

Turning Point: The Newsletter of



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Citizens United for
Rehabilitation of Errants

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From the Chair

by Hedy Harden

The 'Stimulus for Prisoners' Story

As COVID-19 erupted around the world and throughout the U.S., Congress passed the CARES Act, the \$2.2 trillion stimulus bill signed by Trump on March 27, 2020 in response to the economic fallout from the pandemic.

As early as May 19, I began receiving emails from Charlie Sullivan, President of National CURE, talking about stimulus checks for prisoners. I couldn't get too excited about it, thinking, "That will never happen."

But Charlie thinks big. Finally one day he got my attention when he reported that a federal judge had ruled on September 24 that prisoners were entitled to receive the checks. It still seemed too good to be true, but I read up on it. The deadline for paper filing was October 15 at that time, which didn't leave much time for such an unprecedented operation to be implemented.

So I got busy. I started by sending emails to all of our prisoner advisory board members, providing information about filing and asking them to spread the word. I also notified other prisoners. I did my best to make sure that at least someone from each prison received the word. When I received phone calls from prisoners or answered their emails, I made sure to pass on the news.

For weeks I was flooded with emails, calls and letters from prisoners and their loved ones on the outside, wanting information. It was a full-time job keeping up with the requests. My stress level was up, but I felt good about helping to make this happen, even while still wondering in the back of my mind whether the prisoners would actually see their money.

It seems the IRS had been making its own rules. Prisoners who received stimulus checks had been advised to return them, stating they were not eligible. Citing the IRS rules, prisons, jails and detention cen-

ters in some states had confiscated the funds from incarcerated people and returned them to IRS. Some facilities in those states even threatened prisoners with criminal prosecution if they didn't return the money sent to them by the IRS.

Since the 13th Amendment makes prisoners slaves of the state, I figure the legislators who designed the CARES Act probably didn't even think it necessary to exclude them.

In fact, Jonathan Smith, executive director of the Washington Lawyers' Committee for Civil Rights and Urban Affairs, suspects that Congress didn't even explore the issue of economic impact payments going to prisoners.

"They pass laws that are 500 pages that nobody reads," says Smith. "My guess is nobody thought about it."

It remains to be seen how Missouri will handle the prisoners' money. We know they hope to reap a windfall.

Money that some prisoners owe the state for things like court fees and child support will be first on their list. At any rate, much of the money is expected to be spent at the canteen, which in itself creates a lot of improper revenue for the state.

Some checks have come in for prisoners whose families filed electronically, but none of the funds have been made available to prisoners yet. No doubt DOC is doing research and trying to decide how to handle the money as it comes in.

The October 15 deadline for mailed claims was extended to October 30 and then again to November 4, but IRS has notified prisons that they should allow prisoners to file even after the deadline. IRS says all remaining checks will be sent shortly after November 21. I sincerely hope everyone entitled to these funds is able to apply for and receive them.



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As COVID rages through Missouri prisons, prisoners are especially hurting financially because many of their families, often their only means of financial support, have lost jobs during the pandemic-induced recession.

Most Missouri prisoners receive only \$7.50 or \$8.50 a month to live on. This has to cover toothpaste, shampoo, soap and other basic hygiene products, not to mention cleaning supplies not provided by the state. In the coronavirus era, being short of these basic hygiene products can be deadly. ♦

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CURE is *NOT* a service organization. We are an all-volunteer non-profit criminal justice advocacy organization. CURE has NO legal services—please do NOT send legal papers. We advocate for criminal justice reform, but we cannot take on individual cases.

Mission Statement

CURE believes that prisons should be only for those who MUST be incarcerated and that prisons should only exist for the purposes of education and rehabilitation. CURE is a membership organization. We work hard to provide our members with the information and tools necessary to help them understand the criminal justice system and to advocate for positive change.

Bill Challenges 13th Amendment

The 13th Amendment abolished slavery after the Civil War—but not for all. Lawmakers left a loophole, also known as the “Punishment Clause,” within the Amendment that outlawed slavery “except as a punishment for crime whereof the party shall have been duly convicted.” As a result, slavery was not outlawed in prisons.

To this day, legalized slavery has bent the American criminal justice system, fanned the flames of mass incarceration, and stripped millions of people—particularly Black Americans and (other) people of color—of their most basic human rights. Immediately following the ratification of the 13th Amendment, during Reconstruction and accelerating after Reconstruction ended, Southern jurisdictions arrested Black Americans in large numbers for minor crimes codified in new “Black Codes,” like loitering or vagrancy.

Then sheriffs would exploit the Punishment Clause to lease out the imprisoned individuals to work landowners’ fields—in some cases on the very plantations where they had previously been enslaved. This re-enslavement was so prevalent that by 1898, 73% of Alabama’s state revenue came from renting out the forced labor of Black Americans.

The 13th Amendment’s loophole drove the over-incarceration of Black Americans, and especially Black men. This pattern has continued unbroken through the Jim Crow era, the “war on drugs,” and the proliferation of “three strikes” laws, more severe plea deals, and harsh mandatory minimums—all of which disproportionately impact communities of color.

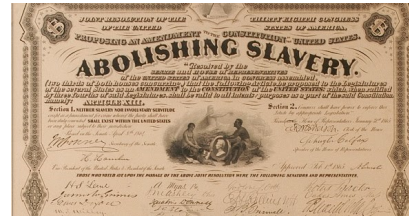
Even today, 155 years after slavery was supposedly abolished in the United States, private prison corporations profit from forced labor, as do companies that sell their goods—which are made by forced labor from un- or under-compensated people—to unsuspecting consumers.

The 13th Amendment’s Punishment Clause is indisputably racist in origin and in impact. There should be no exceptions to a ban on slavery. It is time to end slavery once and for all.

In 1970 we had a prison population of 357,000, while today’s is 2.3 million. According to the Bureau of Justice Statistics, there are 900,000 people engaged in forced labor in the United States. 97% of incarcerated people never had a trial. Instead, many are coerced into plea deals for non-violent offenses. And plea deals themselves are filled with racial disparities.

