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Prison inmate convicted of attempted murder

By JIM PFIFFER

Star-Gazette 12/11/98

jpfiffer@stargazette.com

A prison inmate and convicted murderer was convicted Thursday of first-degree attempted murder for repeatedly stabbing an Elmira Correctional Facility officer.

A seven-woman, five-man jury deliberated for nearly five hours before returning the 4:20 p.m. guilty verdicts on all counts against Eric Jeffrey. The other charges: Aggravated assault upon a peace officer, second-degree assault and first-degree promotion of prison contraband.

The 24-year-old Jeffrey, who is already serving a 25-to-life sentence for a 1994 murder conviction in New York City, faces a second 25-to-life bid when he's sentenced Feb. 1 by Chemung County Judge Peter C. Buckley.

During deliberations, the jurors struggled with the issue of Jeffrey's intent when he attacked Jerry T. Fochler on July 7, said a juror who didn't want to be identified. "When the judge gives you the definition of the law, you have to go by that definition in reaching a verdict," the juror said. "We weren't 100 percent sure of the definition of attempted murder so we had to keep going out and have them read it to us. We just all wanted to be 100 percent sure."

Twice during deliberations, the jury returned to the courtroom to have the legal definition of attempted murder read back to them. Assistant Chemung County District Attorney Christopher P. Baker argued that Jeffrey intended to kill Fochler because he stabbed him so many times in the head and neck area. "When you're stabbed in those areas of the body, it's likely to cause death," Baker said, who prosecuted the case.

After voting to convict Jeffrey of attempted murder, the jurors had no difficulty convicting him of the other charges, the juror said. Jurors heard testimony from eight witnesses, including graphic and emotional details from Fochler.

The 59-year-old Fochler, a 17-year correctional officer, still suffers from pain, numbness and repeated nightmares. He has not returned to work since the attack and said he doesn't plan to. Jeffrey's lawyer, Chemung County Public Defender Richard W. Rich Jr., didn't call any witnesses. Rich said he will appeal the verdict.

Jeffrey will spend at least 15 years locked in solitary confinement 23 hours a day at Southport Correctional Facility, Baker said. The day of the attack, the 6-foot, 4-inch, 200-pound-plus Jeffrey was in solitary confinement at Elmira Correctional Facility for previously refusing a direct order.

He attacked Fochler when he was released from his cell for recreation. Fochler, who had never before had contact with Jeffrey, was stabbed six or seven times in the head, arms, neck and back with a 5-inch long sharpened metal rod. Other correction officers arrived and Jeffrey surrendered.

A note was later found on the sink in Jeffrey's cell that read: "You ... better live forever. Ha, ha, ha. Otherwise I'll be waiting for you. Only God can judge me now." The note also instructed officers to turn on a cassette player in Jeffrey's cell, said Baker. The tape was cued to a rap song called "Only God Can Judge Me Now," by slain rapper Tupac Shakur. A motive for the attack was never proven, although investigators suspect it was prison-gang related.

During a pre-trial proceeding in September Jeffrey loudly claimed to be Jesus, sang hymns and demanded to be his own judge and lawyer. Because of that and continued attacks on prison staff since July, Jeffrey was placed in handcuffs and leg irons during his four-day trial.

During the trial, Jeffrey, with shoulder-length dreadlock haircut and goatee, refused to stand when the jury and judge entered or left the courtroom, a customary act of respect during courtroom proceedings.

Jeffrey's disrespect didn't surprise Baker. "If you've already been convicted of murder, and then while you're in prison you attack someone and plunge a shank in his body that many times, you can't expect too much respect from that type of person."

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Civilian female cook at Elmira Correctional Facility charged with raping a male inmate.

By JIM PFIFFER
Star-Gazette
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A female civilian cook at the Elmira Correctional Facility has been charged with raping a male inmate -- a convicted murderer. It's believed to be the first case of its kind in Chemung County.

Allyson H. Chase, 30, of Trumansburg, was arraigned Friday in Elmira City Court on three felony

counts of third-degree rape. Chase, who was fired from the prison Nov. 18, is accused of raping the 24-year-old inmate three times since September.

Chase supervised the inmate as part of a vocational training program and they had sex in a supply room above the kitchen, according to court records.

Even though she is charged with rape, Chase is not accused of having sex with the inmate against his will. Regardless if the inmate wanted to have sex, a 1996 state law says a state prison inmate cannot legally consent to sexual relations with a prison employee responsible for the custody and care of the inmate.

