

## Inmates Still Wrongfully Imprisoned

Despite Lawsuits, Mix-Ups Between Jail and Court Remain

By BRENDAN SMITH

Franklin Tyree Jr., a homeless man with a long record of minor offenses, spent his 49th birthday behind bars last month in the D.C. jail, even though he should have been released months earlier.

It was just one more day for Tyree, a 24-hour snapshot from more than eight months he has been wrongfully imprisoned in two eerily similar cases that highlight the District's byzantine inmate-records system.

After spending three days in jail, Tyree should have been released Oct. 23 when a D.C. Superior Court magistrate judge sentenced him to time served on an open alcohol container charge and dismissed a urinating in public charge. Instead, Tyree languished in jail for more than 100 days because the Superior Court did not provide a release order in one case until Feb. 6, jail officials say.

In a strange twist of circumstance, Tyree suffered the same predicament five years ago when he was "overdetained" for five months past his release date on similar charges after records employees at the D.C. Department of Corrections failed to enter a judge's release order into the department's database.

"This is beyond me. I know there are mistakes made at the jail, but I've never in all my years heard of a situation like this," says D.C. defense attorney Steven Polin, who represented Tyree on the 2001 charges that led to his first overdetention.

While it seems like Tyree was struck by lightning twice, he is by no means alone in being wrongfully imprisoned.

The District paid \$12 million last year to settle a class-action lawsuit by more than 4,000 former inmates who were detained past their release dates and subjected to strip searches. A second federal lawsuit is now seeking class status for possibly thousands of additional inmates who didn't meet the 2005 deadline for the first suit, which could expose the District to even more damages.

"If a \$12 million payment isn't going to catch their attention, what is?" says William Claiborne, the lead plaintiffs' attorney in both suits. "We thought we had fixed the problem, but obviously we haven't."

The current suit—which features more than 35 affidavits from former inmates stating they were overdetained from one to 96 days—claims the District "has no functioning inmate manage-



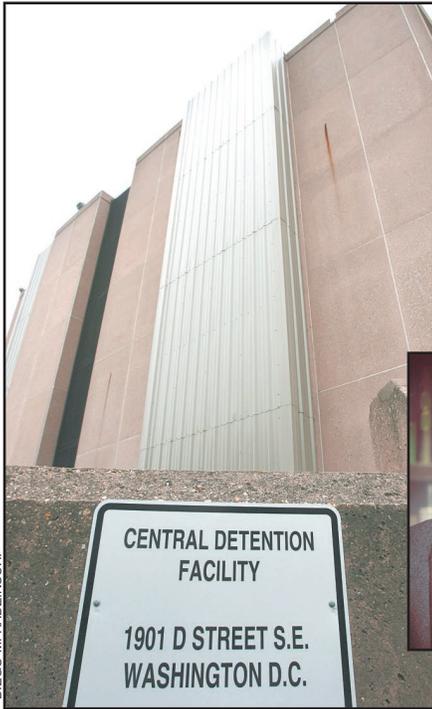
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**PRISON BREAK:** D.C. lawyer William Claiborne, who represents former inmates suing the city, says making sure that prisoners are released on time is not "rocket science."

ment system" and still engages in a "pervasive and persistent pattern of overdetentions."

The Corrections Department has been plagued by recordkeeping problems in tracking more than 3,000 inmates housed at the city jail and the adjacent Correctional Treatment Facility, which is operated by Corrections Corp. of America under a 20-year contract.

In 2005, the District and a former jail health-care contractor paid more than \$1.2 million to settle a lawsuit from Joseph Heard, a deaf, mute, and mentally ill man who was wrongfully imprisoned for almost two years after a misdemeanor charge was dismissed in 1999.



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#### WHO'S AT FAULT? A

spokeswoman for D.C. Corrections director Devon Brown (below) says Superior Court is to blame for Franklin Tyree's additional months spent locked up in the D.C. jail.



Corrections Department spokeswoman Beverly Young says the missing release order from Superior Court caused Tyree's mistaken imprisonment.

"The overdetention of an individual oftentimes results from factors outside of DOC control, as this incident confirms," Young said last week in a four-page response to questions from *Legal Times*.

Tyree might still be in jail if Cliff Keenan, deputy director of the D.C. Pretrial Services Agency, hadn't alerted jail officials after finding Tyree's case during a review of defendants being detained on misdemeanor charges.

While the Corrections Department denies responsibility for Tyree's recent overdetention, Young admits failures to properly staff the department's records office have caused "work backlogs, erroneous and late releases." The D.C. Council approved a \$3 million budget request last year to hire 26 new records examiners and six case managers to help solve the problem. The department also has contracted for design work for a \$7.5 million booking and release center, which is required in the class-action settlement.

The improvements will come too late for Tyree, who already has lost more than eight months of his life after being ensnared twice in the bureaucratic tangles between the courthouse and the jail.

"The Franklin Tyrees of the world are our forgotten population. He's homeless, and he's an invisible guy," Polin says. "He deserves to be released on his release date. It's incomprehensible that he should get lost in the system like that."

Tyree, who lists "no fixed address" in recent court files, has dozens of misdemeanor cases stretching back 25 years at D.C. Superior Court. Almost all of the charges are for minor public-order offenses, such as drinking in public or disorderly conduct, with his only felony conviction stemming from a bail violation for failing to appear in court.

