1992 change which reduced the frequency of parole reviews. Because the Michigan legislature made additional changes to the parole laws in 1999, the cumulative effect of the 1992 and 1999 changes, the district court reasoned, could not have been resolved by the 1997 ruling in *Shabazz*.

As the district court put it, a "state cannot continuously make changes in the parole process that, taken together, create a sufficient risk of an increased penalty; but, when looked at alone, would not violate the Ex Post Facto Clause."

Examining the record before it, the district court concluded that the combined effect of all the statutory changes – which had induced the Board to adopt a "life means life" policy – had sufficiently disadvantaged the plaintiff class to constitute an ex post facto violation.

In arriving at its conclusion, the district court relied largely on statistical evidence showing a decline in the rate of parole in Michigan, from a steady 5-15 percent between 1942 and 1984 to just 0.15% between 1995 and 2004.

To the Sixth Circuit, however, the data effectively skipped over by the district court – covering the period from 1985 to 1994 – were just as significant as the data the district court considered relevant. The numbers from that period revealed average annual parole rates ranging between 0.18% and 0.6% – not significantly different from the 0.15% rate of subsequent years.

Moreover, the appellate court concluded, it could not distinguish the effect of the Board's legitimate exercise of its discretion from the effect of statutory changes to the parole process. Relying on *Garner v. Jones*, 529 U.S. 244, 253 (2000) [*PLN*, June 2000, p.5], the Sixth Circuit held that regardless of cause or motivation, "If the Parole Board decided within its discretion to get tougher, that would hardly amount to an ex post facto violation as long as it was within the Parole Board's discretion to get tougher."

The case was remanded to the district court to enter judgment in favor of the defendants. See: *Foster v. Booker*, 595 F.3d 353 (6th Cir. 2010), *cert. denied*.

California Prison System Lays Off Teachers, Vocational Instructors

by Michael Brodheim

Due to a $60 billion budget deficit in fiscal year 2009-2010, California prison officials decided to slash funding for rehabilitative programs for prisoners. And while state employees affected by the resulting layoffs cried foul (and fraud), prison officials claimed the cutbacks would promote efficiency and ultimately reduce crime.

The California Dept. of Corrections and Rehabilitation (CDCR) announced in late 2009 that it planned to lay off 850 teachers and vocational instructors, including prison staff who run substance abuse and anger management programs. As a result, the state will save $250 million in direct costs.

In the long run, however, the indirect costs to the state – in terms of increased prison violence and recidivism – may exceed the short term savings. Prior to the cuts, about 57,000, or one-third of California's 170,000 prisoners, were enrolled in educational or vocational programs. About 12,000 (roughly 7 percent of the state prison population) were taking substance abuse classes. Those numbers will be reduced by approximately thirty percent as a result of the budget cuts and layoffs.

The wisdom behind the cuts was questioned by those who teach the programs. John Kern, a landscape horticulture instructor at Soledad State Prison since 1984, noted the benefits of providing job skills to prisoners that they can utilize upon their release. Most significantly, perhaps, prisoners who learn a trade are less likely to reoffend. Also, when prisoners are occupied, prisons tend to be safer. Lastly, much of the work done by prisoners in vocational programs can actually save the state money, such as by reducing prison costs associated with landscaping, printing and janitorial services.

"These programs give inmates hope, and inmates with hope are more easily managed," Kern said. "We don't change every guy, but we change enough to make it worth it."

CDCR graphic arts teacher Cindie Fonesca, who received a layoff notice, agreed. "They're going to learn from their 'cellies'" if academic and vocational classes are cut, she stated. "That's what they're going to do, which is how to be better criminals."

Lending support to Kern and Fonesca, former San Francisco District Attorney Kamala Harris, now California's Attorney General, opined that cuts to rehabilitative programs would only increase the state's recidivism rate – which, at 70%, is already the highest in the nation.

Further, the budget cuts and layoffs seem hypocritical in light of the addition of "Rehabilitation" to the CDCR's name only five years ago – a point made by California Assemblyman Ted Lieu, an unsuccessful candidate for Attorney

General. "I believe the best way to reduce prison costs is to inject money into rehabilitation programs. ... If it works for a certain percentage of people, that's really all we need," he observed.

Responding to CDCR Secretary Matthew Cate's curious assertion that the cuts in rehabilitative services would somehow reduce crime, Lieu said bluntly, "It's false."

Not only is the premise of less crime resulting from fewer rehabilitative programs false, but the CDCR's process of laying off prison teachers and vocational instructors was alleged to be fraudulent.

On January 8, 2010, CDCR vocational instructor Don Wiley, employed at the Chuckawalla Valley State Prison, received a 30-day layoff notice. The notice was dated December 31, 2009, and Wiley wondered why it took so long to arrive. Postal authorities determined that while the notice – and hundreds of other layoff notices mailed by the CDCR – had been metered on December 31, they weren't actually mailed until January 6, 2010 in violation of postal rules.

"It was pretty obvious what they had done – they screwed up and they tried to cover it up," said Wiley. "I'm convinced that someone in CDCR ordered their staff to pre-date all of these envelopes even though they couldn't mail them for another week."

Wiley notified his union, SEIU Local 1000, which represents professional educators employed by the state, including those in the state prison system. Over 200 SEIU members then filed grievances protesting the pre-dated layoff notices, and as a result the layoffs were postponed for a month.

Meanwhile, SEIU Local 1000 pursued two lawsuits filed against the state – one related to budget cuts affecting prison rehabilitation programs and another concerning the layoffs.

In regard to the former suit, the state claimed that only prisoners had standing to challenge cuts to rehabilitative programs. However, the SEIU argued that the "CDCR has a mandate to provide a certain level of education in the prisons and that by laying-off teachers CDCR is failing to meet this mandate."

In regard to the second lawsuit, the SEIU argued that under Government Code 1281.8, employees can file for a temporary restraining order if an employer's actions – in this case action by the state – results in irreparable harm. The case settled in October 2010. See: *SEIU Local 1000 v. Department of Personnel Administration*, San Francisco Superior Court (CA), Case No. CGC-10-497156.

According to SEIU spokesman Jim Zamora, "A number of [prison staff] did lose their jobs," but "a number of people were able to land in other positions, transferred to other positions or took demotions ...." Additionally, other CDCR employees took early retirement. The cuts to the state prison system's educational and vocational programs, however, will have a lasting impact.

PLN has previously reported on California's closure of parolee residential centers [*PLN*, Nov. 2009, p.35], reduction in funding for treatment programs for drug offenders under Prop 36 [*PLN*, March 2010, p.19], and slashing of CDCR rehabilitative services due to budget cuts [*PLN*, June 2010, p.26].

Apparently, state officials are determined to keep the recidivism rate as high as possible by denying prisoners rehabilitative and re-entry programs.

Sources: *San Francisco Chronicle, https://prisonmovement.wordpress.com, http://abclocal.go.com, www.seiu1000.org*

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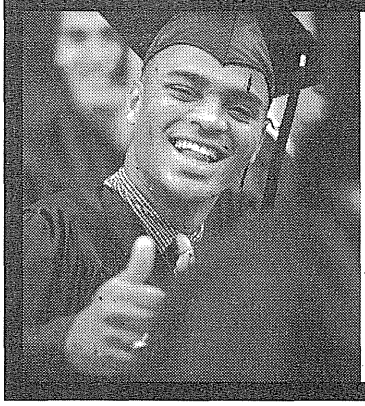
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Virginia Federal Court Invalidates DOC Ban on Sexually Explicit Books

by David M. Reutter

A U.S. District Court has held that a Virginia Department of Corrections (VDOC) policy which prohibits "works of literature which include an explicit description of a sexual act or intercourse" is unconstitutional, both facially and as applied.

The court's ruling was entered on cross-motions for summary judgment filed in a lawsuit brought by VDOC prisoner William R. Couch. Couch claimed that VDOC operating policy 803.2, which was used to exclude *Ulysses* and *Lady Chatterley's Lover* from the prison library and prevented him from ordering those books from a private vender, violated his rights under the First and Fourteenth Amendments.

A publication can be banned under VDOC's "specific criteria for publication disapproval" if it contains "...explicit or graphic depictions or descriptions of sexual acts, including but not limited to: a. Actual sexual intercourse, normal or perverted, anal or oral; b. Secretion or excretion of bodily fluids or substances in the context of sexual activity; c. Lewd exhibitions of uncovered genitals in the context of sexual activity; d. Bondage, sadistic, masochistic or other violent acts in the context of sexual activity; e. Any sexual acts in violation of state or federal law."

The district court noted that the "violation of state or federal law" provision "would ban any book describing rape, statutory rape, attempted rape, incest, adultery, polygamy, sexual abuse, and prostitution."

Without providing scientific or expert testimony, the VDOC contended its policy was constitutional because it had a logical connection to the penological goals of rehabilitation and protecting the security, discipline and good order of the prison system. In so doing, the VDOC listed the usual panoply of goals that prison officials use to support such regulations. That list included stopping bartering or disputes over sexually explicit material, protecting prisoners and staff from the violence or harassment such material would cause if allowed, and ensuring that rehabilitation efforts were not undermined.

The court flatly rejected the VDOC's arguments. "It strains credulity to believe that limiting a prisoner's access to *Lady Chatterley's Lover* could have any effect on the security, discipline, and good order of the prison," wrote the district court. "Likewise, it would be patently incredible to assert [James] Joyce's *Ulysses* will somehow threaten the rehabilitation of a prisoner."

The court held it "would be irrational, if not utterly incomprehensible" that such books and a list of dozens of "highly regarded works of literature which include an explicit description of a sexual act or intercourse" could be banned by prison officials, "while permitting *Playboy*."

The VDOC was aware that the Holy Bible has descriptions of incest yet is not banned. "When regulations are not strictly enforced in prison contexts, the regulations can rightly be subjected to criticism as arbitrary," the court noted. "The broad reach of the regulation merely provides an opportunity for arbitrary enforcement of this regulation on the basis of the VDOC chaplain's moral judgment."

As such, the district court held the "regulation does not possess the constitutionally required rational connection between the regulation and the legitimate governmental objective." Further, the court found the regulation was not reasonable but was an exaggerated response to the concerns of prison officials. As the policy was unconstitutional, the district court held that injunctive relief was appropriate but declined to award punitive damages.

The VDOC was enjoined from enforcing and applying Operating Procedure 803.2, while the court afforded Virginia prison officials "an opportunity to amend, revise, or modify" the regulation, or to draft a constitutional policy. The court granted Couch's motion for costs and expenses on November 18, 2010, taxing Couch's $350 filing fee to the defendants. Couch represented himself pro se. See: *Couch v. Jabe*, U.S.D.C. (W.D. Vir.), Case No. 7:09-cv-00434-jct-mfu; 2010 WL 3433630.

State Inspections Compel Changes at Abusive Michigan Juvenile Facility

by David M. Reutter

Inspection reports by Michigan's Department of Human Services (DHS) concerning conditions at the Muskegon County Juvenile Detention Center (MCJDC) found an abusive environment caused by understaffing. On the verge of losing the state license to operate MCJDC, county officials agreed to make reforms.

Located in the northern area of Michigan, MCJDC houses up to 22 middle-school and high-school-aged juveniles. They end up at the facility by order of a family court overseeing criminal charges against them. MCJDC's superintendent reports to the county administrator rather than to officials associated with the courts, DHS or the sheriff's office.

After several inspections revealed serious problems at MCJDC, Steve Ragsdale, a child welfare licensing consultant with DHS, began interviewing former MCJDC residents. Ragsdale issued five reports between December 15, 2009 and June 24, 2010, finding systemic abuse at MCJDC.

Facility staff told Ragsdale that they had no choice but to use "physical management" and long-term seclusion for the safety of both employees and residents. When Ragsdale made an unannounced visit to MCJDC on June 7, 2010, he got a first-hand glimpse of the chaos that reigned at the juvenile facility.

He observed one resident tip over a bookcase. Two others picked up chairs and mimicked throwing them. Ragsdale asked a shift supervisor about the staff's scheduling while advising her that he was going to cite the facility for being "dangerously understaffed."

"She was advised that she needed to do whatever was necessary to ensure resident and staff safety, including placing residents in seclusion, if that were the best alternative," wrote Ragsdale.

"There were not sufficient employees to complete a staffing schedule at the facility. It was necessary to place residents in seclusion in order to insure resident and staff safety," Ragsdale noted in his final analysis.

Most often, staff used "physical

management" on residents when they weren't imposing long-term seclusion. As one staff member put it, "I did not survive two wars to be taken out by some 13-year-old."

During his inspections, Ragsdale viewed a video that captured a staff member "dropping" a youth, whose arms were shackled behind his back, "face first from a height of 2 feet."

After viewing more videos and interviewing staff, Ragsdale learned that "bending a residents' arm behind his back was referred to by residents and staff as 'chicken winging,' which was commonly used as an inappropriate restraint technique by MCJDC employees.

Another improper restraint was "short shackling," which involves handcuffing a youth's hands and feet. Another set of shackles then connects the handcuffs and foot shackles. A staff member admitted to Ragsdale that he once short shackled a youth for nearly five weeks.

When MCJDC staff were really frustrated with a youth's behavior, they used a tool obtained from the Muskegon County Jail – a device called the "AEDEC Prostraint Prisoner Restraint Chair," which is a collapsible chair on wheels. Straps on the chair secure the wrists, ankles, upper arms, legs and chest. An additional two straps cross through the crotch. PLN has reported several incidents of positional-asphyxiation deaths that have resulted from the use of such restraint chairs.

There was no formal training or training manual for the restraint chair at MCJDC; instruction was passed on verbally. According to the manufacturer, people placed in the chair should never be left unattended and should be unrestrained at least every hour.

Various interviews led Ragsdale to a 12-year-old boy who had been strapped in the chair. Ragsdale was advised by staff that the chair was used because the youth was trying to bite and repeatedly strike staff members.

When interviewing the boy, "it was noted that he had multiple bruises, strap marks, shackle marks, and bite marks on his arms, legs, shoulders, wrists, ankle, chest, and groin area," wrote Ragsdale. The youth reported that he had been restrained in the chair for nearly two hours, part of which time staff was not in the room, allowing him to bite himself.

County administrator Bonnie Hammersley said she was unaware the restraint chair was being used at MCJDC. "When I heard we had it, I asked for it to be removed immediately," she said. Commenting on problems at the facility, Hammersley stated, "I attribute it to the change we're seeing in the youth we're dealing with. Their needs are greater."

Ragsdale, however, attributed the problems to understaffing and lack of training. He found that three employees had a "lack of ability" to deal with juveniles at MCJDC, including two who used excessive physical force. While not providing names, county officials fired three MCJDC staff members following the release of Ragsdale's reports.

Matthew Kaley, 54, MCJDC's superintendent since 2007 and an assistant superintendent for 12 years prior to that time, resigned in July 2010. He was replaced by Muskegon County's deputy family court administrator, Paul Wishka.

Wishka said MCJDC had a "strong core of committed employees." It was a small core, though, with one staff member for every eight residents. On July 13, 2010, the county hired seven more staff members, putting at least one more employee on each shift. Overlap allows up to six staff during peak need times.

An action plan prohibits the use of the restraint chair and short shackling. The plan also calls for "daily review on the use of behavior management rooms; training for staff members in nonabusive physical and psychological intervention; immediately notifying the state if a resident is injured during restraint by staff; conducting an internal investigation of complaints about staff using excessive force; and allocating mental health resources through Muskegon County Community Mental Health" at MCJDC.

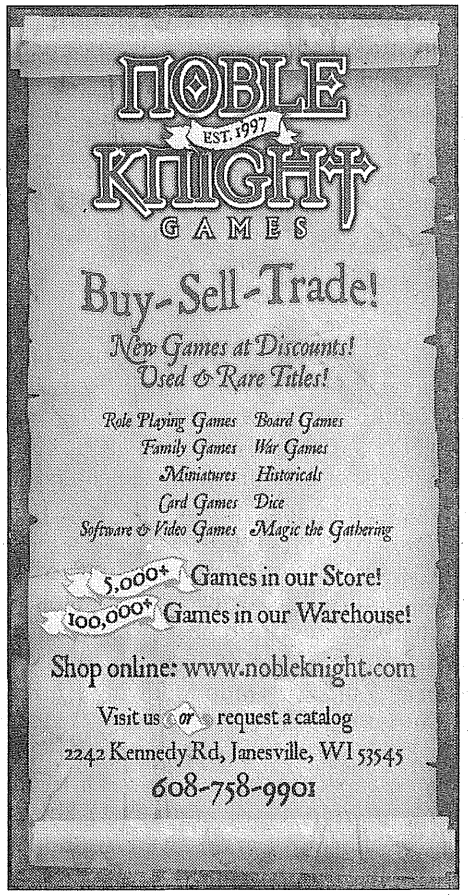
The juvenile facility was allowed to continue operating under a provisional license, which permits state officials to make random visits.

Source: *Muskegon Chronicle*

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Report Faults Private Prison Company for Deadly Arizona Prison Break

by Matt Clarke

On August 19, 2010, the Arizona Department of Corrections (ADC) issued a report concerning the July 30 escape of three prisoners from a privately-operated prison in Kingman, Arizona. The report was highly critical of Management and Training Corporation (MTC), the for-profit firm that runs the Kingman facility.

On the same day the ADC report was released, the last of the three escapees was captured along with an accomplice. Unfortunately, the escapees left behind a deadly trail of crime that included hijacking 18-wheelers, kidnapping, two murders, aggravated assaults and a shootout with police.

The escape from the MTC-operated facility also temporarily suspended Arizona's efforts to privatize 5,000 more prison beds in the state. [See: *PLN*, Sept. 2010, p.42].

John Charles McCluskey, 45, was a year into a 15-year sentence for attempted second-degree murder when he convinced his cousin and fiancée, Casslyn Mae Welch, 44, to aid in the escape. Welch approached the prison unnoticed and tossed a pair of bolt cutters over the perimeter fence. McClusky and two other prisoners – Tracy Allen Province, who had served seven years of a life sentence for murder and robbery, and Daniel Renwick, who had served eight years for murder – used the bolt cutters to make a hole in the fence, then tied back the fencing with a dog leash.

Welch had parked a car with weapons, cash and false identification nearby, but the escapees became disoriented and split up to look for the vehicle. Renwick found the car first and drove off, leaving the others to fend for themselves. Taking advantage of McClusky and Welch's prior experience as big-rig truck drivers, McClusky, Welch and Province hijacked the first of two tractor-trailers used to flee the area. Ironically, Renwick, who had taken all of the group's supplies, was the first to be caught. He was arrested two days later in Rifle, Colorado following a brief shootout with police.

Forensic evidence later linked the other escapees to the murder of an Oklahoma couple, Gary and Linda Haas, whose charred remains were found in their burned-out camper in eastern New Mexico. Soon thereafter, Province was spotted in a Wyoming church on August 8, 2010 and taken into custody without resistance.

McClusky and Welch remained on the lam until August 19, when a forest ranger went to investigate an unattended campfire in Arizona's Apache-Sitgreaves National Forest. The ranger spoke briefly with a nervous McClusky, then left and called in a SWAT team, which swarmed the campground when McClusky was in a sleeping bag outside a tent. Both McClusky and Welch surrendered without firing a shot, though both expressed a desire to shoot it out had they been able to get to their weapons. McClusky also said he wished he had killed the ranger.

Federal and state charges of murder, carjacking, kidnapping, armed robbery, aggravated assault and conspiracy have since been filed against McClusky, Welch and Province. They may face the death penalty. McClusky's mother, Claudia Washburn, 68, was prosecuted for helping her son by sending him money after he escaped; she pleaded guilty and was sentenced in January 2011 to seven months in prison.

The dramatic course of the deadly crime spree kept the escape in the news for weeks. The resulting public attention demanded an investigation into how the escape happened and whether it could have been prevented. The ADC was quick to investigate, largely placing the blame on the poor quality of MTC's operations at the Kingman prison.

ADC Director Charles L. Ryan ordered all prisoners with life sentences, murder convictions, a history of escapes or more than 20 years left on their sentences removed from Kingman until the MTC-run prison was brought into compliance with ADC guidelines. This resulted in the transfer of 148 prisoners. Arizona Governor Jan Brewer, seeking political cover, said the classification system that allowed those prisoners to be assigned to medium security at Kingman was in place before she was elected.

"It is something that maybe should be reviewed," Brewer stated, though she noted that "that classification is used across America."

The ADC report did not mince words. "Human error and security lapses directly led to an escape of three inmates," said Ryan. "The security at the prison did not meet ADC standards." Further, Ryan noted that state officials had "grave concerns that there was laxness on the part of security staff."

MTC accepted responsibility for the escape and pledged to do better. "We are in agreement with the report and are committed as a company to make the corrections necessary to provide the level of security expected of all professionals in our business," said MTC senior vice president Odie Washington. At the same time, Washington claimed the company was not at fault because its Kingman employees never informed corporate headquarters of security problems at the prison.

Regardless, the ADC was charged with oversight of private prisons in the state and the problems at Kingman were so fundamental that they should have been caught. The ADC's monitor at Kingman was reassigned on August 13, 2010. Wade Woolsey, the ADC official charged with oversight of private prison contracts, resigned.

According to the ADC report, the main flaws that facilitated the escape were false alarms from the intrusion zone alarm system inside the perimeter fence. The alarms were so frequent that MTC guards largely ignored them, taking 20 minutes or longer to check and clear the zone. This left the fence area without a zone alarm until it was cleared. Staff considered clearing the alarms less important than "answering the telephone, issuing keys, [and] checking staff in," the report stated.

Further, prisoners had easy and direct access to the perimeter fence via the dog yard, which was part of a newly-discontinued program designed to use prisoners to habilitate dogs prior to their adoption. Additionally, an outside access door from a housing unit was apparently left propped open with a rock.

A shift change occurred around 9:00 p.m. During that time, and at every other shift change, there was a window of fifteen minutes or more when there were no perimeter guards because they were going off duty and had to check in

their weapons, while guards coming on duty waited to check out the weapons. Further, mobile perimeter patrols always came from the same direction at the same intervals, making them easy to predict. After the escape, it took MTC staff two hours to notify the ADC.

Guards and supervisors at the MTC prison were poorly trained and had little experience, with 80% being newly hired or newly promoted. There was also a lack of respect for guards among the prisoners, who flaunted regulations by growing long hair and facial hair, and not displaying their identification cards.

"The inmate attitude appeared to be poor," ADC investigators wrote. "One inmate spoke in a disrespectful manner to the Warden when she questioned his lack of identification, another called out 'Fuck ADC' as we approached."

Among many other problems, ADC investigators found that sand in the area around the perimeter fence wasn't being replaced so that easily discernible tracks could be spotted in the event of an escape. The investigators also found large amounts of cardboard materials, piles of dirt and a sweat lodge between the inner and outer fences, plus excessive vehicular traffic on the perimeter security road, which provided access to another prison.

MTC's once-a-day fence checks were insufficient and the investigation team went unchallenged by the static and mobile perimeter guards even when intruding into the area between the inner and outer fences. Problems in the prison's armory included missing ammunition and weapons being placed in storage while loaded.

MTC agreed to a plan to correct all the deficiencies noted in the ADC report. Further, county and state officials have asked MTC to pay more than $100,000 for expenses related to responding to the escape. And in September 2010, the Haas family filed a $10 million notice of claim against Arizona and a wrongful death suit against MTC. See: *Haas v. Management & Training Corporation*, U.S.D.C. (D. Ariz.), Case No. 2:10-cv-02043-JAT.

The high-profile escape from the MTC facility rekindled debate over Arizona's controversial use of private prisons. "If we're going to give these private companies oversight over our inmates, we need to make sure we're holding them accountable," said David Lujan, a Democratic candidate for Arizona Attorney General.

Republican attorney general candidate Tom Horne said prisoners with murder convictions should be banned from medium-security facilities. "I think the Attorney General should be monitoring that sort of thing, maintaining stats, keeping track," he observed.

Governor Jan Brewer, a strong proponent of private prisons, put a different spin on the ADC report, saying it revealed the escape was the result of human error and not due to problems inherent with private prisons.

ADC Director Ryan said he was convinced there is a role for private prisons in Arizona. Around 6,400 of the state's 40,000 prisoners are incarcerated in privately-operated facilities.

Arizona's Republican-controlled legislature is also very much in favor of prison privatization. In 2009, the state took the unprecedented step of offering $100 million annually for a private company to operate all but one ADC prison complex. The bill was signed into law by Governor Brewer, but the language about privatizing most of the state's prison system was later repealed after no suitable contractor came forward. As of February 2011, the state was seeking bids from private prison companies to build and operate facilities

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AZ Private Prison Faulted (cont.)

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Arizona politicians have faced criticism for being unduly influenced by the private prison industry. Corrections Corporation of America (CCA), the nation's largest private prison firm, operates six facilities in Arizona – three of which house immigration detainees. Governor Brewer has aides with ties to CCA, and Paul Senseman, Brewer's spokesman, was formerly a CCA lobbyist. Phoenix-based consulting and lobbying firm Highground manages Brewer's campaign and also lobbies for CCA. Critics claim that Governor Brewer signed the bill to privatize most of the state's prison system, as well as controversial legislation to crack down on illegal immigrants (SB 1070), in an effort to benefit the private prison industry. [See: *PLN*, Nov. 2010, p.1].

Whatever the reasoning, Brewer was wrong when she said the Kingman escape was caused by problems not endemic to private prisons. The ADC investigation revealed poor training, improper perimeter construction, failure to properly install, calibrate and monitor the fence alarm system, and a general laxness that presumably is not present in ADC facilities. These types of short cuts are driven by companies trying to trim costs so as to increase profits.

Private prison firms win contracts by claiming it is cheaper to house prisoners in privately-operated facilities, but that too is a lie. A September 2010 study by Arizona's Auditor General found that it costs almost $8.00 more per prisoner per day to house a medium-security prisoner in a private prison than in a state prison ($55.89 per diem in a private prison versus $48.13 in a private prison).

Arizona State University criminology and criminal justice professor Travis Pratt found no evidence to support private prison companies' claims that they save money up-front. Instead, he found they often cut back on staffing, wages and services in order to boost their profit margins.

"Cost savings like that don't come without consequences," said Pratt. "And that can present a security risk that is elevated." A security risk such as allowing three prisoners to escape and go on a deadly crime spree, for example.

"The general issue is the quality of service – and security is a part of that," stated criminal justice professor Stan Stojkovic, at the Helen Bader School of Social Welfare at the University of Wisconsin-Milwaukee. "They're there to make money and any way they can cut corners means they make more money."

In 2008, then-Arizona Governor Janet Napolitano and state Senator Robert Blendu drafted and introduced legislation to require that private prison companies build their facilities to state prison construction standards; share information about prisoners and their employees with state officials; and stop importing dangerous, violent felons from other states. The bill was defeated.

"The private prison industry lobbied heavily against that bill, and they were successful," said then-Napolitano lobbyist Michael Haener.

The July 30, 2010 escape from the Kingman prison has revived efforts to hold private prison companies accountable. Unsuccessful Democratic gubernatorial candidate Terry Goddard said he would push to revive the 2008 bill, and called for an overview of prisoner classification policies.

Perhaps the silver lining in the tragic outcome of the MTC escape will be that it slows Arizona's headlong rush into wholesale prison privatization. Given the political influence and deep pockets of private prison companies, though, it is unlikely that the push towards privatization will be slowed for very long.

Sources: *ADC report, Associated Press, Arizona Republic, www.azcentral.com, www.azstarnet.com, www.foxnews.com, www.ctv.ca, www.abc15.com, www.aolnews.com, Phoenix New Times*

Have a Cell Phone in Your Rectum? Body Cavity Searches OK'd in First Circuit, but Surgical Searches Are Not

by Brandon Sample

It is okay to look for contraband in a prisoner's rectum so long as the search is done by medical staff in a non-abusive manner, according to the U.S. Court of Appeals for the First Circuit. Prison officials, however, cannot force prisoners to undergo surgery in order to search for prohibited items.

While incarcerated at Puerto Rico's Bayamon 501 prison, Angel Luis Sanchez was subjected to a series of increasingly intrusive searches as part of a quest to find a cell phone that guards thought he had hidden inside his body.

The incident began after a handheld metal detector went off while Sanchez was being searched. A subsequent strip-search revealed nothing, as did another scan with the metal detector, but that was not good enough for the guards.

They asked a doctor to take X-rays of Sanchez's abdominal cavity. While the results from the X-rays were pending, Sanchez was placed under constant surveillance and guards instructed him to defecate on the floor. Sanchez did so, but no cell phone was found.

Shortly thereafter the results from the X-rays came in. According to the doctor who examined the X-rays, Sanchez had a foreign object in his rectum that looked like a cell phone. Sanchez denied having a cell phone and again defecated in front of the guards. Although no cell phone came out, the guards were not satisfied.

Sanchez was taken to an emergency room where a rectal exam was performed by a doctor in order to recover the elusive cell phone. The first search of Sanchez's rectum came up empty. A second digital examination revealed no cell phone, either. However, the guards and medical staff still were not convinced.

Next, doctors scheduled Sanchez for exploratory surgery of his abdominal cavity. Prior to the surgery, another X-ray was taken which revealed no foreign objects in Sanchez's body. Nevertheless, the surgery went forward after the surgeon coerced Sanchez to consent by promising to do another rectal exam while Sanchez was under anesthesia in lieu of performing surgery.