It's similar to a statutory rape law that, for example, makes it illegal for an 18-year-old man to have sex with his 17-year-old girlfriend, even though she consents.

The law was passed to protect female inmates from sexual attacks by male prison employees, said Elmira City Court Judge Thomas E. Ramich, who arraigned Chase. But it applies to all inmates, regardless of gender.

"It could be said that the law was passed to protect female inmates from sexual demands by staff," explained Ramich. "The officer could say he didn't rape the inmate because she consented to it. But how can she consent if she is under lock and key and in complete control of the correction officers?"

Lawrence is serving a 30-year-to-life sentence after being convicted in 1991 in Onondaga County, N.Y., of murder, assault, robbery and criminal possession of a weapon, said Mike Huston, a state Department of Correctional Services spokesman.

If convicted, Chase could be sentenced to four years in prison on each of the three counts, said Assistant Chemung County District Attorney Adam Gee.

Lawrence, who had been at Elmira since 1991, was transferred to Clinton Correctional Facility Nov. 19, said Huston. He is eligible for parole in 2020.

Chase was arrested by New York State Police in Horseheads after someone, other than the inmate, notified prison officials about the incidents, said state police Senior Investigator William Driscoll.

The alleged rapes occurred in the afternoons in the beginning of September, and on Sept. 15 and Nov. 6, said Ramich.

Driscoll said this was the first time he had investigated such a case. Gee said this is the first such case to his knowledge in Chemung County, the site of two state prisons.

Chase, who is single and has three children, was fired from her \$27,102-a-year job, Huston said. She had worked as a cook at Elmira since May 21.

Chase's attorney, Jeanne Clark of Syracuse, told Ramich in court Friday that Chase has no other felony convictions.

Chase, a lifelong Trumansburg resident, was released on her own recognizance. The case will be transferred to Chemung County Court for further action.

Chase and Clark declined to talk to a reporter on Friday.

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Kingston Jury finds inmate guilty of throwing excrement

A violent inmate who repeatedly told a judge last week to perform vile sex acts, was convicted by an Ulster County jury yesterday of tossing his own excrement at a Shawangunk correction officer. And for that, he could get a life sentence.

Jamal Thomas, 46, of the Bronx, was convicted by a jury yesterday of aggravated harassment of an employee by an inmate, a felony. Prosecutor Emmanuel Nneji said his office will be seeking "persistent felony offender" treatment for Thomas.

That means visiting County Court Judge Frank LaBuda can sentence him up to 25 years to life on top of his life sentences for the 1979 murder of a fellow jail inmate and the 1982 kidnapping and escape attempt from the Bronx House of Detention.

He was already serving time for the 1979 shooting of a New York City cop. Last August, an Ulster County Jury acquitted Thomas of charges he assaulted a correction officer at Eastern Correctional Facility outside Ellenville.

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Letter to the Editor (Star Gazette - Elmira)

Silver should work as a corrections officer
I found it appalling that Assembly Speaker Sheldon Silver would think us New Yorkers to be so ignorant in believing that he and his cronies would be long overdue for a pay raise.

Are these the same people who can't pass a state budget on time, costing taxpayers millions of dollars in interest?

Silver wrote about California legislators' pay scales, but failed to mention that California's legislators are banned from holding private sector employment. You see, those legislators work full time, not part time.

Could the average New Yorker imagine making \$57,500 a year part time. Silver mentions that pay hikes are necessary to retain qualified individuals who would find the job worthy.

My God, the incumbents keep getting elected over and over again, so the job must be pretty rewarding. I walk the beat of a New York state correction officer every day, full time, and don't get paid even close to that. Yet we sacrificed with zero percent raises in our last three contracts.

Where were you then Speaker Silver? I don't recall you stating we were overdue. Come walk our beat along with some of your cronies for a day. You'll vote us a 50 percent pay hike when you get feces or urine thrown in your face.

REGINALD S. FERGUSON
Horseheads

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INTERESTING FEDERAL BILLS WHICH AFFECT CORRECTIONS

S.561

SPONSOR: Sen Shelby (introduced 04/10/97)

A bill to require States receiving prison construction grants to implement requirements for inmates to perform work and engage in educational activities, to eliminate certain sentencing inequities for drug offenders, and for other purposes.

H.R.3729: A bill to ensure that prisoners are not permitted unsupervised access to any interactive computer service.

Sponsor: Rep Pryce .

H.R.792: A bill to amend title 18, United States Code, to prevent Federal prisoners from engaging in activities to increase their strength or fighting ability while in prison.

Sponsor: Rep Pryce .

