CIVIL RIGHTS INSIDER

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From the Desk of the Chairperson

Like many people, the end of the year and the beginning of the next always inspires in me a reflective mood. It's a time when we can look back to appreciate our accomplishments, consider what there is to learn from our experiences, and think about how we can do better. Now that it's been a little over a year since I took over as the Chair of the Civil Rights Section, I can say that it's been a terrific but challenging, sometimes humbling, learning experience. Here are some of my thoughts.

I'm proud of our accomplishments this year. To list the highlights, the Civil Rights Section:

- Staged our second Civil Rights Etouffee CLE here in New Orleans, which was an even bigger success than our first, with over 100 participants and a full day of civil rights oriented CLE
- Updated our bylaws to conform them to new FBA National policies
- Sponsored and supported various events for our fellow FBA members, including the Southern District of New York's Rule of Law Award, given to civil rights legend and Congressman John Lewis
- Held elections for officers and brought new people on to the Board (congratulations to Chair Elect Robin Wagner and Secretary Kyle Kaiser, and thank you to our new amicus chair, Kate Marples–Simpson)
- Continued to produce this high quality and award winning newsletter thanks to our editor-in-chief, Steve Dane, and all the various contributors.

Of course, even with these accomplishments, there are some things that I'd like to continue to work to improve over my next few months in office. I'm coming to realize that one of my most important jobs as the Chair is to keep momentum going by offering people a chance to get involved in this organization. One of my goals over the next few

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In this Issue:

You [Still?] Have the Right to Remain Silent: Constitutional Implications of Government Outsourcing Through "Internal" Investigations

by Steven M. Dettelbach and Tera N. Coleman, Baker & Hostetler LLP, Cleveland, OH

On May 2, 2019, in the opinion of *United States v. Connolly*,[1] Chief Judge Colleen McMahon of the Southern District of New York, expressed grave concern over the government's practice of "outsourcing" its investigations of alleged corporate misconduct to private law firms. The court found that the government "outsourced" a criminal investigation into manipulation of the London Interbank Offered Rate ("LIBOR") to a large bank and its outside counsel—one of New York's most prestigious, large law firms. As a result, she held that the arrangement violated defendant Gavin Black's Fifth Amendment rights when outside counsel interviewed the defendant under the threat of termination from employment. In other words, the court ruled that because of the way the federal agencies acted, the private law firm was effectively acting as an arm of the government and thus subject to the protections guaranteed to individuals by the U.S. Constitution.

To those who have seen up close how some prosecutors and agents treat private law firms conducting "internal" investigations, the decision seemed long overdue. Judge McMahon questioned the government's frequent practice of "outsourcing its investigations into complex financial matters to the targets of those investigations."[2] The court stated that it was "deeply troubled by this issue" and that the practice has "profound implications."[3] Why? It's impact on constitutional rights of individual corporate employees.

Is *Connolly* a blip or will it have implications for prosecutors and companies conducting internal investigations in the future? Time will tell, but Judge McMahon has potentially opened up a new frontier in protecting the rights of individuals facing such investigations.

Background of Government "Outsourcing"

The "outsourcing" referenced in *Connolly* is the concept of the government's use of the investigatory efforts of a company's outside counsel. While corporate cooperation is nothing new, in recent years the use of such private investigations to wholly supplant the government's own investigation has grown. There are several reasons. First, increasingly complex white-collar cases tax the government's limited resources and even its expertise. Second, multinational fraud schemes can sometimes place crucial evidence and witness testimony beyond the government's ability to gather it. Third, a wink and a nod at private actors can allow the government to benefit from the use of heavy-handed tactics without proper Constitutional protections. In other words, the Government can get someone else to their so-called "dirty work." That last reason, of course, is the potential evil driving *Connolly*. Major corporations in the United States often cooperate with federal prosecutors to obtain deferred or non-prosecution agreements, declinations or reduced sentences, and they do it aggressively and well.