But another rectal exam did not occur; instead, the surgeon performed the exploratory surgery anyway. No cell phone was discovered. Sanchez was discharged from the hospital and returned to the Bayamon prison two days later.

Sanchez then sued the guards and medical staff, claiming Fourth Amendment violations. The district court dismissed Sanchez's lawsuit for failure to

state a claim. Sanchez appealed, and the First Circuit reversed in part.

Although the Fourth Amendment applied to the searches, the Court of Appeals upheld the district court's dismissal of Sanchez's claims related to the digital rectal exams. While rectal examinations may be "highly intrusive and humiliating," they are not necessarily prohibited, the appellate court held. Rather, the touchstone of whether such searches violate the Fourth Amendment is if they are "reasonable."

In Sanchez's case, the Court of Appeals found that the digital rectal exams were reasonable because they were "carried out by medical professionals in the relatively private, sanitary environment of a hospital, upon suspicion that plaintiff had contraband in his rectum, and with no abusive or humiliating conduct on the part of the law enforcement officers or the doctors."

The surgery conducted on Sanchez's abdominal cavity, however, stepped over the line. "The surgery described in the complaint was ... an unreasonable, unconstitutional search," the First Circuit wrote, given "several indications of the absence of contraband, including the results of two monitored bowel movements and two rectal examinations." "Society is prepared to recognize that a prisoner has a reasonable expectation that he will not be forced to undergo abdominal surgery for the purposes of finding contraband, at least in these circumstances," the appellate court held. The judgment of the district court was accordingly affirmed in part and reversed in part. See: *Sanchez v. Pereira-Castillo*, 590 F.3d 31 (1st Cir. 2009).

Following remand, the case settled in January 2011 under undisclosed terms.

Probation May Not Be Conditioned On Overly Broad Court Access Restrictions

A California Court of Appeal has concluded that a probation condition prohibiting a defendant from being within 500 feet of any courthouse is unconstitutionally overbroad.

Alejandro Perez pleaded guilty to second degree robbery after forcibly taking a $29 pair of pants from a person he believed had previously vandalized his brother's property. The trial court placed him on 36 months of formal felony probation. Consistent with the probation officer's report and the request of the prosecutor, the court imposed 36 probation terms and conditions, including one prohibiting Perez from attending any court hearing or being within 500 feet of any courthouse unless he is either a defendant or under subpoena there.

On appeal, the Court noted that while trial courts have broad discretion to impose conditions which foster rehabilitation and protect the public, nonetheless a condition prohibiting non-criminal conduct must be reasonably related either to the crime of conviction or to future criminality. Here, the 500-foot restriction on access to courts was neither reasonably related to Perez's crime nor to the possibility of future criminality. Additionally, it potentially infringed upon Perez's constitutional right of access to the courts, as well as his First Amendment right of access to government complexes in which, aside from a courthouse, public agencies (such as a city council, tax collector, or health department) may also be located. See: *People v. Perez*, 176 Cal.App.4th 380, 97 Cal.Rptr.3d 632 (Ca. App. 2009).

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Social Security Audit Criticizes Prisoners' Access to Personal Data; Federal Legislation Passed

by Matt Clarke

On March 12, 2010, the Office of the Inspector General (OIG) of the Social Security Administration (SSA) released an audit report on prisoners' access to Social Security numbers (SSNs). The report criticized eight states for providing prisoners with access to SSNs as part of their institutional jobs.

The purpose of the report was to follow-up on an August 2006 audit in which the OIG determined that prisons in 13 states allowed prisoners to access SSNs through a variety of slave labor work programs. That earlier audit noted the potential threat to SSN integrity, and recommended that the SSA and prisons work together to limit prisoners' access to SSNs. [See: *PLN*, April 2007, p.24].

The 2010 report found that the SSA had taken some steps to educate prison officials about the risks associated with allowing prisoners access to SSNs. However, prisons in eight states continued to provide prisoners with access to SSNs. Generally, prisoners encountered SSNs and other personally identifiable information when they performed data entry, encoding, digital imaging or records conversion. The types of documents they worked with included criminal background checks, police reports, health records, student transcripts, tax forms, employee wage statements and Department of Labor forms.

Some security controls were in place. These included preventing prisoners from viewing names associated with SSNs, banning writing and copying in the work area, searching prisoners leaving the work area, and requiring prisoners to sign a confidentiality agreement. However, some prisoners attempted to circumvent the security precautions.

In May 2009, a Kansas state prisoner was found to be in possession of personally identifiable information following a routine strip search and mail search. The prisoner was removed from the work program and disciplined. In December 2006, a Connecticut prisoner was discovered with a file in her cell that contained personally identifiable information. A routine audit had determined that the file was missing.

The OIG audit found 15 prisons that allow prisoners access to SSNs, including one each in Alabama, Arkansas and South Dakota, two in Oklahoma, four in Tennessee and five in Kansas. Additionally, some prisoners in Kansas, Tennessee and West Virginia have access to SSNs while employed in work release programs.

The OIG recommended that prisons stop allowing prisoners access to SSNs. "Although we recognize there may be benefits in allowing prisoners to work while incarcerated, we question whether prisoners have a need to know other individuals' Social Security numbers," the audit stated. "Allowing prisoners access to Social Security numbers increases the risk that individuals may improperly obtain and misuse SSNs."

Kansas Department of Corrections spokesman Bill Miskell defended the practice. "We're extremely sensitive to the potential for any kind of access to personal identifying information and have policies to limit an inmate's ability to write down any of this information," he said. Miskell noted that attempts to circumvent security policies had been isolated and, so far as he knew, unsuccessful.

Others were not convinced that allowing prisoners access to other peoples' SSNs and personal information was a good idea.

"It is essential that we rein in the widespread use and display of these numbers and keep them out of the hands of criminals and organized crime groups that now sell stolen Social Security numbers as a source of income," remarked U.S. Senator Dianne Feinstein, who sponsored the Social Security Number Protection Act (S. 3789), which prohibits prisoners from having access to SSNs.

The Act was signed into law in December 2010 as Public Law No. 111-318, and will phase in restrictions on allowing prisoners access to SSNs over a one-year period. The Act states, "No Federal, State, or local agency may employ, or enter into a contract for the use or employment of, prisoners in any capacity that would allow such prisoners access to the Social Security account numbers of other individuals." However, it does not appear to specify a remedy for violations of the law and a right without a remedy is meaningless.

Sources: *SSA OIG Report No. A-08-10-11042, USA Today*

Georgia Eases Sex Offender Restrictions in Face of Federal Court Challenge

Laws that restrict where sex offenders can live have been popular in legislatures throughout the U.S. With much fanfare and hoopla, Georgia passed one of the nation's toughest sex offender residency statutes on July 1, 2006.

That law prohibited sex offenders from living within 1,000 feet of schools, parks, churches, school bus stops and other places where children gather. In effect, the law served to drive sex offenders into desolate areas or out of the state.

At one point, as reported in *PLN*, a group of homeless sex offenders set up a tent city on state land behind an office park in suburban Atlanta until they were evicted. [See: *PLN*, May 2010, p.20].

Before Georgia's law even went into effect, however, civil liberties groups began filing lawsuits; as a result, state legislators had to make changes before the entire law was scraped by the federal courts. "The bottom line was that the hammer was about to fall on us, and I was deeply concerned that the entire statute was in jeopardy," said state Senator Seth Harp, who helped push through a revision to the law.

One of those hammers was a federal lawsuit challenging Georgia's sex offender residency restrictions as being unconstitutionally vague, which is presently pending cross-motions for summary judgment. See: *Whitaker v. Perdue*, U.S.D.C. (N.D. Georgia), Case No. 4:06-cv-00140-CC.

According to the complaint in *Whitaker*, which was filed by the ACLU of Georgia and the Southern Center for Human Rights, "Thousands of people on Georgia's sex offender registry will be forced to evacuate their homes, leave their

jobs, cease attending church services, and be required, by legislative fiat, to abandon court-mandated treatment programs."

Now, following the recent statutory revisions, even law enforcement officials are perplexed about the state's sex offender laws. "Our deputies are trying their best to enforce this law," said Tonia Welch, training coordinator for the Georgia Sheriffs' Association. "And the way the changes have been, it has caused confusion. Every time they got situated, the laws change, and then they have to shift gears."

The revised statute, which was signed into law in May 2010 by Governor Sonny Perdue, allows the 13,000-plus registered sex offenders who committed their offences before June 2003 to live wherever they want. That date was selected because it is when Georgia's first sex offender residency law became effective.

Sex offender restrictions after that date vary depending on when the offense was committed. Offenders who committed their crimes from June 4, 2003 to June 30, 2006 can live near a church or swimming pool, but those convicted after July 1, 2006 are barred from residing within a 1,000-foot radius of those facilities.

Georgia's revised sex offender law eases other restrictions. It allows some offenders to petition to be removed from the state's sex offender registry, and exempts the disabled and elderly from the residency requirements. Further, sex offenders are no longer required to provide their Internet passwords to state officials.

While at least five other states have tightened their sex offender residency restrictions, Iowa joined Georgia in easing up a bit. Prompted by lobbying from the Iowa County Attorney's Association, state legislators reduced a 2,000-foot sex offender exclusion zone around schools and other areas. That restriction still applies for the highest-level offenders, such as those who committed crimes involving a child, and a 300-foot "no loiter" zone applies to all sex offenders.

"It's better than what we had, but it still fosters a false sense of security," said the association's executive director, Corwin Ritchie. "It does target the predator-type, who might be sitting within sight of a school, but we have so many sex offenses going on within people's homes, we forget those types of victims."

Also forgotten are the hazards inherent in ostracizing sex offenders after they complete their prison sentences. Research shows that lack of social support, unemployment and housing instability are the greatest contributing factors to whether released prisoners re-offend. When restrictions are placed on sex offenders that make it harder for them to reintegrate into society, the risk of recidivism increases.

Residency restrictions for sex offenders have been controversial since their inception. "It's something states are still struggling with," said Jill Levenson, a Lynn University professor who specializes in sex offender policies. "One side argues the laws aren't punitive, but the other side of the argument is that once people enter into a plea and agree to something, you can't come back years later and change it."

Another problem is that some defendants accused of sex-related crimes do not realize the long-term consequences of pleading guilty, which may subject them to registration requirements and residency restrictions for the rest of their lives.

Several states, such as Florida, continue to experience difficulties with their sex offender residency restrictions, including creating a population of homeless sex offenders that is hard to monitor. [See related article in this issue of *PLN*].

Sources: *Associated Press, Atlanta Journal Constitution*



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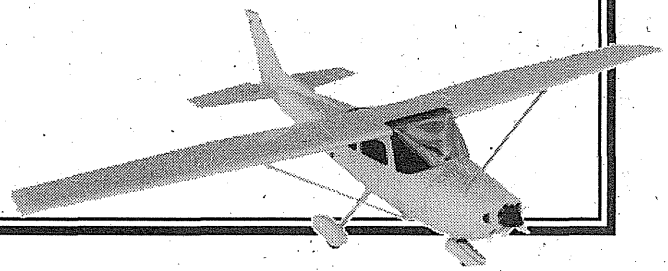
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Kentucky Jail Guards' Convictions Affirmed in Sexual Abuse of Young Prisoner

by David M. Reutter

The Sixth Circuit Court of Appeals has affirmed the convictions and prison sentences of two guards who were found guilty of violating a prisoner's civil rights. The guards' actions resulted in the sexual assault of an 18-year-old prisoner.

When J.S. was arrested for speeding and eluding police on February 14, 2003, he was taken to Kentucky's Grant County Detention Center. At the time, J.S. was 18 years old, six feet tall and weighed 125 pounds. He had blonde highlights in his hair, wore a bright shirt and had heart shapes on his underwear. Sgt. Shawn Sydnor described J.S. as a "scared little kid" who was "sissy looking."

His clothing and looks caused guards to tease him about being cute, and one said he would make "a good girlfriend for the inmates." Sgt. Sydnor told guards Wesley Lanham and Shawn Freeman that J.S. "needed to be scared."

To do so, Sydnor said J.S. should be placed in a general population cell. Lanaham stated he "knew a guy, down in 26 Hall," which was known as the "hallway from hell." It housed prisoners convicted of misdemeanors and felonies.

Detention center staff were aware of 26 Hallway's violent reputation. Sydnor testified that he knew of instances of prisoners expressing concern about sexual assault; that sexually predatory behavior occurred in the prison; and that 26 Hallway had more incidents of sexually predatory conduct than other areas of the facility.

Despite this knowledge, Sydnor informed a female guard who told him not to put J.S. in 26 Hallway "that it was none of her business and that he wore the sergeant's stripes." Lanham and Freeman then went to 26 Hallway to talk with prisoner Bobby Wright, telling him they wanted him to "fuck with" J.S.

Once Lanham and Freeman told Sgt. Sydnor that things had been "taken care of," they took J.S. to 26 Hallway. One of them said, "Here you go boys. I have some fresh meat for you." J.S. was then pushed into the cell and the door was closed.

He was promptly grabbed by the arm and led to a bed where several prisoners petted him, began taking his clothes off, and slapped him with their flip-flops. His pleas for help were ignored by the guards. J.S. was then taken to the shower where hot water was turned on and his head was beaten against the wall. He "felt a strong pain in his buttocks and believed he was being anally raped."

Eventually, J.S. got out of the shower but fell as he tried to run towards the door. Prisoner Victor Zipp told J.S. he had two choices: "Either get fucked in the ass or suck my dick." When J.S. refused either choice, another prisoner punched him in the back of the head. Zipp then grabbed J.S by the hair and forced his penis into J.S.'s mouth. J.S. bit down as hard as he could and Zipp withdrew. Another prisoner hit him in the back of the head again, but he was left alone until he was removed from the cell the next morning. Sydnor, Lanham and Freeman then conspired to create false reports to justify placing J.S. in 26 Hallway.

The three guards were subsequently charged with violating J.S.'s civil rights and making a false entry. Sydnor pleaded guilty to conspiracy, but the indictment was dismissed and he cooperated in the prosecution of Lanham and Freeman, who were later convicted. Lanham was sentenced to 15 years in federal prison and Freeman received a 14-year sentence. The Sixth Circuit affirmed their convictions and sentences on August 24, 2010. See: *United States v. Lanham*, 617 F.3d 873 (6th Cir. 2010), *petition for cert. filed.*

Prison Health Services Doctors Caught in Scandals

In a two-week period in July 2010, two doctors employed by Prison Health Services (PHS) were involved in scandals that led one to resign while the other was arrested.

PHS regional medical director Dr. Trevor P. Parks was accused of not being certified to provide healthcare for the 12,000 prisoners covered by a $123 million contract between PHS and the City of New York to supply medical treatment at Rikers Island and the Manhattan Detention Center.

In light of questions concerning his board certification for internal medicine, Parks resigned on July 14, 2010. *PLN* had previously reported that Dr. Parks operated a PHS subsidiary called PHS Medical Services P.C. that provided healthcare services at Rikers Island – an arrangement that state officials called a sham. [See: *PLN*, Nov. 2006, p.6]. Dr. Parks said he had resigned to concentrate on his appeal of a recommendation by the American Board of Internal Medicine to suspend his certification.

"They're just concerned with something that I got caught up in, and I'd really rather not go into it," he stated. PHS's contract with the city requires the company's medical director to be board certified. Until they were notified by a reporter, city health officials, who oversee the PHS contract, were unaware that Parks' board certification was in question.

In an unrelated incident, PHS Dr. Franck Leveille, 60, a 12-year employee at Rikers Island, was arrested in the early morning hours of July 28, 2010 for sexually abusing a female prisoner. Leveille was charged with criminal sexual conduct for an incident that occurred in March 2010; under New York law, it is illegal for staff to have any sexual relations with a prisoner.

In addition to his position with PHS, Leveille also works as a family specialist at the Brooklyn Medical Plaza. If convicted he faces more than four years in prison.

"This physician is charged with exploiting an inmate in his care, according to the criminal complaint, and violating his fundamental professional responsibility," said Department of Investigations Commissioner Rose Gill Hearn.

Sources: *www.nbcnewyork.com, http://abclocal.go.com, New York Times*

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Prisoner Labor Used to Clean Up BP Oil Spill

by Matt Clarke

On April 20, 2010, an explosion on Deepwater Horizon, an offshore drilling platform in the Gulf of Mexico, killed 11 workers. The accident resulted in an oil spill that leaked oil into the gulf for three months, damaging both the ecology and economy of coastal states – particularly Louisiana. Deepwater Horizon was owned by a corporation called Transocean and leased to oil company BP (formerly British Petroleum).

Early in BP's effort to clean up oil-soaked beaches in Louisiana, cleanup workers wearing scarlet pants and T-shirts emblazoned with the words "Inmate Labor" were easy to spot. Local residents, many of whom had been rendered destitute by the oil spill, which had destroyed the fishing industry in the region, expressed outrage. Why was BP hiring prisoners when the Deepwater Horizon accident had forced so many coastal residents into unemployment?

The first and most obvious answer to that question is to save money. Louisiana has 39,000 prisoners, but only enough space in its state prisons to incarcerate 19,000. The other 20,000 are housed in private prisons, parish jails and work-release centers. This decentralized incarceration scheme makes if difficult to oversee, or even understand, the statewide practice of prisoner labor. Parish jails, under the direction of local sheriffs, are allowed to contract out prisoners to work for private businesses. The prisoners receive between zero and forty cents an hour for their labor plus an opportunity to earn extra credits ("good time") off their sentences.

The businesses get a sober, drug-free, cheap workforce, supervised by guards, that shows up on time ready to work – even if the assignment is dangerous to the prisoners' health, such as cleaning up a toxic oil spill.

"If you talk to people around here, it is jokingly referred to as rent-a-convict," said Michael Brewer, a former public defender, who was quoted in a July 2006 *New York Times* article on prisoner labor in Louisiana. "There's something offensive about that. It's almost like a form of slavery."

Just getting a workforce that will show up is a big plus for BP. Although the appearance of prisoner laborers sparked outrage, BP claimed it could not find enough local employees who would take the hot, dirty, exhausting and dangerous 12-hour-a-day jobs at the $10 per hour BP was offering. One work release center operator noted that the Louisiana Workforce Commission might field 400 new non-prisoner employees on any given Monday and only have 200 show up for work the following day.

After local residents complained, workers with scarlet pants and "Inmate Labor" T-shirts disappeared from Louisiana beach cleanup crews. BP and government officials claimed they didn't know if prisoners were still being used for cleanup efforts. Does that mean prisoners were no longer working on the crews? Not at all. Rather, the prisoners were issued oil-resistant coveralls and shirts with BP logos. Prisoner work crews in just such attire were observed returning to the Lafourche Parish Work Release Center (LPWRC) in unmarked white vans.

But BP's attempt to conceal the fact that it was using prisoners to clean up the oil spill was largely ineffective, as 70% of Louisiana's prisoners and almost all of the prisoner workers on the cleanup crews are black while 90% of the local coastal residents are white. The obvious racial disparity in the cleanup crews led NAACP president Ben T. Jealous to ask "why black people were over-represented in the most physically difficult, lowest paying jobs, with the most exposure to toxins." The answer is because black people are overrepresented in the prison system, which is where many of the cleanup crews came from.

Prisoner workers are bound by BP's notorious gag rule and thus cannot speak about the cleanup. Most prison and government officials refuse to comment on or feign ignorance about the use of prisoners in the cleanup effort. However, it is known that beach cleanup crews work 12 hours a day. They are dressed in high-density polyethylene coveralls that are taped to their plastic-covered steel-toed boots. Under OSHA rules, they work 20 minutes followed by a 40-minute rest due to the oppressive heat that builds up in their protective suits under the hot sun. Between their 6 a.m. starting time and the end of the work day at 6 p.m., they will have clocked 3-4 hours of back-breaking labor and 12 hours of exposure to noxious, possibly toxic oil fumes. If a prisoner decides that the risk to his health is too great and refuses the cleanup assignment, he forfeits "good time" credits towards his sentence and is returned to prison.

Some local officials have acknowledged using prisoner labor for oil cleanup. A Plaquemines Parish Sheriff's Office lieutenant admitted having three unpaid prisoner crews sandbagging to block the spread of oil in Buras, Louisiana. The warden of LPWRC said he had 18 prisoners assigned to oil cleanup work, noting that the number changed on a daily basis. Louisiana Governor Bobby Jindal's office issued a press release praising the training of 80 state prisoners in the "cleaning of oil-impacted wildlife recovered from coastal areas." The prison system later denied that was the case, but the media reported that "more than 80 prisoners wearing green jumpsuits were searching for wildlife affected by the spill."

The situation is similar in Alabama, where SG & S Oil Recovery Product, LLC hired over 200 state prisoners to assist with the oil cleanup effort. Most of those prisoners were trained for three days in Hazardous Waste Operations and Emergency Response, while some were used to manufacture oil containment booms at a work-release center in Loxley.

SG & S owner Jay Graddick said he prefers prisoner labor. "It's almost impossible for them to steal anything," he said. "They're not walking around talking on cell phones. They're orderly, because repercussions are harsh. I've had less problems with these guys than when I've hired just normal people."

Further, prisoners will do work that "normal people" won't do, according to Graddick, who put an ad in the local paper offering $8 to $10 an hour for cleanup work and "didn't get a single phone call from somebody looking for a job." Nonetheless, "if a guys walks up, and he's looking to do the work, I'll hire him," Graddick said. Of course, cleanup companies would rather hire prisoners who have little choice about showing up for work or being exposed to toxic oil fumes while on the job.

Nor are officials in Louisiana and Alabama the only ones who recognize the benefits of prisoner labor for oil cleanup. In Dade County, Florida, where no oil has come ashore, county commissioners considered a proposal to use prisoners to "rehabilitate" the shoreline in the event

the spill reaches the Miami area.

It's a dirty job cleaning up BP's oil spill, but apparently prisoners are the ones who have to do it.

Sources: *The Nation, http://blog.al.com, www.cbs4.com, The Daily Mail (UK), DailyKos, www.aolnews.com, New York Times*

Former Orange County Jail Detainee Paid $750,000 to Settle Guard Tasering Suit

In March 2010, Orange County, California paid $750,000 to settle a civil rights suit filed by Matthew Fleuret, a former jail prisoner who alleged he was subjected to excessive force following his arrest in March 2006 on suspicion of obstructing a deputy in the performance of his duties, after Fleuret got into a bar fight on St. Patrick's Day.

Fleuret was never prosecuted, but the incident that gave rise to his lawsuit was videotaped and made public after he sued the county for $47.5 million. The video showed Fleuret being placed in a holding cell, then being held down by at least five guards. Over a period of some 13 minutes, Fleuret's arms were pulled back while he was shocked with a Taser 11 times.

According to internal records from the sheriff's department, Fleuret was intoxicated and uncooperative at the time of the incident. The county did not admit fault when agreeing to the settlement. See: *Fleuret v. County of Orange*, U.S.D.C. (CD Cal.), Case No. 8:07-cv-00803-AG-AN.

Since then, however, the department's policy regarding use of force has changed dramatically, at least according to Assistant Sheriff Tim Board, who attributes the turnaround to the appointment of Sandra Hutchens as Orange County Sheriff in 2008. Hutchens' predecessor, former Sheriff Michael S. Carona, resigned after being indicted on corruption charges; he was later convicted and sentenced to 66 months in federal prison. [See: *PLN*, Feb. 2009, p.1; Nov. 2009, p.38]. During Carona's tenure, two prisoners died after being Tasered while a third was beaten to death by other prisoners within sight of the guards' glass-enclosed booth.

The ACLU has called on the sheriff's department to limit the use of Tasers to situations where there is a threat of death or serious injury.

Additional source: *Los Angeles Times*

Massachusetts: Wrongful Conviction Suit Settled for $3.25 Million

The City of Boston has agreed to pay $3.25 million to settle a lawsuit filed by a man who was wrongfully convicted and imprisoned for 18 years for a series of rapes he did not commit.

Ulysses Charles was convicted in 1984 of raping three women at an apartment complex near the General Dynamics shipyard where he worked as a welder building Navy ships.

His convictions and 80-year sentence were overturned in 2001 after DNA evidence revealed that semen found at the crime scene belonged to two other men. Charles' defense attorneys alleged that police and prosecutors had deliberately withheld exculpatory evidence.

In April 2009, a civil jury found by "clear and convincing" evidence that Charles was innocent of the 1980 rapes and awarded him $500,000 under Massachusetts' wrongful conviction statute.

Charles had a separate federal civil rights lawsuit pending against the Boston Police Department, though, that sought millions of dollars in damages for police misconduct in connection with his wrongful conviction.

In December 2009, the City of Boston agreed to settle the federal suit for $3.25 million. William Sinnott, counsel for the city, said that lawyers for both parties had "engaged in long and thoughtful deliberations," and that both sides were "satisfied" with the settlement.

"There are five victims in this case," said Frank C. Corso, Charles' attorney. "There are the three women who were raped. There is the man who spent 18 years in prison for a crime he did not commit. And there's society, which is paying money and not solving a crime." See: *Charles v. City of Boston*, U.S.D.C. (D. Mass.), Case No. 1:04-cv-10986-NG.

Additional source: *Boston Globe*

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Class Action Certified in California Federal Civil Rights Suit Against TransCor

On February 16, 2010, a California U.S. District Court certified a class action lawsuit against Nashville, Tennessee-based private prison transport company TransCor America for transporting prisoners more than 24 continuous hours without giving them an opportunity to rest overnight in a bed.

The class action suit was brought pursuant to 42 U.S.C. § 1983 and alleged that TransCor subjected prisoners to cruel and unusual punishment during long journeys exceeding 24 hours by keeping them shackled and in a cage while depriving them of access to regular food, water or toilet facilities, and for failing to allow them to sleep overnight in a bunk. The lawsuit also raises claims under California's Tom Bane Civil Rights Act, Cal. Civil Code § 52.1. The plaintiffs filed a motion for class certification, which TransCor opposed.

Accepting as true any substantive allegations made in the complaint, the district court held that the requested class of "all pretrial detainees who were transported by TransCor America, LLC, its agents, or employees, and forced to remain in the transport van for more than 24 hours" was too broad. The court limited the claims to pretrial detainees and prisoners who were transported for more than 24 hours from February 14, 2006 to the present date, even if transferred from one vehicle to another with each individual transport being less than 24 hours, and a subclass for prisoners who were transported by the prison system and TransCor combined for more than 24 hours.

The district court specifically excluded prisoners who were transported earlier than February 14, 2006, but had the legal right to toll their claims due to insanity or their status as minors. The court refused to exclude federal prisoners, but excluded prisoners and pretrial detainees transported on behalf of federal officials because a § 1983 action could not be brought against federal authorities and their agents.

The court found that TransCor had not shown it had an adequate administrative remedy that prisoners were required to exhaust under the Prison Litigation Reform Act, and that one named plaintiff, who was no longer a prisoner when the lawsuit was filed, was not required to exhaust administrative remedies at all.

The district court held that the named plaintiffs showed more than de minimus physical injuries and class members were not required to separately do so. The class met the Federal Rule of Civil Procedure 23(a) requirements of numerosity, commonality, typicality and adequacy. Further, the pendent state claims raised under the Tom Bane Civil Rights Act could be certified as a class action because the Act did not prohibit class actions and the use of handcuffs and shackles on transported prisoners satisfied the Act's "coercion" requirement.

The court thus granted the plaintiffs' motion for class certification and certified the class as described above. Attorneys Andrew C. Schwartz, Karen L. Snell and Mark E. Merin were appointed as class counsel, and the class notification was approved by the court on March 16, 2010. The case remains pending, and *PLN* has published several notices regarding the class certification in this suit. See: *Schilling v. TransCor America*, U.S.D.C. (N.D. Cal.), Case No. 3:08-cv-00941-SI.

Towns Defaulting on Prison and Jail Bonds

by Matt Clarke

Municipal bonds have long been considered a safe investment. However, recent defaults on bonds used to pay for the construction of privately-run prisons and jails have investors worried about losing their capital, and towns worried about their ability to raise money through future bond issues.

As far back as 2005, bonds used to finance the West Alabama Youth Services detention facility went into default. Those bonds, which were originally issued at par and yielded a 7.25% return, are currently trading at 9 cents on the dollar.

However, such defaults were rare until recent years. Driving the current wave of bond defaults are unscrupulous businesses that sold small towns on the idea of building privately-operated jails while overstating the need for jail bed space and the potential revenue stream. Some of these private detention facilities were able to buck the recent trend of reductions in state prisoner populations by switching to immigration detention. However, a speedier deportation process and more stringent standards for immigration facilities have resulted in complications.

For example, the Baker County Development Corporation was created to finance a jail and immigration detention center in north Florida. In 2008, $105 million worth of bonds were issued to finance the facility. The county technically defaulted in August 2010 by using reserves to pay the interest; the bonds dropped to 71.25 cents on the dollar with a yield of 20.73%.

According to Matt Fabian, director of research for Municipal Market Advisors, Baker County as well as Central Falls, Rhode Island and Hardin, Montana have debt troubles due to jail construction that didn't work out as planned.

In 2005, $99 million in bonds was issued at par with a 7.25% yield to pay for the Central Falls Detention Facility. After the bonds entered technical default in 2009, they were trading at 85.3 cents on the dollar and yielding 8.63%.

