PRISON Legal News

VOL. 22 No. 4
ISSN 1075-7678

Dedicated to Protecting Human Rights

April 2011

Nationwide *PLN* Survey Examines Prison Phone Contracts, Kickbacks

by John E. Dannenberg

An exhaustive analysis of prison phone contracts nationwide has revealed that with only limited exceptions, telephone service providers offer lucrative kickbacks (politely termed "commissions") to state contracting agencies – *amounting on average to 42% of gross revenues from prisoners' phone calls* – in order to obtain exclusive, monopolistic contracts for prison phone services.

These contracts are priced not only to unjustly enrich the telephone companies by charging much higher rates than those paid by the general public, but are further inflated to cover the commission payments, which suck over $152 million per year out of the pockets of prisoners' families – who are the overwhelming recipients of prison phone calls. Averaging a 42% kickback nationwide, this indicates that the phone market in state prison systems is worth more than an estimated $362 million annually in gross revenue.

In a research task never before accomplished, *Prison Legal News*, using public records laws, secured prison phone contract information from all 50 states (compiled in 2008-2009 and representing data from 2007-2008). The initial survey was conducted by *PLN* contributing writer Mike Rigby, with follow-up research by *PLN* associate editor Alex Friedmann.

The phone contracts were reviewed to determine the service provider; the kickback percentage; the annual dollar amount of the kickbacks; and the rates charged for local calls, intrastate calls (within a state based on calls from one Local Access and Transport Area to another, known as interLATA), and interstate calls (long distance between states). To simplify this survey, only collect call and daytime rates were analyzed.

Around 30 states allow discounted debit and/or prepaid collect calls, which provide lower prison phone rates (much lower in some cases). However, since other states don't offer such options and not all prisoners or their families have access to debit or prepaid accounts, only collect calls – which are available in all prison systems except Iowa's – were compared. Also, while telephone companies sometimes provide reduced rates for evening and nighttime calls, many prisoners don't have the luxury of scheduling phone calls during those time periods.

Lastly, it should be noted that more recent phone rates may now be in effect due to new contract awards or renewals, and while data was obtained from all 50 states, it was not complete for each category. See the chart accompanying this article for a breakdown of the data obtained.

PLN has previously reported on the egregious nature of exorbitant prison phone rates, notably in our January 2007 cover story, "Ex-Communication: Competition and Collusion in the U.S. Prison Telephone Industry," by University of Michigan professor Steven Jackson.

How Are Phone Rates Regulated?

Domestic phone calls are generally divided into three categories: local, intrastate and interstate. The rates charged for these calls depend on several factors and are regulated by different authorities. Local calls are usually flat-rate within a small area around the call's originating location; e.g., within the same city.

Local and intrastate calls are often regulated by state public utility or service commissions, which set rate caps. These caps are negotiated to allow phone companies to recover capital costs in a reasonable time frame while also satisfying requirements levied by the state. The latter include subsidizing low-income phone users, providing emergency communications for state agencies, and providing required phone coverage (such as emergency-reporting phone booths along major highways). Obviously, some of these state-mandated requirements are not in and of themselves profitable, so negotiation of rate structures includes recouping these otherwise nonrecoverable costs.

At the interstate level, phone com-

Inside

Protect your rights—the long awaited new edition of the Prisoners' Self-Help Litigation Manual now yours for $45.95

An indispensable guide for prisoners and prisoner advocates

FOURTH EDITION

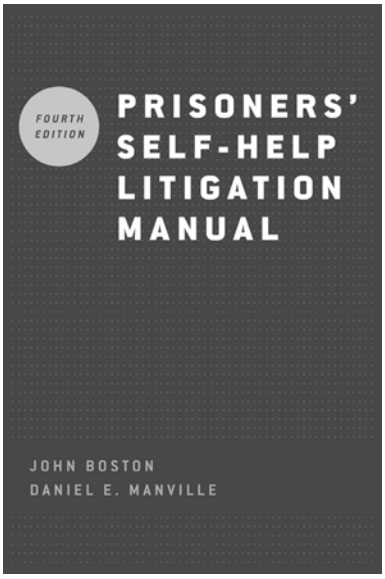
PRISONERS' SELF-HELP LITIGATION MANUAL

John Boston, *Prisoners' Rights Project of the New York City Legal Aid Society*, and **Daniel E. Manville**, *Attorney Specializing in Prisoners' Rights Litigation*

Prisoners' Self-Help Litigation Manual is an indispensable guide for prisoners and prisoner advocates seeking to understand the rights guaranteed to prisoners by law and how to protect those rights.

Over the past decade, prison law and conditions have changed significantly. This new edition is updated to include the most relevant prisoners' rights topics and approaches to litigation, including:

- Clear, comprehensive, practical advice on the conditions of confinement, civil liberties in prison, procedural due process, the legal system, how to litigate, conducting effective legal research, and writing legal documents.
- Strategic focus on federal constitutional law and practice, with additional commentary on state law, providing prisoners and those wishing to assist them with the most important information concerning the legal rights of convicts and detainees.
- Updates include all aspects of prisoners' rights law as well as material on legal research, legal writing, types of legal remedies, and how to effectively use those remedies.



Shipping is included in the $45.95 price—please fill out the form below to complete your order.

4 EASY WAYS TO ORDER

✆	**Phone:**	866.445.8685
	Fax:	919.677.1303
	Web:	**www.oup.com/us**
✉	**or mail this form to:**	Order Dept. Oxford University Press, 2001 Evans Road, Cary, NC 27513

YES, I would like _____ copies of the ***Prisoners' Self-Help Litigation Manual*** (ISBN: 9780195374407) at $45.95.

Subtotal: $_____

Total Amount: $ _____

PAYMENT OPTIONS (please check one):

Check or money order enclosed (payable to Oxford University Press)

Credit Card: ❑ MasterCard ❑ Visa ❑ Amex

Account Number _____

Expiration Date _____

Signature _____

BILL TO:

NAME _____

ADDRESS _____

_____

CITY, STATE, ZIP _____

_____

SHIP TO:

NAME _____

ADDRESS _____

_____

CITY, STATE, ZIP _____

PUBLISHER
Rollin Wright
EDITOR
Paul Wright
ASSOCIATE EDITOR
Alex Friedmann
COLUMNISTS
Michael Cohen, Kent Russell, Mumia Abu Jamal
CONTRIBUTING WRITERS
Mike Brodheim, Matthew Clarke, John Dannenberg, Derek Gilna, Gary Hunter, David Reutter, Mike Rigby, Brandon Sample, Jimmy Franks, Mark Wilson
RESEARCH ASSOCIATE
Sam Rutherford
ADVERTISING DIRECTOR
Susan Schwartzkopf
LAYOUT
Lansing Scott/ Catalytic Communications
HRDC GENERAL COUNSEL
Lance Weber

***PLN* is a Monthly Publication**

A one year subscription is $24 for prisoners, $30 for individuals, and $80 for lawyers and institutions. Prisoner donations of less than $24 will be pro-rated at $2.00/issue. Do not send less than $12.00 at a time. All foreign subscriptions are $100 sent via airmail. *PLN* accepts Visa and Mastercard orders by phone. New subscribers please allow four to six weeks for the delivery of your first issue. Confirmation of receipt of donations cannot be made without an SASE. *PLN* is a section 501 (c)(3) nonprofit organization. Donations are tax deductible. Send contributions to:

Prison Legal News
P.O. Box 2420
West Brattleboro, VT 05303
802-257-1342
info@prisonlegalnews.org
www.prisonlegalnews.org

Please do not mail *PLN* paperwork for an ongoing case or request legal advice. *PLN* is not a legal service provider and cannot give legal advice. *PLN* reports on legal cases and news stories related to prisoner rights and prison conditions of confinement. *PLN* welcomes all news clippings, legal summaries and leads on people to contact related to those issues.

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

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

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

Prison Phone Contracts (cont.)

panies are also regulated by the Federal Communications Commission (FCC). The FCC oversees rate structures across state lines, provides for an orderly integration of smaller telephone companies into the national phone network, and is responsible for implementing the Telecommunications Act of 1996.

These regulatory agencies are necessary to prevent one large company from forming a monopoly and price gouging the public with unreasonably high phone rates. However, such monopolies are only prohibited in the non-prison market. Prison phone service providers are free to bid on contracts at the maximum rates allowed by regulatory agencies, and upon winning such bids are effectively granted a monopoly on phone services within a given prison or jail system.

The Prison Phone Bidding Process

Prisons and jails present unique cost factors to telephone service providers. Such factors include physically secure phones (i.e., no readily removable parts); extensive monitoring and recording capabilities, including the ability to archive phone calls for later review by investigators; and difficult access to the prison-based equipment for servicing.

Some of these requirements, especially the monitoring, recording and archiving aspects, are not unique to prisons and are routinely provided to corporate America's call and customer service centers. Naturally, telephone companies should be allowed to build into their charged rate structure the recovery of capital and operating costs for such expenses.

But that simple logic does not control the cost of prison phone rates. What does control the rates? Pure, unabated greed by both the phone companies and the contracting agencies (e.g., state prison systems, county jails and private prison companies).

The bidding process for prison phone contracts typically begins with a request for proposal (RFP) – a document that outlines the number of phones, locations and technical performance standards required by the contracting agency. The latter include minimum "down time" specifications, frequency of servicing, estimated usage, and (in most but not all cases) audit provisions. From the RFP, telephone companies can determine their cost exposure when making bids. But that is not what guides their bid price or determines the winning bidder in most cases.

With very few exceptions, prison phone contracts contain kickback provisions whereby the service provider agrees to pay "commissions" to the contracting agency based on a percentage of the gross revenue generated by prisoners' phone calls. These kickbacks are not insignificant. At more than $152 million per year nationwide for state prison systems alone, the commissions dwarf all other considerations and are a controlling factor when awarding prison phone contracts.

For example, when Louisiana issued an RFP for prison phone services in 2001, it specified that "[t]he maximum points, sixty (60) ... shall be awarded to the bidder who bids the highest percentage of compensation ...," and that "[t]he State desires that the bidder's compensation percentages ... be as high as possible."

When the Alaska Dept. of Corrections (DOC) issued an RFP in 2007, bidders were rated on a point system with 60% of the evaluation points assigned to cost. The RFP explicitly stated that "[t]he cost proposal providing the largest percentage of generated revenues ... to the state will receive the maximum number of points allocated to cost." That is, the most important evaluation criterion was the commission rate.

Prison phone service kickbacks average 42% nationwide among states that accept commissions, and in some cases reach 60% or more. Put into simple terms, up to 60% of what prisoners' families pay to receive phone calls from their incarcerated loved ones has absolutely nothing to do with the cost of the phone service provided. The kickbacks are not controlled by state or federal regulatory agencies, and the only limit on the maximum rate for prison phone calls is the top rate permitted by such agencies or by the phone service contract itself.

It should come as no surprise, then, that many prison phone contracts result in very high rates, with enough profit left over after recouping all of the phone company's costs to permit up to 60% of the gross revenue to be paid to the contracting agency. The kickback rates are listed in the chart accompanying this article, as are the dollar amounts of the commissions received in 2007-2008.

Some prison officials have denied that kickbacks influence their decision when contracting for prison phone services. "There are complaints due to the rates,"

said Nevada DOC spokesman Greg Smith in 2008, after the DOC entered into a new phone contract with Embarq. "A lot of families do complain that it's expensive, but it's an intricate system, it's not cheap.... We didn't negotiate this [contract] to create more revenue for us."

However, when responding to the RFP for Nevada's prison phone contract, Embarq had presented three options: base rates, lower rates and higher rates. The lower rate option included a smaller kickback (41.5%) and lower guaranteed minimum commission ($1.36 million per year). Instead, the Nevada DOC selected the company's higher rate option, which provided a 54.2% kickback and guaranteed minimum annual commission payment of $2.4 million, even though this resulted in higher local and interstate phone rates for prisoners and their families.

So despite protestations by prison officials, sometimes they do in fact negotiate contracts specifically to create more revenue. This was explicitly acknowledged in an RFP for prison phone services in Alabama. According to a March 13, 2007 memo from the state's Department of Finance, the RFP "proposed to award what amounts to an 'exclusive franchise' to the successful bidder based on the highest commission rate paid to the State on revenues received from users of the [prison] pay phones." It is likely no coincidence that Alabama has one of the highest commission rates – 61.5%.

The History Behind Kickback Commissions

The prison phone service market remained an exclusive monopoly of AT&T until 1984, when it was thrown wide open with AT&T's breakup under a settlement in an antitrust action brought by the U.S. Department of Justice. In 1989, MCI introduced its "Maximum Security" service, part of a larger concerted push into the government and institutional markets. By 1995 MCI held monopoly or near-monopoly contracts for prison phone services in California, Ohio, Connecticut, Virginia, Wisconsin, Missouri and Kentucky (MCI merged with WorldCom in 1998).

Other companies had their own "locked-in" contracts. The reorganized AT&T Prisoner Services Division managed to hold on to prison phone contracts in New Jersey, Pennsylvania, Michigan, New Mexico, Mississippi and Washington, followed by phone companies GTE (in Washington DC, Hawaii, Indiana and parts of Michigan); Sprint (sharing Michigan and also in Nevada); and US West (in New Mexico, Idaho, Oregon, South Dakota and Nebraska).

By the mid-1990s, this new competition had driven prison phone rates – spurred by higher kickback commissions to win contracts – to new heights. According to an American Correctional Association (ACA) survey published in 1995, nearly 90% of prison and jail systems nationwide received a portion of the profits derived from calls placed by prisoners, ranging from 10-55% of gross revenues.

For states struggling to keep up with the costs of exploding prison populations, these kickback payments represented a welcome and multi-million dollar source of income. According to the 1995 ACA survey, based on self-reports, Ohio was making $21 million a year in prison phone commissions (more recently it took in only $14.5 million based on *PLN*'s research), while New York brought in $15 million, California $9 million (more recently $19.5 million in 2007-2008), Florida $8.2 million (more recently $3 million), and Michigan $7.5 million (more recently $10.2 million before phasing out kickbacks in August 2008).

According to the ACA, 32 state prison systems plus 24 city and county jails – a fraction of the national total – reported phone commission payments in 1994 totaling over $100 million. The more recent total was $152.44 million from 43 of the 44 states that received prison phone revenue at the time of *PLN*'s survey (Arizona claimed it did not track commission payments).

Since the survey, one additional state no longer accepts prison phone kickbacks: California. Thus, the nationwide total for commission revenue has since decreased by $19.5 million per year based on California's 2007-2008 commission income (the state's kickback was phased out from a flat $26 million prior to August 2007 to $19.5 million in 2007-2008, $13 million in 2008-2009, $6.5 million in 2009-2010 and zero in FY 2010-2011).

Notably, however, the kickback commission data reported by state prison systems still vastly undervalues the prison phone service market, as it does not include jails, the federal prison system, private prisons or immigration detention facilities.

By 2000, the commission rates for prison phone contracts had soared to new heights, with California at 44%, Georgia 46%, South Carolina 48%, Illinois, Ohio and Pennsylvania at 50%, Indiana 53%, Florida 57%, and a national high in New York at 60% (reduced in 2001 to 57.5%). Ten states were raking in $10 million or more per year from prisoner calls, with California, New York and the federal Bureau of Prisons leading the way with over $20 million each in annual kickbacks. Such patterns were broadly if unevenly replicated at the local level, with city and county jails entering into similar commission-based phone contracts.

According to *PLN*'s research, as of 2008 more than half of the states that reported their kickback percentage were receiving commissions of at least 40%, including thirteen that reaped 50% or more. The Idaho DOC uses a commission structure that includes a per-call kickback ranging from $1.75 per collect call to $2.25 per debit call, which is "not affected by ... the length of call or whether the call is local or long distance." This flat per-call commission translates to an effective kickback rate of 10.5% to 66.1% based on a 15-minute call. Several states have

increased their commission rates in recent years, including Vermont and Wyoming.

The emphasis on kickback commissions correlates to a lack of competition in the prison phone industry. If competition truly existed, prison phone rates would gravitate towards a relatively consistent level as phone companies vie with competitors to obtain contracts. Businesses in the non-prison market must be price competitive, which benefits consumers. But that hasn't happened in the prison phone market; the phone rates in the chart accompanying this article are enormously varied across the national map, with high rates in some states and lower rates in others.

This is because prison phone companies don't "compete" in the usual sense. They don't have to offer lower phone rates to match those of their competitors, as prison phone contracts typically are based on the highest commission paid, not the lowest phone rates. Free market competition is thus largely absent in the prison phone industry, at least from the perspective of the consumer – mainly prisoners' families.

As stated in an efficiency analysis of prison phone contracts published in the Federal Communications Law Journal in 2002, "In the prison context, the state contracts with a private entity, and the private entity provides services to the prisoners and also to the state. ... Due to the perverse financial incentives and the political climate surrounding prisons and prisoners, however, neither the state nor the private entity acts in the best interests of the consumers in particular or of society in general."

The Arbitrary Nature of Prison Phone Rates

Referring to the accompanying chart, even a casual examination of prison phone rates nationwide reveals a patchwork of charges that simply cannot be correlated to providing the same basic telephone service. In other words, the rates are arbitrary.

Some local calls are flat rate (typically for 15 to 20 minutes); others have a connection charge plus a per-minute fee. Local collect calls range from as low as a flat rate of $.50 in Florida, North Dakota and South Carolina to $2.75 + $.23/minute in Colorado ($6.20 for a 15-minute local collect call). Alaska is unique in that prisoners can make local calls for free.

Intrastate rates vary from $.048/minute in New York to $3.95 + $.69/minute in Oregon ($.72 versus $14.30 for a 15-minute collect call, respectively).

Interstate rates are as reasonable as New York's $.048/minute with no connection fee, or Nebraska's $.70 + $.05/minute, but most crowd the high end of the scale with a connection charge of $3.00 or more plus per-minute rates up to $.89 – resulting in $10 to $17 for a 15-minute collect call (Washington has the highest interstate rate). This is a far cry from the much lower long distance rates paid by the non-

incarcerated public, which typically run $.05 to $.10 per minute or simple flat rate monthly fees for unlimited long distance calling in the $50-80 a month range.

Only eleven states have local collect call rates of under $1.00 per call, while Nebraska's interstate rate is *one-twelfth* and New York's interstate rate is *one twenty-fifth* the cost of the highest-priced phone charges for a 15-minute long distance collect call.

The irrationality of the rate structures is further exemplified by Rhode Island's no-kickback commission *low* rates, which are provided by Mobile, Alabama-based Global Tel*Link (GTL) – the same firm that has some of the *highest* rates in other states where the company pays commissions.

Local collect calls made by prisoners in Arkansas cost $4.80 per 15-minute call compared with $.70 in Rhode Island. Further, the rate for interstate collect calls from Arkansas prisons is $10.70 for 15 minutes, compared with $5.80 in Rhode Island – even though the same company, GTL, supplies phone services in both states.

It is readily apparent that the service provided, i.e., prison-based phone calls, is profitable for GTL even at the company's lowest rates; thus, the higher rates charged in states where GTL pays commissions amount to nothing more than price gouging and gross profiteering. Sadly, GTL's kickback-based business model is prevalent across the country, as more than half the state prison systems now employ GTL to provide phone services – either directly or through other GTL-owned firms.

In addition to connect and per-minute charges, some prison phone companies price gouge in other ways. For example, Value-Added Communications (VAC), which provides phone services for New York state prisoners, charges a $7.95 service fee when a prisoner's family adds funds to their phone account by credit card (there is no fee for payments by money order). Further, a $4.95 "monthly inactivity fee" is charged for an account with no call activity for over 180 days. And if a prisoner's family wants to close the account? Unless the account has not been used and is closed within 90 days after it was created, a $4.95 fee is imposed to cover "administrative" expenses.

GTL charges family members a $4.75 service fee for each $25.00 payment made to a prepaid phone account via credit card (i.e., a $9.50 surcharge for a $50.00 payment to a prepaid account – almost a 20% fee). There is a $5.00 charge to close an account and withdraw the remaining balance; also, if an account is not used for 90 days, the balance is forfeited to GTL. Another prison phone company, Securus Technologies, charges a monthly bill statement fee of up to $2.99 plus a "processing fee" of up to $6.95 for credit or debit card payments made online or (ironically) by phone.

Such extra fees cost Securus at least one contract. After Securus won a bid to provide phone services for the New Mexico DOC in April 2009, competitor Public Communications Services (PCS) challenged Securus' bid because it did not factor in the additional billing statement and credit card fees, which inflated the actual cost of phone calls. The New Mexico Dept. of Information Technology agreed. "It's in the best interest of the state to cancel the contract and start over again," said spokeswoman Deborah Martinez, noting that the bid information "was not as clear as it should have been."

Once companies win prison phone contracts and are granted a monopoly on phone services within a certain prison or jail system, however, prisoners' families have no choice but to pay the phone rates and fees if they want to accept calls from their incarcerated loved ones – an extortionate form of price gouging. Do you want to speak with your mother, father, wife, husband or child who's behind bars? Then pay up – at rates up to two dozen times higher than for non-prison calls.

Are All Prison Phone Companies the Same?

Prison phone companies have included some well-known firms and some that offer phone services solely in prisons and jails. Widely known are AT&T and Unisys, but the largest prison phone service provider is GTL. Other companies include Securus (owned by H.I.G. Private Equity), VAC, PCS, McLeod/Consolidated Communications, Embarq (a spin-off from Sprint/Nextel that is now owned by CenturyTel, Inc. d/b/a CenturyLink), ICSolutions, FSH Communications, and Pay-Tel (which mostly services jails in the southeast).

In recent years, many of the firms providing prison and jail phone services

have been merged into larger companies. FSH entered the prison phone market after buying the payphone assets of Qwest Communications Int'l, and recently sold its prison phone business to VAC. Securus Technologies, Inc. was formed in 2004 by the merger of T-Netix and Evercom Systems – two of the major players in the prison phone industry. On June 1, 2009, Securus entered into a 5-year contract renewal to provide phone services at 25 facilities operated by Corrections Corp. of America. According to a Securus press release, the contract was worth "over $19 million annually."

GTL has been prominent in consolidating the market. For example, the company took over AT&T's National Public Markets prison phone business on June 2, 2005, and acquired MCI WorldCom's correctional phone services division from Verizon in 2007. GTL also purchased competitor DSI-ITI, LLC in June 2010. GTL was itself acquired by Veritas Capital and GS Direct, LLC (owned by Goldman Sachs) in February 2009, but still does business as Global Tel*Link.

A rational mind would conclude that larger companies with more amortization of overhead costs would provide lower rates to be more competitive. But that is not what happens. The largest firms instead are able to offer larger kickbacks, thus creating the very monopoly that competitive bidding was designed to prevent. This is not to say that GTL, among other prison phone service providers, does not "compete." When GTL is up against a competitor for a contract where the contracting agency has imposed rate caps or does not accept commissions, it will apparently bid lower rates to compensate.

Although all prison phone companies provide the same basic service – secure phone systems for prisons or jails with monitoring, recording and other security features – there are some differences.

One firm, PCS, stood out in terms of providing low phone rates. In three states that ban kickback commissions the winning contractor was PCS on the basis of bidding lower rates for phone services. Those states are Nebraska, Missouri and New Mexico (while Missouri does not accept commissions, it requires payments to cover certain staffing costs).

In another state where kickbacks are banned, Rhode Island, the winning bidder was GTL. What, you ask, the company known for high rates had the *lowest* bid? Indeed, GTL charges Rhode Island prisoners $.70 (flat rate) for local and intrastate calls plus a thrifty $1.30 + $.30/minute for interstate calls. Evidently, absent the need to provide kickback payments, GTL was able to offer lower rates and underbid its competitors.

GTL has since acquired PCS effective November 10, 2010, thereby reducing its competition for no-commission, lower-rate prison phone contracts.

Are All States the Same?

The short answer is "no." Eight states have banned prison phone kickbacks entirely: Nebraska, New Mexico, New York, Rhode Island, Michigan, South Carolina, California (as of 2011) and Missouri (Missouri requires its phone service provider to cover the cost of 21 staff positions to monitor prisoners' calls). New Hampshire, Kansas and Arkansas have reduced their kickback commissions, and Montana recently entered into a limited-commission contract. As a result, prison phone rates in those states have plummeted.

Although not included in *PLN*'s state-by-state survey, the District of Columbia prohibits any "surcharge, commission, or

other financial imposition" on prisoners' phone calls beyond legally-established phone rates, which are limited to "the maximum rate determined by the Public Service Commission of the District of Columbia." D.C. Code Ann. § 24-263.01.

While phone companies' costs associated with installing and maintaining secure prison phone systems exceed those of installing public telephones, this is not reflected by the widely variant rates charged in different jurisdictions.

For example, GTL charges only $.70 for a local collect call in commission-free Rhode Island. But the company stiffs prisoners' families in Alabama with $2.75 for a local call and charges $4.80 for local calls in Arkansas – no doubt due to GTL's 61.5% and 45% kickbacks in those states, respectively. This indicates that GTL can provide lower rates absent the need to pay hefty commissions to the contracting agency.

Securus provides up to a 32.1% kickback in Alaska, but offers kickbacks of up to 60% in Maryland. Yet Securus' interstate rate in Maryland (with almost *double* its Alaska kickback percentage) is less than *half* the interstate rate in Alaska. Securus partnered with Embarq to handle phone services in Texas' prison system at $.26/minute for local and intrastate calls, and $.43/minute for interstate calls – using a "bundled" rate that includes a 40% kickback. [See: *PLN*, Feb. 2009, p.27; Nov. 2007, p.11]. Thus, for a 15-minute collect interstate call, Securus charges $6.45 in Texas prisons versus $7.50 in Maryland and $17.30 in Alaska. Such disparities further demonstrate the arbitrary nature of prison phone rates among the states, even when provided by the same company.

Maine is unique in that its Department of Corrections supplies phone services for prisoners through the state's Office of Information Technology. That does not mean Maine has forgone making a profit off prisoners' phone calls, though, as the DOC receives an effective 22% commission from collect calls and the charged rates are comparable with those in states that accept commission payments.

In 2007 the Public Utilities Commission held the Maine DOC was a public utility under state law since it was providing phone services, and ordered the DOC to file its rate schedule with the Commission. However, the DOC appealed and the Maine Supreme Court ruled on April 21, 2009 that the DOC was not a public utility and thus not subject to regulation by the Commission. See: *DOC v. Public Utilities Commission*, 968 A.2d 1047 (Maine 2009).

Iowa has a system in which prison phone services are provided through the Iowa Communications Network (ICN), a state agency, which in turn contracts with PCS. The Iowa DOC only permits debit calls, and instead of receiving a percentage-based commission the DOC keeps all of the revenue generated after paying ICN and PCS for phone usage charges. Prison phone rates in Iowa are comparable to those in states that receive kickbacks.

In Oklahoma, a prison actually closed in 2003 due to excessively high phone rates. The North Fork Correctional Facility, located in Sayre and operated by Corrections Corp. of America (CCA), housed almost 1,000 Wisconsin prisoners. Long distance calls from the facility were $3.95 + $.89/minute, and Sayre received a 25-42% commission that amounted to $656,000 annually – nearly equal to the city's entire budget before the private prison opened. When Wisconsin officials pressured CCA and Sayre officials for lower rates, AT&T, the prison's phone service provider, refused. Unable to renegotiate the rates under the city's contract with AT&T, Wisconsin transferred all its prisoners to a different CCA facility. [See: *PLN*, March 2004, p.14].