Companies face great pressure to cooperate with government investigations. They know, as does the government, that it is prudent for companies to structure internal investigations to gather the information that the government likely needs. The threat of indictment has been described as "the corporate equivalent of capital punishment"[4]—just ask Arthur Andersen (younger readers sadly may have to ask a more senior lawyer about that name!). Even the mere news that a corporation could be facing a criminal investigation can cause stock to plummet. An actual indictment however can be fatal to a company. This pressure is so great that it may even seem as though corporations have little alternative but to cooperate.[5]

That pressure during a criminal investigation can cause a company to exert unfair pressure on its employees in ways that the government cannot. This pressure is often exerted on employees to be interviewed by a private lawyer, absent any Fifth Amendment right against self-incrimination. And the results of those "internal" interviews go where? Right back to the government, in certain cases, the functional result being that constitutional rights of individuals are at risk. Worse yet, the government may know about, ignore or even encourage such conduct.

The Constitutional Implications

The practice of outsourcing or corporate cooperation poses the potential to violate an individual's constitutional rights during the internal investigative process. It is not uncommon for an employee's failure to cooperate to result in termination. But in *Garrity v. New Jersey*, the Supreme Court held that statements obtained from public employees under the threat of termination are compelled and thus prohibited from use in subsequent criminal proceedings.[6] The option to choose between one's means of livelihood or pay the penalty of self-incrimination constitutes coercion that violates an employee's Fifth Amendment right against self-incrimination and the due process clause of the Fourteenth Amendment.[7] *United States v. Stein*, extended *Garrity* to private corporate conduct where the actions of a private employer are "fairly attributable to the government."[8]

So, companies must engage in a delicate balancing act to avoid violating an employee's constitutional rights by effectively compelling an interview while acting as a de facto arm of the government. And the government must not unduly interfere with or direct an "internal" investigation.

The Court's Decision in *Connolly*

Connolly arose from a lengthy complex investigation initiated by the United States Securities and Exchange Commission ("SEC"), the Unites States Commodity Futures Trading Commission ("CFTC"), and then the United States Department of Justice ("DOJ") into the possible manipulation of the LIBOR rate. The CFTC sent a letter stating that it "expect[ed]" the bank to "cooperate fully" by engaging outside counsel to conduct a full review of its LIBOR practices and to report the results of such review on an on-going basis.[9] The court noted that the threat of indictment placed significant pressure on the financial institution to cooperate, finding that the CFTC's request was a "classic Godfather offer—one that could not be refused."[10]

And like most such offers, it wasn't. The bank and its lawyers complied with the government's demand and coordinated extensively with the SEC, CFTC and DOJ.[11] In the early stages of the "internal" investigation it held a series of telephone meetings with the government wherein the framework for the initial investigatory steps was laid out.[12] The government advised them in writing that it "envision[ed] regular updates, initially occurring weekly, from Counsel concerning the status and progress of the internal investigation [and that] [t]hese updates will include simultaneous productions of responsive documents and information uncovered in the internal investigation."[13] Outside counsel later met with the government to present exhaustive summaries or "downloads" of interviewee statements among other things. Of importance to the court in this case is that it appears that the government waited to receive outside counsel's witness interview "downloads" before it began its own interviews.[14]

The court found that the government "gave considerable direction" to outside counsel "about what to do and how to do it," including which employees to interview, and how to interview them.[15] In one instance the government even advised an outside lawyer for the bank to conduct an employee interview "as if he were a prosecutor."[16] Specifically they interviewed Defendant Gavin Black three times without counsel, and the first interview was conducted at the government's request.[17] Before Black was interviewed a fourth time, the company requested permission from the CFTC.[18] Black was essentially required by corporate policy to sit for the interviews or risk termination.[19]

At trial in 2018 Defendants Connolly and Black, both bank employees, were convicted of conspiracy and wire fraud charges in connection with their manipulation of the LIBOR while at the bank. Black moved to vacate his conviction and dismiss the indictment against him under *United States v. Kastigar*, 406 U.S. 441 (1972) (prohibiting direct and indirect use of compelled statements of a defendant). Black argued that statements obtained by his employer were fairly attributable to the government within the meaning of *Garrity*, and thus compelled in violation of his Fifth Amendment right against self-incrimination.

