The *Loyola Public Interest Law Reporter* is an innovative legal publication that focuses on reporting the most current legal topics in a news format directed to students, educators and practitioners. *PILR* is edited and produced by Loyola students and is housed within the Center for Public Service Law. Founded in 1995, *PILR* offers feature articles and news of legal developments in the areas of human rights, economic justice, criminal justice, the environment, and governance. In addition to an editorial staff selected through a write-on process, Loyola law students direct all aspects of *PILR*’s research, writing, graphics, production and business management.

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# TABLE of CONTENTS

<table>
<thead>
<tr>
<th>Author</th>
<th>Page</th>
<th>Title</th>
<th>Section</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ian Barney</td>
<td>89</td>
<td>Gun Shy: Turning Violent Criminals into Anti-violence Advocates</td>
<td>FEATURE</td>
</tr>
<tr>
<td>Amy McCarthy</td>
<td>99</td>
<td>Punishing Juveniles: Is Life without Parole too Cruel?</td>
<td></td>
</tr>
<tr>
<td>Bill Schramm</td>
<td>104</td>
<td>Early Release Programs in Illinois: Justifiable or Objectionable?</td>
<td></td>
</tr>
<tr>
<td>Timothy Reeb</td>
<td>109</td>
<td>Should We Learn to Love Insider Trading?</td>
<td></td>
</tr>
<tr>
<td>Jeff McDonald</td>
<td>115</td>
<td>Should “Bum-bashing” Be a Hate Crime?</td>
<td>FEATURE</td>
</tr>
<tr>
<td>Brittany Kubes</td>
<td>125</td>
<td>Attacked from All Sides: Increased Sexual Assault Reports within the U.S. Military</td>
<td></td>
</tr>
<tr>
<td>Susie Bucaro</td>
<td>131</td>
<td>A Black Market for Magical Bones: The Current Plight of East African Albinos</td>
<td>FEATURE</td>
</tr>
<tr>
<td>Christina McMahon</td>
<td>141</td>
<td>Amidst Controversy over Federal 287(g) Immigration Program, Arizona Approves Immigration Trespassing Crime under New Law</td>
<td></td>
</tr>
<tr>
<td>Brian Patient</td>
<td>148</td>
<td>How Will the 9/11 Hijackers Be Brought to Justice?</td>
<td></td>
</tr>
<tr>
<td>Valerie Uribe</td>
<td>153</td>
<td>“How Did this Happen to Me?”: The Ugly Truth about Real Estate Scams</td>
<td></td>
</tr>
</tbody>
</table>
Letter from the Editor

Guilty or innocent? How do we define justice and determine when it has been served? Must all of one’s morals, beliefs, and values coincide with society in order for one’s behavior to not be deemed criminal? As foreshadowed in our Fall 2009 issue, this Spring edition of the Public Interest Law Reporter focuses on the criminal justice system. The writers report on the “criminal” theme from the viewpoints of key players—including victims and offenders, lawmakers and law enforcement officers, advocates and judges and citizens and non-residents—examining the developments, shortcomings and positive outcomes of today’s criminal justice system.

We begin by examining the process of punishing the accused. How do we balance the goals of retribution, rehabilitation and deterrence? The lead feature article examines how community organizations are attempting to combat Chicago’s gun violence problem. The writer discusses the debate over which programs will prove to be the most efficacious. Some look to the courts to strike this balance. Will the Supreme Court draw a line of when a life sentence without the possibility of parole violates one’s constitutional rights? Our next piece looks at balancing the goals of sentencing with respect to juveniles. In Graham v. Florida and Sullivan v. Florida, the Supreme Court faces this issue head on with two cases involving juveniles who were sentenced to life without the possibility of parole after committing non-homicidal crimes.

Or, is it the responsibility of local governments to combat violence and ensure the adequate functioning of the criminal justice system? The short-lived implementation of early release programs in Illinois suggests the public disagrees.
We next turn our focus to the victim—will increased penalties for offenders provide greater protection for victims and address safety concerns of the community? One of our feature writers highlights the debate surrounding the possible expansion of the definition of a hate crime to include crimes against the homeless. Another writer reports on new Department of Defense regulations and the implementation of increased sanctions against military personnel to prevent sexual assault among the ranks. Our final feature article addresses this question on the international front, exposing the inadequate response to the victimization of albinos in East Africa.

As we close this “criminal” issue, we revisit a topic of the Fall issue—the rights of immigrants and foreigners. Can we bridge the gap between the rights of these individuals and national security concerns through the criminal justice system? One of our writers highlights the battle between local and state law enforcement and the federal government in the fight against illegal immigration. Has the state of Arizona taken the issue too far? Another article questions which forum is the most appropriate for the trial of those who placed our national security at risk. Should we define justice differently when the defendants are accused of the greatest act of terrorism against the United States?

While the debate continues as to whether it is the responsibility of the community, the judicial system, governmental agencies, the legislature or a collaborative effort among several of these actors to best address the challenges facing today’s criminal justice system, what is certain is that the problems are real and there is much to be done.

We hope you enjoy this “criminal” issue of the Public Interest Law Reporter and thank you for your readership.

Sincerely,

Cerise Fritsch
Editor in Chief
GUN SHY: TURNING VIOLENT CRIMINALS INTO ANTI-VIOLENCE ADVOCATES

by Ian Barney

The piercing crackle of fatal gunshots reminds Chicagoans daily of their city’s notorious reputation for gun violence. In 2008, the 412 victims murdered at the discharge of a firearm accounted for more than 80 percent of the City’s total murders.1 Project Safe Neighborhoods is a federal program focused on dismantling Chicago’s gun violence problem. The program seeks to reduce gun violence in Chicago by increasing enforcement of gun crimes and altering community perceptions about the detriments of gun violence.
CHICAGO’S PLAGUE

Experts view Chicago’s violence problem as a serious public health issue. From 2004 to 2009, Chicago has averaged 512 murders per year or 18.2 murders for every 100,000 citizens. This figure comes into sharp perspective when compared with New York City and Los Angeles, where murder rates in 2008 hovered at 6.2 per 100,000 and 10 per 100,000, respectively. Additionally, in 2008, more than 80 percent of Chicago’s murders involved a firearm, compared to 66 percent of murders in New York City.

Chicago Mayor Richard M. Daley has been outspoken about gun violence, calling the issue “a national epidemic.” He has also pushed for stricter laws to restrict access to guns, particularly assault weapons. “If reasonable local gun laws could have prevented even one . . . needless death[, it would have been important],” Daley said. “Instead, the violence continues.”

In his push for stricter gun laws, Daley has voiced his opposition to the Supreme Court’s Heller decision, which overruled Washington D.C.’s handgun ban. Heller spurred a constitutional challenge to a similar law on the books in Chicago.

Despite Daley’s engagement on the issue, violence in Chicago has increasingly spread to vulnerable youth populations. During the 2007 to 2008 school year, 27 Chicago Public School students were killed and another 211 were shot. Those numbers rose during the 2008 to 2009 school year to 34 killed and 290 shot.

As Chicago’s violence has spread to students, the crisis has gained considerable public attention. Daley has stayed out in front of the issue, urging Chicagans to “encourage our children to stand up against violence in the community and help create a healthy, non-violent society.”

The threat of violence, however, does not extend to every school district in Chicago. Rather, more than 80 percent of shootings involving Chicago Public School students involved only 38 of Chicago’s 89 public high schools, demonstrating a significant concentration of violence.
The Mayor is not alone in his recognition and repudiation of youth violence. After the death of Derrion Albert, a 16 year old who was beaten to death after school in a gang-related melee, the Chicago Tribune dedicated a symposium of articles to youth violence.

The common thread among those who care deeply about this issue is a yearning for an answer. Although Chicago has implemented a plethora of community violence prevention programs, gun violence remains a serious problem.

STRATEGIC INTERVENTION: REDUCING GUN VIOLENCE IN CHICAGO

Project Safe Neighborhoods is determined to change that. The project focuses on stringent enforcement of current gun laws, strives to prevent the vulnerable from becoming offenders, and assists ex-offenders in completing successful re-entry into society.

Project Safe Neighborhoods’ enforcement efforts are highly specified, targeting those most at risk of being a victim or offender of a gun crime. In addition, the program focuses its efforts on changing the community attitudes toward gun violence and the law.

In 2002, Project Safe Neighborhoods officially began to tackle Chicago’s gun violence problem.

The program’s first priority was to choose the target neighborhoods for strategic intervention. Researchers involved with the project performed studies that immediately confirmed what residents of Chicago know by intuition: Chicago’s gun violence problem is heavily concentrated in just a few highly impoverished, socially isolated neighborhoods.

Particularly, researchers quickly recognized that areas of the West Side and the South Side of Chicago exhibited incidents of gun violence well above the City average. The research showed that the target districts for the West Side of Chicago had a homicide rate of 75.5 per 100,000, while the control group on the South Side of Chicago had rates just below 40 per 100,000.

The first step to strategic intervention was implementing a “get tough” enforcement approach. The Chicago Police Department, working together with the Bureau of Alcohol Tobacco, Firearms and Explosives (ATF), the Cook
County States Attorney’s Office and the U.S. Attorney’s Office ramped up efforts to remove illegal guns from the streets. These agencies also engage in bi-weekly meetings to decide whether to prosecute gun cases at the federal level.

Bolstered federal prosecution is designed to increase the deterrent effect of committing a gun crime. A suspect with a prior criminal history who is charged with a gun crime in federal court could face up to a 15 year minimum sentence of incarceration if convicted.

Additionally, the Chicago Police Department will publish posters picturing a community gun offender and listing his hefty term of federal incarceration. Assistant U.S. Attorney John Lausch notes that the implication of these posters is clear. “This is someone everyone in the community knows,” Lausch says. “The message is: Don’t let this be you.”

**CHANGING BEHAVIOR BY CHANGING ATTITUDES**

Just as important as Project Safe Neighborhoods’ targeted enforcement approach are its efforts at changing community norms. Project Safe Neighborhoods uses education as a tool for deterrence, supplying both offenders and non-offenders in the community with perspectives on turning away from gun violence.

Perhaps the most important of these efforts are the Offender Notification Forums and the Follow-up Re-entry Program. These programs are based on the Project Safe Neighborhoods team’s belief that “the key to changing the pattern of gun crime lies in altering the normative beliefs of gun users themselves.”

As part of these programs, the U.S. Attorney’s Office requests that community offenders currently on parole or probation attend a forum hosted by Project Safe Neighborhoods. Typically, these offenders have a history of gun violence and gang participation.

The forums are hour-long round table discussions with approximately 20 to 25 offenders, state and local law enforcement officials and community representatives. Assistant U.S. Attorney Nancy DePodesta describes the forums as “a feature unique to Chicago’s program” back in 2002. Typically a forum will
have representatives from the Chicago Police Department, ATF, and the U.S. Attorney’s Office.  

