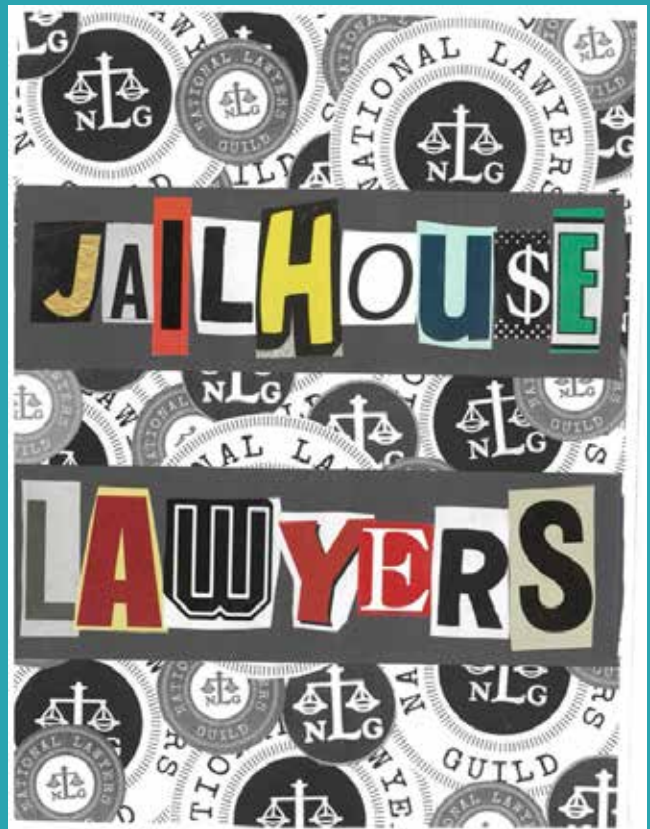
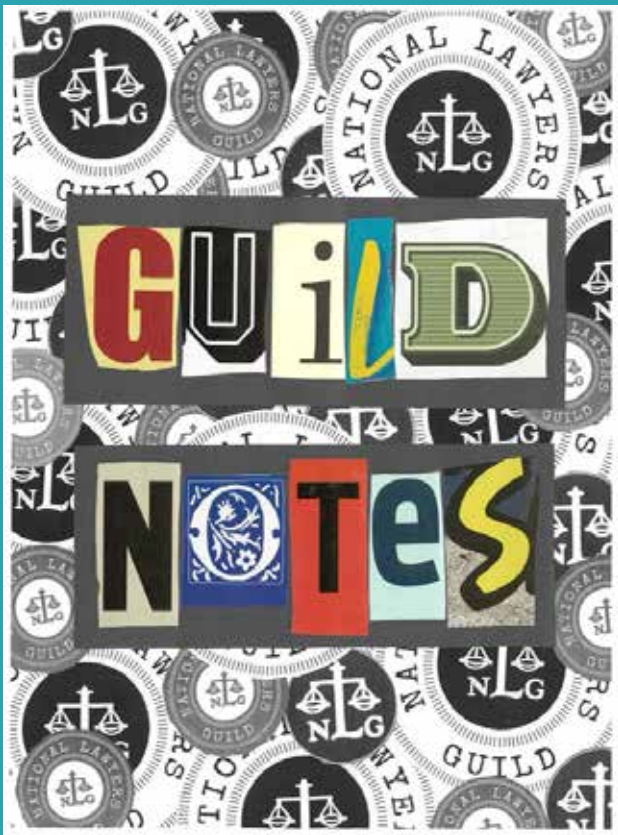


Guild Notes

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NLG's Tri-Annual Membership Newsletter,
for Jailhouse Lawyer Members & Beyond



Art Above by Christopher Santiago, Kirkland Correctional, Columbia, SC

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2024 Resolutions/Amendments Update

*Thanks to those who voted for our 2024 Resolutions/Amendments.
All three proposals passed:*

- Resolution On Deported Military Veterans*
- Proposed 2024 Amendment to Constitution Article 2.1:
No Discrimination*
- Terrorism Designations Resolution*

Welcome to New Jailhouse Lawyer Members

If you are receiving this newsletter, that means that we have received your request to be added as a member. We are a membership association of lawyers, law students, legal workers, and jailhouse lawyers. Membership is open to anyone incarcerated who writes to the NLG National Office expressing their interest in becoming a member, and there is no cost. Membership lasts for three years, after which you can write to us again to let us know to renew and if you have a different mailing address. Formerly incarcerated members have the option to annually renew their membership once they are released, with a waiver if needed. Your membership will be as a national member, not affiliated with a local chapter.

NLG Membership Consists of:

- * Subscription to *Guild Notes*, which comes out 2 or 3 times a year
- * The *Jailhouse Lawyers Handbook* (currently 2021 edition - write to us if you need one!)
- * Opportunity to submit writing to the “Beyond Bars” column in *Guild Notes*:
When submitting, think about what in your experience as a jailhouse lawyer might be beneficial to share with other jailhouse lawyers around the country? Drawing upon personal experience as an illustration of a broader topic is encouraged. There is a word limit of around 750 words. You can send to: GN Submissions, National Lawyers Guild, PO Box 1266, New York, NY 10009. (Please also let us know if you would like your full name published). Unfortunately, we cannot write back to everyone who sends us an article, and there is no guarantee that an article will be published. We do, though, appreciate every submission we receive, and all give us insight that we wouldn’t otherwise have of what is going on inside the prison walls. (If we didn’t publish your article in the next issue, it’s very possible we’ll publish it in a future one).
- * Ability to vote in our annual elections on bylaws/resolutions

Beyond these, the NLG staff do not have capacity to facilitate further benefits, including:

- * Membership cards
- * Access to legal representation or to have a lawyer read through your legal documents
- * Ability to return any legal documents you send to us back to you or to anyone else
- * Marking either *Guild Notes*, the *Jailhouse Lawyers Handbook*, or any other mail as “legal mail”, as we are not a law office and not acting in any representative capacity

NLG Statements

The NLG Celebrates the Victory of the Uhuru 3 against the Government's Attempt to Imprison them and Intimidate Our Movement

On December 16, 2024, Omali Yeshitela, Jesse Nevel, and Penny Hess, known as the Uhuru 3, were sentenced to three years' probation and three hundred hours of community service, as their crowd of supporters outside chanted: "Not one day [in jail]". The trial of Uhuru 3 is one of the most important First Amendment cases in recent history.

The three had been convicted in September 2024 on fabricated, politically motivated charges of conspiracy after the jury found them innocent of the more serious and FARA (Foreign Agents Registration Act) related charges of supposedly conspiring with the Russian government to interfere in U.S. elections.

While we believe that there should have been no sentence handed down, indeed there should have been no prosecution on these baseless charges, the trial judge's refusal to impose any prison time is a clear victory for the Uhuru Movement and for the fight against increased US repression.

The federal indictment had alleged that the Uhuru Movement worked on behalf of the Russian government to spread pro-Russian propaganda and influence local elections, without registering as a foreign agent under Foreign Agents Registration Act (FARA)-related statute, 18 USC 951.

From the start, this was clearly a political prosecution and a political trial. The State's goal in charging the Uhuru 3 with being "foreign agents" was larger than convicting these three defendants. It was part of a larger political goal to discredit speech that the US government does not agree with, in particular, speech by Black people against U.S. foreign policy.

The not guilty verdict on the "Russian agents" charge means that the jurors found that the defendants' advocacy for the liberation of Africa and African people and in opposition to NATO's expansionism in Ukraine were legitimate First Amendment activities. The jury clearly rejected the absurd implication that Black people require leadership from Russia to define and lead the struggle to end domestic colonialism and US imperialism abroad.

Seeing the jury's inconsistent and incomprehensible verdict finding Uhuru 3 guilty of conspiracy, i.e., of "planning to sow discord and inflame American political tensions at the behest of Russia," yet not guilty of being Russian agents, the judge refused the government's attempt to lock up an important part of the Black liberation movement. He went so far as to find that the actions of the Uhuru 3 were protected political speech that should not be chilled by the government.

The prosecution of the Uhuru 3 threatened all US anti-imperialist and internationalist individuals and movements. Their victory is a victory for all of us who speak out against our government's racist and imperialist policies.

However, this is just one victory in a long ongoing battle. Similar false charges have already been levied to try and intimidate rising political dissent in the Palestinian solidarity and anti-cop city movements. Samidoun —

The Palestine Prisoner Support Network — has recently been declared a terrorist organization by the Treasury Department, part of the latest iteration of a resurgent McCarthyism, with claims of terrorism being the new anti-communism. Sixty one Stop Cop City protesters are facing RICO charges in Atlanta.

We cannot be intimidated. We must continue to speak out, to organize, and to make alliances internationally as we resist racism, white supremacy, genocide, and imperialism. We must continue to exercise our rights as the State— whether Democratic or Republican— tries to deny them and to criminalize us.

Our movement will not be intimidated!

The NLG Says Ceasefire Today, Liberation Tomorrow!

The National Lawyers Guild welcomes the announcement of a ceasefire in the occupied territory of Gaza. This is the least that could happen, given Israel's recent escalation of their 76-year, ongoing, genocidal campaign against Palestinians. It comes at a time when the death toll has exceeded 46,000 people, with reports that this number is undercounted. Israel has displaced more than 90% of the Palestinians living in Gaza. It will take decades to rebuild all the damage that was done, and therefore it's imperative that we also demand an immediate lifting of the siege and ongoing economic embargo on Gaza.

This level of violence and destruction witnessed could not have been achieved without our elected officials at every level of government aiding Israel. The U.S. federal government has sent over \$26 billion in weapons since October of 2023. Congress passed legislation designed to target non-profits who dare to speak out about the genocide of Palestinians. States like Texas have censored pro-Palestine speech on college campuses. All of this did not stop the massive wave of popular support that the Palestinian people have across the world. Mass protests broke out against the ongoing genocide. Universities became encampments, as students took over public spaces demanding an end to the genocide. The International Criminal Court and International Court of Justice both have cases against Israel for violating human rights, thanks to the initiative and pressure of Palestinians and their allies from South Africa to Chile to Ireland, and many more. The world has witnessed the atrocities that Israel is committing, and they are fighting back.

