Turning Point : The Newsletter of

MISSOURI CURE

Spring-Summer 2021

Citizens United for Rehabilitation of Errants

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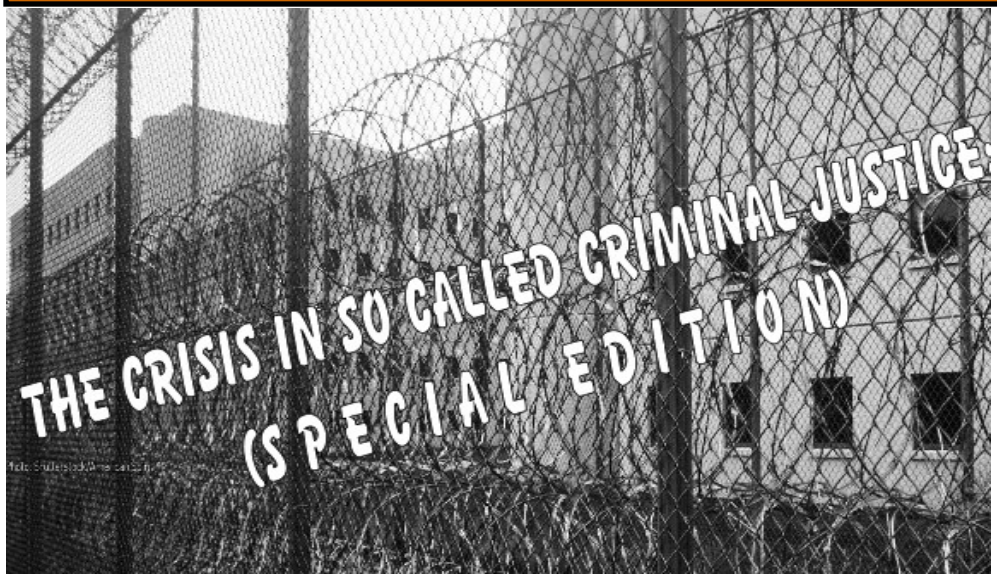

Inside this issue:

Hedy's Medical Crisis: From the Vice-Chair and Chair

This newsletter must come with an apology for the excessive delay in its publication and distribution to our readers. **It is a special edition which contains vital information regarding the so-called criminal justice system**, We hope you will find it was worth waiting for.

One of the reasons for the *Turning Point* newsletter delay is that our Chairperson, Hedy Harden, has been in the midst of a very serious medical crisis for several months. Her diagnosis is cancer, among other things, and her recovery and return to work at Missouri CURE is uncertain at this point in time. But she has had some surgery, is scheduled for more surgery and has shown signs of improvement. We have delayed getting out this information because right now we don't know what the outcome will be. At this moment she is residing in a nursing home and her absence, has resulted in a considerable amount of complexities.

Hopefully, some of you have received the postcards I sent out not long ago notifying you of this. If you didn't receive one, it was either because so many things have kept me busy until I just didn't have enough time or I ran into other complications. I apologize for this.

Right now, most of the difficulties *Missouri CURE* is facing are problems created by the *Covid 19 Pandemic (*just like everyone else). This is something we really can't do anything about. Much of the work we do involves interacting with other people on a personal and physical level.

However, we want to ensure our members and readers that *Missouri CURE's* continued survival is currently not in any jeopardy because of this. Regardless of Hedy's outcome and the *Covid 19* crisis, our members are still committed to staying involved in the prisoner's rights struggle which we have been a part of for the last 31 years.

We are hopeful for a favorable outcome in Hedy's situation and we are encouraged by her recent words which reads as follows:

I miss you all. I miss my computer. I miss communicating and working on the Newsletter. And I'm once again missing deadlines. But I guess some of them are good to miss.

I've been back here in St. Mary's Hospital (St. Louis) since May 16, spending the first three nights in ICU where they told my family that if I had waited any longer than I did to get there I probably would not have survived. So I'm glad I missed that deadline. I am extremely weak, but with therapy and home help, I'm hoping to improve.

Missouri CURE member Shirley Sutton is my new caregiver, and she's a gem. Keith, Shirley & Kathy are here to assist me. Thank goodness for that.

It took me two days just to type this article. So Keith & Kathy will be doing the bulk of the newsletter this time. As you can see it is a special edition. It will focus on specific problems with the criminal justice system. I hope you will enjoy reading it.

Sincerely yours Keith and Hedy

Mission Statement

CURE believes that prisons should be only for those who MUST be incarcerated and that prisons should only exist for the purposes of education and rehabilitation. CURE is a membership organization. We work hard to provide our members with the information and tools necessary to help them understand the criminal justice system and to advocate for positive change.

JURISPRUDENCE

The Supreme Court's Conservatives Issued Decision Too Extreme for Clarence Thomas

In a sweeping 5–4 decision, the court stripped Congress of its power to create new rights. BY MARK JOSEPH STERN

On Friday, June 25, 2001 the United States Supreme Court pulled off a heist decades in the making. In *TransUnion v. Ramirez*, five conservative justices seized Congress' power to create new individual rights and protect victims by authorizing lawsuits when those rights are violated. Instead, the court awarded *itself* the power to decide which rights may be vindicated in federal court, overturning Congress' own decisions about which harms deserve redress. Justice Brett Kavanaugh's opinion for the court was so extreme it prompted Justice Clarence Thomas to write a furious dissent, joined by the liberals, that accused the majority of infidelity to the Constitution. But because of the court's 6–3 conservative supermajority, Thomas' defection from the conservative bloc did not change the outcome. And now, thanks to Friday's decision, a huge number of Americans harmed by a flagrant violation of the law will be locked out of the federal judiciary altogether.

