# Aging in Prison: A Cruel and Not Unusual Punishment

Second of a two-part series about incarceration and health

June 15, 2020 By Kate Ferguson

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A short time after public health officials realized that the coronavirus pandemic had reached U.S. shores, experts warned that prisons would become hot spots for outbreaks of COVID-19, the respiratory illness caused by the coronavirus. Organizations advocating for criminal justice reforms pressed harder as reports confirmed that elderly people, especially incarcerated adults, were more likely to contract the virus and die.

In 2018, the First Step Act, legislation famously tied to original cosponsor Senator Cory Booker (D–N.J.) was hailed as a landmark bill. Basically, the federal law reduces mandatory minimum sentences for nonviolent drug offenses and allows judges to avoid imposing life sentences on people with three or more convictions for nonviolent drug offenses.

Cory BookerEugene Parciasepe/Shutterstock.com

Booker viewed the bill as a step forward for the criminal justice system, calling it “the beginning of a long effort to restore justice to our justice system” and “a meaningful break from the decades of failed policies that led to mass incarceration.”

Thus far, the movement against law and order at the cost of human rights—a destructive behemoth fed, in large part, by people’s fear of violence—has achieved only moderate success. Changing the system will be an agonizingly slow process requiring legislation much more comprehensive than that which Booker achieved.

“At the core of mass incarceration is the legacy of racism. The First Step Act fails to address structural racism, which has governed policing, prosecution and incarceration of Black and Latinx people for generations. Any meaningful FIRST STEP must lead to dismantling the criminal justice system that is governed by racism. A solution that only offers freedom to those convicted of non-violent drug offenses sustains mass incarceration,” says Jose Saldaña, the executive director of Release Aging People in Prison (RAPP), a grassroots advocacy organization based in New York City. “We must enact community-focused federal and state legislation that offers justice to those most impacted by the racist policies of mass incarceration. This means those who have been given the harshest sentences that constitute death by incarceration sentences that created the crisis of men and women getting old, sick and dying in prison with little opportunity for release.

“This approach serves the interest and concerns of the Black and Latinx families and communities that have been most impacted by mass incarceration for generations,” Saldaña continues. “This

leads to re-defining ‘crime and punishment’ in more humane terms and toward a more humane and justice-driven criminal justice system, one that values redemption and transformation over perpetual punishment based on race and ethnicity.”

Saldaña believes that piece-meal solutions, even those that are seemingly progressive, like Brooklyn District Attorney Eric Gonzalez’s position not to oppose parole release for any incarcerated person prosecuted in King’s County who pleads guilty, fall short. “The same offer is not extended to those who elected to exercise their constitutional right to a trial. This solution punishes those who were convicted by a jury trial and rewards those who were convicted by a guilty plea,” he says. “DA Gonzalez also supports a Second Chance bill that does not exclude anyone based on the crime of conviction or the length of the sentence. But, according to the bill, a motion for a modification of the sentence must be made by the County District Attorney’s Office. Those who have been complicit in enforcing the policies of mass incarceration cannot be tasked with transforming the system.”

This means that solutions must be community-driven, so certainly not policies introduced and controlled by special interest groups like the Police Benevolent Association, Saldaña stresses. “From a historical perspective, those who are complicit in invoking and sustaining the racist policies of mass incarceration do not have the moral authority to define justice for us.”

Certainly, 57-year-old Roslyn D. Smith, also from Brooklyn, appreciates Gonzalez’s enlightened outlook on her criminal history. The prosecutor reviewed Smith’s case and commuted her sentence to 25 to life from the original 50 to life she received for her involvement in the brutal murder of an older couple at age 17. The double homicide made headlines in 1979.

Roslyn D. Smith, V-Day Beyond Incarceration Program ManagerCourtesy of Roslyn D. Smith

“At the time, I was with my codefendant, Valerie Gaiter, who passed away while she was still in

prison," Smith says. "She was misdiagnosed with cancer—they told her it was acid reflux and didn't treat her properly—and she ended up dying from Stage IV esophageal cancer."

Gaiter, age 21, was also sentenced to 50 years to life. Despite leading an exemplary life while incarcerated—mentoring new arrivals to the Bedford Hills Correctional Facility and training service dogs in the Puppies Behind Bars program for veterans and first responders with posttraumatic stress disorder—her application for clemency, filed in 2012, was rejected. By then, Gaiter's health was failing.