"We find it hard to believe that they would shut down the prison over telephone rates. We had no interest in shutting the prison down," said AT&T spokesman Kerry Hibbs. But that is exactly what happened, despite AT&T's last-minute cancellation of its contract with Sayre in an effort to forestall the prison's closure and the loss of 225 jobs. "Everyone tried to get those rates lowered," said CCA vice president Louise Grant. "It was not done."

Such is the power of profitable prison phone revenues. CCA's North Fork facility has since reopened, presumably with lower phone rates.

Florida – A State in Flux

Florida prisoners have enjoyed affordable phone rates since April 2006, when then-DOC Commissioner James McDonough reduced the cost of prison phone calls by about 30%. [See: *PLN*, Oct. 2006, p.24]. Soon, however, they may receive a rude wake-up call. In 2009 the Florida legislature passed a bill (S.B. 2626) that removed rate caps for all providers of "operator services" in the state.

On September 24, 2009, the Florida Public Service Commission (in Docket No. 060476-TL) ruled that prison phone calls should be included in the class of services that would no longer have a rate cap. Eight companies, including GTL, PCS, Embarq Florida, Evercom Systems and T-Netix, had argued in favor of removing the rate caps.

Under Florida's prison phone service contract with Securus, the state's recent annual kickback was $3 million and phone charges were substantially lower following McDonough's rate reduction. It remains to be seen whether Securus' current rate of $.50 for local collect calls, and $1.20 + $.04/minute for intrastate and interstate calls, will continue once the rate caps are removed.

If Florida county jails are any indication, the phone rates charged to prisoners' families are far from rational. In Monroe County, local calls are billed at $2.25 and long distance calls cost $1.75 + $.30/minute. The funds obtained by the Monroe County Sheriff's Office from its phone system are deposited into the inmate welfare account to pay for board games, television and other items used for the benefit of prisoners. The jail contracts with ICSolutions, Inc.

Other Florida county jail phone rates include: Escambia County, local $2.25, intrastate $1.75 + $0.30/minute, interstate $4.99 + $0.89/minute; Lake County, local $2.25, interstate $3.95 + $0.45/minute; Gadsden County, local $2.25, intrastate $1.85 + $.50/minute, interstate $2.85 + $.50/minute; and Broward County, local $2.35, intrastate $1.75 + $0.30/minute, interstate $3.66 + $0.59/minute. Broward County, which contracts with Securus,

receives a 58.5% commission on prisoners' phone calls.

Thus, Florida jail prisoners are subject to long distance rates ranging from $6.25 to $18.34 for a 15-minute collect call at the above facilities, representing an almost 300% difference between the lowest and highest rates, even when such calls are made from jails within the same state.

PLN Sues to Obtain Phone Contract Data

While most of the states contacted by *PLN* provided their prison phone contract data pursuant to public records requests, albeit sometimes grudgingly, one did not. Mississippi refused to produce a copy of its phone contract with GTL or any data concerning GTL's commissions paid to the state.

A court ruling in a previous case filed by one of GTL's competitors had resulted in a protective order sealing the contract and related kickback commission data, despite the fact that the contract involved a public, taxpayer-funded agency – the Department of Corrections.

PLN filed suit against the Mississippi DOC and GTL on March 10, 2009 seeking disclosure of the prison phone contract and commission data, noting that the state's public records act specifies that "all public records are ... public property, and any person shall have the right to inspect, copy or obtain a reproduction of any public records of any public body."

"Contracts entered into by the state which involve public funds are public documents," stated *PLN* editor Paul Wright. "As such, the prison phone contract and commission information must be produced pursuant to Mississippi's public records act, and Global Tel*Link, a private for-profit company, cannot hide such documents from members of the public. Such secrecy is unacceptable and contrary to public policy." GTL agreed to settle the case in June 2009 by producing a copy of its contract with the State of Mississippi and associated commission data. Those records revealed that GTL paid the state a 55.6% commission – one of the highest in the nation – amounting to $2.8 million in 2008.

PLN was represented by Jackson, Mississippi attorneys Robert B. McDuff and Sibyl C. Byrd. See: *PLN v. Mississippi Dept. of Corrections*, Chancery Court of Hinds County (MS), Case No. G 2009 391 I. [*PLN*, May 2010, p.8].

What Happens Without Kickbacks?

The prison phone contract data obtained by *PLN* provides a before-and-after look at phone rates in several states that have banned, limited or reduced their kickback commissions. The comparisons are telling.

The New Mexico DOC stopped accepting commissions in 2001 following the enactment of House Bill 13, which specified that contracts "to provide inmates with access to telecommunications services in a correctional facility or jail shall not include a commission or other payment to the operator of the correctional facility or jail based upon amounts billed by the telecommunications provider for telephone calls made by inmates in the correctional facility or jail." N.M. Stat. Ann. § 33-14-1.

New Mexico previously had a 48.25% commission rate, and before House Bill 13 went into effect the DOC's intrastate phone rate was $1.80 + $.22/minute for collect calls. Following House Bill 13 the intrastate rate dropped to $1.75 + $.125-$.175/minute – a modest but significant decrease of 14.2% to 28.9% for a 15-minute call. Local and interstate call rates

could not be compared due to a lack of pre-2001 data. New Mexico still has high phone rates in comparison with other states that no longer accept commission payments, though.

The State of New York faced (ultimately unsuccessful) legal challenges to its exorbitant prison phone rates, plus a concerted advocacy campaign involving the New York Campaign for Telephone Justice, Prison Families of New York, Inc. and other organizations. On July 19, 2007, then-Governor Eliot Spitzer signed the Family Connections Bill, which prohibited kickback commissions and required the DOC to contract with telephone service providers based on the lowest cost. [See: *PLN*, April 2007, p.20].

Previously, New York had received a commission of 57.5% to 60%, the highest in the nation at the time, which generated $200 million in kickback payments from 1996 through 2007. The no-commission statute went into effect in 2008, and under a new contract with Unisys and VAC, New York prisons now have some of the lowest phone rates in the country – a flat $.048/minute for any type of call (i.e., $.72 per 15-minute call whether local, intrastate or interstate).

Before banning kickback commissions, New York's prison phone rates were $1.28 + $.068/minute for all categories of collect calls (i.e., $2.30 per 15-minute call whether local, intrastate or interstate). Thus, after the commissions ended, the rates dropped 68.7% based on a 15-minute collect call.

In August 2008, Michigan ended its practice of accepting kickback payments from prison phone service providers as a result of legislative action. Under the state's no-commission contract with Embarq, rates decreased significantly to $.12/minute for local and intrastate calls and $.15/minute for interstate calls, with no connection charge. The new rates represent a 10% price drop for local calls, a 77% drop for intrastate calls and an amazing 87% drop for interstate calls from the previous commission-based rates of $2.00 local, $2.95 + $.325/minute intrastate and $3.99 + $.89/minute interstate.

Michigan's prison phone contract has since been bid to PCS, now owned by GTL, but the current low rates remain in effect until a new rate structure is developed. Prior to ending its phone kickbacks, the state received a 50.99% commission that generated $10.2 million in FY 2007.

South Carolina's legislature banned prison phone kickbacks as part of a 2007-2008 appropriations bill, stating, "the State shall forego any commissions or revenues for the provision of pay telephones in institutions of the Department of Corrections and the Department of Juvenile Justice for use by inmates. The State Budget and Control Board shall ensure that the telephone rates charged by vendors for the use of those telephones must be reduced to reflect this foregone state revenue." S.C. Code of Laws § 10-1-210.

The bill was introduced by Republican Senator W. Greg Ryberg, a member of the Senate Corrections and Penology Committee, upon the request of the South Carolina DOC. Prior to the ban on kickbacks, South Carolina's prison phone rates were $.76 for local calls, $1.73 + $.22/minute intrastate and $1.89 + $.22/minute interstate.

The new no-commission rates, effective April 1, 2008, were $.50 for local calls (a 34.2% reduction), $1.00 + $.15/minute for intrastate calls (a 35.4% reduction) and $1.25 + $.15/minute for interstate calls (a 32.5% reduction), with the rate decreases based on a 15-minute call. Under its previous commission-based contract, South Carolina received $1.2 million in FY 2008.

California is phasing out prison phone kickbacks effective by the end of the 2010-2011 fiscal year. Phone rates for California prisoners have been dropping since late 2007, and in early 2011 were down to the final rate of $.58 + $.058/minute for local calls, $.77 + $.084/minute for intrastate calls and $1.52 + $.342/minute for interstate calls, according to the state's Inmate/Ward Telephone System Contract.

California's commission-based rates prior to August 2007, when the kickbacks began to be phased out, were $1.50 + $.15/minute for local calls, $2.00 + $.22/minute intrastate and $3.95 + $.89/minute interstate (the rates in the accompanying chart reflect the initial rate reduction for 2007-2008). The new phone charges as of 2010-2011 thus represent a price drop of 61% for 15-minute local, intrastate and interstate collect calls compared with the rates before the state began to phase out commission payments.

This is yet another example of how banning kickbacks translates to lower phone rates. California prohibited prison phone commissions as a result of state legislation, S.B. 81, enacted during the 2007-2008 session.

Notably, states do not have to eliminate payments from prison phone companies entirely to achieve lower phone rates, as evidenced by Missouri, which has low rates of $1.00 + $.10/minute. While no longer accepting commissions, the state requires its phone service provider to cover the cost of 21 staff positions for monitoring prisoners' calls (about $800,000 to $900,000 annually). Previously, Missouri had received a 55% commission before eliminating prison phone kickbacks in April 1999.

New Hampshire limited its maximum commission rate to 20% and imposed rate caps in a 2006 RFP issued by the state's Division of Plant and Property Management, which resulted in fairly low rates of $1.20 + $.10/minute for prison phone calls. Montana, Kansas and Arkansas have also reduced but not eliminated their kickback commissions, with lower phone rates as a result.

Following a July 2010 RFP, the Montana Department of Corrections contracted with Oregon-based Telmate, LLC to provide prison phone services. By state statute, all commissions from the phone system must go to the inmate welfare fund. The DOC determined that $23,000 per month was sufficient to maintain the fund, and "[t]he RFP was written with the requirement that the commissions only generate enough to maintain the inmate welfare fund. This allowed the vendors responding to the RFP to focus on the rate of the call and not how much money could be generated by commissions."

The Montana DOC's phone rates under its prior contract with PCS, as reflected in the chart accompanying this article, were $2.75 + $.20/minute for local, intrastate and interstate calls. Telmate's rates, pursuant to its limited-commission contract (which has a maximum kickback of 25%), are $.24 + $.12/minute for local, intrastate and interstate calls. This represents a 64.5% reduction from the previous rates for a 15-minute call.

When the Kansas DOC entered into a new telephone contract with Embarq in January 2008, Kansas Secretary of Corrections Roger Werholtz stated, "It is important for inmates to be able to maintain contact with their families and friends. We have recognized for many years that the cost of the phone calls inmates make from our correctional facilities has created a financial hardship for their families, and I

am pleased that the new contract will help reduce those costs."

The state's new contract with Embarq included a kickback of 41.3% and a minimum guaranteed annual commission of $1,057,000, compared with the 48.25% kickback and minimum $2,750,000 annual commission in the DOC's prior contract with Securus/T-Netix. Embarq's new collect call rates are $2.61 for local calls, $1.96 + $.41/minute intrastate and $1.70 + $.40/minute interstate. Under the previous higher-commission contract the collect call rates were $4.35 local, $3.26 + $.69/minute intrastate and $2.84 + $.66/minute interstate. Thus, under its reduced-commission contract with Embarq, the Kansas DOC's phone rates dropped by 40% across the board.

And when the Arkansas DOC contracted with GTL in February 2007, the company initially offered a 55% commission with phone rates of $3.00 + $.24/minute for local and intrastate calls, and $3.95 + $.89/minute for interstate calls. Arkansas officials instead considered two alternative rate proposals, one with a 50.75% commission that had a 25% decrease in the per-minute call rates, and the other with a 45% commission that included a 50% decrease in per-minute rates.

The Arkansas DOC selected the 45% commission with lowest per-minute rates ($3.00 + $.12/minute for local and intrastate, and $3.95 + $.45/minute interstate), noting that "while our annual revenues may decrease, we believe this would be a good faith effort to reduce the financial burden on inmate [sic] families." Although the phone rates for Arkansas prisoners still remain high, they are not as high as they could have been had the DOC decided to maximize its commission rate.

The above examples send a clear message that prisoners and their families and advocates should seek both administrative and legislative changes to ban, limit or reduce kickbacks, and encourage prison systems to contract with the *lowest* bidder for phone services. While it seems a Herculean task to convince state officials to forgo millions of dollars in phone revenues, and indeed legislation to reduce prison phone rates has failed in a number of states, it is not impossible and there have been several success stories beyond the states that have already banned kickbacks.

According to the Equitable Telephone Charges (eTc) Campaign, a project of National CURE that advocates for prison phone rate reform, Arkansas selected a lower commission and phone rates in 2007, as described above, due to efforts by prisoners' advocacy groups and threatened legislation to eliminate the commissions entirely.

Also, an effort to impose a $2.00 fee on local calls from Alaskan prisons was scuttled as a result of public opposition. The Alaska DOC had announced that the fee would go into effect on September 1, 2008 under a new prison phone contract with Securus. Previously, prisoners could make local calls at no cost.

The Regulatory Commission of Alaska received a number of complaints concerning the $2.00 per-call charge and opened an investigation, stating "that doubt exists as to the reasonableness" of the fee. The proposed local call charge was withdrawn in January 2009, even though Securus had estimated that based on historical call volume the $2.00 fee "could add [gross] revenues of $4,661,808 annually." Local calls remain free for Alaskan prisoners.

In short, the magnitude of harm caused by typical prison phone contracts that include kickbacks, and thus higher phone rates, is most apparent when comparing rates in the states that accept commissions with those that do not.

Prison Phone Rates on the Federal Level

The federal Bureau of Prisons (BOP) has moved to a debit-based phone system called the Inmate Telephone System (ITS), in which prisoners pay for calls from their institutional accounts, though they can also make collect calls to approved numbers. The system has all of the usual security features but in most cases has resulted in savings to prisoners and their families.

Rates are as low as $.06/minute for local debit calls and $.23/minute for long distance debit calls. However, collect long distance rates are still pricey at $2.45 + $.40/minute ($8.45 for a 15-minute interstate collect call). Intrastate rates are capped at 90% of the applicable state-regulated phone rates, which vary.

BOP prisoners are limited to 300 minutes of calling time per month (400 in November and December), and phone calls are limited to 15 minutes. The ITS was implemented following a settlement in a federal class-action lawsuit, *Washington v. Reno*, in November 1995. [See: *PLN*, Sept. 1996, p.16; March 1995, p.4; Nov.

1994, p.10; March 1994, p.1].

The BOP entered into a 3-year contract with Unisys in 2005 to install and operate a new generation of the ITS (ITS-3, also known as TRUFONE) at more than 100 federal correctional facilities; the contract had an estimated value of $37 million, not including three one-year optional extensions. The BOP declined to provide its phone commission data during *PLN*'s recent survey.

In Congress, legislation to require the FCC to prescribe rules regulating prison phone services, titled the Family Telephone Connection Protection Act, was introduced by U.S. Rep. Bobby Rush in 2005, 2007 and 2009, but was never enacted.

Another piece of federal legislation, the Cell Phone Contraband Act (S.1749), signed into law by President Obama on August 10, 2010, makes it a crime for federal prisoners to possess a cell phone. The law also includes a little-known provision that requires the Government Accountability Office (GAO) to study the BOP's phone rates and investigate less expensive alternatives.

In regard to federal oversight of prison phone services, *PLN* has asked the FCC to address excessive overcharging relative to interstate prison phone calls as part of the *Wright* petition – a rulemaking proposal pending before the FCC (CC Docket No. 96-128). The petition stems from a long-standing federal lawsuit challenging exorbitant phone rates, *Wright v. Corrections Corp. of America*. [See: *PLN*, April 2004, p.39].

An alternative rulemaking proposal, submitted in the *Wright* petition in March 2007, suggests a rate cap of $.25/minute for all interstate collect calls and $.20/minute for all interstate debit calls made by prisoners. Thus far the FCC has taken no action on the *Wright* petition since it was originally filed in 2003, despite having acknowledged in a prior proceeding that "the recipients of collect calls from inmates … require additional safeguards to avoid being charged excessive rates from a monopoly provider."

Legal Challenges Mostly Unsuccessful

Lawsuits challenging exorbitant prison phone rates have met with little success. In *Walton v. NY DOCS*, 18 Misc.3d 775, 849 N.Y.S.2d 395 (N.Y.Sup. 2007), the court held that New York's then-57.5% kickback commission did not violate the constitutional rights of prisoners' families. [See: *PLN*, Oct. 2008, p.24; April 2007, p.20]. This finding was upheld by New York's highest court, the Court of Appeals, in 2009. See: *Walton v. NY DOCS*, 13 N.Y.3d 475, 921 N.E.2d 145 (N.Y. 2009) [*PLN*, Aug. 2010, p.18].

An Indiana appellate court denied an appeal in a class-action suit by prisoners' families raising similar issues. See: *Alexander v. Marion County Sheriff*, 891 N.E.2d 87 (Ind.Ct.App. 2008) [*PLN*, June 2009, p.28]. New Mexico's Supreme Court upheld the dismissal of a lawsuit challenging prison phone rates in 2002 [See: *PLN*, June 2003, p.17], as did New Hampshire's Supreme Court that same year, in *Guglielmo v. WorldCom, Inc.*, 148 N.H. 309, 808 A.2d 65 (N.H. 2002). Further, the Eighth Circuit Court of Appeals affirmed the dismissal of an excessive prison phone rate complaint in *Gilmore v. County of Douglas*, 406 F.3d 935 (8th Cir. 2005).

Such legal actions typically run afoul of the "filed rate doctrine," which holds that once a telecommunications company files its rate structure (tariffs) with an appropriate regulatory agency, and then adheres to those rates, it is insulated from court challenges. [See, e.g.: *PLN*, Jan. 2005, p.6].

A nationwide class-action suit was filed against GTL in California in August 2010, claiming the company exploited its customers "by charging them [] exorbitant, undisclosed per-minute rates (often in excess of $1.00/minute) and excessive service charges," including undisclosed fees for depositing money into prepaid phone accounts. The suit settled under confidential terms before a class was certified. [See: *PLN*, March 2011, p.38].

An Ohio federal court ruled in 2003 that recipients of collect calls from Ohio prisoners could pursue claims against counties and prison phone service providers alleging that unreasonably high rates violated their equal protection, freedom of speech and associational rights. Claims against the State of Ohio, as well as antitrust and telecommunications statute claims, were dismissed. Soon after that ruling the case was stayed pending the resolution of bankruptcy proceedings involving WorldCom, Inc., and no further action was taken by the court. See: *McGuire v. Ameritech Services, Inc.*, 253 F.Supp.2d 988 (S.D. Ohio 2003).

In 2001, the Seventh Circuit Court of Appeals held that Illinois officials did not violate the rights of prisoners or their families by granting phone companies a monopoly on collect phone services at particular prisons in exchange for commission payments. The appellate court found that exorbitant telephone rates did not violate the First Amendment, the kickback payments did not result in unconstitutional takings or violate antitrust laws, and equal protection and due process claims were barred due to the doctrine of primary jurisdiction. See: *Arsberry v. State of Illinois*, 244 F.3d 558 (7th Cir. 2001), *cert. denied*. [*PLN*, May 2002, p.12; Feb. 2001, p.19; June 2000, p.19; Aug. 1999, p.10].

In Michigan, a U.S. District Court dismissed a suit concerning prison phone rates, holding that the filed-rate doctrine barred challenges to the fairness of the rates charged; that the FCC had primary jurisdiction; that the plaintiffs failed to state a claim for rate discrimination; that the state was immune from liability; and that state regulatory and consumer protection law claims were pre-empted by federal statutes. See: *Miranda v. Michigan*, 141 F.Supp.2d 747 (E.D. MI 2001) and *Miranda v. Michigan*, 168 F.Supp.2d 685 (E.D. MI 2001) [*PLN*, May 2002, p.12].

The Ninth Circuit Court of Appeals rejected prisoners' claims that higher phone charges were the result of a "conspiracy" between a warden and the telephone companies, finding that prisoners did not have any constitutional right to particular phone rates. See: *Johnson v. State of California*, 207 F.3d 650 (9th Cir. 2000) [*PLN*, Nov. 2001, p.22].

Even legal challenges by alternative prison phone service providers that offer lower-cost calling options have failed, such as a lawsuit filed against Securus, T-Netix, Evercom and GTL by Millicorp, a Florida-based company that has a Voice Over Internet Protocol (VOIP) subsidiary called "Cons Call Home." Securus, et al. were accused of blocking calls to VOIP numbers set up by Millicorp for prisoners' families. The suit was dismissed in April 2010 under a procedural rule of the federal Telecommunications Act. [See: *PLN*, May 2010, p.48].

Regulation by State Agencies

Some actions before state regulatory agencies have had greater success. The Utilities Consumer Action Network filed a complaint against MCI with the California Public Utilities Commission over irregularities in the company's billing practices

and quality of service for calls originating from California prisons. In a 2001 settlement, MCI agreed to refund more than $520,000 in illegal overcharges to families of California prisoners. [See: *PLN*, Nov. 2001, p.19].

This followed a pattern of state regulatory actions and settlements dating from the early 1990s that saw a number of telecommunications companies fined and ordered to pay refunds due to illegal prison phone call billings.

In Louisiana, the state Public Service Commission ordered GTL to refund $1.2 million in overcharges from June 1993 to May 1994. In 1996, North American Intelecom agreed to refund $400,000 overcharged to members of the public who accepted prisoners' phone calls, following an investigation by the Florida Public Service Commission. The following year the Commission ordered MCI to refund almost $2 million in overcharges on collect calls made from Florida state prisons. [See: *PLN*, Aug. 1998, p.8; March 1997, p.12; Sept. 1996, p.13].

More recently, in Washington state, AT&T agreed in December 2007 to pay over $300,000 in fines for overcharging prisoners' families for calls made from the Airway Heights state prison and Washington State Penitentiary. Families were eligible to receive refunds for an estimated $67,295 in overcharges. [See: *PLN*, March 2008, p.34].

Florida's Public Service Commission ordered TCG Public Communications, Inc., previously a subsidiary of AT&T before being acquired by GTL, to pay $1.25 million to settle overbilling complaints at the Miami-Dade Pretrial Detention Center from 2004 through 2007. The settlement, approved in August 2009, provided for the $1.25 million to be paid to the state's general revenue fund; prisoners' families who were overcharged received nothing. [See: *PLN*, Feb. 2010, p.49; April 2009, p.38].

A lawsuit filed in 2000 challenging the lack of notice to consumers who accepted high-priced collect calls from Washington prisoners remains pending in Washington state court. After more than a decade of litigation before the state superior, appellate and supreme courts, and before the state utilities commission, the case boiled down to T-Netix and AT&T arguing over which company was responsible for providing notice to the call recipients. On April 21, 2010, the utilities commission held it was AT&T. Between 2000 and 2010 *PLN* has run five articles related to this case, which is now set for trial. See: *Judd v. AT&T*, 136 Wash App 1022 (2006) [*PLN*, Dec. 2010, p.16; March 2007, p.38].

Most of the time, though, state regulatory agencies take little interest in prison phone services so long as the rates charged are within established rate caps – which are typically set very high. Rather, state public utility or service commissions tend to get involved only when prison phone companies overcharge, impose illegal fees or otherwise violate state regulations. This assumes that such regulatory agencies have jurisdiction over prison phone service providers. In at least two states, Colorado and Virginia, they do not. [See: *PLN*, Aug. 2004, p.44; March 2003, p.12; Nov. 1998, p.23].

There are exceptions, of course, where state regulatory agencies have intervened to set lower rate caps for calls made by prisoners, such as in Kentucky, or to investigate proposed prison phone rate hikes, as in Alaska. A larger problem is that in some cases the utility commissions are largely co-opted by the industries they purport to regulate, with conflicts of interest and a revolving door in which commission staff are later hired by the companies they oversaw.

When former Florida Public Service Commission chairwoman Nancy Argenziano resigned in September 2010, she condemned "the corruption, the bought-and-sold nature of everything related to the operation of the PSC." She noted there was a "universal expectation that if you audition well, PSC employees and commissioners will be rewarded with lucrative jobs with the utilities," indicating a thin line exists between the regulators and the regulated.

The Purpose of Prison Phone Services

Government officials who approve prison phone contracts that include kickbacks and excessively high rates apparently forget why prisoners are afforded phone access in the first place. For one, there is a widely-known and researched correlation between prisoners who maintain contact with their families and those who are successful in staying out of prison after they are released. This, in turn, benefits the community by reducing costs associated with recidivism.

According to Prof. Steven Jackson, "recidivism and community impact studies, some of which were used to justify the introduction of prison calling in the first place[,] ... have found that a powerful predictor of re-offending is the failure to maintain family and community contact while incarcerated."

For example, a research brief by the

Jane Addams Center for Social Policy and Research at the University of Illinois at Chicago, published in 2004, observed that "Family roles and relationships are important in reentry planning, whether or not they are explicitly articulated in formal policies and program documents. Family connections and other social networks impact not only families' and children's well-being but also the achievement of social goals such as the reduction of crime and the building of vibrant communities."

Policy changes that can make a difference in maintaining prisoners' family relationships include making "telephone access to families and friends a basic prison program that is run with attention to the same cost efficiency and cost containment rules that are used for other prison operations." The research brief noted that exorbitant "government sanctioned telephone rates are abusive and take advantage of families' reliance on telephones as a primary means of communication during incarceration."

And according to a 2004 study by the Washington, D.C.-based Urban Institute, "Our analysis found that [released prisoners] with closer family relationships, stronger family support, and fewer negative dynamics in relationships with intimate partners were more likely to have worked after release and were less likely to have used drugs." The study's authors, Christy Visher, Vera Kachnowski, Nancy La Vigne and Jeremy Travis, concluded that "[i]t is evident that family support, when it exists, is a strong asset that can be brought to the table in the reentry planning process."

Such findings have been recognized by corrections officials. The federal Bureau of Prisons states that "Telephone privileges are a supplemental means of maintaining community and family ties that will contribute to an inmate's personal development." (Program Statement 5264.07 (2002), as codified at 28 CFR § 540.100(a)).

When GTL tried to raise phone rates in Tennessee in 2002, then-Tennessee Dept. of Corrections Commissioner Donal Campbell stated, "As you know, maintaining contact with family and friends in the free world is an important part of an inmate's rehabilitation and preparation to return to the community. Furthermore, telephone privileges are essential in managing inmate populations…. [Rate increases] would hinder both of the aforementioned departmental objectives in addition to creating an undue hardship for inmates' families."

According to the Oregon DOC, "Ongoing contact with supportive family and friends is an important part of inmates' success in prison and upon release." Also, when South Dakota renewed its contract with FSH in March 2008, Corrections Secretary Tim Reish remarked, "The reduced rates we were able to negotiate will have a positive impact on the inmates' ability to maintain contact with their loved ones while they are in prison."