TransUnion revolves around "standing," on an individual's ability to file suit in federal court. The Constitution allows federal courts to hear only "cases" or "controversies," and the Supreme Court has interpreted this language to limit the kinds of disputes that these courts can entertain. Specifically, SCOTUS has held that a person may only sue in federal court if they suffered an "injury in fact," also called a "concrete harm. "Some concrete harms are obvious: An abridgment of constitutional liberties, for instance, plainly qualifies; so does a physical or financial injury. But what about less traditional harms? Friday's case provides a good example. *TransUnion*, a credit reporting agency, incorrectly flagged thousands of people as potential terrorists and drug traffickers using an incredibly sloppy and inaccurate system. Some victims were denied credit because *TransUnion* told businesses they were serious criminals. Others were never actually denied credit, but they still suffered: *TransUnion* did not tell these individuals that the company had flagged them as serious criminals and declined to provide them with a "summary of rights" required by law.

See Supreme Court Page 10

WHY CRIMINAL JUSTICE SO BADLY NEEDS REFORM

by Keith Brown El

It is always upsetting to find a case where an innocent person has been sent to prison—(unless you are one of those mentally deranged persons with a grossly, distorted misconception of law or you just don't care about innocent people being convicted and sent to prison) and believe me they are out there. But to decent, sane and rational people these kind of injustices are disturbing, especially when the person has had to spend 10, 20, 30, 40 and nearly 50 years in confinement.

Few cases are more upsetting than that of Kevin Strickland who was wrongfully convicted and sent to prison at the age of 18. I remember him as a mild-mannered, boyish looking, intelligent and athletically inclined young man. He is now 61 years old, confined to a wheelchair and has a face that tells the story of how 43 years of unjust incarceration have taken its toll on him.

Oxymoron-law-enforcement-officials would have you believe that cases like Strickland's (or "Nordy, " as he is sometimes called) don't happen very often. But even after decades and scores of wrongful convictions of people who were obviously innocent, the Strickland case is only the first time that Jackson County Prosecutor Jean Peters-Baker has actually owned up to this.

There are at least 25 or 30 people incarcerated throughout the state who are innocent but were wrongfully convicted (which I can personally name). In fact, I'm 100% certain that just the few people I know about are only a mere thimble-full in comparison to the actual numbers.

A disproportionate number of innocent people are in jail because they plead guilty. If you don't already know, read on and you'll find out why. Approximately between three and five percent of criminal cases in the U.S. actually go to trial (it's interesting that no reliable estimates or exact numbers exist). But it is a safe bet that a good many of these are people who chose to go to trial because they simply could not tolerate the idea of pleading guilty to a crime which they did not commit.

This is not to say that everyone who cops a plea is actually guilty either. Everyone knows that prosecutors don't care if a person is actually innocent or not. If you make them go through the trouble of trying your case and you lose, like Nordy did, they are going to seek the harshest sentence possible (and will most likely get it). Most of 95-97% of the people who plead guilty do so because they just don't want to take that risk. This is a practice of prosecutorial misconduct that needs to be stopped.

There used to be a time when the prevailing attitude was that the criminal justice system doesn't make mistakes. If an individual came to you and said, "I'm an innocent person in prison," you simply nodded your head and said to yourself "Yeah Right ." But in your mind you probably remained very skeptical. People often even made wise-cracks about it when the person walked away and sometimes to their face. "Everybody in jail is innocent," (they would say) or "Oh, here we go again, another innocent person in prison." But in today's society, a claim of wrongful convictions or actual innocence is not the big laugh it used to be. The number of people who have been or should be exonerated is so alarming that it should immediately take the smile right off anyone's face who would dare try and extract some humor from the situation.

According to information on the internet, the Missouri Prison population is now at 30,337. And it has been estimated that at least one in eight people convicted by juries across the U.S. are innocent of their alleged crimes. *(See Article on Page 4)*. One in eight innocent persons convicted in jury trials equals 12.5%. That number should at least be the same or even higher in cases where people plead guilty out of fear that the will be convicted in a jury trial and as a consequence, receive a much harsher sentence. In other words 12.5% of 30,337 equals 3,793 innocent people confined in just Missouri prisons alone. Now that Nordy's innocence is no longer in dispute, it still may take years for him to obtain his actual release. As the *Missouri Supreme Court* has recently acknowledged in the Lamar Johnson case, this State has no judicial mechanism whereby it can free innocent people after their appeals and post-conviction remedies have been exhausted. That people who are plainly innocent can still end up being convicted (no matter what the evidence is) and having their appeals and post-conviction remedies denied for years, speaks to the shams, the total ineffectiveness and the gross inadequacies of the circuit courts and Missouri Appellate Process. It is a further confirmation that in spite of all the overwhelming evidence to the contrary, lawmakers and judges in this state still refuse to accept the fact that their system of criminal justice is in bad shape and does indeed make "mistakes.

To be assured of this all one needs to do is look at the cases of people like that of Ricky Kidd, Robert Nelson, Darryl Burton, Larry Callahan, Eric Clemmons, Donald Dixon, James Bowman, Anthony Lytle, Jon Smith, Lamar Johnson, Patty Prewitt, Bobby Shaw, Reginald Clemmons, Judy Pickens, Ken Middleton, Lamont McIntyre, Tony Miner, Kevin Strickland, William Whitworth Foster, Ryan Ferguson, Eleanor Reasoner, Joseph Amrine, Larry Griffin, Walter Burton, Cornell Jackson, George Williams, and what almost happened to their seven alleged co-defendants : Robert Johnson, Robert Gales, Clifford Valentine, Robert Toney, Comrade Atkins, Archie Dixon, Michael Sheppard, , and the list goes on and on. But to label cases like these as simple mistakes is much too generous of

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(See Strickland, bottom)

FIVE THINGS YOU MUST DO TO WIN A JURY TRIAL

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There are a lot of lawyer shows on TV. Television loves the law because they can introduce a new interesting case for each show and they always manage to get the trial done in one hour.

