

INCARCERATION AND THE LAW

CASES AND MATERIALS

Tenth Edition

Excerpt (p. 457-58)

This piece is by a person who spent nearly sixteen years incarcerated in Illinois for a crime he did not commit. After diligently teaching himself the law, Blackmon litigated his case pro se in the district court. He was later appointed counsel for his appeal; his conviction was ultimately vacated, and the state dropped all charges. Today, he works as a civil rights litigation paralegal.

ERIC BLACKMON, LITIGATING FROM THE INSIDE

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In my 16 years in prison the hardest and most challenging thing to do was fight. Not fight in the sense of having a physical brawl, because that's easy; in fact many consider that an inevitable part of prison. What I mean by fight is litigate in court, civil or criminal, for trial or appeal. These are some of the hardest and most taxing parts of prison, more so than the time, degradation, lack of basic needs, and separation from family and friends. Many may find that unbelievable but I'll try my best to highlight what makes these things so hard to navigate.

First and foremost, most of us trying to litigate from behind bars are ill-prepared to step into a courtroom from the beginning. Many of us come from impoverished neighborhoods with less than adequate schools, thereby putting us far behind at the start. Although most of us can read and comprehend with no problem, reading and understanding the law presents its own set of challenges. Initially our way of thinking and analyzing cases and the law come from a different perspective as well—most of us are emotionally driven when trying to prove our innocence or obtain a basic right, and that clouds our vision. So we're extremely far behind before ever taking and reading our first case.

The next set of hurdles we encounter while trying to litigate from the inside is the lack of time and resources provided by the prison. In the prisons where I was housed, we usually got law library access only one day a week for about an hour or so. Sometimes we did not even get that hour because of lockdowns, other people needing to go to the library that specific week, or any of the plethora of other reasons that may prevent you access—and believe me, there are many. Sometimes you may only get to go once a month or every two weeks for that hour. So the time that we're afforded access is not adequate to fully research and prepare any sort of sufficient argument, pleading, or filing.

There are other problems with the materials that are in the library. In the prisons where I was housed, libraries were sparsely funded and had few books, if any. The books they did have were usually outdated or damaged. With no computer access, that's all that we had to work with, and it's safe to say we weren't at all prepared or knowledgeable about new laws or recent rulings. How we managed to even survive or understand the most basic litigation requirements is a surprise to me given the sheer lack of access to everything we experienced.

The other overpowering force that we must try our best to overcome is the requirements put in place by the statutes such as the Antiterrorism and Effective Death Penalty Act (which severely restricts the right to habeas corpus) and the Prison Litigation Reform Act (which creates many additional obstacles to litigating while incarcerated). So many times we are required to have some documentation, or form, or response that we rarely have within our grasp

or control. Being incarcerated often puts us at the mercy of others, many times the prison officials, which rarely if ever have our best interest in mind. I could tell you of a number of stories where a guy is waiting on affidavits or responses to grievances that never come although we're sure we have done our part to insure that they arrive in a timely fashion. Even worse is when prison officials actively sabotage your efforts by throwing away your documents or mail. Sometimes we are even given misinformation or outright lied to about the process or the way things should be done. These seemingly small things can be devastating to a case, even more so when they are done to a person proceeding pro se.

It's said that all pleadings done by a prisoner pro se are to be "liberally construed," but you shouldn't be surprised to find out that that rarely is the case, especially if there's something we're missing or a step we forgot. The courts are definitely unforgiving in that respect, which puts us up against nearly insurmountable odds.

With all of this said, it says something about the few guys and few cases that are pro se that are able to proceed further and succeed. My hat goes off to those valiant few that have been able to do the almost unimaginable.

The funny thing is that the problems and odds we face have a good effect by creating a sort of sub-culture in prison amongst those seeking legal advice and help. The lack of resources has forced guys who would have otherwise been enemies to band together and share knowledge, books, cases, briefs, and anything that may help their cases. Some have gone on to argue successfully before some of the highest courts, others have even written and changed laws. So the lack of resources, while holding us back, has not been able to stop us. We have and will continue to fight, even though we know that the odds are stacked against us, and we celebrate every victory no matter how small because we know the true meaning of litigating from the inside.