Finally comes a constitutional amendment, led by Senator Merkley (OR) and Representative William Lacy Clay (MO-1st District), striking the “except as punishment” clause from the 13th Amendment. This amendment would close this loophole that has been used for a century and a half to perpetuate mass incarceration and allow others to profit from the forced labor of their fellow Americans, disproportionately Black Americans and people of color. Work programs and training opportunities for incarcerated individuals could continue—but not without consent.

For further information, contact Tara Stutsman at tara_stutsman@merkley.senate.gov or at 202.306.3891. ♦



Update on COVID in Missouri Prisons

A surge of prisoner deaths in November related to the coronavirus has led to renewed calls on Missouri to take additional steps to protect Missouri’s prison population.

As of December 1, the Marshall Project in partnership with the Associated Press, reported Missouri’s total cases of prisoner COVID-19 at 4,627 and prisoner deaths at 33.

We are no longer able to access the MDOC statistics. At last report on

November 25, DOC spokesperson Karen Pojmann reported 27 prisoners and four DOC staffers to have died from complications of COVID-19. At least 17 prisoner deaths and two staff deaths have been recorded during November. All of the 27 inmates who died were men, she said.

Pojmann said Monday there were 763 active COVID-19 cases among offenders incarcerated across 20 Missouri prisons, and 218 among prison staff. ♦

Election Day Nuggets

November 4, 2020 NY Times:

- ♦ **Florida** voted to raise its minimum wage to \$15 an hour by 2026, getting support from 61 percent of voters.
- ♦ **Colorado's** proposed ban on late-term abortions did not pass.
- ♦ **New Jersey, South Dakota and Arizona** voted to legalize recreational marijuana, and **Oregon** became the first state to decriminalize possession of a small amount of any street drug.
- ♦ **Mississippi** voted to adopt a new state flag that does not feature the Confederate Battle Flag. ♦



A protest in support of a \$15 minimum wage last year in Fort Lauderdale, Fla. via Associated Press

Wrongful Conviction Project Created in St. Louis

The Midwest Innocence Project (MIP) and the MacArthur Justice Center (MJC) of Missouri have teamed up to expand efforts to overturn wrongful convictions.

Attorney Megan Crane, who co-directs MJC with Amy Breihan, will lead the project. Crane previously served as co-director of the Center on Wrongful Convictions of Youth at Northwestern Pritzker School of Law, which was the first organization in the world to focus exclusively on wrongful convictions of children. Before that she worked as a capital post-conviction attorney solely representing people on California's death row.

MIP attorneys will serve as co-counsel. Tricia Bushnell, MIP Executive and Legal Director, remarked, "This new partnership will allow us to

serve even more wrongfully convicted people and reduce the number of years individuals must spend waiting before they see justice."



Megan Crane

To date, 49 people in Missouri have been exonerated, but advocates believe there could be hundreds more innocent Missourians incarcerated for crimes they did not commit. The process of overturning a wrongful conviction is long, difficult and expensive.

MJC co-director Amy Breihan stated, "We recognized the need for more resources on the ground in Missouri to do the critical but labor- and resource-intensive work of investigating and litigating a wrongfully convicted person's actual innocence. We receive countless letters from incarcerated Missourians with compelling evidence that they are innocent."

Crane especially looks forward to

expanding MIP's capacity to investigate and litigate cases of Missouri youth wrongfully behind bars. "Youth are at heightened risk of wrongful conviction and extreme sentencing for a variety of troubling reasons," Crane said.

MIP and MJC have already joined forces in the case of Michael Polite, who was 14 years old when wrongfully charged of murdering his own mother in Hopewell MO. He was convicted and sentenced to life in prison on the basis of since-debunked "arson science" and testimony by police who interpreted Michael's traumatized reaction to his mother's death as suspicious evidence of guilt.

"As an organization, MacArthur is focused on holding the state accountable for state-sanctioned misconduct," said Crane. "This mission was a key motivation for launching our Wrongful Conviction Project."

Information source: St. Louis American Newspaper October 15-21. ♦

A Step Forward

Proceeds from legalized marijuana sales now fund programs that pair mental health counselors with police on certain 911 calls. The program is working in cities along the state Front Range. Colorado SUN 10/28/20 ♦

A note from Hedy: I was determined to get this newsletter to the printer on time (by December 1), but fate intervened on November 25 when I fell and fractured my left foot. It's been like an alternate reality since then, but I'm still fighting to complete the job. Sorry if it's a little late.



A Message from the Other Side of the Fence

by Ricky Kidd

In 1996, I was picked up and pinned for a double homicide that I was not responsible for. I was 21 years old at the time. I was sentenced to 4 life sentences (2 of them without the possibility of parole). Many of you may recall me being right there where you are. Innocent or guilty, it's a bad place to be, without a doubt.

It took 23 years to finally regain my deserved freedom—23 years of missed holidays, birthdays, and other special moments away from family & friends. And though I now walk in freedom one year later, I still feel like I'm missing special moments with many of you who I saw as family and friends for 23 years. For the most part, we were all we had and we had to stick together. Those time are not easy to forget.

Some I've spoken to since I've been home; others I've not; in part because I've been extremely busy, using my voice to raise awareness about the situation you all find yourself in.

I testified before lawmakers earlier this year about compensation for Exonerates in Missouri.

I've spent time getting to know Rich Finneran, who was running for Missouri Attorney General this past November. Sadly he didn't make it across the finish line.

I've spent time interviewing and speaking with St. Louis Circuit Attorney Kim Gardner: about many various issues that concern and directly impact many of you.

On the Kansas City side I've been asked to contribute to a few think tanks surrounding Jean Peters Baker's Office.



That will happen in 2021.

I toured the country this past August for 30 Days straight, over 6,000 miles and 13 states, raising awareness about wrongful convictions. It was my first "Freedom Lap" tour, which will kick off again in 2021.

I've sat on panel discussions with the Pulitzer Center, the ACLU of MO, and I'm currently in talks with PBS to do a full story in 2021 about prison conditions, over-sentencing, and what it's like for prisoners who come home after being gone for so long.