Unfortunately, real life is not like TV. Trials can take weeks instead of an hour and they're a lot more boring than on TV. On TV lawyers always lose their temper and they yell at witnesses and they argue with the judge. This doesn't happen very often in real life. In TV every case goes to court. In real life 95% of the cases settle out of court. On TV the lawyers are always good looking. Well, maybe that part is accurate. Today I'm going to give you five things you must do to win a jury trial:

First, you've got to be prepared. Unlike on TV the lawyer that is best prepared is always going to win. On TV the lawyer shows up, doesn't give a fabulous performance and still wins the case. In reality, jury trials are a lot like doing your taxes, the person who has the best documentation wins the case.

Secondly, your lawyer has to get the right judge. There are ways to avoid certain judges. And your lawyer must know the judges propensities and avoid judges that will try to make you lose or worst, judges that will intervene to prevent you from even getting a jury trial in the first place. And if you do get one of these bad judges, your lawyer must know the judge to present your case in a way that the judge will make an exception to the way he or she normally is.

Third, You got to get the right jury. Jury selection is an important part of the trial and your lawyer must investigate the background of all potential people who could be on the jury. Frankly, most lawyers don't do this because it's time-consuming. You can rule out people who will not be fair such as people that work for insurance companies and that kind of thing.

Fourth, you got to be able to simplify the issues. Trials are complex. Defense

lawyers try to obfuscate the issues and delay the trial. If your lawyer cannot simplify the argument so that the jury understands right away the chances of winning decreases rapidly.

You've also got to dramatize at the right time. There is a little bit of performance in a trial and your lawyer must know how to persuade the jury. In one case I had years ago, a semi-trailer truck driver said that he had no time to react before running into my clients car and killing her. So I asked him in the deposition how far ahead did he first see the car and he said a quarter of a mile. By the way, the truck driver also claimed that he was going right at the speed limit. Have you ever noticed that truck drivers when you see them on the road, they're always speeding, but when you see them in court, they're always going right at the speed limit? So I did a little bit of math. If he's going 60 miles an hour then his truck is traveling one mile every minute. So a quarter of a mile would take him 15 seconds. Not much time when you're driving. Imagine closing your eyes for 15 seconds while driving your car you would wreck for sure. So I dramatized this for the jury by making them wait 15 seconds and then they could see that the truck driver was not watching the road closely or he would have seen a car in front of him.

Fifth, you got to know when to settle. Your lawyer has to be able to gauge the jury's reaction to the evidence. A settlement may be necessary if things are going badly. Witnesses sometimes testify differently from the depositions and that kind of thing can tank your case. A settlement is still a win. And then, on the other hand the defense will offer a settlement during the trial once they see how badly it's going for them. During the trial maybe the first time the defendant realizes that they may lose.

(Strickland) Continued from page 3

a description. It is more appropriate to use words like "deliberate", "hypocritical" "criminal" and "unrepentant." Government officials have been knowingly doing these things to innocent people for many, many years and have deliberately chosen to let the system remain devoid of even a remedy to immediately correct these kind of injustices.

Thanks to people like St. Louis Circuit Attorney Kim Gardner, the *Midwest Innocence Project,* the Lamar Johnson and Kevin Strickland cases, maybe one day a modicum of freedom can actually prevail after the hypocriscy of the criminal justice system is finally further exposed.

But don't count on it any time soon. The *Missouri Supreme Court* has already denied Lamar Johnson his freedom in an earlier decision and the court has also denied Strickland's bid for freedom just 23 hours ago from the time this article was written.

IT IS ESTIMATED THAT AT LEAST 12.5% OF THE U.S. PRISON POPULATION CONSISTS OF PEOPLE WHO ARE WRONGFULLY CONVICTED OF THEIR ALLEGED CRIMES. 12.5% OF THE MISSOURI PRISON POPULATION WOULD BE 3,793 PEOPLE AND 275,000 NATIONWIDE.

Report: Guilty Pleas on the Rise, Criminal Trials on the Decline

By Innocence Project Staff

The National Association of Criminal Defense Lawyers (NACDL) recently published a report titled, *The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It*, that examines specific cases, data and statistics to explain the decline in the criminal trials and the steady rise in plea deals. Over the last 50 years, defendants chose trial in less than three percent of state and federal criminal cases—compared to 30 years ago when 20 percent of those arrested chose trial. The remaining 97 percent of cases were resolved through plea deals.

Related: John Oliver Reminds Us Why We Should Care about Prosecutor Accountability**.**

The report reasons that the "trial penalty" is the underlying reason for the discrepancy in the shorter length of sentences offered pre-trial through plea deals versus the much longer and more severe sentences offered post trial. According to the report: Guilty pleas have replaced trials for a very simple reason: Individuals who choose to exercise their Sixth Amendment right to trial face exponentially higher sentences if they invoke the right to trial and lose… This [trial] penalty is now so severe and pervasive that it has virtually eliminated the constitutional right to a trial. To avoid the penalty, accused persons must surrender many other fundamental rights which are essential to a fair justice system. because a defendant is more likely to receive a lesser sentence if they choose a plea deal rather than a trial. Why risk the possibility of receiving more time behind bars.

One of the report's key findings and an alarming outcome of the "trial penalty," is the prevalence of innocent people who, instead of going to trial, plead guilty to crimes they did not commit. "There is ample evidence that federal criminal defendants are being coerced to plead because the penalty for exercising their constitutional rights is simply too high to risk," the report reads.

Just yesterday, the Innocence Blog wrote about last week's episode of *Last Week Tonight* with John Oliver, which featured exoneree Rodney Roberts' story about why he took a guilty plea despite being innocent. In the segment, Roberts explains how his lawyer advised him to take the plea deal instead of risk a trial penalty.