In 2019, a lawyer was preparing to file another clemency application for the 61-year-old. (Studies show that individuals classified as "violent offenders" by the criminal justice system are among the least likely to reoffend.) But by then it was too late for Gaiter.

A news story about Gaiter contained excerpts of a letter she wrote that year in which she expressed remorse for the murders. "I am truly sorry to have entered the victims' home and violated them in such a brutal manner. I cannot take back that pain the family has felt over their deaths, and for that I am totally remorseful," Gaiter wrote. "I was stupid, misled and not caring about others. That person is NO longer here or exists within me…The woman I am today would never behave so violently or angry towards another innocent human being as I did 39 ½ years ago."

Had they been passed, two pieces of legislation in New York state—the Fair and Timely Parole Act, which would base the parole release process on who people are today and their accomplishments in prison not on their crime of conviction, and the Elder Parole Bill, which would make individuals age 55 and older who have served at least 15 years in prison immediately eligible for parole—could have resulted in Gaiter's release.

No longer an angry, troubled teenager, Smith, a vivacious, outspoken woman, says Gonzalez's leniency in her case was "due mostly to legal issues that surrounded the culpability of young people who were incarcerated with life sentences."

In addition, her educational achievements and efforts to mentor others while incarcerated at Bedford Hills helped her case tremendously.

Like Gaiter, Smith was in the puppy program. She also mentored younger women in prison and acted as a role model. She took the opportunity to enroll in therapy. "I was adamant about trying to understand myself and what had happened in my life and how it was I could have been involved in a double homicide," she says. "All of that processing came from becoming educated, going to school, going to college and learning about the world and myself and my relationship to it. When I came to prison, I really didn't understand that part."

At age 11, Smith left her grandmother's care in Queens to return to Brooklyn and live with her mother, who was then addicted to heroin. "She was very abusive," she says, before quickly adding, "It wasn't her fault. It was just where she lived at and what she was doing and then the trauma that she had experienced in her life."

“While in prison, I got my bachelor’s degree from Mercy College, and I co-created—along with other women on the inside—a curriculum for a program called Parenting From a Distance,” she says.

Smith’s expertise grew out of personal experience. “I have a 26-year-old daughter who I had in prison by a correctional officer,” she shares.

The three-and-a-half-year affair began when Smith was in her 30s. She explains that although the relationship was consensual, she realized the partnership was tainted by power inequities. “But I overlooked it because—after all the trauma that I’d experienced in my life—I wanted to be loved, be in a relationship and have a child.”

At the time, the Prison Rape Elimination Act was years from being written. “Women were getting pregnant and being sexually abused by civilian staff and officers, having pregnancies, abortions and children, and the corrections officers weren’t accountable for it,” she says. “They got away with it because at that time this wasn’t a criminal offense.”

Eventually, Smith says the officer was fired for “time abuse” before she gave birth. At that point, the authorities didn’t know about their relationship, but “they stopped him from coming to visit me once I found out that I was pregnant,” she says.

A gay couple who were good friends of Smith’s volunteered to raise her daughter while she was in prison. She was able to keep her child during the six weeks it took to complete and process the relevant paperwork and prepare the couple’s house for placement.

“Were it not for my friends, I probably wouldn’t know my daughter today because she probably would have been in foster care, and I would have lost rights, and that would have been a whole other sad story,” she says. “But I do know her, and we’re working on our relationship now.”

Today, after serving 39 years in prison, Smith works for V-Day, the organization founded by Tony Award–winning playwright and activist Eve Ensler—author of The Vagina Monologues—to end violence against women and girls. Smith is the program manager for Beyond Incarceration, a V-Day project that works with formerly and currently incarcerated women to engage and educate activists in the United States and throughout the world about issues that focus on restorative justice.

“The makeup of the parole board needs to be changed; on the commissioners’ side there needs to be more clergy and more people not associated with law enforcement who will listen to us and hear us,” suggests Smith. “People are getting hit for the nature of their crime. The board needs to look at what the person has done since their offense and how that person has grown and what responsibility the person has taken for the crime.