We call on the US and international legal community to escalate our pursuit for legal accountability for the last 467 days of genocide and all Israeli colonial violence, ethnic cleansing, ongoing war crimes and crimes against humanity, including the crime of apartheid, in our global and local legal institutions. We support the efforts of activists and progressive legal communities who are pursuing legal justice against individual members of the genocide army through national laws of Universal Jurisdiction. Every state which has signed and ratified the Geneva Convention is duty bound to prosecute those responsible for violating the Conventions.

We must also call for our legal community to unite in the pursuit of real justice against U.S. individuals and institutions who have directly participated, aided and abetted in the genocide and famine, from the Biden administration officials, to member of Congress, to the media. They are all responsible.

The ceasefire agreement has yet to be ratified, and is set to be rolled out in stages. We must keep our eyes on Gaza and the Palestinian people. The NLG continues to reiterate its support for a free Palestine. We believe that the Palestinians have the right to self-determination, by any means necessary. We also continue to reiterate the "legitimacy of the right of the Palestinian people to resist illegal military occupation, apartheid and ethnic cleansing" as is clear in international law and any correct moral standard. We join others in the statement Ceasefire today, Liberation tomorrow!

NLG Announcements



NLG Student Week of Abolition 2025 March 3-7, 2025: "Practicing Everyday Abolition"

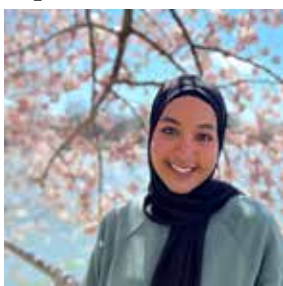
Our student week of abolition is held annually, and is a week in which our student chapters hold events to reflect the Guild's commitment to finding alternatives to current systems of incarceration and policing. For the 2025 Week of Abolition, NLG law school chapters will be organizing events and actions related to the abolition of prisons and police, with a special focus building alternatives in our everyday lives, relationships, and institutions. We are guided by these words by abolitionist organizer and thinker Ruth Wilson Gilmore: "*Abolition is not absence, it is presence. What the world will become already exists in fragments and pieces, experiments and possibilities. So those who feel in*

their gut deep anxiety that abolition means knock it all down, scorch the earth and start something new, let that go. Abolition is building the future from the present, in all of the ways we can."

In past years, NLG students have organized interactive workshops, community discussions, film screenings, tabling, letter writing campaigns, banner drops, visits to incarcerated youth, and panels on topics such as solitary confinement, the school to prison pipeline, immigration detention, transformative justice, and alternatives to incarceration and policing. Last year, over 30 law school NLG chapters across the country hosted 100+ events! Events ranged from political prisoners, to how to be a Legal Observer, and how to embody and materially imagine a world free of prisons. We hope this year is as much of a success!

2025 Haywood Burns Memorial Fellowship Recipients

The Haywood Burns Fellowships (selected annually) are designed to encourage students and legal workers to work in the NLG's tradition of "people's lawyering." The program exists to help students and legal workers apply their talents and skills to find creative ways to use the law to advance justice. Burns Fellowships provoke law students and legal workers to question traditional notions of how one must practice law and to provide a summer experience that will enrich and challenge them. Following are our 2025 HB Fellow Recipients:



(the pictures on previous page are in order of fellows as described by below)

Susan Aboeid is a Sudanese American human rights researcher and advocate dedicated to advancing international law and civilian protection in armed conflict. She earned her B.A. in Modern Middle Eastern Studies from Yale University in 2019. After graduation, Susan moved to Nablus, Palestine to teach World History and English Language Arts. She later consulted for the Human Rights, Conflict Resolution, and Tolerance Program in Amman, Jordan, with the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA). In 2022, Susan studied the application of international human rights and humanitarian law in occupied Palestine at the Al-Haq Center for Applied International Law. Before entering law school, Susan worked as an associate for the Crisis, Conflict, and Arms Division (formerly the Arms Division) at Human Rights Watch. There, she focused on the protection of civilians from various indiscriminate weapons, such as cluster munitions, landmines, incendiary weapons, and lethal autonomous weapons. She has advocated for the adoption and implementation of disarmament treaties at key multilateral international fora such as the United Nations General Assembly (UNGA) and the Convention on Conventional Weapons (CCW). As an 'Emerging Weapons Expert' with the Forum on the Arms Trade, she explored the implications of arms transfers and weapons use globally. Now, as a 1L at Georgetown University Law Center, Susan aims to deepen her understanding of disarmament and international humanitarian law, while examining the intersection of privacy law, surveillance studies, and autonomous weapons systems, particularly their disproportionate impact on communities of color and the Global South. Through the Haywood-Burns Fellowship, Susan will spend her 1L summer at Diakonia International Humanitarian Law Centre's Jerusalem Desk, where she will focus on the application of international humanitarian law across occupied Palestine.

Randall Hazard is a passionate advocate for social justice, committed to advancing the mission of the National Conference of Black Lawyers (NCBL) through education and innovation. Currently a law student at North Carolina Central University and a former national board member of NCBL, he aims to develop a comprehensive educational video course that high-

lights the historical and theoretical contributions of NCBL. This course will combine oral histories, archival footage, and expert commentary to inspire a new generation of legal professionals and activists. Additionally, he envisions establishing a publication arm for NCBL to amplify its mission through books, reports, and digital content. Through the Haywood-Burns Fellowship opportunity, he intends to refine his skills in educational resource development, intellectual property frameworks, and community-driven initiatives. Furthermore, he aims to form a coalitional education council with organizations like the NLG to expand the curriculum and foster collaboration among social justice advocates.

Nessa Mccoy is interested in movement lawyering and advocating for justice-impacted and formerly incarcerated individuals. Having personal experience with the criminal justice system's failures, Nessa advocates for transformative justice practices and focuses on dismantling harmful institutional structures while promoting healing and empowerment for Black and brown communities. With the help of the Haywood-Burns Fellowship, Nessa will spend her 3L summer at ROOT (Reclaiming Our Options Together) Legal, an organization representing court-designated victims who want help in dismissing criminal charges and seeking non-carceral alternatives for addressing the root cause of interpersonal harm. After law school, Nessa wants to continue working in criminal defense, participatory defense, and reentry.

Asha Ramachandran (they/she) is a 2L at the New York University School of Law who is passionate about disability justice, harm reduction, and anti-carceral movements. Asha was born and raised in Massachusetts. In college, they were a reporter and editor for their university's student newspaper and wrote extensively about local injustices within the criminal and immigration legal systems in New York. They led a team of volunteers to establish a prison outreach program, connecting pen pals and sending a progressive newsletter to incarcerated people nationwide. Asha volunteered at immigrant justice organizations while in school to connect immigrant community members with legal resources and healthcare during the COVID-19 pandemic. After graduating, they worked as a social worker in a criminal court arraignments, advocating for hundreds of people to be released pre-

trial as an alternative to cash bail. In law school, they founded Courtwatch NYU, an arrangements-watching initiative that puts public pressure on the most carceral judges. They volunteer and coordinate a harm reduction organization as well as solitary confinement advocacy and direct representation. Asha is also a volunteer Parole Advocate and Suspension Representation Project Advocate. They have interned at the Criminal Law Reform Project at the ACLU, the Neighborhood Defender Service of Harlem, and the Office of the Appellate Defender. As a Haywood Burns Fellow, Asha will work at Rights Behind Bars, a prison litigation and movement lawyering organization that advocates for the dignity of incarcerated people. Asha hopes to reduce the harm of the criminal legal system through person-centered lawyering.

Alexandra Sarkis: As the only daughter of immigrants who grew up near the San Diego-Tijuana border, Alexandra recognized that earning a higher education

would not only provide her with economic stability but would also allow her to advocate for her community. These experiences inspired her to pursue a career in public interest law. Prior to law school she worked as a client advocate at a public defenders office in the Midwest helping clients mitigate any enmeshed penalties as a result of their incarceration status. She thanks her clients for teaching her how to be a community lawyer. Last summer, Alexandra interned at two different public interest organizations; Neighborhood Legal Services of Los Angeles and Resilience Force. These opportunities provided her with exposure to public benefits law and workers' rights law. As a Haywood Burns fellow, Alexandra will be at Federal Public Defenders of San Diego, Inc where she will work at the intersection of immigration law and criminal law. Alexandra will also be clerking for the California 4th District Court of Appeal. Her summer experience will allow her to gain crucial skills to help protect immigrants in her community upon graduation.

