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Voices from a Prison Pandemic: Lives Lost from COVID-19 at Lakeland Correctional

Kimberly Thomas, in Conversation with Dennis Berkey, Perry Bradley, Robert Boles, Leo Carmona, Danta Davis, Charles Foresi, Osceola Foster, Jawan Hayes, Herbert John Newman, Fred C. Proctor, Cory Souders, Michael Sweet, and David Ward*

Coronavirus tore through jails and prisons like wildfire. In some states, more than half of the people incarcerated there tested positive for COVID-19; nearly 400,000 people in prison across the United States have tested positive.¹ For people in prison, COVID-19 brought the loss of close friends, solitary confinement, loss of connection with family and programming, lack of information, and fear of contracting the virus. It has also reminded those who are incarcerated of the one-dimensional way in which people in prison are perceived. As stated by one collaborator, Cory Souders, “[s]o many men and women who come to prison are identified by the crime they committed. In my eyes, many on the outside have forgotten the fact that we are still human.”²

Before society’s collective consciousness fades, the authors of this Commentary seek to document the experience of the coronavirus from inside the prison walls and to remember of the lives of the men who died from COVID-19 inside one prison, Lakeland Correctional Facility, a 1,400-person state prison in rural Michigan where coronavirus hit early and hard.

* Kimberly Thomas is a clinical professor at the University of Michigan Law School. Dennis Berkey, Perry Bradley, Robert Boles, Leo Carmona, Danta Davis, Charles Foresi, Osceola Foster, Jawan Hayes, Herbert John Newman, Fred C. Proctor, Cory Souders, Michael Sweet, and David Ward are men who are incarcerated at Lakeland Correctional Facility or were incarcerated at that facility during the COVID-19 crisis in 2020. This article is dedicated to the men who lost their lives to COVID-19, to the families of the deceased, and to their friends who survived them at Lakeland Correctional Facility. This article names those who lived at Lakeland and that could be identified through Michigan Department of Corrections records as being taken by COVID-19. We hope that these men will be remembered for the entirety of the lives they lived.

Kimberly Thomas thanks Michael Pinard, Paul Reingold, Dana Thompson, and Mike Steinberg for their input on an earlier draft of this commentary and Veronica Portillo-Heap for excellent research assistance.

¹ *A State-By-State Look at 15 Months of Coronavirus in Prisons*, THE MARSHALL PROJECT, <https://www.themarshallproject.org/2020/05/01/a-state-by-state-look-at-coronavirus-in-prisons> [<https://perma.cc/8AUS-MYR6>] (As of July 1, 2021, when the Project stopped collecting data, there were 398,627 reported cases.) (accessed July 31, 2021) [hereinafter *A State-By-State Look Coronavirus in Prisons*].

² JPay from Cory Souders to Kimberly Thomas (June 22, 2020) (on file with author).

I. COVID-19'S DESCENT UPON LAKELAND CORRECTIONAL FACILITY

As collaborator Jawan Hayes put it, “The Covid-19 was not humble when it made its presence known here at the Lakeland Facility.”³ The *New York Times* has kept a running list of the locations with the highest concentrations of infections, with correctional facilities making up an overwhelming proportion of the locations on the list.⁴ At the beginning of summer 2020, Lakeland Correctional Facility was in the top ten of this list.

Collaborator Danta J. Davis wrote:

I listen to the radio pretty much daily. The station in this area just said about those who pass their names and crimes. Which totally took away from the loss of their lives. As of right now the yard is partially closed down we are not allowed to go to the other side unless there is a need . . . after so many passed they stopped saying names just the number of people who had passed. I think at about 16! So we really don't know who all passed.⁵

These locations, like nursing homes⁶ and other congregate living facilities, were easy targets for the coronavirus because of the lack of space for social distancing, the inability to follow hygiene precautions, and few containment options.⁷ David Ward, a collaborator who lives at Lakeland Correctional, put it this way:

Overcrowding issues aside, the general nature of incarceration itself is one of compacted confinement; we eat, sleep, and share hygiene facilities en masse. And it's even worse in regards to living quarters! In my case, there are 39 inmates housed in a room roughly 40'x45'. My closest neighbor and I sleep with our heads about 24" apart -- with NO wall in between. Thus

³ JPay from Jawan Hayes to Kimberly Thomas (June 24, 2020) (on file with author).

⁴ See *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> [<https://perma.cc/6LXX-SJBB>] [hereinafter *Coronavirus in the U.S.*].

⁵ Letter from Danta J. Davis to Kimberly Thomas (undated, received on July 7, 2020) (on file with author).

⁶ See *Coronavirus in the U.S.*, *supra* note 4 (stating that cases had “been reported in more than 15,000 nursing homes and other long-term care facilities” and that “[m]ore than 335,000 residents and employees” were infected and 59,000 died).

