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OCTOBER 10, 2003
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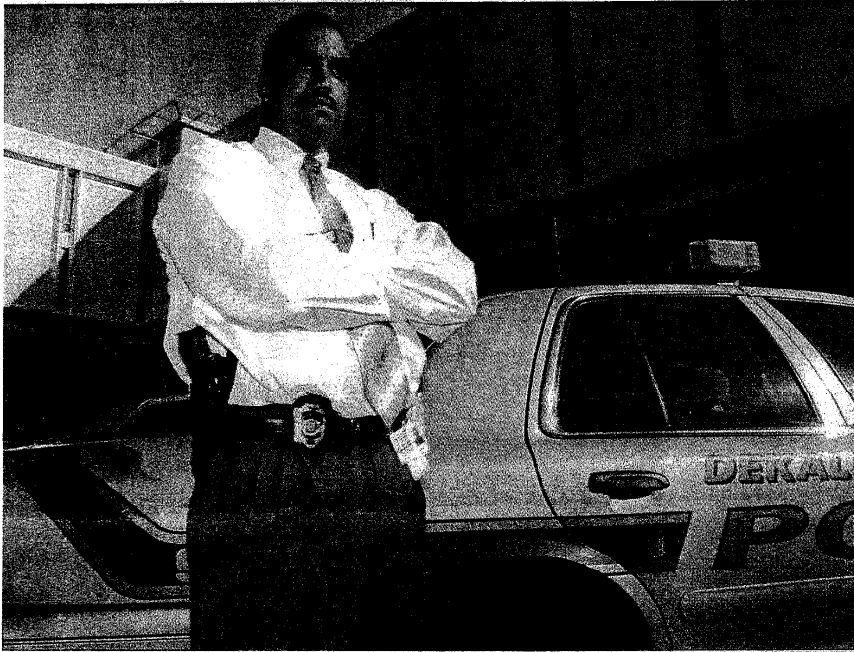
DAILY REPORT

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FULTON COUNTY DAILY REPORT

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ALISON CHIRCH

DeKalb Detective Sgt. Kyla Jones said Nuwambians intended

GSU LAW PROF SPARKS TRAFFIC COURT REFORM, FREES INMATES

Man spends several days in jail for improper bicycle equipment

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law professor and the Georgia Justice Project took up their cause with city officials.

Four inmates accused of minor traffic violations and who had spent an average of seven days in jail were set free from the Atlanta jail Wednesday night after a

The inmates hadn't received a probable cause hearing within 48 hours, as required by law on all

See JAIL, Page 5

Judge Vows No More Than One Day in Jail for Minor Violators

JAIL, from page 1

warrantless arrests, and were being "illegally imprisoned," the activists said.

Calvin S. Graves, chief judge of the City Court of Atlanta, reacted quickly by calling a meeting of court and corrections officials. He said a new system was put in place this week that should ensure defendants charged with minor offenses won't spend more than a day in jail.

The inmates' plight came to the attention of Georgia State University law professor Clark D. Cunningham and Georgia Justice Project Executive Director Douglas B. Ammar.

Cunningham, who joined the faculty in 2002 as an ethics professor, followed 24 inmates charged in September with minor traffic or pedestrian violations, most of which carry no jail time and maximum fines of \$101. One inmate was charged with riding his bicycle without the proper equipment.

Cunningham found that nine of the 24 inmates he tracked had spent an average of seven days in jail. One was held as long as 12 days without a probable cause hearing.

Labeling it "illegal imprisonment," Ammar and Cunningham sent a letter Wednesday to Mayor Shirley C. Franklin, Police Chief Richard J. Pennington, Graves, Corrections Department Chief Thomas J. Pocock and City Attorney Linda K. DiSantis.

Ammar and Cunningham demanded the immediate release of the nine inmates and challenged the city to change the way it handles those imprisoned for minor traffic violations.

According to Pocock, four inmates were released Wednesday night and the other five already had been released.

According to Pocock and Solicitor General Joseph J. Drolet, who also attended the meeting called by Graves, the city agreed that none of the inmates should've been held for more than 48 hours without a probable cause hearing.

However, the city doesn't have procedures for probable cause hearings, Drolet and Graves said in separate interviews.

That's because it's so expensive to have the police officers, a public defender and the solicitor at the jail to hold those hearings, especially in cases involving minor traffic violations, they said.

Drolet and Graves said they were aware of the problems, but Graves said there's no excuse for a person to serve several days in jail for a bicycle violation, which occurred in one of the cases that Cunningham brought to the



GSU Prof. Clark D. Cunningham tracked 24 inmates at Atlanta jail.

attention of city officials.