“Justice needs to be restorative and included in the prison system so relationships can be restored between people; a lot of prisons don’t have that,” she adds. “Then we need sentence reform because there are disparities between sentences for Black and brown people. We get more time

than our white counterparts who get drug treatment programs and ATI (alternatives to incarceration). Also, how unfairly immigrants are treated is another thing, with ICE (Immigration and Customs Enforcement) rounding up people under Trump.

“I don’t want to get into politics, but the justice system really does need to be reformed,” Smith stresses. “We have a lot of work and a lot of educating to do. We need to let people know that this could be you and that we need to embrace a little humanity so that all people can get a chance to benefit from restorative justice.”

Smith’s opportunity arrived unexpectedly and helped to change her life. “While I was on the inside, I met Eve when she did a documentary with us called What I Want My Voice to Do to You,” Smith says. “That was also part of my healing process, where we took our crime and tore it apart, took responsibility and understood the harm we caused to others.”

Like many other adults forced to participate in the horror show that can typify life in prison, Smith went to war daily. She says she battled mice nightly. (“They would crawl across your feet while you watched TV.)” She also contended with a roach problem that was “so bad that when I had my daughter, I had to put tape around her crib so the roaches wouldn’t crawl up there. Each day, I’d change the tape because it would be filled with roaches.”

Then, whe1n she turned 46, she was stricken with fibroids. These tumors in the uterus caused her to bleed profusely for 12 days during her menstrual cycles, requiring that she change sanitary pads every 15 or 20 minutes. “I was told I had to have a hysterectomy, which I could have avoided,” Smith says. “Now that I’m out here, I’ve learned more about the different procedures they have to treat this condition. Then, I was diagnosed with [the autoimmune disease] lupus and put on medication that I’m only just now finding out that I might not even need.”

That medication was Plaquenil, also known as hydroxychloroquine. She’d been prescribed a dose of 250 milligrams twice daily, which her current physician says was overkill for her mild case of lupus, especially since the medication can “cause retinal damage to your eyes,” Smith says.

“It really isn’t easy because I feel like I had so many threats to deal with; there were so many things and opportunities that I missed, so much advice and so much of life that I’ve missed,” Smith laments. “I’m middle-aged now and turning 58 this Friday. I’m almost 60 years old.”

Ensler offered her a job when she came home from prison. “Thank God for Eve that she gave me a job; she was there for me,” Smith says. Her voice quivers, tears threatening to fall. “Other than that, it would be hard for me to find a job. I can’t get Medicaid. I won’t be able to get Social Security, and in 10 more years, I’ll be 70, and I don’t have anything! I think about all these things, and it bothers me.”

Exposés about shabby medical care in prison are commonplace. But for people who have experienced these failures in the system, the wounds leave lasting scars on minds and bodies.

“When I got into my 30s, I started seeing guys who were just 10 years older than me—in their 40s

or approaching their 50s—and they were having heart attacks and dying, or they were getting sent out for medical issues, getting bypass surgeries," says Alejo Rodriguez, who spent almost 33 years in prison before he was granted paroled following his 11th appearance before the board. "There was one gentleman who was having a heart attack, and they couldn't get his cell open in time—the mechanism had locked and they had to open it manually—he ended up passing."

Rodriguez pauses, his brown eyes thoughtful. "Either these things were becoming more frequent, or I was just there longer so I was seeing it more," he concludes.

When Rodriguez was barely into his 40s, vertigo struck. "I was 42 years old, and next thing you know, the walls are spinning on me, and I didn't know where that came from. I was throwing up, and they had to shoot me up with medication to calm me down," Rodriguez says. "This kept happening, so I was hospitalized for a couple of days. When I came out of it, I had to be careful of what kinds of food I was eating. I couldn't drink but X amount of coffee during the course of the day because of the effect it would have on my system. I couldn't help myself, and I just felt so vulnerable."

Thanks to the decision handed down by the Supreme Court in 1976 in Estelle v. Gamble, prisons must by law provide medical care for the men and women they house. According to the Constitution's Eighth Amendment, not doing so is illegal—at least in writing—and considered prosecutable as "cruel and unusual punishment."

Rodriguez says he got health care when he needed it, but requesting services meant risking being branded a liar or a malingerer. "Like this was some kind of ploy just to get out of the programming for that day," he says. "Sometimes, a request for medical help would be met with a skeptical air and a battery of questions, such as 'Why are you here?' 'What's really bothering you?'

