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In Cook County, you can be found not guilty, and still go back to jail

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Brian Otero spent nearly two years in Cook County Jail waiting to go to trial for a burglary. The jury found him not guilty, but he didn't get to leave the courtroom like they do on TV. No, he was brought back into the Cook County Jail to be "processed" out. He was put in a small cell just off the front of the courtroom, to eventually be brought back into the jail.

Now remember, at this point, there are no charges against Otero, yet he's being detained against his will because that's just how we've always done it in Cook County. Defendants who have been held in jail awaiting trial are brought back into the jail. They can be handcuffed, searched, and locked back up in their cell even though there are no charges against them.

Sheriff Tom Dart and county officials are doing little to change the seemingly unconstitutional practice and that could cost taxpayers millions

"Free" man

On his way back into the jail after acquittal, Otero was put in a holding cell with a number of other inmates and three men attacked him.

"They approached me and asked me, 'Did you win your case, are you going home today?'" Otero said in an interview in his attorney's Loop law office. "Upon me saying 'yes' one of them swung at me and when he swung at me the other two grabbed me and they started hitting me all over my body."

Otero says two of his friends were in the same bullpen, and they pulled his attackers off but he had a busted lip and a sprained hand.

"To this day I got a torn ligament in my hand, but I did not seek or ask for no medical attention. I

just let it be because I was just trying to hurry up and get out as fast as I can,” said Otero.

Otero was eventually brought back to his cell, to wait. Ten hours after he was acquitted he was finally released from the jail.

“When I walked out the front gate from division 5 onto the streets, it was 4 o’clock in the morning.

Presumed innocent

“Mr Otero, when he walks into that trial is assumed innocent, right? And then he is found innocent, so the system ought to be better prepared to do this,” says Otero’s attorney Mike Cherry.

Cherry is suing Cook County and Sheriff Tom Dart on behalf of Brian Otero and other detainees. He says he thinks the practice of jailing people when they’ve been found not guilty would offend most Americans’ sense of justice. On top of that, he says, it doesn’t happen to people with money. It happens mostly to poor people, people who were in jail before trial because they couldn’t afford to post bond.

“Basically the lawsuit challenges as unconstitutional this process that happened, because it denies him his freedom,” says Cherry. He says when Otero was acquitted he should have been released.

Sheriff Tom Dart, who runs the jail, says he wishes that were case too.

“We’re trying to get people out of the jail as quickly as possible for a myriad of reasons, whether it’s just general overcrowding issues, potential liability issues, everything,” Dart said in an interview with WBEZ in May of this year.

The sheriff didn’t have a solution for the problem then, but said, “I do think that probably in the next few weeks some of these limited cases, the limited ones, we probably can come up with some things, so if you circle back, you know in the next couple weeks, we could have something on some of them.”

I circled back, and I circled back again. Weeks turned into months and so far the grand solution is riding on two personal computers in the basement of the courthouse in north suburban Skokie.

Skokie pilot program

Cook County has one jail but a number of courthouses, so every morning buses leave the jail at 26th and California on the city’s Southwest Side, filled with detainees who have hearings at courthouses around the county. In Skokie, a bus from the jail drives into a secure garage in the basement. The detainees are nearly silent as they file two by two, handcuffed together, off the bus and past an officer who checks them in.

The new computers here emit beeping sounds every time an officer scans a detainee’s I.D. card. The two computers are the start of a plan to finally digitize some of the paperwork in the jail, and a spokeswoman for Dart say it’s possible that the update could potentially, one day, possibly allow people to be immediately released from courtrooms when they’re acquitted.

But I ask Kelly Jackson, the chief of the civil division for Sheriff Dart, how long that will take?

“I couldn’t even answer that for you. I have no idea,” Jackson said. “Skokie’s operating right now but it’s the only one of the 17 court facilities that are doing that. There would be no way to estimate if we could, when we’ll finish rolling it out everywhere, and where our legal department and the state’s attorneys office will take us with that.”

A spokeswoman for Dart says starting this week they’re going to allow people found not guilty to leave from the Skokie courthouse. They still won’t be walking right out of the courtroom, but at least they won’t have to go back on the bus to the jail at 26th and California. It’s a start.

A court system stuck in past

But even if the sheriff’s office makes the technological leap to the 1990s in all 17 courthouses, the rest of the Cook County court system under Clerk of Courts Dorothy Brown is pretty solidly stuck in the 70s. The whole court system is paper and carbon copies. That presents a problem for Lt. Charles Luna when he’s supposed to release someone from the jail.

“We’re still using carbon paper in the courts, so the clerks actually write on the mittimuses that are carbon paper, actually, the duplicates, so in order to transfer the records to the jail, it’s actually in triplicate I believe, because one is kept in the court in the clerk’s office and then two are sent to the jail for our purposes,” says Luna. Whatever the case, it’s a lot of paper and before Luna lets an inmate out of the jail he has to organize and verify the inmate’s entire court file, which can be several inches thick with those carbon copies.

“At times it can be like looking for a needle in a haystack,” Luna said.

But that doesn’t do anything to sway attorney Mike Cherry, who is suing Cook County on behalf of Brian Otero, the guy at the beginning of the story who was found not guilty and then taken back into the jail where he was assaulted. “I don’t have one ounce of pity when a system says I’ve got to take advantage of someone because it’s too complicated for me to protect the innocent. That’s crazy,” says Cherry. It’s also potentially very costly.

Ten years ago Los Angeles County had to pay out \$27 million to people who’d been held in the jail after they were acquitted.

While it’s Sheriff Dart who is detaining people, it’s Cook County State’s Attorney Anita Alvarez who tells Dart what he needs to do to comply with the constitution. For two weeks Alvarez’s office has failed to provide WBEZ with any explanation as to whether the current practices are constitutional, or what her office is doing to ensure Cook County doesn’t have to pay out millions in settlements arising from this practice of detaining people after they’ve been found not guilty.

Attorney Mike Cherry says he hopes his lawsuit is expensive enough that it finally forces the county to do something.