⁷ Taylor Miller Thomas, *How U.S. Prisons Became Ground Zero for Covid-19*, POLITICO MAG. (June 25, 2020, 3:00 AM), <https://www.politico.com/news/magazine/2020/06/25/criminal-justice-prison-conditions-coronavirus-in-prisons-338022> [<https://perma.cc/A453-MNWT>]. See also Laura Hawks et al., *COVID-19 in Prisons and Jails in the United States*, 180 JAMA INTERNAL MED. 1041 (April 2020).

our little open-air ‘cell’ is quite literally a Petri dish just waiting to be contaminated.⁸

Lakeland Correctional Facility, opened by the Michigan Department of Corrections [MDOC] in 1985, houses approximately 1,400 people mostly in dormitory-style units for lower security level prisoners⁹ and includes one unit that is the state prison system’s geriatric ward.¹⁰ About 700 of the 1,400 prisoners at Lakeland are either elderly or have chronic-care conditions.¹¹

When it became apparent that the coronavirus had entered the state prisons in April 2020, Lakeland was one of the first MDOC facilities to have every person tested for COVID-19 because of the age and health of the individuals living there and, even early on, the high number of deaths.¹²

Ward describes the descent of coronavirus at Lakeland:

[I]t wasn’t until we got word that the first ‘positive’ prisoner had died that the full gravity of this disease really hit home. And then our fear became a quiet panic.

Over the course of the next few weeks, the number of the deceased grew and grew. Even though the infected were being ‘isolated’, the damage had already been done: Covid-19 was running rampant throughout the entire facility.¹³

Of the 1,400 prisoners, nearly 800—about 55 percent of the facility—tested positive for COVID-19 in the spring of 2020.¹⁴

⁸ JPay from David Ward to Kimberly Thomas (July 31, 2020) (on file with author).

⁹ *Lakeland Correctional Facility (LCF)*, MICH. DEP’T OF CORR., https://www.michigan.gov/corrections/0,4551,7-119-68854_1381_1388-5371--,00.html [<https://perma.cc/WNB6-PP8A>] (last visited Dec. 28, 2020).

¹⁰ Steve Friess, *Old Age in the Big House*, AL JAZEERA AM., (Jan. 6, 2015, 5:00 AM), <http://america.aljazeera.com/articles/2015/1/6/older-prisoners.html> [<https://perma.cc/QC6G-QERH>].

¹¹ Sam Fry, *Coldwater Prison has More than 600 COVID-19 Cases, Facility-wide Testing Reveals*, BATTLE CREEK ENQUIRER (Apr. 24, 2020, 5:20 PM), <https://www.battlecreekenquirer.com/story/news/local/2020/04/24/coronavirus-michigan-prison-lakeland-correctional-facility-600-covid-19-cases/3023594001/> [<https://perma.cc/R4U-6KZF>] (“It’s very important for us to know who’s positive because of the population that’s at Lakeland, which about half of the prisoners there, about 700, have chronic care conditions or are elderly,” [MDOC spokesman Chris] Gautz said. “So we need to do everything we can to protect the health of those prisoners because we’ve had about a third of our deaths statewide that have come from that facility.”).

¹² *Id.*

¹³ JPay from David Ward to Kimberly Thomas (July 31, 2020) (on file with author).

¹⁴ Lauren Edwards, *Close to 800 Prisoners at Coldwater Correctional Facility Test Positive for Coronavirus*, FOX 17 W. MICH. (Apr. 27, 2020, 3:45 PM), <https://www.fox17online.com/news/coronavirus/785-inmates-test-positive-for-coronavirus-at-prison>

The coronavirus crisis at Lakeland exists at the intersection of our discussions about long prison sentences, the aging prison population, and challenges and failures of prison health care and prisoner wellness. These failings of the carceral system predated the coronavirus and contributed to the severity of the impact of COVID-19 when it arrived in our prisons. COVID-19 hit correctional facilities with a force even greater than outside the prison walls and, like our criminal and corrections systems, has a disproportionate impact on Black and poor individuals and communities.

A. *The Aging of Our Prison Population and the Attendant Health Care Needs*

Of the men who died at Lakeland, the youngest one described by other men at the facility was fifty-nine years old; the rest were in their sixties and seventies. Like outside the prison walls,¹⁵ COVID-19 at Lakeland appears to have hit the elderly the hardest.

Osceola Foster remembers Richard Palombo, who died on April 19, 2020, at the age of seventy-one:

[Palombo] was a well-rounded person of knowledge. We had some of our most in-depth conversations about sports . . . Mr. Palombo was a trivia sensation often surprising others by being able to retain so much knowledge of various sorts. His passion was sports though. He was a devoted Piston and Lion's fan! . . . He participated in activities to the best of his abilities. Some days were better than others of course. While he walked his best pace & distance with his walker, we trailed him with his wheel chair.¹⁶

Some of these older inmates took to heart their role as elder statesmen. Vernard Washington, who died of COVID-19 at age seventy-three,¹⁷ Herbert J. Newman remembers, was the ultimate tutor:

[<https://perma.cc/S85F-G4YD>].

¹⁵ See, e.g., Jonathan M. Wortham, et al., *Characteristics of Persons Who Died With COVID-19 – United States, February 12 – May 18, 2020*, 69 MORBIDITY & MORTALITY WKLY. REP. 923 (July 17, 2020) (stating that, based on data on 52,166 deaths with laboratory-confirmed COVID-19, 79.6% were age 65 or older).

