

PRISON

POLICY INITIATIVE

In Memory of Jon E. Yount

1938 – 2012

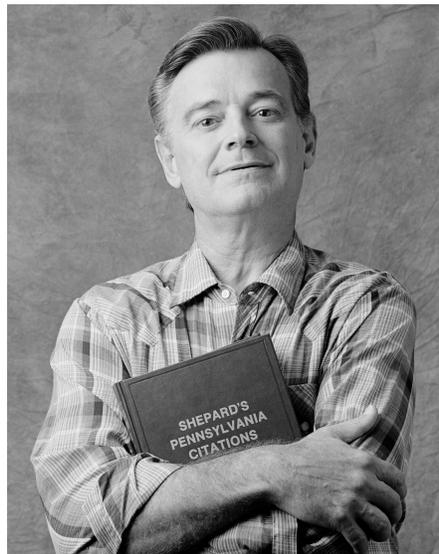
by Peter Wagner, Executive Director

Sometime in the early morning of April 26, in his cell in a remote Pennsylvania prison, a 74-year-old jailhouse lawyer serving a life sentence took his own life. He was a quiet man who avoided taking credit for his work, so many people in and outside of prison don't know about the debt they owe to Jon E. Yount.

I knew Jon well, although not as well as I'd have liked. We corresponded a few hundred times, with him writing more than me, and I visited him four or five times. A careful reader of this blog might recognize Jon's name from the Prison Policy Initiative advisory board, but very few people know that Jon was the first person to recognize how the Census Bureau's prison miscount could distort state legislative redistricting.

In the late 1990s, Jon and filmmaker Tracy Huling, working independently, linked the Census Bureau's counting incarcerated people as residents of the prison location to negative political and economic effects. Tracy and Jon's efforts started people talking about it, and it was this "rumor" that I initially set out to debunk. I was skeptical that the prison system was large enough for census counts of correctional populations to distort the federal budget or congressional districts. It turns out that the Census Bureau's prison miscount did have only a very tiny effect on the distribution of federal funds, but it was Jon's work that first drew my attention to the distortion on state legislative districting.

I didn't know it until after I had completed my first report, *Importing Constituents, Prisoners and Political Clout* in New York, but Jon had written a thesis about felon disenfranchisement that mentioned the



Photograph of Jon E. Yount reprinted from *Doing Life*. © by Good Books (www.GoodBooks.com). Used by permission. All rights reserved.

Census Bureau's prison miscount, and he was also working on a lawsuit about these issues. But that's getting ahead of the story, a story about a man who experienced the transformation of America's criminal justice system from the inside and who relentlessly fought to remedy the injustices he found.

The offense and the trials

Jon Yount committed a horrible murder in 1966 when he was 27 years old. In a few moments, a young woman's life ended forever; and in the eyes of the state of Pennsylvania, those moments were to define the rest of Jon's life. He rejected the state's view, and spent the rest of his life showing to himself and those who were watching that he

was much better than his worst act.

After his death, I re-read some of the court decisions from his case. The experience was a stark reminder of how trials used to be conducted in this country. Jon's first conviction was thrown out because the police had violated his constitutional rights. (The Supreme Court's landmark *Miranda* case protecting defendants from unconstitutional interrogation techniques came down after his arrest.) At his second trial, 77% of the jury pool in the small rural community was familiar with the case and had already formed an opinion against him. Worse, 8 out of the 14 jurors stated their bias and were kept on the jury anyway. The Judge refused to move the trial.

A federal magistrate thought that this trial, too, violated the Constitution. The district court disagreed, but a three judge panel on the Third Circuit found that Jon,

... has shown that the pretrial publicity caused actual prejudice to a degree rendering a fair trial impossible in Clearfield County. After examining the totality of circumstances, we hold that petitioner's [second trial] was not fundamentally fair.

Yount v. Patton, 710 F.2d 956, 972 (3d Cir. Pa. 1983)

Unfortunately, by a 7-2 vote, the Supreme Court reversed the Third Circuit's positive decision. The Supreme Court's word was final, but Jon, ever cognizant of vote totals and trends once summarized the point in a letter that "Thus, by a narrow 7-6 margin, the federal judges who reviewed my case let the conviction stand."