“The discussion opens with a scared straight message,” says Assistant U.S. Attorney John Lausch. This opening message outlines the consequences of committing a gun crime. The group then spends the remainder of the hour discussing the choices the ex-offenders must make in order to ensure they do not reoffend. 

At each meeting an ex-offender tells his own story. The ex-offender discusses avoiding a life of crime since conviction and emphasizes the importance of reducing community violence.

After the meetings formally conclude, the discussion continues as an informal meet-and-greet between law enforcement, community representatives and ex-offenders. The forums sometimes present ex-offenders with a chance to meet employers in the community who may be hiring. “The forums usually at least provide someone who can place the offenders in jobs, if not offer them a job,” says DePodesta. Often present at the forums are representatives of organizations and service providers dedicated to helping ex-offenders get back on their feet.

Lausch acknowledges that the practical effects of these forums are difficult to calculate. However, the forums are at least correlated with reduced crime rates. As of January 2009, individuals who attended a Project Safe Neighborhoods forum experienced a recidivism rate decrease of 30 percent. Further, half of all offenders outside of Project Safe Neighborhoods’ outreach efforts re-offended within three years of being released from prison, while only 25 percent of offenders who participated in Project Safe Neighborhoods’ forum program re-offended during that same period.

TARGETING YOUTH

In addition to educating ex-offenders, Project Safe Neighborhoods implements programs aimed at changing youth attitudes towards gun violence. Two of Chicago’s programs, which have also been implemented in other cities, are Hands without Guns and In My Shoes.
Hands without Guns focuses on educating Chicago Public School students about ways to avoid or mitigate situations that could lead to gun violence. The goal of the campaign is to engage “young people as violence prevention advocates in their communities.” The program consists of workshops designed to give young people a better understanding of the effects of gun violence on themselves, their families and their community.

In My Shoes is a program that brings victims of gun violence to students. The victims, who have suffered a spinal cord or brain injury due to street violence, engage the students in dialogue sessions. In these sessions, the victims warn at-risk students from low-income neighborhoods of the consequences of negative behavior and encourage the students to pursue education.

Nancy DePodesta describes the presentations as “detailed and graphic.” “They give a real depiction of what it’s like to be a victim of gun violence,” she says. In almost all cases, the speakers are wheelchair bound due to their injuries.

Reducing Violence in Chicago

Researchers with Project Safe Neighborhoods believe that the program’s violence reduction strategy has been successful. They point to a 37 percent reduction in the monthly homicide rate in the target areas during the first two years of the program’s implementation. This reduction is substantially greater than the reduction experienced by the remainder of the City.

However, Jens Ludwig, Co-Director of the University of Chicago Crime Lab, believes Project Safe Neighborhoods could be more effective. Ludwig posits that the federal project would have a greater deterrent effect if it focused more on local targeted police patrols aimed at preventing illegal gun-carrying, rather than increased federal prosecution.

Ludwig emphasizes that street-level enforcement, which increases the probability of punishment, seems to be more effective than federalizing gun cases, which increases the level of punishment. According to Ludwig, patrols provide a greater deterrent effect because they provide increased certainty that committing a gun-crime will result in punishment.
Ludwig also points to research suggesting that increased use of school-based programs involving peer leaders could help reduce gun violence.73

“Despite all the money and all the pilot programs that have been started, we are floundering around,” said Ludwig.74 Ludwig pushes for more empirically based anti-violence programs in addition to rigorous evaluations of which anti-violence programs actually work.75

In line with Ludwig’s approach, the University of Chicago Crime Lab has sponsored a youth violence initiative called Becoming a Man – Sports Edition.76 The program “seeks to help youth develop coping skills for managing situations that might otherwise lead to violence . . . ”77

Becoming a Man – Sports Edition provides youth-based group intervention, including counseling and life-preparedness programs.78 These programs use cognitive behavior therapy to improve students’ emotional self-regulation and social skill development. The goal is to help students avoid potential conflicts.79

The program also exposes students to after-school sports opportunities.80 These opportunities offer safe recreational activities directed by coaches trained in Becoming a Man – Sports Edition’s scientific model.81

Project Safe Neighborhoods encourages the type of initiative and ingenuity shown by Becoming a Man – Sports Edition.82 In fact, Project Safe Neighborhoods’ approach to changing community attitudes towards gun violence is largely based on non-governmental programs.83 Assistant U.S. Attorney John Lausch notes that community organizations created the Hands without Guns and In My Shoes programs, not the federal government.84

Lausch stresses that part of the success of Project Safe Neighborhoods depends on communities and organizations using innovative approaches to fight gun violence.85 “We need these programs,” says Lausch.86

Though experts may disagree as to the preferred strategy for combating gun violence, they seem to agree that gun violence in Chicago is a problem worth fighting. The future of which depends on the success of programs like Becoming a Man – Sports Edition and Project Safe Neighborhoods.
NOTES

3 Tracey Meares et al., HOMICIDE & GUN VIOLENCE IN CHICAGO: EVALUATION & SUMMARY OF PROJECT SAFE NEIGHBORHOODS PROGRAM 1, 1 (2009) [hereinafter HOMICIDE & GUN VIOLENCE IN CHICAGO].
4 CHI. POLICE DEP’T CRIME SUMMARY, supra note 1, at 1.
8 Id.
10 Id.
12 Id.
14 Id.
17 See Ahmed & Banchero, supra note 11.
19 Id.
20 Id.
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22 Id.
23 Id. at 1.
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25 See id. at 1.
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34 Id.
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36 HOMICIDE & GUN VIOLENCE IN CHICAGO, supra note 3, at 2-3.
37 Id. at 3.
38 Id.
39 Id.
40 Id.
41 Interview with Nancy DePodesta, supra note 29.
42 Interview with John Lausch, supra note 18.
43 Id.
44 Id.
45 HOMICIDE & GUN VIOLENCE IN CHICAGO, supra note 3, at 3.
46 Interview with John Lausch, supra note 18.
47 HOMICIDE & GUN VIOLENCE IN CHICAGO supra note 3, at 3.
48 Id.
49 Interview with Nancy DePodesta, supra note 29.
50 Id.
51 Interview with John Lausch, supra note 18.
52 Id.
53 HOMICIDE & GUN VIOLENCE IN CHICAGO, supra note 3, at 4.
54 Id.
55 Id. at 2.
56 Id.
57 Id.
59 Id.
60 HOMICIDE & GUN VIOLENCE IN CHICAGO, supra note 3, at 2.
62 Id.
63 Interview with Nancy DePodesta, supra note 29.
64 Id.
65 Id.
66 HOMICIDE & GUN VIOLENCE IN CHICAGO, supra note 3, at 3.
67 Papachristos et al., supra note 28, at 245, 254.
68 HOMICIDE & GUN VIOLENCE IN CHICAGO, supra note 3, at 4.
Loyola Public Interest Law Reporter

70 Id. at 680-81.
71 Id.
72 Id. at 680 n.6.
73 Id. at 686.
74 Shelton & Banchero, supra note 2.
75 Id.
76 Banchero, supra note 16.
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80 Id.
81 Id.
82 Interview with John Lausch, supra note 18.
83 Id.
84 Id.
85 Id.
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PUNISHING JUVENILES: IS LIFE WITHOUT PAROLE TOO CRUEL?

by Amy McCarthy

Stacey T. was only 14 years old when he robbed a drug dealer. He was neither aware that his co-conspirators would murder the dealer nor was he present during the murder itself. Nonetheless, Stacey T. will now spend the rest of his natural life in prison without the possibility of parole. Stacey T.'s situation begs the question: Is life without parole cruel and unusual punishment for juveniles?

Currently, nearly 2,500 prisoners in the United States are serving life without parole sentences for crimes committed while they were minors. No other country in the world has this sentence.
In 2005, the Supreme Court held in \textit{Roper v. Simmons} that imposing the death penalty on juveniles is unconstitutional.\textsuperscript{6} Since then, the Court’s reasoning has become the cornerstone of the movement to abolish life without parole for juvenile offenders.\textsuperscript{7} In the coming months, the Supreme Court will decide whether the imposition of a life without the possibility of parole sentence for juveniles, who were convicted of non-homicidal offenses, violates the Eighth Amendment of the U.S. Constitution.\textsuperscript{8}

\section*{Prosecuting Juveniles as Adults}

It is both constitutional and permissible for juveniles to be tried as adults in state or federal criminal proceedings in the United States.\textsuperscript{9} In Illinois, for example, there are five specific crimes that automatically transfer an individual from juvenile to adult status for adjudication purposes.\textsuperscript{10} These specific crimes are first degree murder, aggravated sexual assault, aggravated battery committed with a firearm, armed robbery committed with a firearm and aggravated car hijacking committed with a firearm.\textsuperscript{11} The severity of the crime, not the age of the accused, is what mandates trial and punishment as an adult.\textsuperscript{12}

Similar to Illinois, 27 states have made a life without parole sentence mandatory if the juvenile is convicted of certain crimes.\textsuperscript{13} Additionally, 42 states permit juveniles to be sentenced to life without parole.\textsuperscript{14}

There was a dramatic increase of heinous crimes committed by minors in the mid-1980s. Professor John Dilulio, Jr. of Princeton University coined the term “juvenile super-predators” in describing this group.\textsuperscript{15} In his 1995 article, \textit{The Coming of the Super-Predators}, Dilulio warned the public that “on the horizon . . . are tens of thousands of severely morally impoverished juvenile super-predators.”\textsuperscript{16} According to Thomas Maroney, Supervising Attorney at the Office of the Cook County Public Defender, however, “the number of heinous crimes committed by minors is declining.”\textsuperscript{17}

Because the fear invoked by this “juvenile super-predators” phase is diminishing, Maroney’s biggest concern with prosecuting juveniles as adults is that these juveniles are then subject to adult sentences.\textsuperscript{18} Others disagree with Maroney’s sentiments. Maggie Elvey, whose husband was beaten to death by two minors, states that “[i]f they can do these kinds of crimes, then they have got to face the punishment.”\textsuperscript{19}
SHOULD JUVENILES BE TREATED DIFFERENTLY THAN ADULTS?