¹⁶ *Biographical Information: Richard Palombo*, MICH. DEP'T OF CORR., <https://mdocweb.state.mi.us/otis2/otis2profile.aspx?mdocNumber=120368> [<https://perma.cc/GGL2-8XWM>]. JPay from Osceola Foster to author (dated June 23, 2020) (on file with author). For more information regarding Richard Palombo, see Ed White, *Michigan Prisoner, Who Died of Coronavirus, Confessed to Murder That Freed Innocent Man*, AP & DETROIT FREE PRESS (April 22, 2020, 1:43 PM), <https://www.freep.com/story/news/obituary/2020/04/22/richard-palombo-coronavirus-michigan-prisoner/3004703001/> [<https://perma.cc/GT74-ZTQU>].

¹⁷ *Biographical Information: Vernard Washington*, MICH. DEP'T OF CORR., <https://mdocweb.state.mi.us/otis2/otis2profile.aspx?mdocNumber=185747> [<https://perma.cc/TEE6-4XC5>]. The MDOC webpage, called Offender Tracking Information System, has information on each person in the state correctional facility. This webpage states “discharged” under “current status” and the individual’s “discharge date” for a range of situations, including the death of the inmate.

He worked in various jobs over the years but later decided he wanted to help young men obtain their GED's so he became a tutor. Many young men can be thankful for Mr. Washington's input into their studies. He was most proud of young men learning to read and encouraged them to continue their education. He was a giant in here and is talked about often, though he is gone home to join his deceased family members in heaven.¹⁸

The population of elderly prisoners ballooned from just under 9,000 people age fifty-five or older in 1981 to nearly a quarter of a million in 2012, a growth of over 1,600 percent in three decades, according to an ACLU report.¹⁹ By 2030, the elderly prison population is expected to surpass 400,000, amounting to over one-third of prisoners in the United States, according to that same report.²⁰ At least seventy-five prisons provide hospice services, and many prisons have assisted living centers with full-time nursing staff, according to a Pew Charitable Trusts analysis.²¹

Collaborator Leo Carmona wrote of the work he had been doing helping to take care of the elderly prisoners at Lakeland:

For the last sixteen months, I have been blessed with the awesome responsibility of being employed as an aide in Lakeland's Elderly Long-Term Care program. My coworkers and I serve an assemblage of men who are elderly. Many of whom also suffer from a variety of chronic illnesses and physical disabilities which limit their mobility. Prior to the inception of this amazing program, it was noticed that many of these men were languishing away in their beds with very little to no daily activity. Some have outlived their loved ones, and no longer have contact with the outside world. The 'E.L.T.C.' Program was thus conceived to get these men active and engaged again.

I was hired to do several things. Primarily, we operate a walking program wherein we bring our patients (who are housed in a few different units) together where they are able to walk laps around a small semi-private

¹⁸ Letter from Herbert J. Newman, Jr. to Kimberly Thomas (June 29, 2020) (on file with author).

¹⁹ ACLU, *AT AMERICA'S EXPENSE: THE MASS INCARCERATION OF THE ELDERLY*, at i (June 2012), <https://www.aclu.org/report/americas-expense-mass-incarceration-elderly?redirect=criminal-law-reform/report-americas-expense-mass-incarceration-elderly> [<https://perma.cc/42PV-PRMZ>] (In 1981, there were 8,853 people fifty-five and older; in 2012, there were 246,600.).

²⁰ *Id.* It costs \$34,135 per year to house an average prisoner, but \$68,270 per year to house a prisoner over age fifty, in part because prisons were designed with younger prisoners in mind. *Id.* at ii, 28.

²¹ Michael Ollove, *Elderly Inmates Burden State Prisons*, PEW CHARITABLE TRUSTS (March 17, 2016), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/03/17/elderly-inmates-burden-state-prisons> [<https://perma.cc/6DTC-ZSX4>].

track, away from the noise and chaos of the general population. We keep track of laps walked and number of days participated. We also facilitate game leagues and other activities for the men we serve. While on the surface, this provides them opportunity for physical activity at their own respective paces, the more intangible benefit is the communication and companionship that these men receive, and the knowledge that they aren't forgotten and uncared for.²²

Despite the lower recidivism rate for elderly prisoners,²³ more people are dying of old age in prison than ever before.²⁴ As these prisoners age, their health care and other costs accrue to the state departments of corrections. One estimate found, on average, it costs approximately \$72,000 yearly to imprison an elderly individual in the U.S., which is triple the cost for a younger prisoner.²⁵

Few prisons are able to accommodate age-related changes such as functional decline, mobility, and chronic medical conditions The physical environment of most prisons is not adequate for the needs of frail elderly prisoners, and few specialized facilities and programs exist for older adults. Further, staff at most prisons lack training to work with older adults.²⁶

Additionally, "incarcerated persons tend to age at a rate faster than the general population, a phenomenon referred to as accelerated aging."²⁷ This is due to a combination of high levels of trauma and stress before they enter prison, which increases vulnerability to illnesses, and the fact that many prisoners do not receive proper healthcare when they arrive and throughout their incarceration.²⁸

²² JPay from Osceola Foster to Kimberly Thomas (June 23, 2020) (on file with author).

