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Pennsylvania Institutional  
Law Project's  
2017 Annual Report



Pennsylvania Office

Left/Right: Jim Davy, Esq., Michael T. Bailey, Esq., Angus Love, Executive Director,  
Stephanie Thomas, Office Manager, Calysta Xenakes, Legal Assistant and  
Su Ming Yeh, Managing Attorney  
Su Ming Yeh, Managing Attorney

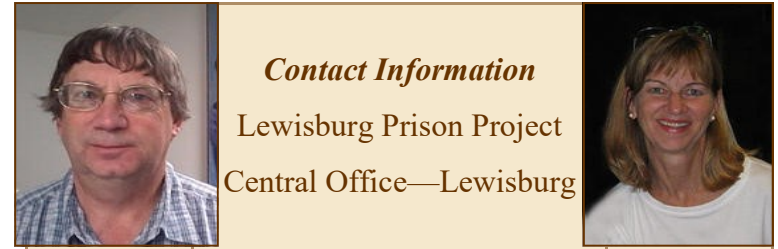
**Eastern State Penitentiary's radial plan served as the model for hundreds of later prisons**

**By: Angus Love, Executive Director**

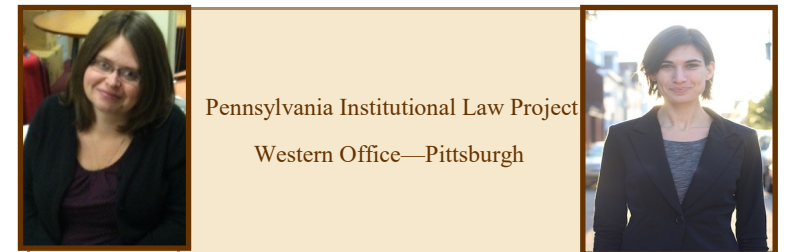


### **The More Things Change, The More They Stay The Same**

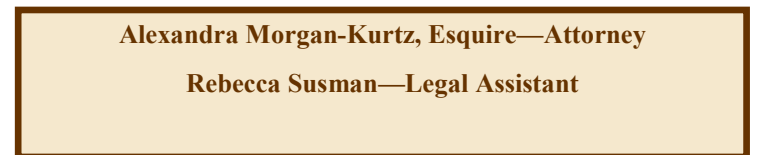
In 1682, William Penn set forth a revolutionary penal code which represented a sharp departure from the British system of corporal punishment. The Pennsylvania Quakers utilized this instrument in their quest for penal reform. Departing from the public humiliation and cutting off of heads and hands, they came to believe that total isolation, day and night could be the cure for abhorrent behavior. Solitude would serve several purposes: it would be punishment par excellence, it would give the prisoner time for reflection and contrition, protect contamination from the more sophisticated and prevent escapes. The Commonwealth authorized a prison to carry out this new philosophy in 1821. That prison was Eastern State Penitentiary which opened its doors in 1829. The architectural design incorporated the philosophy of isolation. Inmates were led into their cells with hoods. They remained in their cells until completion of their sen-



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**Calysta Xenakes—Legal Assistant**  
**Jim Davy—Staff Attorney**

They remained in their cells until completion of their sentence, eating, sleeping, working and getting religious instruction in the cells. The name ‘penitentiary’ embodied the philosophy of penance, a solitary period of reflection. This became known as the Pennsylvania system of corrections.

The separate system is a form of prison management based on the principle of keeping prisoners in solitary confinement. When first introduced in the early 19th century, the objective of such a prison or "penitentiary" was that of penance by the prisoners through silent reflection upon their crimes and behavior, as much as that of prison security.