The court found that the internal investigation conducted by the company and its outside counsel was indeed "fairly attributable to the Government."[20] The court concluded that outside counsel "did everything that the government could, should, and would have done had the government been doing its own work."[21] But instead, the court noted, "rather than conduct its own investigation, the Government outsourced the important developmental state of its investigation to [the bank] . . . and then built its own 'investigation' into specific employees, such as Gavin Black, on a very firm foundation constructed for it by the Bank and its lawyers."[22] The court found that Black's interviews were unconstitutionally compelled in violation of *Garrity*.[23] However, because Black's compelled statements were not used at trial directly or indirectly by the government, Black was not entitled to *Kastigar* relief the Court ruled.[24]

The court noted that its decision could have "implications that extend well beyond this particular case."[25] Particularly, this ruling appears to reiterate a company's need to carefully consider and balance a desire to cooperate with the government during an internal investigation with considerations of employees' constitutional rights. It signals that courts may recognize limits to how far the government may ask a company to go in its attempt to cooperate, especially when it comes to requiring employees to submit to interviews. The opinion is a clear warning shot to government lawyers against directing the work of defense counsel. Internal investigations are not unusual, nor is it unusual for a company to cooperate with the government during its investigation. This ruling however, emphasizes that an arm's length relationship between the two is critical to protecting individual Constitutional rights.

Conclusion

Prosecutors and white-collar defense practitioners should heed the warnings of *Connolly* when seeking corporate cooperation or conducting internal investigations. The government has considerable weight in dealing with a corporation, but it must watch the manner in which it wields that weight. The government should refrain from micromanaging a company's internal investigation. Companies and outside counsel must balance carefully their cooperation with the government and the protection of employees' Constitutional rights.

We are likely to see the government and the defense bar applying the lessons of *Connolly* to internal investigations and corporate cooperation going forward. Counsel should be aware of this decision and should consider its potential implications early in the life of an internal investigation. Corporate cooperation is quite appropriately alive and strong, but the *Connolly* case may indicate that our Constitutional system doesn't allow the government to put it on steroids.

Steve Dettelbach is a partner at BakerHostetler and national co-chair of its Corporate Investigations and White Collar Group. He is also the former U.S. Attorney for the Northern District of Ohio. Tera Coleman is an associate in BakerHostetler's White Collar Group.

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Using Fair Housing Laws to Address Displacement

by Scott Chang, Director of Litigation, Housing Rights Center, Los Angeles, California

In communities across the country low income families face displacement as higher income households move into changing neighborhoods accessible to transportation and jobs with traditionally lower rents.

Studies indicate that housing costs are rising fastest in neighborhoods with the greatest influx of more affluent residents and that these same communities have a decreasing number and percentage of residents of color.[1] As a result of displacement, low-income families move to higher poverty neighborhoods, away from whiter, low-poverty neighborhoods and city centers.[2] Displacement and gentrification thus "pose[] a major challenge to the continuing diversity within American cities and to the protection and preservation of longstanding communities within them."[3]

Recent litigation and public policy successes demonstrate that the Fair Housing Act can be an effective tool to combat displacement. My firm, Housing Rights Center, was involved in a case, *Martinez v. Optimus Properties*[4], using federal and state fair housing laws to challenge the attempted displacement of Latinos, families with children and people with mental disabilities from several apartment complexes in Los Angeles. Public Counsel, the Los Angeles office of Skadden, Arps, Slate, Meagher & Flom, Brancart & Brancart, Public Advocates and Housing Rights Center represented the plaintiffs.

Plaintiffs were 13 individuals living in six apartment complexes in the Koreatown neighborhood of Los Angeles and two non-profit organizations who counseled and assisted them. Plaintiffs alleged that Defendants pursued a "Koreatown strategy," which consisted of purchasing occupied apartment complexes, instituting a targeted campaign to force out certain targeted tenants, renovating and re-renting vacated units, and then flipping the properties for a quick profit. The campaign allegedly targeted Latinos, families with children and people with mental disabilities who lived in rent-controlled units and were protected from "no cause" evictions. The practices allegedly engaged in by Defendants included issuing multiple baseless eviction notices, denying maintenance and repairs, failing to post or explain notices in Spanish, shutting off water and issuing improper notices that Section 8 Housing Choice Vouchers would no longer be accepted.