²³ Kim Steven Hunt & Billy Easley II, *The Effects of Aging on Recidivism Among Federal Offenders*, U.S. SENTENCING COMM'N 3 (2017), https://www.uscc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf [<https://perma.cc/FUG3-KKZE>].

²⁴ Hope Reese, *What Should We Do About Our Aging Prison Population?*, JSTOR DAILY (July 17, 2019), <https://daily.jstor.org/what-should-we-do-about-our-aging-prison-population/> [<https://perma.cc/6LBX-K7RC>].

²⁵ *The Plight of the Elderly in Prison*, ACLU, <https://www.aclu.org/other/plight-elderly-prison> [<https://perma.cc/UT3B-UHF5>]; see also *\$16 Billion Spent Annually Locking Up Prisoners 50 Years of Age and Older Who Post Little Safety Risk*, ACLU (June 30, 2012), <https://www.aclu.org/press-releases/releasing-low-risk-elderly-prisoners-would-save-billions-dollars-while-protecting> [<https://perma.cc/3PKW-BS8T>] (estimating a cost of approximately \$16 billion a year for prisoners aged fifty or older).

²⁶ Sarah Rakes et al., *Recidivism Among Older Adults: Correlates of Prison Re-entry*, JUST. POL'Y J., Spring 2018, at 1 (internal citations omitted).

²⁷ *Id.* at 3.

²⁸ Reese, *supra* note 24.

Missing from this Commentary, and from most of the stories of prisoners who died from COVID-19, are the details of their health and medical care, including things that could not be observed by the naked eye. The article chooses not to delve into the declining health concerns, pre-existing conditions, or commentary on the provision of health care of any of the people at Lakeland. This is due to concern for the privacy of the deceased and their health care records, as well as respect for their friends and caregivers in prison, who also wanted to support the privacy of their friends. Yet, similar to how the inequities of our health care system are at the center of the national debates around the coronavirus, a discussion of COVID-19's impact in our prisons requires attention to prison health care. My collaborator's memories hint at these deeper concerns.

Robert Boles remembered David Haney-Bey, who died at sixty-five years old,²⁹ went through a lot:

Losing half of both of his legs and having serious problems He used to come to the law library for help. Everyone use to direct him to me. I put him on the right track to get a good understanding of civil litigation, and gave him direction when he got pleadings back Although he was in a wheelchair this did not slow him down. He interacted with his family.³⁰

B. *The Prevalence of Death by Incarceration*

Several collaborators thought their friends did not need to die in prison and attributed their death caused by COVID-19, in part, to life or extremely long prison sentences. Dennis Berkey expressed these thoughts about his friend, Mike Drielick, who everyone called "Mudpit" because of his love of, and talent for, ceramics:

So Mudpit died in prison from COVID-19. He survived 47 years of incarceration, remained a good man who would of made a great neighbor, friend, member of society if Mudpit was only given the chance, as so many men & women incarcerated would Mike would of never committed another crime, he was in his 70's a little old man and there are plenty more that share Mudpit's story.³¹

²⁹ *Biographical Information: David Maurice Haney*, MICH. DEP'T OF CORR., <https://mdocweb.state.mi.us/otis2/otis2profile.aspx?mdocNumber=209628> [<https://perma.cc/PN7M-73S4>].

³⁰ Letter from Robert Boles to Kimberly Thomas, 5 (July 4, 2020) (on file with author).

³¹ JPay from Dennis Berkey to Demetrius Titus AFSC Good Neighbor Project (June 19, 2020) (forwarded to author by permission; on file with author). Berkey emphasized the same point in a different way in another correspondence: "Most of us have matured well passed the young fool we were so many decades ago who committed the crime(s) we were charged with. If the taxpayers knew what a true waste of money these prisons are, they would vote much differently, as a very large part of the prison population could be very safely released, i.e. the elderly who have served more than three decades of incarceration, who have sterling prison conduct, and are over sixty-five years old, they have

While violent crime, including murder, has generally declined over the past twenty-five years, the number of people serving life sentences in U.S. prisons is at an all-time high and continues to grow.³² From 1992 and 2016, “there was a 12.7 percent increase in the number of people on death row,” compared to a 328 percent increase in the population sentenced to life without parole during that time.³³ A 2017 study found that 161,957 people are serving life with or without parole sentences and “an additional 44,311 individuals are serving ‘virtual life’ sentences” of 50 years or more.³⁴ In total, one out of every seven prisoners are serving life or virtual life sentences.³⁵ Nearly 40,000 inmates in California, a third of the state’s total prison population, are serving life sentences.³⁶ And among the lifer population, more than 17,121 were convicted of nonviolent crimes.³⁷ Nationwide, Black Americans are incarcerated at five times the rate of whites and in some states at ten times the rates of whites.³⁸ This extreme disparity is also a feature of life sentencing: nearly half, or 48.3 percent, of life and virtual life-sentenced prisoners are Black, and in some states

aged beyond being a threat to society.” JPay from Dennis Berkey to Kimberly Thomas (July 27, 2020) (on file with author).

³² ASHLEY NELLIS, SENTENCING PROJECT, STILL LIFE: AMERICA’S INCREASING USE OF LIFE AND LONG-TERM SENTENCES 29 (2017), <https://www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/> [<https://perma.cc/RR7L-3LEV>].