The prison attracted international attention as Charles Dickens, Alexander de Tocqueville and others visited and provided comment. Charles Dickens, after his visit in 1842, wrote critically: “I am persuaded that those who designed this system... do not know what it is they are doing... I hold the slow and daily tampering with the mysteries of the brain to be immeasurably worse than any torture of the body.” Less than a decade after Eastern State Penitentiary opened its doors, it became apparent that isolation was causing mental breakdown amongst the prisoners. Reports describing the effects of the Pennsylvania system on the minds of inmates appeared in annual reports of the Prison Discipline Society, *The Journal of Prison Discipline and Philanthropy*, and numerous other publications popular among social reformers and scholars. In the 1838 report of the Prison Discipline Society, the “Effects of the System of Solitary Confinement, Day and Night, on the Mind” was included as subcategory of discussion, one that was retained through the following decade.<sup>2</sup> Their argument was simple: isolation produced higher rates of mortality and insanity among prison inmates. Soon adverse effects on mental health caused concerns. In the mid 1800’s a group of German joined the chorus of opponents with a series of scathing papers of the debilitating effects of prolonged isolation. Soon the Pennsylvania system gave way to the Auburn system of congregate living behind the walls.

system gave way to the Auburn system of congregate living behind the walls.

Fast forwarding to the modern era, the mass incarceration movement began around 1980 with the introduction of mandatory sentences, the war on drugs, sentencing guidelines and other efforts to legislate morality. Populations increased as much as 6 or 7 fold over the next few decades. Pennsylvania Department of Corrections went from 8,000 inmate in 8 institutions and a budget of 200 million in 1980 to 48,000 inmates, 27 institutions and a budget of 2.2 billion today. As unrest occurred, prison officials increasing relied on isolation. The numbers of inmates put in solitary increased even quicker than the overall increases. [In](#) Pennsylvania, the Behavioral Adjustment Units [BAU] gave way to the Restricted Housing Units [RHU]. Soon the Special Management Units [SMU] emerged also known as super **max**s. Supposedly these units were to cure inmates of their wrongdoing but successes were few and far between, necessitating the creation of the long term segregation units [LTSU] for failures of the SMU's, RHU's, general population and society.

Finally we are seeing recognition of the failures of the modern equivalent of the failed Pennsylvania system of corrections. Colorado has taken the lead in banning isolation altogether after their Secretary of Corrections was murdered by an inmate released from isolation into society. As reported on a recent 60 Minutes piece, Pelican Bay is downsizing their infamous SHU. Sadly the United States and Pennsylvania have failed to recognize these trends and the mistakes of our past. The United States Penitentiary at Lewisburg represents the worst of these abuses. It's SMU is plagued with violence. Fights and deaths are all too frequent. Our organization has two class actions and 2 damages cases on behalf of SMU residents. Richardson is a class action challenging the practice of forced double celling with a penalty of 15 days in chains for

**Criminal Justice Advocacy & Support Directory**

Published in conjunction with Center Peace, Inc., this re-entry guide provides a comprehensive listing of organizations and agencies that assist ex-offenders in their transition to public life.

**Criminal Justice Advocacy & Support Directory**

A Guide to Services for Pennsylvania Inmates, Victims of Crime & Their Families

2010 - 2012

**Prisoners' Rights Handbook**

2013 Edition  
A Guide to Correctional Law Decisions of the Supreme Court of the United States & the United States Court of Appeals for the Third Circuit



Edited by  
Angus R. Love, Esq., Pennsylvania Institutional Law Project  
and  
Eva DeJair

Additional thanks to Geoffrey Tabin, Esq., Adrienne Conditonis, and Adrienne Shorrock.

We will use, for purposes of this Handbook, the term "prisoner" to refer to any person who is confined in a correctional facility, whether or not they are charged with a crime and whether or not they are awaiting trial or sentencing. The Handbook is intended to provide information to prisoners and their families and friends.



**How To Change Your Name**  
A Self-Help Guide



**The Grandparents' Guide to Custody & Visitation in Pennsylvania**

PA Institutional Law Project

*Compassionate Release  
In Pennsylvania 2014*

## ***Re-Entry & Self-Help***

PILP considers it crucial that prisoners are prepared for their eventual re-entry to society, and PILP is proud to be deeply involved in efforts to ensure that our clients have the tools and resources needed to become productive citizens and avoid the risk of recidivism.