In Roper, the Supreme Court held that minors lack a sense of maturity.\(^{20}\) Given this lack of maturity, the Supreme Court concluded that minors are less culpable than adults.\(^{21}\) According to Justice Kennedy who delivered the majority opinion of the Court, “juveniles have a greater claim than adults to be forgiven.”\(^{22}\) Because juveniles are developing their identities, their reckless conduct and behavior can subside with age and experience.\(^ {23}\) Yet, the Supreme Court has also held that it “cannot deny or overlook the brutal crimes too many juvenile offenders have committed.”\(^ {24}\)

According to research studies conducted by the MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, minors typically do not possess the social skills to exercise self-control and make mature decisions.\(^ {25}\) Various studies also conclude that juveniles are more concerned with short-term implications rather than long-term consequences.\(^ {26}\) Furthermore, the research findings suggest that juveniles are big risk-takers and are more vulnerable to peer pressure than adults.\(^ {27}\)

Neuroscientists urge that there are biological distinctions that explain why teenagers make irrational decisions.\(^ {28}\) In the words of Stacey T., “out of na"iveness, out of influence, out of the ignorance of knowing the consequences, [I] agreed to do a crime.”\(^ {29}\)

Non-profit organizations also support prohibition of life without parole for juveniles.\(^ {30}\) As expressed by Amnesty International and Human Rights Watch, the main concern raised by life without parole is that it extinguishes any type of rehabilitation of a minor.\(^ {31}\) The organizations fear that “by sentencing children to life without parole, society tells them unequivocally that their lives are worthless.”\(^ {32}\) Since they have no expectancy of being released, juveniles serving natural life sentences are at the “bottom of the list” in terms of receiving education or vocational training.\(^ {33}\)

The Roper Court also finds this outcome disconcerting.\(^ {34}\) Compared to adults, a “greater possibility exists that a minor’s character deficiencies will be reformed,” stated the Roper Court.\(^ {35}\) Thus, the Court posited that rehabilitation is a more appropriate form of punishment for minors.\(^ {36}\) Although life without parole does not promote rehabilitation, there are three other goals of punish-
ment that are recognized under the law that may justify a life without parole sentence: retribution, deterrence, and incapacitation.37

In addition to the Supreme Court and non-governmental organizations, state legislatures also recognize that minors lack a level of maturity.38 This recognition is exactly why states have enacted age restrictions on many activities, such as driving, drinking, voting, smoking and gambling.39 Ironically, as the Supreme Court noted in Thompson v. Oklahoma, juveniles are not old enough to serve on juries; yet, they are old enough to stand trial as adults.40

On the other hand, many individuals believe that sentencing minors to life without parole is completely within constitutional limits.41 They argue that the fact that nearly every state permits this sentence demonstrates its constitutionality.42 Shannon Goessling, an attorney who represents 33 victims’ rights groups, believes that “this system is not set up for rehabilitation. It is set up for retribution and consequences.”43 According to Goessling, it is an injustice to victims if these juvenile defendants are released after they commit such heinous crimes.44

There are many legally, socially and medically recognized arguments on why minors are inherently different than adults. The main issue, however, is whether minors should be treated differently than adults in the eyes of the law. Stacey T. and the rest of the world wait in anticipation for the Supreme Court to resolve this issue in terms of life imprisonment without the possibility of parole.

NOTES

2 Id. at 30.
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11 Id.

12 Id.

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16 Id.

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18 Id.


20 Roper, 543 U.S. at 570.

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23 Id.

24 Id. at 572.


26 Id.

27 Id.

28 Amnesty Int’l & Human Rights Watch, supra note 1, at 48.

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30 Id. at 6.

31 Id. at 82.

32 Id.

33 Id. at 70.

34 Roper, 543 U.S. at 570.

35 Id.

36 Id.


39 Id.

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42 Id.

43 Nina Totenberg, High Court Weighs Life Terms for Minors, NPR News, Nov. 9, 2009.

44 Id.
EARLY RELEASE PROGRAMS IN ILLINOIS: JUSTIFIABLE OR OBJECTIONABLE?

by Bill Schramm

As a result of budget shortfalls, many states are turning to early release programs to trim their deficits. Specifically, in Illinois, Gov. Quinn adopted two programs in September 2009. The first program, Meritorious Good Time Push (MGT Push), assisted offenders who exhibit good behavior, while a separate program was created solely for non-violent offenders who are within the last year of their sentences. Both programs were short-lived, however, because Gov. Quinn suspended MGT Push in December 2009 and the other program in January 2010 due to political and public pressure.

Support still exists for early release programs. Proponents of early release argue that it is cost effective and does not place the safety of the community at risk.
Yet, opponents contend that the program undermines the judicial system and presents legitimate public safety issues. Early release programs relieve budget deficits, but with the integrity of the criminal justice system and the safety of the public at issue, at what cost?

**Who Should Be Eligible?**

Under MGT Push, 1,700 inmates received accelerated good-time credit for their sentences. Inmates in this program could be granted up to 90 days of credit based on their good behavior in prison regardless of whether they were convicted of violent or nonviolent crimes. Many received this credit immediately, and thus some served only weeks in jail.

The second program Gov. Quinn suspended affected nearly 1,000 inmates, all of whom were nonviolent offenders. Unlike under MGT Push, potentially violent offenders, such as those convicted of aggravated and domestic battery, were not eligible. These two programs with their different eligibility requirements demonstrate an important question in this debate: who should be eligible for these programs?

Public Defender Jim Mullenix says, “The vast majority of inmates are not beyond salvaging and can coexist with others in society.” According to Mullenix, the ideal early release inmates are typically inmates convicted of property or possession (drugs, weapons and other contraband) crimes, elderly inmates, inmates serving the last portion of their sentences and inmates convicted of non-violent crimes.

Mullenix acknowledges that there are some people who are too violent and cannot function appropriately in society. However, he states, “the vast majority of people who fall into the situation where they commit crimes do so, not because they are bad, but because they are unfortunate and have little other means to make a living.” Mullenix believes these less violent individuals would benefit the most from an early release program.

Former Cook County State’s Attorney Richard Devine takes a different, but not entirely opposite, position. “It should be people that fit within the context of the overall policy and law that have done the things that are appropriate to earn credits. It should not simply be because someone is aging.”
While there is no general consensus on who should be eligible, both opponents and advocates seem to agree that any early release program should not include violent offenders.¹⁹

**ADVOCATES AND OPPonents OF EARLY RELEASE PROGRAMS**

Januari Smith, a spokeswoman for the Illinois Department of Corrections (IDOC), is an advocate of early release programs. “[We support the program] because of the budget crisis as well as to enforce Gov. Quinn’s prison-reform efforts. We believe these low-level, non-violent offenders . . . can be better served in the community where there are more resources available than at IDOC,” she states.²⁰ Smith also believes that it is important for the public to realize that eligible inmates are low-level, non-violent offenders who will be coming back to the community soon.²¹ According to Smith, IDOC wants “to get them the resources, the services they need, to rehabilitate themselves to re-enter society successfully.”²²

However, not all public officials agree. Many criminal prosecutors opine that the early release of prisoners may save money now but will ultimately undermine the Illinois court system.²³ Echoing this sentiment, a spokeswoman for current Cook County State’s Attorney, Anita Alvarez, states that “the programs could threaten public safety or increase crime.”²⁴ Prosecutor Joseph Bruscato of Winnebago County agrees. “When an individual who was supposedly sent to prison shows up less than a month later, what are the people in the community saying? What is the victim thinking?”²⁵

However, according to Mullenix, these programs provide an obvious financial benefit to the state as well, which is the true reason for the development of early release programs.²⁶ “Once in the system, a prison is responsible for every aspect (medical, dental, housing, food) of an inmate’s life in addition to guarding the inmate, and training him through occupation and rehabilitation programs.”²⁷ “That all adds up,” says Mullenix, “and once released back to society, this cost is no longer the penitentiaries’ to bear.”²⁸

Anita Alvarez’s predecessor, Richard Devine, still has doubts.²⁹ Devine believes allowing budget issues to drive corrections policy is problematic.³⁰ “If credits are allowed and encouraged for positive things that prisoners do in order to get their lives back on track, that’s fine.”³¹ Devine remains concerned, however,
that the Governor wants to release a certain number of prisoners for budget issues and then work backwards from there.\textsuperscript{32}

Devine states, “It is too important for the public and especially the victim of crimes and for their families who rely on the justice system to go through a process where they determine what the punishment will be. These programs affect not only the victims of crime, but the public as a whole.”\textsuperscript{33} If passed by the legislature, the Governor will be bound to enforce early release programs.\textsuperscript{34}

Devine adds, “One of the most important things that the Government does is to provide prisons for people who have been convicted of crimes. You do not cut back prison funds; you cut other things back.”\textsuperscript{35}

CONCLUSION

According to Devine, the justice system should not be scaled back by general budget cuts without a thought to the potential long-term implications it would have on the operation of that system.\textsuperscript{36} Gov. Quinn and the Illinois legislature must make these difficult decisions while keeping Illinois citizens' overall best interests in mind.

With the end of budget concerns nowhere in sight, the Illinois government is faced with the daunting task of balancing the budget while maintaining a safe and efficient prison system.

NOTES

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4 Garcia, supra note 2; O’Connor, supra note 2.
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6 Interview with Jim Mullenix, supra note 5; Interview with Richard A. Devine, supra note 5.
Loyola Public Interest Law Reporter

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SHOULD WE LEARN TO LOVE INSIDER TRADING?

by TIMOTHY REEB

The American notion that insider trading should be punished civilly was established over one hundred years ago.¹ In 1934, a federal statute made insider trading punishable criminally, and ever since United States enforcement agencies have considered insider trading violations a top priority.²

Despite the traditional American stance, many countries do not punish insider trading.³ Even in the United States, some scholars believe that insider trading can have a positive impact on financial markets.⁴ For example, Donald Boudreaux, Economics Professor at George Mason University, has outlined reasons for not only de-criminalizing, but also encouraging insider trading.⁵

In his article, Boudreaux explains that when insiders buy or sell stock based on inside information, the price of the stock quickly changes.⁶ The positive result,
according to Boudreaux, is stock prices that accurately reflect corporate realities.  

While consistent with the views of at least two leading economists, Boudreaux’s stance has received scholarly criticism and is in sharp contrast to that of the U.S. Securities & Exchange Commission (SEC) and the U.S. Department of Justice (DOJ). University of California Los Angeles Law Professor Stephen Bainbridge, for example, specifically dismisses Boudreaux’s approach. Bainbridge argues that insider trading affects prices much more slowly than Boudreaux suggests.

Boudreaux’s views appear irreconcilable with those of scholars such as Bainbridge. However, the two professor’s contrasting stances highlight the reality that American views on insider trading may not be as clearly defined as history suggests.

INSIDER TRADING LAWS: AN AMERICAN TRADITION

According to the SEC, illegal insider trading “refers generally to buying or selling a security, in breach of a fiduciary duty or other relationship of trust and confidence, while in possession of material, nonpublic information about that security.”

In a 1998 speech, Thomas C. Newkirk, then Associate Director of the SEC’s Enforcement Division, described the history of insider trading laws in the United States. “The American notion that insider trading is wrong goes back over one hundred years.” Newkirk explained that insider trading was criminalized in the United States after the stock market crash of 1929.

“In response to the crash, Congress enacted the Securities Act of 1933 and the Securities Exchange Act of 1934, aimed at controlling the abuses believed to have contributed to the crash. The 1934 Act addressed insider trading directly through Section 16(b) and indirectly through Section 10(b).” According to Newkirk, “ever since [the enactment of the 1934 Act], courts and regulators [have] struggled to refine prohibitions on insider trading.”

