LITIGATING CIVIL RIGHTS VIOLATIONS BY FOR-PROFIT PRIVATE PRISONS

By

Bill Trine[1]

Introduction

Civil rights litigation against the for-profit prison industry is relatively new because of the re-birth of privately owned and operated prisons. Although the law governing Section 1983 civil rights litigation against private prisons is basically the same as litigation against government-operated jails and prisons, there are some differences in both law and litigation strategy, which makes private prison litigation more appealing. The prison system in the United States exists to punish and rehabilitate. Private prison corporations exist to make a profit by cutting costs and increasing revenues. This fundamental difference in using prisons to maximize profits and minimize costs resulting in death or serious injury to inmates can provide motivation for a jury's assessment of enhanced punitive damages. This article will focus on some of the differences in litigating against a private prison. The history of private prisons should provide amply motivation to pursue justifiable litigation.

The Re-Birth of the Private Prison Industry

When the slaves were freed following the Civil War, southern states, starting with Mississippi, began enacting new criminal codes, the so-called "black codes" designed to criminalize non-violent behaviors in order to round up the former slaves and lease them to private industry as slave labor for reconstruction of the South. This also provided a steady supply of workers to the same plantations that had previously used slave labor, but those former slave owners had a property self-interest in keeping their slaves alive. Not so with plantation owners and other private contractors who leased prisoners and worked them to death knowing that newly built private prisons would continue to provide a steady supply of black prisoners. Southern states solved their freed slave and impoverished tax-base problem in one fell swoop by filling newly built private prisons with former slaves and permitting the private prisons to lease the prisoners to private contractors and plantations for a profit knowing they would be worked to death and knowing there was a steady supply in reserve. This outrageous and inhuman system prevailed until the public could no longer stomach it and a new movement for penal reform resulted in private prisons being outlawed in the early 1900's.[2]

So why do we again have private prisons? States and the federal government began enacting legislation guaranteed to fill our prisons to overflow capacity and require that more new prisons be

---

[1] Bill Trine is a noted trial lawyer, author and teacher. He is a past president and founder of Trial Lawyers for Public Justice, a public interest law firm headquartered in Washington, D.C., and a past president of the Colorado Trial Lawyers Association, which honored him with the first Norm Kripke Lifetime Achievement Award in 1996.

[2] The Prison Payoff: The Role of Politics & Private Prisons in the Incarceration Boom," Western States Center & Western Prison Project, by Brigette Sarabi & Edwin Bender, p. 1 (Nov. 2000).

built without a tax base for doing so. We are all familiar with those laws requiring longer sentences, targeting drug use and immigration violations, three strikes and you're out, mandatory service of 85% of a sentence, etc. As a result, our jail and prison population has ballooned from 300,000 to 2.2 million since 1980.[3] To solve the economic consequences of building more new prisons than schools, President Reagan in 1984 pushed for a greater privatization of government services including the use of private prisons to be financed by private industry. The idea caught fire and while the issue was being debated in California, Tennessee and Mississippi became the first states to again allow the use of private prisons.[4] Since 1985, the number of private prisons has grown from five to 150.[5]

Despite this unbelievable prison growth, there has been a steady decline in non-violent crime for the last ten years, but we must keep our prisons filled to supply corporate America with cheap labor. From 1980 to 1984, the number of inmates employed in prison industries increased by 358% and sales of prison-made goods grew from $392 million to $1.31 billion and by the year 2000, to nearly $9 billion in sales. More and more industries have downsized their workforce and substituted cheap prison labor. A plant in Austin, Texas, that assembled computer circuit boards was closed and the work moved thirty miles away to a prison in Lockhart operated by a private corporation.[6]

As of January 2000, 28 states have authorized the use of private prisons and only two states have prohibited the use of private prisons.[7] This is a growing industry dedicated to making a profit off of human merchandise by cutting the cost of food, medical care, services and programs, and by understaffing prisons with poorly trained, cheap labor. The result is flagrant civil rights violations, which flourish because very few are litigated for lack of counsel. However, more lawsuits should be and could be successfully litigated against the private prison industry. Although tort claims and Section 1983 civil right violations brought against federal and state-operated prisons are restricted by qualified immunity and the Federal Prison Litigation Reform Act (PLRA), these defenses are often not available in litigation against private prisons.

The theories of liability and defenses available depend on whether it is a state prisoner or a federal prisoner bringing the action.