The sentence and the escape

Even though the top court in the nation had upheld his conviction, Jon still had a realistic chance of seeing freedom again. Decades ago, a life sentence didn't necessarily mean a person would die in prison. When Jon was convicted, lifers served an average of about 12 years prior to commutation. He was a model prisoner and was recommended for a commutation after he had served 7 years. He didn't receive that commutation, nor did he receive any of the others he was recommended for in the first 20 years of his sentence.

Frustrated, and with the number of commutations granted by the governor in free fall, Jon had enough.

In 1986, Jon walked away from the minimum security prison where he was incarcerated and traveled the West. He eventually settled in Boise, Idaho. Using the name Jim Forsgren, he was a model Boise citizen who literally fed the poor and visited the sick. Nearly two years later, after being featured on *NBC's Unsolved Mysteries*, Jon was arrested. After his arrest, the *Idaho Statesmen* headline was "Friendly Idahoan caught as fugitive: Bad past catches up with 'good neighbor'."

After his return to prison, Jon applied for commutation one more time with a request to move back to Idaho. The *Idaho Statesman* summarized, "Forsgren or Yount, he's liked: Friends say killer would be welcome." As his landlord's sister-in-law explained: "To me, although he murdered someone, Jon isn't a murderer.... If they ever were to come back to Idaho, they certainly would have a place to stay – here with us." Unfortunately, the state didn't agree. I've heard that he applied for commutation shortly before he took his own life, but to my knowledge the last time he requested commutation was when his former neighbors in Idaho requested that he do so.

The Jailhouse Lawyer

I never asked Jon if he was always interested in politics and the law, but I know that by the early 1990s, Jon was using the legal skills he developed working on his own cases to benefit the larger population of incarcerated people. He strategically picked his cases for maximum impact. The two that I am most familiar with were *Mixon* and *T-Netix*:

Mixon v. Commonwealth challenged

Pennsylvania's system of banning people in prison and people recently released from prison from voting, and separately challenged prison-based gerrymandering in state legislative districts. Jon prepared the lawsuit and it was filed by civil rights attorney Sam Stretton. The plaintiffs were several Black and Latino men incarcerated in Pennsylvania prisons, and Maureen Williams, a Black female voter from Philadelphia. *Mixon* was the first case to raise the issue of prison-based gerrymandering in the state legislative context, although that particular claim was quickly dismissed because it was a part of a re-enfranchisement suit and not a redistricting one.

When *Mixon* was filed, Pennsylvania disenfranchised two groups of people: People in prison couldn't vote, and people who had been released within the past 5 years couldn't register to vote. People who had been registered to vote prior to incarceration, however, could vote. The Court struck down this arbitrary restriction that served to restrict the franchise:

"We can conceive of no rationale for permitting those who were registered previous to incarceration to vote on their release, while those who were not previously registered, cannot. Such a statute has the appearance of penalizing ex-incarcerated felons for their status. Moreover, implicit in a presumption that an unregistered individual who commits a crime, and is punished therefor, remains civilly corrupt for five years following release, is the unwarranted assumption that there was no possibility of rehabilitation during that period of incarceration and for five years thereafter. There is nothing of which we are aware to support this logic and underpin the implication that, after five years have elapsed following a convicted felon's release from confinement, that individual has magically acquired the wherewithal to be a responsible, qualified elector. We therefore conclude that the prohibition against registration for five years after release from confinement is constitutionally infirm, and overrule this preliminary objection."

Mixon v. Commonwealth, 759 A.2d 442, 451-452 (Pa. Commw. Ct. 2000)

In 2005, the Pennsylvania Legislature attempted to roll back this ruling and ban

both probationers and parolees from the polls. Jon successfully organized against the law, which the *New York Times* called "a shameful step backward" ... "at a time when the rest of the country is moving in the opposite direction."

In *Yount v. T-Netix*, Jon brought the prison system's abusive telephone rates and billing practices before the Pennsylvania Public Utility Commission and won refunds in 2008.

The Department of Corrections required all incarcerated people wishing to call their loved ones to use a particular company that charged exorbitant rates. The company, in exchange for the monopoly contract, would kick back \$3 million a year plus 32 to 40% of the revenue from every phone call. Further increasing the cost to incarcerated people and their communities, the phone system would arbitrarily disconnect people, forcing them to pay another reconnection charge in order to continue their conversations.