The 1934 Act also grants the SEC the power to enforce civil violations of insider trading laws and grants the DOJ the authority to seek criminal sanc-

110
Linda Chatman Thomsen, Director of the SEC’s Division of Enforcement, described the SEC’s approach to insider trading violations over the past 80 years during her September 2006 testimony before the U.S. Senate Committee on the Judiciary. “The Division pursues these cases day in and day out and has developed unparalleled expertise in this area,” Thomsen explained.

“Indeed, a long list of prominent and not so prominent individuals would undoubtedly testify that the Enforcement Division does not pull its punches,” Thomsen continued. “The respective histories of the SEC and DOJ, as well as those of state attorneys general and securities regulators, demonstrate our collective commitment to prosecuting insider trading, civilly and criminally, under federal and state law.”

Despite the SEC and DOJ’s strong stance against insider trading violations, not all Americans share the same sentiment. In his October 2009 article, “Learning to Love Insider Trading,” Boudreaux lays out his argument in favor of insider trading. “Time to stop telling horror stories,” Boudreaux begins. “Insider trading is impossible to police and helpful to markets and investors.”

The cornerstone of Boudreaux’s argument revolves around the efficiency of market prices: “Prohibitions on insider trading prevent the market from adjusting as quickly as possible to changes in the demand for, and supply of, corporate assets.” “The result,” Boudreaux explains, “is prices that lie.”

On a subsequent television appearance on CNBC’s “Kudlow Report,” Boudreaux discussed his position further. “If insiders can trade on non-proprietary information, they drive those prices more quickly to their correct levels,” he explained. “And that means that the millions of stock traders out there, who are not insiders, are able to buy and sell at prices that more closely reflect their true values.”

Boudreaux is not alone in his stance. Henry Mann, Dean Emeritus at George Mason University School of Law, has argued forcefully against the criminalization of insider trading. In addition, Milton Friedman, American economist and Nobel Prize laureate, said in a 2003 interview, “You want more insider
dealing, not less; you want to give people most likely to have knowledge about deficiencies of the company an incentive to make the public aware of that.”

OR HATE IT?

Other scholars disagree with the suggestion that insider trading should be de-criminalized. Specifically, Bainbridge addresses Boudreaux’s stance, stating that “insider trading simply does not have the effects Boudreaux ascribes to it.” If insider trading is to affect the price of securities,” Bainbridge begins, “it is through the derivatively informed trading mechanism of market efficiency.” Bainbridge explains that when those individuals possessing material nonpublic information begin trading, their trading has only a small effect on price. He believes that, after the insider trading occurs, some uninformed traders become aware of the insider trading and react to that information. Finally, according to Bainbridge, “the market reacts to the insiders’ trades and gradually moves towards the correct price.”

“Given the inefficiency of [insider trading],” Bainbridge concludes, “the market efficiency justification for insider trading loses much of its force.”

Loyola University Chicago School of Law Professor Steven Ramirez agrees with Bainbridge. “Boudreaux is in really weak territory here,” Ramirez begins. “If you take out the insider trading laws, investors will lose confidence and that could take out 15 percent of the equity in our financial markets on a permanent basis.”

NOT SO CLEAR AFTER ALL

Boudreaux and Bainbridge pose viewpoints that appear irreconcilable: Boudreaux argues insider trading quickly adjusts the price of stocks while Bainbridge argues it does so very slowly. Perhaps, however, the mere fact that such differing viewpoints exist is noteworthy. Considering the United States’ long tradition of punishing insider trading, Boudreaux and Bainbridge highlight the reality that American views on the topic may not be as clear cut as history suggests.
NOTES

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SHOULD “BUM-BASHING” BE A HATE CRIME?

by Jeff McDonald

As far as authorities can tell, August Felix’s only crime was living on the streets.¹

Felix, a homeless man, was severely beaten with no apparent motive other than amusement.² His plight is representative of a larger trend of unprovoked violence against the homeless.³

In response, legislators have been gathering support for adding the homeless as a protected class to state and federal hate crime laws.⁴ However, calls for protection have also encountered resistance.⁵
PASSING LEGISLATION

On April 6, 2006, Maine became the first state to offer stiffer penalties for attacks against homeless people. The state law empowers judges to issue harsher sentences at their discretion for crimes against victims selected because they were homeless.

Not long after, Maryland went a step further. On May 7, 2009, it became the first state to incorporate non-discretionary protection for the homeless into its hate crime statute. Like Maine, Maryland added homelessness to race, religious belief, national origin, disability, gender and sexual orientation on its list of protected classes. The new law went into effect on Oct. 1, 2009.

Since 2009, California, Florida, Ohio, South Carolina, Alaska, Texas and the District of Columbia have considered enacting special protection laws for the homeless class. The bills in Texas and Ohio were defeated, but legislation in California, South Carolina, Alaska, Florida and D.C. is still pending.

Many other states have considered measures to protect the homeless in recent years. Nevada’s 2007 proposal would not only have added homeless individuals to the protected ranks of hate crime classes but would have allowed the victim to collect actual and punitive damages, as well as attorney’s fees.

While special legislative consideration for the homeless is gaining traction in several states, homelessness is not currently a protected class under federal hate crime statutes. Specifically, the Violent Crime Control and Law Enforcement Act of 1994, which addresses major categories of violent crime, does not include homeless people as a protected class. The Act defines a hate crime as one “in which the defendant intentionally selects a victim . . . because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability or sexual orientation of any person.”

Impelled by the persistent attacks on the homeless in recent years, members of Congress have introduced two pending proposals to provide extra services to homeless crime victims. One proposal would amend the Hate Crimes Statistics Act, a law tasking the FBI with collecting information on crimes motivated by race, religion, sexual orientation, disability or ethnicity. This change would require tracking crimes against the homeless. The other proposal au-
VICTIMS OF HOMELESS VIOLENCE

The push for legislation has been spurred by several shocking high-profile instances of violence. On March 26, 2006, police discovered August Felix, 54, one of Orlando’s homeless residents, crumpled on the driveway of a condominium building with severe blunt force head injuries.

Felix could not identify his attackers before dying in the hospital. He only knew that they were youths. Six local teens were eventually charged with the beating.

The violence in Orlando followed closely on the heels of similar attacks in Fort Lauderdale. On the night of Jan. 12, 2006, a group of teens beat three unrelated homeless men in a random spree of violence. The victims were slashed, pounded with baseball bats and shot with paintball guns. Jacques Pierre, 60, and Raymond Perez, 52, were hospitalized with life-threatening injuries, but survived.

Forty-five-year-old Norris Gaynor was not so lucky. He was bludgeoned to death while sleeping on a park bench. The spree gained worldwide notoriety when security camera footage of Perez’s beating was broadcast on national television networks and the Internet.

“A NATIONWIDE PROBLEM”

According to the National Coalition for the Homeless (NCH), Florida leads the nation in violence against the homeless, with 30 separate incidents reported in 2008. California follows with 22.
Homeless individuals often fail to report acts of violence against them out of fear of authorities.

Attacks are most common in urban areas, with the highest incidences of violence occurring in warm weather states. Here, the homeless population spends more time outdoors and stands out conspicuously against crowds of tourists. They are more visible and more accessible to anyone who wishes them harm.

But attacks are by no means limited to those sunny places. "It's a nationwide problem," said Neil Donovan, Executive Director of NCH. He believes that increased instances of violence in Florida and California only reflect higher rates of reporting. "If there was capacity to collect this information, as there is in Florida or California, then the numbers would be much greater than one would suspect."

Over the 10 years the NCH has been keeping track, acts of violence against the homeless have been reported in 46 states, Washington, D.C. and Puerto Rico. In those incidents, 244 homeless individuals were killed.

"The information that we gather and have been gathering over the past 10 years shows that the number of incidents from last year to this year has re-
mained relatively the same,” Donovan said. “However, the severity has increased. The resulting death from injuries has increased.”

Homeless people often clash amongst themselves over turf or resources. In most reported cases, however, it is a domiciled outsider who attacks. In incidents compiled by the NCH, attackers are often intoxicated and acting impulsively. Homeless attackers also tend to be young. Over the past 10 years, 78 percent of those accused or convicted were 25 or younger. Over half were younger than 19.

Those arrested for gratuitous violence against the homeless often claim inspiration from Bumfights, a series of videos distributed on DVD and the Internet. In the four Bumfights videos, producers induce homeless men to fight each other and perform dangerous stunts in exchange for money and alcohol. Their popularity has spawned copycats like The Bum Hunter, a Steve Irwin parody video in which the narrator pounces on unsuspecting homeless people as though he is wrangling animals.

These bum-bashing movies capitalize on a perception of homeless people as inhuman and expendable. Regardless of whether the videos are a cause or a symptom of negative attitudes towards the homeless, their popularity is undeniable. A search in March 2010 for “bum fight” on Youtube.com returned over 9,500 videos.

Another factor that turns the public violent is the virtual criminalization of homelessness in many communities. Cities such as Los Angeles and Atlanta, have passed strongly enforced ordinances against panhandling, loitering or sleeping outside. Homeless advocates, like the NCH, fear that they give residents the attitude that the homeless should be pushed out of town.

As a class, homeless individuals may be the most poorly equipped people to defend against targeted violence. They often lack refuge from the public, suffer from mental and physical handicaps and avoid law enforcement authorities out of fear.
DEFINING HOMELESSNESS AS A HATE CRIME

Hate crime legislation has its roots in the civil rights movement. In the late 1960s, Congress passed civil rights laws that specified punishments for depriving anyone of basic civil rights on account of color, race or national origin. The first hate crime legislation at the state level was passed in California in September 1987.

As the laws developed, states began departing from the federal model. They focused on the group classification of the victim and relaxed requirements on the type of act committed. In 1993, the U.S. Supreme Court unanimously affirmed the constitutionality of enhanced penalties for hate crimes.

In advocating for stronger legislation, the NCH argues that homelessness shares features with many other recognized hate crime categories. “Hate crimes are truly common in that the person is acting on a bias,” said Donovan. “It is a bias that is determined within their own mind that they believe they have justification to act upon.”

“I think that’s where the similarities lie. Whether it be because of race or religion, whether it be about somebody’s sexual preference or their economic situation, these are all conditions that people are judged upon.”

According to the NCH, class-based prejudice and violence are not stigmatized in some circles. Because homeless people have less power and social influence than the general population, they have an invisible status in society. Advocates fear that crimes against them are not taken as seriously as crimes against other citizens.