Privately Operated State Prisons

A. Theories of Liability

1. State Common Law and Statutory Tort Claims.

---

[3] *Prison Nation: The Warehousing of America's Poor,* by Tara Hereviel and Paul Wright (Routledge 2003), p. 1.
[4] *Id.,* Note 2.
[5] *Id.,* Note 3 at p. 3.
[6] *With Liberty for Some: 500 Years of Imprisonment in America,* by Scott Christianson (Northeastern University Press, 1998), p. 290.
[7] *Id.,* Note 2, at p. 1.

Private prison corporations can generally be sued for state common law and statutory torts just as any other corporation.[8] Accordingly, state governmental immunity statutes with restrictions on damages and notice of claim provisions generally are not applicable. Further, most provisions of the Federal Prison Litigation Reform Act (PLRA) clearly do not apply to state law claims brought in state court.[9] Further, a state law action filed in state court and removed to federal court by defendants is not a "federal civil action" within the meaning of the PLRA. See, *Mitchell v. Brown & Williamson Tobacco Corp.*, 294 F.3d 1309, 1316 (11th Cir., 2002).

2. Section 1983 Civil Rights Claims

Private corporations operating state or local prison or jail facilities may be sued under 42 U.S.C. §1983.[10] Qualified immunity is not available as a defense in a Section 1983 claim brought against privately employed prison guards and their corporate employer.[11] In explaining why private prison guards, unlike those who work directly for the government, do not enjoy immunity from suit in a Section 1983 case, the Supreme Court reviewed the history of private prison abuse in the 19th century which gave rise to common law liability stating, "we have found no evidence that the law gave purely private companies or their employees any special immunity from such suits."[12]

Most prison physicians are private practitioners working under contract to the state. As such, while they are liable for constitutional violations, some courts have held that they have no right to the affirmative defense of qualified immunity, e.g., *Hinson v. Edmond,* 192 F.3d 1342 (11th Cir. 1999).

Privately Operated Federal Prisons

A. Theories of Liability

Although state prisoners can pursue a Section 1983 claim against private contractors who are not entitled to a defense of qualified immunity, federal prisoners cannot bring an

---

[8] See, e.g., *Adamson v. Correctional Medical Services,* 359 MD. 238, 753 A.2d 501 (2000) (negligence suit against prison's private medical provider); *McDermitt v. Corrections Corporation of America,* 814 P.2d 115, 117, 112 N.M. 247 (App. 1991) (private prison corporation may be sued for negligence resulting in deprivation of rights secured by federal and state constitutions).

[9] See, e.g., 42 U.S.C. §1997e(a) (exhaustion requirement applies to actions "with respect to prison conditions under Section 1983 of this title, or any other federal law"); §1997e(e) ("physical injury" requirement applies only to a "federal civil action"); §1997e(d) (attorney fee restrictions apply only to cases "in which attorney's fees are authorized by §1988 of this title)."

[10] *Correctional Services Corp. v. Malesko,* 534 U.S. 61, 71 n. 5 (2001); *Natale v. Camden county Correctional Facility,* 318 F.3d 575 (3d Cir. 2003) (reinstating §1983 claim aganst jail's private medical provider).

[11] *Richardson v. McKnight,* 521 U.S. 399, 117 S.Ct. 2100, 138 L.Ed.2d 540, 1997 U.S. LEXIS 3866.

[12] *Id.,* Note 11.

implied damages action (Bivens claim) against a private corporation under contract with the Bureau of Prisons. *Correctional Services Corp. v. Malesko,* 534 U.S. 61 (2001).

Although a federal prisoner may not sue a private prison corporation, employees of the private prison can be sued under *Bivens v. Six Unknown Fed. Narcotics Agents,* 403 U.S. 388 (1971).[13]

Some states have adopted a "little PLRA" that applies to prison litigation in their state courts. But some of these do not apply to litigation against private entities.[14]

Although a federal prisoner may not sue a private prison corporation itself under Bivens, a prisoner may sue the corporation directly in tort. *Correctional Services Corp. v. Malesko,* 534 U.S. 61 at 72-74 (2001). A federal prisoner may also sue the United States under the Federal Tort Claims Act, join the corporation as a defendant, and ask the court to exercise supplemental jurisdiction over the claim against the corporation.[15]