The Two Rivers Detention Center in Hardin defaulted on $27 million in revenue bonds in May 2008 after the city could not find prisoners to fill its vacant prison. [See: *PLN*, Dec. 2009, p.1].

Further, in April 2010, the Texas panhandle town of Littlefield had to dip into its reserves to cover interest on $1.2 million in debt used to finance the Bill Clayton Detention Center. Following the technical default, Fitch Ratings dropped the town's bond rating from BB to BBB – essentially junk bond status.

According to Littlefield city manager Danny Davis, the city had to cut fire and police services and may raise property taxes in an effort to avoid completely defaulting on its $780,000 annual bond service payments. The city is also exploring selling the jail or having the state take it over. The latter option seems unlikely, as Texas is faced with a huge budget deficit and has cut the state prison system's budget by 5% in FY 2010 with another 10% cut announced for FY 2011.

Littlefield's problems originated in

August 2008 when Idaho prisoner Randall McCullough committed suicide at the Bill Clayton Detention Center, which focused attention on deplorable conditions at the GEO Group-run facility. [See: *PLN*, June 2009, p.1]. GEO lost its contract to house out-of-state prisoners and terminated its operating agreement with the city in 2009, leaving Littlefield with a prison empty of everything except debt. The city is now hoping to contract with Avalon Correctional Services to operate the detention center as an Intermediate Sanction Facility.

Bob Libal, the Texas coordinator of Grassroots Leadership, a non-profit advocacy organization that opposes private prisons, said many small towns agreed to use risky debt to fund "speculative prisons" managed by private companies.

"They go after a lot of towns without a lot of sophistication and resources to do the due diligence," said Libal. "If they let the bonds go under, it is very difficult for them to issue any more debt."

This problem will continue so long as towns look at private prisons as a way to generate revenue and jobs – but perhaps they are simply getting what they deserve for trying to profit off of other people's incarceration and misery.

PLN previously ran a comprehensive article on back-door prison finance through the use of municipal revenue bonds and other types of government securities. [See: *PLN*, Nov. 2008, p.1]. The impact on state and county governments' ability to raise money to build government-run prisons and jails by selling bonds remains unclear since those bonds are backed by the taxing authority of the government. For the past several years there has been a large, ongoing, federal investigation into corruption in the state and municipal bond markets but no indictments have been issued yet.

Sources: *SmartMoney, Lubbock Avalanche-Journal*

$100,000 Settlement in Nebraska Jail Prisoner Suicide Suit

Sheridan County, Nebraska has agreed to pay $100,000 to the estate of a prisoner who committed suicide while at the Sheridan County Jail.

Jay Spotted Elk hung himself with a belt in his cell after being arrested on a misdemeanor charge of failure to appear. Spotted Elk was intoxicated and distraught at the time, and allegedly made numerous suicidal statements to Ray Heath, a sheriff's deputy who took him to jail. Spotted Elk also injured himself while in the patrol car, repeatedly banging his head against the frame of the car, causing a gash in his head.

Heath did not seek medical attention for Spotted Elk's head injury nor did he inform jail staff that Spotted Elk had made suicidal comments, according to the lawsuit filed by Spotted Elk's estate. Levi McKillip, a guard working in the jail's booking area, allegedly did not ask Spotted Elk or Heath about Spotted Elk's head wound. McKillip also failed to remove Spotted Elk's belt before putting him in a "drunk tank."

Spotted Elk's suicide was the fourth at the Sheridan County Jail since 1998. Another eight prisoners from 1998 to 2005 unsuccessfully attempted suicide. The case settled just four days before going to trial.

The terms of the settlement require Sheridan County to institute several policy changes to reduce the incidence of prisoner suicides at the jail. All jail staff are now required to undergo mandatory suicide training. Further, since Native Americans are particularly prone to jail suicide, the settlement requires jail employees to notify tribal suicide prevention staff at the nearby Pine Ridge Oglala and Rosebud reservations whenever a Native American prisoner exhibits suicidal tendencies. The suicide prevention staff, in turn, can then speak with the prisoner via telephone or face to face. The settlement also includes a five-year monitoring period – until 2015 – to ensure compliance with the settlement terms.

Spotted Elk's estate was represented by Maren L. Chaloupka of Chaloupka, Holyoke, Hofmeister, Snyder & Chaloupka, a Scottsbluff, Nebraska law firm. See: *Eastman v. County of Sheridan*, U.S.D.C. (D. Neb.), Case No. 7:07-cv-05004-JFB-TDT.



PLN and HRDC Win Consent Judgment Against Louisiana Sheriff in Censorship Case

On May 18, 2010, Prison Legal News (PLN) and its parent organization, the Human Rights Defense Center (HRDC), won another battle against censorship by prison and jail officials.

In 2009, PLN and HRDC sued Jack A. Stephens, Sheriff of St. Bernard Parish in Louisiana, after staff at the St. Bernard Parish Prison refused to deliver to prisoners issues of *PLN* and *Protecting Your Health and Safety,* a prisoners' rights handbook distributed by PLN. The failure to deliver these publications, PLN and HRDC argued, was a violation of the First Amendment.

Separately, PLN and HRDC contended that the prison's failure to provide PLN with notification of rejected publications violated due process.

PLN and HRDC moved for a preliminary injunction in January 2010, but the district court delayed ruling on the motion while the parties engaged in settlement negotiations. On May 18, 2010, with the assistance and oversight of the court, the parties agreed to resolve PLN and HRDC's requests for injunctive relief through the entry of a consent judgment.

The consent judgment requires St. Bernard Parish to deliver all withheld issues of *PLN* to prisoners. Previously rejected copies of *Protecting Your Health and Safety* must also be delivered.

The sheriff agreed to adopt a new policy related to incoming publications as part of the consent judgment. Under the new policy, a publication will be rejected only if it contains materials that would "threaten security, good order, or discipline of the institution or that may facilitate criminal activity, or are otherwise prohibited by law."

In making this assessment, staff cannot reject a publication "solely because its content is religious, philosophical, political, social, or sexual, or because its content is unpopular or repugnant." Further, a list of banned publications cannot be established.

If a publication is rejected, both the prisoner and sender must receive notification of the rejection and be given an opportunity to file an administrative appeal. The new incoming publications policy is not limited to PLN and HRDC, but applies to all publishers and distributors that send reading material to prisoners at the St. Bernard Parish Prison. In addition to the extensive injunctive relief, the jail also paid $10,000 in damages and $30,418 in attorney fees and costs.

PLN and HRDC were ably represented by New Orleans attorneys Mary E. Howell and Liz Cummings and former HRDC general counsel Dan Manville. See: *Prison Legal News v. Stephens*, U.S.D.C. (E.D. La.), Case No. 2:09-cv-07515-JCZ-SS.

Florida: Cost Savings and Benefits of Prison Privatization Non-Existent

by David M. Reutter

"Florida's experience with privatized prisons raises serious questions about whether the taxpayers are getting their money's worth," concludes an April 2010 policy brief report released by the Florida Center for Fiscal and Economic Policy. The report questions methods used to determine whether private prisons cost less to operate or are more effective at reducing recidivism.

"Between 1989 and 2008, the rate of crime in Florida significantly decreased," the report states. Violent crime dropped by 41%, property crimes by 46% and the total crime index declined by 46%. Yet the number of Florida's prisoners grew 108% in comparison to the average 78% rate of prison population growth nationwide over the same time period.

State policymakers, swayed by the potential to save money and reduce recidivism through prison privatization, allowed private companies to manage correctional facilities in Florida. The authorizing statute requires private prisons to operate at a 7% savings over state-run facilities. See: Florida Statutes § 957.07(1).

By 2008, six of Florida's prisons – Bay, Gadsden, Graceville, Lake City, Moore Haven and South Bay – were operated either by the GEO Group or Corrections Corporation of America (CCA), holding 7,725 state prisoners.

On their face, private prisons appear to save taxpayers money. In 2008, private prisons cost $17,216 annually per prisoner compared to $18,980 per prisoner at state-run facilities.

However, the report notes this is deceptive. Prisoners in public prisons are more costly due to their higher security levels and expensive medical care. Additionally, older public prisons "do not offer the architectural advantages to supervision and custody that the newly constructed privately operated prisons have that lower operational costs."

Florida's oversight of its prison system is unique among states that use private prisons. The Department of Management Services (DMS) handles the procurement process and contract management, which includes a daily on-site presence. To ensure that security standards are maintained, the Florida Department of Corrections conducts random inspections at private prisons. While this dual oversight system can be effective, "in many cases, it causes coordination and accountability problems."

The report found no support for the rationale to use private prisons, as "[t]here is no compelling evidence that the privatization of prisons has actually resulted in [the statutorily required 7%] savings." As to recidivism reduction, "the contracts and contract monitoring are focused on inputs (e.g., inmate program participation requirements) and do not include any provisions to ensure the desired outcomes of reduced recidivism." In fact, several studies have found that prisoners released from private prisons may have higher recidivism rates. [See: *PLN*, Dec. 2009, p.11].

To ensure that taxpayers receive the desired result from prison privatization, the Florida Center for Fiscal and Economic Policy recommended that the Department of Corrections have primary responsibility for procurement and contract management. Private prison firms that bid on state contracts should be required to make their best and final offer rather than being advised of a per diem rate, and bids over the per diem established by the state should be considered non-responsive and rejected.

Additionally, the Office of Program Policy Analysis and Government Account-

ability should conduct studies to determine if the state or a private company can best realize construction and operational savings in newly-built prisons. The Auditor General should conduct annual audits to ensure that the statutorily-required 7% savings actually occur. Finally, the report recommends that the Prison Per-Diem Workgroup meet regularly.

Some issues not addressed in the report include fraud, mismanagement and lack of meaningful oversight of privately-operated prisons. For example, Florida's Office of Program Policy Analysis and Government Accountability issued a report in December 2008 that found the DMS' oversight of private prisons had significant weaknesses. [See: *PLN*, Aug. 2009, p.18].

Further, prior state audits revealed that Florida had overpaid GEO Group and CCA more than $4.5 million for vacant job positions and maintenance that was never performed. [See: *PLN*, Nov. 2007, p.38; June 2007, p.32].

Source: *"Are Florida's Private Prisons Keeping Their Promise?" Policy Brief, Florida Center for Fiscal and Economic Policy (April 2010)*

Tennessee: Private Prison Guards Considered "Public Servants"

Employees of Corrections Corporation of America (CCA), the nation's largest for-profit prison company, are public servants within the meaning of Tennessee's criminal code.

In July 2008, CCA guards David Gilliam and Joe Edward McCown III, who worked at the Hamilton County Workhouse in Chattanooga, were charged with official misconduct and official oppression under T.C.A. §§ 39-16-402 and 39-16-403. However, the trial court granted the guards' motions to dismiss the charges, agreeing that CCA employees were not "public servants" under Tennessee law.

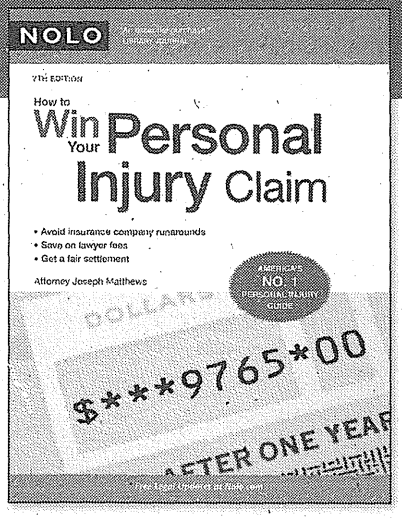
The state appealed and the Court of Criminal Appeals noted that the issue was one of first impression. "The State, citing *Alex Friedmann v. Corrections Corporation of America*, No. M2008-01998-COA-R3-CV (Tenn.Ct.App., Nashville, Sept. 16, 2009), *perm. app. denied* (Tenn. 2010), contends that the defendants are public servants because they are performing a service traditionally entrusted to the government."

The Court of Criminal Appeals found that the state's Private Prison Contracting Act "specifically extends the provisions of Code sections 39-16-402 and -403 to employees of private prison contractors," and that the statute was "unambiguous."

The Court also agreed "with the court of appeals [in *Friedmann*] that by operating a correctional facility, a function traditionally performed by the State, CCA and its employees were engaged in a governmental function." The ruling in *Friedmann* resulted after PLN associate editor Alex Friedmann sued CCA under Tennessee's public records statute. [See: *PLN*, Oct. 2008, p.24].

Therefore, the Court of Criminal Appeals agreed that private prison guards qualified as public servants under Tennessee's criminal code, and reversed the trial court's dismissal of the charges against Gilliam and McCown. See: *State v. Gilliam*, Case No. E2009-01079-CCA-R3-CD (Tenn.Crim.App. 2010), 2010 WL 2670822.

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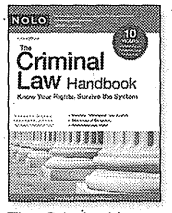
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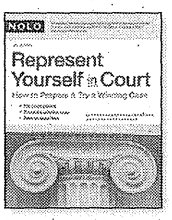
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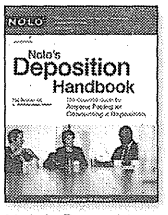
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Texas Audits Private Prison and Substance Abuse Treatment Contract Monitoring

by Matt Clarke

In March 2010, the Texas State Auditor's Office released a report on a performance audit of the Private Facilities Contract Monitoring and Oversight Division (PFCMOD).

The PFCMOD monitors private prisons and private substance abuse treatment programs under contract with the Texas Department of Criminal Justice (TDCJ). Texas has more prisoners in private prisons than any other state. The audited private contractors were responsible for 26,798 prisoners in a variety of settings – including 13 private prisons, 5 private state jails, 4 private Intermediate Sanctions Facilities, 9 private Substance Abuse Felony Punishment Facilities, two In-Prison Therapeutic Communities, a Multiple Program Treatment Facility, 19 private Substance Abuse Treatment Facilities, one In-Prison Driving While Intoxicated Treatment Program, two County Jail Work Release Programs and 8 private halfway houses.

The contracts for those services exceeded $255 million in FY 2009, up from around $235 million in FY 2008. The audit covered the PFCMOD's activities for FY 2008 and 2009.

The Texas Board of Criminal Justice approved the creation of the PFCMOD in 2007. In FY 2009, the PFCMOD had a budget of around $53 million and a staff of 40 contract monitors to oversee 68 contracts with 33 different companies. The 2009 contracts were for a total of 20,722 beds and 6,855 treatment slots.

The state auditors noted a lack of performance standards in some contracts that would make it impossible for the TDCJ to hold companies accountable for non-compliance. The report found that the TDCJ did not consistently include financial reporting requirements in its contracts for substance abuse treatment programs and did not include all of the essential contract provisions required by the State of Texas Contract Management Guide in all of its contracts. The TDCJ also allowed some contractors to conduct their own criminal background checks on their employees without controls to ensure that the checks were properly performed.

The audit noted that responsibility for the private contracts for substance abuse programs was divided between the PFCMOD, the Parole Division and the Rehabilitation Programs Division without clear definitions of the divisions' responsibilities. This caused lapses in oversight functions.

The TDCJ further failed to maintain documentation to justify contract renewals, and some contractors failed to document the qualifications of their employees. The PFCMOD did not document all of its monitoring visits to halfway houses and substance abuse programs.

Additionally, the audit noted some security problems. The TDCJ had no documented policies and procedures for processing contractor payments, which resulted in some payment irregularities and improper payment documentation. Many contractor employees unnecessarily had access to and the ability to change reports that track the arrival, departure and transfer of prisoners. Some former contractor employees continued to have such access, which could compromise the security of the prison system. The PFCMOD was improperly designated as having primary responsibility for managing security and user access to the computerized payment Authorization Management System. This should have been assigned to the Information Technology Division. Also, contractor workers were not required to sign security agreements.

The PFCMOD agreed with the audit's recommendations to correct the identified deficiencies. See: *The Department of Criminal Justice's Oversight of Selected Providers that Deliver Residential Services and Substance Abuse Treatment Programs*, Texas State Auditor Report No. 10-025 (available at www.sao.state.tx.us and on PLN's website).

Short-Lived Class Action Lawsuit Filed Against Global Tel*Link in California, Then Secretly Settled

by Mike Brodheim

Sick and tired of being gouged by high prison phone rates, Nadia Alvarez and Rachel Fishenfeld, two California residents, filed a consumer class action suit against Global Tel*Link (GTL) in August 2010. GTL, a major telecommunications company that contracts with prisons and jails throughout the country to provide phone services, was accused of engaging in unfair business practices in violation of both federal law and California state law.

Alvarez and Fishenfeld sought certification of a class consisting of all United States residents who, within two years of the filing of the suit, paid for GTL's services so they could receive phone calls from someone in a jail or prison. The plaintiffs also sought to certify a subclass of California residents only, consisting of those who paid for GTL's services during the four years prior to the filing of the lawsuit.

The plaintiffs were represented by J. Paul Gignac, a partner at Arias Ozzello & Gignac LLP of Santa Barbara, as well as Steven S. Derelian of Pasadena and Eugene Feldman of Hermosa Beach – counsel with experience in handling class action litigation on behalf of consumers.

In their complaint, Alvarez and Fishenfeld stated that GTL is an "exclusive provider" at the facilities where it operates and thus is "able to exploit its customers by charging them exorbitant, undisclosed per-minute rates (often in excess of $1.00/minute) and excessive service charges." GTL allegedly requires its customers to establish and maintain an advance pay balance that is used to pay for calls made to the customer by someone who is incarcerated, with such calls incurring varying per-minute rates that are not disclosed to the customer.

The suit further claims that GTL fails to inform its customers that they will be charged a service fee of $4.75 for each $25.00 prepayment they make towards an advance pay account. Nor does GTL notify its customers that this service fee will be deducted from their advance pay balance.

GTL is contractually obligated to "validate" the phone number of each call made by a prisoner. It does this, unbeknownst to its customers, by placing a hold or freeze on a portion of the advance pay balance of a customer's account each time they receive a

call from someone who is incarcerated. The amount held or frozen ranges from $14.71 to $21.62, and the hold lasts for 30 to 60 minutes – until the call is "validated."

The hold thus has the effect of reducing the amount of the advance pay balance available to pay for incoming calls and forces GTL customers to make additional pre-payments, even before exhausting an existing advance pay balance, in order to continue to receive phone calls from prisoners.

The lawsuit enumerated five claims for relief, including violations of the Federal Communications Act, 47 U.S.C. § 201, and California's Unfair Competition Law, Business and Professions Code § 17200, et seq. The suit sought damages, restitution, declaratory relief, injunctive relief and other equitable relief.

On January 31, 2011 the parties filed an agreed stipulation dismissing the suit – presumably pursuant to a confidential settlement agreement, though one of the plaintiffs' attorneys declined to comment. The lawsuit had not reached the class certification stage at the time of the stipulated dismissal. See: *Alvarez v. Global Tel*Link Corporation*, U.S.D.C. (C.D. Cal.), Case No. 2:10-cv-06288-RGK-JC.

Kentucky Guards Sentenced to Federal Prison in Detainee Abuse Prosecution

A Kentucky federal court has sentenced five guards from the Fayette County Detention Center (FCDC) who were prosecuted in connection with systematic abuse of prisoners at the facility.

FCDC Sgt. John McQueen, 33, and Cpl. Clarence McCoy, 31, were convicted by a federal jury on May 13, 2010. It was established at trial that they and other FCDC guards had conspired to deprive detainees of their constitutional rights by physically abusing them and by creating false and misleading incident reports to conceal the abuse. The conspiracy charge identified multiple incidents of abuse that occurred between January 1 and October 1, 2006. Other charges described specific incidents of abuse and acts of obstruction of justice. [See: *PLN*, Dec. 2008, p.50].

Before trial, FCDC Lt. Christine Lafoe pleaded guilty to conspiring to obstruct justice; Sgt. Anthony Estep pleaded guilty to a civil rights charge and an obstruction charge for failing to intervene in the abuse; and Cpl. Scott Tyree pleaded guilty to a civil rights conspiracy charge.

"The power granted to correctional officers so that they can perform their critical public safety duties does not give them free reign to abuse the civil and constitutional rights of inmates under their supervision," said U.S. Assistant Attorney General Thomas E. Perez. "Those officers who abuse their power and the public trust in this way will be prosecuted to the fullest extent of the law."

McQueen and McCoy were sentenced in September 2010; both received 120 months in federal prison plus two years' supervised release. Previously, Lafoe received a 12-month sentence and two years' supervised release, Estep was sentenced to 12 months and 1 day plus one year on supervised release, and Tyree received 18 months plus two years' supervised release.

Source: *U.S. Department of Justice press release*

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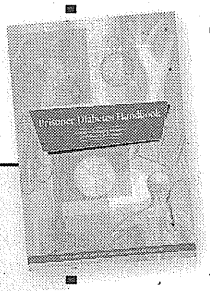
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Ohio Governor Spares Death Row Prisoner, Cites Problems with Evidence

by Derek Gilna

Kevin Keith, 46, on Ohio's death row for murdering two women and a 4-year-old child, and scheduled for execution on September 15, 2010, was spared by Ohio Governor Ted Strickland. In commuting the death penalty portion of Keith's sentence on September 2, Governor Strickland stated, "This case is clearly one in which a full, fair analysis of all of the unanswered questions should be considered by a court."

Commutation was the last resort for Keith, who had exhausted his state court appeals and whose petition was rejected by the U.S. Supreme Court. The Ohio Parole Board had unanimously recommended the denial of Keith's clemency request. Before granting the commutation, Gov. Strickland listened to the appeals of a diverse group of individuals from both political parties, attorneys general, judges and prosecutors, after Keith's attorneys uncovered evidence that they argued cast doubt on his guilt.

Defense lawyers had raised various issues, including that the assault that resulted in the murders Keith was convicted of committing was actually carried out by another man, who said he had been hired for $15,000 to carry out the crime. They also maintained that the police photo lineup was prejudicial because it included a larger picture of Keith than other suspects. No physical evidence connected Keith to the crime; his conviction was based on circumstantial evidence.

In a statement, Gov. Strickland said, "It is my view, after a thorough review of the information and evidence available to me at this time, that it is far more likely that Mr. Keith committed these murders than it is likely that he did not. Yet, despite the evidence supporting his guilt and the substantial legal review of Mr. Keith's conviction, many legitimate questions have been raised regarding the evidence in support of the conviction and the investigation which led to it. ... Under these circumstances, I cannot allow Mr. Keith to be executed."

Keith's attorneys were pleased by the commutation but asked that the governor set him free, stating, "The same compelling reasons that support Governor Strickland's actions today warrant a new, fair trial for Mr. Keith, including the existence of newly discovered evidence withheld by the state, and the development of new science behind eyewitness identification, all of which point to Mr. Keith's innocence."

Keith remains incarcerated, now serving life without parole, while his attorneys consider their strategy to obtain a new trial in an attempt to prove his innocence.

Sources: *New York Times, Columbus Dispatch, www.kevinkeith.org*

U.S. Supreme Court: No Federal Habeas Relief for California Lifer Parole Denials

by John E. Dannenberg

In a unanimous per curiam opinion, the U.S. Supreme Court (USSC) summarily reversed rulings by the Ninth Circuit Court of Appeals in two California parole cases in which the Ninth Circuit had overruled state court denials of habeas corpus relief from challenged parole denials by life-sentenced prisoners ("lifers"), and had invoked authority under 28 U.S.C. § 2254 to grant federal habeas corpus relief.

Damon Cooke had been sentenced to 7 years to life for a 1991 attempted first-degree murder. He was denied parole at his 2002 suitability hearing. Cooke petitioned the state Superior Court, which denied relief when it found "some evidence" to support the Board's denial. His petitions to the California Court of Appeal and California Supreme Court were rejected.

The U.S. District Court denied Cooke's subsequent 28 U.S.C. § 2254 habeas petition but the Ninth Circuit reversed, holding that California's parole statute created a liberty interest protected by the Due Process Clause, and that "California's 'some evidence' requirement" was a "component" of that federally-protected liberty interest. The Ninth Circuit then concluded that the state courts had made an "unreasonable determination of the facts in light of the evidence" under § 2254(d)(2) by finding any evidence that Cooke would pose a threat to public safety if released. See: *Cooke v. Solis*, 606 F.3d 1206 (9th Cir. 2010).

Elijah Clay had been sentenced to 7 years to life for a 1978 first-degree murder. He was granted parole at his 2003 suitability hearing but California's Governor reversed, asserting that evidence in the Board's record supported the reasons for his decision. Clay unsuccessfully petitioned all of the state courts, which denied relief upon finding "some evidence" to support the Governor's denial. The U.S. District Court disagreed, granting Clay's 28 U.S.C. § 2254 habeas petition based on an "unreasonable determination of the facts," and the Ninth Circuit affirmed. See: *Clay v. Kane*, 384 Fed.Appx. 544 (9th Cir. 2010).

The USSC granted certiorari in both cases and consolidated them. The Court observed that the Ninth Circuit had tried to sweep into § 2254's reach the enforcement of a state law-created liberty interest in parole, under the guise that California's "some evidence" state court review standard was "a component" of a state liberty interest that was subject to federal due process protection.

However, the USSC held that the federal courts' review of the state court findings (that there was "some evidence" of lifers' current dangerousness if released on parole), to determine whether such findings were unreasonable in light of the evidence, amounted to a redetermination of the merits of the state court rulings, which is prohibited. "Federal habeas corpus relief does not lie for errors of state law," the Court wrote. Also, "[a] mere error of state law is not a denial of due process."

The USSC agreed that California law does create a liberty interest in parole, much like that found in *Board of Pardons v. Allen*, 482 U.S. 369 (1987) and *Greenholz v. Inmates of Neb. Penal and Correctional*

Complex, 442 U.S. 1 (1979). But in those cases, the USSC held that all that was protected by the Due Process Clause were the procedures used by the state; e.g., the opportunity to be heard, or a statement of reasons why parole was denied. "The Constitution does not require more," the Court said, finding that Cooke and Clay had received more than this minimally-required due process.

Sharpening its criticism of the Ninth Circuit, the USSC wrote, "No opinion of ours supports converting California's "some evidence" rule into a substantive federal requirement." The Court held that "the minimum procedures adequate for due process protection of [California's liberty] interest are those set forth in *Greenholz*." Indeed, the USSC called California's "some evidence" standard "a procedure beyond what the Constitution demands."

The Supreme Court continued, "Because the only federal right at issue is procedural, the relevant inquiry is what process Cooke and Clay received, not whether the state court decided the case correctly. The Ninth Circuit's questionable finding that there was no evidence in the record supporting the parole denials is irrelevant unless there is a federal right at stake, as § 2254 requires."

Voicing its obvious frustration with the Ninth Circuit, the USSC concluded, "The short of the matter is that the responsibility for assuring that the constitutionally adequate procedures governing California's parole system are properly applied rests with the California courts, and is no part of the Ninth Circuit's business." The appellate court's rulings were therefore reversed.

This decision will have a profound impact on the estimated 400-500 California lifer petitions currently pending before U.S. District Courts, the Ninth Circuit and on petition for certiorari before the USSC. See: *Swarthout v. Cooke*, 131 S Ct. 859, 562 U.S. ___ (2011).

$373,000 Settlement in New York City Juvenile Facility "Building Tenders" Suit

by Brandon Sample

Echoing the violence of the Texas prison system during the 1970s where prisoners guarded other prisoners under an abusive practice known as the "building tenders" system, the City of New York has agreed to pay $373,000 to settle a lawsuit involving similar practices at the city's Robert N. Davoren Complex (RNDC).

Using a system known as "The Program," corrupt RNDC guards gave selected juvenile prisoners free reign to exact violence against other prisoners in order to maintain order at the facility. The guards, too lazy to do their jobs, often stood by and watched while prisoners were beaten. [See: *PLN*, Feb. 2010, p.28].

Tyreek Shuford was one such prisoner. In March 2007, Shuford was assaulted by several other prisoners who had been given "authority" to maintain order at RNDC. The attack was unprovoked and guards merely stood by and watched while the assault took place. Shuford asked for medical attention for his injuries, but the guards refused.

Almost a month later, Shuford was assaulted again. Instead of other prisoners, though, it was the guards themselves who attacked Shuford. That violent assault was also unprovoked. Shuford suffered multiple nasal bone fractures, a left orbital fracture, a depressed zygomatic fracture, and multiple cuts and bruises to his face and body.

Shuford brought suit under 42 U.S.C. § 1983, arguing that the defendants used excessive force against him and failed to protect him from assault. Shuford also alleged municipal liability against the city based on a pattern of abuse and violence at RNDC.

In settling the case, New York City agreed to pay Shuford $373,000. Defendant Darlene Sanders, a guard at RNDC, paid Shuford $200. Defendant James Davis, another RNDC guard, agreed to pay $1,500, with the district court entering a judgment to that effect on April 2, 2010. Disciplinary action was taken against both Davis and Sanders.

Shuford was represented by attorneys with the New York law firm of Emery, Celli, Brinckerhoff & Abady LLP, and by the Legal Aid Society. See: *Shuford v. City of New York*, U.S.D.C. (S.D. NY), Case No. 1:09-cv-00945-PKC.

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Disgraced Doctor Good Enough for Texas Prisoners

by Matt Clarke

In 2006, Anita Goodman lost her 31-year-old son Aaron to an overdose of prescription medication as a wave of similar deaths rolled through Harris, Jefferson and Orange Counties in Southeast Texas.