Wisconsin law provides that prison officials "shall encourage communication between an inmate and an inmate's family, friends, government officials, courts, and people concerned with the welfare of the inmate. Communication fosters reintegration into the community and the maintenance of family ties. It helps to motivate the inmate and thus contributes to morale and to the security of the inmate and staff." Wis.Admin.Code DOC § 309.39.

And in its final June 8, 2006 report, the Commission on Safety and Abuse in America's Prisons noted that prison phone rates were "extraordinarily high," and that lowering the rates would "support family and community bonds."

For many prisoners, particularly those who are functionally illiterate and cannot rely on written correspondence, phone calls are the primary means of maintaining family ties and parental relationships during their incarceration. This is also true for prisoners whose families cannot travel to distant prisons for in-person visitation. While most prisoners are from urban areas, virtually all prisons built in the last 30 years have been built in rural areas far from where most prisoners originate and will return to upon completing their sentences.

Additionally, prisoners' families suffer from the increased isolation that attends fewer phone calls from their incarcerated loved ones due to exorbitant phone rates. Often, prisoners come from low-income families that can ill afford grossly high phone bills that sometimes run into hundreds of dollars per month.

Hence, prison phone contracts awarded on the basis of the highest kickback (and thus the highest cost to prisoners' families) are vindictive and ill-conceived at best, and negatively impact prisoners' familial relationships and recidivism rates at worst.

Excessive prison phone rates are also detrimental from a security standpoint. Cell phones in prisons and jails have become an epidemic problem for corrections officials, who cite a number of security concerns associated with contraband phones, starting with the corrupt staff who smuggle the cell phones into the prisons. [See: *PLN*, Feb. 2011, p.40]. Yet the market for cell phones behind bars is driven in part by the exorbitant rates charged by prison phone companies; prisoners use illegal – but much more affordable – cell phones to stay in touch with their families and friends. By reducing institutional phone rates, prison officials would reduce the demand for and associated security risks of contraband cell phones.

Sadly, the societal and security benefits of providing prisoners with more affordable phone rates are trumped by greed for the lucrative kickbacks. Worse, phone commission money is often paid to the contracting state's prison system or general revenue fund, where it becomes a source of addictive income that makes it difficult to end commission-based contracts. And we're not talking peanuts, as the kickbacks total more than $152 million annually nationwide. California collected $26 million per year before beginning to phase out its commission payments in 2007; New York pocketed up to $20 million annually before banning kickbacks in 2008.

The truth is told by the numbers: Almost 85% of state prison systems receive kickback payments from telephone service providers at the expense of facilitating more affordable phone calls for prisoners and their families, and in spite of the societal benefits that would inure from lower phone rates.

Prison Phone Contracts as Socially Regressive Policy

According to *PLN*'s research into prison phone contracts, the bottom line is that (1) the vast majority of states receive kickbacks from phone companies, which result in higher phone rates; (2) these excessive rates further distance prisoners from their families, who can ill afford high phone bills; (3) the larger community is disadvantaged when prisoners are unable to maintain family ties that will help them succeed post-release; and (4)

most states profit handsomely, to the tune of over $152 million a year nationwide, from prison phone kickbacks; however, phone rates drop significantly absent such commissions.

Thus, prison phone contracts, except in those few states that have banned or limited kickback commissions, are nothing short of a socially regressive, socioeconomic-based assault on prisoners' families and the community as a whole. This assault occurs due to the basest of reasons – avarice – by telephone companies and contracting agencies that are willing to sacrifice the known rehabilitative benefits of maintaining prisoners' relationships with their families in exchange for profitable phone revenue.

PLN has reported on prison phone issues since the early 1990s, and most of the news has been negative. The trend, unfortunately, is for consolidation of the prison phone market – which will further erode competition – and deregulation, as in Florida. *PLN* supports federal oversight of and rate caps on interstate prison phone services, as well as closer regulation and lower rate caps on the state level. Most significantly, the contracts should be bid on the basis of who can provide the lowest price to the consumer, the direct opposite of what occurs now.

The American Correctional Association, American Bar Association and National Association of Women Judges have voiced support for reforming prison phone rates, and a number of advocacy organizations are involved in this issue – including National CURE, state CURE chapters and the eTc Campaign, the Center for Constitutional Rights, and the Brennan Center for Justice.

The consensus reached by these groups is that to ensure prisoners maintain their family relationships so they have a lesser chance of re-offending after they are released, and to reduce the unfair financial burden placed on prisoners' families, exorbitant prison phone rates must cease. If prison systems in states ranging from California and New York to Nebraska and South Carolina can reduce their phone rates by forgoing commissions, then there is no reason – except callous greed – why other states cannot do likewise.

PLN extends our thanks and gratitude to the Funding Exchange (www.fex.org), which provided grant funding for PLN's research into prison phone contracts.

Sources: *PLN research data, www.etc-campaign.com, http://ccrjustice.org, www.sfreporter.com, www.aclu.org, Global Tel*Link, www.securustech.net, www.vaci.com, www.icsolutions.com, Media Justice Fund of the Funding Exchange, www.pulp.tc/html/inmate_phones.html, www.justice.gov, www.businesswire.com, www.gores.com, www.lvrj.com, New York Times, www.dsiiti.com, www.epsicare.com, Daily Hampshire Gazette, www.juneauempire.com, http://rca.alaska.gov, www.heraldtribune.com, North Carolina Journal of Law & Technology (Vol. 8, Issue 1: Fall 2006)*

CORRECTION

(October 23, 2012)

The prison phone commission kickback data for Virginia was incorrectly reported in the original chart that accompanied this article. The chart has since been corrected. Virginia's kickback from prison phone revenue was $4.82 million in 2008, not $13.77 million as originally reported. Thus, the total amount of kickbacks for all states (excluding Arizona for which data is not available) was $143.49 million, not $152.44 million as originally reported.

Prison Phone Contract Data / Kickbacks / Daytime Collect Call Rates - REVISED

STATE	PROVIDER	% KICK.	$/YR KICK.	Local Call	Intrastate[1]	Interstate	COMMENT
AK	Securus	15-32.1	247 K	0.00	1.55 + .13-.38/m	3.95 + .89/m	Free local calls
AL	GTL	61.5	5.5 Mil.	2.75	2.25 + .30/m	3.95 + .89/m	
AR	GTL	45	2.06 Mil.	3.00 + .12/m	3.00 + .12/m	3.95 + .45/m	
AZ	Securus	53.7	?	1.84	.36/m	.52/m	
CA	GTL	Flat	19.5 Mil.	1.50 + .107/m	2.00 + .159/m	3.95 + .70/m	Ending kick in 2011 [2]
CO	VAC	43	3.1 Mil.	2.75 + .23/m	2.75 + .23/m	3.95 + .89/m	Highest local rate
CT	GTL	45	4.49 Mil.	2.00	1.75 + .23/m	3.95 + .89/m	
DE	GTL	46	1.35 Mil.	2.00	2.50 + .20/m	2.50 + .89/m	
FL	Securus	35	3 Mil.	.50	1.20 + .04/m	1.20 + .04/m	Rates reduced in 2006
GA	GTL	49.5	7.8 Mil.	2.70	2.00 + .19/m	3.95 + .89/m	
HI	HI Telecom	?	74 K	1.95	1.45 + .14/m	?	
IA	ICN/PCS	Special	846 K	2.00	2.00+.21-.27/m	3.00 + .30/m	Debit calls only [3]
ID	PCS	10.5-66*	1.2 Mil.	3.80	3.80	3.80 + .85/m	* Effective kick rates
IL	McLeod	56	10.7 Mil.	2.71 + .16/m	2.50 + .26/m	3.95 + .89/m	
IN	GTL	18	80 K	2.95	2.25 + .30/m	1.50 + .25/m	Formerly AT&T
KS	Embarq	41.3	1.05 Mil.	2.61	1.96 + .41/m	1.70 + .40/m	Kick reduced in 2008 [4]
KY	Securus	54	3.2 Mil.	1.85	1.50 + .20/m	2.00 + .30/m	Formerly MCI
LA	GTL	55	3.96 Mil.	.98	2.15 + .19/m	2.15 + .21/m	
MA	GTL	35	1.9 Mil.	.86 + .10/m	.86 + .10/m	.86 + .10/m	Current kick is 15-30%
MD	Securus	48-60	6.1 Mil.	.85	2.85 + .30/m	3.00 + .30/m	
ME	Maine DOC	22	370 K est.	1.55 + .25/m	1.55 + .25/m	3.00 + .69/m	State-run phones
MI	Embarq	**NONE**	**NONE**	.12/m	.12/m	.15/m	Ended kick in 2008 [5]
MN	GTL	49	1.44 Mil.	1.00 + .05/m	3.00 + .23/m	3.95 + .89/m	
MO	PCS	**NONE**	800-900 K*	1.00 + .10/m	1.00 + .10/m	1.00 + .10/m	* Pays for 21 staff
MS	GTL	55.6	2.8 Mil.	2.60	1.90 + .20/m	3.00 + .69/m	*PLN* filed suit for data
MT	PCS	50	300 K est.	2.75 + .20/m	2.75 + .20/m	2.75 + .20/m	Kick reduced in 2011 [6]
NC	GTL	52	8.7 Mil.	1.04	2.25 + .19/m	3.95 + .89/m	Formerly AT&T
ND	Securus	40	132 K	.50	2.46 + .24/m	2.46 + .24/m	Effective rates
NE	PCS	**NONE**	**NONE**	.70	.70 + .05/m	.70 + .05/m	
NH	ICS	20	240 K	1.20 + .10/m*	1.20 + .10/m	1.20 + .10/m	* No per/m for 1st 5 min
NJ	GTL	40	4.42 Mil.	1.75 + .05/m	1.75 + .40/m	1.75 + .89/m	Current rates = $.33/m.
NM	PCS	**NONE**	**NONE**	2.15	1.75+.125-.175/m	3.00 + .50/m	Ended kick in 2001
NV	Embarq	54.2*	2.26 Mil.	1.45	.85 + .1175/m	3.50 + .79/m	* $2.4 Mil. min. kick
NY	Unisys/VAC	**NONE**	**NONE**	.048/m	.048/m	.048/m	Ended kick in 2008 [7]
OH	GTL	38	14.5 Mil.	1.14	1.04 + .322/m	3.90 + .871/m	Rates as of 2009
OK	GTL	50*	1.07 Mil.	3.60	3.60	3.60	* 50% of net profit
OR	FSH/VAC	50-60*	3 Mil.	2.64	3.95 + .69/m	3.95 + .89/m	* $3 Mil. min. kick
PA	GTL	44.4	7.05 Mil.	1.65	2.35 + .26/m	3.50 + .50/m	
RI	GTL	**NONE**	**NONE**	.70*	.70*	1.30 + .30/m	* Flat fee for 20 min
SC	Embarq	**NONE**	**NONE**	.50	1.00 + .15/m	1.25 + .15/m	Ended kick in 2008 [8]
SD	FSH	33-38	225 K	3.00	3.00 + .44/m	3.50 + .50/m	Formerly Qwest
TN	GTL	50.1	3.2 Mil.	.895	1.852 + .098/m	3.53 + .617/m	
TX	Embarq/Securus	40	1.81 Mil.	.26/m	.26/m	.43/m	Bundled rate
UT	FSH	45-55	900 K*	3.15	2.80 + .12/m	3.00 + .45/m	* 2009 kickback data
VA	GTL	35	4.82 Mil.*	1.00	2.25 + .25/m	2.40 + .43/m	* Corrected in 2012
VT	PCS	35	372 K	1.40 + .072/m	1.40 + .23/m	3.25 + .50/m	37% kick in 2009
WA	FSH/VAC	51	5.1 Mil.	3.50*	3.50*	4.95 + .89/m	* Flat fee for 20 min
WI	Embarq	30	2.6 Mil.	1.25	1.25 + .28/m	2.00 + .35/m	
WV	GTL	46	900 K	.85	.85 + .20/m	.85 + .50/m	
WY	ICS	34-43	323 K	1.49	1.17 + .17/m	3.55 + .62/m	51.5% kick in 2010
		41.9 Avg	**143.49 Mil.**				

1 Intrastate rates reflect intrastate interLATA rates, or intrastate intraLATA rates if interLATA is not applicable
2 CA is phasing out kickbacks in 2011; new rates = $.58+$.058/m. local, $.77+$.084/m. intra, $1.52+$.342/m. inter
3 Iowa uses a debit-only system and keeps all revenue after paying phone usage charges
4 Kansas reduced its commission from 48.25% in Jan. 2008; old rates = $4.35 local, $3.26+$.69/m. intra, $2.84+$.66/m. inter
5 MI banned kickbacks in August 2008; old rates = $2.00 local, $2.95+$.325/m. intra, $3.99+$.89/m. inter (current provider is PCS)
6 MT contracted with Telmate in 2011 for a limited 25% commission; new rates = $.24+$.12/m. for all categories of calls
7 Prior to 2008, NY had a 57.5% commission; old rates = $1.28+$.068/m. for all categories of calls
8 SC banned kickbacks as of April 1, 2008; old rates = $.76 local, $1.73+$.22/m. intra, $1.89+$.22/m. inter

Source: Prison Legal News research data (as of 2007-2008); revised 10/23/2012

Some Agencies Balk at Releasing Prison Phone Data

by Mike Rigby

It is common knowledge among *PLN* readers that prison and jail phone rates are priced far above those in the free world. But just how overpriced are they? What is the average kickback (commission) rate provided by phone companies, and how much in kickbacks is paid each year nationwide?

In an effort to obtain a comprehensive overview of the prison phone market, I was hired to help acquire phone contracts, rate information and commission data from all 50 state prison systems as well as the federal Bureau of Prisons (BOP) and selected county jails. I requested the same data from all agencies yet the responses, and what was initially produced, varied widely.

Responses to the requests for phone data were varied, but the norm was a mixture of bureaucracy and indifference. I was often routed from department to department, from one person to another, before reaching someone who had the authority or initiative to provide the requested information.

For example, the Alabama Department of Corrections (DOC) readily produced its commission data, but obtaining the prison phone contracts from the uncooperative state purchasing department took multiple calls and emails to 5 different agency officials. Actually obtaining copies of the documents entailed having a local supporter go to their office in Montgomery, Alabama to photocopy the documents since the agency refused to photocopy and mail, or scan, fax or otherwise release the documents to me. They would only provide them for "inspection" in their office. In seeking the Kentucky documents I was channeled through 4 separate state agencies and instructed to file a Freedom of Information Act (FOIA) request through the Finance Cabinet (which turned out to be the wrong department) before finally receiving some but not all of the data. Agencies in Pennsylvania and Iowa sent my requests to their legal departments.

A fairly common practice was to charge a fee for the requested documents. Some agencies waived the fees, but several demanded payment even after being informed the information would not be used for commercial purposes. These included agencies in the states of Ohio ($17.05), Illinois ($22.50), Delaware ($25.00), Idaho ($38.40), Oregon ($75.00) and Maryland ($78.00). Washington State and North Carolina provided the records for nominal fees of $1.25 and $5.00, respectively.

The Good

A minority of agencies quickly and freely provided the requested data and expressed a desire to know how their phone rates compared to those in other prison systems. Among the most cooperative were agencies in Alaska, Kansas, Colorado, Massachusetts, Montana, New Hampshire and Nevada. The Nebraska Department of Administrative Services was also helpful, noting that Nebraska's prison phone rates were among the lowest in the nation because the state does not receive commission payments.

In subsequent follow-up emails, state officials in Louisiana, North Dakota, Indiana, New York, South Carolina, Idaho, Maryland and Hawaii were helpful in supplying additional information.

The Bad

A number of state agencies and DOCs behaved like recalcitrant children, shouting "no, no, no!" to repeated requests to waive fees or produce the records in electronic format at reduced rates. Among the most uncooperative and bureaucratic were agencies in Arkansas, Hawaii (initial requests), Iowa, Kentucky, Alabama, New Mexico, New York (initial requests), Oregon, Tennessee, Virginia, West Virginia and the BOP (which eventually produced rate information but no data concerning commissions). Some of these agencies simply ignored the requests. To acquire the Iowa documents, for example, it took no less than 10 phone calls and emails to the same DOC contact person. In seeking the West Virginia data, over a dozen calls, emails and voicemails went unanswered.

The Ugly

Deserving special mention for their unfriendly attitudes are the Arizona and Mississippi DOCs. Arizona prison officials were completely unwilling to help and demanded an outrageous fee of $651.00 for production of their phone contract data. Thanks to the assistance of the Arizona ACLU who assisted us with the request by having one of their employees go to the DOC headquarters and copy the requested documents, wer were able to obtain them. They refused to waive the fees or copy only certain parts of the contract at a reduced price and then only with a personal representative physically going to their office. The Arizona DOC further claimed they do not track commission revenue; in other words, they allegedly have no idea how much the state makes off prisoners' phone calls.

Even worse, the Mississippi DOC refused to produce the requested information under any circumstances. After ignoring multiple requests for phone-related records, the DOC's FOIA officer produced a court order from an earlier case "barring release of the information." *PLN* then had to file suit against the Mississippi DOC and its prison phone service provider, Global Tel*Link, to eventually obtain the documents.

For those states that are reluctant to provide copies of their prison phone contracts and commission data, which are public records, one must wonder what they have to hide. See this issue's cover story for the results of *PLN*'s prison phone research project.

From the Editor

by Paul Wright

The gouging of prisoner's families and friends by prison and jail officials and the telephone industry is a well-known phenomenon but also one that is fairly recent. Telephones were not introduced into prisons and jails until the 1970s (the state of Texas was the last to introduce phones to its prison system in 2010). It took almost two decades before the telecom industry figured out that they could get lucrative contracts by offering "commissions," the euphemism for kickbacks, to prison and jail officials in exchange for monopoly contracts that allowed them to charge as much as they wanted.

Two decades later the practice is entrenched and normalized. In the mid 1990's the *Wall Street Journal* estimated that the prison and jail phone call racket was a billion dollar-a-year industry, but no one really knew the extent of it. This issue's cover story on the prison phone industry is unique because it is the first time anyone has ever looked at the actual contracts and dollar amounts generated by the prison phone racket.

As Mike Rigby's side bar article makes clear, getting this information was not easy and, in fact, at least half the states produced considerable obstacles to our being able to obtain the documents. Due to limited resources we concentrated on telephone contract information for state prison systems, not the nation's 3,800 jails or private prisons, military prisons, juvenile prisons, immigration prisons, civil commitment centers or the myriad other places where Americans are held against their will and their captivity is monetized by their captors and corporations alike.

This research project was made possible by a small grant that Prison Legal News received from the Media Justice Fund at the Funding Exchange, which allowed us to devote considerable resources to tracking down the data and analyzing it. Investigative journalism is time consuming and resource intensive, a polite way of saying it costs money to do.

Since 2003 the Federal Communications Commission has been sitting on a petition, *In re Wright* (no relation), which calls on the FCC to regulate the cost of interstate prison and jail telephone calls. The petition has been vigorously opposed by the telecom and prison industry alike. As this issue goes to press, the FCC has not issued a decision. *PLN* has submitted extensive comments to the FCC, as have over 3,700 parties, as to why the cost of prison and jail calls should be regulated. We will also be submitting this month's cover story to the FCC for their consideration in that matter.

We would like to thank the Media Justice Fund for making this month's cover story possible. It illustrates the reality that serious, hard-hitting investigative reporting requires resources to do. As previously noted, we had to file suit against the Mississippi Department of Corrections to obtain their prison telephone contract, as they claimed it was a confidential document and had filed it under seal in court lest the citizens of Mississippi learn the scope and extent of the kickbacks received by their prison system.

Sadly, the obvious conflict of interest with prisons and jails profiting off their captives is of little concern to legislators and the government agencies that sign prison phone contracts. The use of cell phones by prisoners has received widespread attention nationally. The role of corrupt employees in bringing the cell phones into facilities is typically ignored or glossed over, but more significantly, the effort to stamp out prison cell phone use in order to protect the monopoly on high prison telephone kickbacks is largely ignored – as if government officials have no profit motive in the matter. For those who believe in capitalism, the prison cell phone market is an illustration of the magic of the marketplace, where corrupt staff profit from selling prisoners cell phones and the prisoners find cell phone bills cheaper to pay than the exorbitant rates charged by prison and jail telephone monopolies.

As I write this editorial, I have finished interviewing Hollywood action star Danny Trejo, a former prisoner himself and one of the most prolific living actors. Mr. Trejo shares his story of going from prison to work as a substance abuse counselor to one of the most famous actors in the world (he has appeared in over 200 movies). We will publish the interview in an upcoming issue of *PLN*. This is part of a new series of interviews in *PLN* with former prisoners who have not only turned their lives around and succeeded, but who have succeeded exceptionally well by any standard.

All too often prisoners and former prisoners hear only negativity about being "failures" and having neither hope nor opportunity. There are plenty of examples to the contrary and we will be bringing them to you. Over the years I have been asked "how could you start PLN while you were inside a maximum security prison?" Why couldn't I is the better question. The bigger limits are not always the ones imposed on us but the ones we impose on ourselves.

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

New Research: Why Innocent People Confess to Crimes They Did Not Commit

by Derek Gilna

A September 2010 article in the *New York Times* highlighted an interesting phenomenon that has become more evident in an era where DNA evidence is available to help conclusively prove guilt or innocence – the fact that many people confess to crimes they did not commit, and serve lengthy prison terms as a result. Now, due to numerous real-life examples and research by experts, it is recognized that such confessions occur much more frequently than originally presumed.

Peter J. Neufeld, co-founder of the New York-based Innocence Project, said the new research is dramatic. "In the past, if somebody confessed, that was the end. You couldn't imagine going forward." Neufeld noted that rather than focusing on whether confessions were physically coerced, one should also "look at whether they are reliable."

According to records compiled by Professor Brandon L. Garrett of the University of Virginia Law School, since 1976 at least 40 people have given confessions that were later shown to be false by DNA evidence. Prof. Garrett observed that it has been known for some time that the mentally impaired, mentally ill, young, and easily led can often be coerced into confessions, but cited the example of Eddie J. Lowery to demonstrate that even people who do not

fall into any of those categories can also be induced into false confessions.

Lowery spent 10 years in prison in Kansas for the rape of a 75-year-old victim and was cleared by DNA evidence in 2003 after serving his sentence. He was later pardoned, and received a $7.5 million settlement for his wrongful conviction.

In another case, Jeffrey Deskovic spent 16 years in prison for a murder he did not commit in Poughkeepsie, New York; he was exonerated by DNA evidence in 2006. [See: *PLN*, Aug. 2009, p.12]. Prosecutors had successfully argued that his detailed confession could only have been made by the perpetrator of the crime.

A common thread in such cases, as disclosed by Prof. Garrett's research, was the complexity of the alleged confessions. "I expected, and think people intuitively think, that a false confession would look flimsy ... [such as] 'I did it'." But, said Garrett, false confessions instead "looked uncannily reliable."

Prof. Garrett cited the factor of police contamination during interrogations by introducing and describing elements of the crime when questioning suspects, either purposely or otherwise. "I had known that in a couple of these cases, contamination could have occurred ... I didn't expect to see that almost all of them had been contaminated."

Garrett's research showed that most of the people who falsely confessed had been subjected to long, high-pressure interrogations without legal counsel present. In Lowery's case, he believes that the contamination was intentional based upon the police going over the details of the crime. "They fed me the answers," he said.

According to Lowery, "You've never been in a situation so intense, and you're naive about your rights.... You don't know what you'll say to get out of that situation."

Of course the next question to be considered is how many false confession cases exist that are not disprovable by DNA evidence.

An expert on the issue of police contamination during questioning of suspects, Steven A. Drizin, director of the Center on Wrongful Convictions at the Northwestern University School of Law, has stated that "contamination ... is the primary factor in wrongful convictions. Juries demand details from the suspect that make the confession appear to be reliable; that's where these cases go south."

Police training experts often advocate the videotaping of police interrogations, and ten states now require at least some videotaping when suspects are questioned, especially in death penalty cases.

Professor Garrett has authored a book on wrongful convictions, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong*, published by Harvard University Press, which is scheduled to be released in April 2011.

Sources: *New York Times, www.law.virginia.edu*

Bexar County, Texas Fails to Properly Evaluate Mentally Ill Jail Prisoners

by Matt Clarke

In 2009 the Texas legislature amended a law, codified at Article 16.22 of the Code of Criminal Procedure, with the intent to require early identification of mentally ill jail prisoners so they can receive appropriate treatment and consideration upon sentencing.

Bexar County, which includes the city of San Antonio, Texas, has failed to fully apply the state law to its 4,500 jail prisoners, 21% of whom are estimated to have a mental illness. Under the law, the jail is required to provide a list of possibly mentally ill prisoners to a magistrate within 72 hours of arrest, and the magistrate must order a mental health evaluation and receive a report and recommended course of treatment within 30 days. The magistrate is required to provide a copy of the report to the prosecutor and defense attorney. During this process the criminal case cannot proceed.

State Rep. Pete Gallego sponsored the bill with the aim of seeing criminal justice and mental health resources used more efficiently.

"The goal is to do it up front," said Gallego. "The way the system was working was, you weren't catching [mentally ill prisoners] until the tail end, and by then the person had been sitting in jail and needing health care for a period of time."

However, the new state law designed to address the problem of mentally ill jail prisoners was unfunded, and did not specify which magistrate was responsible for ordering and reviewing the mental health evaluations.

"Over the past several weeks, someone in the jail administration has been e-mailing me a list of persons suspected of having a mental illness," said Bexar County Criminal Magistrate Judge Andrew Carruthers in a March 2010 memo to jail officials. Carruthers stated his "duties and resources do not encompass compliance" with Article 16.22.

"I have a full-time responsibility working for 10 criminal district courts," wrote Carruthers. "My schedule will not accommodate that." The law "says 'a magistrate.' It does not say the criminal magistrate of Bexar County."

Indeed, the phrase "a magistrate" may have confused jail officials. In Texas, any type of state judge, from a Supreme Court justice down to the lowly justice of the peace, can be considered a "magistrate."

Bexar County Criminal District Court Administrator Melissa Barlow Fisher agreed that the term "a magistrate" in the statute is too vague.

"That's a part of the problem," she said. "We don't know who they mean. And the poor jail doesn't know who they mean." Fisher noted there are three full-time and nine part-time magistrate judges at the county's central magistrates' office who are "not doing mental health evaluations. That's not their job." Further, "Most [Texas] counties are like us. They don't have the resources and they have not implemented this to the letter of the law, like it should be."

Bexar County District Judge Mary Roman wrote to the county commissioners, informing them that the county lacked "additional medical personnel, mental health magistrates and administrative staff" needed to follow the law, but was nonetheless in "substantial compliance." She joined the sheriff and district attorney in arguing that the law was more suited to smaller counties.

Rep. Gallego disagreed, noting that Austin, San Antonio, Houston, Dallas, Fort Worth and El Paso should have higher numbers of prisoners with mental health issues than lower-population counties. He also called "substantial compliance" with the law insufficient.

"The analogy that I've used is basketball," said Gallego. "The ball either goes through the hoop or it doesn't."