I'm currently working on starting my own not-for-profit, "Derailed Justice." That will be coming in 2021 along with more details for contacting the right people and getting something done. Right now, I plead for your pa-

tience. One man can't do it all, and the team is still being built—close, but not quite there yet.

There's more... so much more, and I share to let many of you know that you might not see me or hear from me but that I am out here working on some of the important issues that matter. I know it's easy to feel forgotten in those places, especially during this time of the year. But you are not forgotten!

As I prepare to wrap this up, let me say that my outcome is not just exclusive to me. Physical Freedom awaits you too! Mean-

while, you can begin working on freeing yourself mentally, emotionally and spiritually. I vow to you that this is what help pave the way for my physical freedom. Certain part of the chains that kept me bound were already broken. A couple of good pulls on the other part, and with good people pulling as well... it all came to fruition. One of my favorite quotes now hangs on my office wall, "Dreams Don't Work Unless You Do!"

Lastly, I wanna say this... hold on to your sanity and faith. And try your best to see the forest from the trees. Tend to your garden while you have the time, and make sure you're plucking away all the weeds. You will thank yourself when it's your turn to be on the other side of the fence. ♦

The Marshall Project

Grim milestone for the pandemic in prisons. Since March, we've been keeping track of how many people in prison, including staff, have contracted COVID-19, and how many have died from the disease. In November new infections among prisoners increased sharply to their highest level since the start of the pandemic, far exceeding previous peaks. As of December 1, at least 225,946 people in prison had tested positive for the illness. A reported 164,869 have recovered. At least 1,568 prisoners nationwide have died from COVID related illness. Cases among staff also continue a troubling rise.

In Missouri, as of 12/1/2020 there were 4,627 cases of prisoners infected with COVID since March according to the Associated Press. Missouri prison staff infected since March totalled 1,616 cases as of 11/14/20 ♦

Short Stuff

- ♦ **New Jersey released more than 2,200 prisoners** to reduce the risks of infection in crowded prisons. (*November 5, 2020, New York Times*)
- ♦ **U.S. prosecutors have declined to pursue** cases against thousands of people who were arrested at demonstrations against police brutality

ty this summer, concluding that protesters were exercising their civil rights.

- ♦ **Republican Senator Mitt Romney of Utah excoriated the president's attempts** to overturn his defeat, saying "It is difficult to imagine a worse, more undemocratic action by a sitting American President."

Kim Gardner's Efforts Continue to Shine Light On Government Corruption

A Jaws of Justice Radio Commentary by Keith Brown El

St. Louis Circuit Attorney Kim Gardner did not set out to be a champion against white supremacy. She just set out to be a good prosecutor, and despite the many attempts to unseat her by judges, police, and other state officials, or to otherwise undermine her authority, the overwhelming majority of the public still thinks Kim Gardner is doing an excellent job. So do other prosecutors across the country.

But being a black woman of integrity and trying to be a good prosecutor have inevitably brought Kim Gardner into conflict with the forces of white supremacy. You see, white people are privileged in this country and the system pretty much views them as being immune from prosecution when it comes to committing murders and other acts of violence against Black as well as poor people and other minorities. This is especially true if a white person who happens to be rich, or is employed as a police officer, is having a conflict with somebody who is black,

So after Patricia and Mark McCloskey came out of their home on June 28 with guns drawn on Black Lives Matter protesters, and threatening to shoot them if they didn't get off "their street," Kim Gardner charged the McCloskeys with a felony, just as she would have done to anyone who would commit such a crime.

But when Kim Gardner did this, the story went viral. How dare she do such a thing? That is what right wing conservatives said.

In this country the general feeling is that the criminal justice system is designed to oppress black and poor people, and one does not take that system, try to turn it around and use it to prosecute "rich respectable white folks" when they become involved in confrontations with those perceived to be "uncivilized black heathens" such as those engaged in

legitimate non-violent protest against injustice.

Immediately Missouri Governor Mike Parson stepped up and voiced his opposition to Kim Gardner's prosecution of this case. And then Parson announced



STL Circuit Attorney Kim Gardner

that he would issue an immediate pardon to the McCloskeys in the event that they were ultimately convicted, even though the McCloskeys had committed a clear violation of the law, which happened to be a felony.

There was even talk of legislation being created to give the governor authority to fire Kim Gardner, who is a public official lawfully elected and later re-elected by 61% of St. Louis city residents. The McCloskeys were even given a spotlight at the Republican National Convention concerning their situation.

It has now been 4 months and 4 days since the confrontation occurred between the McCloskeys and the Black Lives Matter protesters occurred. Because of all the publicity that this incident received, none of this is probably new information to anyone—but the real issue is this:

Missouri has a fairly sizable number of well-publicized cases involving people who should not be in prison—either because they have been wrongfully convicted or because they have proof of their actual innocence. Some of the people are white, but they mostly tend to be black.

Here are a few: **Eric Clemmons, Ken Middleton, Reggie Clemons, Patty Prewitt, Judy Pickens, Keith Carnes, Lamar Johnson and Walter Barton (recently executed).**

Choosing to let innocent people remain in jail or die on death row, while allowing the guilty to go free is wrong, it's wicked, and it is despicable, but it's not surprising. The State knows with absolute certainty that at least some of the people above are not guilty, and their innocence is not even in dispute. Yet neither Mike Parson nor any other Governor before him has ever given so much as one fleeting thought to pardoning any of these people, and they have been languishing in prison for years. Yet the McCloskeys can be guaranteed a pardon before they are actually convicted, even though they are obviously guilty as hell for the crimes they committed.

This is a case that does not deserve to be forgotten. So I withheld doing any commentaries on this matter until the day before the election, because I wanted people to still have this fresh on their minds as they are going to the polls to vote.

Politicians who condone and sanction criminal conduct or even openly violate the law themselves do not belong in the Governor's office or the White House. Haven't we seen and elected far too many politicians like that already? Hopefully tomorrow will be a day when we can do something to change some of that. Let us also hope that tomorrow will be the "last call for alcohol" for those who are drunk off corrupt politicians.