³³ *Id.* at 24. While this rate appears to be the highest in the United States, it is also part of a global trend. Between 2000 and 2014, there was an 84% increase of life sentences worldwide, from 261,000 people in 2000 to approximately 479,000 in 2014. DIRK VAN ZYL SMIT & CATHERINE APPLETON, PENAL REFORM INTL. & UNIV. OF NOTTINGHAM, LIFE IMPRISONMENT: A POLICY BRIEFING, at 1 (2018), https://cdn.penalreform.org/wp-content/uploads/2018/04/PRI_Life-Imprisonment-Briefing.pdf [<https://perma.cc/YL3C-E4LE>]. Most European countries have abolished LWOP sentencing. *Id.* at 3.

³⁴ NELLIS, *supra* note 32, at 5. *Cf.* Jessica S. Henry, Christopher Salvatore & Bai-Eyse Pugh, *Virtual Life Sentences: An Exploratory Study*, 98 PRISON J. 294 (2018) (finding that more than 31,000 people in twenty-six states were serving virtual life sentences, defined as sentences with a term of years that exceeds an individual’s natural life expectancy).

³⁵ NELLIS, *supra* note 32, at 5.

³⁶ Dashka Slater, *Can You Talk Your Way Out of a Life Sentence?*, N.Y. TIMES (Jan. 1, 2020), <https://www.nytimes.com/2020/01/01/magazine/prison-parole-california.html> [<https://perma.cc/P8J3-AFLH>].

³⁷ NELLIS, *supra* note 32, at 12. More than two-thirds of federal prisoners serving life or virtual life sentences were convicted of nonviolent crimes, including 30% for a drug crime. NELLIS, *supra* note 32, at 13. An ACLU sample study of prisoners serving LWOP for nonviolent offenses found that 83.4% of those sentences were mandatory, and in many of these cases the judge stated on the record that he or she opposed the sentence as too severe. ACLU, *Overcrowding and Overuse of Imprisonment in the United States: Submission to the Office of the High Commissioner for Human Rights* (May 2015), <https://www.ohchr.org/Documents/Issues/RuleOfLaw/OverIncarceration/ACLU.pdf> [<https://perma.cc/K6EY-3UCG>].

³⁸ NELLIS, *supra* note 32, at 14.

two-thirds or more are Black.³⁹ Seventy percent of all youth ever sentenced to life without parole are people of color.⁴⁰

As of 2016, Michigan had just short of 6,000 people serving life without parole, paroleable life, or virtual life sentences; approximately 13.5 percent of the state prison population.⁴¹ As of 2017, more than thirty percent of Michigan's prisoners are serving sentences of over twenty years,⁴² and Michigan has one of the longest average prison sentences—even when lifers are excluded—in the country.⁴³ Michigan also spends a greater percentage of its general fund on corrections than nearly every other state.⁴⁴

Life and de facto life sentences do not, however, have a proven benefit to crime deterrence and safety. There is “no empirically evident deterrent value of life

³⁹ NELLIS, *supra* note 32, at 14. Over 65% of those serving de facto life sentences are people of color. NELLIS, *supra* note 32, at 14. Fifty-five percent of virtual life sentences were imposed on Black Americans, thirty-four percent on whites, and twelve percent on Hispanics. *Virtual Life Sentences*, SENTENCING PROJECT 1, 2 (Aug. 2019), <https://www.sentencingproject.org/wp-content/uploads/2019/08/Virtual-Life-Sentences.pdf> [<https://perma.cc/8JN6-T85E>]. The extreme over-representation of Black people in life sentences is on top of an underlying disproportionality in prison sentences generally. Michigan's prison population generally, like prisons around the country, is disproportionately Black compared to the state population. See, e.g., Anne Mahar, *A Snapshot of Michigan's Prison Population*, SAFE & JUST MICH. (Aug. 6, 2019), <https://www.safeandjustmi.org/2019/08/06/a-snapshot-of-michigans-prison-population/> [<https://perma.cc/4F2K-RFEQ>] (showing MDOC data that has a prison population that is fifty-three percent Black and forty-three percent white and noting that Latino/Hispanic people are undercounted because a category for Latino/Hispanic is not regularly included).

⁴⁰ Heather Renwick, *Rejecting Harsh Sentences for Children: 20 Years of Sentencing Reform*, AM. BAR ASS'N (July 9, 2018), <https://www.americanbar.org/groups/litigation/committees/childrens-rights/articles/2018/summer2018-rejecting-harsh-sentences-children-20-yrs-sentence-reform/> [<https://perma.cc/AQQ7-LBTF>].

⁴¹ NELLIS, *supra* note 32, at 10 (reporting 3,804 prisoners serving life without parole, 1,317 serving paroleable life, and 590 serving virtual life).

⁴² *The Long Haul: Why Long Sentences Hurt Everyone in Michigan*, SAFE & JUST MICH. (Feb. 27, 2019), <https://www.safeandjustmi.org/2019/02/27/the-long-haul-why-long-sentences-hurt-everyone-in-michigan/> [<https://perma.cc/7SJE-M4DQ>] (reporting that 31.7% of the prison population was serving twenty year or longer sentences in 2017).