The prison population is a significant market for telephone services, and incarcerated people are the very definition of a captive market, carrying all of the associated potentials for abuse. As the Commissioners wrote in their order requiring T-Netix to refund the improper charges:

"We are troubled that T-Netix did not regard the inmates as customers, even when their calls were paid for using the inmates' prepaid accounts. ... While the erroneous disconnections themselves are difficult for the inmates, the fact that T-Netix has done little or nothing to investigate complains or to make refunds, when appropriate, is unacceptable."

(*Jon E. Yount, AC-8297 et. al. v. T-Netix, Inc. and T-Netix Telecommunications, Inc.* Penn. Public Utility Commission, Docket No. C-20042655, Opinion and Order, p. 12.)

His successful work against the high telephone rates had a high cost for Jon. The prison system retaliated. Jon was transferred from Huntingdon Prison in central Pennsylvania to the remote SCI-Greene facility in Greene County on the West Virginia border. At Huntingdon, where he had been confined for 16 years without a single disciplinary infraction, there was a large lifers group he worked with and his family and supporters could conveniently visit him. As Jon explained to me in the letter announcing

his transfer, at Greene there were no “inmate organizations”, and it was far more difficult for family and friends to visit. I know I was only able to visit at Greene once. And I can report that unlike in Huntington, where the visiting room was always crowded with families, when I was at Greene shortly before Christmas in 2008, the visiting room was almost empty. That’s not surprising, given the location. The state’s prison population disproportionately comes from Philadelphia. The Huntingdon prison was 127 miles from Philadelphia, but SCI-Greene was 330 miles from Philadelphia. I could see why Jon would quip in one letter that he had been transferred to “Siberia-South”.

This article, though, is about Jon’s accomplishments, not his struggles, so let me go back to how I met him.

Discovering the importance of prison-based gerrymandering to state legislative redistricting

When I was investigating the Census Bureau’s prison miscount, I was inspired to focus on state legislative redistricting because of a short article by Robert T. Hoetzel on prisoners.com that showed how 10% of a state house district could be incarcerated. The article framed this as a “one person one vote” issue, and explained,

The advantage of incorporating a penitentiary or two in one’s district is the best kept secret in politics. It’s the newest form of gerrymandering. There’s no reason for politicians to show any regard for inmates’ concerns, views or political parties. A politician might represent them, but inmates have no power. They can’t vote. For the “host” district’s office-holder, it’s the best of all worlds!

I naively assumed this article was just an isolated bit of brilliance and didn’t think much more about it for a year. More than a year later, after I had completed my academic paper on prison populations and redistricting, and then the *Importing Constituents: Prisoners and Political Clout in New York* report, I wrote to Mr. Hoetzel to share a copy of my report and politely inquire if he had done any other similar research or writing. My timing could not have been better.

As it turned out, Mr. Hoetzel was to be paroled in under two weeks, so he shared my letter with the Pennsylvania Lifers’

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Association and one of their elected Trustees, Jon E. Yount. As I quickly learned, they had been working on census issues for some time. Jon had published a short thesis about felon disenfranchisement that addressed the census counts of prison populations, and had also raised the census count issue in the *Mixon* lawsuit. But having exhausted their remedies in state court, Jon and the Lifers’ Association were stuck. They had a lot of ideas on next steps, but, as Jon told me many times, “there are limits to what you can do with a number after your name.”

Jon asked me to run with the issue, and he unleashed a constant flood of ideas and news clippings to propel the project. Jon was something like a human Lexis machine. Particularly in the first few years we corresponded, there was almost a constant flood of articles and data tables coming in. Sometimes they were from that day’s paper or an alert about what was just on C-Span, but just as often they were ancient but on-point news clippings from deep in his archives. I find it hard enough to organize my research notes on my computer, so I don’t have the foggiest idea how Jon managed to collect and organize so much material in a tiny cell.