H.R.169: A bill to amend the Violent Crime Control and Law Enforcement Act of 1994 to prevent luxurious conditions in prisons.

Sponsor: Rep Franks, B.

S.438: A bill to provide for implementation of prohibitions against payment of social security benefits to prisoners, and for other purposes.

Sponsor: Sen Grassley .

S.2332: A bill to limit the ability of prisoners to challenge prison conditions.

Sponsor: Sen Faircloth .

H.AMDT.561: An amendment, printed as amendment No. 4 in the Congressional Record of April 22, 1998 to prohibit the release or non-admission of prisoners from prison solely on the basis of the condition of the prison facility.

Sponsor: Rep DeLay .

S.602: A bill to provide a mandatory minimum sentence for State crimes involving the use of a firearm, impose work requirements for prisoners, and prohibit the provision of luxury items to prisoners.

Sponsor: Sen Snowe.

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Inmate cable t.v.

At Elmira the superintendent issued a memo to the inmate population that states the following:

I am pleased to advise you that the Elmira Correctional Facility has entered into an agreement with Time Warner Entrainment to have cable run throughout the housing units.

While we are working out the details, the following information is available to us at this time:

Time Warner is planning on commencing this project during the first quarter of 1999.

All of the housing units, except for SHU, will be wired for cable television.

All cells within each housing unit will have a cable TV connection installed within it.

Time Warner will provide a cable box to each subscriber that will enable them to receive standard service, which is currently 51 channels. The facility will have the ability to broadcast programming on three additional channels

Inmates who wish to use the services will be required to pay \$1.75 per month

There is a list of channels is attached to the memo. They are the same channels that we pay \$35 a month for. Think about it, old people on fixed incomes can't afford cable but convicts get it for next to nothing. Who says crime doesn't pay.

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Memo on Bill A07977

BILL NUMBER: A7977

PURPOSE OR GENERAL IDEA OF BILL:

This bill would strengthen the protections available to individuals who, while employed in public service as well as private business and industry, choose to go public with information regarding activities of their employer which are reasonably believed to be a violation of law or which pose a serious danger to public health or safety.

SUMMARY OF SPECIFIC PROVISIONS:

This bill amends Labor Law 740 (the section of New York's "Whistleblower Law" that covers private employers) to make its provisions more consistent with those under Civil Service Law 75-b (the section of the "Whistleblower Law" that covers public employers) by expanding its prohibition against retaliatory action to include instances where the employee discloses or threatens to disclose to a supervisor or public body an activity, policy or practice of the employer that the employee reasonably believes to be in violation of the law or which poses a serious danger to public health or safety. Concurrently, this bill will amend Civil Service Law 75-b to extend protections against retaliatory disciplinary action by a public employer against a public employee who discloses information to the news media, provided the employee has made a good faith effort to provide the information to be disclosed to the appointing authority prior to disclosure to the media and is not otherwise prohibited by law. "News media" includes newspaper, magazine, news agency, press association, wire service, professional journalist or newscaster.

JUSTIFICATION:

In 1984, the Legislature enacted the "Whistleblower Law" which protects employees who refuse to comply with their employer's instructions to violate the law or who disclose to governmental authorities employer wrongdoing from retaliatory action by their employer (L.1984, Ch.660). That law, however, was limited to employees who disclose employer activity which was both in violation of law and posed a serious and

substantial threat to public health and safety.

In 1986, the Legislature amended the Civil Service Law to extend those protections to the same employees who disclose information regarding any activity which the employee reasonably believes is a violation of law, rule or regulation, whether or not the violation endangers the public health and safety (L.1986, Ch.899). That amendment did not, however, afford similar protections to private sector employees. (See, e.g., *Burdell v. General Electric Co.*, 1995 WL 83729 {3/2/95}, holding that 740 does not impose a "reasonable belief" standard.) This particular legislation addresses that need through comparable amendments to the Labor Law.

This bill provides:

1. protection to public and non-public employees who refuse to participate in such activities and are sometimes severely penalized by their employers for their refusal;
2. safeguards to those same employees when disclosures are made by other persons acting on their behalf, as well as those employees who report illegal or dangerous activities themselves;
3. elimination of the existing election of remedies provision, which unfairly requires employees to waive remedies available under other laws;
4. protections to public employees who make their information known to the news media as a result of inaction or disregard by their employer.