NLG Foundation Announces the Latest Guild Grants Recipients



Projects previously supported by NLG Foundation Guild Grants. Above, from left to right: NLG Arkansas Chapter hosts a Know Your Rights Car Clinic; University of Toledo NLG Law School Chapter's Criminal Record Sealing Clinic held November 15, 2024; NLG Queer Caucus Erasure Resistance Project's guide to help teachers and students navigate the world of anti-LGBTQ+, legislation and school policies; 2023 Chicago Board Retreat with Kobe from the Chicago Alliance Against Racism and Political Repression

Since 2014, the NLG Foundation (NLGF) has been investing in building the capacity of NLG chapters and committees across the country through the Guild Grants program. To advance the NLG's mission of putting people and the planet before property, the NLGF awards one-time grants to selected NLG entities for educational campaigns and programs that will increase capacity, promote membership, and build the Guild. The Guild Grants enhance the effectiveness of the NLG in supporting liberatory movements. Whether it's by working to tackle injustice at the local level, providing resources to activists, or recruiting members and facilitating deeper involvement, each of our grantees are finding creative ways to build the Guild. In the most recent grant cycle, we awarded grants of up to \$7,500 each to these 11 NLG chapters and committees:

- Chicago NLG Chapter to expand training opportunities for new attorneys to take on protest cases
- Humboldt County NLG Legal Observers for supplies to provide a safe presence of LOs in local actions

- Indiana NLG Chapter for promotional kits and legal observing supplies to serve the cities of Bloomington, Indianapolis, and Fort Wayne
- Louisiana NLG Chapter for the Legal Observer Sweeps Program to respond to the escalating pattern of sweeps and closures of unhoused encampments
- Minnesota NLG Chapter to revitalize the chapter through member outreach and engagement
- New England Law Boston NLG Chapter to update KYR materials with jurisdictional specific information and hold a KYR train the trainer training
- NLG Far West Region for Sweeps Response Skill Shares to support California's unhoused and indigent communities and those who are responding to the unhoused crisis
- NLG Mass Defense Steering Committee to develop a policy and resource guide on how to navigate proactive or defensive litigation
- North Carolina NLG Chapter for a national outreach campaign on Stop Cop City RICO charges to address the ongoing political prosecutions of activists, raise awareness, and provide support to those affected
- Philadelphia NLG Chapter for the Jailhouse Lawyers Letter Writing Project
- Pittsburgh NLG Chapter to engage current and potential members through trainings and events

2025 #Law4ThePeople Convention Recap



The #Law4ThePeople convention in Alabama was the first time that the convention was done in a hybrid model, and the first time we met in person since 2020! A huge thank you to our host, the Alabama Chapter, for their work and guidance in making sure we had a successful convention. During this year's convention, the metaphorical and literal presidential baton was passed, marking the official beginning of Ría's presidency! With new leaders in place, the Guild is beginning a new chapter in the Guild's history. The convention also marked the 20th anniversary of the Alabama Manifesto, which created the The United People Of Color Caucus (TUPOCC). At the convention, founders of TUPOCC reflected on what it meant at the time, the work it has done to shape the Guild, and how TUPOCC can serve as a guide for the Guild's future.

We were also honored to have Noura Erakat and Jaribu Hill as our keynote speakers. Our thanks go to them for sharing their battles, knowledge, and care about the world with us. The convention also could not have happened without all of the presenters and speakers, who shared their experiences in a myriad of fields. Thank you all!

Beyond Bars: Submissions from Jailhouse Lawyer Members

In Response to Beyond Bars Article in Fall 2024 by A. Johnson

By Samuel Barrett in Lincoln County Detention Center, Kemmerer, WY

Dear NLG Reader,

I agree with Antwann Johnson of Missouri in the Fall 2024 issue of Guild Notes that overturning wrongful convictions by pro se litigants is nearly impossible. From the intentional deprivation of access to legal resources and materials - even one's own case records possessed at the institution where the inmate is housed - to the intentional disruption of the ability to prosecute his or her case within the bounds of the post-convictions statutes (moving her or him to another facility when legal deadlines are known to the facility administration to be very near), the wrongfully convicted face adversaries not just in the courthouse setting, but especially from the staff of state departments of corrections, federal departments of corrections, and private prison operators - all of whom have a financial interest in the wrongfully convicted remaining convicted.

As I've networked with organizations such as the Sixth Amendment Project (6AC), the Jailhouse Lawyers Initiative (JLI), and others, I've come to understand that the real issues preventing justice are deeply rooted in the justice system itself, and feature the following components:

1. Reviewing courts have developed case law that conflicts with other case law, even within the same court; this has the perverse effect of providing a legal pathway through which the government's attorneys may usher the courts, regardless of the circumstances of the issue claimed
2. The sheer volume of the relevant case law for any given issue - state or federal - is such that every issue raised by a convicted person - represented by counsel or not - is doomed to failure by one of the case law traps, above
3. The tens (hundreds?) of thousands lines of statutes applicable to each claim type and associated procedural process are sufficient to render the wrongfully convicted unable to even read them all in the time frame limitations codified by AEDPA; this leads to a vast majority of pro se legal filings falling prey to procedural traps
4. The AEDPA itself, with its single federal habeas allowance and truncated time frame, all but completely diminishes the ability of pro se litigants to meaningfully pursue their claims; worse is that the one year time limitation is applied to both state and federally convicted persons, thus denying state prisoners equal protection under the law (as they must first exhaust state level remedies first or risk losing their federal habeas opportunity - in other words, state prisoners must learn both state and federal case law, statutes, and related materials and prosecute their claims to exhaustion in state district courts and supreme courts and then follow that monumental task up with preparing and filing their federal habeas - all within one year's time).

Even if a pro se litigant successfully navigates all of these murky waters, with crocodiles of procedural default and alligators of case law gotchyas lurking beneath the surface, there is no guarantee that reviewing court will fairly adjudicate the issue(s).

The most damning aspect of all of this, though, is a statistical analysis of direct appeal efforts (by those with at-

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torneys and those proceeding pro se). For example, of the 309 total published appeals reviewed, only 11 (3.56%) have been met with any relief whatsoever, and the breakdown of that relief is as follows:

- 3 Instruction Error
- 3 Illegal Search & Seizure / Unconstitutional Traffic Stop / Unlawful Search
- 1 Illegal Sentencing
- 1 Jurisdictional (juvenile/adult)
- 1 Court Abuse of Discretion
- 1 Motion to Suppress
- 1 Improper Testimony - 404(b) Prior Bad Acts

In other words, the WY Supreme Court has found that in every criminal case that went to trial, resulting in a direct appeal in the years 2021-2022:

1. Every defendant enjoyed a speedy and public trial
2. Every defendant enjoyed an impartial jury
3. Every defendant was informed of the nature and cause of action against him/her
4. Every defendant enjoyed the ability to confront witnesses
5. Every defense attorney(s) rendered constitutionally-effective assistance of counsel and presented a complete defense of the defendant at trial and on direct appeal

These are all core Sixth Amendment issues. The same defendants also didn't experience any prosecutorial misconduct, structural, or per se defects in the proceedings that resulted in a verdict of guilt, or court errors. Either the trial judges, state prosecutors, defense attorneys, and all other case-related parties conduct absolutely perfect trials (stop laughing long enough to read on!), or the systems of trial proceedings and of post-conviction relief in WY (and every other jurisdiction, presumably) are seriously flawed. I'm willing to bet on the latter.

Pardon me while I climb onto my soapbox for a moment. I was convicted after a COVID-19 Pandemic-era trial (October 2020) in which: the judge denied public access and allowed witnesses to testify while wearing COVID masks/face coverings; I was unable to consult with my attorneys; a juror was excused mid trial for COVID exposure; two of my attorneys were excused mid trial for COVID exposure; the jury convicted me of a crime I was never even accused of having committed; and my family, friends, and interested members of the community were denied access to the courtroom by court and security staff. I may feel a certain way about all of this. I'm now climbing down from my soapbox.

Trouble Jeopardy

By Samuel Barker, Louisiana State Prison, Angola, LA

Preface: LA law and case rulings are used for examples herein because: 1) All state constitutions (and statutory counterparts) are virtually identical to the 5th Amendment of the US Constitution's Double Jeopardy clause, and 2) LA law and case rulings present a perfect example of the ploys used by all state courts overtime for the subject matter presented herein, which includes mass incarceration and no finality of judgement

The trouble with the concept and policies of Double Jeopardy provisions and Protections (DJP and P) currently is the full erosion of DJP and P in relation to the long-held tradition of punishing recidivism (aka, the act of continuing in crime); a tradition that is entirely illegal, not withstanding that the practice largely contributes to mass incarceration (where a high percentage of new criminal cases are Habitual Offender - HO - cases).

This erosion was set out - as in progress - back in 1956, in a couple of the Yale Law Journal articles, which provide a more global perspective on the historic and social policies behind the Double Jeopardy concept.

“Prohibition against Double Jeopardy found in the Federal and state constitutions presents two distinct policies: that no person should be punished more than once for the same offense, and that no one should be harassed by successive prosecutions for a single wrongful act of activity” (65 Yale L.J. 339).

The current test, the “same evidence” test - “leads not only to unpredictable results, but is slowly eroding a procedural objective which deserves to be upheld”. The “suggested solution” is a same transaction test - under this test, a second prosecution is barred when the proof shows that the second case concerns the ‘same transaction’ as the first.” (58 Yale LJ 513)

After a long and drawn out cat and mouse game of criminal defendants filing various (valid) angles of H.O related DJ claims and the courts literally saying anything to defeat such claims - even the polar opposite of previous rulings, the courts (both state and federal), slammed the door on future reliefs (contending that all arguments have been exhausted) by making their own exceptions to exclude DJP and P from H.O. laws; noting H.O. laws - at the core - cannot be enacted until the constitution’s DJ clause is amended, and that has never occurred, nor will it ever likely occur.

The state and federal DJ clauses are concise and clear, that “no person shall be twice put in Jeopardy for the same offense”. See - U.S. L.A. Constitutional Amendment - 5 - also, LA Constitutional article 1, section 15, and LA criminal code of procedures, article 591.

The problem with these Judge-made exceptions to exclude DJ and P from H.O. laws, is that such exceptions are legally infirm. This is true to the extent that - in example - LA constitution article 3 section 1 (typical of all state and federal laws) gives the Legislature the sole authority to create all manner of laws - including their legislatively-determined exceptions. Simply put, courts are limited to interpreting and enforcing law, and courts exceed their Jurisdiction (usurping the power and authority of the Legislatures; a violation of the separation of powers clause) by making any exception

to any law.

A prime example of a legislatively determined exception to DJP and P is seen (typical in all states) by LA Code of Criminal Procedures, article 591 (The state statutory counterpart to the constitutions Double Jeopardy Clause) following the DJ clause itself

“Except, on his own motion, a mistrial is granted judgement or arrested, or where there has been a mistrial, legally ordered under the provisions of article 775 or ordered with the express consent of the defendant”-this article - nor any other (constitutional or statutory) has any implication at all that DJP and P can be excluded from HO laws which would be contrary to constitutional law.