"My lawyer said, 'If you take this deal, they're only offering you two years. And, if not, they're going to take it off to trial and the judge is ready to give you a life sentence if you get found guilty, and I think you're going to get found guilty.' This is my attorney telling me [this]—the one person I had there to help me."

Unjust Denials of Release From Wrongful Convictions

By Keith Brown El

Why is the State of Missouri so vehemently opposed to letting wrongfully convicted persons out of prison who have proven their innocence?

On June 1, 2021, The Missouri Supreme Court declined to order Kevin Strickland's immediate release from confinement after serving 43 years for a murder he didn't commit. *(See Story on Page 3)*. Even the Jackson County Prosecutor's Office, who initially prosecuted Strickland, has now admitted that he is innocent of the crime and that he was wrongfully convicted.

Governor Parson has also declined to issue Strickland a pardon while issuing 17 other commutations on that same day.

Strickland had his case tried by a jury and received a sentence of life without parole for 50 years. His two alleged co-defendants who pleaded guilty, were sentenced to only 10 years and were discharged many years ago.

Apparently state appellate courts and the Governor's Office are using illegitimate denials of release from unlawful convictions as another weapon in the state's arsenal to further penalize criminal defendants who choose to have their cases tried by juries.

It's bad enough that criminal defendants already face the certainty that they will receive harsher sentences if they refuse to plead guilty and have to be convicted by the state in a jury trial. But further retaliation is also obviously in store for them by way of unjust denials of relief during the appellant process, post-conviction remedies and the governor's office.

IS GOVENOR MIKE PARSON A RACIST OR IS HE JUST STUPID?

He is unwilling to pardon an innocent black man for a crime he didn't commit, yet he is willing to pardon two white people who are obviously guilty of a crime they committed against Black Lives Matter Protesters.

According to Missouri Governor Mike Parson, innocent people who have been in prison for 43 years "is not a priority and this does not entitle them to be move to the front of the line." Parson was referring to a black man named Kevin Strickland who entered prison, as an able-bodied person at the age of 18 and is now 61 and in a wheelchair. If Strickland's particular set of circumstances doesn't require being moved to the front of the list then what does? (is the question I would ask).

A few months ago, the governor obviously didn't feel the way he feels now when two white racist citizens in St. Louis pull guns on *Black Lives Matter* protesters back in June of 2020. As soon as St. Louis Circuit Attorney Kim Gardner filed criminal charges against Mark and Patricia McCloskey, they immediately received national attention. *That white people could be criminally penalized for doing anything wrong to black people who were protesting racial injustice is unthinkable.* So let's just call it like it is, and not only that, but it appears that in this new era of racial injustice—which is much like the old era of racial injustice—hurting, threatening or merely expressing contempt for black people is the easiest way to become a celebrity and get to the top of the hero list in white racist America.

So the McCloskey's then mysteriously moved to the front of the line on Governor Parson's list. The governor couldn't even wait for the McCloskey's to be convicted in a trial before he announced that he would issue an immediate pardon for the couple if they were convicted. ***They were and he did.***

Before this, only two actual pardons have been issued in Missouri in the last 200 years **(all others were commutations).**

To me this suggests that Governor Parson already knew the McCloskey's

had broken the law and stood a good chance of being convicted or he just didn't care because they were white. Parson's racism is despicable and his stupidity is egregious.

The McCloskeys claim they were protecting their home and were within their rights in doing what they did because their home is located on a private street. But living on a private

street just means that only those who live on that street can park their cars there. It does not mean you have a right to pull guns on people and threaten them because they are black or because they wander into your neighborhood while staging a protest.

Nowhere in the United States is anyone allowed to do this and Mark McCloskey is a lawyer so he should have known that. But the McCloskeys are also rich, white and privileged and consider themselves as being above the law, (like most people similar to them usually do).

Anyway, everyone agrees that Kevin Strickland is innocent—even the prosecutor's office and the people who initially put him in jail— that he should have never been convicted in the first place and he has been locked up way too long for a crime he didn't commit.

This new law that is supposed to be going into effect in August to prevent something like this from happening again, is a joke. It will still allow the attorney general to prevent an obviously innocent person from being released by appealing the case and possibly keeping that person tied up in a prolonged legal process for years. Kevin is also now disabled and if there is any legitimate reason for the governor's uncertainty about his innocence, Mr. Strickland is far less capable of posing any real danger to anyone than his two alleged co-defendants were who had admitted their guilt, received a relatively small sentence and were release from prison decades ago.

Therefore, if the only thing that matters are the facts in this case, then reaching the aforementioned conclusion does not require any serious or prolonged contemplation, All it takes to free Kevin Strickland is a stroke of the governor's pen. Therefore, the only conclusion one can come to for the Governor's delay must be because he is a racist and/or is one of those politicians who would rather see innocent people sit in prison or on death row and continue to be punished for something they clearly are not guilty of, especially if they are black.

Racism in Criminal Trials: What Will U.S. Supreme Court Say?

Bennett L. Gershman, Contributor
Professor of Law, Elizabeth Haub Law School, Pace University

How much racism is allowed to infect a criminal trial before a court has to step in? That's the question in two Supreme Court cases to be argued this month. One case, Buck v. Davis, deals with an expert witness in a capital murder trial who testified at the sentencing hearing that Black defendants are over-represented in the criminal justice system and that the defendant's race increases the likelihood of his committing more violent crimes in the future, which is one of the factors a capital sentencing jury considers. In the other case, Pena-Rodriguez v. Colorado, during jury deliberations over the guilt of a Mexican-American defendant charged with sexual assault on a white woman, one of the jurors - a former police officer - is alleged to have stated: "I think he did it because he's Mexican, and Mexican men take whatever they want." He also said that the jury should disbelieve the defendant's alibi witness because he is Hispanic. It would be hard to find a criminal trial featuring such blatant racism.