And run with the issue we did. After a decade of work, we made prison-based gerrymandering one of the central controversies of the 2010 Census. In 2010 and 2011, four states passed legislation ending prison-based gerrymandering within their borders. The Maryland and New York laws are already in effect and have been upheld by the courts. We’re also making systemic progress at the Census Bureau. The Bureau squandered the planning time necessary to count incarcerated people at home in 2010, but it did agree to a critical interim step: changing how it publishes the data. This ultra-technical change made it easier for state and local governments—especially rural counties—to avoid engaging in prison-based gerrymandering. The Census Bureau made it easier for legislatures to identify incarcerated populations in the data. This made it possible for counties and municipalities to manually correct the data to better reflect the actual population of the area.

There is plenty of work still to be done on prison-based gerrymandering, especially in Jon’s home state of Pennsylvania. In 2009, Elena Lavarreda and I released a report, *Importing Constituents: Prisoners and Political Clout in Pennsylvania*, that found that eight state house districts would not have met minimum population requirements without using prison populations as padding. The report inspired a great article in the *Legal Intelligencer* and rural Pennsylvania’s *Daily Review* (Towanda PA), editorialized in support, but in Pennsylvania, we still have a long ways to go.

Several times Jon said he was done with the Census problem and was moving on to other projects where he could have an impact despite the “number after his name,” but he still spent an inordinate amount of time focusing on census issues. For that, I’m deeply grateful.

We had many long strategic conversations about the relationship between felon disenfranchisement and what we now call prison-based gerrymandering, drawing on important lessons from Jon’s own work. The short version of our conclusion was that it rarely makes sense to try and address both issues at the same time because it confuses both the public and the courts for very little gain. Our analysis was that felon disenfranchisement and counting incarcerated people in the wrong place were separate issues. Each exacerbates the harm of the other, but they have different origins and very different solutions. Because solving one issue won’t resolve the other, there was little justification for complicating the public’s understanding of either problem. On the other hand, it’s hard to separate the issues. As the *Philadelphia Jewish Voice* wrote in a column about prison-based gerrymandering: “What could be worse than suppressing someone’s right to vote? Stealing their right to vote and attributing it to someone else.”

In 2005, Jon sent me an incredibly useful gem: the Pennsylvania Secretary of State’s office’s residence rules for incarcerated people. As I wrote in a blog post in 2005,

The rules state that a prison cannot be used as a voting address, and that the

person should vote using either his or her last registered address or register at his or her last pre-incarceration address. But the rules also contain a common sense provision that keep the rule fair and accurate: prisoners may also establish a new residence outside of the correctional facility, “for example, if the inmate’s spouse establishes a new residence in which the inmates intends to reside upon his/her release from confinement.”

We’ve since found simpler ways to illustrate the principle that, for all other purposes, incarcerated people are not considered residents of the prison location, but in 2003 Jon collected affidavits to demonstrate that incarcerated people in Pennsylvania are not welcome to stay in the town that contains the prison after they are released. He found four people who were at that time incarcerated at Huntington but who, during releases from previous prison terms at various facilities, were told they were not free to stay in the area.

As Jon explained in this cover note to me with the affidavits:

The obvious point of the foregoing is that prison inmates are considered residents only for the purposes . . . political "gerrymandering". Even though they will be required to reside wherever they go for a period of time before they acquire residency status there, they certainly are stripped of their Huntingdon residency status - by those who have no authority to do so - the moment they walk out the prison gate!

Jon wasn’t a formally trained demographer, but he sent me a long letter in 2006 with some ideas that I really should have blogged about at the time. I had shared with him the argument made by an academic I knew who wrote that, while he saw the political necessity of counting incarcerated people at home for redistricting purposes, he saw a lot of value in counting incarcerated people in prison for other purposes, such as health and employment research. His argument was that we want to know where people physically are so that we can get a sense of the prevalence of disease or the racial composition of the available workforce. Jon made a very detailed argument – that I’ll have to write more about soon – that the academic’s argument overstates the amount of interaction between

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incarcerated people and the surrounding community. Incarcerated people are not a part of the labor force of the surrounding community, and their ability to share communicable diseases is limited to their contact with staff. For example, it would be quite misleading to portray a rural community like Forest County, Pennsylvania as a hotbed of hepatitis if most of the people with hepatitis are incarcerated and either got the disease in prison or brought it with them from their home communities. The overwhelming majority of people in prison are not lifers, have not been in prison long, and will be home very soon. Counting incarcerated people at home for demographic purposes is more honest to the reality of their communities.