An historic example of legislative intent is seen in the aforementioned article 591, in which the framers of that article went further than most states (in the 1928 Code), in that they at least attempted to define what a “same offense” is, using the following language:

“That offense formerly charged and presently charged are identical or different grades of the same offense or that one is necessarily included in the other”. This, incidentally, speaks to the (unused) same transaction test.

In premise, Jeopardy attaches in any “proceeding which may result in incarceration”. Black’s Law Dictionary (making DJ a risk-based concept).

Factually, when a person was charged and tried - relevant to former conviction, they were once put in Jeopardy for that particular offense, using that same offense twice - later, and especially in an unrelated case - puts the person twice in Jeopardy for that single wrongful act of transaction.

Here, the practice of punishing recidivism may be viewed as a sort of shell-game, utilized to circumvent constitutional law to engage in the illegal tradition of punishing recidivism.

The core element of the shell game is the H.O. laws themselves, enabled contrary to constitutional law. The aforementioned conflicting case rulings are just another part of the shell-game.

But the most problematic part of the shell game is the attachment of the HO sentence enhancement to the new crime's conviction.

In the first instance, there's no functional relationship between the former conviction and the new crime's conviction. In the second instance, the prior conviction can't be used in the new crime's trial as it only tends to build bad character rather than contributing to any fact in the new case ("Admissibility or the other acts of misconduct involves a substantial risk or grave prejudice to the defendant" - State v Prieur)

The deceptive part of the shell game is: 1) to assert that the HO law is merely an enhancement proceeding, but if it were merely an enhancement proceeding (and legal), a separate statutory law would be unnecessary and to assert that "It is not a crime to be an habitual offender", (State v Bruins) - This is to imply an allegation of recidivism isn't a trial for a new felony.

But factually the HO proceeding IS a trial and trial like in every aspect. A separate "multiple" bill of information (a vehicle to charge crime with) is used to allege a prior conviction. The idea is to put on a case to prove the accused is the one and same who committed the prior - to obtain a guilty verdict as a recidivist - and then to attach the prior conviction caused HO enhancement to the new crimes conviction when it was impossible to use the prior conviction in the new

crimes trial.

In closing, here's an irony (or call it an oxymoron, if you will), if it's not a crime to be an HO, then the immediate response that comes to mind is: "where there is no crime, there can be no time" (think, OJ Simpson, the glove does not fit)

But that contention is belied by the fact "Legislature enacted the HO law to define conduct as criminal" (State v Johnson). Add this reality, to bring the point home, that the HO enhancement is caused by the second use of the prior conviction; take the prior conviction out of the equation of an HO proceeding (trial) and there remains no element with which to prove or punish recidivism.

The question is: who will check (or challenge) the constitutional violating Legislatures and judges with their illegal exceptions that exclude DJP and P from HO law - effectively slamming the door on relief? That seems to be a question that is currently unanswerable. Thus, it seems certain it will take an external coalition to attack the illegality of punishing recidivism (a practice that has never met its purported objective to reduce crime and repeat offenses). In the meantime, the mass incarceration machine churns on, while traditions prevail over law.

Retaliation After Book and Podcast

By Nicholas J. Ely in Nebraska Dept. of Corrections, Lincoln, NE

Imagine waking up one morning to discover that the government has prohibited you from speaking to your significant other. Without warning, you are no longer able to speak with your partner or see them anymore. They're ripped from the fabric of your life. You check your phone but their number is no longer available to call; all of their social media accounts have been deleted and your email is blocked. No matter what you do, you can no longer communicate with them or see them. Really imagine that..as if your loved one becomes a ghost overnight and you're helpless to fix it. No last words, nothing. How traumatizing would this be? How much pain would you feel?

This is what happened to me on November 18th, 2024 when the prison administration removed my fiancée from my phone list so that I could no longer call her and blocked her email, effectively prohibiting all communication between us, then removed her as an approved visitor.

This same day the administration also suspended my mother's email account and blocked another friend of mine. Why did they stop me from speaking with my fiance?

Well, the harassment began in August after I published my book "The Prisoner Manifesto" but the actual retaliatory behavior began the morning my fiance released her first episode to her podcast called "More than an Inmate's Girlfriend". The administration was not happy about it, even though it's just a podcast about love. They said a book is one thing, but a podcast "crossed the line". But it gets worse...

We had planned to get married on Christmas, but the admin went above and beyond their scope of authority to deny our marriage application by claiming the running of a podcast and the publishing of books create a "threat to safety, security, or good order of the institution"; therefore, "you two may not be married." Wait.. what?!

Since when did practicing your freedom of speech become a cause of such retaliation - to prohibit you from ever speaking to your fiance again and deeming your marriage a "threat to the institution"? - I guess when they fear whatever it is that you have to say. But if the administration has nothing to hide, what is there to be afraid of?

We violated no policy or rules, and I never received a misconduct report for any of this - but I have been retaliated against in a major way and threatened to be sent to the hole (solitary confinement) if I "keep it up".

This retaliation occurred simply because my fiance produced a podcast and because I wrote a book - and I have several documents in my possession signed by the warden stating that "publishing books and running podcasts will not be tolerated". Apparently.

But this "knee-jerk" reaction has violated my First Amendment freedom of speech, as well as my human right to be married. A prison's power stems from its ability to operate outside of the public eye from behind the scenes. When no one is watching, they'll do whatever they want to us.

This retaliatory behavior was the "push" I needed to fully dedicate my time to becoming a certified paralegal, or jailhouse lawyer. Nebraska prisons have no "legal beagles" or anybody ensuring our rights remain protected (at least not where I'm housed) so I've taken this responsibility upon myself.

Utilizing the *Jailhouse Lawyer's Handbook* and the *Prisoner's Self-Help Litigation Manual*, I have taught myself the basics to filing a section 1983 lawsuit, but this will be my first job at the giant. I can't let them get away with doing what they've done to myself, as well as others. From witnessing the harassment I've endured since writing a book, most other inmates here have become scared to speak out in fear of retaliation from the administration.

When a prison has "chilled" a person of "ordinary firmness" from utilizing their voice, their First Amendment rights have been violated.

They've tried to take my fiance from me but all that's done is stoke the fire..mine and hers. And for that, I am blessed.

My fiance now has four episodes published, seven completed, and I have nothing but time to publish book after book...working on my paralegal certification.

Being a Prevailing Litigant is Humbling When You are one of a Few

By Geoffrey Reese, Maine State Prison

My name is Geoffrey Reese, and I'm currently incarcerated at the Maine State Prison. I am going to be sharing details of my journey as both an advocate for prisoner's rights and a litigant, consisting of: my tenure as a board member of the NAACP; efforts to enlist the legal services of national civil rights organizations and galvanize public support; spearheading of legislative initiatives; and bringing state/federal civil actions against state agencies and agents while incarcerated. It requires tireless effort to build oneself a prominent network of affiliates and advocates who share mutual interest in social equality, criminal justice reform, and public advocates willing to zealously defend civil/constitutional rights of prisoners. However, the resulting benefit of my having community and legislative ties has allowed me access to people, professionals, and resources that have been pertinent in my pursuit of meaningful change and justice for all.

Shortly after I arrived at the Maine SP upon being sentenced to 29 years for a conviction of elevated aggravated assault and lesser included sentences, I was introduced to the Executive Board members of our NAACP Branch. Thereafter, I was invited to join and accepted a leadership role and held nearly every position on the board during the period of my membership. I forged a great friendship with the regional president of the NAACP, who worked in the Portland branch. She ascended to become a Rep. of her local district of state government, and we have collaborated on several bills, which she has sponsored. Early during my confinement, I also began my pursuit of further education in a tuition-free college program, The Sunshine Lady Foundation, sponsored by Doris Buffet (sister of the well known Warren Buffett) through the University of Maine, Augusta. I also allied with other civic groups that assembled in the prison, eg the Longtimer's and Veteran's group, which has been for the collective benefit of both the groups and prisoner population.

Additionally, in 2016, I was denied the return of my legal materials from the then-Property Officer in the prison, after my materials had been confiscated and

transferred to him for storage and non-punitive reasons relating to an earlier incident. A verbal altercation ensued, where I remained poised and civil. However, I subsequently wrote him a letter that led with policy citations, corroborating my earlier claim that he was wrong for denying me access to the allowable volume of materials that he had refused and withheld. I also rebuked him for his belligerent unprofessionalism and warned him to never speak to me as he did the day before. Upon his receipt of the letter, he fabricated an accusation of "threatening", and I was placed on Emergency Observation Status (EOS) - a form of short-term Administrative Segregation Status, essentially. Consequently, I lost all of my property and privileges for up to 72 hours, after which time I was then to be reviewed by a board of staff members. It was apparent to me that this was retaliation from the Property Office who I had confronted with my articulate written words.

Long story short, after my repeated requests to speak to the Unit Supervisor (the Sargeant) were ignored, I covered my window during Count Time - a non-violent protest of my circumstances. Ultimately, I was pepper-sprayed excessively before I submitted to the security personnel's instructions and was removed from the cell. Afterwards, I was not given the full and proper decontamination recommended by the chemical agent manufacturer. I was taken to the Special Management Unit (SMU, also known as segregation or "seg") and seen by a nurse for a standard screening, where I was denied requested medical and mental health treatment - before being placed on Administrative Segregation Status.

During the several days that I was housed in the SMU, I was denied a shower or requested medical treatment or mental health services. So, I wrote requests to the appropriate departments and staff, as well as filed numerous grievances.

Throughout my journey to becoming a "jailhouse lawyer", I've become familiar with the Prison Litigation Reform Act and its prerequisites and regulatory application to prison(er) litigation. The most important requirement is that a prisoner/plaintiff/petitioner must exhaust the available administrative remedies, i.e., complete the prison's grievance process before filing an appeal or action in state or federal court.