Nevertheless, some question the value of hate crime protection for the homeless. Opponents, such as the Anti-Defamation League (ADL), maintain that such legal protection should be reserved for so-called “immutable” categories. These are characteristics people are unable to change about themselves, such as race and gender. The ADL argues that homelessness should not be considered with protected categories like disability or race because it is a fluctuating condition, making it more difficult to define and identify.
The authors of NCH’s report, *Hate, Violence, and Death on Main Street USA 2008*, respond that other protected categories are at least as mutable as homelessness.82 Forty states and the District of Columbia include religion as a protected classification.83 A Muslim can choose to stop practicing Islam, but a homeless man cannot usually choose to move into a home. Thus, these proponents argue that while homelessness is not immutable in the most restrictive sense, mutability should not be the determining factor.84

Still, critics of hate crimes in general, such as the conservative Traditional Values Coalition, doubt their fairness and effectiveness at all.85 Hate crime prosecutions often hinge on whether the accused uttered a trigger word, such as an ethnic slur, during the crime.86 These triggers are frequently the only way to prove that the victim’s protected classification motivated the attack.87 Opponents like the Coalition argue that this is an arbitrary distinction in sentencing that makes a hate crime a crime of thought.88

Even if hate crime protections for the homeless become commonplace in the United States, special sentencing ultimately fails to address the underlying problem that the victims have no homes.89 No law can entirely remove the dangers of sleeping on the street.90

Whitney Gent, spokesperson for the National Law Center on Homelessness and Poverty, acknowledges that a hate crime law initially may not be enough to offer much protection.91 “We’re not sure how likely it is that hate crime protection will stem violence against homeless people, as the people committing these violent acts would not necessarily be reading the laws protecting homeless people,” she said.92

However, recognition of homelessness as a protected class sends a message that society is concerned about the homeless and acknowledges the problem.93 Gent considers the legislation in terms of public perception.94 “[W]e understand these protections as being an important part of public education and outreach, which are more likely to result in decreased violence.”95

In the meantime, homeless individuals remain vulnerable. And advocates will continue to campaign for more widespread protection as they search for ways to curb the brutality.
NOTES

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75 Nat’l Coalition, supra note 3, at 37.
76 Id. at 38.
77 Telephone Interview with Michael Stoops, supra note 12.
78 Davidson, supra note 4; Nat’l Coalition, supra note 3, at 37.
79 Davidson, supra note 4.
80 Nat’l Coalition, supra note 3, at 37.
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ATTACKED FROM ALL SIDES:
INCREASED SEXUAL ASSAULT REPORTS WITHIN THE U.S.
MILITARY

by BRITTANY KUBES

Jessica, a helicopter maintenance crewmember in the U.S. Military, was the victim of sexual assault by more than one colleague.¹ In 2009, Jessica reported that her squad leader made unwanted sexual comments towards her and then tried to physically force himself on her.² In a later unrelated incident, an acquaintance stationed at another base raped her.³ Jessica is one of three women in a unit of 60 men.⁴

Experiences of sexual assault amongst military personnel are not unique. In fact, one in three female soldiers will experience sexual assault while serving in
the military.\(^5\) In 2008, there were 2,265 reports of sexual assault involving military service members, a nine percent increase from 2007.\(^6\)

Was the 2008 increase in sexual assault reports in the military a positive result of stricter standards or a sign of rising assault occurrences?

According to Dr. Kaye Whitley, the director of the Pentagon’s Sexual Assault Prevention and Response Office (SAPRO), the increase in the number of sexual assaults can be attributed to the improved reporting methods and the Department of Defense’s (Department) new policy of encouraging victims to come forward with information regarding sexual assault.\(^7\) On the other hand, as one anonymous military intelligence lieutenant suggests, “military men and women have become hypersensitive to any hint of impropriety by fellow soldiers, which then leads to the rising level of reports.”\(^8\)

No matter what the direct cause of the increase in reporting, it has led to heightened controversy. Particularly, the controversy surrounds the oft-forgotten male sexual assault victims and the related implications of the “Don’t Ask, Don’t Tell” (DADT) policy. This policy prohibits openly gay men, lesbians and bisexuals from serving in the military.\(^9\)

MILITARY SEXUAL ASSAULT REGULATIONS

In order to establish a central organization of accountability and oversight for sexual assault policy, the Department created SAPRO.\(^10\)

Former Secretary of Defense, Donald H. Rumsfeld, directed former Secretary of Defense for Personnel and Readiness, Dr. David S. C. Chu, to review the way the Department controlled the treatment and care of military member sexual assault reports.\(^11\) In 2007, the Uniform Code of Military Justice (UCMJ) broadened its definition of sexual abuse from solely covering rape to include other related offenses.\(^12\) This change in the UCMJ definition demonstrates the Department’s commitment to preventing sexual assault in the military.\(^13\)

One year later, there was a nine percent increase in sexual assault reports.\(^14\) Additionally, the Pentagon estimated that approximately 80 to 90 percent of
sexual assaults went unreported in the military in 2008. Shortly after the Department created stricter assault regulations an increase in reports occurred.

**Does a Rise in Sexual Assault Reports Implicate a Rise in Sexual Assault Cases?**

There are various causes for the recent increase in sexual assault reports by military service victims. The Department notes that the increase may be attributed to the result of the UCMJ’s broadened definition of the term “sexual assault.” More conduct consequently falls under that category, resulting in more reports.

Indeed, some soldiers believe that the stringent standards have resulted in too much sensitivity. For example, according to military member James Mallory, if a soldier “hears anything off color across the room, they then have leverage to launch a complaint and possibly gain a promotion.” These soldiers are skeptical of the increased number of reported attacks.

Another factor is that soldiers may have mixed feelings about coming forward and reporting attacks. The victim may face a negative impact on his or her career and a remaining tour with the perpetrator. Or, the victim may not report an attack if a “favor,” such as a promotion in exchange for the alleged sexual assault, has resulted.

On the other hand, some military personnel suggest that there are increased reports because the number of assaults has increased. The Defense Task Force on Sexual Assault in the Military Services reported that some military personnel believe the increase is attributed to the fact that perpetrators believe they will not be held accountable for their acts. Specifically, these officers believe they have complete impunity because their commanders are often more focused on the mission than on their conduct.

Furthermore, Courtney Mullins, intern at the Washington Coalition of Sexual Assault Program, suggests that other barriers for military service victims exist that may be contributing to the overall number of reports. Such barriers may include lack of privacy or fear of the career impact of reporting attacks. Military service members live in close quarters in remote locations. Additionally,
women are typically isolated and unevenly distributed at bases, making up only one in 10 soldiers at some bases.  

Kingsley R. Browne, a professor at Wayne State University Law School, opines that sexual assaults are the predictable consequence of “mixing the sexes together in the often intimate and cloistered environments in which military personnel operate.” These opinions contribute to the numerous reasons for the recent increase in sexual assault reports.

**The Male Victims Left Behind**

Women are not the only victims of sexual assault in the military. In 2008, 10 percent of military service victims were male. Many men do not believe they are vulnerable to sexual assault if they are in all male units, likely due to the perceived safety net of DADT.

DADT prohibits anyone who demonstrates a “propensity or intent to engage in homosexual acts” from serving in the U.S. armed forces. Under the policy, these acts “create an unacceptable risk to the armed forces’ high standards of morale, good order and discipline, and unit cohesion,” which are “the essence of military capability.”

One anonymous military intelligence officer contends that homosexuals should not be allowed in the military. He states that soldiers should not have to fear living with “gay men who may be bigger and stronger” than them. Is this the same apprehension that women face from such “bigger and stronger” heterosexual men in the military?

DADT has recently received a lot of media attention due to its controversial policy. However, there has been less focus on sexual assaults occurring within the military. According to the Department, men may be less likely to report a sexual assault by another male due to risk of their own stigmatization with respect to DADT.

**Conclusion**

The Department asserts that significant progress has been made in responding to victims of sexual assault since the establishment of SAPRO. At the same
time, the Department also acknowledges that improvements could be made in prevention, victim care and accountability.\textsuperscript{39} President Obama recently called on Congress to “finally repeal the law that denies gay Americans the right to serve the country they love because of who they are.”\textsuperscript{40}

Congress may also be called on in the future to develop new regulations to make women feel more comfortable in the military and to further decrease the prevalence of sexual attacks. It may have a duty to do so regardless of whether those reports are a result of the broader sexual assault standard or a mere increase in reports.

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Loyola Public Interest Law Reporter

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A BLACK MARKET FOR MAGICAL BONES: THE CURRENT PLIGHT OF EAST AFRICAN ALBINOS

by Susie Bucaro

In 2009, more than 20 East African albinos were murdered.1 Their bodies entered a regional market piloted by witchdoctors, where albino body parts are bought and sold as magic charms.2

The killings began in 2007.3 Since then, more than 50 albinos have been killed,4 and in Tanzania, more than 10,000 people have been displaced from their homes.5 Although the Tanzanian government has sentenced a handful of albino killers to death, little has been done to protect albinos from future outbreaks of violence.6 As one Tanzanian put it, albinos have become "refugees in
their own country.”7 In the face of a mostly apathetic local government, some albinos may be forced to survive by becoming refugees somewhere else.

A HISTORY OF DISCRIMINATION

Although albino-targeted killings began within the last three years, discrimination against albinos in East Africa is not a recent phenomenon.8 Throughout sub-Saharan Africa, albinos have historically been ostracized because they look different.9 George Ngaweje is a 16-year-old albino, living in Dar es Salaam, Tanzania.10 Although his mother does not suffer from albinism, she gave birth to three children who do: George, his brother and his sister.11 George believes that albinos are treated unfairly because of their skin color.12 “Some of the albinos are killed,” he says, “without any reason.”13

Albinos, or people with albinism, suffer from a genetically inherited disorder that results in an absence of pigmentation in a person’s hair, skin and eyes.14 As a result, people with albinism are extremely sensitive to the sun.15 Furthermore, albinism oftentimes results in an abnormal development of the retina, causing many albinos to suffer from a significant visual impairment.16

For an East African albino, especially one who is poor, these handicaps are severely limiting. If the person cannot afford glasses to help his or her vision problems, he or she is unlikely to succeed in school and will probably drop out.17 An uneducated albino is forced to find work in menial day-labor jobs under the scorching sub-Saharan sun.18 As a result, these day-laborers often die prematurely of skin cancer.19 These health factors have contributed to the stigmatization of African albinos because East African society tends to ostracize those with physical defects as “worthless.”20

Cultural superstitions in Tanzania that these health problems are the result of curses make matters even worse. George believes that the violence toward albinos in Tanzania is caused by cultural and traditional practices.21

Tanzanian albinos have traditionally been stigmatized in their communities as omens of disaster.22 In some regions, albino children are believed to be the ghosts of European colonists.23 A husband might divorce his wife if she gives birth to an albino child, accusing her of having an affair with a white man.24 As a result, many albino children are raised by a single parent, which presents
another obstacle – a financial one – to providing the child with basic needs and an education.25 Even those albinos who do receive an education are often discriminated against in the workplace and not considered for promotions.26