⁴³ See *id.*; see also *Time Served: The High Cost, Low Return of Long Prison Terms*, PEW CENTER ON THE STATES 1, 13 (June 2012), https://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/sentencing_and_corrections/prisontimeservedpdf.pdf [<https://perma.cc/GG7Q-VCH8>] (“Among prisoners released in 2009 from reporting states, Michigan had the longest average time served, at 4.3 years”); see also *id.* at 15 (“Of all the violent offenders released in 2009, those in Michigan served the longest average time in custody, 7.6 years.”).

⁴⁴ *Distribution of State Expenditures (In Millions)*, KAISER FAM. FOUND. (2019), <https://www.kff.org/other/state-indicator/distribution-of-state-spending/?dataView=1¤tTimeframe=0&sortModel=%7B%22colId%22:%22Corrections%22,%22sort%22:%22desc%22%7D> [<https://perma.cc/SC9J-ZTTH>] (showing that, out of all states, Michigan tied for fifth for percentage of budget to corrections).

sentences or long sentences,”⁴⁵ and “empirical evidence disput[es] any real correlation between extreme prison terms and enhanced public safety.”⁴⁶

As Osceola Foster asks, “These men were/are sons, fathers, cousins, mentors, husbands, brothers, friends, associates and clients to people. What does enough look like, Mrs. Thomas?”⁴⁷

II. LIVES INTERRUPTED

COVID-19 hit out of nowhere, as people were in the midst of their day-to-day lives in prison. William Drew dedicated himself to reflection and growth, most recently through completing a victim awareness class. Jawan Hayes, who helps run the class, wanted the public to know of Drew’s insight into his crime and that he completed the class before he passed away:

I facilitate a Victims Awareness class and Drew was in my class and I saw another side of him that I never saw or knew of when it came down to empathy, remorse and forgiveness. His expression about how one bad decision can alter a person’s life. Kim, I have certificate of completion for Drew can you somehow put that inside of the review its just a thought?⁴⁸

Herbert J. Newman had much to say about his friend, Dave Harris, who “worked in the kitchen as a line worker, who loved greeting men as they came to pick up their trays” and died at the age of sixty-four.⁴⁹ Newman noted:

He, like myself, was a ‘rabid’ Dallas Cowboy fan, and lived for Sunday afternoons so we could cheer on our team A great guy who often told me how sorry he was for what he had done I wish the world could see how much he had changed. He will be missed.⁵⁰

Lakeland Correctional had the highest number of inmate deaths in Michigan at twenty-four.⁵¹ Osceola Foster stated, “[W]e’ve lost so many guys and for many of

⁴⁵ *An Argument Against Life Sentences, Especially for Juvenile Defendants*, NPR (Dec. 23, 2018, 8:01 AM), <https://www.npr.org/2018/12/23/679592515/an-argument-against-life-sentences-especially-for-juvenile-defendants> [<https://perma.cc/UDF9-YCT6>].

⁴⁶ Melissa Hamilton, *Some Facts About Life: The Law, Theory, and Practice of Life Sentences*, 20 LEWIS & CLARK L. REV. 803, 805 (2016).

⁴⁷ JPay from Osceola Foster to Kimberly Thomas (June 23, 2020) (on file with author).

⁴⁸ JPay from Jawan Hayes to Kimberly Thomas (June 24, 2020) (on file with author).

⁴⁹ *Biographical Information: Dave Harris*, MICH. DEP’T OF CORR., <https://mdocweb.state.mi.us/otis2/otis2profile.aspx?mdocNumber=527986> [<https://perma.cc/8JCB-LY93>].

⁵⁰ Letter from Herbert J. Newman, Jr. to Kimberly Thomas (June 29, 2020) (on file with author).

⁵¹ *MDOC Response and Information on Coronavirus (COVID-19)*, MICH. DEP’T OF CORR.,

us we're still in mourning. There are obviously no timelines on grieving/mourning so who knows how long it'll take for us to recover. Our bright spot starts with our memories of them."⁵²

The memories shared with me were inspiring, heartbreaking, joyful, despairing, funny, and compelling. They helped shine a light on the individuality of the person who died and his characteristics beyond the offense of conviction, which many expressed was the only fact of their friends' life that had been previously recorded.

- Osceola Foster shared his memories of Edward Cramer, nickname "Bear," who died of COVID-19 at the age of sixty-four.⁵³

Bear would consistently clean and provide fresh water in the bird feeders stationed outside A-Unit. In the winter months, he'd come out and crush the ice so that the birds would have a familiar place to eat or drink."⁵⁴

- Cory Souders wrote his memories of Bobby Haggitt, who died on May 5, 2020, at the age of seventy-five.⁵⁵

If I ever met someone who loved to garden, this was the guy. For the past two years that I knew this man, he was battling [a health problem]. Yet every day he was out walking a couple of miles, even in the cold weather. Last summer though, he would go out to his garden sometimes for hours. He worked in the community garden which donates the produce to the local pantry here in Coldwater.⁵⁶

- Robert Boles wrote about Bill Lovett, who died at the age of seventy-seven.⁵⁷

<https://medium.com/@MichiganDOC/mdoc-takes-steps-to-prevent-spread-of-coronavirus-covid-19-250f43144337> [<https://perma.cc/57MF-EH6W>] (last visited Aug. 1, 2021).