The case of Alejandro, a severely mentally ill Bexar County jail prisoner, is instructive. At 19, Alejandro started hearing voices and believed that the television and the family's dachshund were sending him ominous messages. At 23 he punched his father over a longstanding argument about whether Alejandro should see a doctor. Following his arrest, Alejandro's case was dismissed and he was sent to a state hospital.

Arrested six years later for possession of marijuana, he received probation. He continued being arrested, jailed and placed on probation for almost a dozen misdemeanors over the following 13 years. However, his mental illness made it impossible for him to satisfy the conditions of his probation and Alejandro was violated and thrown in jail seven times for a total of 225 days.

Finally, he was jailed for stepping on his father's foot without causing injury when he was on probation for driving while intoxicated.

"There was no bruising, really," Alejandro's court-appointed attorney, Edward Piker, said. "It was very minor. But he was arrested for assaulting the elderly anyway."

Possibly without ever hearing about Alejandro's mental illness, Judge Monica Guerrero found him guilty and added community service and stress education to the terms of his probation. However, he was arrested and incarcerated for reckless driving before completing probation.

Piker admitted that he didn't subpoena Alejandro's psychiatric records. "I don't remember if I specifically said [he suffers from paranoid schizophrenia] or not," Piker acknowledged.

"I depend on attorneys to find out about anyone's mental illness," said Judge Guerrero. "If we find out there's a hardship or an illness, it could preclude community service."

Yet Associate Probate Judge Oscar Kazen, who presides over civil commitment hearings for the mentally ill, noted that Article 16.22 was amended to avoid exactly that type of uncertainty.

"Right now [the system] is ad hoc, and it relies on a lot of good luck and good will," said Judge Kazen. "If you don't have the luck, somebody can slip by."

Indeed, it appears that Alejandro, who recently completed an 81-day stint in jail, was one of the unlucky ones who slipped by.

Dr. Sally Taylor, director of psychiatric services at the Bexar County jail, has pushed for strategies to divert the mentally ill from incarceration. If a mental illness makes a prisoner a threat to himself or others, Taylor's staff sometimes asks the prosecutor to drop charges. If the charges

are dropped and space is available, the prisoner is then transferred to a psychiatric facility. Every 72 hours, Taylor's staff sends a list of prisoners with suspected "severe mental illness" to the county's four mental health public defenders and a coordinator in a court that has a weekly mental health docket.

Prisoners whose answers to screening questions at booking indicate severe mental illness may be placed in an 18-cell mental health unit at the jail if there are no openings at outside mental health facilities. Taylor's practices have been cited by county officials as constituting "substantial compliance" with Article 16.22.

The problem is that Article 16.22 requires much more. The law mandates that *all* prisoners suspected of mental illness be evaluated, not just those suspected of "severe mental illness." It requires that a magistrate be notified within 72 hours, not public defenders and a court coordinator, and that the magistrate order an evaluation and receive a report within 30 days.

In explaining the focus on "severe mental illness," Taylor said, "We try to triage them so somebody with a less severe illness is going to wait longer. That's just the nature of limited resources everywhere." She also admitted that the mental health evaluations required by Article 16.22 are more extensive than those performed by her staff.

So how are Taylor's "substantial compliance" practices working? In 2009, with less than three full-time psychiatrists, her staff conducted 8,200 mental health assessments and treated about 3,000 prisoners for mental illness. The jail also had five suicides in 2009, over three times the national average. The jail has a list of nearly 100 mentally ill prisoners awaiting transfer to a state mental health facility. And the situation may soon get worse.

The Texas Department of State Health Services has been told to cut its 2012-2013 budget by 10%. This means $246 million in proposed cuts, including $134 million from mental health services. Texas already ranks 49th in state spending on mental health, according to the Texas Medical Association.

If the budget cuts result in mentally ill prisoners spending more time in jail instead of treatment facilities – the exact situation Article 16.22 was amended to prevent – it will be a case of the state and county being penny-wise and pound-foolish. The mentally ill decompensate in jail, increasing the probability of their ending up in prison or emergency rooms, which costs taxpayers more than it would to identify and treat mentally ill prisoners on the front end.

Indeed, according to a May 2008 cost analysis of Bexar County's jail diversion program for the mentally ill, which is coordinated through the Center for Health Care Services, "Combining criminal justice and treatment costs during pre-booking diversion was associated with $3,200 in lower costs per person during the first 6 months after diversion." Absent the jail's pre-booking diversion program, "costs would have been more than $1.2 million higher during the 6 months immediately after diversion."

Further, "[p]ost-booking diversion was associated with about $1,200 in lower costs per person [during] the 18- to 24-month period after entry into diversion," and costs without post-booking diversion "would have been $700,000 higher."

Bexar County's jail diversion program reportedly keeps 800 to 1,000 mentally ill people out of jail and emergency rooms each month. The program apparently works well – it received a Gold Award from the American Psychiatric Association in 2006. However, proposed cuts would reduce the Center for Health Care Services' budget by 20%, and the county lacks necessary funds to comply with the laudable goals of Article 16.22.

"We're doing everything we can at this point," said Judge Roman. "We would be glad to do even more, but the resources have to be there, and we're not in charge of the resources."

Neither are mentally ill prisoners, of course, but they are the ones who suffer most due to lack of sufficient funding for evaluation and treatment programs. *PLN* has previously reported on Texas' shortage of mental hospital beds, which leaves mentally ill prisoners stranded in jail without adequate treatment. [See: *PLN*, Feb. 2008, p.30].

Sources: *San-Antonio Express-News; Article 16.22, Texas Code of Criminal Procedure; www.sacurrent.com; "A Cost Analysis of the Bexar County, Texas, Jail Diversion Program" (RTI International, May 2008)*

Prisoners' Human Rights

by Corey Weinstein, MD

It was a little more than sixty years ago that the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights (UDHR). For the first time in history, governments from around the world declared that "All human beings are born free and equal in dignity and rights," and that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

A number of treaties and conventions have been promulgated based on the UDHR, stating the principle that all people in any kind of detention or prison must "be treated in a humane manner and with respect for the inherent dignity of the human person."[1] The declaration of the inherent dignity of all people is the foundation of human rights doctrine and stands in stark contradiction to societies' historical treatment of law breakers and the imprisoned.

In ancient Greece, "infamous" criminals were not allowed to appear in court, make public speeches or serve in the army. Criminals in Rome could be denied voting rights or the ability to hold public office.[2] In medieval Europe, infamous criminals suffered "civil death" which resulted in the deprivation of all rights, confiscation of property and exposure to injury. Those deemed "outlaws" could be killed with impunity by anyone. In England, felons lost their property and even right of inheritance. Their property went to the state.[3] These views and rules were brought to America by the colonists and except for inheritance rights were largely retained by the states after the American Revolution.

Looking more closely at California, the Penal Code of 1886, sections 673-674, stated that "A sentence of imprisonment in a state prison for any term less than for life suspends all the civil rights of the persons so sentenced, and forfeits all public offices and all private trusts, authority, and power during such imprisonment. A person sentenced to imprisonment in the state prison for life is thereafter deemed civilly dead." The imprisoned had no legal identity. Authorship and copyright were impossible. Even after release, former prisoners could not vote, hold office, make contracts, own property or compose a will. In 1919 the Penal Code was amended to restore certain rights but only at the discretion of the parole board.[4]

It wasn't until 1968 that the "Convict Bill of Rights" was installed as California Penal Code section 2600. The statute expanded the reading, writing and correspondence privileges of prisoners, including receiving all printed matter that did not incite violence or was not grossly obscene. Prisoners could inherit property and write to lawyers and public officials confidentially, and could own written material.

In the last forty years there has been some erosion in California law concerning prisoners' rights, but the core aspects have been preserved. Notably, however, individual prisoners no longer have the right to correspond confidentially or have confidential individualized scheduled interviews with members of the media.

Current voting disenfranchisement laws in the United States are an important vestige of colonial civil death laws. Forty-eight of the 50 states have disenfranchisement laws that deprive convicted offenders of the right to vote while in prison. In most states offenders on parole or probation cannot vote. And in 14 states ex-offenders are effectively barred from regaining their voting rights despite having paid their debt to society. In 10 states, one in four black men is permanently disenfranchised. The fact that most of the states with permanent disenfranchisement statutes are in the southeastern U.S. speaks to the continued racist character of laws in the old Confederacy.[5]

The application of human rights principles to incarcerated people is an important step in the development of humane societies. The positive obligations required by human rights include a great deal more than the protections guaranteed by the Eighth Amendment of the U.S. Constitution. The Eighth Amendment prohibits cruel and unusual punishment, defining what is too egregious to be done to prisoners. A human rights framework goes far beyond that and is well expressed in a variety of international treaties and rules. One of the oldest international instruments concerning the treatment of people in custody is the United Nations Standard Minimum Rules for the Treatment of Prisoners (SMRTP).[6]

The SMRTP is a detailed document which provides principles and rules for minimally-adequate penal systems. Many of the provisions are routine in industrialized nations today. The separation of convicted and pre-trial detainees, and men and women; standards for adequate space, light, ventilation and heat; and decent clothing, bedding and food are all fairly well maintained in modern prisons.

But other provisions of the 55-year-old SMRTP are often left wanting. Rule 27 requires that discipline and order be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life. Excessive disciplinary practices are not uncommon, particularly in poorly-managed private prisons, and there are thousands of U.S. prisoners serving long terms in solitary confinement or subjected to devices like restraint chairs, chemical sprays or non-lethal weapons that border on or are frankly torture.

SMRTP Rules 22-26 require well-managed and adequate medical services. In the last 30 years almost all of the states were judged at one time or other to be in violation of the U.S. Constitution over their deliberately indifferent medical care. Some are still under court supervision. California's prison medical services have been under court-ordered receivership since 2006. Continued deficiencies of care forced prisoners to sue the state, arguing in federal court that overcrowding must be reduced in order for adequate medical care to be established. California is appealing a court order to immediately decrease the state's prison population by up to 40,000. The U.S. Supreme Court heard oral argument in the case in November 2010, and a decision is pending.[7] [See, e.g.: *PLN*, Aug. 2010, p.1; July 2010, p.14].

SMRTP Rule 53 requires that women be guarded by female officers who are the only staff that hold authority over women prisoners or hold the keys to the areas where women prisoners are held. Further, no male staff member can enter a women's facility unless accompanied by a female officer. Yet it is still common in U.S. prisons for men to guard women prisoners even in the most sensitive units like Administrative Segregation, where women are in their cells up to 23.5 hours a day and are subject to intrusive observation when using the toilet or showering.

In California, male guards have access to women's housing areas, walk the tiers of high-security units and escort shackled women prisoners, having direct physical contact.

SMRTP Rules 71-76 prescribe that prisoners be required to work at safe jobs in useful trades that prepare them for earning an honest living after release. Work should closely resemble that of similar jobs outside prison, and be equitably compensated. In the often-overcrowded U.S. prison system only 5% of prisoners work in prison industries.[8] Most who do have jobs in prison perform make-work tasks such as pushing brooms or cleaning toilets that others have cleaned recently.

It is in the International Covenant on Civil and Political Rights that one of the clearest statements is made that frames the human rights approach to incarceration. Article 10 affirms that "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person." The ICCPR goes on to assert in Article 10(3) that "The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation."[9]

The SMRTP is very specific in Rules 65-66, stating, "The treatment of persons sentenced to imprisonment ... shall have as its purpose ... to establish in them the will to lead law-abiding and self-supporting lives after their release and to fit them to do so.... To these ends all appropriate means shall be used, including religious care ... education, vocational guidance and training, social casework, employment counseling, physical development and strengthening of moral character, in accordance with the individual needs of each prisoner...." [10]

This stands in stark contrast to the purpose of prisons in the U.S. today. The principles guiding U.S. prison management during almost all of the past 200 years have been retribution, deterrence and incapacitation. Incapacitation refers to incarcerated persons being unable to commit crimes outside of prison walls.[11] Simply put, retribution and deterrence are punishment strategies designed to drive out the desire to commit crime, while incapacitation is merely a warehousing of prisoners to keep them off the streets. These are failed tactics that result in high recidivism rates and contribute to the economic disaster of severe poverty among the poorest communities. In 2008, 1 out of 99 adults was behind bars in the U.S. and more than 50% of prisoners were back in custody within three years of their release.[12]

Long sentences in warehouse-like prisons incapacitate in more ways than just keeping people off the streets. Idleness, overcrowding and despair deprive the individual of the capacity to act independently, to have adequate self esteem and to feel they are part of mainstream society. All of which contributes to the deepening and widening of the permanent criminal underclass in the U.S.[13]

A human rights approach can be adopted to overall prison management. The International Center for Prison Studies (ICPS) uses such an approach in all of its prison management projects. It does so due to the importance of managing prisons within an ethical context which respects the humanity of everyone involved in prison: prisoners, prison staff and visitors. Also, an ethical human rights approach is the most effective and safe way to manage prisons. The management of prisons is about the management of human beings. This means that there are issues which go beyond the usual benchmarks of effectiveness and efficiency to deep matters of respect for others, dignity of the individual and setting a norm of proper behavior.[14] The ICSP has worked primarily with pan-European nations in concert with the World Health Organization's Health in Prison Project since 1995.

A good example of the effect of humane prison management was carried out twenty years ago at the 23.5-hour-per-day lockdown supermax unit at the Washington Correctional Center (WCC) in Shelton, Washington. The supermax unit at WCC was a horror of abuse and strife. Prisoners acted out by burning mattresses, yelling and screaming at all hours, threatening and striking staff, and gassing (throwing human waste on) staff and other prisoners. Staff acted in kind with brutality and disrespect. A new management team was brought in to run the facility.

The superintendent developed a single-minded strategy to bring the unit under control. He focused on staff behavior. A 28-point set of rules was promulgated and all staff were expected to follow the directives. Key provisions included:

• the principle that men are sent to prison as punishment and not for punishment

• a belief in a man's capacity to change his behavior

• a normalization of prison routines including programs, amenities and services

• respectful treatment, cultural sensitivity and lack of racial bias

• timely and dependable responses to prisoner requests, and never lying

• staff modeling of the behavior expected of prisoners

• consistent and fair discipline and swift punishment of acts that threaten security

• using only the force necessary to maintain order, security and safety

When it was discovered that line staff were not adhering to the rules they were disciplined or fired, and any supervisor not enforcing the rules was fired. The result of this management strategy was a complete reversal of the chaos and violence in the unit. Prisoners spoke with nearly one voice, saying that they were able to do their time productively in order to achieve transfer back to mainline prisons. What the prisoners appreciated most was simply being treated like a human being.[15]

It is in the European Union (EU) that the realization of human rights principles in penal practices has been most formally developed. Human rights conventions and covenants are incorporated into law with mechanisms for ensuring compliance. An important such mechanism is the Optional Protocol to the International Covenant on Civil and Political Rights. The Protocol furthers the purposes of the ICCPR by setting up a way for individuals to complain to the Human Rights Committee and be officially heard. The Human Rights Committee has the power to investigate any state party that is a signatory to the Protocol.[16]

Using the ICCPR as a basis, the nations of the EU conduct regular investigations into each other's penal practices and hear from individuals who have not had their grievances properly adjudicated. Needless to say, the United States has not signed the Protocol nor implemented a domestic program of oversight that would serve the same purpose. The U.S. continues to assert that the U.S. Constitution is a sufficient document to insure human rights standards for the incarcerated.

The U.S. is routinely very late in making its obligatory reports to the UN Committee on Torture under the Convention Against Torture (CAT). In May 2006 the UN Committee responded to the United States' second periodic report under CAT, noting that the report was 3.5 years late. The Committee was critical, found the U.S. was out of compliance with CAT requirements, and expressed concern regarding the following: [17]

• absence of a law specifically prohibiting torture, with appropriate penalties

• psychological torture being ruled limited to "prolonged mental harm"

• U.S. law excluding times of armed conflict and secret detention facilities from limitations on torture

• law enforcement personnel not being adequately trained re: torture and CAT

• the use of waterboarding, short shackling, induction of fear with dogs, sexual humiliation, stress positions and other cruel, inhumane or degrading treatment or punishments, and the lack of investigations to bring perpetrators to justice

• limitations on federal civil actions brought by prisoners for mental or emotional injury that cannot also show physical injury (under the Prison Litigation Reform Act)

• the need to review execution methods to prevent severe pain and suffering

• the lack of measures to prevent all sexual violence in detention centers and insure effective investigation and prosecution of all perpetrators

• persistent gender-based humiliation and shackling of women during childbirth

• the practices of keeping children and adults in the same prison, and children receiving life sentences

• the need to review the use of electroshock devices that have proven lethal during restraint procedures

• the common use of prolonged solitary confinement in supermax prisons

• the many allegations of brutality and excessive force against vulnerable populations, particularly racial minorities, migrants and LGBT detainees

This long list of concerns and admonishments demonstrates how far the United States is from being a nation that respects and implements human rights for people who are incarcerated.

When prisons serve a positive social function and become a place of renewal and rehabilitation, communities are safer. Not only do prisoners benefit from living in humane circumstances, but society reaps the gain as well. Despair and hopelessness are replaced by a realistic, more positive sense of the future for both individuals and society. Turning from the negative approach of stopping cruel punishments under the U.S. Constitution to the positive requirements of the human rights standards is a good step toward making prisons work for the good of all.

Having prisons in which the essential aim is rehabilitation and social reintegration is a necessary step in beginning to heal the growing divide between rich and poor and stop the dramatic growth of severe poverty in the U.S. As the world's leading jailer the U.S. must not only reverse the size of its prison population, but also alter the purpose of incarceration. Human rights doctrine and standards provide a well-practiced and successful way forward for our criminal prosecution and detention systems, and a way to assist in bringing the U.S. Constitution 200 years forward into the modern era.

Dr. Corey Weinstein, a physician in San Francisco, California, is a long-term human rights advocate for prisoners. He works with the American Public Health Association, California Prison Focus and the WHO Health in Prison Project, and wrote this article exclusively for PLN

ENDNOTES

[1] Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment; adopted by the United Nations General Assembly, Resolution 43/173 of 12/9/88

[2] Ewald, Alec; "Civil Death": The Ideological Paradox of Criminal Disenfranchisement Law in the United States, Wisconsin Law Review, p.1045, 2002

[3] Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States, The Sentencing Project, 1998

[4] Eric Cummins, The Rise and Fall of California's Radical Prison Movement, Stanford U. Press, 1994, p.25

[5] Op. cit., Losing the Vote

[6] Standard Minimum Rules for the Treatment of Prisoners, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663C (XXIV) of 31 July 1957 and resolution 2076 (LXII) of 13 May 1997

[7] Ritchey, Warren, The Christian Science Monitor, July 14, 2010

[8] Cole and Smith, The American System of Criminal Justice, Thomas Learning, Inc., 2007, p.507

[9] International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966. Entered into force 23 March 1976 in accordance with Article 49

[10] Op. cit. Standard Minimum Rules

[11] http://law.jrank.org/pages/1358/Incapacitation.html; Incapacitation – The Scholarly Literature on Incapacitation and the Measurement of Incapacitative Effects, Estimates of Incapacitation, Offending Trajectories and Incapacitation Policy

[12] One in 100: Behind Bars in America 2008, Pew Center on the States, 2009

[13] The Warehouse Prison, John Irwin, Roxbury Publishing Company, Los Angeles, CA, 2005

[14] Coyle, Andrew, A Human Rights Approach to Prison Management, International Centre for Prison Studies, London, UK, 2002

[15] Author's interviews with staff and prisoners at the Maximum Control Complex at the Washington Correctional Center in Shelton, Washington

[16] Optional Protocol to the International Covenant on Civil and Political Rights, G.A. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59. U.N. Doc 63/16 (1966), 999 U.N.T.S. 302, entered into force 3/23/1976

[17] Consideration of Reports Submitted by State Parties Under Article 19 of the Convention, United States of America, Committee Against Torture 36th Session, 1-19 May 2006, United Nations, CAT/US/CO/2, 25 July 2006

Colorado Sought to Revoke Prisoner's Electrician License After His Release

by Gary Hunter

For nearly two decades, Colorado state prisoner Marke E. Bogle worked as a licensed electrician for the Colorado Department of Corrections. In 1987, with the prison system's approval, he tested and obtained his journeyman's license. The next year he was licensed as a master electrician, and prison officials paid for his license renewal every two years.

Bogle spent the better part of 18 years working 12-to-15 hour days, and even trained other prisoners. He performed every conceivable electric-related job while he was locked up. He installed surveillance systems and repaired electrical fences. Wardens kept him on call at all hours and he traveled across the state repairing prisons' electrical problems for 60 cents a day – the going wage for prison labor.

On one occasion Bogle even saved his prison supervisor's life. "I was 72 feet up [a lamppost]" recalled Richard Nailor, Bogle's former supervisor. When Bogle realized the pole was about to snap, "he held it real carefully as I eased down."

Bogle only declined one job during his entire sentence: He refused to wire the Territorial Prison's room used for lethal injections.

In 2006, after almost two decades behind bars, Bogle was released on parole. He soon began to ply his electrical trade to support himself.

State Attorney General John Suthers then filed disciplinary proceedings to have Bogle's license revoked due to his felony conviction. The official position of Colorado's Department of Regulatory Affairs was "to ensure the safety of the public" when reviewing the status of all licenses.

"I think it's a bunch of crap," Nailor said of the state's efforts to revoke Bogle's license. "He's been in places where if he wanted to kill me, he could have done it 10 times. Instead, basically, this man saved my life."

O.J. Fleming, CEO of Northern Electric, Inc. and Bogle's boss, agreed. "He's paid his debt to society and has every right to make a meaningful living," he said.

Bogle lamented his dilemma. "All that money I saved the state, and then I start my new life and it's like, 'You're no good to us anymore.'"

Following news reports about the state's attempt to yank Bogle's license – and thus his means of earning an honest living – the Department of Regulatory Affairs reached a more reasonable accommodation that let Bogle retain his license under a stipulated agreement.

It's worth noting that when prisons exploit prisoners' labor, they quickly become a disposable commodity. No doubt, had Bogle remained in prison providing low-cost electrical work, state officials would not have tried to revoke his license despite his obvious felony conviction. Upon his release on parole, however, he was no longer any use to the state and they took action against him accordingly.

Sources: *Denver Post, www.doradls.state.co.us*

It's Scary Out There in Reporting Land: Why Crime News is on the Rise and Reporting Analysis is on the Decline

by David Cay Johnston

To understand how badly we're doing the most basic work of journalism in covering the law enforcement beat, try sitting in a barbershop. When I was getting my last haircut, the noon news on the television—positioned to be impossible to avoid watching—began with a grisly murder. The well-educated man in the chair next to me started ranting about how crime is out of control.

But it isn't. I told Frank, a regular, that crime isn't running wild and his chance of being burglarized today is less than one quarter what it was in 1980. [*Author's note*: Upon further checking, I learned that the chance of getting burglarized today is actually 42.5 percent of what it was in 1980].

The shop turned so quiet you could have heard a hair fall to the floor had the scissors not stopped. The barbers and clients listened intently as I next told them about how the number of murders in America peaked back in the early 1990's at a bit south of 25,000 and fell to fewer than 16,000 in 2009. When we take population growth into account, this means your chance of being murdered has almost been cut in half.

"So why is there so much crime on the news every day?" Diane, who was cutting Frank's hair, asked.

"Because it's cheap," I replied. "And with crime news you only have to get the cops' side of the story. There is no ethical duty to ask the arrested for their side of the story."

Cheap news is a major reason that every day we are failing in our core mission of providing people with the knowledge they need for our democracy to function. Barry Glassner, in an important book every journalist should read, tells us how cheap news badly done spreads false beliefs and racial distrust. It's been a decade since he came out with *The Culture of Fear: Why Americans Are Afraid of the Wrong Things.* By my sights, the problems Glassner described have gotten worse, much worse.

Does Anybody Care?

Beats are fundamental to journalism, but our foundation is crumbling. Whole huge agencies of the federal government and, for many news organizations, the entirety of state government go uncovered. There are school boards and city councils and planning commissions that have not seen a reporter in years. The outrageous salaries that were paid to Bell, California city officials—close to $800,000 to the city manager, for example—would not have happened if just one competent reporter had been covering that city hall in Southern California. But no one was, and it took an accidental set of circumstances for two reporters from the *Los Angeles Times* to reveal this scandal.

Four decades ago when I covered local government meetings in Silicon Valley for the *San Jose Mercury*, I always asked for copies of the agency budget. In those days, before spreadsheets or the first pocket calculator had been invented, I did long division in the margins to figure out trends and how the taxpayers' money was being spent. It not only relieved the tedium of the meetings I sat through, but it produced story after story after story that engaged readers and at times infuriated officials while protecting the public purse.

Increasingly what I see are news reports evidencing a basic lack of knowledge about government. And this isn't happening just with beat reporters but with the assignment and copy editors who are supposed to review stories before they get into print or on the air.

In the first 10 months of 2010, a Nexis database search shows, newspapers and wire services reported more than 1,700 times that juries, grand or petite, handed down indictments and verdicts.

Sometimes I pick up the phone and call reporters whose stories contain this incredibly dumb mistake and politely try to educate them. Perhaps it's obnoxious, but somebody needs to do it. Some reporters ask me what difference it makes. A few have insisted that [handed] down is correct. Really, I ask. Even if people have never been in the courtroom, they would know from movies and television that the judge sits in the highest position and therefore juries hand up while judges hand down. When I've asked reporters and some editors how many votes are needed for a jury to convict, I've sometimes gotten back cautious, slow or wrong answers. And it's not a trick question. If any reporter doesn't instantly know this answer, then alarms should sound and training should promptly commence.

Far too much of journalism consists of quoting what police, prosecutors, politicians and publicists say—and this is especially the case with beat reporters. It's news on the cheap and most of it isn't worth the time it takes to read, hear or watch. Don't take my word for it. Instead look at declining circulation figures. People know value and they know when what they're getting is worth their time or worth the steadily rising cost of a subscription.

Less for More

I also am board chairman and part owner of a very small business—we manage a small hotel—that follows a different customer policy than newspapers do. Every year the three papers I subscribe to cut quality and raise prices. When we charge our guests more, we give them something more—nicer shampoo, fluffier towels—and we tell them about the new benefit. Why should we think people would pay more for less and do so repeatedly?

One day a decade or so ago when Amtrak said my Metroliner would be delayed at 30th Street Station in Philadelphia, I ran upstairs and bought *The Philadelphia Inquirer*, where I worked for seven years. Buried inside I found a half column about the new budget for Montgomery County, the wealthiest and most important county for the newspaper's financial success. The story was mostly about the three commissioners yelling at each other. The total budget was mentioned, almost in passing, with no hint of whether it meant property taxes would go up or down, more money would be spent on roads or less, or any of the other basics that readers want to know.

For this I paid money? I could only imagine the reaction of the residents of Montgomery County.

This problem is not with the breakdown in the centuries-old economic model, a simple model that many journalists do not really understand. Connecting buyers and sellers who are in search of one another pays the bills. What draws them is a desire to find out that which is important but that they did not know. We call this information the *news*.