My name is Keith Brown El. Thank you for listening.

Disclaimer: Missouri CURE unapologetically stands for criminal justice reform, and in doing so we insist on our right to provide information to our readers and the public about those who are working towards Criminal Justice Reform and those who are not. It is not our intentions by the publication of this article to endorse or disparage any political candidate or organization, but simply to give voice to the truth. ♦

Scores of former federal prosecutors in Washington, D.C. lent their support to a group of Black prosecutors in the U.S. Attorney's office there who are seeking sweeping changes to fix some of the racial biases in criminal justice systems. *The Washington Post* 10/28/2020

Today, more people are serving life sentences in the U.S. than the entire prison population in 1970.
(The Sentencing Project)

Speech given at St. Louis March for Reparations October 17, 2020:

Reparations Now!

by Angelika Mueller-Rowry

When I volunteered and lived on College Hill (south of O'Fallon Park) in 1974, the area was euphemistically called a "changing" neighborhood, then 85% black. Yes, there were already signs of disinvestment and deterioration, but it was still a **livable** and **vibrant** community.

Twenty-five years later I was **shell-shocked** when I drove through what was now a **ghost town** – hardly anything left but burnt-out ruins, liquor stores, weed-overgrown vacant lots, boarded-up businesses and decaying school buildings "For Sale".

It looked like a war zone, and my first thought was: **What does it do to the human psyche to grow up and live like this, knowing nobody cares how you live – or die?**

Another 20 years later we witness the tragic, **compounding effects of systemic racism and inter-generational trauma**. Now, suddenly, it's considered an "emergency" – but anybody with eyes to see knows the North Side has been in a state of emergency for 40 years while nothing was done but **deliberately** let it bleed to death.

Now, suddenly, the City of St. Louis is taking \$2 million from its emergency fund to pay witnesses to crimes to testify against other people. Such a witness-enticing program can only lead to more wrongfully convicted people, as those with a grudge against someone can easily lie to get the money. \$2 million are earmarked for the same 'Law & Order' poli-

cies that got us where we are today. **Two million dollars!** This money, and of course much more, is direly needed to revitalize the impacted communities, tackle poverty and homelessness, and provide services that stabilize struggling families.

I have a piece of advice for Mayor Krewson and Aldermanic President Louis Reed:

To get to the **source** of the "out-of-

backs of enslaved Africans, who were never compensated for the past four hundred-plus years of their forced labor and suffering.

Exploitation, land loss, destruction of original identity, genocide, state violence and systemic racism continued in chattel slavery's aftermath – and still haunt the present in manifold ways.

People of African ancestry have legitimate claims to reparations, including monetary compensation and the rebuilding of their communities. Reparations are a debt (not a charity!) **owed** by our nation and by its corporate institutions.

Until significant steps are taken to reverse the ongoing neglect and abuses—end police violence and the criminalization of Black communities, eradicate poverty, invest in public education, universal health care, and the restoration of human rights—it will be impossible to repair the continuing damage wrought by the ideology of white supremacy,

which permeates all governing institutions of this country. Leadership on the question of what our nation owes ought to come from the African American community, whose right to self-determination and autonomy to chart the path of healing we fully recognize.

Reparations Now!
Black Power Matters ❖



control crime problem," all you have to do is **LOOK IN THE MIRROR! The real culprits sit in City Hall, Clayton, the State Capitol, and in the White House.**

When demanding REPARATIONS, it is indispensable to remember the following:

The formation of the United States was based on white supremacy. This country was built on stolen land – and on the

Jonathan & Maya Married

Maya Moore spent years fighting to free Jonathan Irons from prison, and he finally was released in July after being exonerated. But their story together was only just beginning. Moore and Irons have since been married, the WNBA star announced in September.

"We wanted to announce today that we are super excited to continue the work that we are doing together, but doing it as a married couple," Moore said on *Good Morning America*. "We got married a couple months ago and we're excited to just continue this new chapter of life together."

"Over the last 13 years we have developed a friendship and just entered into this huge battle to get him home, and just over

time it was pretty clear what the Lord was doing in our hearts and now we're sitting here today, starting a whole new chapter together," Moore said.

Irons was still in Jefferson City Correctional Center when he said he wanted to marry Moore, but told her not to answer then. After he was finally released in July, he didn't wait long to ask the question and finally hear Moore's answer.

"When I got out we were in the hotel room; we had had some friends in the room, it was winding down and we were extremely tired, but we were still gassed up on excitement," Irons said. "It was just me and her in the room and I got down on my knees and I looked up at her and she



kind of knew what was going on and I said, 'will you marry me,' she said, 'yes.'" *The New York Times*. ❖

Resistance Builds Resilience

by Travis Henderson EI

From the time we arrived on the shores of what is now called America, there has always been resistance. It may have been Harriet Tubman leading enslaved people to freedom through the Underground Railroad—or John Brown's raid on Harper's Ferry.

Resistance may have been Ida B. Wells working with the NAACP to launch an anti-lynching campaign, or the thousands of Brothers and Sisters who left the South during the Great Migration.

Resistance looked like Diane Nash leading Freedom Rides through the Deep South, Rosa Parks in the front of the bus, Fannie Lou Hamer at the 1964 Democratic National Convention, and Angela Davis on the steps of the courthouse with a raised fist.



Resistance looked like Medgar, Martin and Malcolm. It looked like Frederick Douglass and W.E.B. DuBois.

Resistance was Thurgood Marshall arguing a case before the U.S. Supreme Court or the Black Panthers serving breakfast to children in Oakland.

Resistance was students registering voters in Mississippi or integrating lunch counters in North Carolina.

Resistance was a Toni Morrison novel and an Aretha Franklin song. Resistance was Romare Bearden's art and Judith Jamison's dance moves.

Resistance looked like Muhammad Ali, Tommie Smith and John Carlos. Resistance was Madame C.J. Walker and Black Pullman Porters. Resistance was the brave and beautiful Nat Turner and those who helped him let Justice take its course.