John McDaniel, an 83-year-old defense attorney who handles traffic and misdemeanor cases at Superior Court, was appointed to represent Tyree last October. After Tyree was sentenced to

time served on Oct. 23, McDaniel says he assumed Tyree had been released because he wasn't contacted by Tyree or the jail during the 3 1/2 months Tyree was overdetailed.

"I'm surprised it could go through without someone discovering it," McDaniel says.

Tyree abuses alcohol and drugs and rarely shows up for court hearings, resulting in frequent bench warrants for his arrest, McDaniel says. Since Tyree is homeless, he may have wanted to stay in jail instead of hitting the cold streets in winter, McDaniel adds.

"He's sophisticated enough to get the authority's attention about staying overtime," McDaniel says. "When you're out here in this hard life, you need a rest."

Tyree, a bean pole of a man at 6 feet 6 inches and 190 pounds, couldn't be located for comment. But even if he wanted to stay in jail, that doesn't release the Corrections Department or Superior Court from their legal duty to prevent overdetections and protect inmates' civil rights.

Trying to determine the reasons for Tyree's wrongful imprisonment is a lesson in frustration, complicated by missing court records, incompatible databases, and a lack of accountability.

The Superior Court's Criminal Division uses electronic filings for most court paperwork through its case-management system called Courtview, but the jail still requires paper copies of release orders and other court records because Courtview and the jail's database are not linked, which Claiborne calls the "Achilles' heel of the system."

Release orders for jailed inmates are hand-delivered from clerks in about 30 courtrooms to U.S. marshals, who provide courthouse security. The marshals then give the paperwork to corrections officers, who transport inmates between the courthouse and the jail. The records then must be manually entered into the Corrections Department database. The cumbersome process greatly increases the chances for human error, lost paperwork, and erroneous or late releases.

Corrections Department Director Devon Brown did not respond to interview requests last week.

According to the electronic docket in Courtview, Magistrate Judge Ronald Goodbread filed release orders in both of Tyree's cases on Oct. 23 when he should have been freed.

However, neither the court file nor scanned documents in Courtview contain an Oct. 23 release order for the urinating in public charge that was dismissed. The court file contains no release orders, while the electronic file shows only a Feb. 6 release order filed by Goodbread after Tyree's overdetention came to light.

Goodbread couldn't be reached for comment last week.

Dan Cipullo, director of Superior Court's Criminal Division, says he found the Oct. 23 release order late last week at the court's Quality Assurance Unit in a pile of paperwork that had not been scanned into Courtview. Cipullo believes a copy of the release order was sent to the jail, but he admitted there is "absolutely no way for certain to know in any case" because of the manual system for transferring paperwork to the jail.

D.C. Councilmember Phil Mendelson, chairman of the Public Safety and Judiciary Committee, says the ongoing problem with the transmission of court records from Superior Court to the jail contributes to overdetections.

"That transmission is sometimes not done clearly or timely, and

that may be what happened here,” Mendelson says. “I think even one case is a serious problem because it shouldn’t be happening.”

If jail officials are missing paperwork, they can access Courtview to check the status of cases and can contact court staff to request faxed copies of court records, says Superior Court spokeswoman Leah Gurowitz.

In August 2002, Superior Court Chief Judge Rufus King III issued an administrative order because the “occurrence of erroneous and/or late releases from the D.C. Jail has increased over the past several months.” The order came three months after Tyree’s first overdetention was featured in *The Washington Post*.

The order requires that clerks and judges complete all needed paperwork while a jailed defendant is in court and that no defendant will be returned to the jail unless U.S. marshals have paperwork for all of the defendant’s cases.

“Ultimately, the Department of Corrections could catch it right in the basement of the Superior Court [at the holding facility]. They shouldn’t accept people if they don’t have paperwork on them,” Claiborne says. “It’s not rocket science. What’s so hard about it? A guy goes to court, and the judge says you stay or you go.”

### **FIXING THE SYSTEM**

The Department of Corrections has begun a number of changes to help prevent erroneous or late releases.

The class-action settlement last year included \$3 million to help build a \$7.5 million Inmate Booking and Release Center,

where inmates could be released without returning to the jail. The center will provide storage space for inmates’ personal possessions, video court arraignments, medical intake screening, holding cells and interview booths for attorneys.

While preliminary design work has begun on the center, construction could be years away because the Corrections Department still needs an additional \$2.5 million for the center, besides \$2 million already included in its capital budget.

The Criminal Justice Coordinating Council, which includes all of the major criminal-justice agencies in the District, discussed last week the possibility of releasing inmates directly from the courthouse to avoid more overdetentions, Mendelson says.

Susan Shaffer, director of the Pretrial Services Agency, says courthouse releases “may be the best way to ensure that these mistakes will not continue to occur.”

Tyree hasn’t received a dime for his eight months of wrongful imprisonment. He hasn’t been a plaintiff in either of the overdetention suits, although Claiborne is trying to locate him.

“People’s days are numbered. You don’t have a limitless supply of days, and it’s outrageous to take a single day from anybody,” Claiborne says. “You don’t do that to people unless you think they are not important. If they thought people who were passing through the jail were important, they would not treat them that way.”

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