Aaron picked up a prescription drug habit in college and had been fighting his addiction to the narcotic hydrocodone, the anti-depressant Xanax and a muscle relaxant called Soma – the combination of which produces an effect similar to heroin. He had delivered signed statements to pain clinics he frequented stating he was a recovering drug addict and did not want to be prescribed any further medication. However, he relapsed and a Texas pain clinic gave him the drugs that led to his overdose.

Goodman, a nurse, filed formal complaints with the Texas Medical Board and criminal justice authorities. In 2007, Dr. Walid Hamad Hamoudi's pain clinic, which had given Aaron the drugs that resulted in his death, was raided.

In late 2008, the Texas Medical Board held a hearing over multiple allegations of "non-therapeutic prescriptions," inadequate records and misdiagnoses involving ten of Hamoudi's patients. Following secretive mediation, the Board announced its decision on June 4, 2010: Hamoudi could retain his medical license by paying a $5,000 fine, passing an exam, completing 20 hours of training, and limiting his medical practice to the treatment of state prisoners for three years. See: *In the Matter of the Complaint Against Walid Hamad Hamoudi, M.D.*, Texas Medical Board, License No. K-7027.

Ironically, within a few months following the Board's decision, Hamoudi left his job where he treated state prisoners. The reason for his departure was not revealed, but budgetary problems at the time were resulting in the firing of many employees at the University of Texas Medical Branch, which provides health care for the state prison system.

Although the Texas Medical Board disciplined Hamoudi, he was not brought up on criminal charges and still retains his medical license. Goodman's story and advocacy inspired the Texas legislature to pass and the governor to sign legislation creating a pain clinic registry.

"I fault doctors like Walid Hamoudi for prescribing unnecessary and highly addictive drugs in large quantities to people like my son. ... He needs to be held accountable for all the pain and misery he has brought on countless families," Goodman said.

Unfortunately, cases like Hamoudi's are not uncommon in Texas. Doctors who abuse their positions are not sentenced to incarceration in prison, but are sometimes allowed to continue treating state prisoners.

Indeed, when disciplining Hamoudi, the Board found that he had failed "to practice medicine in an acceptable, professional manner consistent with public health and welfare." Apparently, though, his professional manner was consistent with providing medical care to prisoners.

Sources: *Houston Chronicle, Austin American-Statesman*

New Mexico Corrections Secretary Lets Private Prison Firms Skate on Understaffing, Forgoes $18.6 Million in Fines

by Matt Clarke

Former New Mexico Corrections Secretary Joe R. Williams did not pursue contractual penalties against Corrections Corporation of America (CCA) or GEO Group despite chronic understaffing by the two private prison companies, which operate four facilities in New Mexico.

GEO and CCA manage prisons for the New Mexico Corrections Department (NMCD) in Hobbs, Grants, Clayton and Santa Rosa. The original decision to allow private firms to operate state prisons was controversial, and recent revelations that the privately-run facilities are chronically understaffed have reignited the debate over privatization.

The NMCD's contracts call for penalties when staffing vacancies reach 10% for 30 consecutive days. In 2007, the Legislative Finance Committee (LFC), the budget arm of the state legislature, reported 37% understaffing at the Lea County Correctional Facility in Hobbs, angering lawmakers. The staff vacancy rate for July 2010 was 22% at Hobbs and 17%, 14% and 13% at the other privately-operated facilities.

However, Williams declined to seek fines for such contractual noncompliance, instead making excuses for GEO and CCA.

Williams said the private prisons were located in rural areas or small towns where recruiting and retaining staff is difficult. He also claimed the companies were offsetting the vacancies by having their employees work overtime, which was also prevalent in the state prison system. However, whereas the $7.2 million overtime budget for state prison employees from July 2009 through June 2010 was made public, the private prison companies refused to release their overtime figures.

Williams also said CCA and GEO were doing an "outstanding" job. "There have been no escapes. There are no substantial problems," he stated. "If there were a problem, I would be down there penalizing them."

Williams further said he didn't want the companies to rush into hiring more staff. "I would rather run a prison with ten quality correctional officers than a bunch of bad apples introducing contraband," he remarked. "I would rather they be in a penalty phase [of the contract] than they have to meet a contractual obligation" by hiring unqualified staff.

Lawmakers, however, citing the fact that the state was foregoing millions of dollars worth of fines for understaffing at the private prisons, disagreed. State Senator Cisco McSorley wondered "how much penalty money New Mexico taxpayers had lost."

"I think we need to see the magnitude of the payments that haven't been made," added State Senator Peter Wirth. "If we are talking about millions of dollars, then absolutely I am concerned about it fiscally and policy-wise. I can assure you that the private operators wouldn't stand idly by if the state wasn't meeting its contractual obligations."

Williams disagreed. He criticized the idea of trying "to balance the corrections budget through penalties." The state's corrections budget has been cut by $10 million over the past two years.

In a memorandum released in September 2010, the LFC estimated the state had forgone $18.6 million in penalties for understaffing over a four-year period; that is, had Williams enforced penalties against CCA and GEO for failing to meet their contractual obligations, the state may not have had to cut its corrections budget. The $18.6 million estimate was based on salaries the companies did not have to pay due to chronic understaffing.

The LFC also found that the NMCD "does not regularly compile vacancy rates, contractor staff pay rates, contractor vacancy savings or review potential penalty amount in its central office, but should do so immediately." State prison officials "should have been performing this compilation to assist in decision making about whether the Secretary should enforce contractually required staffing patterns and associated penalties, or rationale for why not to enforce agreed upon contractual provisions."

Had fines been imposed on CCA and GEO, that would have served as an incentive for the companies to properly staff their facilities per their contractual obligations. Understaffed prisons are dangerous for both prisoners and employees; excessive overtime can't cure the problem, as it leaves prison staff stressed, tired and inefficient. Further, what is the point of having contractual penalties for noncompliance if they are not enforced?

Williams was replaced as Secretary of Corrections by Lupe Martinez in December 2010 following an administration change. Given his lax oversight of the state's contracts with CCA and GEO, one must wonder if he now plans to again work in the private prison industry. Prior to serving as New Mexico's Secretary of Corrections, Williams was employed as a warden by GEO Group.

Sources: *New Mexico Independent, http://newmexico.watchdog.org, New Mexico Legislative Finance Committee Memorandum (Sept. 7, 2010)*

California Prison Officials Pay $10,000 to Settle Prisoner's Retaliation, Conditions Suit

In April 2010, California state prisoner Charles Chatman accepted an offer of judgment from the defendant prison officials he had sued in federal court for allegedly retaliating against him in violation of the First Amendment because he filed grievances about prison conditions, and for allegedly subjecting him to conditions of confinement violative of the Eighth Amendment. Under the terms of the offer, Chatman received $10,000 and his suit was dismissed with prejudice.

On December 9, 2002, while housed at the California Correctional Institution in Tehachapi, a lock-up order was issued for Chatman and a dozen other prisoners due to their alleged participation in a disturbance three days earlier.

All of the prisoners – except Chatman – received disciplinary reports. Prior to being rehoused in administrative segregation, Chatman, along with the other prisoners, was forced to stand outside for 30 minutes in the wind and freezing temperatures while wearing only boxer shorts. Subsequently, Chatman was housed in a cell that was flooded from a leak in the toilet. He remained in that cell without footwear for 15 days, and became seriously ill.

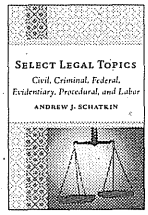
Chatman filed suit in 2003, alleging that the sole reason for his placement in administrative segregation was to retaliate against him for filing grievances and contacting government officials to complain about prison conditions. He further argued that exposing him to freezing temperatures and then placing him in a flooded cell violated his rights under the Eighth Amendment.

The defendants moved for summary judgment. In 2009, the magistrate judge made findings and recommendations, later accepted by the district court judge, requiring at least one defendant to answer each of Chatman's claims. The offer of judgment followed a year later. See: *Chatman v. Tyner*, U.S.D.C. (E.D. Cal.), Case No. 1:03-cv-06636-AWI-SMS.

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BOP's Furlough Notification Policy Not to be Addressed for Seven Years

by Derek Gilna

A September 2010 report by the Office of the Inspector General of the U.S. Department of Justice cast light on deficiencies with the Bureau of Prisons' (BOP) furlough policy, and in doing so inadvertently highlighted the power of the federal prison employees' union to delay changes in BOP policies.

In 2003, the BOP drafted a proposed policy that would have required BOP officials to notify crime victims and witnesses when a prisoner was temporarily released on furlough or transferred to another institution. Seven years later, however, the BOP has yet to implement that policy. Citing the requirements of a collective bargaining agreement with the National Council of Prison Locals, an arm of the American Federation of Government Employees (AFGE), a policy change that could have an effect on conditions of employment for AFGE members must be negotiated.

According to a September 2, 2010 *New York Times* article, "Agency and union officials meet for three days each month to discuss such issues, one at a time and usually in the order in which they were proposed ... the agency now says that it may not be able to fix the [furlough notification policy] problem until 2017 – a time frame called 'excessive and unacceptable' in a new report by the Justice Department's inspector general, Glenn A. Fine."

The Inspector General's report indicated that from 2007 to 2009, the BOP granted non-transfer furloughs to about 2,000 prisoners a year for reasons that included receiving medical treatment, visiting dying relatives, attending funerals, appearing in court, and participating in educational, religious or work-related activities. Only certain security-eligible prisoners were allowed furloughs.

The head of the National Council of Prison Locals, Bryan Lowry, said the delay in developing the furlough notification policy was not the result of any action by the union, pointing out that the BOP could have accelerated the process at any time and "moved it to the front of the line," but never did so. "We would have moved that straight to the top and tried to negotiate that and get it out as soon as possible," Lowry stated.

There was no response to requests for comment from the BOP's press office or other federal prison officials. According to a statement by the Inspector General's office, "There has been excessive delay in implementing the BOP's revised furlough policy, which affects victims' rights and hinders the BOP from addressing weaknesses in the furlough program."

The Inspector General's report "also found that the BOP could not readily provide data associated with furlough-related escapes or information it received about crimes committed by furloughed inmates or inmates who escaped while on furlough," among other deficiencies.

Sources: *"Audit of the Federal Bureau of Prisons' Furlough Program," DOJ Office of the Inspector General Audit Division, Audit Report 10-44; New York Times*

Continuing Violation Doctrine Applies to Deliberate Indifference in New York

The Second Circuit Court of Appeals has held that the continuing violation doctrine applies to a New York prisoner's deliberate indifference claim under the Eighth Amendment.

Jose J. Shomo was confined by the New York City Department of Corrections (NYCDOC) from September 20, 1999 until January 4, 2001. The day Shomo entered custody, he "was diagnosed with right arm paralysis and limited use of his left arm." His treating physicians "ordered that he receive assistance with activities of daily living (ADLs), be transferred to specialized infirmary housing and receive various treatments." However, NYCDOC staff repeatedly ignored those treatment recommendations.

Shomo filed suit in federal court alleging deliberate indifference to his serious medical needs. He also alleged violations of the Americans with Disabilities and Rehabilitation Acts, municipal liability, assault and destruction of property.

The defendants moved to dismiss for failure to file the suit within the three-year statute of limitations under New York law. "While Shomo did not explicitly allege any acts of deliberate indifference within the three-year statute of limitations ..., the district court held that the continuing violation doctrine applied to Shomo's Eighth Amendment claims."

The district court dismissed the complaint with leave to replead claims against doctors Joy Myers, Rameen Seegobin and Shahid Nawaz, based on the continuing violation doctrine. The court dismissed Shomo's claims against all other defendants with prejudice for failure to state a claim. It also held that "Shomo clearly lacks a cause of action under either" the ADA or the Rehabilitation Act.

Shomo filed an amended complaint, but the district court found that the claims against Drs. Nawaz and Seegobin were time-barred, and the claims against Dr. Myers "should be dismissed because 'no facts in the record' showed deliberate indifference to Shomo's serious medical needs." Shomo appealed.

The Second Circuit noted that it had "not before explicitly held that the continuing violation doctrine can delay accrual of an Eighth Amendment claim alleging a policy of deliberate indifference to serious medical needs." The appellate court then agreed with the Seventh Circuit "that the continuing violation doctrine can apply when a prisoner challenges a series of acts that together comprise an Eighth Amendment claim of deliberate indifference to serious medical needs." However, the fact that the doctrine "can apply ... does not mean it must."

Rather, the plaintiff must allege an ongoing policy of deliberate indifference and some non-time-barred acts taken in furtherance of that policy, the Court of Appeals held. "This test screens out Eighth Amendment claims that challenge discrete acts of unconstitutional conduct or that fail to allege acts within the relevant statutory period that are traceable to a policy of deliberate indifference."

The appellate court found that the district court properly applied this test to Shomo's claims and correctly granted him leave to amend his complaint.

The Second Circuit reversed the lower court's dismissal with prejudice of Shomo's claims against supervisory defendants, concluding that he should have been granted leave to replead because "it is possible that Shomo could remedy the inadequacies identified by the district court." The Court of Appeals also concluded that Shomo should be allowed to replead his municipal liability claim because he "could support application of the continuing violation doctrine with allegations that policy-making officials were aware that medical recommendations were deliberately ignored."

The appellate court further found that the district court had erred in dismissing Shomo's ADA and Rehabilitation Act claims, as he "set forth facts that suggest he could have viable claims under the ADA and Rehabilitation Act." The district court was directed to consider the application of the continuing violation doctrine on remand.

The Chief Judge for the Second Circuit wrote a separate concurring opinion "to emphasize that Shomo's claims would be deemed frivolous and suitable for dismissal under any standard but the one we apply to pro se litigants." See: *Shomo v. City of New York*, 579 F.3d 176 (2d Cir. 2009).

Fifth Circuit Holds Texas Parole Revocation Witness Denial Violates Due Process

The Fifth Circuit Court of Appeals has held that the Texas Board of Pardons and Paroles (BPP) failed to comport with the due process requirements of *Morrissey v. Brewer*, 408 U.S. 471, 92 S.Ct. 2593 (1972) when it revoked a parolee for a crime for which he had been acquitted while refusing to let him call several witnesses because they were in jail.

Michael Williams, a Texas state prisoner, was released on parole after serving 21 years of a 99-year sentence. Several months after his release, a woman claiming to be his daughter accused him of assaulting her. Williams said he was fishing with two friends, Samuel Oakley and Allen Nugent, 30 miles from the place of the alleged assault at the time it supposedly occurred. He also said the woman had demanded financial help from him and fabricated the charges when he refused to support her.

Williams was acquitted of the criminal charges, but the BPP revoked his parole based on the alleged assault. During the revocation hearing the hearing officer refused to allow Williams to call several of the witnesses he requested, including Oakley and Nugent, because they were incarcerated – in a jail located in the same building where the hearing took place. The hearing officer told Williams that he didn't have the power to subpoena prisoners.

Williams filed an unsuccessful state habeas action challenging the revocation. He then filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 in federal district court. The court dismissed the petition, and Williams appealed.

The Fifth Circuit held that under Texas law the BPP could subpoena prisoners, which was conceded by the state. The appellate court also held that *Morrissey* requires an "opportunity to be heard in person and to present witness and documentary evidence" at a parole revocation hearing. Thus, Williams was entitled to call his witnesses.

The Court of Appeals rejected the state's contention that short letters submitted by Williams in support of his subpoena request, which described the witnesses' potential testimony, were sufficient to put their testimony before the hearing officer. The appellate court found that such statements were insufficient as substitutes for live testimony as they did not allow for the assessment of credibility.

The Fifth Circuit also rejected the state's claim that prisoners' testimony was "*per se* incredible." Finally, the Court rejected the state's argument that there was no evidence that the witnesses would have actually testified the same way as the letters they signed. That is the reason why live, sworn testimony was required. Further, the case hinged on witness credibility; thus the due process violations had a substantial and injurious effect, and Williams was entitled to relief in the form of a new revocation hearing.

The Fifth Circuit reversed the judgment of the district court and remanded the case for further proceedings. Upon remand the district court provisionally granted the writ of habeas corpus, and ordered that Williams be released from custody if he did not receive a new parole revocation hearing within 180 days that allowed him to call the witnesses who were precluded from his original hearing. See: *Williams v. Quarterman*, 307 Fed.Appx. 790 (5th Cir. 2009) (unpublished).

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Dismissal for Failure to Effect Service Reversed in Florida Failure to Protect Suit

The Eleventh Circuit Court of Appeals has held that as long as a court-appointed agent to serve summons for a prisoner-litigant acting pro se can locate the prison guard-defendant with reasonable effort, prisoner-litigants who provide enough information to identify the prison guard-defendant have established good cause for the failure to effect service within 120 days.

That ruling came in a lawsuit filed by Florida prisoner Larry D. Richardson, who filed a civil rights complaint alleging violation of his Eighth Amendment rights at Charlotte Correctional Institution by assigning him to a cell with another prisoner who was known to be dangerous and who later attacked him, by refusing him medical treatment for 15 hours after the attack, and by denying his numerous grievances and requests.

The district court dismissed the claims against Secretary James McDonough, Mr. Adams, Inspector Laughlin, and Warden Johnson for failure to connect them to the violation. The Eleventh Circuit affirmed that ruling.

At issue was the failure to timely serve summons on guard McNealy. The district court ordered the U.S. Marshals to serve summons on McNealy by having them mailed to guard Shirley Matthew. She informed the Court that she was unable to serve McNealy because there was "no such person at this institution."

The district court dismissed the action against McNealy for Richardson's failure to serve him within 120 days as required by Federal Rule of Civil Procedure 4 (m).

The Eleventh Circuit found that dismissal was an abuse of discretion. Its previous precedent holds that "the failure of the United States Marshal to effectuate service on behalf of an *in forma pauperis* plaintiff through no fault of that plaintiff constitutes 'good cause' for the plaintiff's failure to effect timely service within the meaning of Rule 4 (m)."

The Court, citing *Graham v. Satkoski*, 51 F.3d 710, 713 (7th Cir. 1995), said "that use of marshals to effect service alleviates two concerns that pervade prisoner litigation, state or federal: 1) the security risks inherent in providing the addresses of prison employees to prisoners; and 2) the reality that prisoners often get the 'runaround' when they attempt to obtain information through governmental channels and needless attendant delays in litigating a case result."

The Court held that it is "unreasonable to expect incarcerated and unrepresented prisoner-litigants to provide the current addresses of prison-guard defendants who no longer work at the prison." If the Marshals could have obtained the new address of the prison-guard defendant with reasonable effort, "good cause" is shown. The matter was remanded to determine if McNealy can be located with reasonable effort. In all other respects, the district court was affirmed. See: *Richardson v. Johnson*, 598 F.3d 734 (11th Cir. 2010).

Terminally Ill Maryland Prisoner May Refuse Treatment; State's Highest Court Denies Forced Treatment

by Mark Wilson

The Maryland Court of Appeals held that prison officials cannot force a terminally ill prisoner to undergo kidney dialysis treatment.

In 1995, Troy Reid was sentenced to 40 years in the custody of the Maryland Department of Corrections (DOC). In July 2007, Reid was diagnosed with end-stage renal disease, meaning his "kidneys are no longer able to function or the kidneys completely fail to function, remove waste, or concentrate urine and regulate electrolytes." He also suffers from high blood pressure and human immunodeficiency virus.

Reid required kidney dialysis treatment – "an artificial process to replace the kidney function of removing waste and unwanted water from the blood" – three times per week. He initially consented to dialysis treatment but later chose to terminate all treatment, "even though he understood the medical consequences of ceasing dialysis (serious bodily injury and even death)."

DOC Commissioner J. Michael Stouffer fought to compel life saving treatment for Reid, seeking an injunction from the Baltimore City Circuit Court. The court denied the injunction and the Commissioner appealed to the Court of Special Appeals. The court granted a temporary injunction requiring continuing dialysis pending appeal. The Commissioner then petitioned Maryland's highest court, the Court of Appeals, for a writ of certiorari and for an injunction. The Court denied both requests.

The Court of Special Appeals affirmed the circuit court's denial of an injunction. See: *Stouffer v. Reid*, 184 Md. App. 268, 965 A.2d 96 (2009). The Commissioner sought a second writ of certiorari. The Court of Appeals granted the petition. See: *Stouffer v. Reid*, 409 Md. 44, 972 A.2d 859 (2009).

The Court noted that it had recognized in *Mack v. Mack*, 329 Md. 188, 618 A.2d 744 (1993), that mentally competent adults have a common law right to refuse medical treatment under non-emergency circumstances. It also recognized "that there is considered decisional case law in other jurisdictions holding that a person's right to refuse treatment is" a constitutional right. Yet, *Mack* was decided "under the Maryland common-law right of a competent adult to refuse treatment."

Still, the Court recognized that *Mack* held that the right is not absolute, but rather may be overridden by countervailing state interests. Therefore, the question for the Court was whether the Commissioner presented sufficient evidence of countervailing state interests overriding Reid's decision to refuse treatment. "May the Commissioner of Correction administer life-sustaining medical treatment or nutrition to an inmate over the inmate's objection, where the lack of treatment may cause the inmate's death or serious injury and threaten prison safety, security, and good order?" asked the certiorari petition.

The Commissioner advanced several state interests, including: preservation of life; maintaining prison security, order, and discipline; maintaining the integrity of the medical profession; and interests of third parties and prevention of sui-

cide, each of which had been rejected by the lower courts. The Commissioner's arguments that "preservation of life" is a function of the DOC seems at best ironic and at worst hypocritical given that the only state agency officially vested with committing state murder via the death penalty is the DOC.

After an extensive analysis, the Court rejected the Commissioner's invitation to follow *Polk County Sheriff v. Iowa District Court for Polk County*, 594 NW 2d 421 (Iowa 1999) and *Commissioner of Corrections v. Myers*, 399 NE.2d 452 (Mass 1979) and "conclude that the State's interest in the preservation of life outweighs the inmate's right to refuse medical treatment."

Concerning the State's interest in maintaining prison security and discipline, the Court distinguished *Polk* and *Myers*, finding that "the evidence presented was merely speculative" and "did not persuade the court that correctional officials' conclusions were reasonable and supported by the evidence."

The Court also rejected the Commissioner's "claim that the ethical integrity of the medical profession has been impaired by Reid's refusal to submit to kidney dialysis."

Finally, the Court rejected the Commissioner's "interests of innocent third parties" and "the prevention of suicide." In short, "the Commissioner's non-specific claim of preservation of life, safety and security was insufficient to demonstrate that Reid's refusal of medical treatment would cause a disruption or impact safety in the institution, or endanger the ethics of the medical profession," and "the State has not shown a valid penological interest in compelling Reid to submit to dialysis."

Reid's attorney, Stewart Simms, who is a former Public Safety and Correctional Services Secretary, explains that Reid does not need dialysis. Reid has been advised that his decision is risky, says Simms, but he is prepared to accept the consequences. As this issue of *PLN* goes to press, Reid is alive. See: *Stouffer v. Reid*, 993 A.2d 104 (2010).

Source: *Associated Press*

Iowa Supreme Court Holds Inmate Assault Statute Only Requires Bodily Fluids from Another for Conviction

The Supreme Court of Iowa held that for a prisoner to be convicted of "inmate assault" in violation of Iowa Code § 708.3B (2005), there need only be proof that the prisoner caused a corrections employee to come into contact with another person's blood, seminal fluid, urine or feces. The court rejected the argument that such bodily fluids had to come from the prisoner who was charged with assaulting the employee.

Before the court was the appeal of Jody Nolan McCullah, who was challenging his four-count conviction for assault under § 708.3B. McCullah was at the Polk County Jail on April 20, 2007 when he snuck up behind a jail guard named Harper, striking her on the side of the head. He then began pushing buttons on the control panel in the second floor control room.

An altercation ensued between McCullah and jail guards Harper, Rodish, Bracelin, Purscell and Vandepol. All of the guards except Vandepol were exposed to blood from cuts received by McCallah and Rodish. At trial, the district court denied McCullah's motion for acquittal which argued there was no proof that the blood the guards came into contact with came from him.

The state Supreme Court held that "a conviction under section 708.3B requires proof beyond a reasonable doubt that an employee came into contact with another person's blood, seminal fluid, urine, or feces as a result of an assault by an inmate." Since Harper, Bracelin and Purscell came into contact with another person's bodily fluids – even if was blood from another guard – McCullah's convictions were affirmed.

McCullah's conviction for assault against Rodish, however, was vacated because there was no proof that the blood on Rodish was from anyone other than himself. See: *State of Iowa v. McCullah*, 787 N.W.2d 90 (Iowa 2010).

Second Circuit Holds Costs May be Denied to Prevailing Party on Appeal

The prevailing party on appeal may be denied costs when, in a court's discretion, taxing costs is deemed inequitable, the U.S. Court of Appeals for the Second Circuit held on November 2, 2009.

New York resident Richard Moore sued two Delaware County Deputy Sheriffs following a search of his home that turned up drugs and drug paraphernalia. Criminal charges against Moore were dropped after a state court suppressed the evidence found during the search. Ultimately, the Second Circuit determined that while the deputies had violated Moore's constitutional rights the law was not "clearly established" at the time of the incident, thus entitling the deputies to qualified immunity.

Following another successful appeal by the defendants, the deputies moved for costs pursuant to Rule 39 of the Federal Rules of Appellate Procedure.

Recognizing that "an award of costs to a prevailing party is the norm and not the exception," the Second Circuit held it still had the "discretion to deny costs even if otherwise taxable."

In exercising that discretion the appellate court considered a non-exhaustive list of factors, including "misconduct by a prevailing party, the public importance of the case, the difficulty of the issues presented," and the losing party's "limited financial resources."

In this case, the Second Circuit concluded that "equitable considerations" warranted denying costs to the deputies. The Court pointed to Moore's "meager financial resources" and his "good faith prosecution of [his] claims" as reasons for its decision to deny costs.

Prisoners who lose on appeal and face assessment of costs should use similar reasoning to argue for the denial of a cost award to the defendants. See: *Moore v. The County of Delaware*, 586 F.3d 219 (2d Cir. 2009).

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Ninth Circuit Rules Prisoners Not Required to Include Legal Theories in Grievances

The Ninth Circuit Court of Appeals has held that a prisoner need not use legal terminology nor present legal theories when exhausting administrative remedies before filing a civil rights suit.

Jermaine Donte Griffin, an Arizona state prisoner housed at the Madison Street Jail in Maricopa County, Arizona, filed a civil rights lawsuit pursuant to 42 U.S.C. § 1983 against Sheriff Joe Arpaio and various jail employees alleging deliberate indifference to his serious medical needs.

Griffin claimed he was taking medication that "impaired his vision and depth perception, making it difficult for him to access upper bunks." As a result, he fell from the upper bunk. He "obtained an order for a lower bunk assignment from a prison nurse," but jail employees ignored the order and again assigned him to an upper bunk.

Griffin grieved the upper bunk assignment. Jail officials denied the grievance, noting the nurse's order had resolved the problem. Griffin appealed the denial but failed to mention that the nurse's order was being ignored. He lost the appeal and then filed a civil rights lawsuit.

The district court dismissed the suit, stating that Griffin had failed to exhaust administrative remedies because he had not alleged deliberate indifference to his serious medical needs – the legal basis of his claims – in his grievance. Griffin appealed.

The Ninth Circuit noted that the jail's grievance forms do not require a prisoner to state a legal basis for a grievance; instead, the forms instruct prisoners to give a brief description of the complaint and proposed resolution. In dismissing Griffin's suit, the district court used an Eleventh Circuit standard requiring the inclusion in a grievance of all relevant information about a prisoner's claims.

However, the Second, Fifth, Sixth and Tenth Circuits all use the standard set forth in *Strong v. David*, 297 F.3d 646 (7th Cir. 2002) [*PLN*, Oct. 2003, p.19]. *Strong* held that "when a prison's grievance procedures are silent or incomplete as to factual specificity, 'a grievance suffices if it alerts the prison to the nature of the wrong for which redress is sought.'" This aligns with the Supreme Court's holding "that a prison's own procedures define the contours of proper exhaustion."

The Ninth Circuit adopted the *Strong* standard, holding that a "grievance need not contain every fact necessary to prove each element of an eventual legal claim. The primary purpose of a grievance is to alert the prison to a problem and facilitate its resolution, not to lay groundwork for litigation."

Thus, the district court's reliance on the Eleventh Circuit standard was in error. However, because Griffin failed to provide notice of the jail employees' disregard of the nurse's order, he failed to exhaust administrative remedies because he did not provide enough information to alert jail officials to the nature of his problem. The Ninth Circuit thus affirmed the dismissal of his lawsuit on that alternative basis. See: *Griffin v. Arpaio*, 557 F.3d 1117 (9th Cir. 2009).

Second Circuit Reverses Denial of RLUIPA Dietary Claim

The Second Circuit Court of Appeals reversed a district court's dismissal of the religious diet claims of two New York prisoners who practiced a religious faith called "Tulukeesh."

In 2003, New York prisoner Tyheem Keesh sought permission to practice his religion, Tulukeesh. Prison officials said he could practice in his cell. He then informed the chaplain "that the dictates of Tulukeesh were set forth in the book 'Holy Blackness,' which imposed various dietary obligations .... Tulukeesh also requires ... members to engage in sparring, and prohibits them from appearing nude in front of non-members."