Not surprisingly, race and racism have for the past sixty years been at the center of the Supreme Court's jurisprudence about the meaning of equality in the Constitution. The court, probably more than any other institution, has struggled with issues of race in education, housing, employment, and criminal law, and its rulings are marked by confusion and discord. One of the most vexing questions is the court's disagreement over how much racial progress the country has made since slavery, segregation, and the more recent disparate treatment of minorities. Chief Justice John Roberts, writing for the majority in Shelby County v. Holder, the voting rights case, said that the country has come very far beyond its racist past, so far that the "extraordinary measures" in the Voting Rights Act to protect minorities from discrimination will react to them."

While the impact of a person's race in the criminal justice system is the subject of intense debate among courts and commentators, there is no dispute that the race of a person investigated or accused of crime matters. It is well-documented that racial disparities are noticeable in police stops and frisks, prosecutorial charging, and court's bail and sentencing decisions. And that the most tragic examples may be the disproportionate killings of black men by police. But the appearance of overt racism in a public trial before a judge and jury is rare and most often seen in racial discrimination in the selection of juries and occasionally racial remarks by prosecutors in summations. But the racial issues in the pending Supreme Court cases are at least unusual, and for the Supreme Court should be treated as unprecedented.

The Colorado jury deliberation case offers the Supreme Court an opportunity to resolve a sharp conflict among the lower courts about the **so-called "no impeachment" rule that protects the content of jury deliberations from being disclosed after a verdict. This rule of jury secrecy, according to a majority of the courts, encourages jurors to speak candidly without fearing that their communications with each other would be revealed. Moreover, these courts worry that without this rule lawyers would repeatedly harass jurors after convictions and impair the finality of verdicts.** Other courts, by contrast, follow the rule but make a limited exception in cases where juror bias may be so extreme that a defendant's Sixth Amendment right to a jury trial has been abridged, as in the Colorado case. Although the Supreme Court has tolerated extreme instances of juror misconduct during deliberations - one case described the jury's deliberations as "one big party" contaminated by drug and alcohol abuse - the Court has not yet decided whether statements of racial bias during deliberations override the no-impeachment rule.

After deliberating over twelve hours, the Colorado jury deadlocked on the felony sexual assault count but convicted the defendant of three misdemeanors. In reaching their verdict the jurors had to alibi witness who was Hispanic. Learning of one of the juror's racist comments weighs the credibility of the accuser - a white woman - against the credibility of Hispanics. The defendant's lawyer appealed the conviction on this ground but Colorado's highest court, by a 4-3 vote, applied the traditional no-impeachment rule to uphold the verdict.

The second case, Mr. Buck's death penalty appeal, involved the confluence of several bizarre circumstances: testimony by the expert that in his opinion the defendant is more likely to commit future acts of violence because of his race; a much-criticized defense attorney who had lost twenty capital cases and who called the expert himself; and a concession by the State of Texas that testimony of race-dangerousness is constitutionally prohibited and promised not to oppose new sentencing hearings in seven cases that included similar race-dangerousness testimony from the same expert. But when Mr. Buck filed a Habeas Corpus petition challenging his attorney's conduct as constitutionally deficient, Texas argued that the claim was defaulted because it was not raised in court in a timely manner. And the Fifth Circuit Court of Appeals agreed with Texas that the procedural rule bars appeals except in extraordinary circumstances, and that this case was not of them.

It is almost impossible today to discuss any issue in criminal justice without at the same time discussing the role that race plays at every phase of the process. Conduct by prosecutors and police outside the courtroom are not as closely monitored by the courts as conduct that happens inside the courtroom. And given the increasing focus on protecting defendants against wrongful convictions, it is critical that a defendant's constitutional right to a fair trial before an impartial jury not be corrupted by uniquely pernicious stereotypes promoted either by a purported "expert" witnesses or a bigoted juror. Both instances are so inflammatory as to destroy confidence in a jury's verdict. Will the Supreme Court see it that way in these cases?

Study Shows How Often Juries Get It Wrong:

by Pat Vaughan Tremmel

EVANSTON, Ill. --- Juries across the country make decisions every day on the fate of defendants, ideally leading to prison sentences that fit the crime for the guilty and release for the innocent. Yet a new Northwestern University study shows that juries in criminal cases many times are getting it wrong.

In a set of 271 cases from four areas, juries gave wrong verdicts in at least one out of eight cases, according to *"Estimating the Accuracy of Jury Verdicts,"* a paper by a Northwestern University statistician that is being published in the July issue of Journal of Empirical Legal Studies.

"Contrary to popular belief, this study strongly suggests that DNA or other after-the-fact evidence is not the only way to know how often jury verdicts are correct," said Bruce Spencer, the study's author, professor of statistics and faculty fellow at the Institute for Policy Research at Northwestern. "Based on findings from a limited sample, I am optimistic that larger, carefully designed statistical studies would have much to tell us about the accuracy of jury verdicts."

Spencer cautions that the numerical findings should not be generalized to broader sets of cases, for which additional study would be needed, but the study strongly suggests that jury verdicts can be studied statistically. If such studies were conducted on a large scale, they might lead to better understanding of the prevalence of incorrect verdicts -- false convictions and false acquittals, he said.

To conduct the study, Spencer employed a replication analysis of jury verdicts comparing decisions of actual jurors with decisions of judges who were hearing the cases they were deciding. In other words, as a jury was deliberating about a particular verdict, its judge filled out a questionnaire giving what he or she believed to be the correct verdict.