Far too much of what we produce today is already widely known. We fill so many pages with rehashed or known information that on many days these publications could properly be called *olds*-papers. It's not like there isn't important and revealing news all around us. There is. It's just that we seem swept up in a herd mentality with too narrow a focus and too much eagerness to rely on what sources tell us rather than asking these same people to address important facts that lie in plain sight in the public record.

Much of what passes for reporting about government these days is not only information that is useless, it is laughable nonsense, and I have the coffee stains on my robe to prove it. Every morning I read "Beat the Press" on the Center for Economic and Policy Research website, which is liberal economist Dean Baker's critique of the economic theory, policy and "facts" he finds on the front pages of *The New York Times*, *The Washington Post* and other media outlets. Baker routinely picks apart articles that are as far from reality as a weather story that says the sun rose in the West.

Sometimes I send these criticisms on to the ombudsman or top editors of the offending publications. I have even put together packages showing from the newspaper's own clips that what was printed is utterly false. But I rarely see any corrections made nor any insistence that writers actually know what they are writing about when it comes to government policy, economic policy, taxes or treaties.

During the past 15 years as I focused my reporting on how the American economy works and the role of government in shaping how the benefits and burdens of the economy are distributed, I've grown increasingly dismayed at the superficial and often dead wrong assumptions permeating the news. Every day in highly respected newspapers I read well-crafted stories with information that in years past I would have embraced but now know is nonsense, displaying a lack of understanding of economic theory and the regulation of business. The stories even lack readily available official data on the economy and knowledge of the language and principles in the law, including the Constitution.

What these stories have in common is a reliance on what sources say rather than what the official record shows. If covering a beat means finding sources and sniffing out news, then a firm foundation of knowledge about the topic is essential, though not sufficient. Combine this with a curiosity to dig deeply into the myriad of documents that are in the public record—and then ask sources about what the documents show.

David Cay Johnston, while working at The New York Times, won the 2001 Pulitzer Prize for Beat Reporting for his coverage of loopholes and inequities in the U.S. tax code. He is a columnist for Tax Analysts and teaches the law of the ancient world at Syracuse University's law and graduate business schools. "The Fine Print," the third book in his series about the American economy, is scheduled to be published in 2011 by Penguin. This article originally appeared in the Nieman Reports (www.nieman.harvard.edu) and is reprinted with the author's permission.

[Editor's Note: It is worth noting that today only two newspapers in America even have a reporter who regularly covers prisons as a beat. None of the large newspapers even consider criminal justice issues worthy of regular coverage because they supposedly do not affect their ideal advertiser demographic, even as the tax burden of a growing criminal justice system affects everyone.]

Controversial Drug Given to All Guantanamo Detainees Akin to "Pharmacologic Waterboarding"

by Jason Leopold and Jeffrey Kaye

The Defense Department forced all "war on terror" detainees at the Guantanamo Bay prison to take a high dosage of a controversial antimalarial drug, mefloquine, an act that an Army public health physician called "pharmacologic waterboarding."

The U.S. military administered the drug despite Pentagon knowledge that mefloquine caused severe neuropsychiatric side effects, including suicidal thoughts, hallucinations and anxiety. The drug was used on the prisoners whether they had malaria or not.

Interviews conducted over the past two months with tropical disease experts and a review of Defense Department documents and peer-reviewed journals show there were no preexisting cases where mefloquine was ever prescribed for mass presumptive treatment of malaria.

The revelation, which has not been previously reported, was buried in documents publicly released by the Department of Defense (DoD) two years ago as part of the government's investigation into the June 2006 deaths of three Guantanamo detainees.

Army Staff Sgt. Joe Hickman, who was stationed at Guantanamo at the time of the suicides in 2006, and has presented evidence that demonstrates the three detainees could not have died by hanging themselves, noticed in the detainees' medical files that they were given mefloquine. Hickman has been investigating the circumstances behind the detainees' deaths for nearly four years.

All detainees arriving at Guantanamo in January 2002 were first given a treatment dosage of 1,250 mg of mefloquine, before laboratory tests were conducted to determine if they actually had the disease, according to a section of the DoD documents entitled "Standard Inprocessing Orders for Detainees." The 1,250 mg dosage is what would be given if the detainees actually had malaria. That dosage is five times higher than the prophylactic dose given to individuals to prevent the disease.

Maj. Remington Nevin, an Army public health physician, who formerly worked at the Armed Forces Health Surveillance Center and has written extensively about mefloquine, said in an interview the use of mefloquine "in this manner ... is, at best, an egregious malpractice."

The government has exposed detainees "to unacceptably high risks of potentially severe neuropsychiatric side effects, including seizures, intense vertigo, hallucinations, paranoid delusions, aggression, panic, anxiety, severe insomnia, and thoughts of suicide," said Nevin, who was not speaking in an official capacity, but offering opinions as a board-certified, preventive medicine physician. "These side effects could be as severe as those intended through the application of 'enhanced interrogation techniques.'"

Mefloquine is also known by its brand name Lariam. It was researched by the U.S. Army in the 1970s and licensed by the Food and Drug Administration in 1989. Since its introduction, it has been directly linked to serious adverse effects, including depression, anxiety, panic attacks, confusion, hallucinations, bizarre dreams, nausea, vomiting, sores, and homicidal and suicidal thoughts. It belongs to a class of drugs known as quinolines, which were part of a 1956 human experiment study to investigate "toxic cerebral states," as part of the CIA's MKULTRA mind-control program.

The Army tapped the Walter Reed Army Institute of Research (WRAIR) to develop mefloquine and it was later licensed to the Swiss pharmaceutical company F. Hoffmann-La Roche. The first human trials of mefloquine were conducted in the mid-1970s on prisoners, who were deliberately inoculated with malaria at the Stateville Correctional prison near Joliet, Illinois, the site of controversial antimalarial experimentation in the early 1940s.

The drug was administered to Guantanamo detainees without regard to their medical or psychological history, despite its considerable risk of exacerbating preexisting conditions. Mefloquine is also known to have serious side effects among individuals under treatment for depression or other serious mental health disorders, which numerous detainees were said to have been treated for, according to their attorneys and published reports.

Dr. G. Richard Olds, a tropical disease specialist and the founding dean of the Medical School at the University of California at Riverside, said in his "professional opinion there is no medical justification for giving a massive dose of mefloquine to an asymptomatic individual."

"I also do not see the medical benefit of treating a person in Cuba with a prophylactic dose of mefloquine," Olds said. Mefloquine is "a fat soluble, and as a result, it does build up in the body and has a very long half-life. This is important since a massive dose of this drug is not easily corrected and the 'side effects' of the medication could last for weeks or months."

In 2002, when the prison was established and mefloquine first administered, there were dozens of suicide attempts at Guantanamo. That same year, the DoD stopped reporting attempted suicides.

By February 2002 there were at least 459 detainees imprisoned at Guantanamo. In March of that year, according to the book "Saving Grace at Guantanamo Bay: A Memoir of a Citizen Warrior" by Montgomery Granger, "the situation" at the prison began "deteriorating rapidly."

"There is more and more psychosis becoming evident in detainees ...," wrote Granger, an Army Reserve major and medic who was stationed at Guantanamo in 2002. "We already have probably a dozen or so detainees who are psychiatric cases. The number is growing."

"Presumptively Treating" Malaria

Though malaria is nonexistent in Cuba, DoD spokeswoman Maj. Tanya Bradsher told Truthout that the U.S. government was concerned that the disease would be reintroduced into the country as detainees were transferred to the prison facility in January 2002.

A "decision was made," Bradsher said in an email, to "presumptively treat each arriving Guantanamo detainee for malaria to prevent the possibility of having mosquito-borne [sic] spread from an infected individual to uninfected individuals in the Guantanamo population, the guard force, the population at the Naval base or the broader Cuban population."

But Granger wrote in his book that a Navy entomologist was present at Guantanamo in January and February 2002 and during that time only identified insects

that were nuisances and did not identify any insects that were carriers of a disease, such as malaria.

Nevertheless, Bradsher said the "mefloquine dosage [given to detainees] was entirely for public health purposes ... and not for any other purpose" and "is completely appropriate."

"The risks and benefits to the health of the detainees were central considerations," she added.

A September 13, 2002 DoD memo governing the operational use of mefloquine said, "Malaria is not a threat in Guantanamo Bay." Indeed, there have only been two to three reported cases of malaria at Guantanamo.

The DoD memo, signed by Assistant Secretary of Defense for Health Affairs William Winkenwerder, was sent to then-Rep. John McHugh, the Republican chairman of the House Veterans Affairs Subcommittee on Military Personnel. McHugh is now Secretary of the Army.

A Senate staff member told Truthout the Senate Armed Services Committee was never briefed about malaria concerns at Guantanamo nor was the committee made aware of "any issue related to the use of mefloquine or any other anti-malarial drug" related to "the treatment of detainees."

When questions were raised at a February 19, 2002 meeting of the Armed Forces Epidemiological Board (AFEB) about what measures the military was taking to address malaria concerns at Guantanamo, Navy Capt. Alan J. Yund did not disclose that mefloquine was being administered to detainees as a form of presumptive treatment.

Yund also said the military gave detainees a different anti-malarial drug known as primaquine and noted that "informed consent" was "absolutely practiced" prior to administering drugs to detainees, an assertion that contradicts claims made by numerous prisoners who said they were forced to take drugs even if they protested. Yund did not return calls for comment.

Bradsher declined to respond to a follow-up question about who made the decision to presumptively treat detainees with mefloquine.

An April 16, 2002 meeting of the Interagency Working Group for Antimalarial Chemotherapy, which DoD, along with other federal government agencies, is a part of, was specifically dedicated to investigating mefloquine's use and the drug's side effects. The group concluded that study designs on mefloquine up to that point were flawed or biased and criticized DoD medical policy for disregarding scientific fact and basing itself more on "sensational or best marketed information."

The Working Group called for additional research, and warned, "other treatment regimes should be carefully considered before mefloquine is used at the doses required for treatment."

Still, despite the red flags that pointed to mefloquine as a high-risk drug, the DoD's mefloquine program proceeded.

In fact, a June 2004 set of guidelines issued by the Centers for Disease Control and Prevention (CDC) said mefloquine should only be used when other standard drugs were not available, as it "is associated with a higher rate of severe neuropsychiatric reactions when used at treatment doses."

According to the CDC, "'presumptive treatment' without the benefit of laboratory confirmation should be reserved for extreme circumstances (strong clinical suspicion, severe disease, impossibility of obtaining prompt laboratory confirmation)."

A CDC spokesman refused to com-

ment about the "presumptive treatment" of malaria at Guantanamo and referred questions to the DoD.

Nevin said, if "mass presumptive treatment has been given consistently, many dozens of detainees, possibly hundreds, would almost certainly have suffered such disabling adverse events."

"It appears that for years, senior Defense health leaders have condoned the medically indefensible practice of using high doses of mefloquine ostensibly for mass presumptive treatment of malaria among detainees from the Middle East and Asia lacking any evidence of disease," Nevin said. "This is a use for which there is no precedent in the medical literature and which is specifically discouraged among refugees by malaria experts at the Centers for Disease Control."

Even proponents of limited mefloquine usage are seriously questioning the logic behind the DoD's actions. Professor James McCarthy, chair of the Infectious Diseases Division of the Queensland Institute of Medicine in Australia, who is an advocate of the safe use of mefloquine under proper safeguards, and takes it himself when traveling, told Truthout he was unaware of the use of mefloquine for mass presumptive treatment as described by the DoD, but could imagine it under certain circumstances.

However, when informed that lab tests were available and the detainees were screened for the blood product G6PD, used to determine the suitability of certain antimalarial drugs, McCarthy found the DoD's use of mefloquine at Guantanamo difficult to understand and "hard to support on pure clinical grounds as an antimalarial."

Treatment, Torture or an Experiment?

Another striking point about the DoD's decision to presumptively treat mostly Muslim detainees with mefloquine beginning in 2002 is that it is the exact opposite of how the DoD responded to malaria concerns among the Haitian refugees who were held at Guantanamo a decade earlier.

Between 1991 and 1992, more than 14,000 Haitian refugees were held in temporary camps set up at Guantanamo. A large number of Haitian refugees – 235 during a four-month period – were diagnosed with malaria. But instead of presumptively treating the refugee population at Guantanamo, the DoD conducted laboratory tests first and only the individuals who were found to be malaria carriers were administered chloroquine.

Another example of how the DoD approached malaria treatment differently for other subjects is the case of Army Rangers who returned from malarial areas of Afghanistan between June and September 2002 and were infected with the disease at an attack rate of 52.4 cases per 1,000 soldiers. However, the Rangers did not receive mass presumptive treatment of mefloquine. They were given other standard drugs after laboratory tests, according to documents obtained by Truthout.

Nevin said the DoD's treatment of Haitian refugees represented "a situation that arguably presented a much higher risk of disease and secondary transmission, but one which U.S. medical experts stated at the time could be safely managed through more conservative and focused measures."

Why did the government use the "conservative and focused" approach in treating Haitian refugees and the Army Rangers, but then revert to presumptive mefloquine treatment in the case of the Guantanamo detainees, who – a month after the prison facility opened in January 2002 – were stripped of their protections under the Geneva Conventions?

According to Sean Camoni, a Seton Hall University law school research fellow, "there is no legitimate medical purpose for treating malaria in this way," and the drug's severe side effects may actually have been the DoD's intended impact in calling for the drug's usage. Camoni and several other Seton Hall law school students have been working on a report about mefloquine use on Guantanamo detainees. Their work was conducted independently of Truthout's investigation.

A copy of the Seton Hall report, "Drug Abuse? An Exploration of the Government's Use of Mefloquine at Guantanamo," says mefloquine's extreme side effects may have violated a provision in the antitorture statute related to the use of "mind altering substances or other procedures" that "profoundly disrupt the senses or the personality."

Legal memos prepared in August 2002 by former DoD attorneys Jay Bybee and John Yoo for the CIA's torture program permitted the use of drugs for interrogations. The authority was also contained in a legal memo Yoo prepared for the DoD less than a year later after Secretary of Defense Donald Rumsfeld convened a working group to address "policy considerations with respect to the choice of interrogation techniques."

In September 2010, Truthout reported that the DoD's inspector general (IG) conducted an investigation into allegations that detainees in custody of the U.S. military were drugged. The IG's report, which remains classified, was completed a year ago and was shared with the Senate Armed Services Committee. Kathleen Long, a spokeswoman for the Armed Services Committee, told Truthout at the time that the IG report did not substantiate allegations of drugging of prisoners for the "purposes of interrogation."

The medical files for detainee 693 released in 2008 shows that, two weeks after he first started taking mefloquine in June 2002, he was interviewed by Guantanamo medical personnel and reported he was suffering from nightmares, auditory and visual hallucinations, anxiety, sleep loss and suicidal thoughts.

The detainee said he had previously been treated for anxiety and had a family history of mental illness. He was diagnosed with adjustment disorder, according to the DoD documents. Guantanamo medical staff who interviewed the detainee did not state that he may have been experiencing mefloquine-related side effects in an evaluation of his condition.

Mark Denbeaux, the director of the Seton Hall Law Center for Policy and Research, who looked into the 2006 deaths of the three Guantanamo detainees, said in an interview that "almost every remaining question here would be solved if the [detainees'] full medical records were released."

The government has refused to release Guantanamo detainees' medical records, citing privacy concerns in some cases, and assertions that they are "protected" or "classified" in other instances. The few medical records that have been released have been heavily redacted.

"A crucial issue is dosage," Denbeaux said. "Giving detainees toxic doses of mefloquine has mind-altering consequences that may be permanent. Without access to medical records, which the government refuses to release, the use of mefloquine in this manner appears to be grotesque malpractice at best, if not human experimentation or 'enhanced interrogation.'

The question is where are the doctors who approved this practice and where are the medical records?"

Bradsher did not respond to questions about whether the government kept data about the adverse effects mefloquine had on detainees.

An absolute prohibition against experiments on prisoners of war is contained in the Geneva Conventions, but President George W. Bush stripped war on terror detainees of those protections. Some of the "enhanced interrogation techniques" also had an experimental quality. [See: *PLN*, Feb. 2011, p.20]. At the same time detainees were given high doses of mefloquine, Deputy Secretary of Defense Paul Wolfowitz issued a directive changing the rules on human subject protections for DoD experiments, allowing for a waiver of informed consent when necessary for developing a "medical product" for the armed services. Bush also granted unprecedented authority to the secretary of Health and Human Services to classify information as secret.

Briefings on Side Effects

As the DoD was administering mefloquine to Guantanamo prisoners, senior Pentagon officials were being briefed about the drug's dangerous side effects. During one such briefing, questions arose about what steps the military was taking to address malaria concerns among detainees sent to Guantanamo.

Internal documents from F. Hoffmann-La Roche, obtained by UPI in 2002, indicated that the pharmaceutical company had been tracking suicidal reactions to Lariam going back to the early 1990s.

In September 2002, Roche sent a letter to physicians and pharmacists stating that the company had changed its warning labels for mefloquine.

Roche further said in one of two new warning paragraphs that some of the symptoms associated with mefloquine use included suicidal thoughts and suicide and also "may cause psychiatric symptoms in a number of patients, ranging from anxiety, paranoia, and depression to hallucination and psychotic behavior," which "have been reported to continue long after mefloquine has been stopped."

Military Struggles

Cmdr. William Manofsky, who is retired from the U.S. Navy and currently on disability due to post-traumatic stress disorder and side effects from mefloquine, said those are some of the symptoms he initially suffered from after taking the drug for several months beginning in November 2002 after he was deployed to the Middle East to work on two Naval projects.

In March 2003, "I became violently ill during a night live-fire exercise with the [Navy] SEALS," Manofsky said. "I felt like I was air sick. All the flashing lights from the tracers and rockets ... targeting device made me really sick. I threw up for an hour straight before being medevac'd back to the Special Forces compound where I had my first ever panic attack."

For three years, Manofsky said he had to walk with a cane due to a loss of equilibrium. Numerous other accounts like Manofsky's can be found on the web site www.lariaminfo.org.

In 2008, Dr. Nevin published a study detailing a high prevalence of mental health contraindications to the safe use of mefloquine in soldiers deployed to Afghanistan. Responding in part to concerns raised by the mefloquine-associated suicide of Army Spc. Juan Torres, internal Army presentations confirmed that the drug had been widely misprescribed to soldiers with contraindications, including to many on antidepressants.

A formal policy memo in February 2009 from Army Surgeon General Eric Schoomaker removed mefloquine as a "first-line" agent, and changed the policy so that mefloquine would not be prescribed to Army personnel unless they had contraindications to the preferred drug, the antibiotic doxycycline. Nor could mefloquine be prescribed to any personnel with a history of traumatic brain injury or mental illness.

By September 2009, the policy was extended throughout the DoD.

New prisoners are no longer arriving at Guantanamo, and the prison population has been in decline in recent years as detainees are released or transferred to other countries. Currently, the detainee population at Guantanamo is a reported 174.

But Nevin said the justification the Pentagon offered for using mefloquine to presumptively treat detainees transferred to the prison beginning in 2002 "betrays a profound ignorance of basic principles of tropical medicine and suggests extremely poor, and arguably incompetent, medical oversight that demands further investigation."

Jason Leopold is the Deputy Managing Editor at Truthout. He is the author of the Los Angeles Times bestseller, "News Junkie," a memoir. Visit www.newsjunkiebook.com for a preview.

Jeffrey Kaye, a psychologist living in Northern California, writes regularly on torture and other subjects for Firedoglake. He also maintains a personal blog, Invictus. His email address is sfpsych@gmail.com.

This article originally appeared on Truthout (www.truth-out.org) on December 1, 2010 and is reprinted with the author's permission.

Washington Court Reverses Injunction Against Prisoner's Public Records Requests

On July 29, 2010, the Washington State Court of Appeals affirmed that prisoners have standing to request records under Washington's Public Records Act (PRA). The court also held that photographs of guards; personnel, compensation and training records; and intelligence and investigation reports were not exempt from disclosure. Finally, guards who were not named in a prisoner's "counterfeit sexual predator flyer" were not entitled to an injunction, though prison employees "have the right to seek an injunction to protect their individual privacy rights when faced with an explicit and volunteered threat."

Washington Department of Corrections (DOC) prisoner Allan Parmelee frequently requests public records under the PRA. Between July 2004 and August 2006, he "submitted 95 public disclosure requests" to the DOC, and prison officials claimed at the time that he had filed over 400 public records requests.

Parmelee wrote several letters to DOC officials "stating that he intends to misuse information that he receives about DOC staff," the appellate court noted. "He also made comments that DOC staff have interpreted as thinly veiled threats against them and their families."

Parmelee contacted DOC Secretary Harold Clarke on July 20, 2005, calling Clallam Bay Correctional Center (CBCC) Superintendent Sandra Carter "a man-hater lesbian." He then wrote to Carter on October 8, 2005, informing her that he had sent investigators to photograph her home, interview her neighbors and post information about her on the Internet.

On March 16, 2006, Parmelee submitted a public records request seeking information about DOC Sergeant Mathieu and nine other employees, including their "(1) photograph, (2) performance reviews for the previous five years, (3) compensation records, (4) 'critical' employment records for the previous seven years, (5) administrative grievances and internal investigation records for the past five years, and (6) DOC sponsored training programs." He later supplemented his request by seeking the same records for three other DOC employees.

On March 19, 2006, a letter Parmelee had written to Maxwell Tomlinson of Max Investigations was confiscated from his cell. He asked Tomlinson to obtain information about 20 DOC employees and post it on the Internet, including their "vehicle licenses, codes and pictures of them, their homes, and vehicles."

Parmelee sent Superintendent Carter another letter on July 9, 2006, stating "that he had hired picketers to picket the homes of DOC employees" and to "hand out information brochures about DOC employees to the neighbors."

Two days later, Parmelee was disciplined after he gave a female guard "a mock-up of a flyer" entitled "SEXUAL PREDITORS [sic] IN YOUR NEIGHBORHOOD." The flyer listed the names of six DOC employees – Robert O'Neel, Carrol Riddle, Nathan Cornish, Jenny McHaffie, Michael Christensen and Carter – with spaces for the employees' photographs to be inserted.

Parmelee allegedly told the guard, "These are the flyers that I am having printed and passed out tomorrow and if you don't stay out of it your dead bitch will be on one of them."

On July 19, 2006, Mathieu filed for an injunction in superior court in *Mathieu v. Parmelee*, asking the court to bar the DOC from disclosing her records to Parmelee. Mathieu's petition named 12 other employees as parties, but they were dismissed from the action.

In response, numerous CBCC employees filed a second petition for an injunction in *DeLong v. DOC*, seeking to prevent the DOC from disclosing their records pursuant to Parmelee's public records requests.

In *Mathieu v. Parmelee*, the DOC argued that injunctive relief should be granted to Mathieu "in light of Parmelee's history of harassing behavior." The court agreed and entered a permanent injunction on October 24, 2006, "enjoining the DOC from releasing documents relating to Mathieu, except for her training records for 24 months prior to Parmelee's request, and records regarding her pay grade and pay scale." The court "found that Parmelee submitted the requests to 'gather information to harass, slander and endanger [Mathieu] and her family.'"

Parmelee attempted to intervene in *DeLong* on October 10, 2006 but the court never ruled on his motions. As in *Mathieu v. Parmelee*, the DOC did not oppose the injunction. Rather, the DOC argued "in favor of the injunction and against Parmelee's attempt to intervene or join in the action."

During an October 13, 2006 hearing in *DeLong*, "DOC counsel informed the ... court that Parmelee had requested to appear," but "she objected because he was not a party to the action. The ... court declined to contact Parmelee because it did not believe that he was 'necessary as a party to this action in its present configuration.'"

The court "then heard extensive argument ... detailing Parmelee's harassment of DOC personnel," and issued a permanent injunction identical to the injunction issued in *Mathieu*. Parmelee renewed his motion to intervene on November 6, 2006, but the "court denied the motion as untimely because it believed that Parmelee had a fair and full opportunity to litigate the issues in the *Mathieu v. Parmelee* matter."

Between February 2005 and July 2006, Parmelee had "requested electronic photographic images of over 2,525 DOC employees." He told a CBCC employee "that he intended to use the photographs on flyers labeling the employees as 'sexual predators' ... that he had prepared and planned to disseminate."

On August 1, 2006 the DOC petitioned for an injunction in *DOC v. Parmelee*, seeking to enjoin disclosure of the 2,525 photographic images. While the case was pending, Parmelee sent a letter to Mark Kuzca, Associate Superintendent of the Washington State Penitentiary, stating "that he would be producing flyers labeling DOC employees as 'homosexual predators.'" On January 19, 2007, the superior court enjoined disclosure of the photos.

Parmelee appealed in all three cases, and the Washington Court of Appeals consolidated the cases and issued a single opinion. The appellate court first rejected the state's argument "that the PRA does not extend to incarcerated felons." Although "the record amply supports the DOC's claim that Parmelee's request is a perverse abuse of the PRA," the court found that it was "constrained to hold that prison inmates, including those blatantly abusing the PRA, have standing to request records under the PRA."

This result was dictated by the plain language of the PRA, the Washington Supreme Court's analysis in *Livingston*

v. Cedeno, 164 Wn.2d 46, 186 P.3d 1055 (2008), and the fact that the legislature had twice declined to narrow the definition of persons seeking access to public records under the PRA.

The appellate court rejected Parmelee's contention that the trial court had erred in considering his intended use of the requested records. Although the "DOC cannot consider an individual's status as an inmate when determining whether the information is subject to disclosure under the PRA," the Court of Appeals held that "the trial court could consider a PRA requestor's explicit and volunteered threat when deciding whether an injunction is required to protect the rights of the government's employees."

The appellate court also found that the superior court had erred in holding that Mathieu's photograph and other records were not subject to disclosure under the PRA. The Court of Appeals explained that it was "constrained to reverse the injunction against Parmelee because Mathieu was not named in his counterfeit sexual predator flyer and is unable to demonstrate that she was the victim of this explicit and volunteered threat."

Likewise, in *DeLong*, the appellate court found that "those DOC employees not named in Parmelee's counterfeit sexual predator flyer are not entitled to an injunction, but those DOC employees who were subject to this threat are entitled to injunctive relief." The Court of Appeals further held that "the trial court erred when it refused to join Parmelee as a necessary party because his participation was necessary to protect his interests under the PRA."

Thus, the injunction against Parmelee in *Mathieu* was reversed, and the *Mathieu* and *DeLong* cases were remanded to the trial court for further proceedings. See: *DeLong v. Parmelee*, 157 Wash.App. 119, 236 P.3d 936 (Wash.App.Div.2 2010).

Parmelee has a lengthy history of successful litigation against the Washington DOC related to public records requests, including obtaining damage awards when his requests were improperly denied. [See: *PLN*, Nov. 2010, p.36; Oct. 2010, p.46; May 2007, p.33].

The Washington legislature is currently considering two bills that would restrict prisoners' ability to obtain public records and collect damages in public records cases. Attorney General Rob McKenna has claimed that around three-quarters of public records lawsuits are filed by prisoners, and opined they should not receive damages when their requests are improperly denied. "They should not be benefiting. Crime should not be paying in this way," remarked State Sen. Mike Carrell.

Parmelee's attorney, Michael Kahrs, disagreed, noting that "If the DOC is not penalized [for failing to produce public records], then where's the downside for the department to basically obstruct all prisoner requests?"

