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Concurrent Panels V: Litigating Sexual Assault Cases

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UNIVERSITY of
DENVER

STURM COLLEGE OF LAW
Clinical Programs

2018 PRISONERS' ADVOCATES CONFERENCE

HOSTED BY THE UNIVERSITY OF DENVER COLLEGE OF LAW

AGENDA | Thursday, October 4

12:00pm | Optional Prison Tour – Colorado State Penitentiary
(space limited; pre-registration required)

Please note: tour participants will meet in hotel lobby at 9:30am to carpool to the prison

Prison Law JD Program

3:30-5:15pm | Starting Out as a Prisoners' Rights Lawyer: What You Need to Know | Room 165

Deb Golden, Human Rights Defense Center (@DebGoldenDC)

Sarah Grady, Loevy & Loevy

Bret Grote, Abolitionist Law Center

Moderated by: Sharon Dolovich, UCLA School of Law (@SharonDolovich)

This panel (as the title suggests) is geared to new lawyers wanting to do prisoners' rights work. It will cover a range of topics designed for those just starting out, including the nuts and bolts of prisoner litigation, the Prison Litigation Reform Act (PLRA), and non-obvious routes to doing prisoners' rights work. Ethical issues facing prisoners' rights lawyers will also be addressed. It will be broadcast live on YouTube to allow people to attend and participate remotely and will be available for viewing on YouTube after the event.

5:45pm | Prison Law JD Working Group Dinner | Room 412
(pre-registration required)

An opportunity to sit down together over dinner to strategize how to build out the Prison Law JD community and best support its members.

AGENDA | Friday, October 5

7:45am – 8:30am | Registration & Breakfast | Law School Forum

8:30am – 4:30pm | Publications Table | Law School Forum

Books and other publications authored by attendees will be available for browsing and purchase all day Friday.

8:30 – 9:00am | Welcome | Room 165 (overflow – Room 180)

Dean Bruce Smith, University of Denver College of Law (@denverlawdean)
Laura Rovner, University of Denver College of Law (@llrovner)

9:00 - 9:30am | Opening Address | Room 165 (overflow – Room 180)

Dr. Craig Haney, Distinguished Professor of Psychology
University of California Presidential Chair, 2015-2018

9:30 – 10:45am | Plenary: Knocking on New Doctrinal Doors | Room 165 (overflow – 180)

Sharon Dolovich, UCLA Law School (@SharonDolovich)
Margo Schlanger, University of Michigan Law School (@mjschlanger)
Shira Wakschlag, The Arc (@Shira Wakschlag)
Moderated by: Priscilla Ocen, Loyola Law School (@panocen)

How can we, as advocates, push doctrinal developments to expand the rights of incarcerated people? This panel will examine several innovative prison litigation strategies. In particular, Margo Schlanger will discuss new opportunities to improve the Eighth Amendment's standard for force and conditions claims and how to take advantage of the Americans with Disabilities Act's powerful accommodation mandate; Shira Wakschlag will discuss how prisoners' rights litigation can benefit from ADA deinstitutionalization precedents; and Sharon Dolovich will discuss how procedural justice concepts can help achieve substantive reform. There will be plenty of time for experts in the audience to share strategies and ideas, too.

10:45 – 11:15am | Morning Break

11:15 – 12:30pm | Concurrent Panels I

Culture Change & Turning Corrections into Allies | Room 165

Leann Bertsch, North Dakota Department of Corrections
Sara Norman, Prison Law Office (Speaker & Moderator)
Rudy Reyes, Anti-Recidivism Coalition

Winning a lawsuit does not necessarily result in a more just and humane system; remedies can be scuttled by resistant staff and leadership. “Culture change” has become a phrase that is used frequently these days – how can we make it a reality? What are the ingredients for successful reform? What kind of leadership does it take to change the attitudes and actions of line staff? How can the people who are particularly targeted by toxic cultures – including women, LGBTQ people, and people convicted of sex offenses – be part of the solution?