"Consider the analogy to sample surveys, where sampling error is estimated even though the true value may never be known," Spencer said. "The key is replication. To assess the accuracy of jury verdicts, we need a second opinion of what the verdict should be." By comparing agreement rates of judges and juries over time and across jurisdictions, and even across types of cases, Spencer's statistical analysis could give insights into the comparative accuracy of verdicts in different sets of cases.

Richard Jones (left) served 17 years in confinement for a robbery that was actually committed by Ricky Lee Amos (right). Amos admitted to the crime after the statute of limitations ran out. Had Jones been in Missouri his innocence may have never been proven because Missouri has no statute of limitation for major felonies.

For his analysis, Spencer utilized a study with a special set of cases that was recently conducted in the United States by the *National Center for State Courts (NCSC).* An earlier study was conducted by Kalven and Zeisel in the 1950s.

The agreement rate was 77 percent in the NCSC study and 80 percent for the earlier study. Allowing for chance agreement, the agreement rates were not high. (With chance agreement, for example, if two people tossed coins heads or tails independently to see if they matched, one would expect agreement, heads-heads or tails-tails, 50 percent of the time.)

To obtain a numerical estimate of jury accuracy, some assumptions were made, as is the case for virtually any statistical analysis of social groups or programs. A key assumption of Spencer's study is that, on average, the judge's verdict is at least as likely to be correct as the jury's verdict. Without assumptions, a 77 percent agreement rate could reflect 100 percent accuracy by the judge and 77 percent accuracy by the jury, or 100 percent accuracy by the jury and 77 percent accuracy by the judge, or 88 percent accuracy by both, or even 50 percent accuracy by both if they often agreed on the incorrect verdict.

With the assumption of the Spencer analysis that judges are at least as accurate as jurors after completion of all testimony, we can get an estimate of jury accuracy that is likely to be higher than the actual accuracy. Thus, the 77 percent agreement rate means that juries are accurate up to 87 percent of the time or less, or reach an incorrect verdict in at least one out of eight cases.

"Some of the errors are incorrect acquittals, where the defendant goes free, and some are incorrect convictions," Spencer said. "As a society can we be satisfied if 10 percent of convictions are incorrect? Can we be satisfied knowing that innocent people go to jail for many years for wrongful convictions?"

Spencer envisions that statistical studies would complement nationwide efforts to expose wrongful convictions, including the work of the Center on Wrongful Convictions at Northwestern University School of Law. The center's work in exposing flaws in Illinois' capital punishment system played a significant role in former Gov. George Ryan's decision to commute Illinois death row inmates' pending executions to sentences of life in prison.

The NCSC study is not representative of a larger set of cases, Spencer stressed. He hopes that nationally representative studies will be carried out in the future. Using additional assumptions and statistical models, the extent of wrongful convictions and wrongful acquittals also can be estimated, according to Spencer. The methods also could be extended to estimate accuracy of verdicts in non-jury trials. While the studies on verdict accuracy will not tell whether the verdict for a particular case was correct or not, they will help assess what proportion of verdicts are correct.

See How Juries Get It Wrong Page 11

MAYOR QUINTON LUCAS EXEMPLIFIES WHAT BLACK POLITICIANS ARE TOO AFRAID TO SAY

by Keith Brown El

If anybody ever wondered why we need Gorilla Tape in this society, all they have to do is listen to some of these black politicians who keep putting their foot in their mouths by trying to do the impossible (satisfy racist white folks while still trying to maintain the image of their blackness).

On Friday evening, June 4, a mock coffin was carried through downtown and laid on the steps of the Kansas City Police Department. This was done to protest police killings of unarmed citizens and to declare the death of white supremacy (being perpetuated by the police). In response to this KC Mayor Quinton Lucas and the president of the police union have alleged that "this crosses the line," that this display was "disgusting," and no one wants to see anyone die." Yet like everywhere else, every time someone goes to the mayor or just about any other official in America to confront them about people being beaten or killed by the police, all we hear for their response is crickets. This is when ***somebody*** has to step forth and say what politicians like these can not say or are afraid to say. And when it comes to this subject—I have plenty to say.

Frist of all, it is just not true that no one wants to see anyone die. These racist white cops certainly do want to see black people die or they wouldn't be killing us like it's open hunting season on African-Americans. You would have to be on another planet not to know that. So, what planet has our mayor been living on?

The reason we hear the sound of crickets when we confront officials about people being beaten and killed by the police is because these officials are not going to get in front of the news media and say what is really on their minds: That the lives of people who are killed by the police is really unimportant to them. But we don't need them to tell us that do we? We just need to remind ourselves that sometimes when people say what is, ***THEY ALSO SAY WHAT IS NOT!***

I recall being at an event held at the Paseo Baptist Church in November of 2019. Paseo Boulevard had been renamed in honor of Dr. Martin Luther King Jr., and we were trying to organize against a petition to overturn the city council's action.

Our meeting was disrupted when unwanted protestors came in and demanded to be seen and heard. When Mayor Quinton Lucas took the floor, I heard him say that he supports everyone's right to protest and to engage in freedom of speech, but now I see that what he really meant is that freedom of

Kansas City Mayor Quinton Lucas

For People With Monkey Mouth!

speech is okay as long as people are protesting against something being done in the name of someone like Dr. King. But it's not okay when you are doing it against the police. According to Lucas, protest is then over the line, it's disgusting and something that sets back the cause of the protesters. At least that's what he is saying in this case.

I guess, for political reasons, the mayor, who is black, had to denounce what took place that Friday at the KC Police Department. He is, after all, a part of the government and any kind of protest against the police or the government is never welcomed. And any form of protest that the government thinks is okay is not likely to get us any meaningful results.