As for George, he intends to complete secondary school and attend a university in the hopes of someday becoming an engineer.27 He recognizes, however, that societal discrimination against albinos poses a limitation on his dream.28 How does he feel about it? “Sad,” George says, and “afraid.”29

As an albino in Tanzania, George certainly is not alone. Albinism is relatively common in Tanzania, and therefore this discrimination affects a large group of people. In East Africa, among the countries of Kenya, Tanzania, Uganda, Rwanda and Burundi, one out of every 3,000 children is born with albinism. Comparatively, in the United States, only one in 20,000 babies are born albino.30 The difference is simply genetic: a mutation has found its way into the East African population, and the result has been a striking number of albino births.31 Currently, there are an estimated 17,000 people living with albinism in Tanzania.32

THE ROLE OF WITCHDOCTORS

Beginning in 2007, local Tanzanian witchdoctors began marketing potions made of albino blood, shoes made from albino skin and other objects intertwined with albino hair or comprised of albino body parts.33 The witchdoctors advertised these objects as tokens guaranteed to make people rich.34 The marketing campaign was successful, and within a year a complete dismembered albino body could sell for $75,000.35

The reasons behind this “get-rich-quick-by-killing-an-albino” scheme are unclear.36 Robert Bundala, an Assistant Lecturer in language teaching from Mwanza, Tanzania has one answer: “Poverty is the main cause of all this. The global economic meltdown has turned thousands of people into believing that only through [this type of activity] they can sustain their livelihood.”37

Nicholas Okungu, from Dar es Salaam, Tanzania, has a simple answer for why people are killing albinos: “For their bones.”38 Okungu, an 18-year-old high school student, tells of an albino who came to his school seeking refuge from his fellow villagers, who were hunting him.39 Okungu can remember hearing
about albino-targeted violence years ago. He thinks the problem is more severe in rural areas, where people have less money and are less educated.

Raymond Mosha, a professor of International Exchange at DePaul University in Chicago, agrees with Okungu. Born and raised in Moshi, Tanzania, Mosha believes that the violence is mostly in the villages. “Urban populations,” he says, “are better protected than rural ones by police.” Furthermore, albinos living in urban areas receive the additional protection of living among a more educated population. Urban areas, Mosha continues, have “populations that do not easily succumb to this kind of belief that albino parts make people rich.”

The problem, however, is not limited to rural areas. It has permeated the urban centers of Tanzania as well, perhaps because this is where “wealth-hungry” people, as Bundala calls them, reside. It is not uncommon to hear a crowd harassing an albino in the city by yelling Dili! Dili!, a Swahili play on the word “deal.” What the exclamation “deal” means, Okungu explains, is that an albino represents a deal or a bargain, an opportunity to pocket a financial benefit.

This financial incentive to murder albinos is a result of what Mosha calls witchdoctor malpractice. “People believe the indigenous doctors,” states Mosha, “because traditionally these people have had some healing power – good healing power – so they command considerable authority in the community.”

Whatever the cause may be – poverty, superstition, ignorance or greed – as of November 2009, the official death toll from albino-targeted violence surpassed 50. The Tanzanian Albino Society reported that most of the victims of these murders are women and children with albinism.

THE LOCAL GOVERNMENT RESPONSE

In October 2008, the President of Tanzania, Jakaya Kikwete, condemned the albino killings, saying they were based on a “stupid belief.” The following month, the Tanzanian government declared it a capital crime to kill albinos. Since then, more than 170 people have been arrested for albino killings in
Tanzania, but very few have been prosecuted. The Tanzanian courts cite a lack of funds for litigation as the reason for the delay.

Mosha believes that the local government response has been inadequate. “The Tanzanian government should do much more to protect albinos,” he says. Mosha suggests that the government should “educate the rural masses about the folly and danger of these beliefs, register and supervise all doctors and prosecute all who break the law.”

In September 2009, four men were sentenced to death for murdering an albino boy – the first such ruling in Tanzania. Two months later, the Tanzanian courts sentenced four additional men to death by hanging for their participation in killing albinos. None of those convicted have actually been executed because President Kikwete has yet to sign the execution orders.

George Ngaweje has a message for Kikwete: “If I could get a chance to say something to the president of Tanzania about the violence toward albinos, I [would] say . . . that [the] government should put more effort to protect albinos through instruments like the army and police.” He continues, “the government should give education to people so that they stop killing albinos.”

George dreams of a Tanzania where albinos can live comfortably, without any fear of insecurity. In light of the generally apathetic government response to the problem, however, it appears that safety for albinos in Tanzania might remain just a dream for quite some time.

THE INTERNATIONAL RESPONSE

In 2008, Peter Ash, a Canadian with albinism, founded a non-governmental organization in Canada called Under the Same Sun. The organization is dedicated to eradicating albino-targeted violence in East Africa. One way Under the Same Sun seeks to reduce the violence against albinos is by embarrassing the Tanzanian government into action. Ash believes the government is worried about tourism and its image, and as a result “is trying to keep a lid on [the problem].”

Ash visited the United Nations in February 2009 with the hopes of pressuring the UN to hire a special prosecutor for the killings. Following Ash’s visit, the
For an African Albino, it appears that safety might remain just a dream for quite some time.

UN Secretary General Ban Ki-moon stated that he was “very sad to hear what is happening in Tanzania” and that the UN will “support initiatives by Tanzanian authorities to address the issue.”70 Beyond condemning the killings, however, the Secretary General did not offer any economic assistance to help prosecute the criminals, nor did he promise to exert any pressure on the Tanzanian government to be more proactive in resolving the problem.71

In light of the response by the international community, the International Federation of the Red Cross (IFRC) has called the plight of albinos in East Africa “a silent emergency.”72 The IFRC issued an advocacy report in November 2009, pressuring East African governments to provide better legal protection for people with albinism.73 The IFRC further promised to continue its own
efforts, mobilizing international support to alleviate albino-targeted violence in the region.74

SEEKING REFUGE ELSEWHERE

In the absence of strong local and international support, some albinos have taken measures into their own hands by leaving the region. Abdoulaye Coulibaly arrived in the Spanish Canary islands illegally by boat in April 2009 and became the first albino man to be granted asylum in Spain.75

Local lawyers call it a success and hope Coulibaly’s case will help other albino people seeking refuge.76 The Spanish Interior Ministry, however, rejected an asylum application of another albino, finding that the daily discrimination he suffered in Nigeria did not amount to “persecution.”77

In the United States, albinos seeking asylum must demonstrate a well-founded fear of persecution on the basis of membership in a particular social group.78 In order to establish membership in a particular social group, the applicant must establish that the group is facing persecution based on an immutable characteristic, shared in common.79 The question is whether a genetic disorder, such as albinism, qualifies. In Coulibaly’s case, the Spanish Interior Ministry answered that question affirmatively: persecution based on albinism qualifies a person for asylum.80

Bundala mentioned an albino man he knows who carries a whistle with him to blow for help any time he suspects his life is in danger.81 Perhaps a solution to the problem requires more people, like Peter Ash, to be the whistle-blowers, drawing the attention of the international community to the current plight of East African albinos.

Meanwhile, George, the 16-year-old albino boy from Dar es Salaam, is not looking to the Tanzanian government or the international community to safeguard his life. Nor is he carrying a whistle to call for help. Instead, George has another strategy to keep him safe. “Always,” he says, “I pray to God so that he can protect me from this bad situation.”82
Loyola Public Interest Law Reporter

NOTES

6 Bennett, supra note 4.
7 Email Interview with Robert Bundala, Asst. Lecturer Specialized in language teaching in Mwanza, Tanz. (Feb. 24, 2010).
8 Engstrand-Neascu & Wynter, supra note 3; ASSOCIATED PRESS MSNBC, supra note 5.
10 Email Interview with George Charles Ngaweje, High School Student, Loyola High School in Dar es Salaam, Tanz. (Mar. 3, 2010).
11 Id.
12 Id.
13 Id.
15 Id.
17 ASSOCIATED PRESS MSNBC, supra note 5.
18 Id.
19 Id.
20 Id.
21 Email Interview with George Charles Ngaweje, supra note 10.
22 Id.
23 Bennett, supra note 4.
24 Engstrand-Neascu & Wynter, supra note 3; ASSOCIATED PRESS MSNBC, supra note 5.
25 Engstrand-Neascu & Wynter, supra note 3.
26 ASSOCIATED PRESS MSNBC, supra note 5.
27 Email Interview with George Charles Ngaweje, supra note 10.
28 Id.
29 Id.
30 McNeil, supra note 2.
31 Id.
32 Id.
33 Engstrand-Neascu & Wynter, supra note 3; McNeil, supra note 2.
34 McNeil, supra note 2.
35 ASSOCIATED PRESS MSNBC, supra note 5.
36 Email Interview with Robert Bundala, supra note 7.
37 Id.
38 Email Interview with Nicholas Constantine Okungu, High School Student, in Dar es Salaam, Tanz. (Mar. 1, 2010).
39 Id.
40 Id.
41 Id.
42 Email Interview with Raymond S. Mosha, International Exchange Professor, DePaul University in Chi., Ill. (Mar. 4, 2010).
43 Id.
44 Id.
45 Id.
46 Email Interview with Robert Bundala, supra note 7.
47 Email Interview with Nicholas Constantine Okungu, supra note 38.
48 Id.
49 Email Interview with Raymond S. Mosha, supra note 42.
50 Id.
51 Bennett, supra note 4.
53 Bennett, supra note 4.
56 Id.
57 Email Interview with Raymond S. Mosha, supra note 42.
58 Id.
59 Id.
61 Id.
62 Bennett, supra note 4.
63 Email Interview with George Charles Ngaweje, supra note 10.
64 Id.
65 Id.
66 McNeil, supra note 2.
67 Id.
68 Id.
69 Id.
70 UNDER THE SAME SUN, supra note 14.
71 Id.
72 Bennett, supra note 4.
73 Engstrand-Neascu & Wynter, supra note 3.
74 Id.
Loyola Public Interest Law Reporter

76  *Id.*
77  *Id.*
79  *Id.*
80  Rainsford, *supra* note 75.
81  Email Interview with Robert Bundala, *supra* note 7.
82  Email Interview with George Charles Ngweje, *supra* note 10.
AMIDST CONTROVERSY OVER FEDERAL 287(g) IMMIGRATION PROGRAM, ARIZONA APPROVES IMMIGRATION TRESPASSING CRIME UNDER NEW LAW

by Christina McMahon

In 2008, Velia Meraz and Manuel Nieto, Jr. were traveling to their Phoenix, Ariz. auto-repair store when four local law enforcement patrol cars blocked their path. Officers then surrounded Meraz and Nieto with weapons raised.1
The officers, who had been conducting an immigration sweep near the store, believed that Meraz and Nieto were undocumented aliens.2