⁵² JPay from Osceola Foster to Kimberly Thomas (June 23, 2020) (on file with author).

⁵³ *Biographical Information: Edward Norman Cramer*, MICH. DEP'T OF CORR., <https://mdocweb.state.mi.us/otis2/otis2profile.aspx?mdocNumber=144654> [<https://perma.cc/MT2R-5DW9>].

⁵⁴ JPay from Osceola Foster to Kimberly Thomas (June 23, 2020) (on file with author).

⁵⁵ *Biographical Information: Bobby Joe Haggitt*, MICH. DEP'T OF CORR., <https://mdocweb.state.mi.us/otis2/otis2profile.aspx?mdocNumber=111549> [<https://perma.cc/T4B5-3SL7>].

⁵⁶ JPay from Cory Souders to Kimberly Thomas (July 5, 2020) (on file with author).

⁵⁷ *Biographical Information: William Douglas Lovett II*, MICH. DEP'T OF CORR., <https://mdocweb.state.mi.us/otis2/otis2profile.aspx?mdocNumber=118387> [<https://perma.cc/MSR7-3SL7>].

We worked together in the law library. He always wanted to answer the guys' legal questions and give them assistance He had been a paralegal for Prison Legal Services and worked in the factory at Jackson prison."⁵⁸

- Cory Souders recalled,

Bill was from the Grand Rapids area and had been incarcerated longer than I have been alive He would always speak about his daughters and granddaughter. You could tell that his family truly meant a lot to him.⁵⁹

- Osceola Foster recalled Mike Weaver, who died at the age of seventy-one.⁶⁰

I met Mr. Mike or Mike Weaver here as I've worked with him [H]e was out n' about daily doing gardening chores. He even just recently, as in seven or eight months ago made a makeshift memorial for a A-Unit guy that passed away in the fall. Mr. Weaver walked me through some gardening tips, must dos, and practices while never wavering a moment for his personal life.

Mr. Weaver gave me permission to address him as Mike. He was a pretty sharp card player. There were plenty of card games that he'd successfully play. A lot of guys in A-Unit used to want him as a partner when we ran card games for his unit He was so strong and positive. One of our first talks about him, I recall being shocked by what he'd been through health wise. He has a way with such an elegant soft tone. So at the end of that first conversation about him, I told him that God wasn't ready for you, man! He agreed and every time since after I'd see him [if he wasn't] feeling well, he'd echo those same sentiments. God wasn't ready for me! Well, my brother

HF9T].

⁵⁸ Letter from Robert Boles to Kimberly Thomas (July 4, 2020) (on file with author).

⁵⁹ JPay from Cory Souders to Kimberly Thomas (July 5, 2020) (on file with author).

⁶⁰ *Biographical Information: Michael Jerome Weaver*, MICH. DEP'T OF CORR., <https://mdocweb.state.mi.us/otis2/otis2profile.aspx?mdocNumber=288164> [<https://perma.cc/QWP6-P5UU>].

Mike. God accepted you this time and you definitely left the mark of courageousness, strength, and determination upon us.⁶¹

- Perry Bradley wrote of William Drew, who died on April 29, 2020 at the age of sixty-five.⁶²

He got up and walked every day [despite mobility limitations] He also participated in various self-help programs (i.e., victim awareness, personal enrichment, parole readiness). Mr. Drew had a great sense of humor and was an enthusiastic sports fan. He and I had many heated debates over our favorite sports teams and players.⁶³

- Bobby Layne, who died from COVID-19 at sixty-nine years old,⁶⁴ was recalled by Charles Foresi:

Bobby Layne almost always had a smile on his face. He was one of the pioneers for a new style of greeting cards that are uniquely designed using needle and thread. He's always works with you if your funds were short & would also special make one-of-a-kind cards for you.⁶⁵

- Gregory A. Heisler, who was known as "Country" and died at the age of fifty-nine,⁶⁶ worked as the facility barber. Danta J. Davis remembers that, in addition to working as a barber, Heisler knitted caps to donate for breast cancer awareness month. Charles Foresi

⁶¹ JPay from Osceola Foster to Kimberly Thomas (June 26, 2020) (on file with author).

⁶² *Biographical Information: William Drew*, MICH. DEP'T OF CORR., <https://mdocweb.state.mi.us/otis2/otis2profile.aspx?mdocNumber=137313> [<https://perma.cc/83E6-HP8B>].

⁶³ Letter from Perry Bradley to Kimberly Thomas, 3-4 (undated, summer 2020) (on file with author). Mr. Drew "openly discussed how he acknowledged his downfalls in life, as the things he succumbed to that led him to crime. In being so honest, he opened the eyes of not only me, but some others that were around us." JPay from Osceola Foster to Kimberly Thomas (June 23, 2020) (on file with author).

⁶⁴ *Biographical Information: Robert Milton Layne*, MICH. DEP'T OF CORR., <https://mdocweb.state.mi.us/otis2/otis2profile.aspx?mdocNumber=158785> [<https://perma.cc/SC63-RXG8>].