But I don't think what people like the mayor disapprove of necessarily hurts the cause of the protesters. The only people who find a protest like that disturbing are racist-ass white people who believe in white supremacy. And they don't like seeing what they believe in being under attack. These kinds of people are never going to be in agreement with taking any kind of power away from the police because the police are the white supremacist greatest ally. So, there is no need to waste our time trying to change their minds concerning how they feel about us. We have only two solutions when it comes to dealing with stupid-ass racist white folks: Either keep ignoring them or be ready to do whatever it takes to get them straight when they get out of line

As for the mayor, anyone who says that this or any other kind of protest against police murders and police brutality is "over the line" does not deserve to have a voice in our community. Such a person is unqualified to tell us what does and does not cross the line. And every time people like this try to tell us *what they think* is disgusting, we need to tell them what we think and cross the line even further.

To us, **it is disgusting** when police think people should be summarily executed for any act of breaking the law, or being suspected of breaking the law, and that such acts or suspicions automatically warrants execution on the spot *if you are black.* **It is disgusting** when you have cops *still on the police force* who have brutally beaten or killed unarmed citizens with no justification. **It is disgusting** when you try to *divert people's attention* away from something the cops have done that is really bad by talking to the public about some irrelevant bullcrap. **It is disgusting** when you try to tell people that putting **one coffin containing a stuffed animal** on the steps of police headquarters crosses the line when the police have left ***150 coffins with actual dead bodies in them*** all over Kansas City. Yet you don't think that this crosses the line. **It is disgusting** when you take the *slightest pretext the cops may offer as an excuse* for what they've done and try to make it seem as though it is a legitimate justification.

These are the things that crosses the line! And here is another line that should be crossed: If the mayor is not going to meaningfully address issues that need to be spoken of concerning police murders and brutality then he needs to sit his monkey-ass down and just be quiet! Why don't you cross ***that*** line sir? Mr. Mayor: please do not turn into one of those black men who are like what Haki Madhubuti described in his book *Enemies the Clash of Races:* "Witness the black buffoons before Congress (he said) "whose only gift to the African-American Community is that of being able to articulate their ignorance in near perfect English.

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lawbreakers. In other words, lawmakers declared that a violation of FCRA, *in and of itself*, was an infringement of rights that could be vindicated in federal court.

For many years, conservative justices complained about Congress' ability to create new, enforceable rights like these. And for just as long, more moderate justices like Anthony Kennedy rejected their view, preserving lawmakers' authority to establish new rights by statute.

On Friday, however, Kavanaugh blew past those precedents, rejecting Kennedy's moderation and announcing a new rule: Federal judges, not the people's representatives, get to decide which rights may be vindicated in the federal judiciary. By extension, only federal judges get to decide what counts as a concrete harm sufficient to create standing. It is not enough for Congress to determine that certain rights deserve remedies in federal court. Instead, according to Kavanaugh, federal judges must second-guess Congress' work by deciding which harms are truly concrete. And here, Kavanaugh wrote, this rule requires courts to toss out the claims of 6,332 people who were falsely flagged as criminals, then lied to by *TransUnion* but never explicitly denied credit because of the company's error.

As Thomas noted in dissent, this conclusion clashes with precedent reaching back to the founding. From the start, federal courts acknowledged that an "injury-in-law"—that is, a violation of private rights enshrined in law—established standing. And courts did not require plaintiffs who suffered a violation of their private rights to show some other, more "concrete" injury. "This understanding," Thomas wrote, "accords proper respect for the power of Congress and other legislatures to define legal rights." In *TransUnion*, by contrast, the Supreme Court abandoned that respect, stripping Congress of the power to create "legal rights enforceable in federal court." Put simply, Kavanaugh shattered the separation of powers in the name of safeguarding them. Or, as Justice Elena Kagan wrote in her own dissent: "The court here transforms standing law from a doctrine of judicial modesty into a tool of judicial aggrandizement."

Kavanaugh's conclusion clashes with precedent reaching back to the founding.

The consequences of this radical break from precedent will be severe. As Lindsey Barrett, Fritz Family Fellow and adjunct professor of law at Georgetown, told me on Friday, *TransUnion* "may be particularly damaging to victims of privacy and environmental harms," whose injuries can be harder to quantify. (There are plenty of privacy laws like the FCRA that rely on individual victims to enforce their guarantees, including the Wiretap Act.) "Judicial skepticism of privacy rights—and judges using standing to keep those claims out—has been a problem for a long time," Barrett pointed out, "and *TransUnion* will make it worse." The decision will have an especially outsize impact on class action lawsuits, which allow multiple victims to band together and pursue violations of federal law collectively. It could also undermine civil rights enforcement. Many groups hire "testers" who (for example) apply to rent a home to test compliance with fair housing laws; if they experience discrimination, is that still concrete harm even if they didn't intend to rent the property? And what about civil rights lawsuits that don't involve concrete physical or economic damages , like an illegal search? As UCLA Law professor Andrew Selbst noted, victims of such abuse may no longer have standing to get into federal court.

If there is any silver lining to *TransUnion*, it is the fact that the Supreme Court did not—indeed, cannot—prevent *state* courts from enforcing federal laws like the FCRA. As Thomas wrote, this option renders the court's decision something of a "pyrrhic victory" for TransUnion and other corporations. It might sound counterintuitive, but state courts have the power to enforce federal laws. And about half the states have adopted a looser view of standing that does recognize violations of the law as redressable harms, without the extra requirement that Kavanaugh imposed on

Friday. Victims of corporate malfeasance who get kicked out of federal court under *TransUnion* can therefore sue in one of these states' courts, instead. It will be much less efficient, and may spawn duplicative litigation in different states. And no one should have to run to a random state's judiciary to vindicate rights guaranteed to them by Congress. But it should suffice as a workaround.