"That's absolutely unacceptable," Graves said.

Graves and Drolet said they have been trying to improve the system to prevent such occurrences. Drolet attributed part of the problem to a lack of technology that would allow information to be shared among the courts, the solicitor's office and the corrections department.

Drolet said he'd like to be able to pull up a report on a daily basis that would tell him who is still in jail after 48 hours. Currently, he can get that information only by going to the basement in City Hall and accessing a report from the city's mainframe computer.

However, Pocock, who's in charge of processing and caring for inmates while they're in custody, said Drolet can get a daily printout of who's been jailed. The basic technology is already in place, Pocock said.

Pocock said the real problem is that the court and the solicitor's office aren't providing for the probable cause hearing, a right that was affirmed by the U.S. Supreme Court in *County of Riverside v. McLaughlin*, 111 U.S. 1661 and 1664 (1991), which Cunningham and Ammar cited in their letter.

"I agree the courts and solicitor either need to provide the elements in that hearing that satisfy the *Riverside* decision or we need to release the inmates," Pocock said.

Under the new procedure, minor traffic and pedestrian violations cases will be heard within 24 hours and more serious offenses within 48 hours, said Pocock. Those charged with minor violations who have already spent a day in jail will be credited for time served and their case will be disposed of.

Or they could be released with a traffic citation.

Those charged with more serious offenses would have their first appearance hearings on the second day of incarceration in order to give the solicitor and the public defender offices more time to have someone in court.

Pocock said the corrections department processes about 35,000 inmates a year at the city jail, and 47 percent of them are released on bond. Those who can't make bond are usually poor, he said.

Graves agreed. He said the bulk of those in jail are the homeless or the poor. "And they deserve the same treatment that all of us deserve, and we need to give this special attention," he added.

Cunningham stumbled across this issue accidentally. He was doing research to help the Georgia Supreme Court's Commission on Indigent Defense understand the state's obligations under *Alabama v. Shelton*, 122 U.S. 1764 (2002).

Shelton requires courts to provide lawyers to the poor for any low-level offense that carries even the slightest possibility of jail time, including traffic offenses.

Cunningham, GSU's W. Lee Burge Professor of Law and Ethics, has an endowed chair and grant money that allows him to carry a lighter teaching load so he can investigate ethical issues. Cunningham volunteered at GJP in order to get a ground-level view of how the court handles indigent defendants.

One of his clients in a probation revocation case "disappeared," said Cunningham. After calling DeKalb and Fulton jails, he finally found the client at the Atlanta jail, where he'd been imprisoned for eight days after being charged with riding his bicycle on the sidewalk.

The client said he hadn't had a probable cause hearing. Cunningham then went to first appearance hearings at the jail and talked to Graves, who confirmed the city didn't have a process for probable cause hearings at the jail. Cunningham then filed the open records requests and monitored the cases.



CATHERINE LOVERE/DAILY REPORT

Judge Calvin S. Graves said most of those in jail are homeless or poor.

Graves commended Ammar and Cunningham for playing the role of watchdog.

"Everyone's concerned about it, but no one was looking at it," said Graves. "No one's been watching over the rights [of those incarcerated] and that's what a professor of ethics should be doing," Graves said. "And we thanked him for doing that."

Graves has called a follow-up meeting with the chief of police next week to discuss why minor traffic violators are being sent to jail.

Cunningham was pleased with the swift action, and said, "I suppose no one really treats these [minor offenses] as crimes, but violators are being punished as criminals. ... It's wonderful to think you can write a letter to officials and get a change that way." □

UPCOMING Events

OCT. 11-18: Caribbean Seminar: Georgia Automobile Law, Including Tort Law. Sponsored by the Institute of Continuing Legal Education in Georgia. Seven-night cruise on Holland America's M.S. *Zuiderdam*. Six CLE hours. Call (800) 422-0893 or (770) 466-0886.

OCT. 13-17: Divorce Mediation Training. Sponsored by Resolution Resources Corporation. Approved for 40 CLE hours, including three ethics hours and 40 trial practice hours. Call

Nicole Horton at (404) 225-9800 or (800) 745-2402.

OCT. 16: Taking a "Killer" Deposition: Sponsored by the Institute of Continuing Legal Education in Georgia. 8:45 a.m. to 4:30 p.m. at the Hilton Atlanta Northeast. Six CLE hours, including six trial practice hours. Call (800) 422-0893 or (770) 466-0886.

Information for this column may be sent to Events, Daily Report, 190 Pryor St., Atlanta, GA 30303.