The First Amendment in Prison | Room 190

Alan Mills, Uptown People’s Law Center (@alan_uplc)
Troy Williams, Restorative Media (@IAmTroyWilliams)
Moderated by: Nicole Godfrey, University of Denver College of Law (@nicbrianne)

The panel will begin with an overview of why First Amendment rights are so important to prisoners and are so often undervalued by litigators. We will then discuss the restrictive interpretation the courts have given many First Amendment freedoms as applied to prisoners and conclude with a discussion of creative litigation strategies to try and protect the rights of prisoners in the face of these restrictive decisions. The discussion will include censorship of mail and publications, retaliation against prisoners who seek to speak out, freedom of religion, and access by the press to prisons and prisoners.

Solitary Confinement: Post-Kennedy Strategies | Room 180

Danny Greenfield, MacArthur Justice Center – Northwestern Law School
Jessica Sandoval, ACLU Stop Solitary (@JLawJustice)
Rebecca Wallace, ACLU of Colorado
Moderated by: Maggie Filler, MacArthur Justice Center – Northwestern Law School

Panelists will discuss new and emerging strategies to address solitary confinement in the United States. The panel represents a diversity of approaches, from trial and appellate litigation to state-based policy reform to organizing and uplifting the voices of the directly impacted. The discussion will include a frank assessment of the challenges of abolishing solitary confinement, including strategies to make wins meaningful, as well as a national context for future strategies.

12:30 – 1:30pm | Lunch | Law School Forum

1:30 – 2:45pm | Plenary: Medical Care | Room 165 (overflow – Room 180)

Sara Neel, ACLU of Colorado
Josiah Rich, M.D., MPH, Brown University
Moderated by: Alison Hardy, Prison Law Office

This panel will address the legal implications of two significant developments in prison medical care: the advent of new-generation direct-acting antivirals that can cure hepatitis C but are extremely costly, and medication assisted treatment (MAT) for prisoners diagnosed with opioid use disorder. Sara Neel will discuss the ACLU's recent successful HCV treatment litigation against the Colorado Department of Corrections, and Dr. Jody Rich, director of the Center for Prisoner Health and Human Rights at the Miriam Hospital, will speak about the Rhode Island Department of Corrections' treatment program for opioid addiction. This program, launched in 2016, has been widely touted for contributing to a significant drop in post-incarceration overdose death.

2:45 – 3:15pm | Afternoon Break

3:15 – 4:30pm | Concurrent Panels II

Litigating Damages: Qualified Immunity & Trial Strategies | Room 165

Alan Chen, University of Denver College of Law (@profalankchen)
Anna Holland Edwards, Holland, Holland Edwards & Grossman
Erica Grossman, Holland, Holland Edwards & Grossman
Moderated by: Lori Rifkin, Hadsell Stormer & Renick LLP

The damages panel will offer advice on two of the most important aspects of litigating damages cases: qualified immunity and trial. Panelists will discuss how to present your case to a jury and convince them not only to find for your client but also to overcome the jury's inherent prejudices against prisoner plaintiffs and in favor of correctional officers, and to award maximum monetary damages. Panelists will also discuss how to avoid dismissal of a case based on qualified immunity, including discovery and briefing tips.

Best Practices for Collaborating with Grassroots Organizations | Room 180

Bret Grote, Abolitionist Law Center
Saleem Holbrook, Abolitionist Law Center
Colette Payne, Chicago Legal Advocacy for Incarcerated Mothers (@cglaCP)
Moderated by: Jamelia Morgan, Univ. of Connecticut Law School (@JameliaNMorgan)

Transformative change in the prison system requires pushing for change both inside and outside the legal system. Working to reform prisons requires collaboration between people who are impacted by the prison system and those who work as advocates to improve it. Lawyers in particular and advocates in general must engage in best practices that not only ensure the best possible legal outcomes for their clients, but also amplify the voices of those working on reforming the prison system with communities. This panel offers guidance on what these best practices should be, other tools for success, as well as potential challenges.

