Former County Employee Questions 25-Year-Sentence for Non-Violent Offense

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By Michele Corriel

Editor's Note: *The following is part of a continuing series that puts faces on those denied their rights by the Montana justice system. The 2005 legislature is considering a bill that addresses these civil rights violations by creating a properly trained and funded statewide public defenders office.*

David Lee Brown isn't saying he didn't do the crime. But, he is saying he shouldn't be doing so much time. For a non-violent offense regarding only property and not another person, a sentence of 25 years is too much.

"To get 25 years for theft is kind of ridiculous," Brown said. "I know a guy who shot a kid in the arm, that's pretty violent, he only got eight years and most of them were suspended."

Brown says that his public defender never took the time to go over his case, never put forward the defense Brown asked for, and never brought forward the witnesses Brown had that would have put Brown in a better light.

"Somebody who is charged with a crime, but just wants to get it behind them will plea bargain just to get out of jail," Ron Waterman, consulting attorney for the ACLU, said. "Here's somebody who felt desperate enough, he simply admitted to the crime. Typically, a plea bargain gives the defendant a sentence below the maximum. In this case, 25 years is pretty heavy."

Living in Polson, Brown was employed at the Lake County Courthouse as a maintenance worker. He'd been accused of taking $5,000 from a safe in the courthouse, but there wasn't enough evidence to press charges.

When an accusation of stealing school computers arose, Brown wanted to change the venue of his trial because he felt he wouldn't get a fair shake. "I knew the judge, I knew the prosecutor, and the court reporters, on a first name basis," Brown said. "So I thought it would be best if I got a change of venue. But, the public defender didn't even try. I thought he should have at least put a motion in, but he never did."

Brown met with his public defender, Ben Anciaux, a few times before the 2002 trial, and he was assured that his alibi witnesses would testify on his behalf. But his public defender did not contact them until the day before the trial.

"In fact, the witnesses had to track my public defender down at the courthouse," Brown said. "I wanted to assert my alibi defense, but he wouldn't let me. He didn't suppress evidence or anything."

While Anciaux was representing Brown, he was also running for county attorney, a race he lost.

While Brown was out on bond, he got arrested on another burglary charge. According to Waterman, in the eyes of others, Brown already had one strike against him.

"It's a slippery slope," Waterman said. "If you don't have adequate counsel that sense of hopelessness sets in and you may make some bad decisions."

Brown was given a different public defender, Larry Nistler.

"But Anciaux had the case so messed up, the prosecutor was unwilling to talk to us," Brown said. "They wanted me to plead guilty to that crime and the first crime at the courthouse."

Brown still wanted to take his case to trial, saying he wanted his day in court. But, Nistler advised him to plead guilty.

"I wanted to go to trial," Brown said. "But the day before the trial, Nistler said the alibis wouldn't work. He told me we should just plead guilty right now and see what we get. I didn't even have a plea bargain in place. I didn't really know what I should do. I was relying on his expertise."

Nistler told him that, if he were to take his case to trial, he'd get the maximum sentence of 30 years. But, if he pled guilty, he'd probably only get ten years.

"I felt like he and the prosecutor were teaming up on me," Brown said. "I felt like pleading guilty was my only option."

Instead of ten years, Brown was sentenced to 25 years imprisonment and is currently serving time at the Crossroads Correctional Center in Shelby.

Brown said he was just another case number, and not treated as a person with a life, feelings and rights. "It could have at least been argued," he said. "But now I can't appeal my case, because I pled guilty. I feel like I don't have any recourse."

To date, Brown has served two of his 25 years and is left with a bad taste in his mouth about the justice system. "The public defenders are there to help people, but they're just helping the county," Brown said. "They sure didn't help me."

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Ken Young Forced to Serve Time, Months After Being Ordered Released

By Michele Corriel

Editor's Note: *The following is part of a continuing series that puts faces on those denied their rights by the Montana justice system. The 2005 legislature is considering a bill that addresses these civil rights violations by creating a properly trained and funded statewide public defenders office.*

From the moment Ken Young was arrested and throughout his incarceration, all he thought about was his little girl.

"I was missing work and unable to support my little girl," Young said. "I was worried about her."

On September 20, 2002, Young was sent to prison for Driving Under the Influence (DUI) and a probation violation on a previous DUI. Over a year later he signed a plea agreement that covered all of his charges. He was to serve 13 months plus four years probation, under supervision of the Department of Corrections, with credit for time served.

Usually when someone is meant to go to jail, the arrest documentation reads "commitment to the Department of Corrections," not "supervision." When Young read the wording he asked his public defender, Margaret Borg, to clarify the sentencing.

"I did not hear a peep from her," Young said. "I wasn't fighting the sentence, I just wanted clarification on it. I wanted to know what [Missoula District] Judge Ed McLean meant by 'supervision.'"