Witnesses heard on-site managers say that they were instructed to clear out Mexicans and families with children to make the apartments more attractive to hipsters.

After a motion to dismiss and a motion for summary were denied in part, the case settled. The settlement provided that the defendants would pay $2.5 million in damages and attorneys' fees for 13 individual plaintiffs and two organizational plaintiffs. The settlement also provided for extensive injunctive relief. To address the displacement of low-income households, the plaintiffs requested that the defendants set aside several vacancies for Section 8 Housing Choice Voucher holders. Other injunctive relief included an agreement to comply with fair housing laws, the adoption of written non-discrimination and reasonable accommodation policies, extensive training of property and resident managers, repairs to the plaintiffs' apartments and an agreement that plaintiffs with disabilities would receive specific reasonable accommodations.

Other litigation challenging unlawful displacement has also been successful. In *Baltazar v. Winstar Prop., Inc.*[5], a housing provider purchased a building in East Los Angeles primarily occupied by Latino immigrants. After acquiring the apartment building, the landlord proceeded to raise the rent by more than 60% on all tenants except for the one white family living in the building. Attorneys from the Los Angeles Center for Community Law and Action and Quinn, Emanuel, Urquhart & Sullivan LP filed a lawsuit on behalf of two Latino tenants alleging that the rent increases violated the Fair Housing Act. The jury returned a verdict for $100,000 in compensatory damages and $1 million in punitive damages for the two plaintiffs.

Policy advocacy under the Fair Housing Act's requirement that recipients of federal funds affirmatively further fair housing may also be effective in addressing displacement.[6] Regulations implementing the affirmatively furthering fair housing provision require that recipients assess barriers to fair housing in their community and identify strategies and actions to address the barriers in a document called an Assessment of Fair Housing (AFH).[7] Although HUD has suspended implementation of the rule, some cities have developed AFHs. Several cities including Seattle and Los Angeles have drafted AFHs that identify displacement as a fair housing issue. For example, the City of Los Angeles's AFH identifies the prevention of displacement of low- and moderate income residents as a goal and sets forth strategies such as expanding support against unjust evictions, strengthening rent control, exploring a "Right to Counsel" ordinance to provide attorneys for tenants facing eviction and increasing homeownership opportunities to address displacement.[8]

Scott Chang is Director of Litigation at the Housing Rights Center in Los Angeles. He was one of the attorneys representing the plaintiffs in Martinez v. Optimus Props.

Endnotes

[1]Ojatunde C.A. Johnson, *The Gentrification Boom and Its Implications for Racial and Economic Integration: Unjust Cities? Gentrification, Integration and the Fair Housing Act,* 53 U. Rich. L. Rev. 835, 843 (2019)

[2]*Id.*

[3]Hannah Weinstein, Comment: *Fighting for a Place Called Home: Litigation Strategies for Challenging Gentrification,* 62 UCLA L. Rev. 794, 808

[4]*Martinez v. Optimus Props. LLC,* No. 2:16-cv-08598-SVW-MRW, 2017 U.S. Dist. LEXIS 135395 (C.D. Cal. Mar. 14, 2017) (denying in part motion to dismiss)

[5]*Baltazar v. Winstar Prop, LLC,* No. 2:16-cv-4697-ODW-KS (2018)

[6]42 U.S.C. § 3608

[7]24 C.F.R. § 5.154

[8]*See Assessment of Fair Housing,* L.A. Housing & Community Inv. Dep't, https://hcidla.lacity.org/assessment-fair-housing (last visited Dec. 16, 2019)

Defending the Voting Rights of Jail Detainees

by Chiraag Bains, Director of Legal Strategies, Demos, Washington, D.C.

As we kick off 2020, civil rights lawyers are focused on protecting voting rights so that everyone can be heard in this pivotal presidential election year. One of the most hidden and racially disparate forms of voter disenfranchisement, however, is receiving too little attention: the denial of voting rights to pretrial jail detainees.