⁶⁵ JPay from Charles Foresi to Kimberly Thomas (June 2, 2020) (on file with author).

⁶⁶ *Biographical Information: Gregory Alen Heisler*, MICH. DEP'T OF CORR., <https://mdocweb.state.mi.us/otis2/otis2profile.aspx?mdocNumber=174564> [<https://perma.cc/5KAG-2F3K>].

wanted others to know about how Mr. Heisler “paid it forward” in a place not known for generosity. He wrote:

My very first encounter with this man years ago was when I was on the hunt for a half of a bottle of glue for a project I was in the midst of. Country went in his unit & came back out with what I was looking for. I asked him what he wanted, he replied, ‘just bring my bottle back, the contents are free, no strings attached, just help someone else out when you can.’ Needless to say, the ‘Pay it forward’ concept is a rarity in prison, but Country tried to inspire others to do so anyway. And I keep a ‘Love Box’ of necessities, for those less fortunate, to this very day partially because of the generosity Country showed me without ever having known me.⁶⁷

III. THOSE LEFT BEHIND

Leo Carmona, a collaborator who works with elderly prisoners, writes that he is grateful to the MDOC to have a job that has made a difference in the lives of others. Some studies support his sense that his work improves the quality of life of his fellow inmates.⁶⁸ Yet, as he puts it, “I learned (almost instantly) that this is not just another job”:⁶⁹

There is no so-called professional detachment here. We (my coworkers and myself) have grown to actually CARE about these men and have become emotionally invested in their respective plights. Seemingly coming out of nowhere, COVID-19 scared us and had us in near-panic before it was even here, because we knew that the men we serve were going to be among the absolute most vulnerable to this disease. Personally, I was fearful and wracked with anxiety, wondering how many men we were ‘sure’ to lose.⁷⁰

Leo Carmona reflected on the prison culture and its emphasis on stoicism, and the need to be able to process the death of individuals he knew:

⁶⁷ JPay from Charles Foresi to Kimberly Thomas (June 29, 2020) (on file with author).

⁶⁸ See, e.g., Susan J. Loeb, *Care and Companionship in an Isolating Environment: Inmates Attending to Dying Peers*, 9 J. OF FORENSIC NURSING 35 (2013) (describing role of prisoner caregivers in end-of-life care and also citing to a 2007 study which found that inmate caregivers forged critical relationships with dying peers and staff and improved the quality of care).

⁶⁹ For one study of prison inmate caregivers in the Louisiana State Penitentiary at Angola, which noted the lack of study of this topic and the need to understand the bereavement needs of these caregivers, see Katherine Supiano et al., *The Grief Experience of Prison Inmate Hospice Volunteer Caregivers*, 10 J. OF SOC. WORK IN END-OF-LIFE & PALLIATIVE CARE 80 (March 2014).

⁷⁰ JPay from Leo Carmona to Kimberly Thomas (June 25, 2020) (on file with author).

As incarcerated men, we are (erroneously) ‘taught’ or conditioned not to show emotion, (other than anger) and because of this, many of us will not properly grieve the loss of our friends. We will ‘suck it up’, and soldier on as if it wasn’t a big deal. Only . . . it was. It was a VERY big deal. Every day up to and at the peak of the pandemic, brought the palpable anxiety and fear of wondering who was next to be rushed out of here by ambulance and/or die, and whether it would be us.⁷¹

The prisoners at Lakeland who died of COVID-19, as well as the over 2,700 incarcerated individuals around the country who have also died from coronavirus-related causes,⁷² left behind friends and loved ones, both inside and outside of the correctional system. Herman J. Newman recalled:

Working in the LCF Property Room, I have to help pack their final belongings for shipment to their family members after they’ve passed. There have been times I’ve had to pack up someone’s belongings and have broke down and cried. My boss [] has been most kind and understanding, knowing these men are my friends and it’s hard at times to do what I do.⁷³

Fred C. Proctor described his friend Mike Drielick, who died at the age of seventy-three,⁷⁴ and how he reacted to losing Mike:

When Mike contracted COVID-19 he got very sick He eventually passed out taken to health care and taken to the hospital. I never seen Mike again. A few weeks later an officer told me that Mike had passed away. I took Mike’s passing away very hard and was emotionally hurt for a few weeks and had to get away from people just so I could be human and cry. I lost my little buddy. He was a true friend and brother in which I could talk to and share my thoughts and feelings with and trust they would stay with him. He should not have been forced to die by incarceration.⁷⁵

⁷¹ *Id.*

⁷² See *A State-By-State Look of Coronavirus in Prisons*, *supra* note 1 (data updated through June 2021) (last visited Aug. 1, 2021).

⁷³ Letter from Herbert J. Newman, Jr. to Kimberly Thomas (June 29, 2020) (on file with author).

⁷⁴ *Biographical Information: Michael Daniel Drielick*, MICH. DEP’T OF CORR., <https://mdocweb.state.mi.us/OTIS2/otis2profile.aspx?mdocNumber=135635> [<https://perma.cc/ZF3Z-HWH9>].

⁷⁵ Letter from Fred C. Proctor to Kimberly Thomas (July 18, 2020) (on file with author).