Expansion of whistleblower protections is as necessary in the private sector as in the public sector. The present law offers little or no protection in situations such as those of brokers who reveal important evidence of insider trading, accountants who are asked to falsify tax records, and employees of government contractors who disclose falsifications of records concerning minority businesses. Nor does it necessarily protect the employee who "blows the whistle" in the illegal substitution of inferior materials, because the resultant harm to the public may not be both substantial and specific (the employee may not know whether the substitution is likely to cause great harm and may want to let the appropriate governmental regulator make that determination). The private sector has no internal mechanism to investigate and prosecute the occasional employer who engages in illegal or dangerous activities. Moreover, governmental commissions and agencies investigating such private sector employers are dependent on the cooperation of precisely those that this legislation is designed to protect; that is, employees who are willing to "blow the whistle" on otherwise undiscoverable practices.

The news media frequently plays an important role in the investigation of charges of governmental mismanagement and corruption. Disclosure of this information is a primary step in curbing misconduct. This bill protects from retaliatory action public employees who go to the media with their information, aiding in disclosing and deterring misconduct. Disclosure of this information to the media is often an essential step in curbing misconduct.

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Elmira prison inmates may get cable service

By JEFF MURRAY
Star-Gazette
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Inmates at the Elmira Correctional Facility could get to channel surf in the near future -- cheaper than the rest of us -- but correction officials believe it's the prison staff that will benefit.

The New York State Department of Correctional Services is negotiating with Time Warner Cable to provide cable hookups to each of the inmates who have a TV in their cell. Inmates bought those television sets -- only 12-inch, black and white models are allowed.

Inmates will also have to pay for the proposed cable service and not taxpayers, said department spokesman James Flateau.

"When inmates use collect call only phones to call home, the long distance carrier pays the state a commission on that call," Flateau said. "It's part of the bill to the customer. We pay the basic cable rates from those commissions. If inmates want HBO or Cinemax, we pay for those premium channels from the inmate benefit fund."

Flateau explained that when friends and relatives visit inmates at the prison, money they put into vending machines in the visitor area is put into an account that the inmates can decide how to use. They can vote to use it for premium cable channels if there are sufficient funds.

No rates have been set yet, but Tom Adams, Southern Tier Region division president for Time Warner Cable, said inmates will end up paying a lot less than the average residential customer, simply due to their sheer numbers.

"We do bulk rates with multiple dwelling units based on volume," Adams said. "We have provided cable in a lot of prisons. We are a provider of an entertainment service. If the prison comes to us we'll talk to them and see if we can provide cable for them at a reasonable rate to both of us."

The cable service will probably cost inmates about \$1,000 a month, Flateau said. Of the roughly 1,850 inmates at the Elmira Correctional Facility, he estimated about 600 of them have television sets.

Prison officials figure the charge will work out to about \$1.75 a month per inmate, compared to the \$30.47 monthly fee the average Chemung County cable customer will pay for basic service when rates go up Jan. 1.

However, before people complain that inmates are enjoying a cheap luxury, Flateau said they also have to give up a privilege in return -- a tradeoff he said will benefit the prison staff.

"We're looking at it as an employee safety issue," he said. "Right now, inmates can get a couple of packages a month from home. It's a major source of contraband. If inmates vote to have cable in their cells, they give up their packages from home. It's also an issue of employee time. It's fewer packages they

have to go through."

Not everybody in the community is buying that argument, however.

"I think the cable company is doing a disservice to the community by charging less to the prison than any other person in the community," said John Savino of Horseheads. "I don't think anyone should pay a different price, except senior citizens should have a lower rate. I don't think because people are incarcerated in a prison that they should get a discount."

Local correction officer union officials, on the other hand, believe the program has potential.

"I think it probably would be beneficial to the staff," said Dan Morgan, president of Local 3544 of Council 82, which represents correction officers. "In Elmira, I think they'll see a decrease in the number of inmates who go to the recreation area."

Morgan said the Southport Correctional Facility, where he works, only has a small number of inmates with TV privileges and no cable, but he said even that service has helped reduced inmate problems.

Attica, Clinton and Great Meadow are the other maximum security prisons in the state system that allow cable hookups to individual cells. Another benefit officials have discovered is that cable TV keeps more inmates in those facilities out of trouble.

"What we're finding is a lot of inmates will stay in their cells and watch TV and fewer are going to the (recreation) yard," he said. "That's fewer that might become involved in assaults or action against staff."

TV sets are not allowed in individual cells in medium security prisons, Flateau said, because the more relaxed security makes it easier for those sets to be stolen or damaged.

Inmates also have to sign a form that authorizes the state to take the replacement cost of a cable box out of the inmate fund if a box disappears or is damaged.