On any given day—including Election Day—over half a million people who are innocent until proven guilty sit in jail awaiting trial. Many of them are there because they are too poor to afford their bail. Although they are eligible and often registered to vote, citizens detained pretrial cannot get to the polls and often have no way of voting by absentee ballot. In the 1974 case *O'Brien v. Skinner*, the Supreme Court recognized that pretrial detainees have a fundamental right to vote and cannot be absolutely denied the franchise. And yet violation of their rights remains a systemic problem across the nation.

My organization, Dēmos, is working to change this by filing litigation and advocating with election officials in several states. For example, we are currently suing Ohio in *Mays v. LaRose*, 2:18cv1376 (S.D. Ohio), over the state's practice of denying absentee ballots and any other means of voting to eligible voters who are jailed in the days leading up to an election.

Eligible Ohio voters who find themselves jailed on pending charges or on a misdemeanor conviction may request an absentee ballot from their county board of elections. But such a request must be made in person at the board's office by close of business on the Friday before an election or, if sent my mail, must be received at the board's office by noon on the Saturday before an election. This means that no person arrested after close of business Friday and held in custody through Election Day will be able to request and vote by absentee ballot. Since county officials don't make voting available on-site in jails and don't escort people to the polls, these "late-jailed" voters have their voting rights absolutely denied.

As it happens, Ohio does allow people who are unexpectedly hospitalized (or whose minor children are unexpectedly hospitalized) in the days before an election to make an emergency absentee ballot request—all the way up to 3:00 p.m. *on Election Day*. The county will send two election officials to the hospital, ballot in hand, and these election officials will then deliver the completed ballot back to the board of elections. Alternatively, hospitalized voters can have a family member pick up the ballot and return it for them. This courtesy is not extended to late-jailed voters, even though the state plays a pivotal role in their inability to get to the polls. Unlike with hospitalized voters, it is the state that is keeping the accused from the polls.

In November 2018, our team at Dēmos, along with co-counsel at the Campaign Legal Center and the MacArthur Justice Center, sued in federal court. The Monday before the midterm elections, we sat in arraignments in multiple counties and observed which individuals were ordered detained. Collaborating with public defenders and other in-state advocates, and cross-referencing names from court dockets with the voter registration database, we then visited impacted individuals in jail. Two men detained in the Montgomery County Jail in Dayton, Quinton Nelson Sr. and Tommy Mays II, asked that we represent them and agreed to be class representatives in a class action suit.

Both were registered voters living in Dayton who had intended to vote on Election Day, November 6, 2018. Mr. Nelson was arrested at 10:00 p.m. on the Friday before Election Day, and Mr. Mays was arrested at 7:00 p.m. that Saturday. Both were detained on misdemeanor charges at the county jail on $10,000 bail and could not afford to buy their release. They completed handwritten affidavits in the jail's visitation room on Monday evening.

As voting got underway the next morning, our team made its way from Dayton to the federal courthouse in Columbus. Having finished our pleadings during the drive, our team walked into federal court with a complaint and TRO motion alleging violations of the Equal Protection Clause and First Amendment. The judge held a hearing, granted the TRO, and ordered that ballots be delivered to our clients at the Dayton jail. Mr. Mays and Mr. Nelson both voted that day. And constitutional claims that otherwise would have faced serious ripeness and mootness problems were now properly before the court.

In the year that followed, we conducted extensive discovery and established a firm record that Ohio denies the opportunity to vote to citizens detained in the days leading up to an election. One election official also stated in deposition testimony that there are fifteen times as many hospitalized voters as jailed voters in the state, and the hospital voting process takes eleven times longer to complete than the jail voting process. When asked if there was "anything about the jails as opposed to the hospitals, that would make it such that there would be a reason the board would not be able to, on election day, after 3 p.m., receive the applications, determine the eligibility and print the ballot to deliver to the jail," the election official answered, "Not to my knowledge."