Today, resistance looks like Colin Kaepernick, kneeling. It looks like Brie

Newsome removing the Confederate flag at the South Carolina Statehouse.



Resistance is young people marching for Trayvon and Michael and Eric, Philando and Sandra Bland.

Our resistance has led to resilience. Because of our resistance, we have had to become resilient, whether in Little Rock or Birmingham or Memphis. We endured and overcame and rose above the brutal atrocities set upon the Brothers and Sisters.

Living while being a so-called Black requires a depth of resilience. It's in our blood. We've had to be resilient while being attacked—at work, at school, at the gym, on college campuses, in Starbucks, in cars, on sidewalks, in our own homes, even in prison! This resistance among oppressed humanity has led to our resilience as a people.

This is Our Legacy and This Is Our Greatness—and we are Still Here!!! ♦

Action at Capitol to protest COVID in state prisons - EXPO/MCU partners with Our Lives Matter on Oct. 15

Tracy Stanton, EXPO/MCU team leader, said, "We have friends and family locked up with COVID-19. Some of them are actively infected, very sick and only being isolated. No one is being treated with humanity, simply as expendable."

The two groups marched on October 15 from the State Capitol to the Governor's mansion, where several people spoke, including Tracy Stanton, Maria Miller of Our Lives Matter, and three other prisoner family members. The Governor's mansion blasted music in an attempt to drown out the speakers' megaphones.

Earlier both organizations wrote to officials at the MDOC and to Gov. Parson requesting that persons who could be reasonably released, should be. Those included persons over the age of 65, those already suffering from debilitating

diseases, those scheduled for release in the next few months, and others.

"Our people are not able to fight for themselves; therefore, we have a responsibility to expose the injustices taking place inside of MDOC," said Stanton.

"We have called, written letters, and filed grievances, yet prison authorities not have deemed it necessary to release anyone or protect the lives of those incarcerated, or even those working at the facility."

"We need to bring attention to all the centers and all the ne-

glect," said Maria Miller, founder and director of Our Lives Matter. "There has also been death in Pacific and major uprisings in Bonne Terre and Pacific because of the conditions. Now Moberly has the virus spreading like wildfire. The uprisings are a result of the way staff are treating those who are incarcerated and suffering after testing

positive. We need to address all the issues in all the prisons!"

"We have heard from several prisoners that the isolation protocols of MDOC are not being followed, that those isolated still attend meals with the general population," said Miller.

"Prisoners state that the staff do not take the virus seriously. We have heard that once isolated, the prisoners' tablets are taken away and thus communication with the outside is being cut off. Prisoners are afraid to admit that they have symptoms out of fear of isolation. We have been told that prisoners are not receiving the supplies to keep the area sanitary, and they have limited access to showers."

Our Lives Matter and EXPO St. Louis also question the ability of MDOC to isolate positive cases because of prison overpopulation. Our Lives Matter is asking why MDOC lags behind other states when it comes to releasing prisoners that are near their out dates.

Continued p.12



Why Our “Democracy” is Still in Danger

by Keith Brown El

We know now, thanks to Donald Trump, that we've got a lot of dangerous people in this society who are mentally sick and suffering from psychological derangement. I'm not talking about people whom we normally classify as being mentally challenged. I'm talking about people easily brainwashed by so-called leaders who intentionally try to mislead folks just to gain political or otherwise strategic advantages (*i.e., people who blindly follow leaders like Trump!*).

Hillary Clinton was absolutely correct by referring to Trump supporters as a basket of deplorables [who are] racist, sexist, homophobic, xenophobic, Islamophobic—you name it.” The only thing Clinton did wrong was to apologize for making these remarks.

Prior to Trump's installation in the White House, these people were just waiting to emerge from the shadows, and it seems like once they did, they multiplied and are almost everywhere now. All they needed was a mentally disturbed leader like Trump to validate their existence by making them feel like it was okay to be the way they are. Once that happened, they were ready to fight to the death to try to keep their leader in power, because they knew that the installation of another leader like him was not likely to happen again for a very long time. Their leader knew it too.

In fact, Georgia Senator Lindsey Graham even said as much when he publicly stated: “If these election results are not overturned, we may never see another Republican president in the White House again.”

Graham is also accused of trying to persuade the Georgia Secretary of State into tossing out tens of thousands of legitimate ballots. Indeed, the madness of tyranny knows no boundaries. The insanity of greed has no limitations. And whatever the reasons these things exist, there is no line that they will not cross.

These are the reasons why Trump's followers don't mind all the continuous lying and all of the other illegal and outrageously unethical things he does. They just wanted him to do whatever it would take for him to stay in power. But even

though Donald Trump's days in the White House are numbered, our democracy is still in danger and hanging by a thread, because in spite of all the outrageously evil and dumb things Donald Trump has done, he unfortunately was still a formidable opponent in what should have been a landslide victory for the other party in a real democracy, and **Trump still has nearly half the people in a record-setting voter turnout on his side!**

But whether Trump is President or not, we must understand that he is not the problem; he is just a symptom and an in-



evitable result of the problem. You see, the U.S. has an incurable disease known as racism. It also has an incurable disease known as injustice. You can recite the *Pledge of Allegiance*, read the *Declaration of In-*

dependence, and argue about due process and equal protection of the law as well as other aspects of the *U.S. Constitution* all you want. But racism and injustice are never going to go away as long as the *United States* continues to exist.

Many people in this country simply do not wish to live in peace and harmony with other cultures, nations and races of people. They never have, and this has always been a problem in this country. Trying to make such people see the necessity of this is truly a job that is never ending.

That is why it is so easy for Donald Trump to do the things he does. It is also why Americans don't need agitators like Trump and those

who follow him trying to stir up hate and exploit it to their own advantage.

We also see that the more we tolerated Trump and his insanity the more quickly and vastly his madness spread throughout the land. We even have people in this country that Trump has made it clear that he doesn't like and doesn't even want them to be in this country. Yet even some of these same people still came out to root for him and his practices every chance they got. This blind devotion to Trump was even espoused by people like “Democratic” Senator Dianne Feinstein.