Prior to the described incident, I had contacted the ACLU of Maine on two or more occasions, seeking legal representation for perceived constitutional violations by the custodial agency of the prison (MDOC) and its employees. In each instance, I received a reply from the Legal Director politely declining to take action on behalf of myself and/or others. I gave up on the idea of contacting them ever again for the possibility of them assisting me by defending the very civil rights of others, which they are duty bound to protect.

Coincidentally, and fortunately for me, an attorney friend of mine left her private practice to join the staff counsel of the ACLU of Maine last year, 2017. I had confided in her and shared my frustrations resulting from the repeated refusal of them to assist and defend my constitutional rights. She understood and agreed to intercede by advocating to the legal director on my behalf. She was effective, and the organization took my case pro bono. I entered into a retainer agreement, and they enlisted lawyers to assist them on my case. The complaint was filed that year and consisted of the following claims: 1) an excessive use of force involving pepper spray, in violation of the Eighth Amendment; 2) a failure to decontaminate; and 3) a failure to train (see *Reese v Liberty, et al*)

In September 2021 I finally signed the settlement agreement. It included a monetary payment and other guarantees (I'm bound to an agreement of non-disclosure of the terms) and is subject to the lawful

disclosure upon a proper FOAA request (i.e. request to inspect and/or copy public records, pursuant to the Freedom of Access Act of Maine). I was prepared and looking forward to going to trial and the media exposure and publicity. In short, I didn't plan on settling my case, because I know that it was strong. However, my attorneys gave me their expert opinion, because they are trained to assess risks, and there were some. Mainly, the defendants' defense of "qualified immunity" threatened the likelihood that we would prevail at summary judgement with all or most of our claims. The obvious truth was that, while the desired outcome was more than the agreed terms of the settlement, I had to first secure just compensation for my actual injury over the other principles and interest of others, including the general public. If I was to lose at the summary judgement phase of the litigation and have my case dismissed, all that I wished to occur would be lost. It was a very rational and calculated decision to the variable risk of an unfavorable outcome.

"An injustice to one is an injustice to all". In closing, I'm a devoted advocate and activist behind these walls and in our society, to the extent that I am able. I am committed to doing whatever I can to improve the quality of life here and in every space that I occupy for the underprivileged and less fortunate, for the greater good of America.

A Formula for Success: Criminal Pro Se Defense

By E.C. Theus-Roberts, Pendleton CF, Pendleton, IN

Within the criminal justice community there is a saying any attorney worth their degree knows by memory: A lawyer who represents himself in court has a fool for a client. This, in part, is why criminal defense lawyers invariably try to dissuade clients from self-representation; in legalese pro se (Latin: for oneself). Yet, going pro se is not always a fool's gambit.

My first decade behind bars in CO was contumacious and consequential. I was first sent to administrative segregation (Ad-Seg) in late 2012 for two staff assaults. In the years that followed, 2012-2020, I would average about one new felony charge per year.

Bad experiences with two Denver County (CO) public defenders had left me disillusioned, with a virtual life sentence. I had few other options than proceeding pro se. These seven new cases resulted in one guilty plea, one hung jury, and five dismissals.

I would prefer readers do not follow my example of misconduct, but gather wisdom by and from my experiences. Therefore, here are some practical tips and useful advice for self representation:

The most imperative aspect of pro se representation is self control. When I represented myself at trial in 2017, the smartest thing I did, besides researching related criminal codes, was learn to school my reactions - verbal and nonverbal. Tones of voice, facial expressions, body language can all condemn a defendant as easily as a smoking gun. In this, the prosecutor was my best teacher.

Second most important is making a good presentation. Think of every court appearance as if it were a job interview. Be presentable, professional, and articulate. That means curbing one's enthusiasm for profanity, slang, slouching, and irreverence. The commonly accepted prison/county jail etiquette is not serviceable inside the courtroom.

Now, to some more practical matters. A pro se defendant must know what he/she is defending against. If the charge is introduction/possession of contraband, for example, as one of my dismissed cases in 2018 was, a pro se defendant needs to be conversant on the principal criminal code and familiar with associated/lesser included charges. More than the evidence held against a defendant, the charge(s) dictate what all the prosecuting attorney needs to prove beyond a reasonable doubt. As the responsibility of ensuring the state meets obligatory standards.

Another matter is "discovery" - a file, held by the prosecuting attorney, containing all collected evidence to be used to prove the state's allegations. Discovery rules, like motion and alibi procedures, vary depending on state and jurisdiction. One benefit of proceeding pro se is being provided the discovery in a format allowing comparable accessibility to that of the prosecutor. There must be parity. Whether the district/state attorney has to print out every page or copy the entire discovery to a CD-ROM, a pro se defendant must be given equal access and time to review discovery, by 'time', here it is meant opportunity. This parity is protected by Constitutional Due Process of the 5th and 14th Amendments.

Lastly, legal arguments. What and how you argue is of utmost import. Avoid the irascible urge to dispute every point in court. Not every point of contention is significant for the final verdict. The wrong social security number is a moot point if you are caught on video. Dedicate time to highlighting what all the state failed to or cannot give evidence of. Arguments should highlight notes on the state's case and sow doubt, not annoy the jury nor vex the judge.

I do not make boast of my legal prowess. It came at a heavy, most regrettable cost. In my travails I learned that it is never a question of their [state/prosecutor] version against yours; simply why they are wrong about your guilt. Every success I have greeted in criminal court has come as a consequence of demonstrating what the state could not prove instead of trying to prove my innocence.

I do not advise placing yourself in a position to need these counsels. Still, prison is dangerous and should you find yourself at the accused's table, remember: it is not what you know but what you can prove.

Reprint from Prison Policy Initiative

The Prison Policy Initiative (P.O. Box 127, Northampton, MA 01061) is a national organization that produces cutting edge research to expose the harms of mass incarceration. They send in a quarterly newsletter containing all of their publications and will mail incarcerated people any titles they would like to read. They welcome requests for national or state-level data on a range of issues related to mass incarceration including (but not limited to) probation/parole, prison/jail population data and more.

Bad Behavior: How prison disciplinary policies manufacture misconduct

Prison disciplinary systems are supposed to provide safety, security, and the orderly operation of corrections institutions. In some cases, they're even supposed to aid in rehabilitation. However, our analysis of policies in all state prison systems and testimony from dozens of incarcerated people show these unfair and unaccountable systems are counterproductive, traumatizing, and lengthen prison stays.

By Brian Nam-Sonenstein and Nell Haney / January 2025

Every prison system has a lengthy disciplinary policy laying out the rules incarcerated people must follow, as well as the procedures and punishments they'll face if they don't. If we think of prisons as miniature walled-off cities, then disciplinary systems can be understood as the quasi-legal system within them, governing the daily lives of incarcerated people. These policies are supposed to ensure safety, security, and order by deterring and punishing misconduct. In practice, however, prison discipline is a system of petty tyranny with devastating, long-term consequences. Corrections officers enforce rules arbitrarily, often doling out punishments for mundane behaviors and survival strategies while interrupting access to programming and services that can make a meaningful difference in people's lives. Harsh sanctions are handed down following unfair and unaccountable proceedings wherein it is nearly impossible to defend oneself from the charges.

The end result is a disciplinary system that plays a key role in keeping people in prison longer. Misconduct records discredit incarcerated people in parole and clemency proceedings, while traumatizing disciplinary punishments like solitary confinement increase the chances they'll be arrested again someday in the future. These outcomes are never seen as failures of disciplinary systems; instead they are interpreted as personal failures to live up to the system's expectations. This unquestioning belief in disciplinary systems makes it a foregone conclusion that corrections departments just need more leeway, more money, and "tools" like solitary confinement to force people into compliance.

In this report, we examine the landscape of disciplinary rules and punishments in all 50 state prison systems to get a "big picture" view of how they are designed and how they function as a central aspect of prison life — one that has been overlooked for too long. Using our collection of state prison disciplinary policies and building off our past work analyzing data on these systems and the impact of punishments like fines and fees, we explore the rules, procedures, and sanctions common to most systems. We also surveyed nearly four dozen incarcerated people to get their firsthand experiences because these systems are so opaque and cannot be well understood by reading policy alone. Throughout this report, we've included their insights in blockquotes like this:

Discipline is inconsistent, random, not transparent, capricious, and heavily driven by the egos of staff. Issues of inmate safety are typically ignored.

We found that there are profound similarities between problems with the "free world" criminal legal system and internal prison disciplinary systems. However, prison disciplinary systems are far more unfair and unaccount-

able. In both systems, minor offenses trigger the vast majority of cases. Both systems have procedures that lack fairness, but prison disciplinary processes are missing even the most basic constitutional protections afforded to defendants in the criminal legal system, like the right to legal representation. And both systems are organized around principles that are counterproductive and destabilizing, encouraging further misconduct and punishment instead of constructive and supportive interventions that help people thrive and succeed.

There is one key difference, however: disciplinary systems are entirely administrative, meaning they can be changed much more easily than the criminal legal system. We therefore conclude the report with recommendations that corrections departments can begin to implement immediately. We argue that, by reducing the number of rules, reducing the power of corrections officers to arbitrarily subject people to disciplinary action, adding due process protections, ending the harshest and most counterproductive sanctions, and reducing misconduct records' negative impact on release decision making (such as parole and clemency), we can create ample opportunities to release more people and provide them with services and tools that can actually help them succeed in our communities.