The two bills, S.B. 5099 (allowing courts to enjoin prisoners' public records requests) and S.B. 5025 (barring damage awards to prisoners in public records cases) remain pending in the state legislature. S.B. 5025 has already passed in the Senate.

Additional sources: *www.spokesman.com, http://blog.senatedemocrats.wa.gov*

New York Taxpayers Foot the Bill for Late Prison Vendor Payments

by Brandon Sample

Paying your bills on time is a basic element of efficient fiscal management. Apparently, however, it is a basic element that the New York Department of Correctional Services (DOCS) failed to master, since the Department's tardy payments resulted in $58,553 in unnecessary interest on 2,384 late vendor bills.

The problems stemmed from the Arthur Kill Correctional Facility, a state prison on Staten Island. According to an audit by the Office of the New York State Comptroller dated April 23, 2009, Arthur Kill was late on vendor payments 77 percent of the time during the 2005-2006 fiscal year and 34 percent during 2006-2007. Under New York's prompt payment law, vendors are supposed to be paid within 30 days.

Arthur Kill staff attributed the late payments to staffing issues, lack of available funds, mishandled paperwork and misprioritization of payments. With respect to staffing, for example, Arthur Kill complained that it did not have enough business office employees and that it had trouble hiring new staff because few people were willing to pay $10 a day to commute via a toll bridge, or $6 a day via public transportation.

And while Arthur Kill claimed that it lacked funds, at times, to pay its bills, the audit found otherwise. "We met with DOCS officials in Albany regarding ... where lack of funding was the reason given for payment delays," the auditors stated. "They could not agree with the assertion by Arthur Kill. Instead, they indicated that facility clerical errors had resulted in holds on funds not being released in a timely manner."

Mishandled paperwork was attributed to Arthur Kill medical staff who waited too long to return necessary forms to the business office. Finally, Arthur Kill had failed to first pay vendors that charged interest on late payments. New York taxpayers, of course, had to pick up the bill for the interest charges due to the tardy payments.

The audit report made several recommendations to ensure that timely vendor payments were made in the future. Each was accepted by the DOCS, and prison officials have since reported that Arthur Kill is current on its payments. The report is available on PLN's website.

Sources: *www.silive.com, New York State Comptroller Report 2007-S-141*

Texas State Auditor's Reports Find Problems with Parole System

by Gary Hunter

Two audits of Texas' parole system, in 2008 and 2010, revealed a number of problems and inefficiencies.

According to the first audit, released in June 2008, approximately 1,250 Texas parole officers supervised 77,526 parolees during fiscal year 2007. Five counties – Harris, Dallas, Tarrant, Bexar and Travis – accounted for over half of the parolee case load.

The State Auditor's Office determined that the only efficient aspect of Texas' parole system was in the area of parole revocations. In other areas, both the board that determines parole review criteria as well as parole offices that monitor parolees fell short of acceptable operational standards.

A major factor in the parole system's inefficiency was its antiquated computer database. In 2000 the state contracted with a company called Sapient to implement the Offender Information Management System (OIMS). OIMS consisted of three modules and was projected to go online in 2001. The first module, used for parole supervision, was not operational until 2004 and still had numerous problems. Modules two and three, used for determining parole releases and parole revocations, respectively, were seven years behind schedule when the audit was performed.

The projected cost of OIMS was $31 million, and two of the three modules had yet to be completed at the time of the 2008 audit. Sapient originally provided 150 staff for the OIMS project. After the Parole Department was unable to resolve differences with the company, it terminated Sapient's contract in 2003. That left around 20 people to complete OIMS, resulting in cost overruns and unmet deadlines.

The auditors found that OIMS users faced a variety of problems with the portion of the system that was online. User response times were extremely slow. Parole officers were unable to timely access and use information contained in OIMS, which degraded their ability to properly monitor and supervise parolees.

While the Department had contracted with TPM and the Team for Texas to bring OIMS up to speed, it had not done enough to keep them informed of all the problems that existed within the system. OIMS became especially inefficient at the first of the month when use of the system was heaviest.

The Parole Department insisted that OIMS was 99 percent complete, despite the fact that two-thirds of the system had yet to be brought online. Module two, designed to assist the parole board in determining which prisoners were most eligible for parole, came online temporarily in September 2006 but had to be discontinued in March 2007 as user problems began to mount. At the time it was discontinued, only one percent of the parole determination caseload had been considered.

Module three, designed to assist with parole violations and revocations, was not yet implemented. Regardless, the auditors determined that at least one area of the parole system was operating at peak efficiency – revocations.

Of the case files examined, parole review boards found that probable cause existed to revoke alleged violators 96 percent of the time. Revoked parolees received their hearing packets, review panels were convened within the required time frame, revocation hearings were completed within the "40 day rule" as required, and sanctions were implemented by a two-thirds vote of the review panel 100% of the time.

While revocation procedures operated efficiently, the circumstances leading up to the revocation process were not always so tidy. Over half of the parolees were not tested for drug use in a timely fashion; fifty-five percent of the drug tests were conducted one to three months later than the required testing schedule.

Notably, Parole Department guidelines required "parole officers to impose appropriate interventions within five workdays from the date on which the parole officer becomes aware" of a parolee violation. However, "[t]he Department did not always record interventions in OIMS or impose the intervention within five workdays. Seven of 21 (33 percent) imposed interventions reviewed were not recorded in OIMS and only 5 of 21 (24 percent) interventions were processed within the specified time requirements."

Additionally, GPS monitoring is required of some parolees as a condition of their parole. At times the monitors will alert parole personnel that a parolee is not at a required location or is in violation of his or her curfew. Sometimes these alerts are the result of equipment malfunction; in at least 22 percent of the cases reviewed, parole officers did not resolve problems with the GPS monitors within the required 24-hour time limit.

Parole officers also failed to keep OIMS data current. This inconsistency added to other problems within the OIMS system since the information being shared by parole officials was often incomplete. The end result was that parolees' files were sometimes mismanaged, especially if they were transferred from one parole officer to another.

The audit further noted that parole officers were not completing their required number of office visits and home visits in the specified amount of time. Inadequate monitoring added to parole officers' inability to assist parolees under their supervision.

A conclusion not drawn from the report, but which is immediately obvious from its data, is that the inefficient process with which parole officers perform their duties allows many parolees to slowly spiral out of control. By the time a parole officer finally interacts with a parolee in a meaningful manner, the parolee is usually in the process of being revoked. It is at that point that the system becomes efficient – in sending parolees back to prison.

Certainly parolees have a responsibility to follow the terms and conditions of their parole supervision. But it is unreasonable to expect parolees to be serious about adhering to their parole conditions when their parole officers are not serious about doing their jobs. When parole officers only seem interested in collecting fees and revoking parole, it is unlikely that a parolee will turn to them when they need help.

A more recent audit of Texas' Parole Department by the State Auditor's Office, released in October 2010, reported some improvements. "The Department tracked 93 percent of the required drug tests and 96 percent of the required offender contacts in [OIMS] for fiscal year 2009 and the first half of fiscal year 2010," the audit found, with an average of 1,255 parole officers supervising 79,939 parolees.

However, "the Department did not ensure that parole officers entered all drug tests and offender contacts into OIMS within the required three days. Further, the Department did not always maintain supporting documentation for the drug tests entered into OIMS." The auditors found that 10 percent of the drug tests

reviewed and 20 percent of regular offender contacts reviewed were not entered into OIMS in a timely manner.

The 2010 audit determined that parole officers generally completed required training, and that all newly-hired parole officers had attended the Parole Officer Training Academy. It was recommended that the Parole Department update its training curriculum "related to offender contacts and drug testing since it [had] revised its policies in these areas. As a result, the training may not provide parole officers with the most updated information needed to perform their job duties."

The auditors also noted that the Parole Department had "exceeded the caseload guidelines established in the Texas Government Code and the General Appropriations Act," and that "the methodology the Department used to calculate the caseload ratios in these reports understates the caseloads ...."

Lastly, the audit found that while the Department had "fully or substantially implemented" most of the prior recommendations in the 2008 audit related to offender contacts, drug testing and OIMS, it should "continue its efforts to improve" OIMS. For example, OIMS users reported losing data when the system automatically logged them out after a 30-minute time-out, and continued to report problems with the slowness of the system. OIMS module three was finally implemented in January 2010.

Beyond the issues reported by the State Auditor's Office in the 2008 and 2010 audits, courts have repeatedly found problems with Texas' parole procedures, mainly related to due process violations. [See: *PLN*, Feb. 2011, p.18; Feb. 2009, p.14].

Source: *Texas State Auditor's Office, Report Nos. 08-036 and 11-008*

Oregon Parole Board Improperly Excluded Witnesses at Revocation Hearing

The Oregon Supreme Court, sitting en banc, held that the Oregon Board of Parole (Board) had improperly deprived a parolee of his right to call witnesses at a revocation hearing.

Parolee Thomas Edward O'Hara was arrested on March 9, 2005 for a parole violation after his parole officer, two other parole officers and police conducted an unscheduled home visit.

On March 15, 2005, O'Hara requested a formal hearing and asked that six witnesses be called to testify. The hearing officer denied his request, finding the witnesses could offer nothing relevant to the allegations against him.

The formal hearing was conducted on March 28, 2005. The hearing officer acknowledged O'Hara's witness request and again denied the request, "concluding that the testimony of those witnesses was not relevant to the issues to be examined." O'Hara objected to the denial. The hearing officer then found O'Hara in violation of his parole supervision and recommended a 45-day jail sanction.

On appeal, the Oregon Supreme Court rejected the Board's argument that O'Hara was required to make an offer of proof at the hearing as to each witness' testimony. "That might be an appropriate objection in formal litigation," the Court wrote. "An informal hearing, however, does not require the same level of formality as litigation in a court of law."

The Supreme Court also rejected the Board's argument that O'Hara had failed to present a "theory of admissibility," concluding that "there is no requirement ... – in statute, rule, or case law – that a party offer a 'theory of admissibility' to support the testimony of an eyewitness to the very events at issue in the informal hearing."

Noting that "relevance does not pose a high standard for admissibility," the Court applied the Oregon Evidence Code and concluded that O'Hara's witnesses "reasonably could have been expected to provide relevant evidence." The Supreme Court further rejected the Board's claim that exclusion of the witness testimony was harmless error. Finally, the Court found that the Board erred in failing to issue subpoenas for O'Hara's requested witnesses.

Therefore, the Supreme Court reversed and remanded "so that the Board may conduct another hearing at which it considers relevant testimony" from O'Hara's witnesses. See: *O'Hara v. Board of Parole*, 346 Or. 41, 203 P.3d 213 (Ore. 2009).

Maryland: Convicted Felons Receive Victims' Compensation

by Gary Hunter

Since 2003, Maryland's Criminal Injuries Compensation Board has awarded about $1.8 million to claimants with criminal convictions. In Baltimore, over 120 people who received victims' compensation had been arrested for selling or manufacturing drugs; more than seventy of those payments went to families to cover burial expenses.

Deandra M. Gaskins had convictions for car theft, armed robbery and drug dealing. In 2005 he was shot during a drive-by in South Baltimore, and his injuries resulted in thousands of dollars worth of hospital bills. He applied to the compensation fund for assistance and was approved.

Gaskins had just left work on the night he was shot. As he sat on the front steps of a friend's rowhouse, four men in a car stopped in front of him. One asked Gaskins for the time. When he replied he didn't know, the man responded, "You know what time it is," then opened fire with an assault rifle.

"It snapped my wrist out of place and slung me up against a wall," said Gaskins, who lamented his permanent physical injuries, saying, "I can't play with my kids the way I want to anymore."

In an unrelated incident a gang member was shot to death during an argument at a strip club. The compensation fund helped pay for his funeral. Another victim had two previous convictions for selling cocaine but received almost $12,000 in compensation for lost wages after being wounded in a shooting.

Compensation payments to people who have been convicted of crimes has upset some Maryland legislators. "The whole intention is to help people who are the innocent victims of crime or their families," said former state senator John W. Derr. "I think we've got to take a serious look at [compensation for people with criminal records]." The reality of course is that many violent crime victims are in fact "criminals". The legislature merely seeks to distinguish among the crime victims it likes and the ones it dislikes. Victims of police or guard abuse for example generally do not receive crime victim compensation even when their assailants are convicted of a crime.

Other states, including Florida and Ohio, prohibit ex-felons from receiving any type of victim compensation.

Rodney Doss, past director of Florida's compensation fund, said "It just stands to reason that this office ... should do our part in trying to ensure that innocent crime victims that have not demonstrated a propensity [for violence] are people that are eligible for compensation."

North Carolina restricted felons from receiving victims' compensation in 1999. Ohio instituted a "clean-hands doctrine" after $90,000 was awarded, in 1979, to the spouse of a victim who turned out to be an organized crime member. At least eight states prohibit former felons from receiving victims' compensation payments.

The issue has been hotly debated. "Some of these guys, I don't want to pay them, but the law prevents me from denying it," remarked Robin Wollford, the head claim investigator for Maryland's Criminal Injuries Compensation Board.

Sandy A. Roberts, the Board's chairman, had a different view. "If someone with an extensive criminal background who has changed their life and is moving on and they happened to be the innocent victim of a crime, why shouldn't that person be compensated?" he asked. Roberts contends "the issue is whether they were involved in a crime at the time they were injured, not their background."

Lisa C. Newmark, who co-authored an Urban Institute case study on Maryland's compensation program, noted that "[t]here is a lot of fluidity between being a victim and being a criminal. It's not necessarily two distinct, separate groups of people."

At least one court has agreed. When Ezra R. Johnson was denied compensation for a gunshot wound, he took his claim to the Maryland Court of Special Appeals. Police officials argued that the 1999 shooting had occurred in Johnson's "territory." They also referred to him as a "known drug dealer" and implied the shooting was drug-related.

But the appellate court held in 2002 that Johnson's claim had been improperly denied because the denial was based on hearsay and not on actual evidence of criminal involvement. See: *Johnson v. Criminal Injuries Compensation Bd.*, 145 Md.App. 96, 801 A.2d 1092 (Md.App. 2002).

Compensation has even been paid in cases where prisoners were assaulted or killed while incarcerated. For example, Damon A. Bowie was serving two life sentences when he was stabbed to death in 2004 at a maximum-security prison in Jessup. His father, L.A. Bowie, received $5,000 from the compensation fund to bury his son. "If you're a victim, you're a victim," he said.

Ironically, upon conviction, felons in Maryland may be required to pay a fine that goes to the Criminal Injuries Compensation Board; they can then apply for compensation if they are later victimized themselves.

Statistics indicate that the actual number of ex-felons who receive compensation payments is small. According to research by *The Baltimore Sun*, over a four-and-a-half-year period ending in 2007, of 2,743 claims that were paid only 217 went to people who had criminal convictions, including 147 felons. The payments totaled approximately $1.8 million; the Board can pay a maximum of $45,000 per victim.

Maryland lawmakers have since moved to end the practice. State Sen. James Brochin, a Democrat, has sponsored legislation that would prohibit a person who has been convicted of certain offenses from receiving money from the Criminal Injuries Compensation Board. The bill was introduced in 2009 and 2010, but failed to pass.

It was filed again during the 2011 legislative session as S.B. 51, passed in the Senate and is presently pending in the House. If enacted, the legislation would prohibit victims from receiving compensation if they have been convicted within the past 15 years of murder, attempted murder, drug or sex-related crimes, robbery, carjacking, kidnapping, child abuse and a number of other offenses.

This ignores the fact that just because someone committed a crime in the past does not mean they cannot be a victim of crime themselves and deserving of compensation to the same extent as other victims. Apparently, lawmakers want to ensure that only politically-acceptable victims can receive compensation from the state.

Sources: *The Baltimore Sun, http://mlis.state.md.us*

Maine Governor Rakes in Private Prison Money, Shows Appreciation

by Lance Tapley

In Maine's last gubernatorial campaign, the controversial Corrections Corporation of America (CCA), the nation's largest for-profit prison operator, spent $25,000 on behalf of Republican candidate Paul LePage, now Maine's newly-elected governor. The money was given to the Republican Governors Association's Maine political action committee, which spent heavily on LePage. No other Maine gubernatorial candidate benefited from CCA money, campaign-finance reports reveal.

Although his transition office denied a link with the contribution, LePage met in Augusta with CCA representatives weeks before he became governor. The meeting breathed new life into the town of Milo's effort to lure CCA into building a giant prison in that remote, impoverished Piscataquis County community.

Milo officials also met with LePage. The town manager, Jeff Gahagan, said CCA officials have talked about a prison housing 2,000 to 2,400 prisoners with 200 to 300 employees. If true, that would be an extraordinarily small number of staff for such a large number of prisoners. The Maine State Prison has just over 400 workers – most of them guards – to deal with just over 900 prisoners. LePage also is looking into boarding Maine prisoners in CCA prisons out of state.

That possibility and the Milo prison possibility are connected. State law forbids putting Maine prisoners in a for-profit prison, and David Farmer, a top aide to Maine's previous governor, John Baldacci, a Democrat, told the *Bangor Daily News* that CCA had informed Baldacci "straight out that unless we were willing, as a state, to send prisoners to their institutions or at least let them compete, they would not build in Maine."

Dan Demeritt, Governor LePage's spokesman, said LePage will try to get the law changed in the new Republican-dominated legislature "if it makes sense, if it's a good deal for the taxpayer." He said that at the meeting with LePage CCA officials promoted both the Milo prison and sending Maine prisoners to the company's prisons outside of Maine. It was "a good meeting," he said, but talks are preliminary.

Former Governor Baldacci failed to convince previous Democratic legislatures to allow the Department of Corrections to send prisoners to a CCA prison in Oklahoma. The company also had contributed to Baldacci's 2006 reelection campaign. CCA's Maine lobbyist, Jim Mitchell, is Baldacci's cousin and was a campaign fundraiser. [*Ed. Note*: Another CCA lobbyist in Maine, Josh Tardy, is a former House Minority Leader].

The Maine Civil Liberties Union (MCLU) and the Maine Prisoner Advocacy Coalition are already gearing up to oppose any attempt in the current legislature to remove the ban on sending prisoners to a private prison. Both groups are also opposed to having a private prison built in Maine.

Alysia Melnick, an MCLU attorney, said in an e-mail, "Prisoner advocates and corrections officials agree that the best way to prevent re-offense is through strengthened ties to the community. That process of community reintegration cannot happen if an inmate is thousands of miles from his community."

She added, "Private prisons lack transparency and accountability and this has led, across the country, to serious human rights abuses." The MCLU's parent, the American Civil Liberties Union, recently drew attention to the severe beating of a prisoner by a fellow prisoner at an Idaho CCA-run prison while guards did nothing to stop the attack. The *Associated Press* obtained a prison video showing that incident. The FBI is investigating staff at the CCA prison, which also faces a class-action ACLU lawsuit.

The Baldacci administration argued that sending prisoners to CCA's Oklahoma prison would relieve dangerous prison overcrowding and be cheaper than, for example, boarding prisoners in county jails. But a legislative committee disagreed, saying it would be cheaper to board prisoners in jails, and in 2008 the legislature created the Board of Corrections, whose integration of the prison and jail systems have greatly relieved prison overcrowding. The Maine State Prison in Warren now has 61 unoccupied beds, according to the Corrections Department.

Demeritt said the LePage campaign by law was not allowed to discuss fundraising with the Republican Governors Association. And a Republican Governors Association spokesperson told the *Maine Today* newspapers that donors to his group like CCA had "no say in how or where their money is spent."

This article originally appeared in the Portland Phoenix on December 15, 2010, and is reprinted with permission; at the time of publication CCA had not responded to inquiries by the Phoenix

Update: On February 15, 2011, the Maine Senate voted to confirm Governor LePage's pick to head the Maine Department of Corrections – Joseph Ponte, 64. Prior to being nominated by LePage, Ponte was employed as warden of CCA's Nevada Southern Detention Center; he also previously worked for private prison firm Cornell Corrections as well as in state prison systems. Ponte said he would sell his shares of CCA stock after being appointed Commissioner of the Maine DOC.

Heat Ray Device, Rejected by Military, to be Tested on Los Angeles County Jail Prisoners

by Mike Brodheim

In August 2010, the Los Angeles County Sheriff's Department announced plans to deploy a high-tech heat ray device, originally developed by Raytheon Company for use by the U.S. military in Afghanistan, as a tool to respond to prisoner unrest at the Pitchess Detention Center's North County Correctional Facility in Castaic, California.

Use of the 600-pound, 7 1/2-foot-tall heat ray, an active denial system known as an Assault Intervention Device, is being monitored by the National Institute of Justice, the research arm of the U.S. Department of Justice, which is funding a six-month trial of the heat ray at Pitchess.

"We believe that technology can help solve problems facing the corrections community, including addressing issues of inmate violence," said Sheriff Lee Baca. "The Assault Intervention Device appears uniquely suited to address some of the more difficult inmate violence issues without the drawbacks of tools currently available to us."

With a range of 80 to 100 feet, for example, the heat ray can be used to target prisoners in circumstances where a Taser would be ineffectual. "This device will allow us to quickly intervene without having to enter the area and without incapacitating or injuring either combatant," Sheriff Baca stated.

Indeed, according to Raytheon's website, the device "emits a focused beam of wave energy ... and produces an intolerable heating sensation that causes targeted individuals to flee." The sensation stops, however, "when the targeted individual moves away from the beam." The heat ray uses millimeter waves that penetrate the skin to the depth of 1/64 of an inch, causing a feeling of intense burning, according to Raytheon vice president Mike Booen.

Of course, as the manufacturer, Raytheon has a financial incentive to promote its Assault Intervention Device as being safe and effective. The American Civil Liberties Union and the ACLU of Southern California, by contrast, argue that use of the heat ray is tantamount to torture.

"The idea that a military weapon designed to cause intolerable pain should be used against County Jail inmates is staggeringly wrongheaded," said Margaret Winter, Associate Director of the ACLU's National Prison Project, adding, "Unnecessarily inflicting severe pain and taking such unnecessary risks with people's lives is a clear violation of the Eighth Amendment and due process clause of the U.S. Constitution."

In a letter to Sheriff Baca demanding that he not employ the heat ray against jail prisoners, the ACLU noted that the military itself declined to use the weapon – in part based on humanitarian grounds – as a crowd control device in Afghanistan. The ACLU further observed that when it was field-tested by the U.S. Air Force, the device caused five airmen to suffer lasting burns.

Citing a 2008 report by physicist and less-lethal weapons expert Dr. Juergen Altmann, the ACLU alleged that the Assault Intervention Device can cause second- and third-degree burns, and, without reliable protections, can produce permanent injury or even death. Considering the potential for serious abuse of the device, it is ironic, if not unfortunate, that the heat ray is controlled in a jail setting with a "joystick."

Sources: *www.wired.com, ACLU letter dated August 26, 2010, www.pasademastarnews.com*

Minnesota DOC Releases Study on Impact of Prison-Based Sex Offender Treatment

by Matt Clarke

In March 2010 the Minnesota Department of Corrections (DOC) released a report on the impact of in-prison sex offender treatment programs on recidivism rates. The results of the study "suggest that prison-based treatment in Minnesota produces a significant, albeit modest, reduction in sex offender recidivism."

The report opens by noting that previous studies, which tended to show either no positive effect or a very small reduction in recidivism when comparing sex offenders who participated in in-prison treatment programs with those who did not, suffered from a lack of methodological rigor. The research weaknesses in those studies included a lack of random assignment or matching techniques so that nonequivalent comparison groups were used (in 84% of previous studies), and, most importantly, insufficient sample size (in 87% of earlier studies).

The March 2010 report examines recidivism rates through December 31, 2006 of sex offenders released from Minnesota state prisons between 1993 and 2003. After removing releasees who refused treatment and a matching group from the study, 1,020 releasees who had not been offered treatment were matched with a corresponding group of releasees who received in-prison treatment, for a sample size of 2,040.

To match individual treated vs. untreated releasees, the study took into account variables based upon the releasee's race, age, criminal history, length of imprisonment, prison disciplinary record, type of release, year of release, community notification requirements and relationship with the victim, as well as the victim's age and gender. Untreated releasees were paired with the closest possible match in the treated releasee group. Only matched releasees were used for the study.

Dividing the releasees into four groups – treatment completers, dropouts, participants (completed or not) and non-participants (never offered treatment) – the study reported a 7.1% rate of rearrest for a sex offense within three years for completers, compared with 11.6% for non-participants, 8.1% for participants and 10.6% for dropouts.

For the entire 14-year length of the study, sex offense rearrest rates were 13.4% for completers, 19.5% for non-participants, 14.2% for participants and 16.2% for dropouts. "Controlling for other factors, prison-based treatment significantly reduced the hazard ratio [risk of recidivism] for a new sex offense

rearrest, decreasing it by 27 percent," the study found.

The research showed a 13.4% rate of rearrest for a violent offense within three years for completers, compared with 19.3% for non-participants, 14.4% for participants and 16.9% for dropouts. For the entire study period, violent rearrest rates were 29% for completers, 34.1% for non-participants, 30.8% for participants and 35.1% for dropouts. "The hazard ratio for a violent rearrest was 18 percent lower for treated sex offenders in the risk score model and 19 percent lower in the individual predictor model."

The study also reported a 29.1% general rearrest rate within three years for completers compared with 38.5% for non-participants, 30.3% for participants and 33.1% for dropouts. Over the entire study period, general rearrest rates were 55.4% for completers, 58.1% for non-participants, 56.6% for participants and 59.3% for dropouts. "Participating in treatment had a statistically significant effect on general recidivism, reducing the hazard ratio for rearrest for any offense by 12 percent," the report concluded.

The study admitted to a number of weaknesses. It did not use a randomized experimental design. Lack of data prevented controlling for the impact of post-release treatment. It could not remove from the untreated study group those sex offenders who would have refused treatment had it been offered to them. Further, an uncontrolled, unaccounted-for bias with a gamma value of as little as 1.02 would be sufficient to undermine the reported differences in recidivism rates.

That is the equivalent of the length-of-incarceration variable gamma value, the smallest gamma value among the controlled variables. Thus, an uncontrolled variable such as education level, employment history, economic class, ability to maintain a normal sexual relationship such as marriage, or community-based treatment could possibly invalidate the study's findings.

Another factor not taken into account in the study was the changing nature of Minnesota's prison-based sex offender treatment program. What had been four separate programs has, since 2000, been integrated into a single program that includes a substance abuse component. The different releasees went through different treatment programs depending on when and where they received in-prison treatment. The study also did not appear to account for the civil commitment of sex offenders who have completed their terms of imprisonment and who are then confined in a purported "mental health facility" which is similar to a prison. The study also did not note whether the refusal of sex offenders to participate in prison treatment programs is correlated to the fact that to participate they must admit guilt, and that any statements made in treatment programs can later be used to civilly commit them for the rest of their lives.

Despite its flaws, the study had one very significant finding: that the prediction of recidivism being used by the DOC to determine which sex offenders should be offered treatment was ineffective. The study also found that "[g]iven the state of research and practice in the field of sex offender treatment, the Sex Offender Treatment Program continues to be a work in progress."