I think about the black man who told me that he is for Trump because he (the black man) has made \$100,000 since Trump has been in office and that the only thing Joe Biden was responsible for is mass incarceration which sent a lot of black people to prison.

First of all, anything that happens with the economy during the four years of a presidency are things that were already set in motion by a former president. So Trump is taking credit for an economy which he actually inherited from Barack Obama.

Secondly, Donald Trump has made a lot of noise about criminal justice reform and he brags about some of the minimal changes he has made in this area. However, Trump's entire agenda—especially his selection of federal judges—and all of the other things which Trump believes in and stands for are really *anti-criminal justice reform*. In fact these things make criminal justice reform impossible.

As far as Joe Biden is concerned, I am one of those black people who was in prison because of mass incarceration. But there are other ways to fight this unfortunate catastrophe. Biden has admitted that mass incarceration was a mistake. But right now the focus should be on the welfare of this nation, because life as we knew it is in serious jeopardy.

Therefore we can only hope that Joe

Biden's admission that mass incarceration was a mistake may be an indication that he is now in favor of fixing those things in the system that are conveniently “broken” by design. America would not have survived another four years of Donald Trump.

Biden was the only alternative we had. So while I hate what he did in 1994, I am more concerned now about what he is going to do in 2021 and beyond.

Disclaimer: Missouri CURE *unapologetically stands for criminal justice reform, and in doing so we insist on our right to provide information to our readers and the public about those who are working towards Criminal Justice Reform and those who are not. It is not our intention to endorse or maliciously disparage any political candidate or organization, but to simply give voice to the truth.* ❖

**“Democracy
may not exist,
but we'll miss it
when it's gone.”
(Astra Taylor)**

Autumn Events & Activities

September 4, October 16: Smart Sentencing Coalition ZOOM Meetings sponsored by Empower Missouri

October 15 webinar: The Sentencing Project, Wayne State University, and lifers in Michigan discussed the impact of life sentences and the growing movement calling for "Second Look" policies.

October 27: Meeting with Nicole Galloway. Members of several activist organizations, including Missouri CURE, met with Galloway to learn about her plans if elected.

November 24: NAACP virtual Town Hall meeting on COVID-19 in Missouri Prisons (MO CURE co-sponsored). Speakers included Rod Chapel, President, MO NAACP; Amy Breihan, Co-Director of MJC; Tim Cutt, President of Corrections Officers Association; and State Rep. Wiley Price.

December 19: EXPO-SL forum on Discriminating Housing Practices against Returning Citizens: Explore Policies and Attitudes allowing landlords and property managers to deny housing to former prisoners. ♦

Trump Rushes to Expand Execution Methods for Federal Death Row

Trump's Justice Department has rushed to change the rules around federal death penalties as they expedite a slew of scheduled executions in the final days of the Trump administration, also expanding possible execution methods to include electrocution and death by firing squad.

Trump's approved amendment to the "Manner of Federal Executions" rule gives federal prosecutors a wider variety of options for execution in order to avoid delays if the state where the inmate was sentenced doesn't provide other alternatives.

The rule was included among three dozen policy changes President Donald Trump is attempting to push through before the end of his term.



Once the approved amendment is published in the Federal Register -- which could come as early as Friday -- it will become effective in 30 days.

It also suggests that if the state where the crime occurred does not permit death sentences, a judge can designate another state with those laws and utilize their facilities to carry out the execution; 28 states allow federal and state executions. At least nine of those states allow for alternative methods such as electrocution, lethal gas, firing squad and hanging.

It ultimately may be moot since President-elect Joe Biden campaigned to abolish the federal death penalty, and four of the five inmates scheduled for execution already have their manner selected -- lethal

injection.

If all the executions scheduled since July are completed, the Trump administration will have put the most federal inmates to death during a presidential transition since 1884.

Lisa Montgomery, the only woman on federal death row, would be the first to be executed in nearly 70 years. Montgomery was granted a stay on her execution until December 31 after her attorneys were diagnosed with the coronavirus. Her execution date is set for January 12. The Trump administration has rejected Montgomery's request for a reprieve.

Brandon Bernard -- the youngest in the United States to be sentenced to death for a crime committed as a teenager, is the next scheduled federal execution, on December 10. *CNN, 11/29/2020* ♦

Federal Judge Orders Body Cams on Guards at State Prison

In September U.S. District Judge Claudia Wilken ruled that correctional officers at the Richard J. Donovan Correctional Facility in San Diego CA must wear body cams when interacting with disabled prisoners. Corrections officials argued that body cameras are not as useful in prison as surveillance cameras and that it would take far longer to get them up and running.

But Attorney Gay Grunfeld, whose law firm along with the Prison Law Office represents the plaintiffs, said, "Body cameras can bring sound and context to situations that involve the use of force which surveillance cameras cannot. This is a very important order to help put an end to physical abuse and broken bones of those with physical disabilities at this most dangerous of prisons."

The ruling comes in a class-action civil rights lawsuit over disabled inmates' rights under the Americans with Disabilities Act., in which the federal judge found evidence to support allegations of physical abuse of prisoners. Lawyers representing the disabled prisoners had documented widespread physical abuse.

Wilken gave the California Department of Corrections and Rehabilitation five months to get the body-worn devices into use. She also ordered that records from body cameras be preserved. All footage would be retained for a minimum of 90 days, with videos of "use of force and other triggering events involving class members at RJD [to] be retained

indefinitely."

The ruling Tuesday applies to the single prison, but the judge was expected to hear another motion in October that examines evidence of abuses across the state

prison system and seeks to implement the use of body cameras across 35 prisons.

The injunction was granted based on 112

sworn declarations from inmates that lawyers said showed staff "routinely use unnecessary and excessive

force against people with disabilities, often resulting in broken bones, loss of consciousness, stitches or injuries that require medical attention at outside hospitals." *Source: L.A. Times September 8, 2020* ♦



LIBERTY OR DEATH: A Great American Thinking Error?

by Kenneth Bell

For far too long, capital jurisprudence in the United States has been guided by an enormous thinking error which has resulted in the establishment of blatant inequalities in the imposition of death sentences and sentences of life without parole (LWOP).