Dozens of rules, many of which seem made to be broken

In the most recent national survey of people in state prison, more than half (53%) reported being written up or found guilty for at least one violation in the previous year. Looking at the policy manuals of state corrections departments, it's not hard to understand why. Each state has a lengthy disciplinary policy that includes dozens — sometimes hundreds — of strict rules that incarcerated people are expected to follow at all times, even when they aren't made readily available. These rules cover an enormous range of conduct, most of which is not illegal outside of prisons. Many rules are so vague that they can conceivably apply to all kinds of circumstances. This includes redundant rules against rule-breaking, such as "violating a rule," "disrupting the orderly operation of the institution," or "disobeying an order." Nearly every incarcerated person we heard from said these rules against rule-breaking were among the most common charges found on disciplinary reports.

There are two rules/charges that are alleged more than anything: A) "Disobeying a direct order" and B) "Out of place." Those two charges are virtually unbeatable. I call them "the baby's cry." The baby cries when it can't get its own way, it's hungry, it's tired, etc. The baby cries even when you can't figure out why. Those charges are written for almost anything.

A favorite rule officers and staff use are abusive language and threats, not standing for count, disobeying orders, and unauthorized area. There is no oversight; if an officer or staff member doesn't like you, they can write up a misconduct for the most frivolous offenses to get your parole taken along with numerous other consequences. Abusive language a lot of time is initiated by staff; if you speak back, they can twist whatever is said and write you up. Same as threatening staff and not standing for count. I've seen this abused, especially [6:00 AM] count: a lot of times you may oversleep and not hear the call, honestly, and you're still written up. How can you be written up when you're literally unconscious?! It's not right. "Unauthorized area" can be so much as you stopping at your neighbors door to ask for a shot of coffee. These offenses are nitpicked daily, and result in a 6 months to a year hit when you see the [parole] board.

As we recently pointed out in the context of probation conditions, forcing people to adhere to a long list of rules enforced using the broad discretion of an officer adds stress to an already stressful situation and makes inadvertent and minor violations practically inevitable. Some states, like Nebraska and Connecticut, have around 50 rules while others, like West Virginia, Washington, and Nevada, have around 100 or more. Some rules are obviously appropriate, such as those prohibiting violence, but many more penalize arguably harmless behavior. Notably, not every rule on the books is enforced evenly (or at all). To give a sense of what rules are common in state prison systems, we sorted some of the most common rules into three categories: (1) rules prohibiting harm

toward other people, (2) rules enforcing “good behavior,” and (3) rules suppressing dissent. In the table below, we’ve also included a column with examples of vague rules that give corrections officers wide latitude to punish people for almost anything. This is not a comprehensive list by any means, but the behaviors below are commonly penalized by state prison disciplinary systems:

Common rules: Conduct typically prohibited in state prison disciplinary policies			
Harmful conduct	Good behavior	Dissent	Vague rules
Rules forbidding physical injury or property theft/ damage	Rules enforcing conformity with an institutional ideal of a 'good incarcerated person'	Rules prohibiting organizing, protesting, or resisting authority	Rules that could be applied to a wide range of circumstances and are open to interpretation
Murder	Any consensual sexual or intimate act	Refusal to work	Disobeying an order
Assault	Drug use and possession (incl. alcohol and tobacco)	Protest	Disrespect
Threatening behavior	Tattoos and body modification	Refusal to submit to a drug test	Lying
Destruction of property	Masturbation	"Frivolous" lawsuits that have been thrown out of court	Interfering with count
Tampering with property	Gambling	Violating rules	Misusing phones
Theft of property	Associating with visitors who have criminal records or gang members without prior authorization		Unauthorized possessions
Sexual violence and abuse	Talking to the general public while assigned to off-grounds/outside crew		Being in an unauthorized area
Extortion, fraud, and bribery	Excessive horseplay		Purchasing, trading, or exchanging items
Stalking	Missing a medical appointment		Using equipment in unintended ways
	Being untidy, unsanitary or unhygienic		Misuse of medical services
			Using abusive language
			Unauthorized meetings

Severity classifications: A veneer of proportionality on a system that punishes everything

Severity classifications apply proportionality to how different offenses are handled. The more severity levels there are, the thinking goes, the more nuance there can be in terms of mitigating or aggravating factors for rule violations. Lower-level infractions may result in warnings, reprimands, probation, “agreements” or informal resolutions, and other more lenient responses.

More severe rulebreaking can lead to a different disciplinary procedure altogether, as well as more severe punishments, placement in more restrictive pre-hearing detention (sometimes called “administrative segregation” but best understood as solitary confinement), or referrals to law enforcement for criminal charges. Our analysis shows that most states organize rules into at least three severity classification levels (low, medium, and high). Washington State has the most with eight levels, while Ohio has none at all. Additionally, some states have de facto severity classifications: Florida and Illinois assign harsher punishments to certain rules but don’t actually spell out severity classifications in their policies.

While classification schemes seem to suggest that departments have sorted rules to ensure that more serious conduct receives a more serious response, a closer look quickly dispels this idea. Each state organizes its rules by severity differently, sometimes grouping together or equating conduct that is in no way comparable. Some examples include:

- Three states (Montana, New Mexico, and Wisconsin) with two-tier classification systems have policies that would punish consensual sex between incarcerated people at the highest severity level alongside offenses like homicide and inciting to riot.
- Tennessee, which has a three-tier system, treats refusal to adequately participate at work or in programming as among the most serious offenses alongside escape.
- Indiana’s four-tier system equates unexcused absences from work with sexual harassment.
- Arkansas’ four-tier system classifies masturbation as among the most serious offenses.

Setting aside the vexing logic of how different states categorize violations, almost all states draw some kind of distinction between “major” and “minor” disciplinary infractions. Even at this most basic level, however, disciplinary systems deal mostly with “minor” violations. According to the 2016 Survey of Prison Inmates, only 9% of people disciplined in the last year (and less than 5% of state prison populations nationwide) received a “major”

violation. This ratio mirrors that of criminal arrests: serious violent crimes account for less than 6% of annual arrests, yet law enforcement uses the specter of “violent crime” to justify further investment in tough-on-crime tactics and mass incarceration. Similarly, prison officials use the small portion of “major” disciplinary violations to defend torturous practices like solitary confinement as essential “tools” for maintaining order. Correctional departments will point to the most severe conduct to justify a disciplinary regime that, for the most part, punishes people severely for minor rule breaking.

In another parallel to the “free world,” rule breaking in prison is also unevenly policed and enforced: women are more likely to be written up than men (58% vs 53% in the 2016 Survey) and are more likely to receive “minor” violations (70% vs 57%). One incarcerated person gave examples of explicit racial and gender dynamics in rule enforcement: in women’s prisons, Black women in particular are frequently policed and punished for their hair-styles or for sharing menstrual products, and male officers frequently write women up for “their mouth” — in other words, for daring to speak back to officers. This corresponds with other research showing that women are more likely to be written up and disciplined for breaking prison rules, and receive disproportionate punishment for minor, subjective infractions like “disrespect.”

Harsh, punitive sanctions with long-lasting consequences

Nine out of ten people (90%) in prison who reported being written up for a violation in the past year in the 2016 Survey of Prison Inmates also reported receiving some form of disciplinary action. These harsh, punitive sanctions, which include solitary confinement, loss of good time credits, fines and fees, forced labor, and lost access to programming and services, are destabilizing and traumatizing. Fundamentally, even in the fairest circumstances, they respond to undesirable conduct by inflicting physical, mental, and financial pain on incarcerated people and their support networks. These punishments are costly in the long run as well: misconduct records make it harder for people to be released via clemency, parole, or early release through the accrual of time credits. Meanwhile, traumatizing people with sanctions like solitary confinement increases the chances they’ll be re-arrested in the future. When disciplinary systems are beyond reproach, incarcerated people shoulder all the blame for poor outcomes, and the “common sense” solution becomes ratcheting up destructive sanctions.

Discipline policies we reviewed included the following sanctions, listed in order of increasing levels of severity:

Warnings and reprimands: In some states, sanctions from disciplinary proceedings (usually for minor infractions) can be suspended with certain conditions. In some circumstances, there can be “agreements,” such as informal resolutions and mediation processes.

Fines and fees: At least 16 prison systems use monetary punishments as a form of discipline. In five jurisdictions, people can face triple-digit fines for a single disciplinary charge. Whether structured as tiered fines or flat “administrative” fees, they are an undue burden; prison is already one big financial sanction for those who are already on the lowest rungs of the economic ladder. When prisons impose these charges and help themselves to the funds in people’s prison accounts, incarcerated people are often left with little to no money for purchasing essential items and services that the prison doesn’t provide. As a result, their mental and physical health suffers, creating a more volatile environment inside.

Restrictions on services or “privileges:” Basic services and “privileges” like access to programming, communications, and recreation are crucial to the health, well-being, and flourishing of incarcerated people. Disciplinary systems are in direct conflict with these supportive interventions. Of people in prison who reported being disciplined in the 2016 Survey, roughly half (53%) lost “privileges” like commissary, visitation, or phone calls. Our analysis of prison disciplinary policies uncovered other examples of restrictions placed on basic day-to-day activities: people can lose access to microwaves, dayrooms/day halls, dining halls, movies and tv, radio, state-issued tablets, gymnasium/recreation including free weights, yard, library, hobby work, school, jobs, and more.

Forced labor: Some states impose mandatory work assignments for people who are found to have committed misconduct. These assignments are typically unpaid even though incarcerated people are charged fines and fees for infractions.

Revoked good time credits: Incarcerated people can accrue “good time credits” which are essentially sentencing reductions earned for good behavior. Disciplinary systems commonly eat away at those gains, lengthening incarceration. One out of every eight incarcerated people (12%) lost sentence-reducing good time credits they had previously earned. In Wisconsin, major infractions can even include an extension of one’s release date beyond the loss of good time: this can include an extension of one’s mandatory release date, a suspension of extended supervision, and an extended release date due to confinement in segregation or lock-in.