Pursuant to DOC Directive 4202, prison officials prohibited Keesh from practicing in a group setting. He protested, claiming that the ban on group services violated the rules of "Holy Blackness" and deprived him of the right to practice his religion. Keesh was allowed to eat a "religious alternative" diet, which included "non-red-meat and non-pork-based meals."

Fellow prisoner Jesus Jova also "requested to change his religious designation to Tulukeesh, and demanded that the Defendants accommodate his practice ... in the same manner as Keesh ...."

Between January and July 2004, Keesh and Jova wrote letters and filed grievances concerning the denial of their religious practices by prison officials. They also alleged that they were subjected to retaliation.

In July 2004, prison officials searched their cells and "confiscated copies of 'Holy Blackness' and materials showing that Keesh, seeking to distribute the book, had contacted a self-publishing company." Both prisoners were disciplined for violating rules that prohibited contraband, unauthorized organization, solicitation of goods, practicing martial arts and sparring. Keesh was told that Directive 4202 prohibits proselytizing, and that "his actions were tantamount to proselytization."

Keesh and Jova continued to file grievances and request the return of their copies of "Holy Blackness." After another cell search, Keesh again alleged retaliation.

Prison officials refused to return "Holy Blackness," deciding that "the book would remain with the prison chaplain and Keesh, Jova, and any other adherent [to Tulukeesh] could seek permission to read it."

Keesh and Jova again claimed "that the tenets of Tulukeesh required that they eat only a complex, highly regimented non-soybean-based vegan diet, and that, because the Defendants had not provided one, they continued to experience health problems."

Jova and Keesh sued in federal court alleging several violations of their rights under the Constitution and the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. § 2000cc, et seq. The district court granted summary judgment to the defendants on all claims. On appeal, the Second Circuit reversed as to the plaintiffs' RLUIPA dietary claims.

The appellate court first found that Jova and Keesh were not provided the proper summary judgment notice, but that such error was harmless because "the record indicates that Plaintiffs were fully

aware of the requirements of summary judgment."

The Court of Appeals concluded "that the majority of Defendants' practices satisfy the 'least restrictive means' standard" of RLUIPA. "Directive 4202 strikes a delicate balance between respecting inmates' demands to participate in congregational activities while ensuring that those meetings do not serve as proxies for gang recruitment or organization." The denial of the "demand to spar and receive professional martial arts training is the least restrictive means of furthering Defendants' compelling interests of safety and institutional security," the Court continued.

The Second Circuit found, however, that "Plaintiffs' dietary demands present a more complex issue." Since "the record fails to show that the religious alternative menu ... is the least restrictive means of furthering the Defendants' compelling interests," the appellate court determined that "the district court's grant of summary judgment to the Defendants as to this issue was incorrect." See: *Jova v. Smith*, 582 F.3d 410 (2d Cir. 2009), *cert. denied*.

North Carolina Prisoner Prevails in Claim Related to Paruresis, AKA "Shy Bladder"

The North Carolina Department of Correction (NDOC) has agreed to settle a prisoner's lawsuit that accused NDOC officials and guards of exhibiting deliberate indifference to his medical diagnosis of "paruresis." The settlement includes a monetary payment, attorney fees, and a guarantee of accommodating the prisoner's condition during the remainder of his incarceration.

While at Scotland Correctional Institution (SCI), prisoner Johnny Ollis was diagnosed with paruresis, also known as "shy bladder," which is when "the sufferer is unable to urinate in the real or imaginary presence of others." Due to this diagnosis, SCI guards were ordered to accommodate Ollis' medical condition during drug testing procedures by allowing him to use a dry cell to produce a urine sample.

Things went downhill when Ollis was subsequently transferred to Marion Correctional Institution (MCI). There, guards ignored Ollis' requests to produce a urine sample in a single cell, and "even threatened him with punishment" if he could not provide a sample on demand.

The failure of MCI guards to accommodate Ollis' paruresis "caused pain in his bladder by straining to produce a urine sample. This mental and physical state would last for the duration of the drug test (two hours) and would not subside until hours after Plaintiff returned to his cell," wrote Ollis' attorney, Mindy L. Vervais. "The two hours of abuse while trying to submit to a drug test, and the hours it would take Plaintiff to calm down following the test, did not occur just once, but on four (4) separate occasions while Plaintiff was incarcerated at Marion."

This conduct occurred despite "a court order, a warning from the Attorney General's office, doctors' orders, and Plaintiff's own pleas for accommodation" of his medical condition. To receive accommodation while at Nash Correctional Institution, Ollis intentionally disobeyed guards' orders so he could be placed in segregation where he would have a private toilet.

In a settlement reached on January 7, 2010, Ollis agreed to voluntarily dismiss his civil rights action. The NDOC agreed to pay Ollis $10,000 plus $5,000 in attorney fees, amend its "Prisons Drug Testing Policy" to allow two hours in a private cell when a prisoner has paruresis, and ensure that Ollis is housed in a single cell except in emergency situations. See: *Ollis v. Byrd*, U.S.D.C. (W.D. NC), Case No. 1:08-cv-00549-GCM.

Wisconsin Civil Commitment Patients Denied Minimum Wage

The Wisconsin Court of Appeals held on March 31, 2010 that civilly committed patients are not entitled to minimum wage for the work they perform.

Hung Nam Tran and Eric L. Fankhauser are civilly committed patients confined at the Wisconsin Resource Center (WRC) as "sexually violent persons" pursuant to Wisc. Stat., ch. 980.

In 2005, it was WRC policy to compensate patients for the work they performed, "consistent with current Federal Minimum Wage" (FLSA) laws. Following a January 31, 2007 memorandum, however, WRC Warden Thomas Speech reduced the WRC patient wage rates to below minimum wage, effective March 4, 2007.

On October 26, 2007, Tran and Fankhauser challenged the new pay policy by filing a petition for a writ of certiorari in state court. On April 21, 2009, the trial court issued an order quashing the writ and dismissing their petition.

The Wisconsin Court of Appeals affirmed. Noting that the Seventh Circuit had resolved the same issue in *Sanders v. Hayden*, 544 F.3d 812 (7th Cir. 2008), the court agreed "with the Seventh Circuit: persons civilly committed because they were sexually violent are not covered by the FLSA." The Seventh Circuit had noted in *Hayden* that "The reason the FLSA contains no express exception for prisoners is probably that the idea was too outlandish to occur to anyone when the legislation was under consideration by Congress," citing *Bennett v. Frank*, 395 F.3d 409 (7th Cir. 2005) [*PLN*, April 2006, p.40].

Additionally, the appellate court found the legislative history of Wisconsin's statutes defeated the plaintiffs' arguments, and "Tran and Fankhauser point to nothing that demonstrates that Warden Speech could not act in his capacity as warden to change policy and procedure." Finally, the court denied the plaintiffs' substantive due process claim, concluding that they failed to establish the deprivation of a protected liberty or property interest. See: *State of Wisconsin ex rel Hung Nam Tran and Eric L. Fankhauser v. Speech*, 324 Wis.2d 567, 782 N.W.2d 106 (Wis.App. 2010).

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News in Brief:

Arizona: Corrections Corp. of America officials announced on December 24, 2010 that they had identified 43 prisoners who were involved in a riot a day earlier at CCA's Red Rock Correctional Facility near Eloy. The prisoners, all from California, were placed in administrative segregation pending an investigation. Ten prisoners were injured during the riot and seven were taken to outside hospitals for medical treatment. CCA employees used pepper spray to regain control during the disturbance; no staff members were injured.

California: Former San Diego jail guard Matthew Gutierrez, 34, who worked at the Metropolitan Correctional Center, was sentenced on January 18, 2011 to 15 months in federal prison. Gutierrez had arranged to purchase around 11 ounces of cocaine from a confidential informant. He had pleaded guilty to the charge last November.

California: On January 24, 2011, about 1,000 prisoners at the California Men's Colony protested prison policies by refusing to eat meals served at the facility. Reportedly, 90% of the prisoners in a housing unit refused to go to the chow hall to eat, though they were still buying food from the prison commissary. The policies that led to the peaceful no-meals protest included the implementation of "rolling lockdowns," where prisoners are confined to their cells for 8 hours every other day, and visitation policies. The rolling lockdowns resulted from a statewide effort to reduce prison staff overtime costs due to California's budget crisis.

Florida: A federal prison guard employed at the Coleman Federal Correctional Complex in Sumter County was jailed in January 2011 after thousands of child porn images and videos were found on his home computer. Ronnie Young, 43, was charged with 50 counts of possession of child pornography with intent to distribute after detectives traced child porn file transfers to his IP address. Young was held at the Marion County Jail on $500,000 bond.

Florida: In January 2011, federal prisoner Wo 'Se Piankhi-Shabaka was killed by another prisoner in the USP II at the Coleman Federal Correctional Complex. Piankhi-Shabaka was serving a life sentence; the other prisoner accused of murdering him was not identified. The facility was placed on lockdown while the FBI investigated the incident. This was the second death in a month at the federal prison; prisoner Miguel Jimenez was stabbed to death in the recreation yard of USP I at Coleman on December 18, 2010.

Illinois: Franesiour B. Kemache-Webster, incarcerated at the federal prison in Marion, has been accused of using the Bureau of Prisons' email system for prisoners, known as TRULINCS, to have inappropriate conversations with an underage girl. Kemache-Webster, 50, used emails to share sexually-oriented messages with the girl and said he planned to impregnate her after he was released. Emails sent via TRULINCS are monitored by prison staff, and Kemache-Webster was indicted in September 2010 on a felony charge of enticement of a minor to engage in sexual activity. He also was prohibited from contacting the girl after he reportedly "threatened her with harm" if she did not deny the allegations in the indictment.

Indiana: When Dontas R. Marshall, 41, reported to jail after he was sentenced to 10 years for possession of cocaine, he brought something with him to make his time behind bars more bearable. Guards found 15 marijuana joints sewn into Marshall's underwear when he turned himself in at the Clark County Jail on January 5, 2011. "He checked in here to serve a sentence, so he knew he was going to be here for a while," said Clark County Sheriff Danny Rodden. Marshall now faces new charges of felony trafficking and misdemeanor marijuana possession.

Indiana: On January 27, 2011, Wayne County jail guard Steven M. Frame, 31, was jailed on felony charges of sexual misconduct and official misconduct, stemming from claims that he had sex with two female prisoners in August and September 2010. Frame, who worked third shift, allegedly entered a cell shared by the prisoners and had sex with them; he also allegedly asked them to flash their breasts while he was making rounds at the jail. One of the prisoners said the sex acts were in exchange for Frame bringing in contraband, though he did not do so. The two female prisoners later informed transport guards about the sexual encounters when they were being transferred to another facility. Frame, the son of Wayne County Chief Deputy Mike Frame, was released on $10,000 bond.

Kentucky: The arrest of Antoine Banks in February 2011 explains why some guards inspect prisoners' foreskins during strip searches. Banks was found with a small bag of suspected cocaine in his underwear during a pat-down search following his arrest on drug charges. A subsequent strip search revealed another small bag of crack cocaine hidden in his foreskin. Banks is now facing additional charges of trafficking a controlled substance and promoting contraband.

Maryland: Hannah Wheeling, 65, a teacher at the Cheltenham Youth Facility in Prince George's County, was found dead at the juvenile detention center in February 2010. She had been choked, beaten and sexually assaulted. According to a 27-page report by the Maryland Juvenile Justice Monitoring Unit released in October 2010, "multiple systemic security failures" resulted in Wheeling's death. The report cited confusing policies, lack of security equipment, chronic staffing shortages and fatigue among overworked employees as contributing factors to "a dangerous environment" at Cheltenham. Two employees were fired, two were suspended, one administrator was demoted and other staff members were reprimanded. A 13-year-old boy held at the facility has been charged with homicide and attempted rape in connection with Wheeling's murder.

Mexico: Continuing a trend of deadly incidents in Mexican prisons, 11 prisoners were killed during a riot at a facility in the city of Gomez Palacio in Durango on January 11, 2011. Also, according to news reports, two attorneys who worked at the prison were found shot to death, though it was unclear if the incidents were related. Mexico's prisons are severely overcrowded due to a government crackdown on drug cartels, which had led to high levels of violence.

Montana: On January 28, 2011, Cascade County detention officer Steven Patrick was arrested on a felony charge of using excessive force on a prisoner. "It's one incident where it's alleged that he assaulted an inmate," stated Sheriff's Office Commander Dan O'Fallon. Patrick is accused of punching prisoner William Anderson in the face in November 2010. Anderson allegedly spat on Patrick, which precipitated the punching incident. It reportedly took five guards and a stun gun to subdue Anderson, who was described as "unruly."

Montana: A former Aramark contract employee at the Cascade County Detention Center pleaded not guilty on January 27, 2011 to charges that she had sex with a prisoner. Rebecca Rose

Pfeifle, 44, admitted to having five sexual encounters with an unidentified prisoner when she was employed as an Aramark food service worker at the jail. Pfeifle is scheduled to go to trial on the felony charges in May 2011.

Netherlands: Bas Martens, a Dutch attorney, filed an appeal to keep his client out of jail by claiming he is too large to be incarcerated. "He is a giant of a man, there's no way you cannot realize that as soon as you see him," Martens stated. His client, identified as Angelo MacD, was described as being 6'9" and weighing 500 lbs. – too big for his prison cell, where he is serving an 18-month sentence for fraud. Martens sought to have his client placed on house arrest with electronic monitoring, arguing that keeping him in prison violates European human rights laws. A Dutch court rejected Martens' request in February 2011, noting that while prison conditions may be "somewhat cramped" for Angelo, they were not inhumane.

New York: On January 12, 2011, state prison guard Joshua Davison, 25, was charged with five counts of endangering the welfare of a child for trying to lure underage girls into his vehicle. Davison is accused of stopping seven girls, ages 13 to 17, and inquiring if they needed a ride; he asked at least one of them for sex. Davison worked at the Great Meadow Correctional Facility and was reportedly wearing his prison uniform when he accosted the girls.

New York: Tony Simmons, 47, convicted of sexually abusing teens at a New York City courthouse when he was a juvenile justice worker, was sentenced to four years in prison on February 1, 2011. Simmons was found guilty in January 2011 of having sexual encounters with two teenage girls in the Manhattan Family Court building; he was acquitted of raping another girl. The victims, juvenile offenders, were 15 and 16 years old. The court had initially approved a deal where Simmons would plead guilty and get probation, but rescinded the plea bargain due to opposition from the district attorney and women's rights groups.

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News in Brief (cont.)

Oregon: Amanda M. Colmenero, 22, was found unconscious in a holding cell at the Coos County Jail on September 21, 2010. She was transported to a local hospital where two containers of a substance believed to be methamphetamine were found in her vagina. One of the containers had apparently ruptured, leading to an overdose. Colmenero was hospitalized in critical condition.

Pennsylvania: On January 20, 2011 the Third Circuit Court of Appeals ruled against prisoner Daniel Goodson, who had appealed the dismissal of his lawsuit against Kim, Kourtney and Khloe Kardashian, socialites and T.V. personalities. Goodson had claimed that the behavior of the Kardashian sisters in their shows "Keeping Up with the Kardashians" and "Kourtney & Khloe Take Miami" caused him "extreme emotional distress." However, the appellate court held that the Kardashians' conduct was "simply not sufficiently outrageous" to support Goodson's claims of negligence and intentional infliction of emotional distress.

United Kingdom: In January 2011, three prison guards at HMP Downview, a women's facility in Surrey, were charged with having sex with nine prisoners between 2006 and 2010. Guards Russell Thorne, Simon Dykes and Christopher Bevan pleaded not guilty to charges of misconduct in public office. They were suspended from duty, and are scheduled to go to trial in June 2011. The Guildford Crown Court suppressed the names of the prisoners whom the guards are accused of victimizing.

Utah: According to an online booking record, complete with photo, the cartoon character Yogi Bear was busted in Provo, Utah on February 22, 2011. The fictional bear was apparently arrested on charges that included fishing without a license and an immigration offense. The arrest record and mug shot of Yogi were the result of a training or testing exercise involving the online booking site maintained by the Utah County Sheriff's Office. The previous week, the Escambia County Sheriff's Office in Florida had posted a mugshot of a KFC doubledown sandwich on its booking page, with a description of "Dummy Inmate" – also apparently for testing purposes.

Other Resources

ACLU National Prison Project

Handles state and federal conditions of confinement claims affecting large numbers of prisoners, as well as sexual assaults against prisoners. Publishes the bi-annual NPP Journal and the online Prisoners' Assistance Directory. Contact: ACLU NPP, 915 15th St. NW, 7th Fl., Washington, DC 20005 (202) 393-4930. www.aclu.org/prisons

Amnesty International

Compiles information about prisoner torture, beatings, rape, etc. to include in reports about U.S. prison conditions; also works on death penalty issues. Contact: Amnesty International, 5 Penn Plaza, New York NY 10001 (212) 807-8400. www.amnestyusa.org

Center for Health Justice

Formerly CorrectHELP. Provides information related to HIV – contact them if you are not receiving proper HIV medication or are denied access to programs due to HIV status. Contact: CHJ, 8235 Santa Monica Blvd. #214, West Hollywood, CA 90046. HIV Hotline: (323) 822-3838 (collect calls from prisoners OK). www.healthjustice.net

Children of Incarcerated Parents

Works to stop intergenerational incarceration. Provides resources in three areas: education, family reunification, and services for incarcerated parents and their children. Contact: CCIP, P.O. Box 41-286, Eagle Rock, CA 90041 (626) 449-2470. www.e-ccip.org

Critical Resistance

Seeks to build an international movement to abolish the Prison Industrial Complex, with offices in California, New York and New Orleans. 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-gram

Quarterly magazine of FAMM (Families Against Mandatory Minimums), which includes info about injustices resulting from mandatory minimum laws with an emphasis on federal laws. $10 yr for prisoners. Contact: FAMM, 1612 K Street NW #700, Washington, DC 20006 (202) 822-6700). www.famm.org

The Fortune Society

Provides post-release services and programs for prisoners in the New York City area and publishes Fortune News, a free publication for prisoners that deals with criminal justice issues. Contact: The Fortune Society, 29-76 Northern Blvd., Long Island City, NY 11101 (212) 691-7554. www.fortunesociety.org

Innocence Project

Provides advocacy for wrongly convicted prisoners whose cases involve DNA evidence and are at the post-conviction appeal stage. Maintains an online list of state-by-state innocence projects. Contact: Innocence Project, 100 Fifth Avenue, 3rd Fl., New York, NY 10011 (212) 364-5340. www.innocenceproject.org

Just Detention International (formerly Stop Prisoner Rape)

Seeks to end sexual violence against prisoners. Provides counseling resources for imprisoned and released rape survivors and activists for almost every state. Specify state with request. Contact: Stop Prisoner Rape, 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 at www.justicedenied.org, and includes all back issues of the Justice Denied magazine and a database of more than 3,000 wrongly convicted people. Contact: Justice Denied, P.O. Box 68911, Seattle, WA 98168.

National CURE

Citizens United for Rehabilitation of Errants (CURE) is a national organization with state and special interest chapters that advocates for rehabilitative opportunities for prisoners and less reliance on incarceration. Publishes the CURE Newsletter. Contact: CURE, P.O. Box 2310, National Capitol Station, Washington, DC 20013 (202) 789-2126. www.curenational.org

November Coalition

Publishes the Razor Wire newsletter four times a year, which reports on drug war-related issues, releasing prisoners of the drug war, and restoring civil rights. Yr sub: $6 for prisoners, $25 all others. Contact: November Coalition, 282 West Astor, Colville, WA 99114 (509) 684-1550. www.november.org

Partnership for Safety and Justice

Publishes Justice Matters, a quarterly newsletter that reports on criminal justice issues in OR, WA, ID, MT, UT, NV and WY. $7 yr prisoner, $15 all others. Contact: PSJ, P.O. Box 40085, Portland, OR 97240 (503) 335-8449. www.safetyandjustice.org

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With Liberty for Some: 500 Years of Imprisonment in America, by Scott Christianson, Northeastern University Press, 372 pages. **$18.95**. The best overall history of the American prison system from 1492 through the 20th Century. A must-read for understanding how little things have changed in U.S. prisons over hundreds of years. 1026

Prison Nation: The Warehousing of America's Poor, edited by Tara Herivel and Paul Wright, 332 pages. **$35.95**. PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. 1041

The Celling of America, An Inside Look at the U.S. Prison Industry, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. **$22.95**. PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. 1001

Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, PLN Publishing, 221 pages. **$49.95**. Written by Missouri prisoner Jon Marc Taylor, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, paralegal and college correspondence courses. 1057

The Criminal Law Handbook: Know Your Rights, Survive the System, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 608 pages. **$39.99**. Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy to understand question-and-answer format. 1038

Represent Yourself in Court: How to Prepare & Try a Winning Case, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 528 pages. **$39.99**. Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. The authors explain what to say in court, how to say it, etc. 1037

Law Dictionary, Random House Webster's, 525 pages. **$19.95**. Comprehensive up-to-date law dictionary explains more than 8,500 legal terms. Covers civil, criminal, commercial and international law. 1036

The Blue Book of Grammar and Punctuation, by Jane Straus, 110 pages. **$14.95**. A guide to grammar and punctuation by an educator with experience teaching English to prisoners. 1046

Legal Research: How to Find and Understand the Law, by Stephen Elias and Susan Levinkind, 568 pages. **$49.99**. Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, etc. Includes practice exercises. 1059

Deposition Handbook, by Paul Bergman and Albert Moore, Nolo Press, 352 pages. **$34.99**. How-to handbook for anyone who conducts a deposition or is going to be deposed. 1054

Finding the Right Lawyer, by Jay Foonberg, ABA, 256 pages. **$19.95**. Explains how to determine your legal needs, how to evaluate a lawyer's qualifications, fee payments, and more. 1015

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Protecting Your Health and Safety, by Robert E. Toone, Southern Poverty Law Center, 325 pages. **$10.00**. This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how to enforce your rights, including through litigation. 1060

Spanish-English/English-Spanish Dictionary, Random House. **$8.95**. Two sections, Spanish-English and English-Spanish. 60,000+ entries from A to Z; includes Western Hemisphere usage. 1034

Writing to Win: The Legal Writer, by Steven D. Stark, Broadway Books/Random House, 283 pages. **$19.95**. Explains the writing of effective complaints, responses, briefs, motions and other legal papers. 1035

Actual Innocence: When Justice Goes Wrong and How to Make it Right, updated paperback ed., by Barry Scheck, Peter Neufeld and Jim Dwyer; 403 pages. **$16.00**. Describes how criminal defendants are wrongly convicted. Explains DNA testing and how it works to free the innocent. Devastating critique of police and prosecutorial misconduct. 1030

Webster's English Dictionary, Newly revised and updated, Random House. **$8.95**. 75,000+ entries. Includes tips on writing and word usage, and has updated geographical and biographical entries. Includes recent business and computer terms. 1033

Everyday Letters for Busy People, by Debra Hart May, 287 pages. **$18.99**. Hundreds of sample letters that can be adapted for most any purpose, including letters to government agencies and officials. Has numerous tips for writing effective letters. 1048

Roget's Thesaurus, 717 pages. **$8.95**. Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. 1045

Starting Out! The Complete Re-Entry Handbook, edited by William H. Foster, Ph.D. & Carl E. Horn, Ph.D., Starting Out Inc., 446 pages. **$22.95**. Complete do-it-yourself re-entry manual and workbook for prisoners who want to develop their own re-entry plan to increase their chances of success after they are released. Includes a variety of resources, including a user code to the Starting Out website. 1074

Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A., by Mumia Abu Jamal, City Lights Publishers, 280 pages. **$16.95**. In *Jailhouse Lawyers*, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned-advocates who have learned to use the court system to represent other prisoners. 1073

Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It, by Terry Kupers, Jossey-Bass, 245 pages. ***Hardback only; prisoners please include any required authorization form.*** **$32.95**. Psychiatrist writes about the mental health crisis in U.S. prisons and jails. Covers all aspects of mental illness, prison rape, negative effects of long-term isolation in control units, and more. 1003

The Habeas Citebook: Ineffective Assistance of Counsel, by Brandon Sample, PLN Publishing, 200 pgs. **$49.95**. This is PLN's second published book, which covers ineffective assistance of counsel issues in federal habeas petitions. Hundreds of case cites! 1078

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Hepatitis and Liver Disease: What You Need to Know, by Melissa Palmer, MD, 457 pages. **$17.95**. Describes symptoms & treatments of hepatitis B & C and other liver diseases. Includes medications to avoid, what diet to follow, exercises to perform, and a bibliography. 1031 ☐

Crime and Punishment In America, by Elliott Currie, 230 pages. **$16.95**. Effective rebuttal to right-wing proponents of prison building. Fact-based argument shows that crime is driven by poverty. Debunks prison myths and discusses proven, effective means of crime prevention. 1019 ☐

Prison Writing in 20th Century America, by H. Bruce Franklin, Penguin Books, 368 pages. **$16.00**. From Jack London, Malcolm X and Jack Henry Abbott to George Jackson and Edward Bunker, this anthology provides a selection of some of the best writing describing life behind bars in America, from those who have been there. 1022 ☐

Soledad Brother: The Prison Letters of George Jackson, by George Jackson, Lawrence Hill Books, 339 pages. **$18.95**. Lucid explanation of the politics of prison by a well-known prison activist. More relevant now than when it first appeared 40 years ago. 1016 ☐

Marijuana Law, by Richard Boire, Ronin, 271 pages. **$17.95**. Examines how to reduce the probability of arrest and prosecution for people accused of the use, sale or possession of marijuana. Info on legal defenses, search & seizures, surveillance, asset forfeiture and drug testing. 1008 ☐

Prisoners' Self-Help Litigation Manual, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 960 pages. **$39.95**. The premiere, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. Highly recommended! 1077 ☐

Ten Men Dead: The Story of the 1981 Irish Hunger Strike, by David Beresford, Atlantic Monthly Press, 334 pages. **$16.95**. Story of IRA prisoners at Belfast's Long Kesh prison. 1006 ☐

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Lockdown America: Police and Prisons in the Age of Crisis, by Christian Parenti, 290 pages. **$19.00**. Analyzes the war on the poor via the criminal justice system. Well documented and has first-hand reporting. Covers prisons, paramilitary policing, SWAT teams and the INS. 1002 ☐

The Prison and the Gallows: The Politics of Mass Incarceration in America, by Marie Gottschalk, Cambridge University Press, 451 pages. **$28.99**. Great political analysis of the confluence of events leading to 2.3 million people behind bars in the U.S. 1069 ☐

Women Behind Bars, The Crisis of Women in the U.S. Prison System, by Silja J.A. Talvi, Seal Press, 295 pages. **$15.95**. Best book available that covers issues related to imprisoned women, based on interviews with hundreds of women behind bars. 1066 ☐

How to Win Your Personal Injury Claim, by Atty. Joseph Matthews, 7th edition, NOLO Press, 304 pages. **$34.99**. While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents. 1075 ☐

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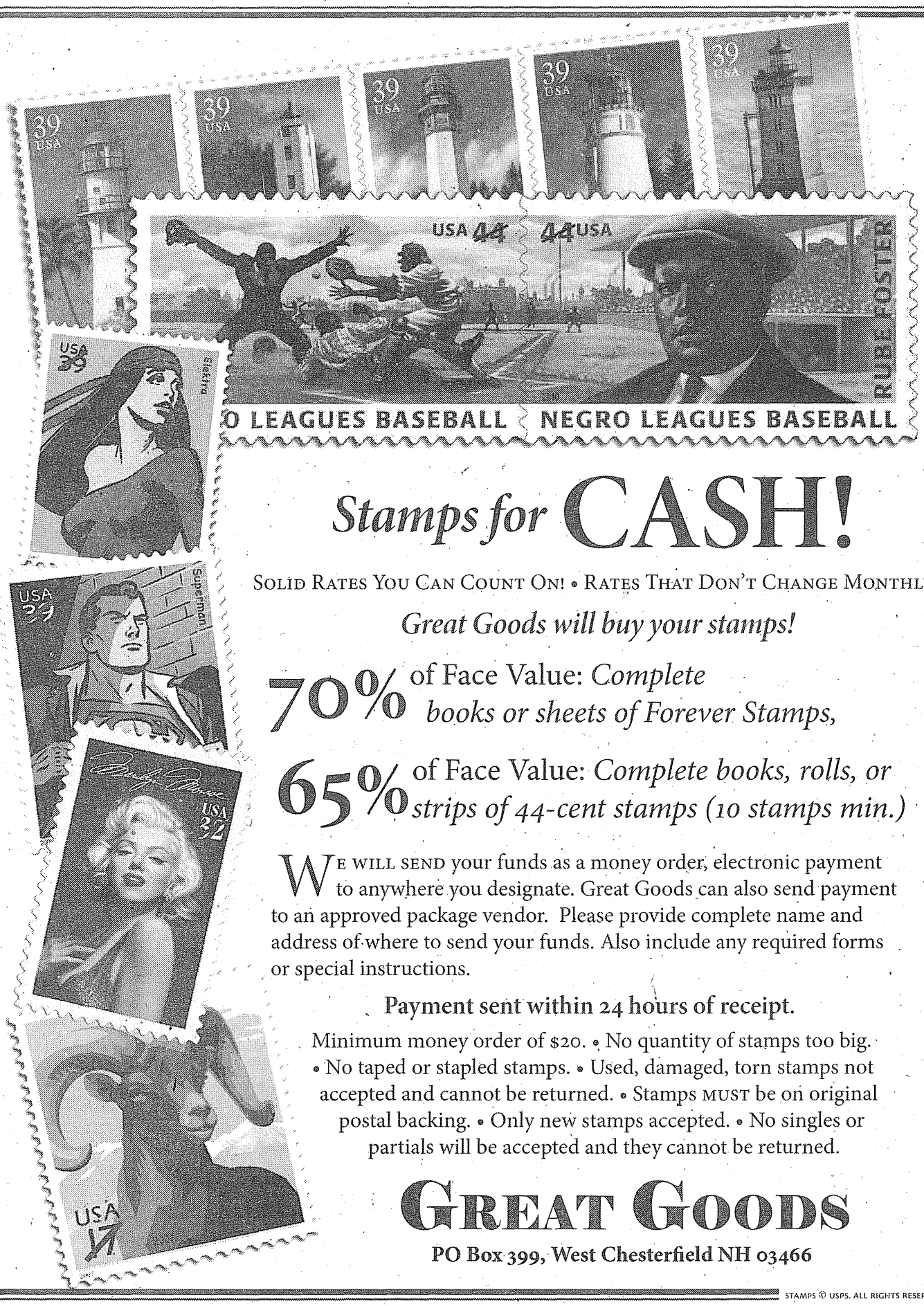
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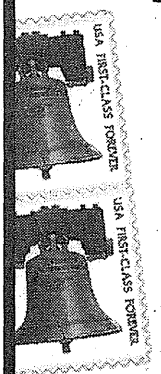
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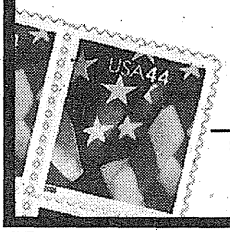
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Case 3:12-cv-00071-SI Document 8-10 Filed 01/31/12 Page 2 of 45