The United States Supreme Court spawned the thinking error in 1976, first in *Gregg v. Georgia*, 428 U.S. 153 at 188, stating, "The penalty of death is different in kind from any other punishment imposed under our system of criminal justice." In that same year, Justice Stewart doubled down on this fallacy in *Woodson v. North Carolina*, 428 U.S. 280 at 304, opining, "Death, in its finality, differs more from life imprisonment than a 100 year sentence differs from one of only a year or two."

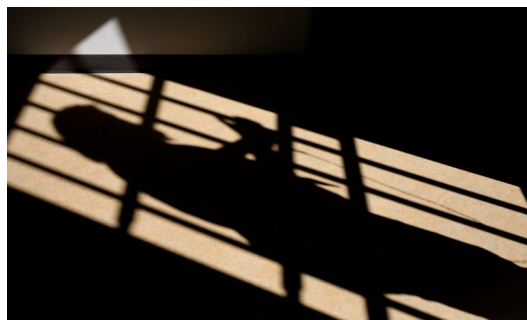
Based on these opinions written by men who have never personally experienced the horrors of a death sentence or a sentence of LWOP, courts and legislatures across the nation began to create special protections for defendants facing death sentences, while those facing LWOP received no more protection than that afforded defendants facing one or two years imprisonment.

In Missouri, some of the extra protections include, but are not limited to the following: a bifurcated trial during which a death sentence may only be imposed after carefully weighing aggravating and mitigating circumstances (RSMo §565.030), the appointment of trial counsel with experience defending clients who have been charged with murder, direct appellate review by the state supreme court (Mo.Const.Art. 5, §3), automatic sentence review, regardless of whether sentencing issues have been preserved for or raised on appeal (RSMo §565.035), the appointment of experienced post-conviction counsel (Mo.R.S.Ct. Rule 29.16), and automatic appointment of counsel in habeas proceedings, (28 U.S.C. §2261).

By contrast, in first degree murder cases where the death penalty is not sought, LWOP is the only available sentence. LWOP defendants are often appointed trial counsel with little or no experience in homicide trials. LWOP ap-

peals are generally heard by the court of appeals. There is no automatic review of any issue in an LWOP appeal, and LWOP habeas petitioners who cannot afford counsel must proceed pro se.

Perhaps the most blatant and egregious display of inequality between the treatment of those sentenced to death and those sentenced to LWOP is the heightened review or "careful scrutiny" of the



record on appeal in death-sentenced cases to ensure that no material errors or constitutional violations have occurred. Former Chief Justice Burger explained that this careful scrutiny in capital cases arises because "the need for treating each individual in a capital case with the degree of respect due the uniqueness of the individual is far more important than in non-capital cases." *Lockett v. Ohio*, 438 U.S. 586, 605 (1978). A fair paraphrasing of Justice Burger's statement is that life imprisonment ending in death is not significant enough to merit careful consideration of the record and issues on appeal, and does not give rise to "the need for treating each individual... with the degree of respect due the uniqueness of the individual."

As a result of this inequity, it is estimated that up to 20% of non-capital cases are reversed in federal appeals, while the reversal rate for capital cases is approximately 68%, Michael Heise, "Federal Criminal Appeals: A Brief Empirical Perspective," *Marquette Law Review* 93 (2009): 832. According to another report, "The rate of success for appeals from denial of habeas corpus relief in non-capital cases typically is estimated at 7% or less.

The comparable rates for capital cases is startlingly different. Between 1976, for instance, when the Supreme Court

restored the death penalty in *Gregg v. Georgia*, and in 1983, the federal court of appeals - when they reached the merits of the petition on habeas review - had decided according to one study more than 73% of the capital cases in favor of the death sentenced prisoner—"Background Report on Death Penalty Habeas Corpus Issues Prepared for the American Bar Association Criminal Justice Section's Task Force on Death Penalty Habeas Corpus," *American University Law Review* 40 (1990): 52, 109. Seen from this perspective, a prisoner sentenced to LWOP is much more likely to die in prison than one sentenced to death by execution.

The statements of the Supreme Court in *Gregg* and its progeny, that "death is different" and therefore deserving of greater protections, also fail to acknowledge that LWOP by its very nature is a type of death sentence. Unlike a sentence of five or ten years during which a defendant MAY die of some unforeseen circumstance, LWOP, like execution, DEMANDS the death of a prisoner before it can be satisfied.

Although Judges and Justices may be adept at handing down sentences, the real experts on the comparable severity of sentences are we who have been sentenced. How many thousands of life-sentenced prisoners have committed suicide as a means of escaping LWOP? Each one of them bears witness against the fallacious idea that 70 or 80 years of imprisonment, isolation, and dehumanization ending in death is somehow infinitely better than fifteen minutes on the executioner's block. Their "dying declarations" are more credible than the *Gregg* and *Woodson* Justices who never served any prison sentence.

For example, in 1999 my friend committed suicide by self-suffocation at the Potosi Correctional Center. He, like I, had been sentenced to LWOP as a teenager and could not stand the thought of 70 to 80 years of misery—many of those years too old and frail to defend oneself—followed followed by a lonely death.

More recently (ERDCC 2018) I witnessed an LWOP inmate leap from a second story walkway with a noose around his neck. He was almost decapitated.

See *Liberty* page 11

Liberty from p.10

In my 30+ years of imprisonment under a sentence of LWOP I have come to understand full well that it is a living death sentence, and irrespective of any rehabilitative processes that I may have undergone, I am banned from human life. I am destined at some future point to be dumped unceremoniously into an unmarked grave by faceless, nameless prison officials. Yet I received no more protections in my trial than a defendant who was tried for auto theft.

In direct contradiction of Gregg and its progeny, American Revolutionary Patrick Henry, famously declared, "Give me liberty or give me death." In these few words Patrick Henry expressed the preference of the entire first generation of Americans to die rather than be subjected to a life without liberty.