In summary, whether a Section 1983 action can be brought against a private prison and its employees free of the defense of qualified immunity depends on whether it is a state prisoner or federal prisoner bringing the action. If a state prisoner brings the Section 1983 claim against a private prison and its employees, qualified immunity is not a defense (*Richardson* case), but is available as a defense when a federal prisoner brings a Section 1983 claim (*CSC v. Malesko).*

Lawsuits Not Subject to the Federal Prison Legal Reform Act (PLRA)

As previously indicated, state common law and statutory tort claims are not subject to the PLRA. In addition, many people in federal custody who are held in private detention facilities are actually immigration detainees, rather than persons facing or convicted of criminal charges. Such people are not "prisoners," so the PLRA does not apply to them.[16] In addition, the PLRA applies only to plaintiffs who are prisoners at the time suit is filed. Those who have served their sentences and been released are not subject to the PLRA.[17] If the suit is filed before the plaintiff is released, but he is released while the suit remains pending, the Eleventh Circuit has held that the plaintiff is covered by the PLRA's requirements because the determination of its applicability or inapplicability is made at the moment of filing. *Harris v. Garner,* 216 F.3d 970 (11th Cir., 2000). Additionally, the PLRA does not apply to detainees who have been committed civilly rather than criminally under things like California's Sexually Violent Predators Act. *Page v. Torrey,* 201 F.3d 1136 (9th Cir., 2000).

---

[13] *Agyeman v. Corrections Corporation of America,* 390 F.3d 1101, 1103-04 (9th Cir. 2004).

[14] See, e.g., *Adamson v. Correctional Medical Services,* 359 MD 38, 753 A.2d 501 (2000) (Maryland's Prisoner Litigation Act does not require prisoners to exhaust administrative remedies before filing a negligence suit against prison's private medical provider).

[15] *Id.,* Note 13 at pp. 1103-04.

[16] *Id.,* Note 13 at pp. 885-86; *LaFontant v. INS,* R.3d 158 (D.C. Cir., 1998).

[17] *Greig v. Goord,* 169 F.3d 165 (2d Cir., 1999); *Janes v. Hernandez,* 215 F.3d 541, 543 (5th Cir., 2000); *Kerr v. Puckett,* 138 F.3d 321, 322-23 (7th Cir., 1998); and *DOE v. Washington County,* 150 F.3d 920, 924 (8th Cir., 1998).

The PLRA also does not apply to wrongful death cases brought by a prisoner's estate or next of kin. *Greer v. Tran,* 2003 W.L. 21467558 (ED LA, 2003).

PLRA Restrictions on Prisoner Lawsuits Against Private Prison Industry

With the exceptions described above, Section 1983 claims by prisoners, whether filed in state or federal court, may be subject to the PLRA,[18] which drastically limits the remedies for all sentenced inmates.

A. Exhaustion of Remedies

The most significant limitation of the PLRA is its requirement that "administrative remedies" be exhausted before Section 1983 prison litigation may be brought. Although the statute limits that requirement to "prison conditions" cases, every suit a prisoner can file against prison officials is considered a "prison conditions" case and therefore the exhaustion requirement applies. *Porter v. Nussle,* 534 U.S. 516 (2002); *Booth v. Churner,* 532 U.S. 731 (2001). Further, "the failure of a state to adopt or adhere to an administrative grievance procedure shall not constitute the basis for an action. . ." 42 U.S.C. 1997e(7)(a). However, the Sixth Circuit intimated that an allegation that exhaustion of administrative remedies was precluded for some reason, might permit an inmate to sue under Section 1983 without having exhausted administrative remedies.[19]

The courts are in agreement that the exhaustion requirement is not a jurisdictional one. It concerns only the timing of the action. *Wyatt v. Leonard,* 193 F.3d 876, 878-79 (6th Cir. 1999); *Perez v. Wisconsin Dept. of Corrections,* 182 F.3d 532 (7th Cir. 1999); *Tucker v. McAninch,* 162 F.3d 1162 (6th Cir. 1998). Therefore, "district courts have some discretion in determining compliance with" the exhaustion requirement. *Wyatt v. Leonard, supra at 879.* Accordingly, it is not necessarily required that the prisoner have used the particular procedural devices prescribed by state prison regulations for exhausting her administrative remedies so long as she has by some method brought her claims adequately to the attention of the appropriate officials. *Hock v. Thipedeau,* 238 F. Supp. 2d 446 (D. Conn. 2002) (Toettel, J.). Moreover, administrative remedies are exhausted when the officials in charge of the prison grievance system refuse to provide the inmate with the system's required grievance forms. *Mitchell v. Horn,* 318 F.3d 523 (3rd Cir. 2003).

