

All Eyes On the Court: An Interview with Attorney and Federal Court Monitor Fred Cohen

by Todd Matthews

Most people familiar with prisoners' rights issues know attorney Fred Cohen as an advocate for juvenile prisoners and prisoners with mental health issues. They have also seen his byline in the *Correctional Law Reporter*, which he co-founded more than 20 years ago, and followed his work as a Federal Court Monitor in Ohio. But they may not know this about Cohen: He once dominated the boards in college basketball. Indeed, Cohen, as a starter for Temple University in 1956, set the record for most rebounds in an NCAA Tournament game by collecting 34 boards against the University of Connecticut. More than a half-century later, the record still stands.

As promising an athlete he was, Cohen was more interested in a different kind of court.

"When it became clear that I was not National Basketball Association material, I was looking at either being drafted to serve in Korea or going to law school," says Cohen. He arrived at the latter, and went on to teach law at Denver University and the University of Texas. He also helped found a graduate school in criminal justice at SUNY-Albany, and published, edited and wrote articles on prisoners' rights.

"I was motivated by a powerful belief that there were too many people in penal facilities, usually for far too long, often for the wrong reasons," Cohen explains. "People who left worse -- more criminally inclined -- than when they went in. This, of course, is no grand discovery but it was my motivating force."

PLN recently spoke with Cohen about his interest and work in prisoners rights issues.

PRISON LEGAL NEWS: You graduated from Temple Law then Yale Law School, taught at a number of law schools, and went on to co-found the Graduate School of Criminal Justice at the State University of New York (SUNY) in Albany. How and why did you become interested in pursuing a career in law? What circumstances led you to SUNY, where you are now Professor Emeritus, and what was the motivation for helping to start the university's Graduate School

of Criminal Justice?

FRED COHEN: I received my first law degree at Temple and a graduate law degree in 1961 from Yale. From Yale, I went into teaching law, beginning at Denver University, and then to the University of Texas, a great law school. I left Texas, after much cajoling, to help found the first "real" graduate school in criminal justice. A law component I developed would help distinguish SUNY at Albany from a "mere" criminology program. The prospect of melding legal studies into a study of the causes and responses to crime is what motivated me. Sadly, SUNY School of Criminal Justice has just about eviscerated the law component and the "planned change" component, becoming just another good program, it seems, in criminology.

PLN: Much of your work has focused on juvenile inmates and inmates who have mental health issues. You have been publisher and editor of the *Juvenile Correctional Mental Health Report*, and wrote a two-volume treatise entitled *The Mentally Disordered Inmate and the Law*. How and why did you become interested in those areas? Has your work affected change in the way juvenile inmates and inmates who have mental health issues are treated in jails and prisons? If so, in what ways? What other work needs to be done, or issues need to be addressed, in these areas?

COHEN: Well, I was always interested in deviance and the law generally and studied Psychiatry and Law with Joe Goldstein and Jay Katz at Yale. Criminal law courses in law school were essentially formal, substantive law courses and I wanted to expand my knowledge into sentencing, probation, parole, jail, prisons, and the like. I wanted to know more about the "why" of crime and not just the "what." In the 1960s, correctional law as a subject area was invented by National Council on Crime and Delinquency's Sol Rubin and was just emerging. So, my interest in mental illness, criminal law, and correctional law combined and I taught courses in those areas, created internships, and consulted with all the Presidential Commissions of the 1970s. It took awhile for me to find a way to move

from teaching, consulting, research and writing to real world advocacy and system change. I don't mean to say I did not visit jails and prisons as a way to inform my research and teaching. I did. But only later as a consultant to activist attorneys, several correctional agencies, and then as a federal court monitor, beginning in 1994 in Ohio, was I able to help create change on the ground.

PLN: You were, then, a court-appointed monitor for mental health services in Ohio's prisons. What was the scene like for Ohio prisoners with mental health issues when you started in that position? How were conditions improved when you left five years later?

COHEN: As Federal Court Monitor, 1995-2000, in *Dunn v. Voinovich*, I helped dramatically change mental health care in Ohio's prisons. Access to care was revolutionized, the officer culture and understanding of mental illness changed, prisoners became people with a constitutional right to care for their serious illness. Prior to *Dunn*, prisoners with mental illness wasted away in segregation. Their illness led to misconduct that led to segregation and further deterioration. We got them out, into residential treatment units, hospital settings -- we got them decent care. Obviously, one does not do this alone. We had Reggie Wilkinson as director, Sharon Aungst as Ohio's health director, Kathy Burns, M.D. as Ohio's psychiatric director, Jeff Metzner as my psychiatric expert, and other terrific people. I developed what came to be called "collaborative monitoring." Monitoring for me became both oversight and consulting. It was -- and is -- not simply "gotcha -- go fix it." I do not just do, "This is not in compliance or this is not proper." In my monitoring, we say we will work with you to help fix a problem. From 1995-2000, *Dunn* drove reform in Ohio but now with no Court Order and a terrible economy, I hear that prison mental health care there is slipping.

PLN: What kind of monitoring work do you do today?

COHEN: I am now the Federal Court Monitor in *S.H. v. Stickrath*, an Ohio case involving all of their juvenile facilities. It is perhaps the most ambi-

tious, litigation-driven, juvenile reform effort in the nation. Our mandate is to greatly enhance safety, rehabilitation programs, and treatment for delinquent youth while steadily reducing institutional size in favor of community corrections and more sophisticated aftercare. The S.H. Stipulation has insulated Department of Youth Services from budget cuts. Two facilities have been or soon will be closed. The youth population is down from about 1,800 to some 1,200. Services are expanding, mental health care is increasing -- over half the DYS youth are on the mental health caseload, with the girls at around 80 per cent. This is a very damaged, very needy, very difficult to work with population. But change is beginning to take hold. I am very proud of this and my terrific team of experts. We have had to deal with obstructionist tactics from the Department of Justice, who has a separate agreement covering only a single facility and the federal interest apparently is to monitor me and ignore the youth. They squander precious resources with at times four lawyers growling at me for what I supposedly haven't done. State and DYS officials and class counsel, especially civil rights

attorney Al Gerhardstein of Cincinnati, on the other hand, have been great.

PLN: What is the *Correctional Law Reporter* and how has it affected conditions in prisons and jails? How does the *Correctional Law Reporter* compare to *Prison Legal News*?

COHEN: The *Correctional Law Reporter (CLR)* is over 20 years old now. Bill Collins and I started this newsletter as a vehicle to report on correctional law in a way that is accessible to non-lawyers while also being useful to lawyers. Our subscribers tend to be corrections professionals who have a budget allowing them to subscribe, advocacy organizations, Attorneys General, criminal justice practitioners, and academics. Sadly, the cost of *CLR* prohibits a broader prisoner readership, although we do publish articles written by prisoners. Neither Bill nor I control costs or prices. *Prison Legal News (PLN)* is much more widely distributed and presumably read, certainly in penal facilities, and its writers do a terrific job with legal material, particularly since they tend not to be trained in law. I have used some *PLN* authors in the newsletters I edit. I write, in part, to alert the field to legal developments

that impose more duties on corrections officials and give more rights to the confined. I know that some of our articles have caused jails, for example, to rethink uniform strip search practices; prisons to do better suicide screening and prevention; rethink Supermax conditions and the mentally ill; and so on. 📖

Todd Matthews is a journalist based in Seattle Washington. This interview is part of PLN's ongoing series of interviews with the lawyers who have dedicated their careers to representing prisoners.

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