BOP Caves on New Book Restriction Program – LISA Newsletter for Week of May 7, 2018

We publish a free newsletter sent every Monday to inmate subscribers in the Federal system.

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Vol. 4, No. 19

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BOP REVERSES COURSE ON BOOK LIMITATIONS

Next to watching the FBI walk a BOP employee off the prison premises in handcuffs, there is nothing BOP management hates more than congressional heat. Last week provided a perfect illustration of that fact, as the BOP hastily reversed a controversial policy that had was making it harder and more expensive for inmates to receive books by banning direct delivery through the mail from publishers, bookstores and book clubs.

The policy banned books from outside sources, including Amazon and Barnes & Noble. Instead, prisoners would have had to submit a request to purchase books through an ordering system run by the commissary in which they would pay list price, shipping and a 30% markup, and could buy hardcover books only, according to memos distributed in at least three BOP facilities. Under the new protocol, a book Amazon might sell for as little as $11.76, including shipping, could cost more than $26.00.

The book policy has been in effect at USP Atwater since last October, USP Victorville since February, and reportedly at USP Lee as well. But the issue only erupted publicly last month at House oversight hearings on the BOP, where Director Inch had his head handed to him by Congresswoman Karen Bass, who raised the issue of the policy being implemented at USP Coleman and lambasted the Director for adopting a policy that seemingly banned books.

We reported on April 23 that Inch seemed nonplussed, saying he was unaware of the Coleman policy and would look into it. When he suggested Rep. Bass might misunderstand the policy, she shot back, “I hope you follow up with Coleman, because this does not seem to be a misperception, this seems to be a directive.”

At the time, we figured the Coleman warden’s new policy was a frolic that the Central Office might not know anything about, but given that the policy was on a slow-walk rollout at joints in California, Virginia and Florida suggests that Director Inch’s denial of knowledge about the book restriction might be less than candid.

After the House hearings raised the book restriction issue, The Washington Post followed up, asking the BOP for the identity of the book vendor the BOP would use, the markup and the rationale for the restriction. The Central Office refused to say, but told the Post in an email last Thursday that the BOP had rescinded the memos and will review the policy to “ensure we strike the right balance between maintaining the safety and security of our institutions and inmate access to correspondence and reading materials.”

“You shouldn’t have to be rich to read,” complained Tara Libert, whose Free Minds Book Club has had reading material returned from two California prisons in recent months and has stopped shipping to two others because of the policy.

So the complaints went from inmates to families to congressional representatives to the media, demonstrating that if the issue is right, even the people who seem to have no power can end up making government accountable.

Washington Post, Federal prisons abruptly cancel policy that made it harder, costlier for inmates to get books (May 3, 2018)

In Justice Today, New Federal Prison Policies May Put Books and Email on Ice (Apr. 27, 2018)

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TENTH CIRCUIT SAYS ROBBERY IS A GUIDELINES VIOLENT CRIME

Ed McCranie pled guilty to federal bank robbery, which his PSR suggested was a crime of violence under Sentencing Guideline 4B1.2(a)(1), just like his prior robberies. The three convictions made Ed a Guidelines career offender under USSG 4B1.1(a). Ed complained at sentencing that none of his three robberies qualified as a crime of violence, but the district court rejected the argument, sentencing him to 175 months.

Last week, the 10th Circuit affirmed, holding that federal bank robbery, which is taking property by force, violence, or intimidation, qualifies categorically as a crime of violence. Ed first argued that because robbery can be accomplished by threatening something other than physical force, such as releasing poison if the teller does not hand over the case, the crime is not a “crime of violence.” But the Supreme Court’s 2014 decision in United States v. Castleman knocked down that issue.

Still, Ed contended, robbery can be committed by intimidation, and some people can be intimidated by raising an eyebrow, without any real threat of physical force at all. If one robs by scaring some clerk who is scared of his own shadow, Ed argued, it does not rise to a crime of violence.

Not so, the Circuit said. “We have defined intimidation… as an act by [the] defendant ‘reasonably calculated to put another in fear, or conduct and words calculated to create the impression that any resistance or defiance by the individual would be met by force’… This definition requires the objective threatened use of physical force.” Even the 10th Circuit pattern jury instructions say that to take ‘by means of intimidation’ is to say or do something in such a way that a person of ordinary sensibilities would be fearful of bodily harm’… And then, putting to rest any concerns of the too-timid teller, the instructions clarify that “a taking would not be by ‘means of intimidation’ if the fear, if any, resulted from the alleged victim’s own timidity rather than some intimidating conduct on the part of the defendant. The essence of the offense is the taking of money or property accompanied by intentional, intimidating behavior on the part of the defendant.”

Because intimidation requires an objectively reasonable fear of bodily harm, Tim’s conviction was upheld.

United States v. McCranie, Case No. 17-1058 (10th Cir. May 3, 2018)

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SUPREME COURT DONE ARGUING, BUT WAY BEHIND ON DECIDING

The Supreme Court has finished all scheduled oral arguments for its term than ends June 30, but is way behind in making decisions. With 8 weeks left in the term, the Justices have 39 cases due for decision by June 30th still left on the docket.