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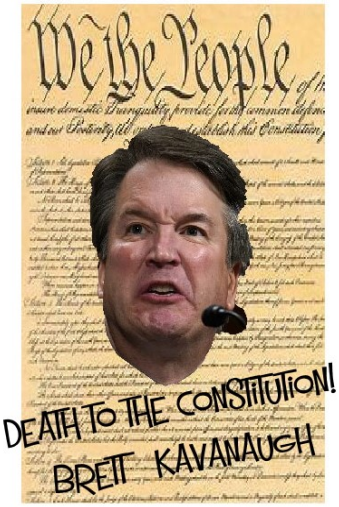

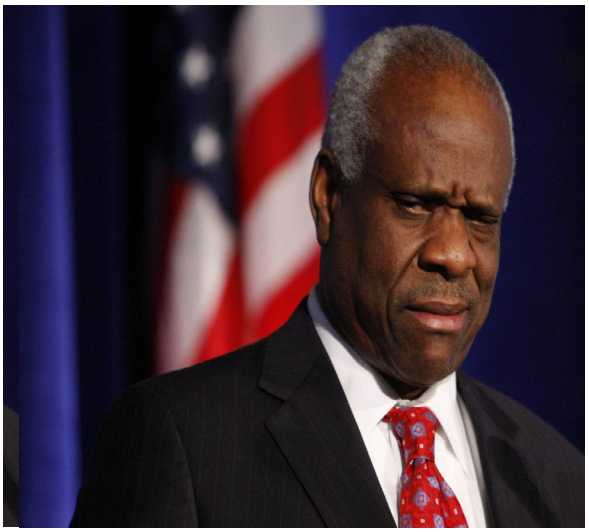

(Lucas)
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"Too many Politicians feel like they have to stop being black simply because they've become politicians. Too many cops feel they have to stop being black just because they've become police officers. In both instances theses people have to walk around and pretend to be color blind. But this racist society is not color blind to them and it sure as hell ain't color blind to their people.

Again, I must emphasize that we don't always go far enough when it comes to crossing the line whenever we are confronting this government about unarmed citizens being brutally beaten and killed by the police. We need to go even further.

Maybe if there was a *real representation* of all of the killings by the police that have actually occurred, this would make the government really get serious and do something about this problem. So I think what these protesters should do is bring ***150 more coffins*** down town, instead of just one, and lay them on the steps of the police department.. We've got 150 dead bodies that the police are responsible for so why shouldn't we? I am sick to my stomach of this attitude some officials have that the police should be immune from any and all criticism (as well as the law) and that they deserve to be treated like some kind of sacred deities simply because they *otherwise* serve the community.

However much the public should appreciate the good deeds that the police do, those good deeds don't outweigh all of the outrageous atrocities that we keep finding ourselves confronted with each and every single day here in Kansas City and all over this country.

Good cops, who feel that constant criticism of bad cops is unfair to all police, should start putting more pressure on their own colleagues to stop doing things that makes all cops look bad. It is the police's responsibility, not the public's, to uphold the police's integrity and defend their reputation, just like everyone else. And police are in a better position to do that than anyone else.

NOTE: A copy of this article and a roll of Gorilla Tape will be left at the Mayor's Office to further underscore comments and illustrations in this article.

My apologies to any primates I may have offended with my comparisons of them to the human species.

Supreme Court From Page 9

Did this second class of victims suffer a concrete harm? Congress certainly thought so. When it passed the Fair Credit Reporting Act in 1970, Congress required credit reporting agencies to follow procedures that would ensure accuracy, send consumers their entire credit report upon request, and inform consumers of their legal rights. Cognizant that the FCRA would not enforce itself, Congress also gave consumers the ability to sue credit reporting agencies that violate the statute, and to collect damages from.

While Kavanaugh deserves the bulk of the criticism for his disingenuous *TransUnion* opinion, the decision would not have been possible without Amy Coney Barrett's vote. Thomas, to his great credit, adheres to originalism and textualism in many cases that involve class actions (which conservative jurists tend to despise). Unlike his conservative colleagues, he is often willing to adhere to the original meaning of the Constitution in this context, even when his methodology leads to a "liberal" result. Thomas' consistency on standing is especially helpful to class action plaintiffs who can prove that a corporation ran afoul of a federal law that shields their private rights

If *TransUnion* had been decided last year, the plaintiffs would have won by a 5–4 vote. But because Barrett replaced Justice Ruth Bader Ginsburg, it came down 5–4 against the plaintiffs. That's the impact of a 6–3 conservative majority: One defection is no longer enough. Barrett, Kavanaugh, and their other conservative colleagues were all too happy to craft a freewheeling new rule rooted in the tradition of "living constitutionalism." That rule will make big companies like TransUnion very happy, since they have won yet another tool to crush class actions. But it should not please anyone who thinks Congress ought to have a meaningful say in which rights our courts must protect.

How Juries Get It Wrong from page 8

"If you were on trial and not guilty, you certainly would want the jury to do the right thing," Spencer said. "Now, subject to these assumptions, studies could be employed to give us an idea of how often that happens." A technical report is available at **http:www.northwestern.edu/ipr/publications/papers/2006/wp0605.pdf**

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Asante! (Thanks!)

Many thanks to the following people who donated to *Missouri CURE:* *Elaine Auch, Michael Casey, James Cody, Benjamin Darden-Bey, Kalvin Ervin, Ronald Hampton, R. Larry Holland, Bryan Coomer, Delvin Donehue, Amberlyn Farrow, Webber Gilmer, Trudell Greenwood, Tremayne Guinn, Lamont Kemp, Earnest Langston, Fredrico Lowe, Lawrence Maserang, Anthony Morris, Kenneth Pickens, Roy Sanford, Charles Shannon, Marvin Stewart, Devante Thomas, Syreta Toson, Steve Tramble,Steven Watts, and Jimmy Ray Williams.*

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Hedy sends special thanks to those who sent Get Well cards and messages.

*If we have omitted anyone, please accept our sincerest apologies, and **THANK YOU** to all who have donated.*

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