### ***Family Visitation and Custody***

By advocating for incarcerated parents, we help strengthen the support networks that newly released prisoners often rely on.

### ***Immigration and Work Status***

When an individual is deported or unnecessarily detained, the impact on their family and community can be devastating, emotionally and financially.

### **Self-Help Materials**

In addition to litigation, PILP assists thousands of prisoners every year by providing self-help materials that empower the individual in an alienating system. Among our publications offered at no charge are:

refusal. *McCreary v BOP* protests the treatment of the mentally ill who were taken off medications and given crossword puzzles as a substitute after the BOP forbade housing mentally ill inmates in the SMU. Two additional individual damage claims involve the same issues.

Sadly Santana prophesy lives as those who forge the past are condemned to repeat it.

Space for a picture if you want, or  
this would be empty space

## **Transgender Inmates In the Department of Corrections**

**By: Su Ming Yeh, Managing Attorney**

A transgender man was brought to the Riverside Correctional Facility as a pre-trial detainee, then subjected to an invasive genital search, even after undergoing the usual other two searches (including a strip search) for all incoming detainees. The Prison Rape Elimination Act regulations prohibit searches for the purpose of identifying gender. While incarcerated, he also became subjected a pattern of transphobic comments and harassment from correctional officers. He filed grievances about the penetrative search and for the transphobic comments and attitudes of the correctional officers. Subsequently, he suffered from retaliation, culminating in being pepper sprayed in the shower area behind a locked screened gate while handcuffed and shackled. PILP currently represents this person in a lawsuit against the City of Philadelphia and the correctional officers and staff involved.

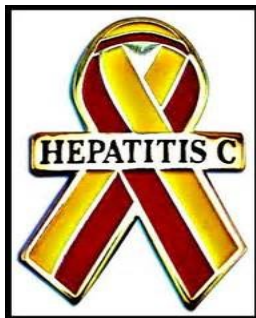


Hep C—Class Action

By: Su Ming Yeh, Managing Attorney

PILP has a current class action challenging the Pennsylvania Department of Correction's (DOC) policy and practices in treating prisoners with chronic Hepatitis C. In 2013, a new medical treatment with a 95% success rate was approved by the FDA but initially cost about \$100,000 for a course of treatment. Although under the U.S. Constitution, a prison may not deny care for non-medical reasons (such as cost), the DOC ceased all treatment of Hepatitis C. In 2015, the DOC promulgated an interim protocol, and in November 2016, implemented the current Hepatitis C protocol. Unfortunately the protocol remained highly restrictive, and in practice failed to provide this potentially life-saving treatment to those who were either too sick or not sick enough to qualify. In the meanwhile, the price of the medication has dropped, and more importantly, a new drug has come onto the market that retails for approximately \$25,000.

PILP, in collaboration with David Rudovsky of Kairys, Rudovsky, Messing, Feinberg, and Lin, and several attorneys from Dechert, filed a class action suit challenging the DOC's policies and practices. While the DOC has now started treating some individuals, they have treated only about 5 percent of those with chronic Hepatitis C. Discovery has now been completed, and plaintiffs' motion for class certification and defendants' motion for summary judgment are pending.



**PILP Revenues**  
**Fiscal Year 2017-2018 (Projected)**

<b>Projected Expenses:</b>	<b>\$782,653.00</b>
Revenues	
Access to Justice	\$350,542.00
Title XX	\$227,860.00
State	\$111,064.00
IOLTA	\$ 31,053.00
Attorney's Fees	\$ 50,000.00
Independence Foundation	\$ 10,000.00
Philadelphia Bar Foundation	\$ 10,000.00
Interest Income & Contributions	\$ 2,730.00
Other	\$ 17,005.00
<b>TOTAL OPERATING REVENUES</b>	<b>\$810,254.00</b>