Source: *"The Impact of Prison-Based Treatment on Sex Offender Recidivism: Evidence From Minnesota," Minnesota DOC (March 2010), available at www.doc.state.mn.us.*

GEO Group Acquires Electronic Monitoring Firm for $415 Million

by David M. Ruetter

The GEO Group, the nation's second-largest private prison company, announced on December 21, 2010 that it will pay $415 million in an all-cash deal to acquire Behavioral Interventions, Inc. (BI). The purchase allows GEO to expand beyond detention services into the area of community supervision.

BI was founded in 1978; the company oversees more than 60,000 offenders in all 50 states through contracts with around 900 federal, state and local agencies. BI uses technologies that include radio frequency and GPS monitoring, voice identification, and remote alcohol detection systems to supervise parolees, probationers and pretrial defendants. "BI also provides community-based re-entry services for approximately 1,700 parolees," according to a GEO press release.

"This acquisition will distinguish GEO as the premier service provider with full continuum of care solutions for correctional, detention and residential treatment worldwide," said George C. Zoley, GEO's chairman and CEO. Currently, GEO operates 81,000 beds at 118 prisons, jails and residential treatment facilities in the U.S., Australia, South Africa and the United Kingdom.

With BI being integrated into GEO's subsidiary, GEO Care, GEO will be able to "address all aspects and reach all segments across the entire corrections, detention and residential treatment spectrum, providing a better basis for meaningful measurement of program outcomes," said Zoley.

Like all corporate business decisions, GEO's purchase of BI is aimed at achieving higher profits. "The acquisition is expected to increase GEO's total annual revenues by approximately $115 million to more than $1.6 billion in 2011," stated GEO's press release. In addition, GEO anticipates "annual cost efficiencies of $3-5 million."

Several large banks provided financing to make the deal happen. "BNP Paribas, WF Investment Holdings (a subsidiary of Wells Fargo & Company), BofA Merrill Lynch, Barclays Capital, SunTrust Robinson Humphrey, and JP Morgan Chase have provided $425 million of committed financing, which will be used to finance the all-cash transaction," GEO stated.

Such financing added to GEO's debt load, however, causing Standard & Poor's Rating Services to lower its rating on the company's bonds. The one-notch downgrade to B+, which is four levels into junk territory, reflects a "meaningful deterioration" in GEO's credit metrics. The BI acquisition and a previous $730 million deal to buy rival private prison operator Cornell Corrections will give GEO around $1.5 billion in outstanding debt.

GEO Group announced on February 11, 2011 that it had finalized the company's purchase of BI. GEO's stock was trading at about $24.31/share as of mid-March.

Sources: *GEO press release, Wall Street Journal, www.bizjournals.com*

Federal Court Rejects California's Attempt to Terminate Clark Remedial Plan, Grants $2.3 Million in Attorney's Fees

by Mike Brodheim

On August 26, 2010, the U.S. District Court for the Northern District of California issued proposed Findings of Fact and Conclusions of Law after conducting a hearing to determine whether it was appropriate to terminate the prospective relief provisions of the Clark Remedial Plan (CRP). The CRP is a set of policies and procedures detailed in a 2001 settlement agreement designed to ensure that California prisoners with developmental disabilities are protected from serious injury and discrimination due to their disabilities. [See: *PLN*, Sept. 1998, p.12].

The State of California, the Governor and various prison officials – the defendants in *Clark v. California* – filed a motion in 2010, pursuant to the Prison Litigation Reform Act, 18 U.S.C. § 3626(b), seeking to terminate the CRP. While the defendants had agreed in 2001 that "they [had] violated the federal rights of plaintiffs [developmentally disabled prisoners] in a manner sufficient to warrant the relief contained" in the CRP, in seeking to terminate the CRP they argued that such violations no longer occurred.

The district court largely rejected that argument. To the contrary, the court found further relief was necessary because the defendants had demonstrated they were unable to remedy their violations of plaintiffs' rights under the Americans with Disabilities Act (ADA) and § 504 of the Rehabilitation Act, as well as under the Due Process Clause of the Fourteenth Amendment.

The court could not conclude, however, that the defendants were deliberately indifferent to the suffering caused by the "constitutionally questionable conditions of confinement" to which developmentally disabled prisoners were subjected, and therefore declined to find that continued prospective relief was also justified under the Eighth Amendment.

In a document spanning 112 pages, the district court made thorough and extensive findings based largely on a systemic review of the treatment of developmentally disabled prisoners in the California Department of Corrections and Rehabilitation (CDCR), conducted by court expert Dr. Peter Leone.

Dr. Leone concluded that "[w]hile some dedicated CDCR staff were providing appropriate services and support to inmates with developmental disabilities, the system as a whole appeared indifferent to the needs of these inmates" and that "[t]he breadth and severity of problems ... suggest that with some exceptions, inmates with developmental disabilities do not receive the protections and supports" prescribed by the CRP.

The weight of the evidence adduced at the hearing, the court found, amply supported Dr. Leone's conclusions. "In total the evidence demonstrates that mentally retarded prisoners and those with autism spectrum disorders are regularly verbally, physically, and sexually assaulted, exploited, and discriminated against in California prisons," the court wrote. "Illiterate prisoners are not given the help they need to understand or fill out important prison documents, leaving them with no way to

use sick call slips or grievance forms, unless they can pay other prisoners or beg them for help. Developmentally disabled prisoners are punished for violating prison rules that they do not understand, and are punished at hearings which they cannot comprehend. These conditions violate these prisoners' rights to due process and to be free of unlawful discrimination based on their disabilities."

The court catalogued the defendants' responsibilities under the CRP into seven categories: 1) identification of developmentally disabled prisoners in order to provide them with reasonable accommodations required under the ADA and the Rehabilitation Act, so they can avail themselves of prison services and participate in prison programs and activities; 2) reading and writing assistance; 3) meaningful assistance in disciplinary, administrative and classification proceedings; 4) meaningful access to grievance procedures; 5) assistance with self-care and daily living activities; 6) protection from abuse; and 7) adequate notice of parole conditions.

The district court noted that the CDCR had identified 1,348 prisoners, or 0.8% of the total prisoner population, as qualifying for placement in its Developmental Disability Program (DDP); that CDCR classified DDP prisoners as DD1, DD2 or DD3 depending on their level of support needs, with DD1 prisoners being mildly impaired and DD3 prisoners having a "severe" impairment requiring regular, intensive assistance to complete self-care and daily living tasks; that the CDCR aimed to "cluster" such prisoners in designated facilities to more effectively address their needs; that mental illness is not a developmental disability but could co-occur with it; that only a small percentage of people with developmental disabilities have identifying physical characteristics; that many developmentally disabled people work hard to mask their disabilities, making it appear that they have skills in areas in which they actually require help; that people with developmental disabilities have inconsistent and uneven skill development, being highly functional in some areas yet having significant functional impairments in other areas; and that many have poor self-care skills while others are naive with respect to prison culture, making them vulnerable to abuse and manipulation by other prisoners.

The court found that the prevalence rate for developmental disabilities among prisoners was at least 2-4%; thus, the defendants were failing to identify, conservatively, at least half of those prisoners who would qualify for protection and accommodation under the CRP. The court noted, disturbingly, that the defendants systematically failed to provide those developmentally disabled prisoners they do identify with assistance in reading and writing, access to medical care, access to canteen, access to the grievance system, assistance with self-care, and effective communication (e.g. at disciplinary hearings). It found, moreover, that the defendants failed to protect developmentally disabled prisoners from abuse initiated by other prisoners and, more egregiously, by staff.

The district court's proposed Findings of Fact and Conclusions of Law were adopted in an order entered September 16, 2010.

On December 29, 2010, the court granted the plaintiffs' attorneys, the Prison Law Office, $2.3 million in fees and costs for work performed in connection with California's motion to terminate the CRP. See: *Clark v. California*, U.S.D.C. (N.D. Cal.), Case No. 3:96-cv-01486-CRB.

Massachusetts Strip Search Class-Action Nets $1,162,468

by Mark Wilson

Massachusetts has agreed to pay $1,162,468 to settle a class-action suit on behalf of 486 detainees who were strip searched without cause at the Franklin County Jail.

The sheriff maintained a policy of routinely strip searching all detainees who were admitted to the jail. The policy did not require individual, reasonable suspicion that the detainee possessed drugs, weapons or other contraband.

Gregory Garvey, Sr. was strip searched without reasonable suspicion pursuant to Franklin County's blanket strip search policy. On March 28, 2007, Garvey filed suit in federal court alleging that the county's strip search policy was unconstitutional. The case was certified as a class action on April 15, 2008, covering "all people strip searched without individualized reasonable suspicion ... at the Franklin County Jail" between March 28, 2004 and February 25, 2007. The district court appointed attorneys Howard Friedman and David Milton as class counsel under Fed.R.Civ.P. 23(g).

On October 22, 2009, the court granted the plaintiff's motion for summary judgment, finding that the county's blanket strip search policy was unconstitutional as to "people who were held while waiting for bail to be set or before a first court appearance after being arrested on charges or on warrants that did not involve a weapon, drugs, contraband, or a violent felony."

The parties entered into a settlement agreement and determined that 486 people fit the class definition. The Commonwealth of Massachusetts agreed to pay $1,162,468 to settle all claims. One-third of that amount, or $387,489.33, went to attorney's fees. Further, up to $42,498 in litigation expenses was deducted.

According to the settlement, the payment due "each Class Member will be reached by dividing the number of Participating Class Members into the balance of the Settlement Proceeds. Class Members will receive one payment each, of the same amount each, even if they were booked into the jail more than one time during the class period. The payment to Class Members will be capped at a maximum of $3,500."

Class representative Garvey was awarded an additional $20,000 incentive payment "to compensate him for bringing this case, the time he spent on this case and his loss of privacy as a result of serving as the named plaintiff."

If any settlement proceeds remain after these distributions, "half of such remaining monies will be paid, as an indirect means of benefitting injured Class Members who did not file claims, to Prisoners' Legal Services" – formerly Massachusetts Correctional Legal Services – and "the other half of such remaining money will revert back to the Commonwealth."

Class members were required to submit a claim form by October 11, 2010; the district court granted final approval for the settlement on January 14, 2011. See: *Garvey v. MacDonald*, U.S.D.C. (D. Mass.), Case No. 3:07-cv-30049-KPN.

Facebook Lands Prison Guards, Prisoners in Hot Water

by Mike Rigby

One downside of the information age is that both prison guards and prisoners have found themselves in trouble due to their accounts on Facebook, the Internet's premier social networking site.

Three Nebraska prison guards were fired in March 2010 due to a Facebook post in which they gloated about abusing prisoners. [See: *PLN*, May 2010, p.50].

"When you work in a prison a good day is getting to smash an inmate's face into the ground .... for me today was a VERY good day," Nebraska Dept. of Corrections guard Caleb Bartels stated on his Facebook page. Two other prison guards, Shawn Paulson and Derek Dickey, posted responses supporting his comment. Dickey wrote, "very satisfying isn't it!!!"

Prison officials confirmed that staff had used force against a prisoner at the Nebraska State Penitentiary on February 8, 2010, the date of Bartel's Facebook post.

In a letter to Nebraska Attorney General Jon Bruning, former State Senator Ernie Chambers said the "reprehensible misconduct" bragged about by the guards on Facebook made them unfit to serve. "Given the nature of their work and the power they exercise over inmates, they have shown themselves to lack fitness to hold employment," Chambers wrote.

"The Department of Correctional Services takes this matter very seriously," stated DOC director Robert Houston. "Inappropriate actions by our staff or statements which could lead to dangerous situations in our prison system are not tolerated."

The three former prison guards, while fired, did not face criminal charges.

In Rhode Island, state prison guard Matthew Lacroix, 27, was arrested in December 2010 for creating a fake Facebook page in which he reportedly pretended to be Rhode Island DOC director Ashbel T. Wall. He was suspended with pay, later pleaded guilty to a charge of "use of fraudulent information," and was fined $500. [See: *PLN*, Jan. 2011, p.50].

Also, a guard at Ohio's Cuyahoga Hills Juvenile Correctional Facility, Matthew Azzano, 33, was fired in August 2010 for posting racial slurs and potentially threatening remarks on his Facebook page. The posts were reportedly aimed at his co-workers and juvenile offenders at the facility.

"He admitted to posting threatening and racially-motivated comments regarding youth and staff at the Department of Youth Services on Facebook," said Ohio Dept. of Youth Services spokesperson Kimberlee Parsell. "I think it's important to note the DYS has zero tolerance for racial harassment and intimidation."

Facebook posts have landed other law enforcement officials in trouble, too. Washington State Patrol cadet Math Blahut was asked to resign in January 2009 after he posted pictures of himself in uniform, drinking out of a pitcher of beer and waiting for a ride after partying all night. He was accused of casting the state police in a bad light. And Massachusetts Sex Offender Registry Board hearing examiner Tyson Lynch faced media scrutiny in May 2009 after posting questionable comments on his Facebook page about the sex offenders he assessed,

calling them "pervs." [See: *PLN*, Feb. 2010, p.33].

Prisoners have also been busted for using Facebook – which they typically access with contraband cell phones that have Internet plans.

In November 2010, Oklahoma prisoner Justin Walker used a cell phone to post several photos on his Facebook account. Prison officials were tipped off and viewed Walker's Facebook page, which included pictures of drugs, weapons and alcohol in his cell. A shakedown soon followed, Walker's phone was confiscated and he was placed in segregation. Among the pictures Walker posted on his Facebook page were some of himself smoking marijuana from a giant bong and displaying knives and white supremacist tattoos. [See: *PLN*, Feb. 2011, p.40].

The South Carolina news media profiled the problem of state prisoners accessing Facebook in January 2011, describing several cases where prisoners had set up Facebook accounts. One such prisoner, Quincy Howard, serving a 30-year sentence, had more than 100 Facebook friends. After being alerted of Howard's online activity, prison officials seized his contraband cell phone and filed disciplinary charges against him.

South Carolina lawmakers are currently considering a bill that would impose penalties on prisoners who use social networking sites. "We now know that the criminals behind bars are using this [Facebook] as a method of intimidation. People's lives are threatened. They're sending out coded messages through social networking," claimed South Carolina State Rep. Wendell Gilliard.

Gilliard's proposed legislation, H. 3527, would extend prisoners' sentences for 30 days and/or fine them $500 if they join social networking sites such as Facebook; the bill imposes similar sanctions on people who set up social networking accounts on behalf of prisoners, which would be a misdemeanor offense.

The ACLU opposes the legislation. "Efforts of this kind are just an attempt to beat up on prisoners because we don't like them," said ACLU National Prison Project director David Fathi, who differentiated the use of illegal contraband cell phones from prisoners' free speech rights.

"The First Amendment protects speech, even if it's speech that some people don't want to see," he said. "The response to seeing something that you don't like on the Internet is, don't look at it."

Sources: *www.allfacebook.com, TIME, www.newser.com, www.cleveland.com, www.thesunnews.com*

Billing Medicaid Would Save NC $11.5 Million in Prison Medical Care Costs

by Mark Wilson

The North Carolina Department of Corrections (NCDOC) "could save about $11.5 million a year by requiring hospitals and other medical service prisoners to bill Medicaid for eligible inmate inpatient hospital and professional services," according to an August 2010 report by the North Carolina State Auditor's Office.

The NCDOC "cooperates with 35 hospitals to provide medical services for over 40,000 inmates housed in 71 prisons." In 2008-2009, the NCDOC spent approximately $159.8 million in prisoner health care expenses but "does not require hospitals or other medical service providers to bill Medicaid for any inmate health care costs," the audit found. A previous audit had "concluded that the Department pays an average of 467% (from 198% to as high as 879%) of Medicaid rates for inmate health care costs." [See: *PLN*, Nov. 2010, p.48].

State auditors found the NCDOC "could reduce its inmate healthcare costs if medical providers billed Medicaid for inpatient services provided to Medicaid-eligible inmates." The Medicaid eligibility requirements "include income and resource limits, citizenship and alien status, state of residence, 20 years old or younger, 65 years old or older, pregnant, blind or disabled," according to the audit report. Prisoners "could also be Medicaid eligible if they are considered physically or mentally disabled under the federal Supplemental Security Income (SSI) program. There are nine diagnostic categories of mental disorders under SSI including personality disorders and substance addiction disorders which may establish disability."

The federal government typically "will not reimburse states (called federal financial participation or FFP) for inmate medical care under the Medicaid program." However, an exception is allowed "during that part of the month in which the individual is not an inmate of a public institution," auditors noted, citing 42 CFR 435.1008.

The Centers for Medicare and Medicaid Services (CMMS) – part of the U.S. Department of Health and Human Services – is the federal agency that administers Medicare, Medicaid and the Children's Health Insurance Program. CMMS "indicates the inmates lose their 'inmate status' and obtain 'inpatient status' when treated in an inpatient hospital setting that is not under the control of a state's correction system," the auditors noted. "Consequently, FFP is available for an inmate's health care expenses if the inmate is Medicaid eligible and he or she is an inpatient of a medical institution." This includes being admitted to a hospital, nursing facility, juvenile psychiatric facility or intermediate care facility.

"Billing Medicaid for eligible inmate health care costs would reduce the Department's costs in two ways," auditors found. "First, the Department would realize reduced costs because hospital and medical services for eligible inmates would be reimbursed at Medicaid rates that are lower than the rates currently paid by the Department. Second, billing Medicaid ... would reduce the Department's costs by transferring these costs to the federal government because the federal government reimburses the States about $.65 for every $1.00 spent on Medicaid."

Additional cost savings could be realized when the Patient Protection and Affordable Care Act, part of the federal health care reform bill, goes into effect on January 1, 2014. The Act "establishes a new eligibility category for all non-pregnant, non-Medicaid eligible childless adults under age 65 who are not otherwise eligible for Medicaid and requires minimum Medicaid coverage at 133% FPL (federal poverty level)." As a result, "more inmates will become Medicaid eligible [as] 'newly eligible individuals' during the first three years: January 2014 through December 2016" under the Act.

Although beyond the scope of the audit, the report observed that "local governments could also realize savings by requiring medical providers to bill Medicaid for eligible inmate health care."

Noting that five states – Louisiana, Mississippi, Nebraska, Oklahoma and Washington – report charging "eligible inmate inpatient health care to their Medicaid programs," the auditors recommended that NCDOC likewise "charge Medicaid for eligible inmate inpatient health care costs." See: North Carolina State Auditor's Office, Performance Audit, Department of Correction, Inmate Medicaid Eligibility (August 2010), available online at www.ncauditor.net and on PLN's website.

U.K. Terrorism Suspects May Challenge Extradition Based on U.S. Prison Conditions

by Matt Clarke

On July 8, 2010, the European Court of Human Rights (ECHR) in Strasbourg, France held that four suspects being detained in the United Kingdom pending extradition to the United States on terrorism charges could challenge their extradition based upon the expected prison conditions they would be subjected to in the U.S. – specifically the anticipated use of the federal supermax prison (ADX) in Florence, Colorado and the imposition of Special Administrative Measures (SAMs) restricting their contact with other people.

Babar Ahmad, Haroon Rashid Aswat, Syed Tahla Ahsan – all British citizens – and Mustafa Kamal Mustafa (AKA Abu Hamza al-Masri), the "suspects," were arrested in the U.K. based on extradition requests by the United States following their indictment on terrorism charges in the U.S. The suspects challenged their extradition in the U.K.'s legal system alleging, among other claims, that they would be subjected to confinement in the ADX and SAMs if convicted. This account simplifies the complexities of three separate legal proceedings that were later consolidated before the ECHR.

The U.K. court held that the suspects' complaints that they may be exposed to trial by military tribunal, the death penalty and rendition were nullified by a U.S. diplomatic note ensuring that their trial would take place in federal court, the death penalty would not be sought and the suspects could be returned to the U.K. if acquitted.

The court found that the potential use of witness testimony obtained via torture would not block extradition, and its admissibility would be determined by the U.S. courts under federal rules of evidence similar to the U.K.'s evidentiary rules. The potential use of segregation before trial, placement in the ADX after trial and imposition of SAMs both before and after trial would not block extradition as such measures did not violate Article 3 of the European Convention on Human Rights.

Further, the court opined that one of the suspects, who had both of his forearms amputated and was partially blind and otherwise in poor health, would likely not be held in the ADX for long before being transferred to a medical facility. On appeal, the U.K.'s High Court agreed with the lower court. The suspects then applied to the ECHR.

The ECHR agreed with the U.K. courts except for the potential use of the ADX and SAMs after trial. In doing so, the ECHR noted that it was a virtual certainty that three of the suspects would be held in the ADX and all four would be subjected to SAMs if convicted. The suspects submitted studies to the ECHR showing that prolonged exposure to such conditions caused psychological and physical harm to most prisoners.

Although there is a program to "step down" from the most severe forms of isolation at the ADX, the process takes a minimum of three years to complete and prisoners who comply with the program still may not be placed in conditions with less isolation if prison officials believe their compliance is a reaction to the controlled environment rather than a result of rehabilitation.

The SAMs add another level of isolation by severely restricting who prisoners can interact with and preventing them from interacting with other prisoners. The suspects submitted evidence that this loss of social contact can also cause psychological harm.

The ECHR held that the suspects' applications raised "serious questions of fact and law" as to the potential length of their sentences if convicted, and whether post-conviction confinement in the ADX and SAMs violated Article 3 of the European Convention on Human Rights. Those aspects of the complaint were declared admissible for the purpose of challenging the extraditions. The remainder of each application was declared inadmissible, with the ECHR crediting the diplomatic assurances of the U.S. that the suspects would not be designated as enemy combatants or subjected to rendition or the death penalty.

The suspects' extradition was thus put on hold pending a full hearing before the ECHR following the initial admissibility determination. See: *Ahmad, Aswat, Ahsan and Mustafa against U.K.*, European Court of Human Rights, Application Nos. 24027/07, 11949/08 and 36742/08.

Additional sources: *www.bbc.co.uk, http://ukhumanrightsblog.com*

Twelve Indiana Prison Employees Suspended for Positive Drug Tests, Contraband

by Matt Clarke

In September 2010, Indiana Department of Corrections (DOC) officials announced the suspension of a dozen employees at the Pendleton Correctional Facility following a crackdown on contraband smuggling. [See: *PLN*, Oct. 2010, p.50]. Pendleton houses about 2,000 prisoners and has approximately 600 employees.

The crackdown, which included cell-by-cell searches and drug testing of employees, was instituted after a rash of prisoners tested positive for drugs in mid-August. Employees were drug tested starting on August 30, 2010, and 49 came back positive within the first two days. Eleven of the guards who tested positive admitted to using illegal drugs and were suspended. The others claimed they did not use illicit drugs, and will be further tested to determine if legal prescription medication caused the positive results.

Another DOC employee was suspended after being caught smuggling a cell phone. Additional employees tested positive for drugs on subsequent days, but the DOC did not release any details about those staff members. The prison had been on lockdown with visits suspended since the rash of positive prisoner drug tests.

"We knew [prisoners at Pendleton] were getting drugs," said DOC spokesman Doug Garrison. "Visitors can bring them in, people on the outside can throw them over fences or walls, or unfortunately they sometimes can come through staff members."

Does testing guards for illegal drugs make sense when trying to prevent prison drug smuggling? "If you're using drugs, you are more prone to need to buy drugs," said Robert May, an Indiana State Police detective assigned to Pendleton. "An easy way to get money for drugs is to smuggle drugs into prison and get paid for it."

May used a two-year-old case as an example. In that case, a contract prison kitchen worker smuggled marijuana into Pendleton by compressing it and forming it into the soles of his shoes. "We think he made almost $32,000 doing this over six months," said May.

According to May, in his five years of prison experience, the most common smuggling method is for visitors or employees to hide drugs, cigarettes or cell phones in body cavities. To counter this, a few months before the lockdown Pendleton installed machines that use puffs of air to detect drug residue on a person's skin or clothing. May said that reduced the number of visitors and employees attempting to smuggle contraband.

Nonetheless, he had arrested 26 people as of August 2010, compared with 38 in all of 2009. Other state troopers who work at times when May is off-duty have made additional arrests.

May said he only arrests one prison employee for every four-to-five visitors he catches in possession of contraband. "Most of the guards are very diligent and report this stuff," he said. "They will report a dirty guard."

According to a 2009 news report, an anonymous Pendleton prison employee stated, "There are [guards] bringing in drugs and contraband into the prison. This goes way up the ladder, way up ... pounds of vacuum-packed tobacco a few weeks ago."

"I just can't believe, at least on a widespread basis, that there's a lot of officers that are turning their head or allowing trafficking to go on at Pendleton," then-Indiana DOC Commissioner Ed Buss remarked at the time.

In April 2009, Tommy Joe Turner, a former Pendleton guard and supervisor of the prison's furniture shop, accepted a plea bargain after being charged with felony bribery. He reportedly allowed tobacco to be smuggled into the shop up to five times in exchange for $500. He received a three-year suspended sentence. Also in April 2009, former Pendleton guard Lee W. Oshier was sentenced to six years' probation on bribery and conspiracy charges related to contraband trafficking. He was accused of trying to smuggle 20 cell phones, 21 chargers and 14 ounces of tobacco into the facility in a cooler.

Indiana DOC officials said they will continue their vigorous efforts to stop contraband smuggling at Pendleton. However, none of the DOC's 17 other prisons have been subjected to similar crackdowns that include drug testing employees. Perhaps they should.

Sources: *www.indystar.com, www.wthr.com, www.wishtv.com, www.indy.com*

Texas Legislator Who Helped Prisoners' Families Indicted, Convicted, Sentenced

by Gary Hunter

For 14 years, Texas State Rep. Terri Hodge (D-Dallas) was a staunch defender of minorities and prisoners' rights in the Texas legislature. On October 1, 2007, federal prosecutors indicted Hodge on 14 counts of corruption including bribery, fraud and conspiracy. The indictment created a firestorm of controversy.

The 31-count main indictment named a number of prominent Dallas citizens including former city council member and Mayor Pro Tem Donald W. Hill. Also named, and most closely connected to Hodge, was real estate developer Brian L. Potashnik and his wife Cheryl.

Rep. Hodge and other defendants were accused of accepting bribes in return for providing letters of support to help Potashnik's company, Southwest Housing, obtain lucrative tax credits for building low-income apartments in southern Dallas.

Outspoken, Hodge passionately professed her innocence. "People say that I got paid for this, man, that's (expletive). I'm not the only elected official that has given a letter to developers putting projects in their districts. I guess what really tied me in is not only had I given a letter, I was living in one of his affordable apartments."

In August 2008, Rep. Hodge's attorneys petitioned the federal district court in Dallas to try her separately from the other defendants. While the indictment named several politicians, Hodge was the only one still in office at the time.

Helga Dill, chairwoman of Texas CURE, an advocacy group for prisoners, said "I am definitely defending her to the

utmost for the work she has done in behalf of inmates and their families. She should be recognized for the honorable work that she has done."

Criminal Court Judge John Creuzot echoed that sentiment. When advised not to include Hodge's name on his primary campaign materials, he responded, "She hasn't been convicted of anything. She's my friend, and I'm proud to have her name on my campaign material."