Of course, Jon and the academic were in early agreement on a very subtle but critical mathematical point: counting incarcerated people in the wrong place harms the prison location most of all. Incarcerated people come from all over the state, disproportionately Philadelphia, but from all over the state. Pennsylvania prisons, however, are concentrated in just 21 counties, so the distortive demographic effect on communities that contain prisons is larger than on incarcerated people’s home communities.

A different mathematical point was a source of tension between Jon and myself. I was fond of writing things like: “Despite common misconceptions, most people in prison are serving short sentences, and very few incarcerated people are sentenced to life without parole.” Jon didn’t like my use of the term “short” to describe either the median imposed sentence of less than 3 years, or the fact that the median time served before release in state prisons was less than 2 years. Jon’s concern – ironic for a lifer – was that in both historical and international terms, modern American sentences *for all offense types* are quite long.

My concern was to distinguish, in the mind of the public, between the permanence of prison buildings and the transience of most of the people confined there. Jon thought, correctly, that I was normalizing the new and extreme sentencing policies in the U.S.

Other than emphasizing the unique statistic we found in New York – that the median time an incarcerated person has been at his or her current facility is 7.1 months – I’m still trying to figure out how to explain both contexts at the same time. Life sentences have always been rare, both when Jon went to prison in the 1960s and when he died. But Jon was in prison long enough to see firsthand how the typical sentence for everyone else was getting longer.¹

Other political and social issues he addressed

Beyond legal writing, Jon also wrote a lot of short columns for various publications and the web about general criminal justice matters and political issues. While many of these articles were specific to Pennsylvania, we helped make some of his writings that spoke to a larger audience available on the web.

One of Jon’s last big projects was a report that reviewed Pennsylvania’s parole policies and offered proposals for reform. He was concerned that incarcerated people were following the recommendations of the parole board to the letter only to be repeatedly denied at parole hearings. As a lifer, parole reform was something that he would never benefit from—his only possible way out was via commutation. But Jon could recognize a systemic problem when he saw one, so he prepared a massive briefing for the state committee that was investigating the parole system. His 2004 report, *Pennsylvania: Parole and Life Imprisonment* was a history of parole policy in the state from 1911 to 2001. Critically, he explained that, contrary to the present public understanding, parole was never intended as an act of clemency, but as a valid disciplinary tool for those deemed capable of supervised rehabilitation outside of the walls. Over 90 years, that intent was lost, replacing what was once intended as a rational determination of whether an incarcerated person is ready for release with a narrow fixation on what a person did many years ago.

Conclusion

Jon's story is exceptional, even apart from his accomplishments. His experience as a lifer who lost hope and died in prison is not the experience of nearly all of the estimated 16 million people who will cycle through the state or federal prison system.²

Most incarcerated people experience prison as a temporary — if permanently life-altering — experience. It is no accident that this constantly-shifting population has a hard time becoming politically engaged. Lifers like Jon are often a challenge to the system because they can develop the social, political and legal relationships on both sides of the walls that are necessary to make change happen.

The unfortunate reality is that society gave up on Jon Yount a long time ago, and never intended to let him be free. To his credit, Jon never gave up on society. He left this world having made major contributions to the lives of the poor, the sick and the incarcerated. Jon's long life showed just how wrong it is to assume that a single bad act can define someone forever.

And much to the regret of the prison system, Jon generally saw the system's efforts to disrupt his work as inspiration to work even harder. As Jon explained to Howard Zehr for his book *Doing Life: Reflections of Men and Women Serving Life Sentences*,

“When something happens, I can't go in, close the door, turn on the television, and ignore it, like some people do. Me, I have to confront. If I don't like something, I have to deal with it. If it's filing a complaint, if it's filing a brief in court, if it's trying to change something within the prison system — when there's something that bothers me, that's the way I deal with things.”

We are very glad you did.

About this article

This article was originally published on the Prison Policy Initiative blog about prison-based gerrymandering, but given the number of people with an interest in Jon and his work who lack internet access, we've made this easy-to-distribute version.