To be fair, the Supreme Court has not been monolithic regarding the "death is different" theory. In *Gideon v. Wainwright*, 372 U.S. 335, 349 (1963) the Court noted the notion "that deprivation of liberty [is] less onerous than deprivation of life [is] a value judgment not universally accepted." More recently, in *Graham v. Florida*, 130 U.S. 2011, 2017

(2010), the Court noted that LWOP sentences share characteristics with death sentences that are shared by no other sentences. However, besides providing some relief for juveniles, the Court has taken no corrective action.

While racism is not the subject of this article, it pervades every corner and crevice of American society. Therefore, I would be remiss if I failed to point out that, while comprising only 14% of American society, Blacks represent



56.4% of LWOP-sentenced prisoners. See Ashley Nellis and Ryan King, "No Exit: The Expanding Use of Life Sentences in America" (*Sentencing Project*, July 2009, 13).

While it is a good sign that so many are calling for systemic reform to the criminal justice system, I pray that we do not overlook the brutality perpetrated upon black Americans by white prosecutors who often seek to convict blacks, not merely of the correct degree of an offense, but of the highest possible degree, even if the evidence does not support such a conviction. In Missouri, all persons convicted of first degree murder and sentenced to LWOP or death have been convicted of the same crime under the same statute, i.e., §565.020. Each of these

individuals are required by the terms of their sentences to die as a prerequisite to completion of the sentence. Missouri's practice of denying LWOP prisoners the same protections afforded death-sentenced prisoners is not in the spirit of the Fourteenth Amendment's Equal Protection Clause, which forbids any state "to deny any person within its jurisdiction the equal protection of the laws."

In light of the recent developments surrounding the police murder of George Floyd, many are now acknowledging a need for systemic change in the criminal justice system. Defense and appellate counsels, organizations such as the MacArthur Justice Center, and public servants such as the Missouri Public Defender System must litigate this issue before the courts: That it was erroneous to establish a system of unequal treatment of LWOP-sentenced defendants and death-sentenced defendants on the basis of the flimsy theory that a sentence of death is substantially different from LWOP in its severity, because both sentences forfeit the life of the one sentenced.

Death by execution is substantially different from LWOP—not because it is so much more severe, but because of the extensive list of extra protections afforded death-sentenced defendants. As such, defendants sentenced to LWOP in Missouri have systematically been denied the right to equal protection of the laws. ♦

Judge Orders Revamp of Missouri's 'Unconstitutional' Parole System

In a decision that could reduce Missouri's prison population, a federal judge has ordered the state to overhaul its parole system.

The order, spurred by a class-action lawsuit in 2017 by state prisoners, requires the MDOC to implement over two dozen reforms related to the agency's unconstitutional handling of parole revocation proceedings. The lawsuit alleged that the current practices resulted in the unlawful re-incarceration of thousands of people each year.

"These reforms should result in fewer people thrown back behind bars, and slow the churn at prison reception centers," said Amy Breihan, co-director of the **MacArthur Justice Center**.

The 55-page order from U.S. District Judge **Stephen R. Bough** found the Department of Corrections has been

intentionally failing to provide state-funded counsel to eligible parolees. The court ordered the department to ensure all eligible parolees have an attorney appointed for any proceeding to move forward.

Secondly, MDOC previously would not disclose evidence against an individual until the hearing; officials are now required to provide evidence at least five days prior to a revocation hearing.

The court also wants the state to move faster on revocation hearings that have previously resulted in parolees waiting hundreds of days in detention.

"Having reviewed the evidence

presented at the hearing and in the parties' briefing on the matter, the court finds constitutional deficiencies in the current parole revocation process remain and issues this order to remedy such due process violations," Bough wrote.

"Countless parolees are re-incarcerated every year while being denied their constitutional right to counsel during the process, said Megan Crane, who also serves as co-director of the MacArthur Justice Center's St. Louis office.

"That's critically important to curbing the spread of COVID-19 in Missouri prisons and surrounding (often rural) communities, whose **hospitals are already at capacity**," Breihan said. ♦





Established 1990

Fight Mass Incarceration—and CURE the Madness!

Disclaimer: The articles in this newsletter are for informational purposes only. Nothing in this newsletter is intended to “promote, incite or advocate disorder or the violation of state or federal law, nor promote, incite, advocate, facilitate or otherwise present a risk of lawlessness, violence, anarchy or rebellion against a government authority”...or any of the other ridiculous excuses that the Department of Corrections frequently uses to reject Turning Point, the newsletter of Missouri CURE, simply because they don’t want prisoners to have access to the information we are trying to provide.

Many thanks to the following people for their generous contributions: Lemoine Carter, Steve Hoffman, Jonathan Pearson, James Robnett, Julian Rowland, Jacob Sipes and Marvin Stewart El. Once again, our deep gratitude to Carol Corey, our super-giver, for her continued contributions and support.



Thank you all!

Capitol rally from page 7

We are asking that:

- ♦ The Missouri Health Department inspect the prisons to make sure that proper COVID-19 safety protocols are being followed including accurate and timely testing
- ♦ Prisoners have P.P.E. (Personal Protective Equipment)
- ♦ MDOC release the chronically ill
- ♦ MDOC release those with an out date within 6 months
- ♦ Visitation be resumed with safety protocols or video visitation
- ♦ Those who have been denied parole in the last five years by an inadequate parole board receive a new hearing.

Contact Maria Miller at 314-467-8341 or MCU-EXPO@mcustl.com. EXPO-MO is a part of Metropolitan Congregations United (MCU). *Information Source: St. Louis American* ♦

HEP C Settlement

Amy Breihan of MacArthur Justice Center has received notice of final approval of the Missouri Department of Corrections HEP C settlement on October 28 by the Federal Court. All class members should receive notice of this final approval. The entire settlement can be viewed at MoHEPCsettlement.com.

Join Missouri CURE!

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Donations to Missouri CURE are gratefully accepted and will be used to benefit prisoners and their families and loved ones.