

No. 33347

State of West Virginia ex rel. Regional Jail and Correctional Facility Authority v. County Commission of Cabell County, West Virginia; Bob Bailey, as President; W. Scot Bias, as Commissioner; and Nancy Cartmill, as Commissioner

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OF WEST VIRGINIA

Starcher, J., concurring:

I reluctantly concur with the well-reasoned majority opinion and the relief awarded therein. I write separately to point to several related issues that the Legislature should take up – along with looking at the daily “room rate” paid to the Regional Jail Authority by our counties’ taxpayers.

First, the creation and history of West Virginia’s Regional Jail “Authority” is an unfortunate example of an anti-democratic trend in American government. The great innovator in this area was the late Robert Moses, who masterminded a system of transportation “Authorities” (for building bridges and highways) in New York State that were answerable to no one -- but controlled billions of public dollars. Using the archaic purported prohibition against public borrowing as an excuse for their creation, these “Authorities” (which are in many ways like the Regional Jail Authority) can become laws unto themselves, orchestrating multi-million-dollar deals that benefit powerful political forces – but effectively outside the control of local and state elected officials, and ultimately, the voters.

No wonder democratically-elected West Virginia county governments chafe in their relationship with the Regional Jail Authority – their only “right” is the right to “pay

up” as much as the Authority says!¹ The Court’s opinion clearly points out that the democratically-elected Legislature has come close to entirely abdicating its duty to see that the RJA is both funded and operated in an efficient and fair fashion. There should be no “blank checks” for the RJA. County commissions cannot continue to send to the RJA signed checks with blanks in the “amount lines” that are to be filled in by RJA administrators.

The Legislature had better step up and restore some balance – or taxpayers will rightfully revolt! It was not long ago that one of our more rural counties could not meet its payroll for county employees because of excessive monies it had to pay to the RJA.

Second, it should be noted that West Virginia has absolutely no need for the number of jail and prison beds it has now (much less an increase). Crime rates are down in our state. Most new admissions to jails and prisons are for nonviolent offenses. And, a substantial portion of jail and prison inmates are there because of their untreated mental illness.

The result is that our regional jails are overcrowded, but the truth is that for the same or less money, many of the current inmates could be safely punished or safely managed (with intensive supervision) in the community – punishment that should be weighed heavily with public service work, like cleaning highways, parks, streams, etc. Sadly, too many prosecutors seek and judges impose long prison and jail sentences out of fear, anger, and re-

¹I very much respect the hard work and integrity of the people who work in our regional jails, all too often for very modest wages. I believe these dedicated public employees should be paid well to protect us from (and try to rehabilitate) the dangerous offenders whom we cannot safely punish and manage in our communities.

election concerns – not common sense or a compelling concern for public safety. And the bottom line is again that county commissions (with ordinary citizens’ tax monies) have to “pay up” – due to sentencing decisions that the commissions did not make. This situation *cries out* for Legislative attention.

Third, let’s not forget that *when it comes to locking people up, race matters*.

The percent of jail and prison inmates who are African American is hugely higher than the African American percentage in West Virginia’s population. And for the same offenses, black West Virginians receive much harsher sentences.² To *not* recognize this is to turn a blind eye to the truth. The Legislature should take a hard look at this situation, too.

Having made these points, I reluctantly concur.

²Several years ago this Court formed a Task Force to Study Perceived Racial Disparity in the Juvenile Justice System in response to a Petition for Promulgation of Rules and Standards to Ensure Equal Treatment in the West Virginia Juvenile Justice System. The Petition was filed by several prominent West Virginia lawyers, including West Virginia University College of Law Professors Robert M. Bastress and former Supreme Court Justice Franklin D. Cleckley, and was based, in part, on a 2001 report titled *Minority Youth and Juvenile Justice in West Virginia*. The report that was funded by the Board of Church and Society, West Virginia Annual Conference, United Methodist Church.

The Task Force met numerous times and considered its assigned charge, but no report has yet to be produced by the Court. Inasmuch as a majority of this Court voted to deny me my scheduled rotation as Chief Justice for the year 2007, I have been unable to help bring this Task Force’s work to a resolution. Sometimes, and for some people, the continuing problems of the color line in America are more easily “swept under the rug” than confronted. But we all pay a price for this mistake.