Conditions of Confinement in Immigration Detention | Room 190

César Cuauhtémoc García Hernández, Univ. of Denver College of Law (@crimmigration)
Victoria López, ACLU National Prison Project (@vlotree)
Rene Lima-Marin, Denver, CO
Moderated by: Danielle Jefferis, University of Denver College of Law (@jeffdanielles)

While the number of people confined under the government's so-called civil immigration detention authority is growing rapidly, immigration detention has long been an element of the carceral state. This panel will explore the history of civil immigration detention and its relationship to punishment, the current scope of immigration detention, the conditions in immigration detention centers, and ways in which those conditions are being challenged inside and outside the judicial system.

4:30pm– 5:15pm | Keynote Speaker: Fox Rich, Co-Founder Rich Family Ministries | Room 165 (overflow – 180) (@foxrich)

Ms. Rich is a formerly incarcerated woman, prisoner's wife, mother of six sons, and matriarch of the Rich family as they have endured over 20 years of incarceration—together. Having spoken on issues nationally and abroad on subjects ranging from love to politics, her messages are filled with consciousness, courage, and conviction, forcing the listening audience to realize that mass incarceration is slavery and has to be abolished.

5:15pm | Reception | Law School Forum

6:15pm | Dinner | Law School Forum

At dinner on Friday, several tables will be reserved for focused issue-area discussion on topics of shared interest. Sign-up sheets for the various topics will be posted, which will be accessible throughout the conference. Anyone wanting to join the conversation on that topic will be able to reserve a place by writing your name on the sign-up sheet.

AGENDA | Saturday, October 6

8:15 – 9:00am | Continental Breakfast | Law School Forum

9:00 – 10:15am | Concurrent Panels III

LGBTQ Clients: Current Issues, Strategies, and Approaches | Room 180

Sheila Bedi, MacArthur Justice Project, Northwestern Law School (@sheilabedi)
Richard Saenz, Lambda Legal (@saenzr03)
Chase Strangio, ACLU LGBT & AIDS Project (@chasestrangio)

The incarceration rate of lesbian, gay, and bisexual people is three times greater than that of American adults generally. Moreover, this growing crisis is part of a larger pattern of violence and discrimination in U.S. society that disproportionately affects low-income transgender and gender-nonconforming (TGNC) people of color. How can advocates meet the needs of their LGBTQ clients in light of these serious challenges? This panel explores the current issues, strategies, and innovative legal approaches to meeting the needs of LGBTQ incarcerated people.

Turning Facts into a Compelling Legal Narrative | Room 190

Wendy Peoples, California Appellate Project & Habeas Assistance and Training

This session will discuss ways to tell the client's story in a compelling and credible manner so as to persuade judges to do what they might not otherwise be inclined to do – grant relief. This will involve looking to narrative theory, as well as examples from successful pleadings.

Class Actions & Prison/Jail Oversight | Room 165

Andrea Armstrong, Loyola University New Orleans College of Law
David Fathi, ACLU National Prison Project (moderator and panelist) (@DavidCFathi)
Corene Kendrick, Prison Law Office (@ck94117)
Eldon Vail, Correctional Consultant & former Secretary of WA Dep't of Corrections

This panel will address the challenges of effective and meaningful oversight of jails and prisons through examining a variety of approaches, including court-ordered monitoring and independent/civilian oversight. Panelists will discuss strategies for class action consent judgments that include monitoring components, how to leverage relationships with defendants and communities to improve transparency, and share the unique challenges and opportunities of different monitoring strategies in their litigation.

10:15 – 10:45am | Morning Break

10:45 – 12:30pm | Plenary: Media and Messaging | Room 165 (overflow – Room 180)

Jean Casella, Solitary Watch (@casellaj4)
Andrew Cohen, The Marshall Project & The Brennan Center for Justice (@JustADCohen)
Lucy Odigie-Turley, Opportunity Agenda (@lucyodigieturles)
Moderated by: Megan Groves, Uptown People's Law Center (@uplcchicago)

Legal advocacy is just one tool to change public policy—you also have to change the minds of the public. This panel will explore why and how prisoner advocates can best shape and share their message.