"Not that there weren't some individuals who would make things up and try to go to the doctor every day—that happens everywhere—but this made you reluctant to even want to seek health care," he adds.

Later, his appendix ruptured, and toxic fluid leaked into his small intestines causing it to collapse. Rodriguez experienced vomiting, diarrhea and muscle cramps in his abdomen; as a result, health providers at the prison placed him under observation for two days.

Finally, using only a stethoscope, the doctor at the facility examined him. "He didn't order an X-ray or an MRI; he just used his physical senses to examine me—looked at my lower abdomen and listened through the stethoscope," Rodriguez explains. "Then he says, 'I don't hear anything wrong.' Then he accused me of lying and said, 'You must be on a hunger strike. Why aren't you eating?'"

The surreal exchange continued in this way for many painful minutes thereafter. "Fortunately, I had been on a phone call earlier that day with a friend of mine whose cousin is a doctor who had told her about the law. I had the right to go out for a second opinion," Rodriguez says. "I asked to

be seen by somebody else because the man thought I was lying. What he said had been recorded. The nurse noted it as such, and they sent me out."

At a civilian medical facility, an X-ray confirmed the presence of a clog in Rodriguez's intestines. He underwent surgery that "cut out 2 feet from my small intestines and squeezed out 5 liters of this toxic fluid from my appendix," he says. "It took 25 staples to close me up. In three weeks, I went from 165 pounds down to 130 pounds."

When he returned to prison, the facility refused to send Rodriguez back to the doctor who performed the procedure. Instead, he was sent to see another doctor with whom the facility had a contract. "He looked at me and asked, 'Did I do the surgery? Why are you here? It looks like you're still alive, so I guess it was a good job. Then he turned around and examined me with his fingers, just poked around, then said everything was OK."

Many months later, Rodriguez realized that the complications caused by the surgery had done extensive damage. Thoughts of a lawsuit swirled through his head, but he couldn't file the paperwork because of a technicality. "I was supposed to put in a notice of appeal within 90 days of my surgery," he says with a shake of his head. "There were just a whole series of issues happening. Pretty much, I just felt like the old cartoon you see where they put a patient on a gurney, roll him over and just tip him over on the other side. Sure, they gave me the medical treatment, and the medical treatment saved my life—no doubt about that. But to this day, I'm living with the results of those complications."

Although incarcerated Americans are the only citizens with a constitutional right to health care, they often don't receive the necessary depth or breadth of care. "Incarceration not only compounds existing health issues and heightens the risk of further health problems, but, most alarmingly, has a deteriorating effect on the bodies of incarcerated people, causing them to physically age at a much faster rate than the public at large" notes a report published in May 2018 by the Osborne Association, a New York City nonprofit based in the Bronx.

In some prisons, such as the medium-security Ulster County Correctional Facility, however, well-intentioned resources to serve older prisoners are available. "The Senior Living Program [SLP] has been in operation since it started in October of 2018," says Stacie R. Bennett, deputy superintendent for program services for New York State's Department of Corrections and Community Supervisions (DOCCS). She's been with the SLP, which was designed to meet the needs of older incarcerated males, since its inception.

Governor Andrew Cuomo had directed the state's DOCCS to invest $500,000 to launch the SLP at Ulster in his 2017 State of the State report. The plan is currently offered only at this facility, located in Napanoch, New York, a hamlet of just over 1,000 residents about two miles from Eastern, a maximum-security prison.

"Individuals who wish to participate in the program must be 55 or older, have a positive disciplinary record—particularly recently—and they have to be eligible to come to Ulster, meaning that if there are other inmates here with whom they can't associate, then they wouldn't be able to

come," Bennett explains. "Since this is a medium-security facility, a maximum-security inmate isn't eligible. They also have to be willing to participate in all aspects of the program, and they can't have refused any required programs."

With only enough beds available in its residential dorm to serve 50 participants, there's a waiting list. "Everything that we do in the SLP's curriculum of multiple programs has a focus to prepare the participant for going home," Bennett explains. This includes a program for job readiness that covers interviewing skills, work ethic, working with clients and writing a résumé as well as a computer program held in a lab setting where participants learn how to conduct job searches.

In addition, a health and wellness program—with staffers who work closely with the medical department—requires individuals to "do a lot of journaling so the men can confidentially write down any questions, issues or concerns they may have about either their own medical situation or just the aging process," Bennett says.

