

THE PRECEDENT

Letter from the Editor

Dear Fellow Western State Students:

Do you have a passion for writing?
Do you enjoy taking pictures?
Do you want to be more involved with school?

The Student Bar Association (SBA) is looking for motivated and enthusiastic students to join the the **Communications Committee**. The purpose of the Communications Committee is to facilitate communications between the SBA and the student body. Also, this committee is in charge of producing the SBA's Monthly Newsletter **The Precedent**.



This is the perfect opportunity for you to inform and impress others with your writing skills, voice your opinions and views, communicate your thoughts and expand your creativity! Also, it looks great on your resume!

If you are interested in taking pictures, writing, and/or editing articles for *The Precedent*, please contact **Jesse Ruiz**, your new Editor-in-Chief for 2015 - 2016 at wsclprecedent@gmail.com as soon as possible expressing your interest.

Please include the following information in your response:

- 1) Your full name, year of graduation from WSCL (anticipated) and contact information
- 2) Your experience in any of the following areas: writing/editing, layout or graphic design, photography, advertisement, PR, etc.

Thank you and we look forward to receiving an email from you.

Warm regards,

Kevin Khoa Nguyen
Western State College of Law
SBA, Vice-President
Editor, The Precedent (2014-2015)

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THE PRECEDENT
welcomes contributions from the
WSCL student body, administration,
faculty, staff, and alumni.

*If you have an essay, article, or
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CONGRATULATIONS!

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Compensating the Wrongfully Convicted: California's Step in the Right Direction

By Briana Roy

It is unfair and inhumane that over twenty states in our country do not have any compensation statutes for those who are wrongfully imprisoned. After years of being imprisoned and exposed to the horrors of prison life, innocent people are exonerated but receive neither compensation nor benefits upon release.

Of the states that allow for compensation for the wrongfully convicted and imprisoned, most do not have a fixed range of recovery for each year an innocent person had to spend in prison. Those states do not offer much-needed services to ensure a successful reintegration back into society. These necessary reintegration services include housing, psychological counseling, job placement and legal assistance. The released prisoners even have difficulty obtaining food; something with which reintegration services usually assist. It is ironic that parolees who are actually guilty of committing crimes are offered such benefits including half-way houses, leaving the innocent to fend for themselves in a world where the stigma of being imprisoned prevents them from successfully maintaining their newfound freedom.

According to the Innocence Project—a non-profit legal organization committed to reforming the criminal justice system—other common shortcomings with current legislation include prohibiting recovery from those that have been deemed to have “contributed” to their wrongful conviction, which includes those who were coerced into making false confessions. With over thirty percent of wrongful convictions being overturned involving people who either falsely confessed or pleaded guilty, the National Registry of Exonerations says this is a trend that is on the rise.

California, however, is making important changes to improve the compensation process for wrongfully convicted

prisoners. Senate Bill 618, signed into law by California Governor Jerry Brown on October 13, 2013, updates California Penal Code 4900. Penal Code 4900 was enacted in 2000 and provides compensation for the wrongfully convicted at a rate of \$100 per day of incarceration. The problem exonerees were facing with this law is that it also required them to undergo a second trial by a compensation board to establish their innocence.

Timothy Atkins was convicted at the age of seventeen and incarcerated for twenty-three years for a murder he did not commit. He was then released in

2007 when a state's witness admitted to being coerced by police, but Mr. Atkins was denied recovery by the compensation board because they did not believe he established his innocence despite his wrongful conviction being overturned. The most important update that Senate Bill 618 provides is that exonerees no longer have to go through a second hearing to prove their innocence before obtaining compensation.



Exoneree Brian Banks—Photo via californiainnocenceproject.com



Exoneree Timothy Atkins—Photo via californiainnocenceproject.com

California took a large step in significantly expediting the compensation process for the innocent who have to adjust to simple tasks that we take for granted such as using a cell phone. Now, other states need to follow suit.

BARRISTER'S BALL 2015

Casino Royale

Royal Court

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3L Queen: McCall Miller

2L Prince: Austin Borchard
2L Princess: Sarah Correa

1L Duke: Anna Siddiqui
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BARRISTER'S BALL 2015



Has America Passed the Point of No Return?: Chicago's "Black Site."

NEWS

By Cheryl Bigos



Brock Terry—an African-American man whom was arrested after being found with five pounds of marijuana in 2011—was whisked away to a secret building, held for three days with no access to a lawyer, brutally interrogated, and could not be located by his family or friends. You might think this would have occurred in a third world dictatorship or a CIA detention center for terror suspects, but you would be wrong.

In February of this year, *The Guardian* published an article detailing torture and abuse of criminal suspects in Homan Square in Chicago. This prompted calls for local and federal inquiry, as well as multiple protests from the Black Lives Matter movement. Six men, mostly African American, told stories of being taken to a secret building for days before being brought to a police station for booking. The first-hand accounts describing their detentions without legal counsel or public notice of their whereabouts were all consistent with each other.

Homan Square is a warehouse used by police for undercover work, but is generally not supposed to be used as a detention facility. Mr. Terry remembered seeing chain-link cages that looked like dog kennels at the site. He claims he was only fed twice during his three-day detention, never saw anyone, but did hear other voices. Every day he was asked the same questions: Was he in a gang? Who was he with? Who runs this? The voices told him if he gave "them a gun" they would let him go. When he didn't produce a "gun," they brought him to the police station for booking.