**PILP Expenditures**  
**Fiscal Year 2017-2018 (Projected)**

Salaries	\$551,321
Employee Benefits	\$195,700
Consultants	\$40,428
Travel	\$22,065
Space Costs	\$61,340
Consumable Supplies	\$12,000
Furniture & Equipment	\$11,289
Printing, Copying & Postage	\$4,300
Law Library	\$5,600
Telephone	\$3,800
Court Costs	\$100
Insurance & Bonding	\$3,990
Depositions & Transcripts	\$12,000
Dues Professional Orgs	\$3,851
Tuition & Seminar Fees	\$900
Connectivity	\$850
Miscellaneous	\$5,950
<b>TOTAL EXPENDITURES</b>	<b>\$908,889</b>



**Strides for Women in Solitary Confinement**  
 By: Alexander Morgan-Kurtz, Staff Attorney

In the discussion surrounding reducing solitary confinement, you rarely read of cases involving pregnant women. That's just common sense. The United Nations has recognized solitary confinement as a form of torture and the DOJ has advised that vulnerable populations such as pregnant women should only be placed in restrictive housing "as a temporary response to behavior that poses a serious and immediate risk of physical harm." The National Commission on Correctional Health Care has even adopted the position that "pregnant women should be excluded from solitary confinement of *any* duration."

Despite the national consensus on this issue, in the winter of 2016, PILP, along with the Abolitionist Law Center and the ACLU of Pennsylvania learned that the Allegheny County Jail routinely housed pregnant women in solitary confinement for minor rule violations. In December 2016, we, along with Reed Smith LLP filed a class action lawsuit in federal court on behalf of five brave women who had been subjected to solitary confinement, deprivation of due process and inadequate nutrition. These women had been placed in solitary confinement for periods of 6-22 days for rule violations including possessing an extra pair of shoes and having another inmate's library book. During their time in solitary, they stayed in their cells for 23-24 hours per day and were rarely given the opportunity to even shower.

Almost immediately after the lawsuit was filed, Allegheny County halted the placement of pregnant women in solitary confinement. The case was settled in October 2017, with the County agreeing to one of the most progressive and comprehensive policies regarding the treatment of incarcerated pregnant women in the country along with various accountability measures. The settlement prohibits the jail from placing pregnant women in restrictive housing except in rare instances where the inmate poses an immediate risk of harm, and those decisions must be reviewed by the deputy warden and cleared by a medical professional. In addition, the jail will provide and track distribution of meals to pregnant women and women who are lactating will be allowed to use a breast pump. As Allegheny County joins the national trend in recognizing that there are better alternatives to solitary confinement, PILP will continue to work to ensure that prisons and jails throughout the state of Pennsylvania treat those incarcerated humanely.

## PILP LEGAL HIGHLIGHTS FOR 2017

Hollihan v. Pa DOC- The case recently settled with the Pennsylvania Department of Corrections abandoning the 'One Good Eye' policy. Richard Hollihan, an inmate at the State Correctional Institute at Somerset filed this class action challenging the policy. It stated that inmates are not guaranteed binocular vision. If you have had successful cataract surgery on one eye, and the other eye starts to deteriorate, then you don't need the other eye corrected according to the old policy. Chief Judge Christopher Connor rejected the DOC effort to dismiss the case and ruled that the policy is draconian and likely a violation of the United States Constitution's 8<sup>th</sup> Amendment prohibition against cruel and unusual punishment. In light of that ruling, the DOC has agreed to abandon the policy. Damages were paid to the lead plaintiff Hollihan and a fee petition is currently pending. The PILP is assisted by Pepper Hamilton and Kairys and Rudovsky law firms.