Administrative remedies will be deemed to be exhausted when a grievance has been filed and the time for responding has expired without a response.[20]

---

[18] Prison Litigation Reform Act of 1996, 42 U.S.C. 1997e.

[19] *White v. McGinnis,* 13 F.3d 593, 595 (6th Cir. 1997). The Eleventh Circuit disagrees and imposes the requirement even when it appears that the relief available through an administrative appeal is not "plain, speedy and effective." *Alexander v. Hawk,* 159 F.3d 1321 (11th Cir. 1998). The exhaustion requirement does not, however, extend to a requirement of pursuing the claim first through the state courts. *Jenkins v. Morton,* 148 F.3d 257 (3rd Cir. 1998); *Pozo v.McCaughtry,* 286 F.3d 1022 (7th Cir. 2002).

[20] *Powe v. Ennis,* 177 F.3d 393 (5th Cir. 1999); or if the prison has failed to provide the inmate with the required grievance forms, *Miller v. Norris,* 247 F.3d 736, 740 (8th Cir. 2001); *Mitchell v. Horn,* 318 F.3d 523 (3rd Cir. 2003). In *Davis f. Johnson,* 322 F.3d 863 (5th Cir. 2003), an inmate was excused from exhausting administrative remedies by filing

The failure to exhaust remedies is an affirmative defense which is waived if not asserted by the defendant.[21]

B. Actual Physical Injury

Actual physical injury is a necessary predicate to prison litigation under the PLRA. 42 USC 1997(e)(7)(e).[22]

C. PLRA Limitation on Attorney's Fees

The PLRA severely limits Section 1988 attorney fees. See 42 U.S.C. 1997e(7)(d)(3): "No award of attorney's fees in an action described in paragraph (1) [suit brought by a confined prioner in which attorney fees are authorized by Section 1988] shall be based on an hourly rate greater than 150 percent of the hourly rate established under Section 3006A of Title 18, United States Code, for payment of court-appointed counsel." The statute also imposes a 25% cap on contingency fees in such cases, which is to be credited against the now limited Section 1988 award. The PLRA fee limitations apply only to suits brought under Section 1983. They do not apply to actions filed against private prisons based on state common law torts or statutes.

Unsuccessful inmates who have exhausted their remedies and sued, but lost, will be liable for taxation of costs even if they are indigent. *Singleton v. Smith,* 241 F.3d 534 (6th Cir. 2001).

Damages

A. State Common Law and Statutory Tort Claims

When a private prison is sued in state court for only state common law or statutory tort claims, the damages may be severely limited. Some states now have legislative limits on non-economic damages, some do not permit punitive damages in a wrongful death claim,[23]

---

a written grievance concerning failure to treat his broken hand when the broken hand made it impossible for him to write. If the inmate missed the deadline for filing, he may not sue but instead must seek permission to file an out-of-time grievance, the implication being that denial of such permission will constitute sufficient exhaustion of remedies. *Harper v. Jenkin,* 179 F3d 1311 (11th Cir. 1999).

[21] *Jenkins v. Haubert,* 179 F.3d 19, 28-29 (2nd Cir. 1999); *Foulk v. Charrier,* 262 F.3d 687 (8th Cir. 2001); *Torrence v. Pesanti,* 239 F. Supp. 2d 230, 231 (D. Conn. 2003).

[22] *Siglar v. Hightower,* 112 F.3d 191 (5th Cir. 1997) (holding a sore and bruised ear resulting from guard brutality failed to qualify); *Searles v. Van Bebber,* 251 F.3d 869 (10th Cir. 2001).

[23] E.g., *Jackson v. Marsh,* 551 F. Supp. 1091 (D.C. Colo. 1982). See, e.g., *Herbertson v. Russell,* 150 Colo. 110, 371 P.2d 422 (1962), now recoverable with limitations pursuant to Colo. Rev. Stat. §13-21-203(3)(a), (b) (2001).

some have eliminated joint liability,[24] and some permit the defendant to designate non-parties at fault,[25] all of which can operate to substantially decrease the assessment of damages.