Young wrote between 30 and 40 letters to Ms. Borg, as well as sending internal notes, known as "kites." But he felt as if his letters were going nowhere. Not only that but he was still worried about his daughter.

"She was only seven back then," Young said. "My ex-wife never sent me any of her letters and I was there a year before she even brought her in to see me."

Finally, on October 28, 2003, Young got the clarification he'd been waiting for. Judge McLean filed an amended judgment, with a handwritten note saying that all remaining time on Young's sentence would be suspended. Young should have been released immediately.

"But I had twelve days left on my 13-month sentence and they wouldn't let me go," Young said. "The next thing I knew I was taken from the Missoula County Detention Center to Great Falls Regional Prison. I couldn't call the Public Defender's Office because they don't accept collect calls so I called the ACLU in New York and told them what was going on."

"I sent Margaret [Borg] letters every day from jail, plus through the regular mail, even when I was in Great Falls," Young said. "I never got any response. I was disgusted. I was way passed anger. Everybody knew I was supposed to be out and there I was sitting in there. These people just throw you away and they don't care. Public defenders don't care. I felt helpless and disgusted. That's the way the system is, they're not going to help you, they just want to make a deal and be away with you."

After three weeks in Great Falls, Young was transferred to Montana State Prison, in Deer Lodge.

"There are people in Great Falls waiting for six months to go to prison and I was only there for three weeks when they shipped me off," Young said. "They were trying to shuffle me around, and put me where it's harder to get out."

In March 2004, four and a half months after the court officially released him, Young was finally freed from prison. He's currently thinking about a lawsuit, but the most important thing for him is that he's back with his daughter.

"I've been working in construction and I've gotten my little girl back," Young said. "I'm not drinking anymore. I've got to take care of my kid."

Bill Hooks, a Helena attorney and a former public defender said that, due to high caseloads, most public defenders have a hard time giving every client the time his or her case needs.

"It requires motivated people to go to work each day to do the best for those clients," Hooks said. "Many times there's an unwillingness to do that."

Hooks said, the way the system works now, there are many times a defendant can sit in jail for lengthy periods without hearing from his or her attorney.

"The result is a lack of confidence in the system," Hooks said. "People end up in prison who don't belong there, or they linger in jail for lengths of time inappropriate for their cases, if the cases had been properly explored or reviewed." But he added since the Constitution calls for effective counsel, "we should do everything we can to live up to that mandate."

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'Lost File' Leads to Nearly a Year's Imprisonment

By Michele Corriel

Editor's Notes: *The following is part of a continuing series that puts faces on those denied their rights by the Montana justice system. The 2005 legislature is considering a bill that addresses these civil rights violations by creating a properly trained and funded statewide public defenders office.*

The person in this story has asked that his real name not be used. Travis Hill is a fictional name, but all particulars of his case are true.

Travis Hill hit bottom. His life was a mess. He was already on probation when he got arrested again. Things were going from bad to worse.

When he got arrested in Missoula for theft, it also violated his probation terms in Polson, which sent him to the Lake County Jail. And Hill found himself in Catch-22. Because he was in jail in Lake County, he was not able to appear in Missoula County court to plead guilty to the new charges against him.

"I had a court date in Missoula to deal with the charges eight days after I was in jail," Hill said. "So I couldn't get the Missoula stuff taken care of because they wouldn't transport me to the Missoula County courthouse, while I was in jail in Polson."

Officials did, however, transport Hill to the Montana State Prison from Lake County, on the probation violation charge. And his charges in Missoula were still unanswered.

Hill wanted to plead guilty to the Missoula charges against him: Theft, no insurance, DUI and drug possession. He knew what he did and wanted a fresh start, to serve his time, and get into a rehab program. But that couldn't happen until he appeared in Missoula County court, where his pleas could be officially entered into the record. Until then he was stuck in limbo.

"I was guilty, I was caught red-handed," Hill said. "There was no question. I admitted it. I just wanted the court to say, 'Guilty,' slam the gavel down and sentence me. The simplest thing imaginable."

But Hill couldn't get his lawyer to answer a request for transportation to a Missoula court appearance. His original public defender, Nik Geranios, quit his job after filing initial paperwork. His replacement was Colleen Ambrose, who never contacted Hill. He didn't even know he had a new lawyer. Ambrose later said she lost Hill's file and that's why she never responded to him.

"That was not an excuse," Helena-based attorney Palmer Hoovestal stated, during his review of the case for ACLU of Montana. "The attorneys should at least have dictated a brief response. It is rarely, if ever, acceptable for a client to be unable to communicate with his lawyer for five months."

During early 2002, Hill wrote 13 letters to Ambrose and her supervisor.