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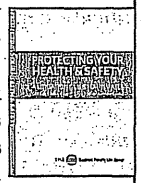
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Prisoners' Self-Help Litigation Manual, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 1500 pages. $39.95. The premiere, must-have "Bible" of prison litigation for current and aspiring jailhouse lawyers. If you plan to litigate a prison or jail civil suit, this book is a must-have. 1077

Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, published by PLN, 221 pages. $49.95. Written by Missouri prisoner Jon Marc Taylor, who obtained a B.S. degree, an M.A. degree and a Doctorate, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, paralegal and college courses available through correspondence study. Great resource for prisoners who want to further their education. 1057

Protecting Your Health and Safety, by Robert E. Toone, Southern Poverty Law Center, 325 pages. $10.00. This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how you can enforce your rights within the facility and, if necessary, in court through litigation. 1060

Starting Out! The Complete Re-Entry Handbook, edited by William H. Foster, Ph.D. & Carl E. Horn, Ph.D., Starting Out Inc., 446 pages. $22.95. Complete do-it-yourself re-entry manual and workbook for prisoners who want to develop their own re-entry plan to increase their chances of success after they are released. Includes a wide variety of resources, including a user code to the Starting Out website that can be accessed following release. 1074

Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A., by Mumia Abu Jamal, City Lights Publishers, 280 pages. $16.95. In *Jailhouse Lawyers*, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned-advocates who have learned to use the court system to represent other prisoners, and in some cases have won their freedom. Must-read for jailhouse lawyers! 1073

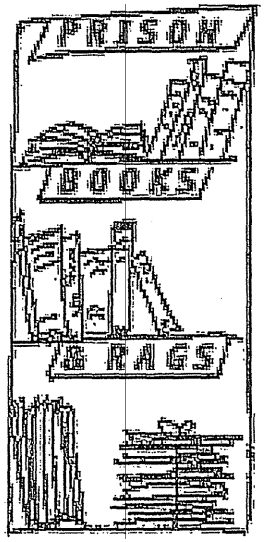
How to Win Your Personal Injury Claim, by Atty. Joseph Matthews, 7th edition, NOLO Press, 304 pages. $34.99. While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents — including dealing with doctors, attorneys and insurance companies. 1075

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Ten Men Dead: The story of the 1981 Irish hunger strike, by David Beresford, Atlantic Monthly Press, 334 pages. $16.95. Inside story of IRA prisoners at Belfast's Long Kesh prison. 1006 ☐

Finding the Right Lawyer, by Jay Foonberg, ABA, 256 pages. $19.95. Explains how to determine your legal needs, how to evaluate a lawyer's qualifications, fee payments, and more. 1015 ☐

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Women Behind Bars, The Crisis of Women in the U.S. Prison System, by Silja J.A. Talvi, Seal Press, 295 pages. $15.95. Best book available that covers issues related to imprisoned women, based on interviews with hundreds of women behind bars. 1066 ☐

10 Insider Secrets to a Winning Job Search, by Todd Bermont, 216 pages. $15.99. Roadmap on how to get a job even under adverse circumstances—like being an ex-con. Includes how to develop a winning attitude, write attention-grabbing resumes, prepare for interviews, networking, how to present your strengths to an employer, and much more! 1056 ☐

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Lockdown America: Police and Prisons in the Age of Crisis, by Christian Parenti, 290 pages. $19.00. Analyzes the war on the poor via the criminal justice system. Well documented and includes first-hand reporting. Covers prisons, para-military policing, SWAT teams and the INS. 1002 ☐

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Crime and Punishment In America, by Elliott Currie, 230 pages. $16.95. Effective rebuttal to right-wing proponents of prison building. Fact-based argument shows that crime is driven by poverty. Debunks prison myths and discusses proven, effective means of crime prevention. 1019 ☐

Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It, by Terry Kupers, Jossey-Bass, 245 pages. ***Hardback only;*** **prisoners please include any required authorization form.** $32.95. Psychiatrist writes about the mental health crisis in U.S. prisons and jails. Covers all aspects of mental illness, prison rape, negative effects of long-term isolation in control units, and more. 1003 ☐

Prison Writing in 20th Century America, by H. Bruce Franklin, Penguin Books, 368 pages. $16.00. From Jack London to George Jackson, this anthology provides a selection of some of the best writing describing life behind bars in America. 1022 ☐

Soledad Brother: The Prison Letters of George Jackson, by George Jackson, Lawrence Hill Books, 339 pages. $18.95. Lucid explanation of the politics of prison by a well-known prison activist. More relevant now than when it first appeared 40 years ago. 1016 ☐

Marijuana Law, by Richard Boire, Ronin, 271 pages. $17.95. Examines how to reduce the probability of arrest and prosecution for people accused of the use, sale or possession of marijuana. Info on legal defenses, search & seizures, surveillance, asset forfeiture and drug testing. 1008 ☐

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No Equal Justice: Race and Class in the American Criminal Justice System, by David Cole, The New Press, 218 pages. $19.95. Explains how the criminal justice system perpetuates race and class inequality, creating a two-tiered system of justice. 1028 ☐

The Prison and the Gallows: The Politics of Mass Incarceration in America, by Marie Gottschalk, Cambridge University Press, 451 pages. $29.99. Great political analysis of the confluence of events leading to 2.3 million people behind bars in the U.S. 1069 ☐

The Habeas Citebook: Ineffective Assistance of Counsel, by Brandon Sample, PLN Publishing, 200 pages. $49.95. This is PLN's second published book, which exclusively covers ineffective assistance of counsel-related issues in federal habeas petitions. Great resource for habeas litigation, and contains hundreds of case cites! 1078 ☐

Factor 8 (DVD), a film by Kelly Duda, Concrete Films. $21.95. Movie about the Arkansas prison blood scandal, in which prison officials sold infected blood harvested from prisoners. **Note: This is a DVD and cannot be shipped to prison.** 1076 ☐

PLN Cumulative Index. $22.50 each. PLN Article Indexes provide detailed information about all PLN articles, including title, author, issue, page number, topics covered, citations, and if it is state, BOP or jail specific. Can be searched on over 500 subjects such as medical neglect or sexual assault. Circle the index(es) you are ordering: **1990-1995, 1996-1998, 1999-2001, 2002-2004.** (more recent indexes not yet available) ☐

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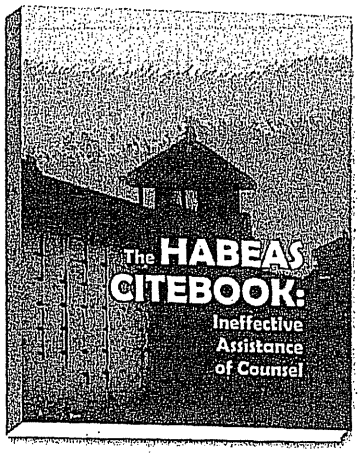
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The Habeas Citebook: Ineffective Assistance of Counsel is the first in a series of books by Prison Legal News Publishing designed to help pro-se prisoner litigants identify and raise viable claims for potential habeas corpus relief. This book is an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

It will save litigants thousands of hours of research and it focuses on the WINNING cases criminal defendants need to successfully challenge their convictions.

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demonstrate formatting and show how to frame a winning argument that will persuade a court to grant habeas relief. *The Habeas Citebook* explains the procedural and substantive complexities of federal habeas corpus litigation with the goal of identifying and litigating claims involving ineffective assistance of counsel.

Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

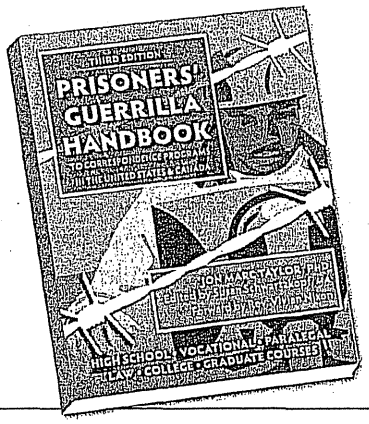
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"Copies of this very usable and useful guide should be available in every prison library—to help incarcerated people give positive direction to their energies while making constructive use of their time. It is a well-established fact that people who have taken college courses in prison have a dramatically reduced rate of recidivism."

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Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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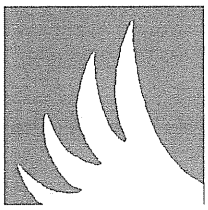
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Prison Legal News

DEDICATED TO PROTECTING HUMAN RIGHTS

October 23, 2011

Dear PLN Supporter,

You recently received a PLN fundraising letter, however, the printer made a mistake and did not print the entire letter so you only received half of it. This is the entire letter which also includes a picture of Nelly, our beloved office mascot. For the sake of human rights in America, and Nelly, please read the entire letter and make a donation to support our cause because human rights can't defend themselves.

This month marks the 40th anniversary of the 1971 uprising and massacre at Attica State Prison in New York. Until the massacre of the Branch Davidians in Waco, Texas in 1993, Attica held the dubious distinction of being the bloodiest confrontation on American soil between civilians and government forces since the Wounded Knee massacre in 1890. The Attica rebellion ushered in the modern era of prison reform which has seen extensive changes in the American gulag, including its massive expansion to the largest prison system the world has ever seen.

When I started Prison Legal News in 1990, there were a million prisoners nationwide and the hard-won reforms of the post-Attica era were already in decline. Today there are more than 2.5 million prisoners in America and while much has changed since 1971, a lot has not. Brutality, medical neglect, overcrowding, lengthy prison sentences and isolation of prisoners remain a constant part of the prison experience. Other developments, like the rise of the private prison industry, the control unit isolation of tens of thousands of prisoners, the immigration gulag and the mass proliferation of torture devices like Tasers and restraint chairs have been anything but good.

After Attica there was a vibrant prisoners' rights movement that demanded change and recognition that everyone had basic human rights, even people in prison. Today we live in a country where citizens are scooped off the street and tortured and held indefinitely as "enemy combatants," where American government death squads roam the planet hunting down, kidnapping, torturing and/or killing anyone deemed a "suspected terrorist," and where the U.S. government openly runs concentration camps at Bagram, Guantanamo and other "undisclosed locations." To suggest that international law and basic human decency should bar murder and torture is apparently a radical notion.

Just as Attica occurred against the backdrop of the American genocide in Southeast Asia, today's evisceration of human rights in American jails and prisons occurs against a

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backdrop of perpetual war and aggression both domestically and overseas. This amply illustrates Martin Luther King, Jr.'s observation that injustice anywhere is a threat to justice everywhere.

Today, *Prison Legal News* is the only publication in existence dedicated to reporting on the human rights of those imprisoned in the American gulag. Thus far this year *PLN* has published cover stories on the litigation involving California's severely overcrowded prison system, the ongoing outrage of the American death penalty, corruption and mayhem caused by the private prison industry, the gouging of consumers by the prison phone industry, control units, shoddy forensic examiners and much more.

We believe that to effect positive change we must inform people about the failures and shortcomings of the American criminal justice system and the inherent conflicts that make our justice system unjust. We do that by reporting corruption and misconduct by corrections officials in PLN's monthly publication, read by tens of thousands of prisoners and non-prisoners alike. We also report legal decisions related to prisoners' rights, so they will be inspired and can learn how to vindicate their few remaining rights in court.

But PLN does much more than provide information about criminal justice-related news and legal rulings.

PLN engages in litigation to protect our First Amendment rights and thereby the rights of our subscribers to receive our monthly publication and the books we distribute. It is no exaggeration to say that PLN is the primary bulwark against government censorship of books and magazines in America today. So far, in 2011 alone, we settled censorship suits against the Galveston jail in Texas and the Spokane jail in Washington, requiring them to modify their mail policies. We also filed suit against a jail in Kansas, two jails in Michigan, the New York state prison system, the Sacramento jail in California and the New Orleans jail due to bans on reading material. PLN is the only publication in the United States that regularly challenges censorship by prison and jail officials – a sad commentary on the mainstream media's respect for the First Amendment.

Further, as part of our efforts to ensure public accountability and obtain source documents for our news reporting, PLN files public records requests – with government agencies and the private companies with which they contract – and litigates when those requests are arbitrarily denied. We have public records lawsuits pending against Corrections Corporation of America in Tennessee, Prison Health Services in Vermont, the Bureau of Prisons in Washington, D.C. and the U.S. Department of Justice in Colorado.

As part of PLN's larger strategy to inform the public and policy makers about problems in our justice system, PLN staff speak at conferences and network with other media agencies, which often quote PLN in their news reporting. In 2011, PLN editor Paul Wright and associate editor Alex Friedmann were quoted or mentioned in articles in the *Seattle Weekly*, *Reason, Washington Times, Huffington Post, Spokesman Review, The Nation, the Tennessean, Truthout, National Public Radio, Business Week*, the *Associated Press* and many others, on topics ranging from prison journalism and postcard-only mail rules in jails to prison slave labor, prison privatization, censorship and prison medical care. Additionally, we are regular guests on radio shows around

the country on criminal justice topics. PLN is also online, where readers can access every article that PLN has ever published as well as many other articles and case summaries, a brief bank for litigators and jailhouse lawyers, a publications database and much more. Visit www.prisonlegalnews.org. We offer a free listserv and have an online bookstore, too. PLN has the most prison- and jail-related content on the 'Net, period, and we upload new content on an ongoing basis.

We further distribute a number of books for prisoners, including legal reference and self-help books. Three PLN anthologies are now in print, most recently *Prison Profiteers: Who Profits from Mass Incarceration*, and we recently began publishing our own books, including the *Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada, 3rd ed.*, by Missouri prisoner Jon Marc Taylor, and *The Habeas Citebook: Ineffective Assistance of Counsel*, by PLN writer and federal prisoner Brandon Sample. Both books were edited by PLN's Susan Schwartzkopf. Our goal is to provide prisoners with non-fiction reference books they can use to improve and help themselves while in prison.

In summary, for the past 21 years PLN has been distributing our monthly publication as well as books of interest to prisoners and their supporters; we have litigated numerous censorship cases to ensure prisoners can receive our publications, in addition to public records cases; PLN staff have served as a source of information and research for the mainstream news media; we maintain a website with extensive information about criminal justice-related issues; and we have started publishing our own self-help books for prisoners.

All of this takes money, because nothing – and no one – is free in America.

PLN's subscriptions and book sales do not cover our overhead; thus, we rely heavily on donations and grant funding to make up the shortfall. Donations and grants alike have dropped due to the frigid economic climate. Alas, the need for the work we do has only increased. Prison and jail populations nationally continue to grow exponentially, and President Obama is seeking money for more cops, more prosecutors and more prisons. Your support is vital to the work we do. Unlike many non-profits, we do concrete things that actually can be measured: we publish a magazine; we publish and distribute books; we successfully sue prisons and jails to ensure they do not engage in unconstitutional censorship; we advocate on behalf of prisoners in the media, before legislatures and administrative agencies, and in public forums. For the full scope of the depth and breadth of our activities, review our annual reports on our website. We run a lean operation and, having consolidated our Vermont and Washington offices last year, cannot cut additional costs without limiting our operational capabilities.

In contrast to other non-profits, PLN does not bombard its supporters with fundraising requests throughout the year. We conduct one fundraiser at the end of the year and this is it. If you are familiar with PLN and our work, then you know we do a lot with little funding. But continued funding is necessary if PLN is to continue operating, and we can't keep doing what we do without your support!

So when you decide where to donate this holiday season, please think about PLN. Consider the work we do – and have been doing for more than two decades – and also consider there isn't much grant funding available for prisoners' human rights and criminal justice reform in the U.S., which are not popular issues. So please make a tax deductible donation to PLN or encourage your family and friends to do so. PLN subscriptions make great gifts, as do the many books we distribute. Your donation will make a difference and go farther than a donation almost anywhere else. We also offer a number of "premiums" for donations above certain amounts (see the enclosed flyer).

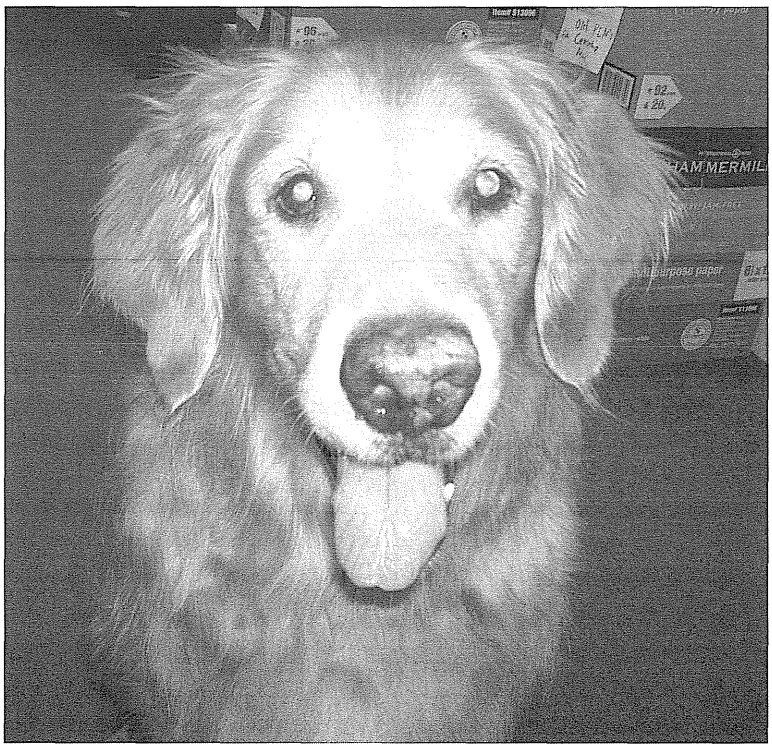
Feel free to forward this fundraiser request to others who may be interested in supporting PLN's work, and thank you for keeping us in mind this holiday season. Our office mascot, Nelly, a 12-year-old golden retriever, pictured below, comes to work every day to support our efforts to protect human rights. If she can support *PLN*, you can too!

In Struggle,

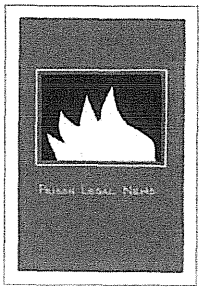
Paul Wright
Editor, PLN

P.S. - You can also order the much-awaited *Prisoners' Self-Help Litigation Manual, 4th edition*, from PLN for $45.95 or *The Habeas Citebook: Ineffective Assistance of Counsel* for $49.95, postpaid.

P.P.S. - Even if you can't afford to make a donation, subscribe or buy a book yourself, please encourage others to do so. Every purchase and donation is a huge help!



Prison Legal News Gifts



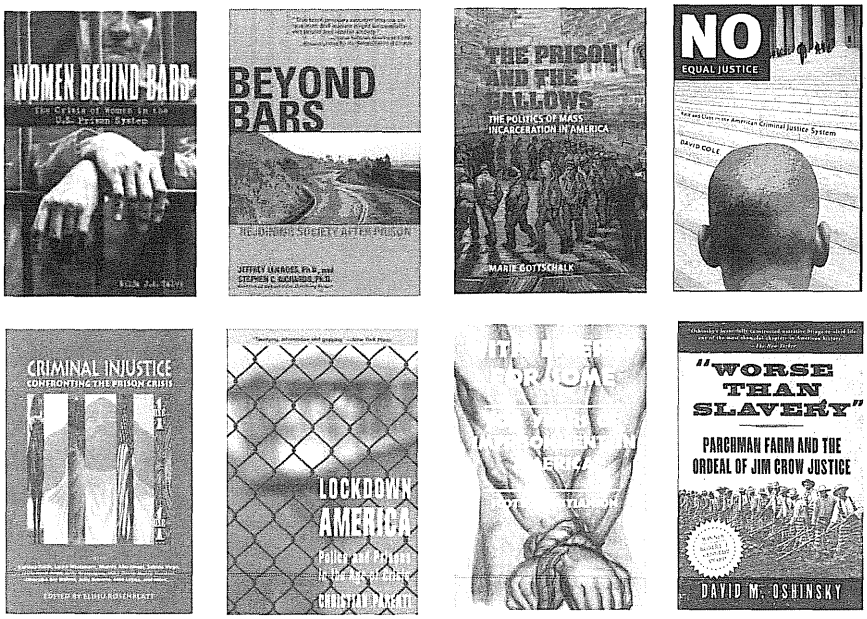
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To show our appreciation for your support, we are providing a Prison Legal News card when you make a donation of at least $50.00. The card is hand embroidered by women prisoners in Bolivia who are paid a fair wage for the cards to help support their families.

Gift Option 2

To show our appreciation for your support, we are providing the Prison Legal News hemp tote bag when you make a donation of at least $75.00. Handmade in Vermont using hemp fiber. Carry books and groceries in style and help end the war on drugs!



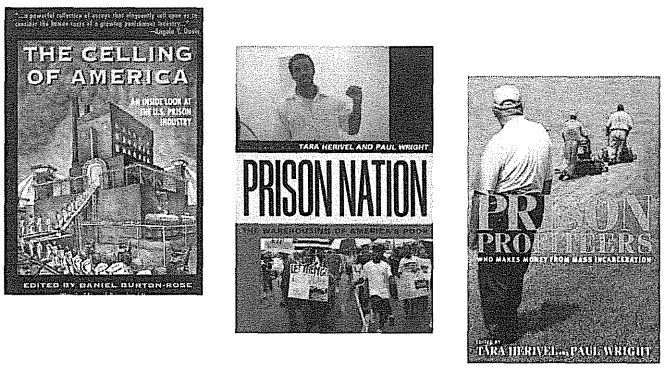


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To show our appreciation for your support, we are providing the following selection of books for you to choose from when you make a donation of at least $100.00. Donations of $100.00 or more can choose one free book title. Each $100 donation entitles you to another free book; i.e., donate $500 and you get five books! Donate $1,000 and you get everything on this page! Please circle the books you want and put the corresponding donation on the next page.

Gift Option 4

To show our appreciation for your support, we are providing the entire Prison Legal News anthology of three critically acclaimed books on mass imprisonment signed by editor Paul Wright! (The Celling of Amercia, Prison Nation and Prison Profiteers), plus the Prison Legal News hemp tote bag to carry the books in when you make a donation of $250.00.



You can mail a check or money order to:

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Or call PLN's office at 802-257-1342 and use your credit card,
Or visit PLN's website at **www.prisonlegalnews.org** and click on the donation link.

Remember — PLN is a project of the Human Rights Defense Center, which is a Section 501(c)(3) non-profit organization, and donations are tax deductible!

Yes! I want to help support PLN — here is my special donation of:

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PLN protects the privacy of its donors, and their names are not reported in our publication or on our website.

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On book and index orders OVER $50.00!
A $6 shipping charge applies to all other book and index orders.
(Free shipping policy in effect from Jan 1, 2010 until further notice)

More Books for Sale!

Prisoners' Self-Help Litigation Manual, updated 4th ed. (2010), by John Boston and Daniel Manville, Oxford Univ. Press, 1500 Pages. **$39.95.** The premier, must-have "Bible" of prison litigation for current and aspiring jail-house lawyers. If you plan to litigate a prison or jail civil lawsuit, this book is a must-have. 1077 [ ]

Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, published by PLN, 221 pages. **$49.95**. Written by Missouri prisoner Jon Marc Taylor, who obtained a B.S. degree, an M.A. degree and a Doctorate, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, paralegal and college courses available through correspondence study. Great resource for prisoners who want to further their education. 1071 [ ]

Protecting Your Health and Safety, by Robert E. Toone, Southern Poverty Law Center, 325 pages. **$10.00**. This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how you can enforce your rights within the facility and, if necessary, in court through litigation. 1060 [ ]

Beyond Bars: Successful Community Reentry after Prison, by Jeffery Ian Ross and Stephen C. Richards, 240 pages. **$14.95**. Complete guidebook on how to prepare for release from prison while still incarcerated. This is the most current, practical and comprehensive guide for ex-prisoners and their families related to managing successful reentry into the community. 1080 [ ]

Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A., by Mumia Abu Jamal, City Lights Publishers, 280 pages. **$16.95**. In *Jailhouse Lawyers*, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned-advocates who have learned to use the court system to represent other prisoners, and in some cases have won their freedom. A must-read for jail-house lawyers! 1073 [ ]

How to Win Your Personal Injury Claim, by Atty. Joseph Matthews, 7th edition, NOLO Press, 304 pages. **$34.99**. While not specifically for prison-related personal injury cases, this book provides comprehensive information on how to handle personal injury and property damage claims arising from accidents — including dealing with doctors, attorneys and insurance companies. 1075 [ ]

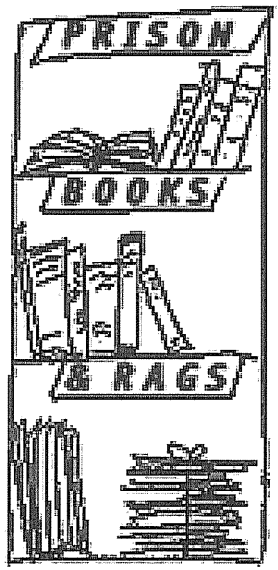
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Case 3:12-cv-00071-SI Document 8-10 Filed 01/31/12 Page 18 of 45

Check the box of the books you want to buy and use the Order Form on the other side of this brochure to add up the cost of your order. **FREE SHIPPING** for book and index orders **OVER $50**. There is a $6 shipping charge for all other book and index orders.