However, damages are not so restricted in a Section 1983 claim. The general rule is that where state law is inconsistent and is "inhospitable" to the federal cause of action, the federal law governing damages will apply.[26] Therefore, when unconstitutional conduct causes death, the cause of action survives even though it would not survive under state law.[27] Similarly, punitive damages can be assessed in a Section 1983 claim, even though such damages may not be available under state law.[28] Likewise, it can be argued that federal law permitting joint and several liability trumps state law that permits only several liability.[29]

In summary, there may be severe limitations on damages when only common law tort claims are asserted in state court, but no state law limitations on damages when a Section 1983 claim is asserted.

What Prisoner Claims To Assert Against Private Prisons and in What Jurisdiction?

A. Section 1983 Claims

If the PLRA is not applicable,[30] or the prisoner has met the exhaustion requirements and other conditions imposed by the PLRA, suit can be filed in either state court or federal court asserting a Section 1983 claim, a Bivens claim, and state common law tort claims. The private prison and its employees would not be protected by qualified immunity and damages under the Section 1983 claim would not be restricted by state law.

If the PLRA would prevent a Section 1983 claim because the prisoner failed to exhaust remedies, the prisoner can assert a state common law or statutory tort claim in state court. If the plaintiff is a state prisoner, the private prison and its employees would not be protected by qualified immunity. If the plaintiff is a federal prisoner, the corporation, but not its employees, would be protected by qualified immunity. However, as previously noted, damages could be limited in a state court common law action by governmental immunity, statutory caps on damages, several liability, and designation of non-parties at fault.

---

[24] See, e.g., *Gen'l Elec. Co. v. Niemet,* 866 P.2d 1361 (Colo. 1994) and *Cooley v. Paraho Dev. Corp.,* 851 P.2d 207 (Colo. App. 1992), aff'd 866 P.2d 1361 (Colo.).

[25] See, e.g., Colo. Rev. Stat. §13-21-111.5 (1987); and *Moody v. A.G. Edwards & Sons, Inc.,* 847 P.2d 215 (Colo. App. 1993).

[26] *Robertson v. Wegmann,* 436 U.S. 584, 594 (1978); and *Espinoza v. O'Dell,* 633 P.2d 455, 465 (Colo. 1981).

[27] *Carlson v. Green,* 446 U.S. 14, 23-26, 100 S. Ct. 1468, 1474-5, 64 L.Ed.2d 15 (1980).

[28] See, e.g., *Garrick v. City & County of Denver,* 652 F.2d 969, 971 (10th Cir. 1981); and *Espinoza v. O'Dell,* 633 P.2d 455, 465 (Colo. 1981).

[29] See, e.g., *Northington v. Marin,* 102 F.3d 1564, 1569 (10th Cir. 1996) ("multiple tortfeasors who concurrently cause an indivisible injury are jointly and severally liable; each can be held liable for the entire injury. It is not essential that all persons who concurrently cause the harm be joined as defendants. . . . Persons who concurrently violate others' civil rights are jointly and severally liable for injuries that cannot be apportioned.").

[30] The PLRA does not apply to detainees, wrongful death claims, or those released from prison who are no longer "prisoners" under the PLRA.

When a Section 1983 claim can be asserted because the PLRA requirements have been met or are not applicable, there is no reason to assert additional common law tort claims with restricted damages. However, some incidents may give rise to a Section 1983 claim against some corporate employees, but not others whose conduct gives rise to common law tort claims. In those circumstances, Section 1983 claims might be filed against some defendants and tort claims against others.

For-Profit County Jail

A county jail, not operated by a private corporation, decided to become a profit center for the county by increasing revenues and decreasing costs, with disastrous results for an illegal immigrant detainee who nearly died and suffered serious bodily injury within one week of his confinement. A lawsuit filed on his behalf,[31] endorsed by Trial Lawyers for Public Justice (TLPJ), illustrates the evils inherent in using prisons and jails to maximize profits and minimize costs by depriving inmate/detainees of their constitutional rights to sanitary housing conditions and adequate medical care. The Plaintiff in that lawsuit, Moises Carranza-Reyes, is a Mexican citizen who was arrested by the Immigration and Naturalization Service for entering the U.S. illegally and transported to Park County Jail in Colorado for confinement as a "status detainee."[32] He was never charged with nor convicted of any crime. Because of the unsanitary conditions at the jail – Plaintiff was confined in an overcrowded cell where many detainees were vomiting, where feces and urine were deposited around the toilets, where toilet paper soaked in phlegm was littered all over the floor, and where the mattresses detainees slept on were on the floor in direct proximity with this human waste – Plaintiff nearly died and suffered serious bodily injury within one week of his confinement. He suffered pneumonia and sepsis and, despite emergent lifesaving care when he was finally transported to a hospital, he was in septic shock and went into cardiac and respiratory arrest. He was resuscitated but because of the late treatment of his infectious disease, he developed a necrotic right lower lobe of one lung, suffered acute respiratory distress syndrome and acute renal failure, and had to have his left leg amputated due to gangrene.