12:30 – 1:45pm | Lunch | Law School Forum

1:45 – 3:00pm | Concurrent Panels IV

Mental Health Care: You've Won the Case, How Do You Get Real Care? | Room 165

Dr. Craig Haney, University of California Santa Cruz
Dr. Bandy Lee, Yale School of Medicine
Maria Morris, Southern Poverty Law Center
Moderated by: Alan Mills, Uptown People's Law Center (@alan_uplc)

Panelists will begin with an overview of the elements a prison mental health system should contain, and how one goes about building a case to show that a system fails to meet the minimum constitutional requirements. The panel will then focus on various obstacles and frustrations in obtaining a meaningful remedy for prisoners even after obtaining a judgment or settlement. Finally, panelists will discuss other models (domestic and foreign) and discuss how they deal with people with a mental illness.

Labor and Employment Issues for People in Prison | Room 190

Amanda Antholt, Equip for Equality
Kenneth Hartman, Jail Guitar Doors/The Catalyst Foundation (@KenEHartman)
Norris Henderson, Voice of the Ex-Offender (VOTE)
Rob G. Rich, Co-Founder, Rich Family Ministries
Moderated by: Taylor Pendergrass, ACLU (@tsp5280)

The exploitation of the labor of incarcerated people has always been a pillar of the carceral state. This panel will explore the historical underpinnings and modern reality of working and being excluded from work in the criminal legal system, the connection to the historic nationwide prison strike this year, and how incarcerated people and their allies, including the disability rights community, are organizing and building power around labor issues.

Prisoners' Rights Litigation 101 | Room 180

Deb Golden, Human Rights Defense Center (@DebGoldenDC)
Sarah Grady, Loevy & Loevy (moderator & panelist)
Su Ming Yeh, Pennsylvania Institutional Law Project

This panel provides an overview of the important foundational aspects of litigating prisoners' rights cases. Topics include: the PLRA, using FOIA to help prove your case, litigating Monell and supervisory liability claims, bringing state-law claims, and proving deliberate indifference in medical care claims. The panel will have plenty of time for questions and discussion with both inexperienced and veteran attorneys alike.

3:00 – 3:30pm | Afternoon Break

3:30 – 4:45pm | Concurrent Panels V

Settlement Strategies: Negotiation, Procedural Options, and Maximizing Damages **Room 165**

Arthur Loevy, Loevy & Loevy

Rachel Meeropol, Center for Constitutional Rights

Margo Schlanger, Univ. of Michigan Law School (moderator & panelist) (@mjschlanger)

Three crucial topics relating to settlement: Loevy & Loevy's Arthur Loevy will discuss strategies for maximizing damages in settlement negotiations; law professor Margo Schlanger will discuss settlement forms available under the Prison Litigation Reform Act, and their pros and cons; and Center for Constitutional Rights attorney Rachel Meeropol will offer insight and strategies for involving incarcerated clients in settlement formulation and negotiation.

Disability Rights Issues in Prison | Room 190

Dara Baldwin, National Disability Rights Network (@NJDC07)

Amy Robertson, Civil Rights Education & Enforcement Center (@AmyFarr)

Rachael Seevers, Disability Rights Washington

Moderated by: Rita Lomio, Prison Law Office

A discussion of new and emerging areas of advocacy for people with disabilities who are incarcerated, including immigration detention and changing technology standards for people who are deaf or hard of hearing. We also will discuss the role and litigating authority of protection and advocacy systems and how they can serve as a resource for prisoner rights attorneys (and vice versa).

Litigating Sexual Assault Cases | Room 180

Julie Abbate, Just Detention International

Laura Ives, Kennedy, Kennedy & Ives

Brenda Smith, American University Washington College of Law

Moderated by: Nicole Schult, Uptown People's Law Center

This panel will address how to represent and litigate cases involving sexual assault against incarcerated men and women. Panelists will discuss what investigations help set up the strongest claims, and how to coordinate with other agencies before filing; how to conduct discovery to prove your case, and how PREA fits into a sexual assault case; and provide context about sexual assault in prisons and jails, as well as provide perspective about litigation going on in other spaces.

4:45pm | Reception with Heavy Hors D'oeuvres | Law School Forum