"I started a weekly letter writing campaign," Hill said. "I verbally laid myself prostrate in front of her desk. I remember writing, 'Even a postcard from your janitor would make me happy beyond belief.'"

Hill just wanted to be eligible for some of the state programs offered at Deer Lodge, an impossibility because of an odd quirk in the law – due to pending charges that had not been answered, Hill could not apply for any of the programs offered by the state prison. Until he pled guilty to the charges he was persona non grata.

"It was excruciatingly frustrating," Hill said. "I couldn't do anything. It was supposed to be my attorney who was helping me, whom I had never met, spoken to, or corresponded with. She was supposed to be the person fighting for my freedom."

The e-mails from Ambrose show that she never met with Hill, nor had she even spoken to him. She was not aware that he was currently serving a sentence in Montana State Prison for his probation violation.

"This is absolutely unacceptable," Hoovestal stated. "Whether she could have done anything for him or not is beside the point. At a minimum, he should have been able to meet with his attorney before being sentenced."

After sitting for five months in prison, waiting to hear from his attorney, Hill finally wrote a letter to the American Civil Liberties Union of Montana, sending a copy to Ambrose.

"Within two weeks I had a response from Ambrose," Hill said.

Ironically, he spent no more than five minutes in front of the judge in Missoula and three months later, Hill was out on conditional release.

Hoovestal stated that Ambrose could have drafted a transportation order to get Hill to Missoula at any time from August of 2001 to June of 2002, but it was never even attempted. "[Hill] received deficient representation and that caused him harm."

"I'm back in college at the University of Montana, now doing well," Hill said, who is also working two jobs. "It made me a little bitter, but I'm getting over that. I was lucky. When you're sitting in a jail cell, all you can think about is your freedom and everyone forgets you're there. You're only a name and a number, yet your heart and brain are in a jail cell -- waiting."

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Man Held Without Trial for Nearly Two Years

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By Michele Corriel

Jack Kottre lost nearly two years of his life inside a Missoula county jail. His 23-month spiral down into the depths of despair was the result of a broken justice system.

"I don't even know how to describe it," Kottre said. "I didn't have anybody to help me."

Arrested on May 4, 2002, for a felony DUI, Kottre was assigned a public defender. Unfortunately, for Kottre, his public defender didn't want anything to do with him or his case.

"The public defender was pretty much saying that he had somebody breathing down his neck," Kottre said. "He just kept telling me to plead guilty. And I wasn't guilty."

Kottre had been pulled over because of a supposed parole violation, when in fact, his parole period had expired. "I'd had a few beers," he admitted, "but I wasn't intoxicated and I wasn't going to plead guilty. I wanted my day in court."

But that day wasn't to come for a long time.

Thirteen months after Kottre's arrest with Kottre still in jail, his attorney took himself off the case. That's when the chief public defender took it over.

According to Montana state statute, the maximum amount of time a judge can sentence a person for a felony DUI is 13 months in jail. Kottre had already served that before he even got to see a judge.

It took another six months before the chief public defender came to talk to Kottre about his case.

"When she finally did come to see me she said, 'Jack, why don't you just plead guilty?' And I said, 'Why don't you get the hell out of here.' I was so depressed," Kottre said. "Nobody was hearing me. I tried to fire my attorneys all the time I was in there. It was a joke. I felt helpless. This is the United States, not some foreign country."

The Sixth Amendment of the U.S. Constitution guarantees citizens rights to a speedy and public trial, an impartial jury, and to have the assistance of counsel for his defense. The Fourteen Amendment guarantees due process. Both of these amendments were disregarded in Kottre's case.

Ron Waterman, cooperating attorney with the American Civil Liberties Union, explained that most speedy trial violations, as it pertains to the Sixth Amendment, happen to those people who cannot afford to hire their own attorneys.

"A speedy trial problem means you don't have competent counsel," Waterman said. "Competent counsels will deal with their clients in a professional and expedient manner. In this case, Jack Kottre was assigned an attorney."

Waterman said the problem with the lack of a speedy trial is that it allows the prosecution to incarcerate people without a conviction.

"What we're doing is presenting to America something that we usually think of as a Third World problem," Waterman said. "We are giving the prosecution the power to imprison a person without necessarily having any evidence to support the accusations. This fellow is taken off the streets, away from his family, accused of a crime but the accusation was never tested. They never proved anything and he lost two years. That could be you or me."

This type of constitutional violation most affects only a certain portion the population – people with limited funds, Waterman said.

"It's every poor person's concern -- arrested with a crime, incarcerated and rotting in jail until the authorities let you go," Waterman said. "As a society it has to be our concern. Certain people are being exposed to the potential that their freedom will be taken from them without proof of guilt. It weakens the fabric our society. This issue deals with the idea that there are two systems of justice – one if you have the money and another if you don't."