Though Nieto, born and raised in Chicago, Ill., was not charged with any infraction, he was pulled from his car and pressed face first against the glass window.3 The officers released Meraz and Nieto after running Nieto's drivers license through a computer to prove his U.S. citizenship.4 However, Nieto claims the officers, operating under a federal 287(g) agreement authorizing local police agencies to enforce federal immigration law, were “overstepping the line.”5

The 287(g) program, which is the section of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) that authorizes it, provides for U.S. Immigration and Customs Enforcement (ICE) to train local police agencies in federal immigration enforcement.6 The local agencies must sign an ICE-issued Memorandum of Agreement (MOA) to participate in the 287(g) program.7

The 287(g) program has increased dramatically since 2006, from eight participating agencies with a $5 million federal budget to 67 participating agencies with a $54 million budget in 2009.8 Supporters claim there have been “phenomenal results . . . as a force multiplier for ICE” to target problems associated with illegal immigration, such as gangs, drugs and human smuggling.9 However, opponents contend the agreements have led to racial profiling in some immigrant communities.10

Last year, the Department of Homeland Security (DHS) revised procedures following these claims of racial profiling and a U.S. Government Accountability Office (GAO) report citing a lack of program objectives and federal oversight.11 DHS issued a revised MOA that all participating agencies needed to sign by Oct. 10, 2009.12 Sixty-seven agencies signed the new MOA, which specifically asked participants to prioritize targeting undocumented aliens who have committed serious crimes, such as murder, rape or robbery, in an effort to minimize those detained for minor civil infractions.13

However, the Arizona state legislature recently passed a law that may obviate the need for 287(g) agreements entirely.14 The new law, SB1070, broadens the state crime of trespassing to apply to all undocumented immigrants within the state.15 Therefore, the law places all incidents of undocumented immigration
squarely within the state police power, allowing local law enforcement to pursue immigration violations without federal approval.  

ARIZONA: “GROUND ZERO” OF THE IMMIGRATION BATTLE

Maricopa County Sheriff Joe Arpaio, famous for conducting widespread sweeps of Hispanic neighborhoods under the pretext of looking for “criminal aliens” pursuant to 287(g) agreements, detained Meraz and Nieto. Meraz and Nieto, however, are not alone. Since 2007, Arpaio has detained over 30,000 other undocumented immigrants, often for minor traffic violations. Due to the number of undocumented immigrants apprehended last year, Maricopa County law enforcement needed to set up a separate “Tent City” outside of the local jail to support the overflow of immigrants detained.

Maricopa County is not the only area taking an aggressive approach to local enforcement of federal immigration laws. According to Joanne Lin, legislative counsel for the American Civil Liberties Union (ACLU), “Joe Arpaio might be the most extreme and obnoxious version of 287(g) run amok, but he is not aberrational. We have examples all across the country of local law enforcement using their authority under the program to harass U.S. citizens and people who look foreign.”

ICE officials claim that the 287(g) program was intended to address “serious crime . . . committed by removable aliens.” However, according to the GAO, several local agencies are using 287(g) to remove undocumented immigrants for violations of minor civil infractions, which is “contrary to the objective of the program.”

Last October, following claims of racial profiling during immigration sweeps, DHS revoked a 287(g) agreement with Maricopa County that allowed 160 of Arpaio’s deputies to enforce federal immigration law. Despite this attempt to deter the improper implementation of 287(g) agreements, Arpaio has chosen to ignore the DHS decision and has begun training all 881 of his deputies. Arpaio claims the right to do so under the “inherent authority” of local police to stop and arrest people in order to enforce immigration law.

Addressing Arpaio’s actions, Muzaffar Chishti, director of the Migration Policy Institute (MPI), states, “[T]hey claim they have the right on their own to hold
someone up without an ICE detainer. What will be challenged is that they can’t just hold people on the basis of an immigration suspicion.”

The Arizona state legislature, however, supports Arpaio. Recently, the legislature gave local law enforcement this power by making federal immigration violations a state crime.

**IMMIGRATION BILL**

On April 23, 2010, Gov. Jan Brewer signed into law SB1070, a sweeping immigration bill that creates a statewide obligation to enforce federal immigration law. This law replaces the 287(g) agreements, in which city or county governments previously decided enforcement of federal immigration. Moreover, the law makes Arizona the first state to enact a crime of “immigration trespassing.” Making immigration trespassing a crime means that an undocumented immigrant could be criminally punished for his or her mere presence in the state. A House amendment to SB1070 replaced the term “immigration trespassing” with “willful failure to complete or carry an alien registration document.” However, this amendment did not alter the substance of the violation.

Even citizens or legal immigrants who happen to leave their home without their documents could be arrested and detained under the law. A first-offense violation of SB1070 is a misdemeanor punishable by up to six months in prison. Subsequent violations are felonies punishable by one-and-a-half to three years imprisonment. The law allows local agents to detain a person “where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States.”

Opponents criticize the law’s failure to address what specifically will amount to reasonable suspicion. Historically, only federal immigration officials had authority to detain a person solely for civil immigration violations based on “reasonable suspicion.” Under 287(g), local law enforcement may only detain for “probable cause.”

Opponents are particularly concerned about the trespassing provision, stating that it will increase racial profiling. They argue that U.S. citizens and legal immigrants will be approached on the basis of their skin color. "Bills like this...
that cast a net so wide are guaranteed to trap U.S. citizens,” states Jennifer Allen, director of Border Action Network.\textsuperscript{45} “It gives too much authority to poorly trained, unaccountable officers. Also, crimes are going unreported because people are becoming afraid that their immigration status will become the main issue, and they will be deported.”\textsuperscript{46}

However, Jessica Vaughn, senior policy analyst at the Center for Immigration Studies, claims that this argument is “a complete myth not supported by any kind of [evidence] . . . Victims of crime simply are [not] going to be subject to removal orders.”\textsuperscript{47}

Alternatively, SB1070 sponsor Republican Sen. Russell Pearce states that the trespassing provision will not be used on a wide scale, and local officers are not required to arrest all illegal immigrants under the law.\textsuperscript{48} “[This bill] will take the political handcuffs off of law enforcement,” he states.\textsuperscript{49}

Additionally, Sheriff Arpaio claims the two-hour training session that each deputy receives to enforce federal immigration law will now include information on how to identify undocumented immigrants and avoid racial profiling.\textsuperscript{50} However, opponents argue that there is no way to target undocumented immigrants without racial profiling.\textsuperscript{51} When asked, Gov. Jan Brewer admitted, “I do [not] know what an undocumented person looks like.”\textsuperscript{52}

The passage of this bill has also returned attention to the Obama Administration’s promise to issue sweeping immigration reform.\textsuperscript{53} Gov. Brewer claims that the law is necessary because the lack of federal immigration reform has forced the states to act in protection of their borders, stating, “We in Arizona have been more than patient waiting for Washington to act.”\textsuperscript{54} Minutes before Gov. Brewer signed the bill into law, President Obama criticized it as “misguided” and urged that congressional failure to pass immigration reform quickly will “only open the door to irresponsibility by others.”\textsuperscript{55} President Obama additionally warned that SB1070 could violate citizen’s civil rights, and urged the Justice Department to monitor the law’s implementation.\textsuperscript{56}

Whether such measures will be sufficient to avoid racial profiling remains to be seen. However, with this unprecedented new immigration law, it seems that Arizona will have its hands full balancing new law enforcement freedoms with the civil rights of U.S. citizens and legal immigrants in the state.
NOTES

2 Id.
3 Id.
4 Id.
5 Id.
8 Chishti & Bergeron, supra note 6.
10 Gonzalez, supra note 1.
11 Id.
12 Chishti & Bergeron, supra note 6.
14 Id.
16 Id.
21 Id.
22 Id.
23 Id.
24 Fernandez, supra note 18.
25 Id.
26 "Inherent authority" announced in a 2002 opinion of the Department of Justice Office of Legal Counsel (OLC) relating to anti-terrorism. After the 9/11 terrorist attacks, Attorney General John Ashcroft announced in a legal opinion written by the OLC on June 6, 2002 that state and local police have the "inherent authority" to enforce civil and criminal violations of immigration law, but that such authority should apply only to the "narrow anti-terrorism mission."

27 Id.

28 Billeaud, supra note 15.

29 Id.

30 Id.

31 Id.


33 Id.

34 Id.

35 Id.

36 Id.


38 Billeaud, supra note 15.


42 Stables, supra note 9.

43 Billeaud, supra note 15.

44 Id.

45 Id.

46 Id.

47 Stables, supra note 9.

48 Id.


50 Migrant Law Training on Tap, supra note 17.


52 Restore Fairness, supra note 40.


54 Id.


56 Komblut, supra note 53.
HOW WILL THE 9/11 HIJACKERS BE BROUGHT TO JUSTICE?
by BRIAN PATIENT

Almost a decade after 9/11, the alleged mastermind behind the Twin Tower attacks, Khalid Sheikh Mohammed, and four alleged accomplices will stand trial in federal court. The accused face criminal charges and are therefore entitled to the protections of the U.S. Constitution. But is criminal court the way to bring the accused to justice?

Debate over the method of justice the defendants should face has been reignited in the wake of a recent decision to hold the trials in a location other than New York City. Some, such as conservative Washington lawyer David B. Rivkin, Jr., want the accused to face military tribunals. Specifically, Rivkin has called for the Obama administration “to accept the Bush administration’s...
thesis that terror suspects should be viewed as warriors, not as criminals with all the rights accorded them in American courts.”

Others are in favor of allowing the accused to be tried in federal court with Constitutional protections. According to Bruce Fein, a former senior official in the Justice Department under President Ronald Reagan, “the entire structure of military commissions is flawed.” Fein further opines, “It combines judge, jury, and prosecutor in the same branch - the very definition of tyranny according to The Federalist Papers.”

**Military Tribunals: Are They Effective?**

Military tribunals have been a part of American history prior to the founding of the republic. The U.S. armed forces run these legal tribunals, or military commissions. Traditionally, military tribunals have been used to prosecute captured enemy combatants. The accused 9/11 terrorists are considered such enemy combatants. However, in November 2009, the U.S. Justice Department made the decision to try the accused in federal court.

The decision to hold the trials in federal court sparked debate among former terrorist prosecutors and political commentators. One of the most outspoken critics of a criminal trial is former federal prosecutor Andrew C. McCarthy. Fifteen years ago, McCarthy prosecuted a terrorist group plotting to blow up the United Nations along with various other New York landmarks. Those terrorists were convicted and sentenced in criminal court.

Ironically, McCarthy, who is known for asking the jury in his closing argument, “Are you ready to surrender the rule of law to the men in this courtroom?” has recently changed his position. Today, he is no longer working for the government and is an outspoken critic of using anything but a military tribunal to prosecute terrorists. In his opinion, international terrorism is "a military problem, not a criminal justice issue."