In November 2019, U.S. District Judge Michael Watson certified our class and granted summary judgment in our favor. Concluding that late-jailed and late-hospitalized voters are similarly situated in all relevant respects, he noted that the state had not proffered any justification for treating them differently "except the Ohio legislature's potential determination that [the latter are] 'particularly worthy'" (citing the state's brief). Judge Watson continued: "But hospitalized persons *are not* more worthy of additional voting privileges under our Constitution than jail-confined persons, and offering greater access to the ballot *simply* because the legislature values the former's votes over the latter's is exactly what the Equal Protection clause forbids."

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Criminal Background Screening in Housing: Emerging Enforcement Tools

by Sara Pratt, Counsel, Relman Colfax PLLC, Washington, D.C.

As the national discussion about the use of criminal background bans in housing intensifies, new tools are emerging to challenge landlord reliance on criminal history as a bar to housing. Use of these tools make it clear that landlords are vulnerable in these cases, including having to pay hefty damage awards and adopt new policies in federal litigation, to resolve cases brought under the Fair Housing Act.

Landlords in today's world increasing make adverse decisions about tenancy based on the criminal background of applicants, sometimes relying on screening systems that collect information about income, credit scores, landlord experiences and criminal background to give them information on which they make tenanting decision.

Adverse tenancy decisions based on criminal background range from a decision to rent, or not to rent, to an applicant, to a decision on adding a family member to an existing lease, to deciding to evict current successful tenants when there is an ownership change. A criminal background review may also occur when a tenant requests a transfer for disability reasons.

Increasingly these decisions are being scrutinized under the Fair Housing Act as resulting in unlawful discrimination. Although people with criminal records are not directly protected by the Fair Housing Act, use of policies and practices that exclude people from housing because of a criminal record are likely to effect African American and Latino individuals disproportionately because they have disproportionately been convicted and/or incarcerated. In addition, an overly broad criminal background policy that excludes people for long ago criminal behavior that is unrelated to their likely success as a tenant today, excludes people who are actually qualified for the housing.

Guidance issued by the Department of Housing and Urban Development interpreting the Fair Housing Act and echoing similar guidance issued by the EEOC in employment, found that use of overly broad criminal background policies has a disproportionate impact based on race and national origin and does not serve a legitimate interest in protecting the safety of residents or their property.[1] HUD concluded that an individualized assessment that considers the severity, nature and timing of criminal convictions and their relationship to successful tenancy was a less discriminatory way to consider criminal histories.[2] HUD said that arrests should not be considered at all "because the fact of an arrest does not establish that criminal conduct occurred."[3]

A $1.187 million settlement involving these issues was recently reached in a lawsuit brought by the Fortune Society in New York and puts a new focus on these issues. Fortune provides housing and other services to formerly incarcerated individuals. In a lawsuit filed in 2014, Fortune alleged that when it tried to rent apartments for its clients at the Sandcastle, a large apartment complex in Queens New York in 2013 and 2014, Sandcastle refused because of their policy of prohibiting anyone with a criminal record from living there. Fortune alleged that the policy unlawfully discriminated because it disproportionately barred African Americans and Latinos from housing without considering each potential tenant's individual history and circumstances. After a July 2019 decision denying Sandcastle's motion for summary judgement, the lawsuit settled with Sandcastle paying Fortune $1,187,500 for damages and attorney fees.[4]

Other settlements have focused on adoption of less discriminatory policies. In a case brought by a Virginia fair housing organization in Chesterfield, Virginia, a federal lawsuit settled quickly this year with the adoption of a policy that limits the consideration of criminal convictions only to certain crimes and only for a short time period, for most crimes less than five years from the date of the criminal conduct.[5]

A recent study conducted by Wilder Research of the relationship between criminal history and success in housing, although limited in scope, examined whether a criminal history actually predicted a person's ability to maintain stable housing. Its conclusion? A criminal background has little effect on an individual's housing success. Further, the effect of a prior criminal conviction on housing outcomes declines over time and criminal offenses that occurred more than five years before move in had no significant effect on housing outcomes.[6]