Three other men were detained at the Homan Square site in 2005. One described being handcuffed by both wrists with his arms spread. He was punched in the face in that position before an officer stepped on his groin as if he were putting out a cigarette.

Cliff Nellis, an attorney with the Lawndale Christian Legal Center, told the *Guardian* that his nineteen-year-old client was denied his constitutional rights when police told him his client was not at Homan Square even though he was. Mr. Nellis received a tip that his client had been

taken there as a suspect in a drug investigation. When he arrived at the building, he asked a uniformed female officer what the building was. The officer replied that she didn't know before walking away from him. He then asked officers standing on the dock of the building if he could see his client, to which they replied: "This isn't a police station, we don't hold people here."

Finally, Mr. Nellis made a phone call to someone—whom he refused to identify—to complain that his client was inside and that he needed to see his client. After about ten minutes, an officer let him in. Mr. Nellis stated that many other attorneys through Legal Aid have been denied access to their clients at Homan Square "numerous times."

The Chicago Police Department would not respond to questions for the story, but issued a statement denying the *Guardian's* report of the detention center. The Chicago Police Department insists the detention center is no different than any other police facility. The city's mayor, Rahm Emanuel, also denied that the facility is like a CIA "black site."

Flint Taylor—a Chicago attorney who has pursued legal means of prosecuting police abuse over the last twenty-five years—believes there is little hope that the Federal Government will proceed with an investigation. He claims that the justice department and the U.S. Attorney have failed to prosecute claims even when they received powerful evidence of police torture and other "outrageous police misconduct." Additionally, when Barack Obama was a state senator in Illinois, he avoided any involvement in the fight against police torture. Since Rahm Emanuel was Obama's chief of staff before becoming mayor, Mr. Taylor is very "skeptical" that the justice department will investigate Mr. Emanuel's police force.

While protests have begun seeking to shut down the Homan Square site, it begs the question: Are there others? If a site like this can go undetected for so many years, how do we know there are not other sites just like it?



Chicago's Homan Square
Photo via chicagotribune.com

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Every time police torture and brutality blatantly occur with no repercussions, our constitutional rights are stripped away. Some might think that a criminal's rights are not important, but that sort of thinking leads to a slippery slope.

Not everyone who gets arrested is guilty. Remember, one is innocent until *proven* guilty. The fact that someone can “disappear” should scare you because eventually, you may disappear too – crime or no crime.

While this does not inspire much confidence for our country's future—our forefathers are probably rolling over in their graves—going to the press and protesting is a start. Only time will tell as to whether that protesting falls on deaf ears.

Source: *Chicagoans Detail Abusive Confinement Inside Police “black site.”*
The Guardian, Spencer Ackerman

Chicago “Black Site” Suggests America Has Passed the Point of No Return
Activist Post, Joshua Krause

Prolonged Detention: *Guillory v. Hill*

By Emma Popiolkowski



You may have seen the show, *The Kustomizer*, or otherwise heard of the man named Vini Bergeman, who is known for his sought after customized vehicles and crazy parties. Apparently the Orange County Sheriff's Department has heard of him. According to the Fourth District Court of Appeal in *Guillory, et al v Hill*, the plaintiffs were guests at Mr. Bergeman's party when, in the early morning hours, 100 of the Orange County

Sheriff's SWAT officers entered the home after the party had already ended. This raid was the result of a warrant obtained by the defendant, Michelle Hill, who was an investigator with the department. The warrant was based on informant information and other investigations. Ms. Hill had information that there was going to be illegal gambling at this party. The search was deemed “high risk” because of Mr. Bergeman's criminal history and association with other criminals. The raid produced two slot machines—which Mr. Bergeman claimed were unplugged and not working—and some marijuana in a guest's purse. In the course of executing this warrant, some of his guests were detained for up to fourteen hours.

During the criminal proceedings against Mr. Bergeman, he was unsuccessful in convincing the court that the warrant was improper. However, some of the party guests filed suit against Ms. Hill and others such as SWAT team members, police officers, and the county for unlawful seizure among other claims. At the time of the case, Ms. Hill was the only remaining defendant.

The plaintiffs argued that Ms. Hill detained the guests beyond the time it took to search the house pursuant to the

warrant. Ms. Hill's defense was that her questioning of the guests was part of the search and alternatively, that she had qualified immunity to detain and question the guests because established law does not state she could not. Further, Hill argued that per *Terry v. Ohio*, she could legally detain the guests because of the illegal slot machines and drugs discovered in the search of the home. Ms. Hill testified that it was her plan to search the home and then question the guests. Testimony suggests that the search was complete sometime between 7:00 am and just before Ms. Hill started to question the guests around 2:16 pm. The guests were allowed to go between 4:30 pm and 9:00 pm.



Vini Bergeman at his home, overlooking Orange County
 Photo via ocregister.com

The trial court issued a directed verdict in favor of Ms. Hill. On appeal, the court reviewed the lower court's decision de novo and affirmed on all issues except for the issue of length of detention. The court answered Ms. Hill's reliance on *Terry v Ohio* two fold. First, the court stated that an officer cannot detain and question every individual who happens to be in the area where a crime was committed. Second, the court stated that the types of detentions allowed by *Terry v. Ohio* are to be of brief duration and limited scope.

Good Luck on



Final Exam Results!

-The 2014-2015 Precedent Staff

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