Solitary confinement: This form of torture is perhaps the most well-known sanction for disciplinary infractions. People in solitary confinement endure all the other punishments on top of being placed in isolation, including restrictions on services and privileges, loss of good time, and more. In the 2016 Survey of Prison Inmates, one-third (35%) of people who received disciplinary action for their most recent rule violation were ordered to solitary confinement. The Survey also showed prisons rely heavily on solitary confinement for infractions that involve no physical harm, such as “verbal assault.” Even respondents who were written up for things falling into the category “other minor violations” ended up in solitary 17% of the time.

You get a paper you can fill out to request witnesses or representation. The hearing examiner never honors your request and will always give a mundane reason for why. The person who writes you up will sometimes appear in your hearing and literally banter with the hearing examiner. They will email in advance to come up with a sanction prior to even looking at the [misconduct report]. It’s wrong. They have so much power — literally your freedom, life in their hands. Then parole just gets what’s on paper, and gives you hit after hit. Next thing you know, you’re maxing out your sentence for the pettiest, most frivolous of reasons. They need body cameras and outside oversight, especially in rural areas. They’re all drinking buddies. How can we be fairly treated?

Misconduct records: Notably, misconduct records are themselves one of the longest-lasting and most consequential punishments of prison disciplinary systems. Like criminal records, misconduct records follow incarcerated people throughout their time behind bars, and they have far-reaching consequences that impact both conditions of confinement and the possibility of release. Misconduct records are often a major consideration for parole and clemency hearings, housing classification, and program eligibility. When it comes to parole, for example, the existence of a misconduct record weighs very heavily against release, yet a clean record is ignored: researchers have found that, contrary to the expectations of incarcerated people, “rather than good behavior being a major consideration for release [...] only misbehavior is taken into account and serves as a reason to deny parole.” Some policies, like Colorado’s, limit how misconduct records can affect access to work, academic programs, or mental health programs; this kind of policy is very uncommon, but it provides an example of how a disciplinary system can function without some of its most counterproductive features.

Disciplinary processes are unfair and unaccountable “kangaroo courts”

Prison disciplinary procedures are loosely modeled after the criminal legal system, but they leave out many of the rights and protections afforded to the accused in criminal proceedings. Much of the unfairness of disciplinary systems is evident in the policies themselves, but because these systems are so opaque, we turned to our survey of incarcerated people to learn more about how they are experienced.

Nearly every incarcerated person we spoke to said that people are “presumed guilty” from the start. Successfully defending oneself, or winning a reversal on appeal, is practically unheard of. In many cases, people who try to file grievances for unfair disciplinary proceedings or who contest the findings in an appeal are targeted for

retaliation. Even when grievances, appeals, or court challenges are successful, the accused has usually already been subjected to punishments like solitary confinement or loss of services and programming for several weeks anyway. One respondent pointed out that those punishments are not credited toward future incidents, and those days spent in solitary confinement can still be reported to parole boards. In other words, incarcerated people get little-to-no reprieve even when they fend off misconduct allegations; they face immediate sanctions while the misconduct report is under review, and the record of those sanctions can be used against them in the future even if they were not found guilty of the charges.

Getting accused alone is enough to lose your job, be removed from school, be removed from your cell, be placed in [administrative segregation, aka solitary confinement], even before they'd see the official write-up. This (often unnecessary) disruption would often result in collateral damage to property, canteen, or personal relationships. Dismissal of charges would never result in fixing any of this.

Unless a staff member intervenes to have the charges dismissed or vouches for someone's credibility, it's unlikely for someone to get a favorable disposition of the charges. People are usually encouraged to plead guilty with an explanation in exchange for leniency. It is not uncommon, during a misconduct hearing, for the hearing examiner or unit manager to say, "I have to give you something," or — when the matter is decided on credibility — "I can't go against my officers." On the rare occasion that someone does succeed, the misconduct report can be dismissed without prejudice to the officers' discretion to be rewritten and submitted anew.

Disciplinary systems are frequently called "kangaroo courts" because of their basic lack of fairness and safeguards for the accused. Incarcerated people routinely feel railroaded into punishment by this system. To begin with, most of the incarcerated people we heard from said that corrections officers will "stack" as many charges as possible on a disciplinary report, or choose charges that inflate the actual conduct, to both encourage guilty pleas and to increase the chances that at least some of the charges will stick, similar to how prosecutors lay on excessive charges to coerce defendants into guilty pleas in the criminal legal system.

Far too often prisoners will be charged with every rule violation possible. And even if there is a minor infraction that could be used, more often than not the major infraction will be given instead. But the reason multiple are given at once is so something will stick.

[One rule enforced more than others] is refusing a direct order, because this is a "catch all" charge that can be applied to any direction given to an incarcerated individual. It is the most common rule we see on misbehavior reports here. No matter what the incident is (a fight, a movement violation, etc) the refusing a direct order charge is always thrown in there as well. Other rules that are enforced more than others: contraband, smuggling, unauthorized exchange. These charges are often combined to inflate the misbehavior report. For example, if an incarcerated individual is carrying food, a bar of soap, or any other small item for a friend and she gets searched, the misbehavior report will state she was carrying contraband, smuggling, and attempting to exchange it. The innocuous item (soap or food) which normally would not be "contraband" is considered contraband because it is being moved from one place to another. And it is an "unauthorized exchange" because even the attempt to exchange it is a violation of the charge.

If you plead guilty, they give fewer days on sanctions. If you fight the charge, they throw the book at you.

The people who prosecute misconduct allegations are not independent, external third parties but are colleagues and supervisors of the officers who bring the charges. As a result, corrections officers are regularly assumed to be truthful and credible, while incarcerated people are not. Incarcerated people are also prevented from obtaining facts and evidence that would be relevant to their defense: for instance, they may face movement restrictions that impede their collection of evidence. Additionally, corrections departments can and do refuse to provide security camera footage or audio pertaining to the incident at hand. Several people told us that even when they do

provide evidence, they face strict time windows and limitations to do so. Even then, their evidence is discounted by hearing officers who refuse to contradict their fellow officers. In almost every state, incarcerated people in disciplinary proceedings are not offered (in policy or in practice) representation by an attorney or the ability to cross-examine witnesses or to be judged by a jury of their peers — even when they are in a disciplinary process for acts that would be a crime outside of prison. Incarcerated people have no protection from unreasonable searches and there is immense pressure for the person to admit guilt to speed up the process and receive lesser punishments.

Prison disciplinary systems mimic criminal legal systems — but without the due process protections

PRISON DISCIPLINARY SYSTEMS	BOTH SYSTEMS	U.S. CRIMINAL LEGAL SYSTEMS
Few due process protections ✗ No right to legal counsel; in some cases you may have access to a staff or peer assistant ✗ Judged by department staff, though generally not someone involved in the incident or investigation ✗ Low standard of proof required: just “some evidence” ✗ No protection from unreasonable searches ✗ No right to cross-examine witnesses ✗ Very limited ability to appeal decisions	Shared due process protections ✓ Right to advance written notice of the charges against you and written record of the decision ✓ Right to tell your side of the story and present evidence — unless the prison decides this would risk prison safety or operations ✓ Right to remain silent; if the prison system compels you to testify in a hearing, your statements can’t be used against you in a criminal case for the same act (“use” immunity)	More due process protections ✓ Right to legal counsel ✓ Right to be judged by a jury of peers ✓ “Beyond a reasonable doubt” standard of proof ✓ Protection from unreasonable searches ✓ Right to know what evidence is presented against you ✓ Right to cross-examine witnesses ✓ Meaningful ability to appeal decisions

When rule violations break state or federal laws, incarcerated people can be subject to both disciplinary and criminal prosecution. Criminal prosecution is entirely separate and runs parallel to disciplinary proceedings. Corrections departments often refer the most serious misconduct that constitutes lawbreaking (like homicide) for criminal prosecution, but this is very often left up to the discretion of individual corrections officers and administrations. In other words, law breaking is not always referred for criminal prosecution. For example, several incarcerated people we heard from listed sexual assault and harassment as among the misconduct charges they saw enforced the least. That is to say, a lot of violence against incarcerated victims goes unaddressed by the disciplinary and criminal legal systems because of the choices of individual corrections officers. Additionally, because criminal prosecution can happen concurrently, it can effectively punish a person twice, lengthen their criminal record, and possibly extend their sentence to incarceration beyond what they would have faced if punished through the disciplinary system alone. Even if criminal prosecution is declined, dropped, or unsuccessful, prisons often reserve *the right to punish the person administratively anyway*.

There is no independent, unbiased oversight or watchdog agency. Starting with the writing of the report, to the hearing, and the appeal, it’s all based on “discretion” and the beliefs and bias of [correctional] employees. From the writing of the report, a prisoner is guilty. A hearing officer never goes against “my officer.” Unless another officer or employee actually provides testimony/evidence to the contrary. Appeals, even in the face of conflicting testimony (of prisoners) and regulatory or case-law holdings, are routinely denied, affirming the hearing officer’s finding of guilty (of something). Thereafter, one is left with limited time to petition the State Supreme Court. Four months or less.

To make matters worse, there is virtually no internal or external oversight of disciplinary practices. Our review of disciplinary systems found some states have more robust oversight policies than others, including audits, analyses, and reviews of cases and procedures. Notably, we are only talking about what’s written in policy — not whether or how those policies are carried out. In terms of external oversight, court review of misconduct rulings is difficult, limited, time-consuming, and often occurs after a person has already been subjected to punishment.

To begin with, incarcerated people's ability to litigate is hamstrung by the Prison Litigation Reform Act (PLRA). But even after overcoming PLRA hurdles, incarcerated people can only really sue if their punishment was extremely and unusually harsh, prolonged their sentence, or was in retaliation for something they have the right to do. And even then, judges usually defer to correctional authorities. In the case of revoked good time credits, corrections departments need only provide some form of due process and some evidence — rather than ensure full due process and evidence beyond a reasonable doubt — for the judge to uphold the revocation of credits. Judges also tend to consider most routine punishments as not harsh enough to merit court intervention; in other words, conditions have to be extraordinarily and unusually bad, which is a remarkable obstacle to overcome in settings where harsh treatment is the norm.