On the other hand, human rights lawyer Joanne Mariner argues that the “outcome of military tribunals will enjoy none of the legitimacy of results reached in normal civilian trials.” “Rather than being stigmatized as terrorists, defendants. . . may be seen as political prisoners - victims, not perpetrators.” Similarly, William Elward, Loyola University Chicago School of Law Adjunct
Loyola Public Interest Law Reporter

Professor and former Assistant State’s Attorney in Dade County, Fla., believes that the rights of the accused need to be protected.\textsuperscript{23} He states, “We are not going to scare anyone into changing their attitudes towards us, but what we can do is show the next generation of people that whoever you are, regardless of what you have done you will get your day in court. This is what sets us apart . . ., a system that provides for all to have a fair day in court.”\textsuperscript{24}

**MILITARY TRIBUNALS: A PATH TO MARTYRDOM?**

The accused have a different view on how to best prosecute those involved in the fight against America and its allies.

Despite the criticism of military tribunals, Khalid Sheikh Mohammed and his accomplices want to stand trial in front of a military tribunal.\textsuperscript{25} Mohammed believes he is a warrior and not a criminal.\textsuperscript{26} Evidence of this is found in the transcript from his combatant status review tribunal proceedings where he compared himself to George Washington.\textsuperscript{27} Mohammed stated, “Gentlemen, we’re all men of war. We understand that sometimes the death of civilians is a necessary incident to getting our goals accomplished. We understand each other.”\textsuperscript{28}

According to ACLU Attorney Ben Wizner, however, the United States should not treat the accused as enemy combatants.\textsuperscript{29} Wizner believes, “there’s nothing military about Khalid Sheikh Mohammed.”\textsuperscript{30} In a recent interview he labeled the accused as mass murderers who should be tried as common criminals.\textsuperscript{31}

The debate over the prosecution of the accused continues. Sen. Lindsay Graham, R-S.C., introduced legislation in February 2010 to prevent government funding for the civilian trials.\textsuperscript{32} Supporters of the strengthened Bush military tribunals argue that “the United States is at war with terrorists and in times of war, enemy aliens are never afforded the protections of the U.S. legal system.”\textsuperscript{33} Meanwhile, the U.S. Justice Department remains committed to having the accused face trial in federal court with the full protections and guarantees of the U.S. Constitution.\textsuperscript{34}

While there are compelling arguments on both sides of the debate, there is no easy solution for dealing with those accused of orchestrating the greatest act of
terrorism on U.S. soil. Despite the debate, those accused of the destruction on 9/11 are set to face the American justice system in the near future.35

NOTES

3 Id.
5 Id.
6 Id.
7 Id.
8 Id.
11 Id.
12 Id.
14 See Mayer, supra note 2.
16 Id.
17 Id.
18 Id.
19 Id.
20 Weiser, supra note 15.
21 Greene, supra note 9.
22 Id.
23 Interview with William Elward, Former Assistant State’s Attorney, Dade County, Fla. & Adjunct Professor of Law, Loyola Univ. Chi. School of Law; in Chi., Ill. (Mar. 18, 2010).
24 Id.
26 Id.
27 Id.
28 Id.
Loyola Public Interest Law Reporter

29 Id.
30 Id.
31 Durkin & Storez, supra note 25.
32 Bendavid & Bravin, supra note 13.
33 Greene, supra note 9.
34 See Mayer, supra note 2.
35 At the time of publication, the Obama Administration was in the process of re-evaluating where to hold the prosecution and the proper trial format.
“HOW DID THIS HAPPEN TO ME?”:
THE UGLY TRUTH ABOUT REAL ESTATE SCAMS

by Valérie Uribe

Since 2007, real estate fraud has increased as a result of the ongoing mortgage meltdown affecting renters and homeowners alike.1 Real estate scams have increased as more and more homeowners face foreclosure.2 In their disparity, homeowners have been lured by fake promises and guarantees made by fraudulent mortgage companies.3

The most common real estate scam affecting renters involves real estate owners leasing mortgage defaulted properties out to unsuspecting renters.4 With
homeowners, the most common real estate scam involves fraudulent mortgage rescue companies tempting desperate homeowners with false promises of immediate debt relief and cash.5

Due to the increase in real estate fraud, renters and homeowners should now proceed with extra caution when buying or renting property. “If a company is making guarantees you should be wary,” states Veronica Spicer, Illinois Assistant Attorney General and supervisor of the mortgage litigation unit.6

“One word is desparate,” says Spicer, when asked to describe the types of individuals who fall for these scams.7

ONE RENTER’S STORY

Some struggling homeowners facing foreclosure have tried to scam renters. Owners of rental buildings and houses lease the properties out to unsuspecting renters, collect security deposits and rent and disappear when the foreclosure process formally begins.8

Data from around the country demonstrates that the displacement of renters due to foreclosure is widespread.9 For example, the Woodstock Institute found that in Chicago 35 percent of foreclosure filings were comprised of two to six unit rental buildings.10
Tenants in rental housing on the verge of foreclosure face the costs and disruption of having to find a new apartment and move, often with little notice. Some tenants may not recover their security deposits either.

“I was completely surprised,” states Laura Nuñez, a renter who nearly fell victim to a real estate scam involving an owner who knew its property would soon enter foreclosure and was in default on its mortgage payments.

“I was looking for a house to rent for me and my kids. I was so excited when I found this house that was affordable and had more bedrooms than the apartment I was currently renting.”

Laura’s daughter, Darlene Nuñez, worked for an attorney at the time and had him look over the proposed lease before her mother signed the paperwork. “The yellow flag went up when the attorney noticed that the landlord was a mortgage trust company, so he had me conduct a chain of title search,” says Darlene.

The yellow warning flag turned to red when Darlene found a Notice of Default in the chain of title. “The property was foreclosed on a previous owner and the mortgage trust company recently bought this property, but apparently failed to make any payments on it.”

Darlene then filed a report with the Los Angeles County District Attorney’s Office Bureau of Investigation for the Major Fraud Division. Neither Darlene nor Laura knows what happened with their filed report.

**REAL ESTATE SCAMS AFFECTING HOMEOWNERS IN ILLINOIS**

Not only are renters such as Laura Nuñez affected by scams, but homeowners also risk losing their homes to scammers. The most common real estate scam affecting homeowners is the foreclosure rescue scam.

“I review five to six consumer reports every day, and about half of those are mortgage foreclosure scams,” states Spicer. “The Attorney General’s Office could sue a new company every day if they wanted to,” Spicer adds.

In this type of scam, financial consultants contact homeowners whose properties are in foreclosure. The consultant frequently tells the homeowner that he
or she will help the homeowners escape foreclosure for a small fee. The company then takes the money but makes no affirmative steps to assist the homeowner.

Brenda Grauer, an Illinois Assistant Attorney General, states, “When people need help with their mortgages they turn to these mortgage vested companies. The companies take their money and do not do any work on the loan.”

In order to remedy the problem in Illinois, the legislature recently passed the Mortgage Rescue Fraud Act (Act), providing that companies must complete the work they promise to do prior to receiving money for their services from homeowners. “It is like going to see the doctor. You see the doctor first, he helps you, and then you pay him later,” states Grauer.

However, the Act did not come in time to assist all homeowners. One of the most devastating cases Grauer recently encountered involves a fraudulent mortgage foreclosure company that scammed Coleamer Hodges, a 43-year-old blind woman, out of her South Side home.

“[Ms. Hodges] lived in this house her entire life and only had three payments left before the house was paid off,” says Grauer. At that point, Hodges turned to Platinum Investment Group to help refinance her mortgage.

Representatives of Platinum coaxed her to sign paperwork that she believed was a refinancing deal. Platinum then transferred her home to a “straw buyer”; an individual, either innocent or working in conjunction with a fraudulent mortgage company, who makes a profit by participating in the mortgage scheme.

Shortly thereafter, Ms. Hodges received a bill for rent, demanding that she pay $1,300 if she wanted to stay in her home. Hodges is currently fighting to keep her residence, and her attorney is attempting to negotiate with the bank.

THE ATTORNEYS WHO FIGHT THESE SCAMS

Many Illinois attorneys are actively working to keep homeowners in their homes. For example, Legal Assistance of Metropolitan Chicago’s Home Ownership Preservation Project has litigated approximately 100 of these cases.
“To know the cases is to hate them,” says Daniel Lindsey, the supervising attorney for the project, when commenting on how these cases can extend for months, draining both labor and monetary resources.41

The Illinois Attorney General’s Office has also been working diligently on these scam cases. In late 2008, the Attorney General’s Office created a cease and desist project focusing on stopping these companies from continuing their fraudulent practices.42

The Attorney General sent letters and copies of the Act to mortgage vested companies to inform them that they were likely in violation of the Act.43 The letter demanded the companies to refund the money back to their clients and to stop conducting business in the state of Illinois.44

“As of December 2008, we sent letters to approximately 350 companies,” Spicer states.45 Spicer adds that about 50 percent of the time the company returned the money to the consumer.46 In addition to these letters, the Attorney General’s Office has sued 31 mortgage companies.47

CONCLUSION

In this real estate economy, caution and awareness may help renters and homeowners avoid scams. “Don’t be reactive; be proactive,” says Lindsey, “if you are a homeowner and in trouble with your mortgage, you are a magnet for predators.”48 Increased awareness of real estate fraud will likely decrease the occurrence of scams against renters and homeowners alike.49

NOTES

2 Id.
5 O’Donnell & Planer, supra note 1.
6 Spicer, supra note 3.
7 Id.
8 Breen & Glashausser, supra note 4, at 6.
9 Id. at 9.
10 Id.
11 Id.
12 Id.
13 Telephone Interview with Laura Nuñez, Renter, in Chi., Ill. (Feb. 27, 2010).
14 Laura Nuñez’s name was changed to protect her identity.
15 Breen & Glashausser, supra note 4, at 6.
16 Telephone Interview with Laura Nuñez, supra note 13.
17 Darlene Nuñez’s name was changed to protect her identity.
18 Telephone Interview with Darlene Nuñez, Renter, in Chi. Ill. (Feb. 27, 2010).
19 Id.
20 Id.
21 Id.
22 Id.
23 Id.
24 O’Donnell & Planer, supra note 1, at 55.
25 Interview with Veronica Spicer, supra note 3.
26 Id.
27 Sandra R. Klein, USTP Initiative Bankruptcy-Related Mortgage and Real Estate Fraud, 28-6 ABIJ 18, 18 (2009).
28 Id.
29 Id.
31 Id.
32 Id.
34 Telephone Interview with Grauer, supra note 30.
35 News Release, supra note 33.
36 Id.
37 O’Donnell & Planer, supra note 1.
38 News Release, supra note 33.
39 Id.
41 Id.
42 Interview with Veronica Spicer, supra note 3.
43 Id.
44 Id.
45 Id.
46 Id.
47 Id.
48 Telephone Interview with Daniel Lindsey, supra note 40.
49 O’Donnell & Planer, supra note 1, at 54.
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