When Carranza-Reyes, together with 7 other illegal immigrants, was transported to the Park County Jail on March 1, 2003, they were placed in Pod D, together with 41 other INS status-detainees, for a total of 49 occupants. Pod D was designed to accommodate only 18 prisoners. It originally contained 18 beds on the upper tier, 3 picnic-style tables with bench seating for 18 prisoners on the lower tier, 2 toilets and 2 showers. When the INS entered into a contract with the Park County Jail to house its detainees, the detainees were all housed in Pod D. As increasing numbers of detainees arrived in Pod D, 14 three-tiered bunk beds were squeezed into the upper tier, which would then sleep 42 detainees. The top bunk was located approximately 16 inches from the ceiling. Once those bunks were filled, additional detainees were provided with a mattress and told to sleep on the floor between bunk beds in the upper tier, or on the floor in the lower tier.

---

[31] *Moises Carranza-Reyes v. Park County, et al,* in the U.S. District Court for the District of Colorado, Civil Action No. 2005-WM-377 (BNB). The Park County Jail is located in Fairplay, Colorado, a small, somewhat isolated community located in the mountains of south central Colorado. Park County has a population of less than 20,000.

[32] The Park County Jail houses alien detainees under a contrct with the U.S. Immigration & Customs Enforcement (ICE).

By March 6, the Pod D population had increased to 61 detainees being housed in a pod designed for 18, with 20 sleeping on the floor and many, including Carranza-Reyes, suffering from severe illness and no medical care. By official policy and practice, the capacity of Pod D was limited only by the number of detainees that could be squeezed into the pod and find sleeping room on the floor. The jail was knowingly and intentionally violating its own Policy and Procedure Manual, which provides: "It is the policy of the Sheriff's Office that inmates are housed in cell or dormitory sleeping areas that provide at least 80 square feet of total living space per occupant." Pod D contained 1475 square feet, which limited the maximum capacity to 18 detainees by construction design, ACA standard 3-4128, and the jail's manual.

This case illustrates what can happen when a county permits its public jail to become a profit center by housing increased numbers of inmates and detainees while cutting the costs necessary to provide clean and sanitary jail.

In September 2000, Park County hired a new jail captain, Monte Gore. When Monte Gore was hired as the new jail captain, the jail had only twelve inmates and was losing money.[33] Gore began soliciting prisoners from other overcrowded counties charging $45 a day and mailing a brochure to other counties and inviting the counties to, "house your prisoners in our 'Park.'"[34] Gore's efforts to increase jail occupancy produced $900,000 in his first year of operation and $1.6 million in 2002. He exceeded his projected $1.8 million in 2003, the year that Carranza-Reyes lost his leg resulting from the filthy, overcrowded jail conditions and poor medical care.[35] To further increase revenues and profits, the county approved a $2 million expansion to increase the occupancy capability by another 110 beds to further increase revenues and profits by housing occupants from overcrowded state, federal and other county facilities that pay a daily fee.[36] In addition to increased revenues and profits, Gore announced that there were other hidden benefits to the county: "Inmates at the jail have provided over 4,000 hours of free labor within the community. They have helped remodel the Fairplay Town Hall, worked in the county maintenance department, supplied help for the U.S. Forest Service at the ranger station and worked to maintain trails and repair fences, as well as providing labor for fire departments and senior services. If you figure that at $10 per hour, you get over $41,000 in free labor for the people of Park County."[37]

Upon completion of the Park County Jail's new addition, which increased its capacity to 260 inmates, Park County announced that in charging other counties to hold their prisoners, Park County can pay for housing its occupants and still make $1.5 million annual profit.[38] In generating $1.5 million annual profit, Gore proudly boasted that, "I don't think there is another jail in the country that is offsetting costs like we do."[39] In generating profits, Gore stated: "The county can use that money to build a bridge or give raises to county employees."[40] *The Denver Post* staff writer who interviewed Gore states that Gore was so eager to win business from other counties that he offered an

---

[33] *Summit Daily News* – "Park County to Expand its Money-Making Jail," Linda Balough, 11/21/03.
[34] *The Craig Daily Press,* by Robert Gebhart, 7/23/04.
[35] Id., Note 9.
[36] *Summit Daily News* – "Park County Jail Hits Record Income," Linda Balough, 3/26/04.
[37] Id.
[38] *The Denver Post* – "Officials Aim to Lock in Profits from Jail," Kirk Mitchell, February 2005.
[39] Id.
[40] Id.