Recommendations

In my opinion, every prison needs a disciplinary process but it should be enforced evenly, consistently, and fairly. It should allow the individual the freedom of choice and independent decision making. Rules should be made as a way to help and manage a population, not as a way to punish them. Many rules are made as a knee-jerk reaction to one individual who misuses a privilege. One person misuses their toothbrush and now the prison does not allow toothbrushes. One person misuses the mail and now our facility doesn't allow mail from family. Mass punishment is the go-to for prisons across the country and it's no way to manage a human population.

For prisons to operate as intended, they need ways to deal with harmful and dangerous behavior. However, as we've noted, most infractions taking place in prisons today are minor. Their enforcement is often petty and arbitrary, and centers around the discretion of individual officers. They pull people into unfair, unaccountable processes designed for them to lose. They provide a way for prisons to punish people for coping with their conditions, turning shared commissary food and medications like Suboxone into "contraband" when people are hungry or in need of healthcare. They take away the limited programs, services, and opportunities that actually benefit people while punishing them in ways that lengthen their sentences or increase the chances they'll someday return.

Disciplinary and criminal legal systems share many of the same problems, as well as the overarching theory that safety can be achieved through punishment. Both systems emphasize punishment over repair, and stigma over transformation, and in doing so — whether through a criminal record or a misconduct record — heavily stack the deck in favor of failure for years into the future. Since these assumptions are fundamental to the design of incarceration and disciplinary systems, reforming disciplinary procedures can only go so far without addressing the flaws that are inextricable from the underlying theory. However, we can acknowledge that disciplinary reform is not going to "fix" prisons and mass incarceration while still fighting for changes to disciplinary powers that can make the daily lives of incarcerated people less oppressive and remove obstacles to their release. Doing so necessarily involves opening up disciplinary systems to criticism rather than seeing them as blameless systems that incarcerated people can only fail to live up to, not be failed by.

Based on our review of disciplinary policies, the available data showing how discipline is meted out in prison, and the testimonies of incarcerated people, we recommend correctional authorities immediately implement the following changes to their disciplinary systems:

Fewer misconduct rules — especially redundant and vague rules. Prison systems have lengthy lists of rules that incarcerated people are expected to adhere to at all times. While it could be argued that the most serious offenses should be "against prison rules," many of the other rules could be addressed in other ways and do not need to be added to misconduct records. Additionally, many of these rules are so vague and redundant that they just create opportunities for an unfair and abusive system. A far more limited list of rules that focuses only on the most dangerous conduct would go a long way to reduce unnecessary involvement in disciplinary processes, making

the system fairer from the start.

More constructive responses and an end to inhumane punishments, including ending solitary confinement. Even if prisons rely heavily on a rules-based system, not every response to rule breaking has to be harsh and punitive. There's a lot of room for jurisdictions to introduce other, constructive means for preventing and responding to rule breaking. Doing so could even open up examination of other prison practices. Rather than harshly punishing drug use in an environment where little-to-no treatment options exist, prisons could reduce harm and actually provide people with the medical care they need. They could introduce more mediation between incarcerated people, as well as counseling and programming. Encouraging visitation and communication with people on the outside, rather than making it costly and difficult (or removing these "privileges" altogether), could also help reduce the likelihood of misconduct. In short, there's a lot of room for experimenting with a needs-based service approach over one of deprivation.

Limit the influence of misconduct records on release decisions. Having a clean misconduct record has very little, if any, positive influence on release decisions, such as parole and clemency, but having any misconduct on one's record weighs heavily against release. Furthermore, lost time credits and other punishments from disciplinary systems add up to keep people locked up for longer. When disciplinary processes are so arbitrary and unaccountable, misconduct records should mean less, and there's a need to make them less of a deciding factor in release determinations (or at least to consider the proportionality of the misconduct, or to weigh good conduct more heavily).

Institute basic fairness, impartiality, and accountability. Even allowing for the most basic protections and procedures afforded to defendants in the criminal legal system would go a long way to making these systems more fair and accountable. Improving representation in disciplinary proceedings, making it easier to introduce and obtain witnesses and evidence, and reducing conflicts of interest by having prison workers run disciplinary processes would also help. This also extends to review processes; in addition to removing obstacles to court review, grievance processes should also be strengthened to make complaints actually actionable and to take the concerns of incarcerated people more seriously.

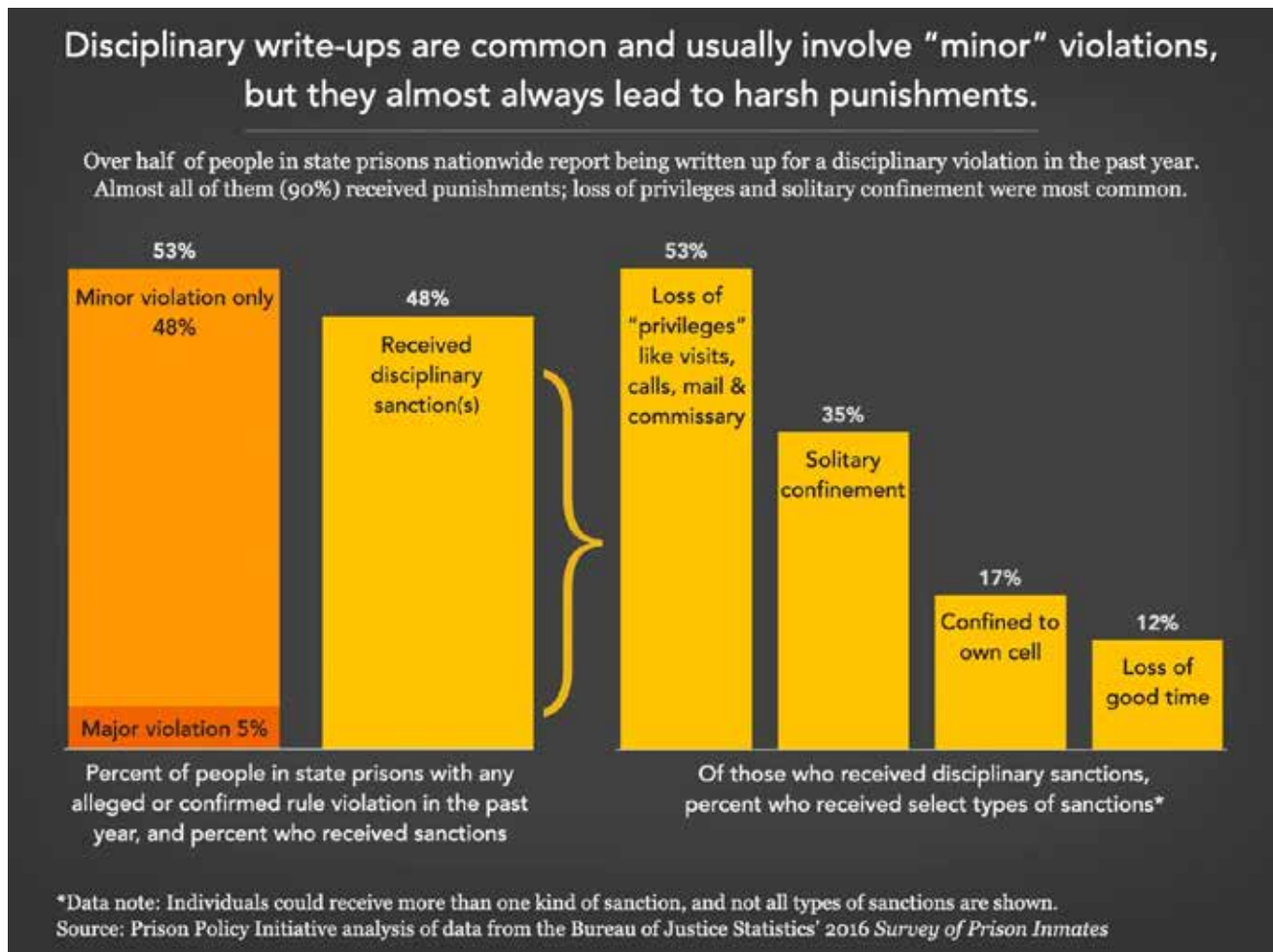
Improve transparency through regular reporting. It's very difficult for the public to get a meaningful view into how these systems work. Some basic records are available through public records requests, but more could be done to provide lawmakers, journalists, advocates, researchers, and others with a clearer picture of who is subjected to disciplinary systems, where and what type of misconduct is taking place, and whether or not disciplinary systems are actually making a positive difference. In addition to reporting, audits by an external agency that has both the power and the will to enforce changes in the best interest of incarcerated people's success is essential.

Subject fewer people to the harms of the disciplinary process by incarcerating fewer people. It's bad enough that the criminal legal system routinely criminalizes and incarcerates people for low-level offenses, but disciplinary systems make that bad situation worse by making it harder for people to get out — and often subjecting them to additional harm and trauma that makes it more likely they'll be re-arrested when they're eventually released. This is especially true in crowded facilities: poor conditions instigate misconduct that can then be used as evidence that people should not be released, exacerbating overcrowding. One way to mitigate the harm of disciplinary processes and their role in keeping prisons full is to drastically reduce the number of people already in the system as well as the number of people being brought into the system.

About the author

Brian Nam-Sonenstein is a Senior Editor and Researcher at PPI. He is the author of several publications, including a report on the misuse of "inmate benefit funds," as well as briefings on the suppression of prison journalism and using decarceration to address understaffing in prisons. In addition to his work as a researcher, Brian plays

a pivotal role in supporting other members of the Research Department in shaping the framing and messaging of their publications in a way that maximizes their impact and reach. Nell Haney is a law student. In 2024, she worked with PPI through a “Law of Incarceration” colloquium taught by Margo Schlanger. For her project, Nell worked on researching, categorizing, and analyzing prison disciplinary policies across the country.



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