Although Missoula is one of the few counties that have a public defender's office, its caseloads are so huge that the office was ineffectual in protecting Kottre's rights.

In frustration, Kottre tried representing himself, but the judge would not allow it. Finally, Kottre decided to just plead "nolo contendre," which means, "I do not contest," a plea that implies a guilty plea, but is not technically an admission of guilt.

"I told the court that I wanted to leave my case open, on the grounds that I wanted to appeal my speedy trial rights, and on unlawful incarceration," Kottre said.

On April 24, 2004, all the charges against Kottre were dismissed.

Kottre's unlawful incarceration case is pending.

"I'm still stressed out over it," he said of his 23-month-long unconstitutional detention. "I'm not suicidal or anything, but it'll bother me for a while."

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Incompetent Counsel Leads to 40-Year Sentences for Innocent Man

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By Michele Corriel

Because of an incompetent attorney, Jimmy Ray Bromgard was sentenced to 40 years in the Montana State Prison for a crime he didn't commit.

Bromgard, only 17, was under detention in Billings for fighting in school when he was placed in a police lineup 18 years ago. The next the thing he knew a judge was handing him a 40-year sentence for raping an eight-year-old girl. He spent over 15 years in state prison, trying to reclaim his freedom.

Thanks to the New York-based Innocence Project, a non-profit organization fighting to reverse wrongful convictions, Bromgard has been acquitted. But the problems that put him behind bars still exist.

At the trial, the prosecution offered a piece of hair as evidence, determined by the Montana State Crime Laboratory (now called Montana State Forensic Sciences Division) to be Bromgard's. According to court testimony, Arnold Melnikoff, then-director of the Montana State Crime Lab, told the jury that the hair found on the victim's sheets had a one-in-10,000 chance of not coming from Bromgard. He added that, combined with the pubic hair found in the sheets, there was a one-in-100,000 chance they had both *not* come from Bromgard.

"More or less, he told the jury I had to be the guy that did it," Bromgard said.

Experts who examined the court case say there are no probable or accurate statistics when it comes to matching hair samples, a practice commonly referred to as "junk science."

The other strike against Bromgard was his attorney, nicknamed "Jailhouse John" Adams, according to the Innocence Project report, because his clients ended up in jail.

"He showed up [to the trial] with an empty notepad," Bromgard said. "He made no opening statements. The only witnesses he called on my behalf were my stepfather and my mother, because they were already in the courtroom."

Bromgard's court-appointed attorney took little time with his case, mounted practically no defense, and was not prepared to deal with the magnitude of the crime. The jury deliberated for only one hour and came back with a guilty verdict.

The court sentenced Bromgard to three consecutive 40-year prison terms at the state prison.

"They put me in general population (at the prison)," Bromgard said. "That's where I got my jaw broken for being a child molester."

After that, Bromgard spent 23 hours a day in solitary confinement.

It wasn't just that Bromgard was innocent; his civil rights were violated, according to those who have investigated his case. The right to a "guiding hand of counsel," was granted in 1963 with the U.S. Supreme Court decision, *Gideon v.*

Wainwright. That translates into a right to have an attorney who works in the client's best interests at all times.

"Our mission is to provide the effective assistance of counsel as dictated by *Gideon v. Wainwright*, and all of the subsequent court decisions," Penny Strong, current Chief Public Defender for Yellowstone County, said recently. Strong was not yet a public defender at the time of the Bromgard case (1987).

During Bromgard's trial, the eight-year-old victim was unable to identify him. At the time of the line up, although the girl picked Bromgard out, she was not sure he was the right man. After the girl was shown the video of the line up, she said she was only "60-to-65 percent sure." When asked at the trial she stated, "I am not too sure." But she still identified him in court as her assailant.

Bromgard's counsel never objected.

Aside from the hair samples, the only other evidence used at trial was a checkbook from the victim's home found near Bromgard's home, not far from the crime scene. However, Bromgard's fingerprints were not at the crime scene or on the checkbook.

DNA testing, performed at the request of the Innocence Project, found semen from the victim's underwear did not match Bromgard's DNA.

"His attorney did no investigation, hired no expert to debunk the state's forensic expert, filed no motions to suppress the identification from a young girl who was, according to her testimony, at best only 65 percent certain, gave no opening statement, did not prepare a closing statement, and failed to file an appeal after Bromgard's conviction," states the Innocence Project report on Bromgard's case.

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(For further information on the Innocence Project, check their website at www.innocenceproject.org. They have exonerated 154 people to date.)

(For detailed information on *Gideon v. Wainwright* see the National Legal Aid & Defender Association's website at: http://www.nlada.org/Defender/Defender/Defender_Gideon/Defender_Gideon_40.)