Landlords are also responsible for making reasonable accommodations to applicants with disabilities in the area of criminal convictions. In a case decided last year, a mother and her son claimed that an apartment complex failed to accommodation the son's disability when he applied to move in with his mother. In that case the son's disability caused him to remove his clothing in public, and that conduct resulted in a misdemeanor conviction. The federal court held that there is an obligation under the Fair Housing Act that requires reasonable accommodations for at least some disability-related criminal actions; here the conduct was directly related to the son's disability.[7]

Even use of the new third party screening services often used today by landlords does not insulate them from liability for relying on a criminal background. Earlier this year, a federal court in Connecticut held that CoreLogic, a tenant screening system used by landlords which collects and interprets criminal records, was subject to the Fair Housing Act's prohibitions against housing discrimination. The Court held that because companies like CoreLogic functionally make rental admission decisions for landlords that use their services, they must make those decisions in accordance with fair housing requirements.[8] The landlord is also named in that lawsuit.

Federal civil rights litigators—in employment, in housing and in other areas—should consider the implications of these cases when assessing potential cases. Emerging consideration

of the impact of criminal convictions on eviction and transfer requests decisions indicate that bringing civil rights challenges to reliance on criminal backgrounds can result in successful outcomes for litigators, and considerable exposure for landlords.

Sara Pratt is Counsel at the firm of Relman Colfax, PLLC in Washington, DC. She was formerly Deputy Assistant Secretary for Fair Housing Enforcement and Programs at the Department of Housing and Urban Development.

Endnotes

[1]Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and in Real-Estate Related Transactions (April 4, 2016), available at https://www.hud.gov/sites/documents/HUD_OGCGUIDAPPFHASTANDCR.PDF

[2]*Id.* at 7.

[3]*Id.* at 6.

[4]*The Fortune Society v. Sandcastle Towers Housing Development Fund Corp., et al,* Case No/ 1:14-cv-06410, U.S. District Court, Eastern District of New York, memorandum and Order (July 3, 2019), and see United States of America's Statement of Interest, available at https://www.justice.gov/crt/file/903801/download, noting "[e]ach year in America, more than 600,000 citizens are released from federal and state prisons, and 11.4 million individuals are released from local jails. Upon release, these individuals face the potential "experience [of] the 'civil death' of discrimination by employers, landlords, and whoever else conducts a background check." *Utah v. Strieff,* 136 S. Ct. 2056, 2070 (2016) (Sotomayor, J., dissenting); see also *Doe v. United States,* 833 F.3d 192, 199 (2d Cir. 2016) (observing "the unfortunate lifelong toll that . . . convictions often impose on low-level criminal offenders" including the inability to obtain rental housing) (citations omitted).

[5]*Housing Opportunities Made Equal of Virginia, Inc. v. Wisely Properties LLC et al.,* Case no. 3:19-cv-00413 (June 4, 2019), complaint, settlement and policy available at https://homeofva.org/wp-content/uploads/2019/08/190806-NR-Sterling-Glen-settlement-Final.pdf.

[6]Wilder Research, "Success in Housing: How much does criminalbackgroundmatter?,"*availableat* https://drive.google.com/file/d/1HwYOBFJ_k98C6TT99w2o7ryk2CnAGvgo/view

[7]*Simmons v. T.M. Associates Management, Inc., et al,* Case no 3:17-cv-00066, Memorandum Opinion, February 14, 2018. Compare Evans v. UDR Inc., 644 F. Supp. 2d 675 (2009),

[8]*Connecticut Fair Housing Center, et al. v. CoreLogic Rental Property Solutions,* Case No. 3:18-cv-00705, U.S. District Court, District of Connecticut (March 25, 2019)

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Endnotes

[1]*United States v. Connolly, et al.,* No. 1:16-cr-00370-CM (S.D.N.Y. May 2, 2019).

[2]*United States v. Connolly, et al.,* No. 1:16-cr-00370-CM, slip op. at 2 (S.D.N.Y. May 2, 2019).

[3]*Id.*

[4]*United States v. Stein,* 440 F. Supp. 2d 315, 319 (S.D.N.Y. 2006).