Before she was indicted Rep. Hodge was criticized for helping prisoners and their families by arranging rare face-to-face meetings between parole-eligible prisoners and members of the parole board, helping obtain the dismissal of disciplinary charges against prisoners which might otherwise prevent them from being paroled, using a rarely-used legislative privilege to obtain prisoners' otherwise highly-secret parole files, and helping prisoners transfer to facilities closer to their families. [See: *PLN*, Aug. 2006, p.24].

In other words, for being compassionate to prisoners and their family members and treating them like the other constituents she represented as an elected official.

Following her indictment, Rep. Hodge said the hardest part was having to beg for money for her criminal defense fund, though she raised almost $200,000. She also criticized the black community for not being more supportive. "A lot of the people who support me don't look like me," she said. "The least support I'm getting is from the African-American community."

The prosecution took its toll on Hodge, 69. "If I thought just being here doing my job would have caused me the kind of problems and misery and pain and worry and disgust, I never would have sought this position," she stated.

In the end, however, as with so many prosecutions, Rep. Hodge agreed to a plea bargain. She pleaded guilty to tax fraud in February 2010, related to her failure to report approximately $30,000 in income she received from the Potashniks, including rent, utility payments and home improvements. She resigned from the Texas legislature but did not plead guilty or admit to the bribery charges.

Prosecutors had also claimed that she misused more than $40,000 in campaign contributions, including "payments from families of Texas prison inmates in return for her political support and assistance on proceedings affecting the inmate before the Texas Board of Pardons and Paroles." Hodge has denied such allegations.

Former Texas Parole Board member Brendolyn Rogers Johnson spoke on Hodge's behalf at her sentencing hearing. "Ms. Hodge is a lady of integrity, compassion and is relentless in her pursuit of fairness and justice for all," said Johnson. "I have personally witnessed her work tirelessly for the people in her district, as well as those who called upon her for assistance."

Hodge was sentenced in April 2010 to one year in federal prison, the maximum she could receive under her plea agreement.

"I want to apologize to my constituents and all the people who have supported me over the past 14 years," she said. "My actions have cast a bad light on many other elected officials. What I've done has contributed to some people's distrust of the political system. All I can say is I am truly sorry for my mistakes." She reported to federal prison on June 22, 2010.

Former Mayor Pro Tem Donald Hill was convicted in October 2009 of being the ringleader of the bribery scheme, and received an 18-year prison sentence. His wife, Sheila Farrington Hill, was sentenced to 9 years while former Dallas Plan Commissioner D'Angelo Lee received 14 years. The Potashniks pleaded guilty and were sentenced on December 17, 2010. Brian Potashnik received a 15-month prison sentence and was ordered to forfeit $1.25 million to the City of Dallas; his wife was sentenced to two years' probation, and both were fined $50,000 each.

Sources: *Dallas Morning News, www.txcn.com*

Questionable New Jersey Halfway House Funding Benefits CEC

by Matt Clarke

Republican New Jersey Governor Chris Christie insisted on budget cuts in 2010, except when it came to funding treatment centers, formerly called halfway houses. Gov. Christie wanted to increase funding for treatment centers by $3.1 million, from $61.5 million to $64.6 million, which would benefit prisoners after they were released.

Coincidentally, the increased funding would also benefit the governor's close friend and political advisor William J. Palatucci, who is a senior vice president and general counsel for Community Education Centers (CEC) – a for-profit company that operates treatment centers in New Jersey as well as secure facilities and in-patient treatment programs in other states.

Palatucci has a decades-long relationship with Christie, during which he has helped run Christie's election campaign and served as co-chair of Christie's inaugural committee. He has also personally contributed $26,650 to the Republican Party. John C. Clancy, CEC's chairman, contributed $138,525 and CEC has contributed $372,350 to both parties.

The donations seem to have paid off. CEC provides 1,687 of the 3,029 treatment center beds under contract from the New Jersey Department of Corrections (DOC).

Eight vendors have DOC contracts for treatment center beds but CEC is not one of them. CEC "does not hold any state contracts," according to its spokesperson. So how does the company provide the majority of the state's treatment center beds? It does so through a non-profit corporation, Education and Health Centers of America (EHC). EHC has the state contracts while CEC supplies the treatment center beds.

Why have a non-profit "buffer" company between the DOC and CEC? Under New Jersey's pay-to-play laws, a business receiving $50,000 or more in government contracts has to file annual disclosures of its political contributions with the election commission. Since 2008, non-profits have been exempted from the pay-to-play laws. EHC doesn't make political contributions and CEC doesn't (directly) hold state contracts, thus no political donations have to be reported.

Who runs EHC? Clancy, the chairman and CEO of CEC, is EHC's salaried president according to EHC's 2009 IRS tax report. Palatucci, senior vice president and general counsel for CEC, is EHC's director of development.

There are two kinds of treatment centers in New Jersey – assessment centers and treatment programs. Soon-to-be-released prisoners are first sent to an assessment center for evaluation. From there, those with substance abuse or behavioral problems may be referred to appropriate treatment programs. The DOC pays $62 per prisoner per day for beds in treatment centers and between $70-$75 per prisoner per day for assessment center beds.

So why is the treatment center budget being increased? DOC Commissioner Gary M. Lanigan said it was due to legislation passed in 2009 that requires 100% occupancy of the treatment center beds under DOC contract, an increase from the 95% occupancy rate previously mandated. Hence the requested $3.1 million budget increase. Not everyone buys that explanation, though.

"Why is this portion of the budget going up when so many things are being slashed?" asked Joseph Marbach, dean of the Seaton Hall College of Arts and Sciences. "What is the underlying reason? Anything that might benefit Mr. Christie's friend, Mr. Palatucci? ... The governor has been very vocal in criticizing these kinds of relationships. For consistency's sake, you'd think Mr. Palatucci would take a leave of absence or recuse himself while Mr. Christie is in office."

Palatucci responded that he had resigned from acting as a lobbyist for CEC, stating he is "an advocate for alternatives to incarceration, and none of that requires me to lobby for CEC."

"I told the governor in January, 'I'm not going to talk to you about my company,'" Palatucci added. Apparently he believes this excuses the fact that his company – CEC – stands to make millions more from its contracts with the New Jersey DOC due to the budget increase.

Commissioner Lanigan remarked that Palatucci's relationship with Christie "in no way influences the process. My job is to keep up a firewall, to make sure the process has not been tainted." Yet Governor Christie is Lanigan's boss, and even if no one orders Lanigan to send more business to EHC, and thus to CEC, he undoubtedly knows that his failure to do so will displease Christie.

The New Jersey legislature approved the state's $29.4 billion budget on June 29, 2010. Three weeks earlier, the New Jersey Republican State Committee elected Palatucci as one of the state's representatives on the Republican National Committee, with Gov. Christie's blessing.

Sources: *www.nj.com, www.thedailyjournal.com, www.cecintl.com*

Wisconsin Prisoner Pleads No Contest to Helping Cellmate Commit Suicide

On June 1, 2010, a Wisconsin prisoner entered a no-contest plea to charges that he helped his cellmate hang himself.

Adam Peterson, 20, and Joshua Walters, 21, were unlikely acquaintances. Peterson, never in trouble with the law before, was serving a life sentence for murder at the Dodge Correctional Institution in Waupan.

Peterson's life had gone off track while he was in college. He developed a mental illness, dropped out of school, and one day wandered into the home of a Madison man. Peterson stabbed the man to death with a paring knife.

Walters, unlike Peterson, had been in and out of prison. His latest stint at Waupan was for a parole violation on a previous burglary charge.

Peterson had tried to kill himself multiple times after his arrest. While awaiting trial, for example, he attempted to hang himself in the shower, but another prisoner notified guards who thwarted the suicide attempt.

Shortly before sentencing, Peterson was transferred to Waupan. Walters was his cellmate. Waupan was supposed to have been a better place for Peterson, who told his family that he liked going to the prison's gym and library. He was even looking forward to his first contact visit

with family members.

But on January 10, 2009, Walters shouted out from his cell, "I think my celly's dead!" And Peterson was indeed dead – he had hung himself with a noose crafted from a bed sheet.

Walters claimed that he woke up and found Peterson hanging. But prosecutors, who later charged him with assisting in Peterson's suicide, painted a different picture.

Based on testimony from Justin Quednow, a career criminal turned jailhouse snitch, they claimed Walters had helped and encouraged Peterson to commit suicide. According to Quednow, Walters told him that "he always wanted to watch somebody hang and kill their self and he ... was just sitting there in his bunk and watching [Peterson] while he was dying."

Walters pleaded no-contest to the charge instead of going to trial. "I got up and tied the bed sheet real, real tight on the end of the bed" for Peterson, Walters admitted. "I said, 'Do what you do. I'm going to bed.'" When he woke up, Peterson had hung himself.

Walters was sentenced on June 11, 2010 to 27 months in prison followed by 27 months of post-release supervision. He apologized to Peterson's family at the sentencing hearing.

Sources: *Associated Press, www.fox11online.com*

$85,000 Settlement in South Carolina Prison Murder Suit

The South Carolina Department of Corrections agreed to pay $85,000 to settle a wrongful death case and survival action in the murder of a prisoner by his cellmate.

Perry Correctional Institution prisoner Charles D. Martin was serving a five-year non-violent sentence. He was assigned on September 12, 2005 to a cell with prisoner Jeffery Motts, who is serving a life sentence for murder.

Motts did not like Martin, and he did not want to share a cell with him. Both requested guards to separate them. Martin told guards he was fearful Motts would attack him. Lt. Tamara Conwell was told by Motts that he would kill Martin if he was not moved.

The threat was followed through on December 8, 2005. Motts confessed that he choked Martin until he was unconscious. He then tied Martin's hands and feet; he spent the night beating Martin until he died. Motts then placed Martin's dead body in a chair, where it remained until breakfast. When Motts told other prisoners he had killed Martin, it was reported to guards.

The federal district court overseeing the case approved the parties' compromise settlement on April 13, 2010. That settlement pays Martin's estate $84,400 for the wrongful death claim and $600 for the conscious suffering Martin sustained.

The estate was represented by Anderson-based attorney J. David Standeffer. See: *Martin v. South Carolina Department of Corrections,* USDC, D. South Carolina, Case No.: 6:07-CV-03422.

News In Brief:

Arkansas: Garland County deputy Garvin Todd Reid, 27, was fired in February 2011, then arrested on charges that he raped a female trustee in a supply room at the county jail. "There were no actual witnesses. There was a detention deputy who had come in as the two individuals [were] coming out of [the] supply room," said Sergeant Joel Ware. A rape kit from the prisoner was sent to the state crime lab. Following his arrest, Reid posted a $7,500 bond; the prisoner, who was not identified, was removed from her trustee position.

Brazil: Six prisoners were killed by other prisoners during a 15-hour riot at a police lockup in Maranhao on February 7, 2011. The murdered prisoners were all accused of sex crimes involving children; four were decapitated. The rioters demanded a kilo of marijuana from authorities in exchange for releasing hostages and ending the disturbance. News reports did not indicate whether they received the cannabis.

California: On January 28, 2011, former Riverside County probation officer Elizabeth Z. Nolan pleaded guilty to a felony charge of unlawful intercourse with a minor. As part of a plea agreement, 16 other counts – including oral copulation with a minor and rape by force or fear – were dropped. Nolan was accused of having sex with a juvenile offender over several months; at the time, her husband was a Riverside County prosecutor. She was sentenced to 1 year in jail in February 2011.

California: Merced County jail guard Anthony Sodini, 27, employed at the John Latorraca Correctional Facility, was arrested on February 9, 2011 on charges of smuggling contraband into the jail. Sodini allegedly brought tobacco to prisoners at the facility. "It is regrettable when one of our own makes bad life choices and crosses a line that he has sworn to uphold," said Sheriff Mark Pazin. "But I want the public to know that we will not treat it differently than any other criminal investigation, and he will be prosecuted to the fullest extent of the law."

California: On February 14, 2011, Beverly Hills criminal defense attorney Michael H. Inman was sentenced to serve 120 days after pleading no contest to a felony charge of trying to smuggle 14.25 grams of heroin into a Los Angeles jail where he was visiting two incarcerated clients. Inman also received three years' probation, and was placed on inactive status by the state bar association.

Columbia: In January 2011, guards at a prison in the city of Bucaramanga intercepted a drug-laden pigeon that tried to fly into the facility. "Agents saw the animal attempting to cross the prison wall. When [the pigeon] tried again he discovered that his body was weighed down with 45 grams of marijuana," said North Santander police chief Jose Mendoza. "Because of this weight he could not reach his objective of entering the prison with the substance." In 2009, a pigeon carrying a cell phone SIM card was found outside the Cómbita prison in Boyacá, Columbia.

District of Columbia: Ingmar Guandique, convicted of murdering former federal Bureau of Prisons intern Chandra Levy in 2001, received a 60-year prison sentence on February 11, 2011. Levy's death led to a scandal involving then-U.S. Congressman Gary Conduit, with whom she was having an affair. While Conduit was not named as a suspect in Levy's death, intense media coverage contributed to Conduit losing his reelection bid in 2002. The case remained unsolved for over 8 years, but an informant eventually fingered Guandique, a Salvadoran immigrant serving time in federal prison for attacking several other women at the same park where Levy's body was found. Investigators searched Guandique's prison cell and found a photo of Levy that he had removed from a magazine. He was indicted several months later.

Florida: On February 4, 2011, Latrishia Mone Laws, a state prison guard employed at the Glades Correctional Institution, was arrested on charges of witness tampering. Laws, 22, is accused of contacting a shooting victim and trying to get him to sign a statement that he had misidentified the person charged in the shooting. The alleged shooter, Charles Coney, who is being held at the Palm Beach County jail, is the father of Laws' child. Laws said she would pay the victim $500 if he recanted his identification of Coney. Following her arrest, Laws was jailed on $100,000 bond.

Florida: Palm Beach County jail deputy Derrick Daniels, 38, was arrested on February 9, 2011 on charges of aggravated battery, official misconduct, culpable negligence and evidence tampering. Daniels is accused of facilitating a fight between two prisoners in segregation on December 12, 2010 and then covering up the incident. Jail prisoner Lajuane Dunnaway told investigators that Daniels let another prisoner, Taurus Turnquest, into his cell. Turnquest stabbed and slashed Dunnaway; after the fight, Daniels disposed of Dunnaway's bloody clothing and bedding, gave him bandages instead of notifying the jail's medical staff, and failed to report the incident. Daniels was later suspended; following his arrest he was held on $96,000 bond.

Florida: Pasco County deputy Brian Call, 35, accused of fraternizing with prisoners building an aviation hangar for the Sheriff's Office, was arrested on January 25, 2011. He had previously been suspended and is in the process of being fired. Call was supervising prisoners working on the hanger during evening shifts; he allegedly used his cell phone to contact some of the prisoners' girlfriends, who would meet them at the hanger. He also shared smokeless tobacco with several prisoners. Call was charged with introduction of contraband into a jail facility and unlawful compensation or reward for official behavior. Prisoners were used to build the hanger as a money-saving measure for the county.

Illinois: On January 31, 2011, Macon County jail guard Standefer "Stan" Bouleware, 41, was arrested on charges of official misconduct and solicitation of prostitution. Bouleware, a 20-year jail employee, allegedly paid a former prisoner for sex. The ex-prisoner reportedly turned him in because she didn't want him to keep contacting her. "He is suspended with pay at this time," stated Sheriff Thomas Schneider. "We will be going through the proper disciplinary process. After his predisciplinary hearing, he will be suspended without pay." Bouleware was in uniform when he was arrested at the woman's apartment, where he was hoping to pay to have sex with her again.

Indonesia: Nineteen prisoners escaped from a prison in West Papua province on February 13, 2011 after overpowering guards during prayer time. Three guards suffered non-serious injuries, according to Warden William Kmur. The escapees were serving sentences ranging from 10 months to 12 years.

Maryland: On February 13, 2011, state prisoner Timothy Davis, 37, was killed at the Western Correctional Institution after another prisoner struck him on

the head with a TV set. Davis' death was the second homicide at the maximum-security facility within two weeks; prisoner Blas Ramon Mata Aguilar, 41, was killed on February 2, 2011. Both deaths are under investigation by the Maryland State Police and the Dept. of Public Safety and Correctional Services.

Mexico: The warden at the Santa Martha women's prison and the director of the facility's hospital were fired for letting a high-profile prisoner receive a cosmetic medical treatment, according to February 2011 news reports. The prisoner, Avila Beltran, AKA "The Queen of the Pacific," is pending trial on drug trafficking and conspiracy charges related to the Sinaloa drug cartel. Prison medical staff

asked an outside doctor to visit Beltran on January 10 to give her a "vaccination." However, the shot was actually botox, which is commonly used for cosmetic purposes to treat wrinkles. Prosecutors are investigating prison staff for "illegal performance of public duties" for allowing Beltran to receive the botox treatment.

Missouri: On February 13, 2011, Pemiscot County prisoner Lavonda Brown died after jumping from a transport van while she was being taken to Poplar Bluff for a court hearing. She had been put in hand and ankle restraints. "It is believed during the transport, Brown was able to remove her hands and feet from the restraints while talking to the deputies who were transporting her," stated Dunklin County Sheriff Bob Holder. Brown then opened the van's side doors and jumped from the moving vehicle, resulting in fatal injuries. Her death was ruled a suicide.

Montana: Former Montana State Prison guard Shannon Davis was sentenced on January 25, 2011 to 13 months in prison after pleading no contest to a charge of felony transfer of an illegal article to a prisoner. Davis, accused of smuggling a cell phone into the facility where she worked in September 2008, was also fined $1,500. The contraband phone was for prisoner Michael Murphy; according to Warden Mike Mahoney, Davis admitted to having a nonsexual romantic relationship with Murphy. Prison officials found that four other female prison employees also had relationships with Murphy. [See: *PLN*, Nov. 2010, p.21].

Washington: Former Benton County jail guard Gregory Andre Brown, 38, entered an Alford plea to a charge of official misconduct for having sex with a female prisoner, and was sentenced to one year in jail (suspended) on February 16, 2011. The incident occurred when the prisoner was cleaning a restroom in January 2009 as part of a work crew, while Brown was supervising the crew. The prisoner did not report the sexual encounter but mentioned it in a letter sent from jail once she was back in custody after another arrest. The letter was returned because it could not be delivered, whereupon it was read by jail staff.

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

Prison Legal News Book Store

Fill in the boxes next to each book you want to order, indicating the quantity and price. Enter the Total on the Order Form on the next page.
FREE SHIPPING on all book / index orders OVER $50 (effective May 1, 2010 until further notice). **$6.00** S/H applies to all other book orders.

SUBSCRIBE TO PLN FOR 4 YEARS AND CHOOSE ONE BONUS!
1. **SIX (6) FREE ISSUES FOR 54 TOTAL!** OR
2. **PRISON PROFITEERS (A $24.95 VALUE!)** OR
3. **WITH LIBERTY FOR SOME (AN $18.95 VALUE!)**

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

With Liberty for Some: 500 Years of Imprisonment in America, by Scott Christianson, Northeastern University Press, 372 pages. **$18.95**. The best overall history of the American prison system from 1492 through the 20th Century. A must-read for understanding how little things have changed in U.S. prisons over hundreds of years. 1026

Prison Nation: The Warehousing of America's Poor, edited by Tara Herivel and Paul Wright, 332 pages. **$35.95**. PLN's second anthology exposes the dark side of the 'lock-em-up' political agenda and legal climate in the U.S. 1041

The Celling of America, An Inside Look at the U.S. Prison Industry, edited by Daniel Burton Rose, Dan Pens and Paul Wright, 264 pages. **$22.95**. PLN's first anthology presents a detailed "inside" look at the workings of the American justice system. 1001

Prisoners' Guerrilla Handbook to Correspondence Programs in the U.S. and Canada, updated 3rd ed. by Jon Marc Taylor, Ph.D. and edited by Susan Schwartzkopf, PLN Publishing, 221 pages. **$49.95**. Written by Missouri prisoner Jon Marc Taylor, the *Guerrilla Handbook* contains contact information and descriptions of high school, vocational, paralegal and college 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

SUBSCRIBE TO PLN FOR 3 YEARS AND CHOOSE ONE BONUS!
1. **FOUR (4) FREE ISSUES FOR 40 TOTAL!** OR
2. **PROTECTING YOUR HEALTH AND SAFETY (A $10.00 VALUE!)**

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

Spanish-English/English-Spanish Dictionary, 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

*** ALL BOOKS ARE SOFTCOVER EXCEPT *PRISON MADNESS* ***

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 ☐

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 resumés, prepare for interviews, networking and much more! 1056 ☐

The Politics of Heroin: CIA Complicity in the Global Drug Trade, 2003 Ed. by Alfred McCoy, 734 pages. **$34.95**. 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. **$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 ☐

PLN Cumulative Index. **$22.50** each. PLN Article Indexes provide detailed information about all PLN articles, including title, author, issue, page number, topics covered, citations, and if it is state, BOP or jail specific. Can be searched on over 500 subjects such as medical neglect or sexual assault. Circle the index(es) you are ordering: **1990-1995, 1996-1998, 1999-2001, 2002-2004** (more recent indexes not yet available) ☐

Subscription Rates

	1 year	2 years	3 years	4 years
Prisoners	**$24**	**$ 48**	**$ 72**	**$ 96**
Individuals	**$30**	**$ 60**	**$ 90**	**$120**
Professionals (Attorneys, agencies, libraries)	**$80**	**$160**	**$240**	**$320**

Subscription Bonuses

2 years - 2 bonus issues for 26 total issues
3 years - 4 bonus issues (40 total) or a bonus book as listed on pg. 53
4 years - 6 bonus issues (54 total) or a bonus book as listed on pg. 53

(All subscription rates and bonus offers are valid through 12-31-2010)

Purchase with Visa, MasterCard, AmEx or Discover by phone: **802-257-1342**
Or buy books and subscriptions online: **www.prisonlegalnews.org**

Mail Payment and Order to:

Prison Legal News
P.O. Box 2420
W. Brattleboro, VT 05303

All purchases must be pre-paid. Prisoners can pay with new first-class stamps (strips or books only, no loose stamps) or pre-stamped envelopes, *if allowed by prison policies.*

Please **Change my Address** to what is entered below ☐

Mail Order To:

Name: _____
DOC #: _____
Suite/Cell: _____
Agency/Inst: _____
Address: _____
City/State/Zip: _____

Subscribe to Prison Legal News — **$ Amount**

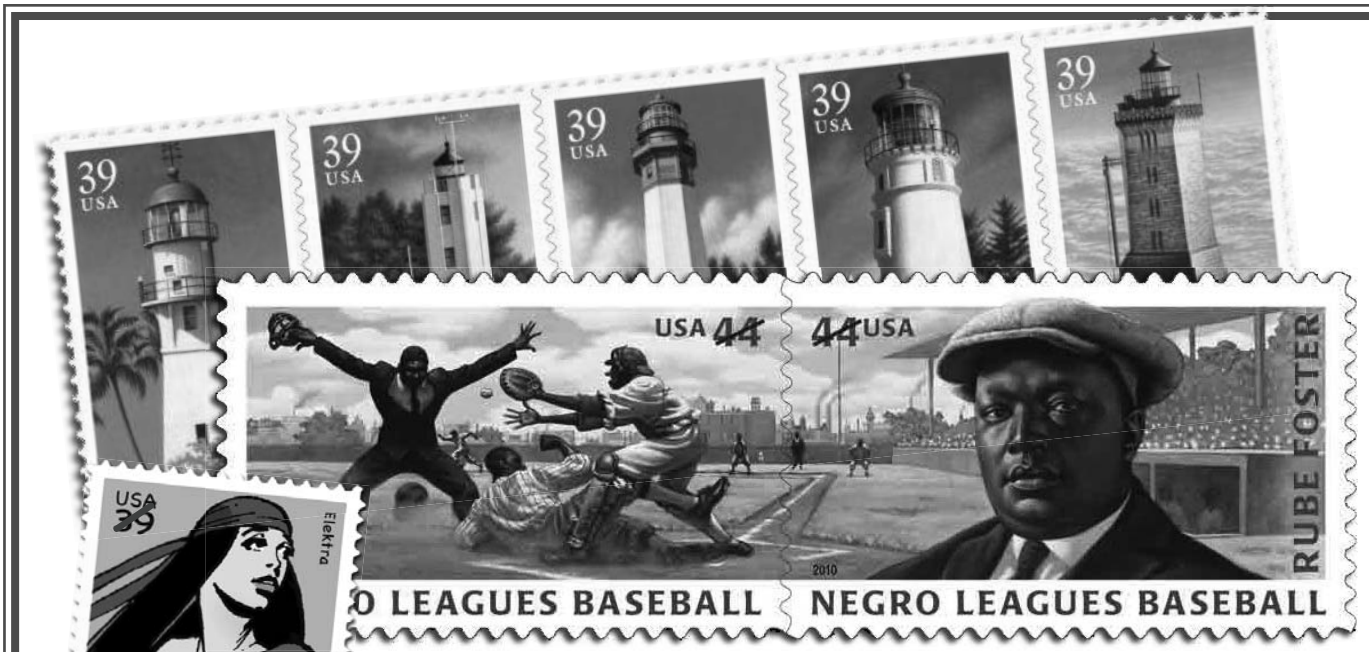
6 month subscription (prisoners only) - $12 _____
1 yr subscription (12 issues) _____
2 yr subscription (2 bonus issues for 26 total!) _____
3 yr sub (*write below which FREE book you want*) _____
or 4 bonus issues for 40 issues total!
4 yr sub (*write below which FREE book you want*) _____
or 6 bonus issues for 54 issues total!
Sample issue of **Prison Legal News** - $3.50 each _____

Books or Index Orders (No S/H charge on 3 & 4-year sub free books OR book orders OVER $50!)

	Qty.	
_____	____	_____
_____	____	_____
_____	____	_____
_____	____	_____

Add $6.00 S/H to Book Orders **UNDER $50** _____
VT residents ONLY add 6% to Total Book Cost _____
Total Amount Enclosed: _____

**** No refunds on PLN subscription or book / index orders after orders have been placed ****



Stamps for CASH!

Solid Rates You Can Count On! • Rates That Don't Change Monthly!

Great Goods will buy your stamps!

70% of Face Value: *Complete books or sheets of Forever Stamps,*

65% of Face Value: *Complete books, rolls, or strips of 44-cent stamps (10 stamps min.)*

We will send your funds as a money order, electronic payment to anywhere you designate. Great Goods can also send payment to an approved package vendor. Please provide complete name and address of where to send your funds. Also include any required forms or special instructions.

Payment sent within 24 hours of receipt.

Minimum money order of $20. • No quantity of stamps too big. • No taped or stapled stamps. • Used, damaged, torn stamps not accepted and cannot be returned. • Stamps must be on original postal backing. • Only new stamps accepted. • No singles or partials will be accepted and they cannot be returned.

Great Goods

PO Box 399, West Chesterfield NH 03466

Prison Legal News
P.O. Box 2420
West Brattleboro, VT 05303

Change Service Requested

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

Subscription Renewal

Subscriptions expire after the issue shown on the label is mailed. For example, if the label says: EXPIRES 02/2006, then the subscription expires after the February 2006 issues is mailed. Please renew at least 2 months before the expiration date. IF THE LABEL SAYS **EXPIRES: 04/2010** THIS IS YOUR LAST ISSUE. Please renew immediately to avoid missing any issues.

Change of Address

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