Prison Profiteers, edited by Paul Wright and Tara Herivel, 323 pages. **$24.95**. This is the third and latest book in a series of Prison Legal News anthologies that examines the reality of mass imprisonment in America. (The other titles are *The Celling of America* & *Prison Nation*, see below). *Prison Profiteers* is unique from other books because it exposes and discusses who profits and benefits from mass imprisonment, rather than who is harmed by it and how. 1063 ☐

Prison Nation: The Warehousing of America's Poor, edited by Tara Herivel and Paul Wright, 332 pages. **$35.95**. PLN's 2nd anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. 1041 ☐

The Celling of America, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. **$22.95**. PLN first anthology presents a detailed "inside" look at the workings of the American criminal justice system. 1001 ☐

Everyday Letters for Busy People, by Debra Hart May, 287 pages. **$18.99**. Hundreds of sample letters that can be adapted for most any purpose, including letters to government agencies and officials. Has numerous tips for writing effective letters. 1048 ☐

The Criminal Law Handbook: Know Your Rights, Survive the System, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 608 pages. **$39.99**. Explains what happens in a criminal case from being arrested to sentencing, and what your rights are at each stage of the process. Uses an easy to understand question-and-answer format. 1038 ☐

Represent Yourself in Court: How to Prepare & Try a Winning Case, by Attorneys Paul Bergman & Sara J. Berman-Barrett, Nolo Press, 528 pages. **$39.99**. Breaks down the civil trial process in easy-to-understand steps so you can effectively represent yourself in court. The authors explain what to say in court, how to say it, etc. 1037 ☐

Law Dictionary, Random House Webster's, 525 pages. **$19.95**. Comprehensive up-to-date law dictionary explains more than 8,500 legal terms. Covers civil, criminal, commercial & international law. 1036 ☐

The Blue Book of Grammar and Punctuation, by Jane Straus, 110 pages. **$14.95**. A guide to grammar and punctuation by an educator with experience teaching English to prisoners. 1046 ☐

Legal Research: How to Find and Understand the Law, by Stephen Elias and Susan Levinkind, 568 pages. **$49.99**. Comprehensive and easy to understand guide on researching the law. Explains case law, statutes and digests, and much more. Includes practice exercises. 1059 ☐

Deposition Handbook, by Paul Bergman and Albert Moore, Nolo Press, 352 pages. **$34.99**. How-to handbook for anyone who conducts a deposition or is going to be deposed. 1054 ☐

Spanish-English/English-Spanish Dictionary, Random House. **$8.95**. Two sections, Spanish-English and English-Spanish. 60,000+ entries from A to Z; includes Western Hemisphere usage. 1034 ☐

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Writing to Win: The Legal Writer, by Steven D. Stark, Broadway Books/Random House, 283 pages. **$19.95**. Explains the writing of effective complaints, responses, briefs, motions and other legal papers. 1035 ☐

Actual Innocence: When Justice Goes Wrong and How to Make it Right, updated paperback edition by Barry Scheck, Peter Neufeld and Jim Dwyer; 403 pages. **$16.00**. Founders of the Innocence Project explain how criminal defendants are wrongly convicted on a regular basis. Explains DNA testing and how it works to free the innocent. Devastating critique of police and prosecutorial misconduct and the system that ensures such abuses continue. 1030 ☐

Roget's Thesaurus, 717 pages. **$8.95.** Helps you find the right word for what you want to say. 11,000 words listed alphabetically with over 200,000 synonyms and antonyms. Sample sentences and parts of speech shown for every main word. Covers all levels of vocabulary and identifies informal and slang words. 1045 ☐

Webster's English Dictionary, Newly revised and updated, Random House. **$8.95**. 75,000+ entries. Includes tips on writing and word usage, and has updated geographical and biographical entries. Includes recent business and computer terms. 1033 ☐

Sue the Doctor and Win! Victim's Guide to Secrets of Malpractice Lawsuits, by Lewis L. Laska, **$39.95**. Written for victims of medical malpractice/neglect, to prepare for litigation. 1079 ☐

With Liberty for Some: 500 Years of Imprisonment in America, by Scott Christianson, Northeastern University Press, 372 pages. **$18.95**. The best overall history of the American prison system from 1492 through the 20th Century. Well written and fact filled. A must-read for understanding how little things have changed as far as prisons go in the U.S. over hundreds of years. 1026 ☐

Ten Men Dead: The story of the 1981 Irish hunger strike, by David Beresford, Atlantic Monthly Press, 334 pages. **$16.95**. Inside story of IRA prisoners at Belfast's infamous Long Kesh prison. 1006 ☐

Finding the Right Lawyer, by Jay Foonberg, ABA, 256 pages. **$19.95**. Explains how to determine your legal needs, how to evaluate a lawyer's qualifications, fee payments and more. 1015 ☐

Seize the Day! 7 Steps to Achieving the Extraordinary in an Ordinary World, by Danny Cox and John Hoover, 256 pages. **$15.99**. Provides 7 steps to changing your expectations and envisioning yourself as being a successful and respected person—which is essential to changing the course of one's life. 1052 ☐

Women Behind Bars, The Crisis of Women in the U.S. Prison System, by Silja J.A. Talvi, Seal Press, 295 pages. **$15.95**. Best book available that covers issues related to imprisoned women, based on interviews with hundreds of women behind bars. 1066 ☐

10 Insider Secrets to a Winning Job Search, by Todd Bermont, 216 pages. **$15.99**. Roadmap on how to get a job even under adverse circumstances—like being an ex-con. Includes how to develop a winning attitude, write attention-grabbing resumes, prepare for interviews, networking, how to present your strengths to an employer, and much more! 1056 ☐

The Politics of Heroin: CIA Complicity in the Global Drug Trade, 2003 Ed. by Alfred McCoy, 734 pages. **$34.95**. Documented exposé of the government's involvement in drug trafficking. 1014 ☐

Lockdown America: Police and Prisons in the Age of Crisis, by Christian Parenti, 290 pages. **$21.95**. Analyzes the war on the poor via the criminal justice system. Well documented and includes first-hand reporting. Covers prisons, paramilitary policing, SWAT teams and the INS. 1002 ☐

Hepatitis and Liver Disease: What You Need to Know, by Melissa Palmer MD, 457 pages. **$17.95**. Describes symptoms & treatments of hepatitis B & C and other liver diseases. Includes medications to avoid, what diet to follow, exercises to perform and a bibliography. 1031 ☐

Crime and Punishment In America, by Elliott Currie, 230 pages. **$16.95**. Effective rebuttal to right-wing proponents of prison building. Fact-based argument shows that crime is driven by poverty. Debunks prison myths and discusses proven, effective means of crime prevention. 1019 ☐

Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It, by Terry Kupers, Jossey-Bass, 245 pages. ***Hardback only*; prisoners please include any required authorization form. $38.00**. Psychiatrist writes about the mental health crisis in U.S. prisons and jails. Covers all aspects of mental illness, prison rape, negative effects of long-term isolation in control units and more. 1003 ☐

Prison Writing in 20th Century America, by H. Bruce Franklin, Penguin Books, 368 pages. **$17.00**. From Jack London to George Jackson, this anthology provides a selection of some of the best writing describing life behind bars in America. 1022 ☐

Soledad Brother: The Prison Letters of George Jackson, by George Jackson, Lawrence Hill Books, 339 pages. **$18.95**. Lucid explanation of the politics of prison by a well-known prison activist. More relevant now than when it first appeared 40 years ago. 1016 ☐

Marijuana Law, by Richard Boire, Ronin, 271 pages. **$17.95**. Examines how to reduce the probability of arrest and prosecution for people accused of the use, sale or possession of marijuana. Info on legal defenses, search & seizures, surveillance, asset forfeiture and drug testing. 1008 ☐

Worse Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice, by David Oshinsky, 306 pages. **$16.00**. Analysis of prison labor's roots in slavery. Focuses on prison plantations and self-sustaining prisons that use prison labor. 1007 ☐

No Equal Justice: Race and Class in the American Criminal Justice System, by David Cole, The New Press, 218 pages. **$19.95**. Explains how the criminal justice system perpetuates race and class inequality, creating a two-tiered system of justice. 1028 ☐

The Prison and the Gallows: The Politics of Mass Incarceration in America, by Marie Gottschalk, Cambridge University Press, 451 pages. **$28.99**. Excellent political analysis of the confluence of events leading to 2.3 million people behind bars in the U.S. 1069 ☐

The Habeas Citebook: Ineffective Assistance of Counsel, by Brandon Sample, PLN Publishing, 200 pages, **$49.95**. This is PLN's second published book, which exclusively covers ineffective assistance of counsel-related issues in federal habeas petitions. Great resource for habeas litigation, with hundreds of case cites! 1078 ☐

PLN Cumulative Index. $22.50 each. PLN Article Indexes provide detailed information about all PLN articles, including title, author, issue, page number, topics covered, citations, and if it is state, BOP or jail specific. Can be searched on over 500 subjects such as medical neglect or sexual assault. Circle the index(es) you are ordering: **1990-1995, 1996-1998, 1999-2001, 2002-2004**. (more recent indexes are not yet available) ☐

All books are soft cover except *Prison Madness*

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Eastern State Penitentiary 1829-1971

Charles Dickens visited Philadelphia's Eastern State Penitentiary in 1842 and he later wrote: "The System is rigid, strict and hopeless ... and I believe it to be cruel and wrong....I hold this slow and daily tampering with the mysteries of the brain to be immeasurably worse than any torture of the body." The prison remained open for 129 years after Dickens condemned it as being barbaric, and some of its inhumane practices still continue to be used in prisons nationwide.

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Case 3:12-cv-00071-SI Document 8-10 Filed 01/31/12 Page 20 of 45

"I truly appreciate all the efforts you put forth to safeguard our Constitutional Rights. From the heart I say 'Thank You' on Behalf of us All!"
~ BL, Washington prisoner

Prison Legal News is an independent, non-profit 56-page monthly publication that reports, reviews and analyzes court rulings and news related to prisoners' rights and prison issues. *PLN* has a national (U.S.) focus on state, federal and private prison issues, with some international coverage as well.

PLN's many thousands of subscribers and readers include civil and criminal trial and appellate attorneys, judges, public defenders, journalists, academics, paralegals, prisoners' rights activists, students, family members of prisoners, concerned individuals, politicians, other government officials, and numerous local, state and federal prisoners nationwide.

PLN is a vital link for prisoners who otherwise don't have access to current legal and prison-related news and information.

"Invaluable resource for anyone wanting 'user friendly' information about current legal developments affecting prisoners in the United States."

~ Human Rights Watch, a long-time PLN subscriber

PLN's coverage of prison issues includes medical neglect, disciplinary hearings, nutrition, living conditions, excessive force, court access, censorship, jail litigation, visiting, telephones, religious freedom, free speech, prison rape, mental health, attorney/client access, sexual abuse of women prisoners, retaliation, the PLRA, HIV and hep C, control units, the death penalty, attorney fees and much more.

PLN Subscription Rates

Prisoners: $18 for 6 months or $30 per year *

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Law firms, govt. agencies and libraries: $90 per year

Sample issue for anyone: $3.50 each*

* Prisoners can pay with **new** stamps or pre-stamped envelopes

Each monthly issue of PLN includes three different types of reporting:

- A cover story on a criminal justice-related issue.
- Reports on individual and class-action prison and jail-related lawsuits when they are filed, when a judgment is entered or the case settles, and when an appellate court decision is issued. We also have prison-related news articles.
- A "News In Brief" section that summarizes interesting news stories across the U.S. and internationally.

Each issue of PLN also contains numerous advertisements from businesses that provide prison-related personal and legal services and books. PLN further sells dozens of self-help, social commentary and legal books.

PLN also has cumulative subject and case cite indexes for all PLN issues from 1990 through 2004. Write for details.

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Protecting Your Health and Safety, by Robert E. Toone. Published by the Southern Poverty Law Center, 325 pages (2009). **$10.00 (free with a 3-year sub!)**. This book explains some basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how you can enforce your rights to health and safety within the facility and, if necessary, in court through litigation. Buy separately: _____

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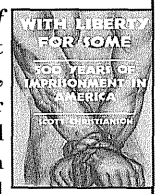
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"Great source of information, especially in states such as Arizona where the law libraries have been taken from the inmates and replaced with paralegals."

~ SB, Arizona prisoner

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With Liberty for Some: 500 Years of Imprisonment in America, by Scott Christianson, Northeastern University Press, 372 pages (1998). **$18.95 (free with a 4-year sub!)**. A classic book and the best overall history of the American prison system from 1492 to the 20th Century. Well written and fact filled. A must-read for understanding how little things have changed as far as prisons go in the U.S. over hundreds of years. Buy separately: _____

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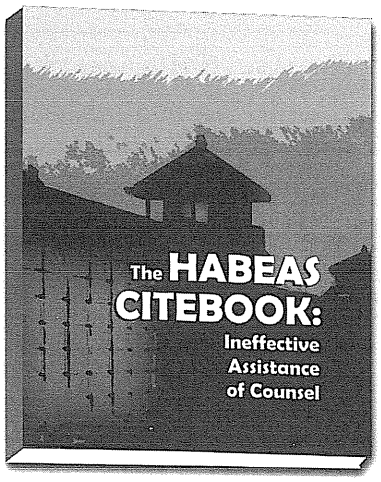
Prison Profiteers: Who Makes Money from Mass Incarceration, edited by Paul Wright & Tara Herivel, New Press (2007). **$24.95 (free with a 4-year sub!)**. This is the third in a series of PLN anthologies that examines the reality of mass imprisonment in the U.S. *Prison Profiteers* is unique from other books on the market because it exposes and discusses who profits and benefits from mass imprisonment, rather than who is harmed by the prison industrial complex and our nation's reliance on over-incarceration. Buy separately: _____

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Case 3:12-cv-00071-SI Document 8-10 Filed 01/31/12 Page 21 of 45

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

It will save litigants thousands of hours of research and it focuses on the WINNING cases criminal defendants need to successfully challenge their convictions.

Well organized into 52 concise chapters, this easy to use book puts the law at the reader's fingertips. The Appendix includes pleadings and forms from successful habeas corpus cases that



demonstrate formatting and show how to frame a winning argument that will persuade a court to grant habeas relief. *The Habeas Citebook* explains the procedural and substantive complexities of federal habeas corpus litigation with the goal of identifying and litigating claims involving ineffective assistance of counsel.

Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

> *The Habeas Citebook* is a nifty and concise self-help guide for prisoners seeking habeas relief based on claims of ineffective assistance of counsel. Navigating the complex and treacherous terrain of habeas law is never easy; but claiming that your lawyer screwed up is even more difficult — especially from the confines of an ill-equipped prison law library.
>
> "Brandon Sample has provided an amazing and much-needed tool for prisoners who are forced to seek relief on their own. The book is thorough; but simple and readable. It starts with a wonderfully well-organized listing of hundreds of different types of ineffective assistance of counsel, set forth in the form of citations to court rulings - a novel approach that not only acts as a springboard for further research but also saves the prisoner countless hours of preliminary research."
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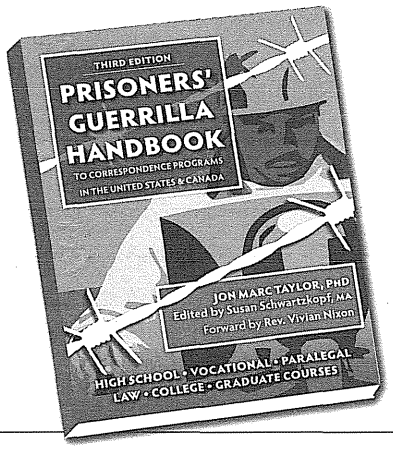
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"Copies of this very usable and useful guide should be available in every prison library—to help incarcerated people give positive direction to their energies while making constructive use of their time. It is a well-established fact that people who have taken college courses in prison have a dramatically reduced rate of recidivism."

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THE GREATLY anticipated and newly updated third edition of the *Prisoner's Guerrilla Handbook to Correspondence Programs in the United States and Canada* has finally arrived! Author Jon Marc Taylor's brand new version is the latest in this unique and highly successful guidebook for the prisoner-student. This invaluable tool and **how-to handbook** provides the reader with **step-by-step instructions** to find the appropriate educational program for **high school, vocational, paralegal, undergraduate, and graduate courses** offered in the U.S. and Canada today.

Invaluable re-entry tool

It presents more than 160 program outlines and offers an **easy-to-use format** for the student to determine which program best suits their needs. It is ideal for the incarcerated student who does not have Internet access or the ability to attend education classes in person. This resource is indispensable for the individual and beneficial for use in all prison libraries and education departments.

The *Prisoner's Guerrilla Handbook* is the only book on the market for the non-traditional prisoner-student. It includes detailed listings of the quality, cost, and course offerings for all correspondence programs available to prisoners. In a time when so many academic opportunities in prisons have been eliminated, this book is an invaluable re-entry tool for prisoners who seek to further their education while incarcerated and to help them prepare for life and work following their release.

Jon Marc Taylor has more than 25 years experience as an incarcerated student, advocate for prisoner education, and author. He has successfully earned a bachelor's degree, a master's degree, and a doctorate via correspondence courses while incarcerated. Editor **Susan Schwartzkopf** has a master's degree in education and 12 years experience teaching immigrants English language skills.

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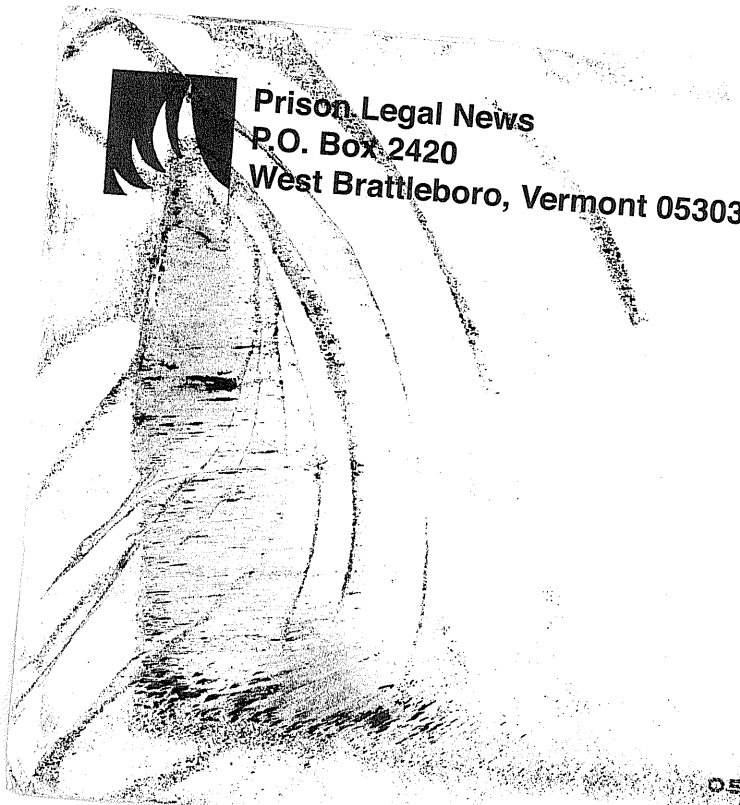
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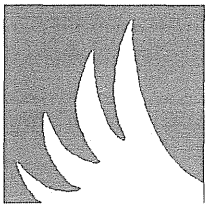
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Prison Legal News

DEDICATED TO PROTECTING HUMAN RIGHTS

October 23, 2011

Dear PLN Supporter,

You recently received a PLN fundraising letter, however, the printer made a mistake and did not print the entire letter so you only received half of it. This is the entire letter which also includes a picture of Nelly, our beloved office mascot. For the sake of human rights in America, and Nelly, please read the entire letter and make a donation to support our cause because human rights can't defend themselves.

This month marks the 40th anniversary of the 1971 uprising and massacre at Attica State Prison in New York. Until the massacre of the Branch Davidians in Waco, Texas in 1993, Attica held the dubious distinction of being the bloodiest confrontation on American soil between civilians and government forces since the Wounded Knee massacre in 1890. The Attica rebellion ushered in the modern era of prison reform which has seen extensive changes in the American gulag, including its massive expansion to the largest prison system the world has ever seen.

When I started Prison Legal News in 1990, there were a million prisoners nationwide and the hard-won reforms of the post-Attica era were already in decline. Today there are more than 2.5 million prisoners in America and while much has changed since 1971, a lot has not. Brutality, medical neglect, overcrowding, lengthy prison sentences and isolation of prisoners remain a constant part of the prison experience. Other developments, like the rise of the private prison industry, the control unit isolation of tens of thousands of prisoners, the immigration gulag and the mass proliferation of torture devices like Tasers and restraint chairs have been anything but good.

After Attica there was a vibrant prisoners' rights movement that demanded change and recognition that everyone had basic human rights, even people in prison. Today we live in a country where citizens are scooped off the street and tortured and held indefinitely as "enemy combatants," where American government death squads roam the planet hunting down, kidnapping, torturing and/or killing anyone deemed a "suspected terrorist," and where the U.S. government openly runs concentration camps at Bagram, Guantanamo and other "undisclosed locations." To suggest that international law and basic human decency should bar murder and torture is apparently a radical notion.

Just as Attica occurred against the backdrop of the American genocide in Southeast Asia, today's evisceration of human rights in American jails and prisons occurs against a

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backdrop of perpetual war and aggression both domestically and overseas. This amply illustrates Martin Luther King, Jr.'s observation that injustice anywhere is a threat to justice everywhere.

Today, *Prison Legal News* is the only publication in existence dedicated to reporting on the human rights of those imprisoned in the American gulag. Thus far this year *PLN* has published cover stories on the litigation involving California's severely overcrowded prison system, the ongoing outrage of the American death penalty, corruption and mayhem caused by the private prison industry, the gouging of consumers by the prison phone industry, control units, shoddy forensic examiners and much more.

We believe that to effect positive change we must inform people about the failures and shortcomings of the American criminal justice system and the inherent conflicts that make our justice system unjust. We do that by reporting corruption and misconduct by corrections officials in PLN's monthly publication, read by tens of thousands of prisoners and non-prisoners alike. We also report legal decisions related to prisoners' rights, so they will be inspired and can learn how to vindicate their few remaining rights in court.

But PLN does much more than provide information about criminal justice-related news and legal rulings.

PLN engages in litigation to protect our First Amendment rights and thereby the rights of our subscribers to receive our monthly publication and the books we distribute. It is no exaggeration to say that PLN is the primary bulwark against government censorship of books and magazines in America today. So far, in 2011 alone, we settled censorship suits against the Galveston jail in Texas and the Spokane jail in Washington, requiring them to modify their mail policies. We also filed suit against a jail in Kansas, two jails in Michigan, the New York state prison system, the Sacramento jail in California and the New Orleans jail due to bans on reading material. PLN is the only publication in the United States that regularly challenges censorship by prison and jail officials – a sad commentary on the mainstream media's respect for the First Amendment.

Further, as part of our efforts to ensure public accountability and obtain source documents for our news reporting, PLN files public records requests – with government agencies and the private companies with which they contract – and litigates when those requests are arbitrarily denied. We have public records lawsuits pending against Corrections Corporation of America in Tennessee, Prison Health Services in Vermont, the Bureau of Prisons in Washington, D.C. and the U.S. Department of Justice in Colorado.

As part of PLN's larger strategy to inform the public and policy makers about problems in our justice system, PLN staff speak at conferences and network with other media agencies, which often quote PLN in their news reporting. In 2011, PLN editor Paul Wright and associate editor Alex Friedmann were quoted or mentioned in articles in the *Seattle Weekly*, *Reason, Washington Times, Huffington Post, Spokesman Review, The Nation, the Tennessean, Truthout, National Public Radio, Business Week*, the *Associated Press* and many others, on topics ranging from prison journalism and postcard-only mail rules in jails to prison slave labor, prison privatization, censorship and prison medical care. Additionally, we are regular guests on radio shows around

the country on criminal justice topics. PLN is also online, where readers can access every article that PLN has ever published as well as many other articles and case summaries, a brief bank for litigators and jailhouse lawyers, a publications database and much more. Visit www.prisonlegalnews.org. We offer a free listserv and have an online bookstore, too. PLN has the most prison- and jail-related content on the 'Net, period, and we upload new content on an ongoing basis.

We further distribute a number of books for prisoners, including legal reference and self-help books. Three PLN anthologies are now in print, most recently *Prison Profiteers: Who Profits from Mass Incarceration*, and we recently began publishing our own books, including the *Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada, 3rd ed.*, by Missouri prisoner Jon Marc Taylor, and *The Habeas Citebook: Ineffective Assistance of Counsel*, by PLN writer and federal prisoner Brandon Sample. Both books were edited by PLN's Susan Schwartzkopf. Our goal is to provide prisoners with non-fiction reference books they can use to improve and help themselves while in prison.

In summary, for the past 21 years PLN has been distributing our monthly publication as well as books of interest to prisoners and their supporters; we have litigated numerous censorship cases to ensure prisoners can receive our publications, in addition to public records cases; PLN staff have served as a source of information and research for the mainstream news media; we maintain a website with extensive information about criminal justice-related issues; and we have started publishing our own self-help books for prisoners.

All of this takes money, because nothing – and no one – is free in America.

PLN's subscriptions and book sales do not cover our overhead; thus, we rely heavily on donations and grant funding to make up the shortfall. Donations and grants alike have dropped due to the frigid economic climate. Alas, the need for the work we do has only increased. Prison and jail populations nationally continue to grow exponentially, and President Obama is seeking money for more cops, more prosecutors and more prisons. Your support is vital to the work we do. Unlike many non-profits, we do concrete things that actually can be measured: we publish a magazine; we publish and distribute books; we successfully sue prisons and jails to ensure they do not engage in unconstitutional censorship; we advocate on behalf of prisoners in the media, before legislatures and administrative agencies, and in public forums. For the full scope of the depth and breadth of our activities, review our annual reports on our website. We run a lean operation and, having consolidated our Vermont and Washington offices last year, cannot cut additional costs without limiting our operational capabilities.

In contrast to other non-profits, PLN does not bombard its supporters with fundraising requests throughout the year. We conduct one fundraiser at the end of the year and this is it. If you are familiar with PLN and our work, then you know we do a lot with little funding. But continued funding is necessary if PLN is to continue operating, and we can't keep doing what we do without your support!

So when you decide where to donate this holiday season, please think about PLN. Consider the work we do – and have been doing for more than two decades – and also consider there isn't much grant funding available for prisoners' human rights and criminal justice reform in the U.S., which are not popular issues. So please make a tax deductible donation to PLN or encourage your family and friends to do so. PLN subscriptions make great gifts, as do the many books we distribute. Your donation will make a difference and go farther than a donation almost anywhere else. We also offer a number of "premiums" for donations above certain amounts (see the enclosed flyer).

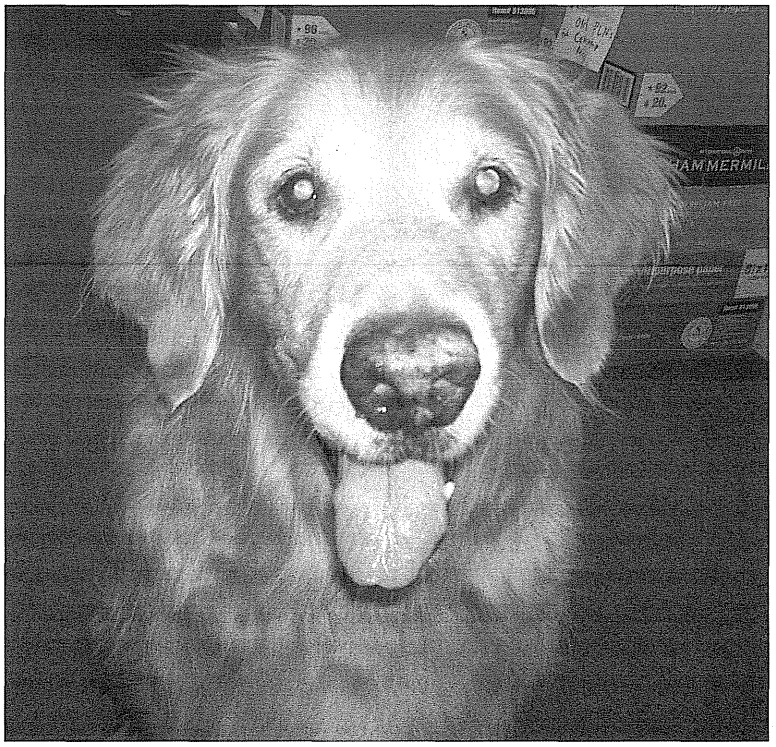
Feel free to forward this fundraiser request to others who may be interested in supporting PLN's work, and thank you for keeping us in mind this holiday season. Our office mascot, Nelly, a 12-year-old golden retriever, pictured below, comes to work every day to support our efforts to protect human rights. If she can support *PLN*, you can too!

In Struggle,

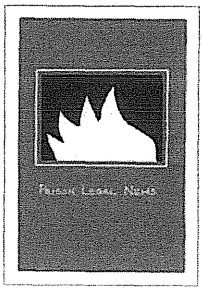
Paul Wright
Editor, PLN

P.S. - You can also order the much-awaited *Prisoners' Self-Help Litigation Manual, 4th edition*, from PLN for $45.95 or *The Habeas Citebook: Ineffective Assistance of Counsel* for $49.95, postpaid.

P.P.S. - Even if you can't afford to make a donation, subscribe or buy a book yourself, please encourage others to do so. Every purchase and donation is a huge help!



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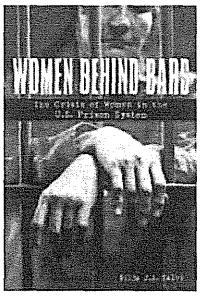
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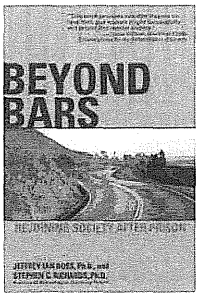
To show our appreciation for your support, we are providing a Prison Legal News card when you make a donation of at least $50.00. The card is hand embroidered by women prisoners in Bolivia who are paid a fair wage for the cards to help support their families.

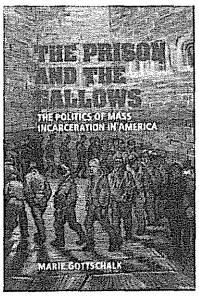
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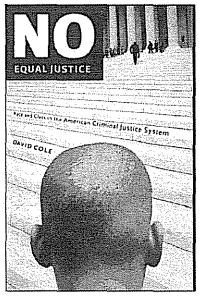
To show our appreciation for your support, we are providing the Prison Legal News hemp tote bag when you make a donation of at least $75.00. Handmade in Vermont using hemp fiber. Carry books and groceries in style and help end the war on drugs!