[5]Preet Bharara, *Corporations Cry Uncle and their Employees Cry Foul: Rethinking Prosecutorial Pressure on Corporate Defendants,* 44 Am. Crim. L. Rev. 53, 88 (2007)("[G]iven the . . typical corporation's vulnerability, no reasonable evaluation of risk can lead to a decision other than to cooperate."); *The Thompson Memorandum's Effect on the Right to Counsel in Corporate Criminal Investigations: Hearing Before the Comm. on the Judiciary,* 109th Cong., S. Hrd. 109-835, at 20 (2007)("Being labeled 'uncooperative' also drastically increases the likelihood that a company will be indicted . . .").

[6]385 U.S. 493 (1967).

[7]*Id.* at 497.

[8]541 F.3d 130, 152 n. 11 (2d Cir. 2008).

[9]*Connolly,* slip op. at 3.

[10]*Id.* at 26.

[11]*Id.* at 4.

[12]*Id.*

[13]*Id.* at 5.

[14]*Id.* at 12.

[15]*Id.* at 4.

[16]*Id.* at 7.

[17]*Id.* at 6-8.

[18]*Id.* at 13.

[19]*Id.* at 6-7.

[20]*Id.* at 19-22.

[21]*Id.* at 24.

[22]*Id.* at 23.

[23]*Id.* at 29.

[24]*Id.* at 40-41.

[25]*Id.* at 29.

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months will be to keep reaching out to new members to see who has the time and interest to help out with the Section's projects. And I'd like to continue to work (as time allows) on efforts to develop better ways for the federal courts to deliver just results for plaintiffs representing themselves, who very often bring civil rights claims. Giving both these plaintiffs and the federal courts some help on these sometimes complex and difficult cases is a worthy goal.

These are goals to continue to work on. But for now, let's reflect on a good year, and look forward to the next. Happy New Year from the Civil Rights Section, and I wish you all the best for 2020.

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The court enjoined Ohio from imposing different absentee ballot request deadlines on late-jailed voters and late-hospitalized voters. The state has appealed. Case No. 19-4112. Although the Sixth Circuit denied a stay, it ordered expedited briefing in January and February so that the case can be decided in advance of Ohio's March 17, 2020 primary.

Voting rights for pretrial detainees is no trivial matter. Our expert witness in *Mays* estimated that roughly 1,000 eligible and registered Ohio voters found themselves behind bars and unable to cast a ballot in each of the last four federal general elections. And that's just one state. Jail voting is such a pervasively neglected right that the aggregate consequences of noncompliance with the Constitution must be severe. Moreover, biases and disparities in criminal law enforcement mean that these violations hit communities of color and low-income voters hardest.

More litigation is needed. We are actively building cases and are eager to work with local counsel around the country. Where state and local officials are willing, litigation may be unnecessary and solutions are at hand. One model is the landmark legislation enacted in Illinois last year, SB 2090, which requires that Cook County Jail become a temporary polling place at election time and that all other counties make arrangement for absentee ballot voting. Grassroots groups like Chicago Votes were at the center of the legislative push and are working with government officials to make the reforms a success. Dēmos is committed to this work and welcomes the partnership of anyone interested in building a more inclusive democracy.

Chiraag Bains is the Director of Legal Strategies at Dēmos, a think-and-do tank dedicated to building a just, inclusive, multiracial democracy. From 2010 to 2017, he served in the Justice Department's Civil Rights Division, as Senior Counsel to the Assistant Attorney General and as a prosecutor in the division's Criminal Section. Follow him on Twitter at @chiraagbains.

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Call for Articles for the Civil Rights Insider

The editors of The Civil Rights Insider invite submissions for publication. Publication allows you to announce your latest win (or loss,) publicize a successful appeal that offers a valuable precedent, share a local phenomenon in the law that may have national implications, invite others to a conference that will be addressing novel issues of civil rights law, provide your personal take on a recent Supreme Court decision and its implications for your practice, or highlight a member whose work you believe should be acknowledged. We welcome your contributions as well as suggestions of subjects that should be addressed so that the newsletter serves us all.

Articles need only be between 500 – 1000 words. If interested, contact Steve Dane, Dane Law LLC, at sdane@fairhousinglaw.com.

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