It's a win-win situation, Flateau said.

"It's a good way of getting rid of privileges that are often a source of contraband and allows us to use staff resources for other things," he said. "We're providing an extra benefit to the staff that inmates are paying for."

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A letter I sent to the Star Gazette as a response

Mr Jeff Muray ,

My name is Pat Hetherington currently Vice President at Elmira Correctional Facility . Reading yesterdays article on cable tv for inmates there was a part I take serious issue with.

First of all Im not taking a stand for or against inmates receiving cable TV or not I personally feel jail cells shouldnt be as comfortable as the Holiday Inn .However If the people of this State think its ok for the convicted felons to have cable TV and if the people whom make the descions see fit to give it to them it niether adds to or subtracts from my life. It in no way effects how I preform my duties.

What I take exception too is the statement that it makes my job safer for it does not. The violence in prison is primarilly caused by inmate Gangs fighting with each other. TV in the cell to give the inmate the choice of rec or tv in his cell is a passive measure. Anytime there is trouble between the gangs the leadership will ensure all their members turn out. In fact thinking that rec turnout will be less due to TV useage will create a false sense of security that could result in less staff posted in critical areas and create a MORE dangerous situation.

Mr Morgan President of Southport made statements about Elmira Correctional Facility that was misleading. Im not sure what problems the few TVs allowed to honor inmates in Southport have averted. But He works there Im sure he does. However ELMIRA President Kingston Bachart and LOCAL 1240 finds recreation numbers have stayed the same since the introduction of TV . Give the inmates TV if you want but dont use my safety as the excuse. Ideally in the future Mr Morgan can discuss the issues that face Southport officers . It is a Maxi Max and has its own set of situations I would not be knowledgable about. Just as Mr Morgans knowledge is incorrect in this case about recreation in Elmira.

I should mention that many officers do not share my somewhat neutral view as to wether inmates should receive cable at reduced rates less than the citizens in the community . Most that have spoken to me feel that it is wrong to do so. Particularly the reduced fee.

Thank You ,
Pat Hetherington Local 1240

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UNION MAY MISS CHANCE AT CONTRACT

By Saul G. Ferrer, Staff Writer

PLATTSBURGH -- Come April 1, the state's correction officers could be working without a contract. With the prison guards' union, Council 82, and its rival, NYSCOPBA, embroiled in a turf dispute, contract negotiations with the state could stall until past the usual January start. Since past negotiation sessions have taken an average of three months and the current contract expires March 31, a new agreement would need to be signed before April 1. If they miss the deadline, union members by law continue to work under their expired contract conditions. That means no added benefits or salary increases for the state's 21,000 correction officers until an agreement is worked out. All this of this

hinges on the State Public Employee Relations Board, which is reviewing NYSCOPBA's challenge to replce C82 as correction officers' collective-bargaining unit.

Earlier this year, NYSCOPBA filed an 8,000 signature petition, calling for a membership vote on which bargaining unit should represent the officers. By law, C82 can be challenged around contract-negotiation time, but at least one-third of the existing union's membership must support the challenge. Once the petition was filed a membership vote was scheduled for Nov. 20. But it was delayed after C82 made allegations that some of the signatures on the petition were forgeries. NYSCOPBA filed papers with PERB that support the validity of the signatures, said PERB spokeswoman Rosemarie Rosen.

PERB is now reviewing the signatures. If ruled valid, a membership vote could be held within the next two weeks. If not, C82 would continue as the officers' union. NYSCOPBA leaders say an independent union would better suit members than C82 and its national sponsor, AFSCME. They describe AFSCME as a clerical union which does not represent the interest of correction officers. Organizers also point to lagging salary increases and a 1994 scandal where three C82 leaders were accused of using union credit cards for personal purchases. They were later ousted.

AFSCME took over daily operation of the union in 1995 until new leaders were elected. NYSCOPBA Secretary David Stanson has previously said that C82 "should move aside so we could get down to business." C82 calls NYSCOPBA an organization with no bargaining experience, compared to the 30 years the council has at the bargaining table. "As we've maintained, they're simply a bunch of wannabes," said C82 spokesman Dan Curran.

He said the rival group has no national support and is afraid members would be left at the mercy of the state if NYSCOPBA becomes the representative union and then folds. "C82 members are suffering from NYSCOPBA's challenge," Curran said, adding that preparations for negotiations with the state have been delayed six weeks because of it. C82 last fended off a challenge in 1994 from TUFCA, which is no longer in business and did not have a national sponsor.