A number of pending decisions on Trump’s DACA program, gay rights and gerrymandering, among others, are drawing media attention. But substantial criminal decisions, including issues on tax law, restitution, plain error, cellphone search warrants and sentence reduction below mandatory minimums for people with 5K1.1 departures, are scheduled as well.

Expect orders and decisions from the court every week, sometimes twice a week, through the end of June.

Rollcall, Sluggish Supreme Court Poised to Deliver Big Decisions (May 1, 2018)

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NEED A SENTENCE COMMUTATION? GET YOURSELF A KARDASHIAN

We never thought we would be writing about one of the Kardashian girls in this newsletter, but last week brought that Kim Kardashian West – wife of Trump-supporting recording artist Kanye West – has been talking to Trump son-in-law and senior adviser Jared Kushner about a presidential pardon or commutation of sentence for Alice Marie Johnson, a 62-year-old federal inmate serving a life sentence for a what the media are calling a “nonviolent drug offense.”

The telephone calls, according to entertainment gossip website Mic, have taken place over the course of the past several months and have picked up in frequency and intensity last week. Now, Johnson’s clemency case is reportedly being reviewed by White House attorneys.

Johnson, a great-grandmother, who has been locked up since 1996, has captured international attention from criminal reform activists — and Kardashian, who saw a media video about Johnson last fall and shared it on Twitter, where it got over 8 million views.

Just three weeks ago, the Dept. of Justice Pardon Attorney announced that 92 commutation petitions and 82 pardon petitions had been denied. Thus far in his administration, Trump has granted three pardons and one commutation, all in politically high-profile cases. Some cynics might reasonably conclude that all one needs to obtain clemency is a celebrity to take up one’s cause.

If there is any good news at all, it is that the DOJ Pardon Attorney’s website now has a search function that will let anyone with web access look up the status of a pending clemency petition, by clemency case number, by BOP register number, or by name. The search engine is at https://www.justice.gov/pardon/search-pending-clemency-case-files.

Mic.com, Kim Kardashian West has talked to White House about pardoning nonviolent drug offender (May 2, 2018)

DOJ, Commutations and Pardons Denied by President Trump (Apr. 16, 2018)

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LOBBYING BUT MAYBE NO VOTE THIS WEEK ON PRISON REFORM

This is the week when the House Judiciary Committee promised to take up the Prison Reform and Redemption Act, a bipartisan prison reform measure being pushed by Doug Collins (R-Georgia) and Hakeem Jeffries (D-New York), but as of Sunday night, the Committee had scheduled nothing but a Tuesday session addressing the opioid crisis.

That is not slowing down the bill’s friends and foes. Jared Kushner is reportedly meeting with the conservative Republican House Freedom Caucus this week to discuss the PRRA. We spoke last week to Jim Jordan (R-Ohio), former HFC chairman, who said he believed in second chances and was open to the goals of the bill. Even current HFC chairman Mark Meadows (R-N.C.), who says he’s "the least supportive of criminal justice reform" among his Freedom Caucus colleagues, the Collins-Jeffries bill "seems to have found a sweet spot."

The PRRA focuses on rehabilitating prisoners through educational programs, vocational training and therapy to reduce recidivism rates. It does not address sentencing issues, including mandatory minimums.

The Freedom Caucus has been historically divided over criminal justice reform, and Meadows says that some more work must be done. But, overall, he believes there is an open mind to find common ground and move the bill forward as long as sentencing reforms are not included. The real issue is whether House Democrats are willing to get on board.

Meanwhile, Senate Judiciary Committee Chairman Charles Grassley (R-Iowa) is busy trying to drum up support for his Sentencing Reform and Corrections Act. The SRCA, which focuses on changes to federal sentencing statutes to correct draconian sentences under 924(c) and drug laws, is co-sponsored by more than a quarter of the Senate, and has support from interest groups like the ACLU and NAACP on the left, and with FreedomWorks and the American Conservative Union on the right.

Grassley issued a statement last week that ended up as a guest editorial in a number of papers. “The bill is tough on crime and focuses law enforcement efforts on the worst criminals,” Grassley said. “But it also promotes fairness in sentencing, especially for lower-level, non-violent offenders. Similar reforms at the state level have reduced crime, closed prisons and cut taxpayer costs.”

But for all of that, Grassley said again last week that he doesn’t expect Senate Majority Leader Mitch McConnell (R.-Kentucky) to bring the bill to the floor unless the political climate changes. He said Republicans who support sentencing changes are combating a perception that their legislation would go easy on criminals. Opponents “feel it’s going to open up the prison doors and people are going to walk the next day,” Grassley said in an interview, noting that his bill creates some new sentencing guidelines connected to opioid trafficking. “This bill is tough on crime.”

WSJ, Opioid vs. Crack: Congress Reconsiders Its Approach to Drug Epidemic (May 5, 2018)

Axios, Kushner and Freedom Caucus to meet over bipartisan prison reform bill (May 2, 2018)

Iowa City, Iowa, Gazette, Sentencing reform will fight crime (Apr. 30, 2018)

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