"We also provide them with a lot of information about aging and health, cardiovascular disease diabetes and smoking cessation. We also have a walking club and state-of-the-art equipment that they work out on, and they have recreation time," she adds. "This is in addition to providing all the mandatory programs that the DOC [Department of Corrections] provides to prepare them to go home, to make sure they have their birth certificates and their social security cards and Medicaid cards. This is so that when they go home they have a step up in getting started in whatever they need to do."

Bennett's pride in and excitement about this program is refreshingly upbeat and contrasts sharply with the decidedly depressing and stressful experiences of all the formerly incarcerated people interviewed for this story. The extremes can be likened to opposite sides of the same reality in a quantum experiment.

Still, it is a fact: Programs that help seniors in prison do exist. In San Luis Obispo, California, the Gold Coat Program is cited in many reports as "the best-known prison-based, in-patient dementia program in the country." True Grit, a program for elderly inmates at the North Nevada Correctional Facility in Carson City, Nevada, is another, as is the Unit for Cognitive Impairment in New York, which houses individuals with health conditions such as Alzheimer's disease, HIV/AIDS, Huntington's disease, and mental illnesses, such as schizophrenia.

In San Francisco, the community-based reintegration program Senior Ex-Offender Program (SEOP) is the first in the United States to support the special needs of older adults released from jails and prisons, including housing, counseling, addiction and substance use issues.

In New York state, Jennifer Brathwaite, the director of education and prevention services at Hudson Valley Community Services (HVCS), oversees programs that serve a specialized group that can include individuals 50 and older who need help organizing transitional planning.

"Those are folks who are either HIV positive or hep C positive or co-infected who are being

released within a 90-day period," she says. "We work with them to transition into whatever community they're being released into with supportive services for basic living needs, which could include things like case management, housing, medical care and transportation."

Brathwaite finds that sometimes formerly incarcerated seniors may not be aware and educated about issues concerning HIV. "While I wouldn't want to stereotype or put everyone in the same group, I think that with our older population, there is less knowledge or access to information that's current about the advancements in this area and in what we know about HIV, hep C, STIs [sexually transmitted infections], infectious disease transmission and things like that," she observes. "I think there's still a lot of stigma, specifically around HIV, and a lack of knowledge about how the virus is transmitted."

Housing or the lack thereof for individuals of any age who are reentering the community after release from prison, is a major problem. "There's a housing shortage in all of New York state, but this is especially so for this population," Brathwaite says.

Many issues and questions arise. "Do they have income? And if they have income, is it low income? And there are wait lists. What do you do about a wait list?" she says enumerating the challenges. "If someone happens to be a registered sex offender, housing is even slimmer, and it's hard to find. This barrier hits and affects all populations across the board that we service in any of our HVCS programs."

Technology is another area that older people released from prison could use support in negotiating. "I can barely work digital devices, and I've been using them for a while," Brathwaite quips.

"All these things that have changed since the time of incarceration until release really create barriers for some of our folks," she says. "A lot of things have to be done online now, and how do you do that if you don't know how?"

Still, even those individuals who were incarcerated for periods of more than 30 years can be reeducated. "The majority of our success stories are folks—including those with HIV or hep C—who have been incarcerated for around that amount of time," Brathwaite says.

Also serving the aging prisoner population are Area Agencies on Aging (AAA). These organizations operate in virtually every community in the United States and emerged as a part of the Older Americans Act of 1973. Much like Brathwaite's group, they offer support services, but their mission targets older adults exclusively, and some have programs that serve older people in prison or those preparing for reentry. Limitations apply, however, on how much AAAs can do, as their ability to help clients is based on how many individuals require services, funding shortfalls and the changing needs of different communities.

Robert Fullilove, EdD, a professor of clinical sociomedical sciences at Columbia University's Mailman School of Public Health and the associate dean for community and minority affairs, is a recognized expert in the ways in which public health and mass incarceration intersect.

“There’s that very odd statistic that those of us in public health cite all the time,” Fullilove says. “We don’t know how it works, but there’s something about having an education that improves your health and your health status and the likelihood that you’ll avoid a whole host of diseases—not just that you learned about disease. There’s just something about the transformative power of education.”