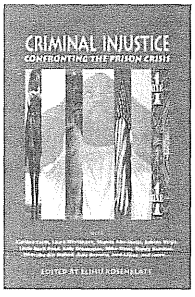


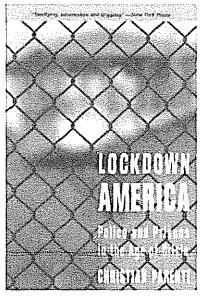


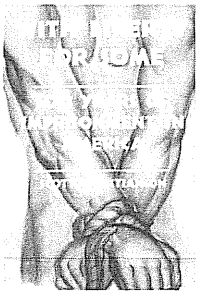


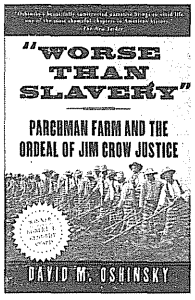










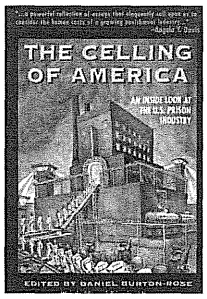


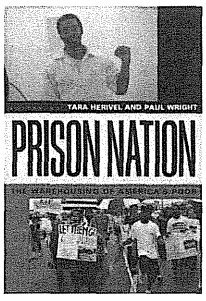
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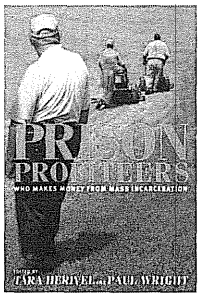
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Protecting Your Health and Safety, by Robert E. Toone, Southern Poverty Law Center, 325 pages. **$10.00.** This book explains basic rights that prisoners have in a jail or prison in the U.S. It deals mainly with rights related to health and safety, such as communicable diseases and abuse by prison officials; it also explains how you can enforce your rights within the facility and, if necessary, in court through litigation. 1060 [ ]

Beyond Bars: Successful Community Reentry after Prison, by Jeffery Ian Ross and Stephen C. Richards, 240 pages. **$14.95.** Complete guidebook on how to prepare for release from prison while still incarcerated. This is the most current, practical and comprehensive guide for ex-prisoners and their families related to managing successful reentry into the community. 1080 [ ]

Jailhouse Lawyers: Prisoners Defending Prisoners v. the U.S.A., by Mumia Abu Jamal, City Lights Publishers, 280 pages. **$16.95.** In *Jailhouse Lawyers*, Prison Legal News columnist, award-winning journalist and death-row prisoner Mumia Abu-Jamal presents the stories and reflections of fellow prisoners-turned-advocates who have learned to use the court system to represent other prisoners, and in some cases have won their freedom. A must-read for jail-house lawyers! 1073 [ ]

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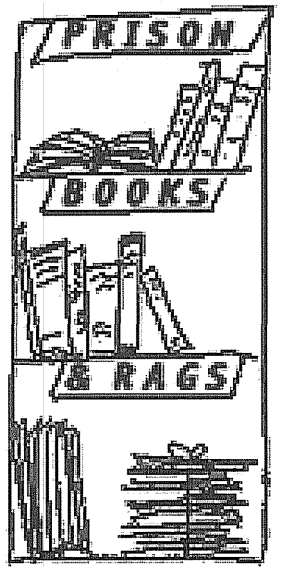
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Prison Madness: The Mental Health Crisis Behind Bars and What We Must Do About It, by Terry Kupers, Jossey-Bass, 245 pages. ***Hardback only*; prisoners please include any required authorization form. $38.00**. Psychiatrist writes about the mental health crisis in U.S. prisons and jails. Covers all aspects of mental illness, prison rape, negative effects of long-term isolation in control units and more. 1003 ☐

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~ BL, Washington prisoner

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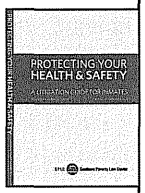
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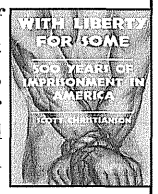
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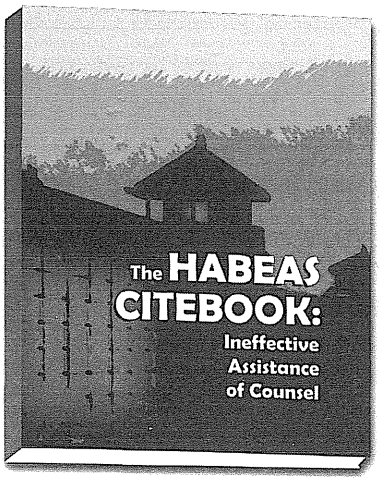
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Case 3:12-cv-00071-SI Document 8-10 Filed 01/31/12 Page 35 of 45

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

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Brandon Sample is a successful jailhouse lawyer litigant incarcerated in the Bureau of Prisons. He is a *Prison Legal News* contributing writer and a member of the National Lawyer's Guild. Editor Susan Schwartzkopf has a master's degree in education and is the director and editor in chief of Prison Legal News Publishing.

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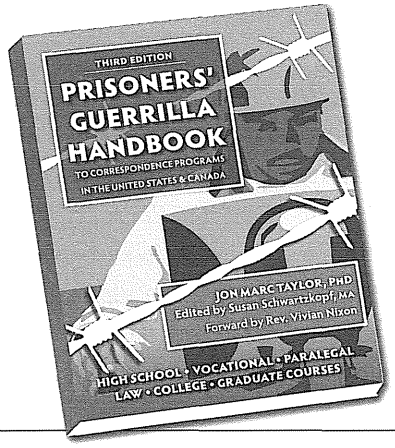
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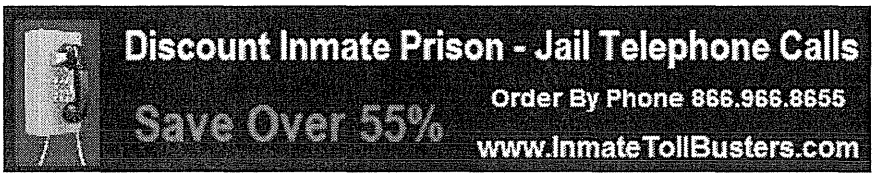
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The Failed Promise of Prison Privatization

by Richard Culp, Ph.D.

We have been experimenting with prison privatization in the U.S. now for over twenty-five years. The privatization idea originated out of a notion that the private sector, with its competition-driven efficiency and innovation, could operate prisons of higher quality and lower cost than the public sector. Create a market for incarceration services, the argument ran, and the market will work its magic, improving prison conditions and rehabilitative outcomes while saving the taxpayers millions of dollars. That market has effectively been created over the past quarter century and we have now arrived at a place where prison privatization has been studied extensively and evaluated rigorously.

Although hyperbole continues to propel prison privatization policy along, research findings are incontrovertible: even in the best private prisons, quality of prisoner care is no better than in public prisons and the cost advantage of privatization, which initially accounted for minimal savings, is steadily eroding as the private prison industry matures.
The big promises of prison privatization – less cost, higher quality – have simply not materialized. Despite these disappointing results, prison privatization advocacy maintains traction in diverse jurisdictions as policymakers from Ohio to Florida and from Maine to California seek expedient solutions to budget shortfalls triggered by a lingering great recession.

In retrospect, it should come as no surprise that prison privatization would fail to live up to its promises. There are several reasons for this. First, free market solutions to social problems like crime assume, after all, that there are "free" markets for appropriate services. However, there is no such thing as a natural market for the services provided by private prison companies. On the contrary, the marketplace for incarceration services is created by the government, for the government. It is an artificial market. Many of the services that have been privatized by government (e.g., custodial services, food preparation, medical care) are provided by the private sector independently of the government's decision to privatize or not. There is a free market analogue for many kinds of services that governments routinely provide. Other fields such as education and health care, for example, have an active market of existing nonprofit and for-profit providers willing to sell educational and healthcare services to a huge market of potential buyers that includes both individuals and governments.

The prison business is fundamentally different in that no one can freely purchase incarceration services as a private individual. There is no natural market for incarceration services. The power to incarcerate someone – to hold a person against his or her will – is a defining characteristic of the state. The government holds a monopoly over the

legitimate use of physical force and the power to incarcerate. Only the government has the legitimate power to restrict a citizen's liberty; individuals are prohibited by law from incarcerating another person under "false imprisonment" statutes. The government can delegate this power on a limited basis – for example, "shopkeeper's privilege" allows merchants to temporarily detain suspected shoplifters. But long-term incarceration is a different matter. The only potential buyers who can legally purchase incarceration services are the government jurisdictions that have custody over indicted, convicted or detained persons. In order to privatize its incarceration function, the government has had to create a market since one does not and cannot exist without its direct intervention.

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Secondly, the development of the private prison industry has resulted in a highly concentrated producer market where only four companies control over 90% of the incarceration services business. Economic theory tells us that when production is highly concentrated in very few companies, the market becomes an oligopoly, a market situation that is inherently less competitive and innovative than a market with more broad-based representation. An oligopoly is characterized by interdependence, avoidance of competition and a rigid attachment to the status quo among the leading firms.

A third part of the story is that government itself unwittingly stifles innovation in the private prison industry. Since the only legitimate customers of prison companies are the jurisdictions that can indict, convict or otherwise detain people, the potential customer base for incarceration services is very limited. In practice, this has led to a situation where only a handful of customers, an oligopsony in economic terms, has come to dominate the customer base. The limited number of customers serves to dissuade private prison companies from conducting research and development into innovative correctional programming, as the tiny customer base tends to demand only those services that mimic what the governments themselves are accustomed to providing.

Origins of the Artificial Market

Contracting out of noncustodial prison services such as medical care, food service, maintenance, education and mental health services has been practiced for a long time and with little controversy. Contracting out of custody services, for which there is no free market analogue, is much more controversial. The deinstitutionalization movement in juvenile corrections during the 1970s initiated a number of experiments in privatized services and custody for juveniles. A major step toward contracted custody of adults occurred when the Immigration and Naturalization Service (INS), the forerunner to today's Immigration and Customs Enforcement (ICE), decided in 1983 to partially outsource the detention of undocumented immigrants in its custody. In the summer of 1983, the INS issued a request for proposals and the newly-formed Corrections Corporation of America (CCA) submitted the winning bid.

Likewise, the community corrections movement in the adult system involved contracting out of the custody function in many low-security adult facilities. Minnesota passed the Community Corrections Act in 1971, and 25 states followed suit with similar legislation over the next 12 years. Community corrections legislation transferred funding from state-level departments of correction to local governments which, in turn, used the funds for halfway house programs and other services for lower-level offenders. Many jurisdictions turned to private contractors to operate these facilities.

In 1986, Management and Training Corporation (MTC) secured a contract to operate a community corrections facility in Eagle Mountain, California. Also in 1986, the State of Kentucky contracted out the development and operation of a 200-bed minimum-security facility in Marion County. Another newly-formed company, the U.S. Corrections Corporation, was awarded the contract. Similarly, the U.S. Bureau of Prisons (BOP) began contracting out the operation of low-security halfway house programs to the private sector during this time. Another early private prison company, Correctional Services Corporation, originally Esmor Correctional Corp., began business in 1989 with two contracts from the BOP to operate halfway houses in New York City.

These early entrants to the incarceration services market found a political climate supportive of privatization in several states, including Kentucky, Tennessee, Texas, Florida, Arizona, New Mexico and Louisiana. By 1994 there were approximately 20 companies actively seeking contracts to either build and manage company-owned prisons or manage existing facilities owned by federal, state and local jurisdictions.

The Supply Side of the Incarceration Services Industry

The traditional industrial life cycle model suggests that new markets move through a process marked by four stages: fragmentation, shakeout, maturity and decline. The fragmentation period occurs when the industry is new, many entrepreneurs enter the market, and they operate at low volume and tend to serve narrow geographic areas. Eventually, a shakeout period occurs as some companies become more efficient and the less efficient ones fail to stay in business. Growth and competition are strongest during this period, as are the profits of the largest companies. The industry reaches maturity when growth slows and surviving companies try to solidify their positions in the industry. At some later time, the industry moves into decline as the demand for the product or service drops and companies seek new ways to recover profitability.

The decade of the 1990s witnessed the rapid growth of prison privatization, consolidation

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of the industry and the cooling off of growth rates as the decade ended. The industry moved through the traditional life cycle stages of fragmentation to maturity during this period. The industry experienced tremendous growth from 1992 to 1998, averaging an increase in capacity of 36% each year. But from 1999 to 2006, growth declined to an average rate of under 4% per year. As market maturity is commonly defined as reaching a state of equilibrium marked by the absence of significant growth or innovation, the industry reached maturity as the new millennium began.

The shakeout stage of the industry is reflected in the difference between the companies doing business in 1996 and those doing business in 2011. In 1996, there were 14 companies with private prison contracts in the United States. Table 1 lists these companies, their rated capacity and their market share of U.S. private prison business. A common measure of the dominance of companies in a given market is the market concentration ratio (CR), or the percentage of total industry sales (or capacity, or employment, or value added or physical output) contributed by the four leading firms ranked in order of market share. A market is considered to have a high CR when the four leading firms control over two-thirds of market share, a moderate concentration when the ratio falls between one-third and two-thirds, and a low concentration when the top four companies control less than a third of total market share.

The four-firm market concentration ratio of the private prison industry was 86% in 1996, a significantly high level of concentration. But by the end of 2011 only seven companies remained in the private prison business, and the market share of the top four firms increased to 92% (see Table 2).

Acquisitions and Ethical Challenges

The rise in concentration ratio means that the industry as a whole has become less competitive. Five of the companies that disappeared between 1996 and 2011 (U.S. Corrections Corporation, Correctional Services Corporation, Cornell Corrections, Inc., Fenton Security, Inc. and Correctional Systems, Inc.) were acquired by larger companies. Four other firms went out of business (Bobby Ross Group, Capital Correctional Resources, Dove Development Corporation and Maranatha Production Company, LLC). Three newcomers, LaSalle Southwest Corrections, Louisiana Corrections Services and Emerald Companies, are small and regionally-based in Texas and Louisiana. A review of the ongoing concentration in the market is illustrative of shakeouts in the industry and of some of the ethically-challenged behavior that can attend to the process of profit seeking. The largest company – Corrections Corporation of America – acquired the third-ranked company, U.S. Corrections Corporation, in 1998. U.S. Corrections, based in Kentucky, had much in common with Tennessee-based CCA. Both companies were founded by entrepreneurs who were well connected with the political establishment in their state. One of CCA's founders, Thomas W. Beasley, was a former chair of the state Republican Party and managed the successful 1978 gubernatorial campaign of Lamar Alexander. Honey Alexander, the governor's wife, was an early investor in CCA. U.S. Corrections Corporation, based in neighboring Louisville, did all of its business in Kentucky prior to 1995. Executives of the company contributed over $77,000 to political campaigns in the state between 1987 and 1993, including $23,000 to Governor Wallace G. Wilkinson and his wife Martha.

Clifford Todd, the CEO of U.S. Corrections, was implicated in a payoff scandal involving the company's contract to run the county jail in Louisville. He was arrested by the FBI in 1994, pleaded guilty to mail fraud and was sentenced to 6 months in jail and fined $250,000. He sold his stake in the company for $15 million in 1994. At the time of the buyout by CCA, U.S. Corrections owned a total of four facilities in Kentucky, Ohio and North Carolina with a capacity of 5,275 beds, and had contracts to manage publicly-owned facilities in Kentucky, Florida and North Carolina with a capacity of 5,743 beds.

The second-largest company in 1996, Wackenhut Corrections Corporation (WCC), was formed in 1984 as a subsidiary to security firm Wackenhut Corporation, which was founded by George Wackenhut, a former FBI agent. Over the ensuing years, WCC grew to become one of the largest private prison companies in the world. The company began providing residential services for at-risk juveniles and young adults under the Job Corps program. WCC went public in 1994 (with Wackenhut Corporation as the majority shareholder). In 2002, the Danish company Group 4 Falck merged with the Wackenhut Corporation and, indirectly, became the owner of 57% of WCC's stock. In 2003, WCC bought out Group 4 Falck's interest in the company and changed its name to the GEO Group, Inc. The GEO Group acquired the industry's seventh-largest company, Correctional Services Corporation (CSC), in 2005 and Cornell Corrections, the fifth-largest company, in 2010.

Founded in 1989, CSC operated under several different names, including Esmor

Correctional Services, Inc. The company was founded by the owners of a welfare hotel in New York City and began its prison business operating halfway houses under contract with the BOP. CSC also managed the INS Detention Center in Elizabeth, New Jersey, remembered best for a June 1995 riot in which 300 detainees took over the facility in protest of poor conditions of confinement. Esmor staff fled from the detention center, leaving order to be restored by federal, state and local law enforcement officers. The INS closed the facility after the riot, noting that CSC guards had abused detainees, gave them spoiled food and deprived them of sleep. The facility was reopened in 1997.

Later, in 2003, CSC was fined $300,000 by the New York State Lobbying Commission for failing to report free transportation, meals and gifts given to a dozen state legislators from Brooklyn and the Bronx. The fine was the largest the state had ever imposed on a company for violating the state's lobbying laws. In May 2008, the Securities and Exchange Commission (SEC) filed charges against three Fort Lauderdale, Florida physicians, alleging insider trading in GEO Group's 2005 acquisition of CSC. According to the complaint, one of the three worked as a consultant to GEO and had a son who worked in GEO's finance department, where he allegedly learned of the pending deal. The three were charged with illegally purchasing $390,000 in CSC stock before the acquisition. Two of the defendants entered into settlement agreements while the third was cleared of the charges.

Another GEO acquisition, Cornell Corrections, Inc., had been the third-largest private prison company in 2006, with 8% of industry market share. Incorporated in 1994, the company built its business primarily with youth services and community-based rehabilitation programs for adults. Pirate Capital, LLC, a hedge fund firm, acquired a 13% interest in Cornell in 2004, becoming the company's largest shareholder, and replaced several board members and the company's CEO with financiers more oriented toward short-term growth. Pirate Capital unloaded its shares of Cornell in 2006 in the midst of an SEC investigation over its stock sales practices, several bad investment decisions and company downsizing. The company warned its stockholders in 2009 of looming problems in managing indebtedness of some $303 million. GEO Group bought Cornell, along with its debt, in 2010.

Management and Training Corporation (MTC) is the third-largest company currently providing incarceration services. MTC is a privately-held Utah-registered company that gained expertise in working with at-risk young people as a major provider of Job Corps programs. The company first entered the private prison market in 1987 when it received a contract to manage the Eagle Mountain Community Correctional Facility in Desert Center, California (which experienced a major riot that resulted in the deaths of two prisoners in 2003). MTC expanded slowly and steadily since 1987 and now runs a total of 20 correctional facilities in Arizona, California, Florida, Idaho, New Mexico, Ohio and Texas.

The company's generally positive reputation as a job training provider has been tarnished by its corrections experience. In 1997, MTC hired the former director of the Utah Department of Corrections, Lane McCotter, as Director of Corrections Business Development. McCotter was well connected in pro-privatization states, having served as director of both the Texas Department of Criminal Justice and the New Mexico Corrections Department before serving as the corrections head in Utah. He left the Utah DOC job in the midst of an investigation over the death of a prisoner with schizophrenia who had been shackled to a hard plastic chair for the final sixteen hours of his life.

In 2003, MTC's Santa Fe, New Mexico facility was under investigation by the U.S. Justice Department for unsafe conditions and poor quality prisoner medical care while McCotter was employed with the company. Nonetheless, that same year he was appointed by Attorney General John Ashcroft to serve on a U.S. Department of Justice team commissioned to assess and implement a plan for rebuilding Iraq's criminal justice system. The team's final act before leaving Iraq was to conduct a ribbon cutting ceremony at the refurbished Abu Ghraib prison, a centerpiece of their corrections planning. Although the facility was empty when McCotter left Iraq, the work of the committee of experts was indelibly stained by the infamous events that subsequently occurred at the prison and from on-going human rights abuse allegations in prisons under the direct supervision of other committee members.

MTC was also involved in a failed experiment in prison privatization in Canada. In 2001, the company won a five-year contract to operate the Central North Correctional Centre (CNCC) in Ontario as part of a pilot project to compare operations of the CNCC facility with a similar publicly-run prison, the Central East Correctional Centre. The government hired PricewaterhouseCoopers to evaluate the two prisons across a variety of dimensions. The evaluation found that the public prison outperformed the MTC facility overall. While the MTC prison was cheaper to operate and provided a greater variety of programming than the government facility, the public prison rated significantly better on security, recidivism

the government facility, the public prison rated significantly better on security, recidivism rates, health care and community impact. Based on the results of the experiment, Ontario decided to turn management of the privatized facility over to the public sector.

Community Education Centers (CEC), incorporated in 1996, rounds out the quartet of companies that control 92% of the current incarceration services market. Like MTC, CEC is a privately-held company whose finances and governance structure are much less transparent than is the case with publicly-held companies. Until a few years ago, CEC's business was concentrated in providing community-based residential, re-entry and rehabilitative services to offenders, mostly in New Jersey and Pennsylvania, but the company moved into the secure incarceration services business with its acquisition of CiviGenics in 2007.

CiviGenics was founded in 1995 in Marlboro, MA by Roy Ross, the former president of Spectrum Health Systems, Inc., a nonprofit company that provided drug and alcohol treatment services for prisoners in the Massachusetts Department of Corrections. Ross arranged a contract for CiviGenics to provide management of Spectrum's Massachusetts in-prison treatment programs. In 1996, CiviGenics acquired Fenton Security, Inc., a small company that had management contracts to operate two county jails in Colorado. Tom Rapone, a former Secretary of Public Safety in Massachusetts, joined CiviGenics as the firm's Chief Operating Officer. CiviGenics expanded its secure custody operations and by 1998 operated several small jail facilities, employed more than 1,000 staff and had revenues of more than $30 million.

In July 1999, the Ohio Department of Rehabilitation and Correction (ODRC) awarded CiviGenics a $14.9 million contract to operate the newly-built North Coast Correctional Treatment Facility (NCCTF) in Grafton. However, the ODRC elected not to renew its contract with CiviGenics when the contract expired in July 2001, citing problems with high staff turnover (including five different wardens in its first 18 months), repeated failure to maintain minimum staffing levels and problems with over-billing the state for positions that remained uncovered. The ODRC subsequently awarded the contract to MTC, which continues to operate the NCCTF facility.

In 2004, the Massachusetts State Auditor completed an audit that found Spectrum Health Systems had misused $17.4 million in state money, with $10.2 million of the total amount involving excessive payments to CiviGenics. The matter was settled in January 2007 in an agreement that required CiviGenics to repay the state $3.4 million and Roy Ross to repay $650,000. With its acquisition of CiviGenics in 2007, CEC became the fourth largest private prison company in the U.S.

The Demand Side of the Incarceration Services Industry

The demand side of prison privatization, like the oligopoly of private prison companies, is also highly concentrated. The potential customers in the private prison market are government agencies at the federal, state and local level that operate jail, prison and detention programs. At the federal level, the Bureau of Prisons, the U.S. Marshals Service and Immigration and Customs Enforcement all manage a variety of custody facilities. The four branches of the military also operate facilities for military personnel sentenced under the Uniform Code of Military Justice. Of course, the 50 states and the District of Columbia each have departments of correction.

According to the Bureau of Justice Statistics, there are some 1,821 state and federal correctional facilities, not counting facilities operated by the U.S. Marshals Service and ICE. At the local level, counties and cities operate about 2,875 jail facilities in the United States. In sum, the potential consumer base of the private prison industry numbers somewhere in the area of 4,700 facilities.

After over 25 years of correctional privatization, there are fewer than 200 private correctional facilities in the United States – only about 4% of all facilities. The federal government is the most actively involved in privatization, with 16.3% of federal prisoners serving time in private facilities. State governments are next, with 6.6% of state prisoners in private facilities. However, whereas 60% of all correctional facilities in the United States are at the local level, only about two dozen city and county jurisdictions (1.7% of the total) contract with private companies to operate their jails and detention centers.
In practice there are very few buyers of privatized incarceration services, and the federal government is the largest single customer. Between 2000 and 2008, the number of state prisoners placed in private prisons increased by about 25%, from 75,018 to 93,537. In the federal system, however, the number increased from 15,525 to 32,712, or about 110%. During the same period, the number of states placing some portion of their prisoners in private facilities actually declined from 30 states to 27.

There are in practice only fifty-four "customers" buying incarceration services from the private prison industry – the three federal agencies, twenty-seven state departments of correction and two dozen local jurisdictions. Within this small customer base, the federal government plus eight states (Texas, Florida, Arizona, Oklahoma, Colorado, Tennessee, California and Mississippi) collectively account for more than 70% of all private prison business. In effect, the market of buyers constitutes an oligopsony, or a market form in which only a few customers buy a certain good and therefore possess the power to affect pricing. The two largest publicly-traded private prison companies recognize their dependency on a limited number of governmental customers as a threat to their profitability and include a warning to stockholders to that effect in their annual reports. At CCA, just three federal government agencies, the BOP, ICE and the U.S. Marshals, accounted for 43% of the company's total revenue for fiscal year 2010, or $717.8 million. The state of California, which is placing thousands of prisoners out-of-state in an effort to reduce in-state prison populations, provided 13% of CCA's total revenue for fiscal year 2010, or $214 million. GEO Group reports that while they have a total of 45 governmental clients (customers), 4 of those clients accounted for over 60% of their U.S.-based revenue (BOP, ICE, U.S. Marshals and the State of Florida). Among those, the three federal agencies combined are responsible for 53% of GEO Group's total U.S. revenue.

The oligopsony of governmental consumers serves to discourage innovation. In practice, government purchasers of incarceration services have required that private prison companies simply duplicate policies and procedures practiced in public prisons, to the effect that the standard operating procedures of most private prison programs closely mirror those of public prisons in the same state. Notably, none of the companies have distinct and viable research and development departments as would be expected in an industry that values innovation. Private prison companies encourage the adoption of public prison practice, rather than the development of innovative practice, by actively recruiting management-level staff from within the public sector.

As a case in point, a review of the background of CCA's facility management staff suggests a widespread practice of mining the public corrections system for managers. Among the wardens of 63 of the company's correctional facilities, nearly two-thirds formerly worked in state departments of correction (36 wardens) or the federal BOP (5 wardens). The most warden-rich jurisdiction was the Texas Department of Criminal Justice, from whence 28% of all CCA wardens were recruited. These experienced staffers bring a degree of order and control to the company's private prisons, but they are not likely to be hired for their spirit of experimentation and innovation.

Arguably, private prisons are not looking to be innovative unless it is a way of cutting costs. The most common way for these companies to make money from government contracts is by reducing personnel expenses. Because labor represents about 80% of the operating cost of a prison, much of the cost savings in private prisons results from paying private correctional officers less than comparable public correctional officers. But this advantage begins to erode in a market where private companies are dependent upon contract renewals (with more experienced staff) rather than new facilities (with new, entry-level staff). Even as labor rates vary among the states, public sector correctional officer starting salaries average $28,000 across all states with a (one standard deviation) range between $23,000 and $34,200. By comparison, the Bureau of Labor Statistics reports a mean annual salary of $42,270 for all occupations in the United States (in May 2008). Public sector prison staff salaries are very low already, suggesting that it is not easy for the private sector to continue to undercut the government in personnel costs.

Conclusion

The increasing concentration of market share among the top four companies and the declining number of companies in the incarceration services market mean that governments considering the privatization option will find a decreasing competitive environment when seeking contract bids. In 1995, for example, a total of seven companies submitted bids in response to a Arkansas Department of Corrections request for proposals for two new privately-operated prisons. In contrast, a 2006 request for proposals to manage a private prison in Pennsylvania yielded only two bidders. With market maturation and increased concentration, it is increasingly difficult for new companies to get into the business and for marginal performers to stay afloat.

Oligopoly theory and industry life cycle theory suggest that the remaining companies will be less competitive overall, seeking interdependent relationships with their competitors to help secure their position now that industry growth rates have cooled. As this scenario continues to unfold, any possibility of meaningful cost savings from privatization will decline over time. A recent study of private prison costs in Arizona found that this has already occurred, as the cost of incarcerating minimum-security prisoners has reached parity between state prisons and private prisons while the cost of housing medium-

security prisoners is now actually lower in state prisons than in private facilities.

The private prison industry bears a fair share of the responsibility for not registering a better showing in research results. Despite the fact that it has hired away from the public sector many "best and brightest" correctional staff, the industry's penchant for financially rewarding its executives and top managers has drained resources that could have been devoted to program research and development.

Governments have also played a role in the failure of private prisons to perform better, particularly in the area of program quality. As an oligopsony, governments hold the power to be more demanding in the area of performance yet have systematically failed to do so. In the main, contracting governments have simply abdicated demand for increasing program quality, settling for an illusory decrease in program costs. Given the history of "iron triangle" relationships that intertwine the private prison industry and government officials, this failure is perhaps not surprising.

One of the more depressing statistics to emerge in criminal justice in recent years is the fact that two-thirds of released prisoners are re-arrested within three years. Enlightened government officials around the country have realized that they can reduce correctional expenditures only by focusing their efforts on reducing recidivism, not by building or contracting for more prison space. Government jurisdictions that are having the greatest success in reducing correctional expenditures are those that are turning to evidence-based practice to guide sentencing decisions and devoting correctional resources toward programs proven to reduce recidivism. Prison is not one of them. In enlightened jurisdictions, incarceration rates are beginning to decline.

As this trend continues, the private prison industry will eventually enter the fourth stage of the industrial life cycle – decline – and will begin shedding some of its capacity. Some companies have already sighted this trend on the horizon and have begun developing alternative business opportunities in areas such as electronic monitoring and prisoner health care. For those government agencies with heavy reliance on private prisons, decline in the industry will pose new problems as companies shed unprofitable contracts and simply walk away. Albert Einstein suggested that insanity is doing the same thing over and over again and expecting different results. If a quarter century of experience with prison privatization has not led to better quality and cost outcomes, it is time to take a more sane approach.

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