### Richardson v. BOP, McCreay v. BOP and Carvalho v. Bledsoe

PILP is collaborating the practices and procedures of the Special Management Unit [SMU] at the Lewisburg Penitentiary the Washington D.C. Lawyer's Committee for Civil Rights and Urban Affairs. At issue is a punitive restraints policy and harmful cell-assignment practices in their SMU. Initially the Richardson case was assigned to Judge Nealon, a John F. Kennedy appointee who summarily dismissed them. An appeal led to a precedential decision from the US Court of Appeals for the Third Circuit affirming class action certification and remanding the case back to the lower court. The Special, Management Unit at the Lewisburg Penitentiary, which houses the worst of the worst in the federal prison system, force individuals into double occupancy cells. If the inmate is concerned about potential violence with the cellmate, he can either go into the cell and risk assault or refuse and be put in 4 point restraints for weeks at a time. [Richardson v. BOP]. "All Things Considered" on National Public Radio recently did two part series on the cases. Following the series, a petition drive has been launched by the National Religious Campaign against Torture asking former Attorney General



a two part series on the cases. Following the series, a petition drive has been launched by the National Religious Campaign against Torture asking former Attorney General Lynch to abandon the practice. Recent the Justice Department recommended against housing inmates with mental illness in SMU's. Lewisburg's response was to take all MH inmates off medication and give them crossword puzzles instead. This led to the filing of McCreary v. BOP class action, also a collaborative effort. It also led to another NPR program. The Carvalho case is an individual damage case involving similar allegations.

#### Chimenti v. Pa. DOC

This civil rights class action challenges the DOC's refusal to provide a new drug, Harvoni, to persons suffering from Hepatitis C. The drug has produced amazing results in the free world but now costs \$28,000 per person. It also greatly reduces the time period that one must be on the drug from 6 months to 12 weeks. It has had an amazing success rate of over 90%. It is estimated that as many as 6,000 inmates have Hepatitis C. Class certification motions were recently filed. PILP is partnering with Dechert and Kairys and Rudovsky.

#### Williams v. City of Philadelphia- Update

While this case remains in suspense, the City of Philadelphia continues to make significant progress on population reduction. Currently the population stands at 6,500, the lowest since 1990. It was almost 10,000 when the case began. All triple cells have been eliminated. These significant reductions allow all other aspects of the prison including medical, mental health, visiting and food service; to run more smoothly and efficiently. Mayor Kenney is to be commended for this effort. Pepper Hamilton and Kairys and Rudovsky.

E.D. V. Sharkey- Discovery continues in this federal civil rights case brought by a female immigrant from Central America who was housed in the Berks County Family Shelter. While there, she was repeatedly sexually assaulted by a Correctional Officer Markley, who was later convicted of sexual assault and sent to prison. The PILP has filed a lawsuit against the guard [Sharkey], ICE and Berks County personnel that operate the facility and Berks County for their failure to have a license to operate the facility. Summary judgement motions were recently filed. PILP is assisted by Matthew Archambeault, Esq.

Tenon v. Long- Anthony Tenon suffered a broken jaw while having an epileptic seizures at the State Correctional Institute at Smithfield. Despite numerous requests, he was denied pain medication and a soft diet. He initially brought the case himself [pro se] and appealed it's dismissal to the US Court of Appeals for the 3<sup>rd</sup> Circuit. After a reversal and remand of the civil rights action, the PILP entered the case and achieved a fair settlement after discovery for Mr. Tenon.

Suarez v. Markley- This excessive use of force civil rights case was brought against Constable Markley while Mr. Suarez was being confined in a holding cell in the courthouse in Downingtown. Markley assaulted Suarez while he was shackled arms legs and stomach. The assault required numerous stitches to his head in the local emergency room. A fair settlement of all claims and fees was rapidly achieved.

Vaughn v. Victims Compensation Assistance Program- This appeal challenges a denial of compensation for the family of the Zion Vaughn. Zion was a senior and star athlete at Penn Wood High School when he was murdered in front of his grandfather's home. He had no criminal record yet was denied compensation due to alleged drug activity. The assailant was never apprehended. His family sought compensation of \$6,500 from the fund to cover funeral expenses but was turned down.

**Board member Dave Rudovsky with Executive Director, Angus Love in court on the Salvatore Chimenti case.**

**Dave is a long time supporter of our work and often co-counsels cases with PILP.**

Photo by Noah Rudovsky