You have permission to reprint this article in full *or* to excerpt it as long as any excerpted versions are marked as excerpts of the longer article available at: <http://www.prisonersofthecensus.org/news/2012/05/22/jon-e-yount/>.

One advantage of the internet version that we couldn't duplicate here is the links to more information. In particular, this url <http://www.prisonpolicy.org/scans/yount.html> has some of Jon's writings and articles about Jon, including the two Idaho articles cited above about how his neighbors in Idaho would welcome him back if he were to be released. Notably missing is Jon's memoir about his time on escape, so if you have a copy, please get in touch.

About the author

Peter Wagner is an attorney and Executive Director of the Prison Policy Initiative. Over the last decade, Peter and the Prison Policy Initiative built the national movement to end prison-based gerrymandering.

About the Prison Policy Initiative

The Prison Policy Initiative documents the impact of mass incarceration on individuals, communities, and the national welfare in order to empower the public to improve criminal justice policy.

We are most famous for our work on prison-based gerrymandering, showing how legislators with prisons in their districts are able to claim non-voting prison populations as “constituents” and then use that extra political clout to lobby for further prison expansion. Starting after the 2000 Census, we quantified the problem and began working with federal, state and local officials to develop solutions to keep legislators with prisons in their districts from dominating political decision-making. We sparked the movement that led four states and more than a hundred local governments to end the practice of prison-based gerrymandering.

The census is just one part of our work. We seek out hidden corners of the criminal justice system and uncover how mass incarceration hurts not just the people locked up, but our entire society. And then we provide the public with the tools they need to create solutions.

For more information about our work in general, please see our website at <http://www.prisonpolicy.org/>.

Our prison-based gerrymandering website is your comprehensive resource for any campaign, with hundreds of articles, reports, podcasts, factsheets, organizing guides, and model legislation: <http://www.prisonersofthecensus.org>

And don't miss our weekly email newsletter: <http://www.prisonersofthecensus.org/subscribe/>

Readers without internet access are welcome to write to us at PO Box 127 Northampton MA 01061.

Endnotes

¹ As the Prison Policy Initiative and the National Voting Rights Institute wrote in an amicus brief to the U.S. Court of Appeals for the Second Circuit:

“It is important to distinguish the rise in incarceration from the rise in crime.

Incarceration rates reflect political and institutional decisions about the length of sentences and the extent to which arrests and convictions should result in prison terms rather than other interventions. As one researcher has written:

“Looking at the overall factors leading to the rise in incarceration, research has demonstrated that changes in criminal justice policy, rather than changes in crime rates, have been the most significant contributors leading to the rise in state prison populations. A regression analysis of the rise in the number of inmates from 1980 to 1996 concluded that one half (51.4 percent) of the increase was explained by a greater likelihood of a prison sentence upon arrest, one third (36.6 percent) by an increase in time served in prison, and just one ninth (11.5 percent) by higher offense rates.”

Marc Mauer, *Race to Incarcerate* 34 (1999) (citing Alfred Blumstein and Allen J. Beck, "Population Growth in U.S. Prisons, 1980-1996," in *26 Crime and Justice: A Review of Research* 43 (Michael Tonry & Joan Petersilia, eds., 2000)). Political choices, not an increased crime rate, largely control the tremendous increase in the numbers of persons incarcerated...”

² In 1997, the Bureau of Justice Statistics estimated in “Lifetime Likelihood of Going to State or Federal Prison,” that if 1991 rates of incarceration held constant, 5.1% of people will go to state or federal prison in their lifetime. (The rate for African-American men is far higher, at 28.5%). Assuming that 1991 incarceration rates would hold constant was a necessary assumption that hasn’t held up. Given that the 1991 rates of incarceration did not hold constant, rising 58% from 1991 to 2010 (313 per 100,000 to 497 per 100,000), it would be reasonable to assume that the Bureau of Justice Statistics would estimate a higher figure than a 5.1% lifetime likelihood of going to state or federal prison today. The Bureau’s analysis did not include jails because the necessary data did not exist. This figure would further raise the 5.1% estimate. Our 16 million figure was calculated by multiplying 5.1% by the 2010 Census population.