This benefit applies to everybody who shapes public health, Fullilove stresses, including parole officers. The Urban Institute, a group which focuses heavily on the criminal justice system in the United States, continues to propose that local governments think about reeducating these law enforcement officers and teaming them with people in public health and health education as a way to help those who are getting out of prison.

“One of the things that mentors get to do is not only guide people in terms of setting realistic goals and aspirations for the future,” Fullilove says. “There’s something about the nature of this contact that—at least preliminary studies that I’ve seen—indicates that you really alter the life course of somebody who’s had that kind of contact with the criminal justice system, particularly if it includes helping people stay in a job training program, remain in school or seek health care for conditions that we are in a position to manage.”

As a way to change how parole is currently managed, Fullilove’s idea for pairing individuals granted parole with a mentor has been advanced by organizations such as the Annie E. Casey Foundation, a private philanthropy based in Baltimore.

Findings from a report on the group’s Ready4Work reentry initiative showed that compared with their non-mentored counterparts, formerly incarcerated people who were mentored were twice as likely to get a job and secure initial employment faster and more likely to stay on the job for at least three months once hired. In addition, participants who met with mentors were 35% less likely to reoffend in the year following their release relative to ex-prisoners who had opted out of the mentoring program, according to the study.

“I’m saying that the public health dimension and the educational dimension is one of the most important changes that we can make in a system that is nothing less than tragic, that is throwing away lives at an unbelievably rapid pace—a 290% increase in the time that people are doing time in jails and prisons over the last 30 years—a number that’s likely to increase in years to come,” Fullilove says. “The notion that public health folks, criminologists, and the police and parole officers actually could make common cause together makes a lot of sense.”

As advocates press for reform in the criminal justice system, RAPP and other organizations are pushing increasingly harder for change. Although it’s been said that the wheels of justice grind exceedingly slow, many people dare to feel guardedly optimistic at precisely this moment in time.

Questions about law enforcement methods, the nature of punishment and what role incarceration ought to play—if any—in an enlightened society now scream ever more loudly for answers. Research findings and recommendations for the best ways to implement change have started conversations between multiple disciplines representing entities and organizations in gerontology,

criminal justice, public health and philanthropy.

As Osborne notes, any serious and sustainable attempt to resolve the ongoing crisis will require a nontraditional, multifaceted approach. Reforms to the parole system are an absolute necessity for change. However, strategies that focus on the rehabilitation of individuals as an integral component of crime and punishment would also transform a justice system that has dehumanized and even demonized people behind bars.

“I worry more than anything else that a lot of the reaction that we’re getting politically is because the general public in the United States just does not have any particular love for those who are behind bars, so there’s this sense that this is part of a liberal conspiracy to have all of our issues somehow vented by taking a group that the rest of the public doesn’t particularly like and suddenly setting them free,” Fullilove said at a RAPP press conference broadcast on the video app Zoom. The event was called to address the impact of the ongoing coronavirus health crisis on people in prison and, by extension, the community at large.

The pandemic was the exclamation point that punctuated the urgency of implementing meaningful change in the justice system. “It’s a simple public health fact that you do not leave a center of infection untouched,” Fullilove explained. “You don’t create reservoirs of infection because what happens is the people who circulate in and out of these places are also likely to be the ones that carry this virus into other neighborhoods than the neighborhoods that are currently impacted by COVID-19.”

According to The Marshall Project, a nonprofit tracking the number of people in prisons sickened and killed by the coronavirus, by June 2, almost 40,656 people in prison tested positive for the illness, with 496 deaths reported.

With elderly adults more at greater risk of contracting COVID-19, incarcerated individuals age 55 and older are particularly vulnerable. The Equal Justice Initiative, a nonprofit dedicated to ending mass incarceration in the United States, reports that seven of the 10 largest coronavirus outbreaks in the country occurred in prisons. “But this is not just about inmates,” Fullilove says. “It’s about all of us.”

Seemingly a world away, these hot spots and the people who live and work there are interconnected with the rest of our communities, despite the distances and differences in race, class and other demographics that separate and divide. What happens there “will ultimately harm us all,” Fullilove says.

“It’s just good public health to think about what we can do to make things better,” he adds. “We have to eliminate the biases that cloud our thinking and do what we know is going to be right for the health of us all.”

End of Part 2 of a two-part series on aging in prison. Click here to read part 1.

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