By March 6, the Pod D population had increased to 61 detainees being housed in a pod designed for 1?, with 20 sleeping on the floor and many, including Carranza-Reyes, suffering from severe illness and no medical care. By official policy and practice, the capacity of Pod D was limited only by the number of detainees that could be squeezed into the pod and find sleeping room on the floor. The jail was knowingly and intentionally violating its own Policy and Procedure manual which provides: "It is the policy of the Sheriff's Office that inmates are housed in cell or dormitory sleeping areas that provide at least 70 square feet of total living space per occupant." Pod D contained 1475 square feet, which limited the maximum capacity to 21 detainees by construction design, ACA standard 3-4128, and the jail's manual.

This case illustrates what can happen when a county permits its public jail to become a profit center by housing increased numbers of inmates and detainees while cutting the costs necessary to provide clean and sanitary jail.

In September 2000, Park County hired a new jail captain, Monte Gore. When Monte Gore was hired as the new jail captain, the jail had only twelve inmates and was losing money.[53] Gore began soliciting prisoners from other overcrowded counties charging $45 a day and mailing a brochure to other counties and inviting the counties to: "house your prisoners in our 'Park.'"[54] Gore's efforts to increase jail occupancy produced $900,000 in his first year of operation and $1.6 million in 2002. He exceeded his projected $1.8 million in 2003, the year that Carranza-Reyes lost his leg resulting from the filthy, overcrowded jail conditions and poor medical care.[55] To further increase revenues and profits, the county approved a $2 million expansion to increase the occupancy capability by another 110 beds to further increase revenues and profits by housing occupants from overcrowded state, federal and other county facilities that pay a daily fee.[56] In addition to increased revenues and profits, Gore announced that there were other hidden benefits to the county: "Inmates at the jail have provided over 4,000 hours of free labor within the community. They have helped remodel the Fairplay Town Hall, worked in the county maintenance department, supplied help for the U.S. Forest Service at the ranger station and worked to maintain trails and repair fences, as well as providing labor for fire departments and senior services. If you figure that at $10 per hour, you're over $41,000 in free labor for the people of Park County."[57]

Upon completion of the Park County Jail's new addition, which increased its capacity to 200 inmates, Park County announced that in charging other counties to hold their prisoners, Park County can pay for housing its occupants and still make $1.5 million annual profit.[58] In generating $1.5 million annual profit, Gore proudly boasted that, "I don't think there is another jail in the county that is offsetting costs like we do."[59] In generating profits, Gore stated: "The county can use that money to build a bridge or give raises to county employees."[60] *The Denver Post* staff writer who interviewed Gore states that Gore was so eager to win business from other counties that he offered an

[53] *Summit Daily News* – "Park County to Expand its Money-Making Jail," Linda Balough, 11/21/03.
[54] *The Craig Daily Press*, by Robert Gebhart, 7/23/04.
[55] Id., Note 9.
[56] *Summit Daily News* – "Park County Jail Hits Record Income," Linda Balough, 3/26/04.
[57] Id.
[58] *The Denver Post* – "Officials Aim to Lock in Profits from Jail," Kirk Mitchell, February 2005.
[59] Id.
[60] Id.

inducement that has the ring of a sales gimmick. "Send your inmates to our jail," he tells them, "and we'll bus them for free."[41]

Although other Colorado counties would like to use their jails as a profit center, they are unable to do so without cutting the costs necessary to provide adequate sanitary housing and necessary occupant services.[42] Unfortunately, other Colorado counties look at Park County's profits with envy and would like to duplicate what Park County has financially achieved.[43] The *Carranza-Reyes* case has publicly exposed the evils inherent in attempting to financially benefit by providing inhumane living conditions in a jail.

Bill Trine
July 2006

[41] Id.
[42] *The Craig Daily Press* – "Jail Staff Pressured to Turn a Profit," Jeremy Browning, 9/24/03.
[43] Id., Note 16.