

MEMORANDUM

TO: Interested Parties  
FROM: James B. Gottstein  
DATE: December 14, 2001  
RE: Rodney Yoder

**PURPOSE AND SCOPE**

C. Rodney Yoder has been held in Chester Mental Health Center under a series of involuntary admission orders since July 12, 1991, commencing immediately after the completion of a sentence for assault. See, *Yoder v. Patla*, 234 F.3d 1275, 2000 WL 1224576, p. 2 (unpublished), (CA7 2000). As set forth below, the facts and circumstances suggest that Mr. Yoder may be improperly held at Chester and his rights while being held at Chester routinely violated. The purpose of this Memo is to present the factual and legal situation of Mr. Yoder in an attempt to help him obtain the assistance of a well-qualified Illinois attorney he can work with<sup>1</sup> to vindicate his rights. A significant number of documents have been reviewed and there have been conversations with a number of people. Since Mr. Yoder has been involuntarily held for over ten years, the record is voluminous and a large number of people have been involved with Mr. Yoder. No attempt has been made to exhaustively review this record and interview all potential witnesses. Nonetheless, it is believed that this memo fairly presents the situation.

**LAW**

**1. Involuntary Commitment Standard**

A person may be involuntarily committed to a mental institution in Illinois (i.e., being a "person subject to involuntary admission") under the following criteria:

(1) A person with mental illness and who because of his or her illness is reasonably expected to inflict serious physical harm upon himself or herself or another in the near future; or

(2) A person with mental illness and who because of his or her illness is unable to provide for his or her basic physical needs so as to guard himself or herself from serious harm.

405 ILCS § 5/1-119

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<sup>1</sup> An important aspect of such a representation is agreement between Mr. Yoder and his counsel on how to proceed at the outset. Mr. Yoder is understandably upset about the way he has been treated and his cases handled in the past by various counsel. Mr. Yoder no doubt needs to accept that his release will turn on factors he considers fallacious. His attorney will probably need to be sensitive to this and supportive of Mr. Yoder's views.

## **2. Procedures**

Under 405 ILCS § 5/3-800(a) "the respondent may request to have the proceedings transferred to the county of his residence." In *In re Muro*, 400 N.E. 2d 1042 (Ill. App. 1980), the court found that because the words "request to" were not present that once the respondent made a request for such a change in venue, that the court had to change the venue. In 1985, the statute was changed to add the words "request to" and it does not appear there are any subsequent cases interpreting this sentence. Without researching the legislative history for the change, it seems logical to assume the purpose of the amendment to add "request to" was to overrule *In re Muro*. On the other hand, since a respondent undoubtedly would have the right to request a change of venue without the statute, it makes no sense to even have the provision if it doesn't create the right to a change of venue because it renders the sentence meaningless.

We determine this intent by reading the statute as a whole and considering all relevant parts. We must construe the statute so that each word, clause, and sentence, if possible, is given a reasonable meaning and not rendered superfluous avoiding an interpretation which would render any portion of the statute meaningless or void. We also presume that the General Assembly did not intend absurdity, inconvenience, or injustice."

*Sylvester v. Industrial Commission*, 756 N.E.2d 822 (Ill. 2001) (Citations omitted)

Under 405 ILCS §5/3-800(c) involuntary admission hearings are open to the public unless a party requests they be closed. "The court shall not close the hearing if the respondent objects to its closure."

Under 405 ILCS§5/3-802 "The respondent is entitled to a jury on the question of whether he is subject to involuntary admission."

405 ILCS§5/3-804 provides in part:

The respondent is entitled to secure an independent examination by a physician, qualified examiner, clinical psychologist or other expert of his choice. If the respondent is unable to obtain an examination, he may request that the court order an examination to be made by an impartial medical expert pursuant to Supreme Court Rules or by a qualified examiner, clinical psychologist or other expert.

There appears to be a conflict between various Illinois state court districts whether this entitles a person to choose an independent examiner to be paid for by the state.

This court has held that in a proceeding for involuntary admission a respondent is entitled under section 3-804 of the Code to examination "by an independent psychiatrist appointed by the court and paid for by the State" . . . This is in contrast to the Appellate Court for the Fifth District, which has held that the requests of section 3-804 can be met by

appointment of a qualified examiner who is independent even if that examiner is an employee of the Department. [citation omitted]

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[T]his court has recognized the great value to a respondent of having an independent examiner. [citations omitted] We also adhere to the wisdom of the *Williams I* and *Williams II* opinions in requiring that the examiner not be an employee of the Department.

*In the Matter of Katz*, 642 N.22d 893, 896-7 (Ill. App. 1994). Thus, in the Third District, under 405 ILCS§5/3-804 a person has the right to an independent evaluation by someone other than a state employee, where in the Fifth District, where Mr. Yoder resides, one doesn't. This is confirmed in a case involving Mr. Yoder, *In re: Yoder*, 682 N.E.2d 753 (Ill. App 5, 1997).

Under 405 ILCS§5/3-805, the respondent has right to be represented by counsel and one will be appointed if the person is indigent. The respondent can waive counsel and represent him/herself if the court is satisfied the respondent has the capacity to make an informed waiver. In the state of Illinois Fifth District, Mr. Yoder is uniformly denied the right to waive counsel when he complains that the public defender is giving him short shrift and won't consult with him prior to the hearing, *In re: Yoder*, 682 N.E.2d 753 (Ill. App 5, 1997), while in the Southern District of the United States District Court for Illinois, he has been found to be very competent and therefore not entitled to the appointment of a *guardian ad litem*, *Yoder v. Patla*, 234 F.3d 1275, 2000 WL 1225476 (7th Cir.(Ill.) 2000).<sup>2</sup>

Under 405 ILCS§5/3-806, "No respondent may be found subject to involuntary admission unless that finding has been established by clear and convincing evidence. However, it has been held that a reviewing court will not reverse an order of involuntary admission unless the trial court's conclusions are against the manifest weight of the evidence, *In re Jakush*, 725 N.E.2d 785 Ill.App.4.Dist.,2000 and a decision to involuntarily commit a respondent should not be set aside unless the trial court's order is clearly erroneous, *In re David D.*, 716 N.E.2d 1245 Ill.App.2.Dist.,1999

Under 405 ILCS§5/3-813, a new involuntary admission order must be sought every 180 days.

A person subject to voluntary admission is also entitled to consideration of alternative mental health treatment settings and facilities under 405 ILCS§5/3-810 and 11 and a treatment plan under 405 ILCS§5/3-814. There are also numerous other provisions relating to the involuntary admission procedures and the respondent's rights thereunder.

### **3. Other Patient Rights**

A "recipient of services" has certain rights under Chapter II of the Illinois Mental Health and Developmental Disabilities Code, 405 ILCS 5/.

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<sup>2</sup> There is more on these cases below.

405 ILCS§5/2-100 provides that people don't lose their rights because they are admitted to an Illinois mental health facility.

405 ILCS§5/2-101 provides:

No recipient of services shall be presumed legally disabled, nor shall such person be held legally disabled except as determined by a court. Such determination shall be separate from a judicial proceeding held to determine whether a person is subject to involuntary admission or meets the standard for judicial admission.

405 ILCS§5/2-101 provides that a recipient is entitled to adequate, humane care and services in the least restrictive setting pursuant to a periodically reviewed individual services plan with the participation of the recipient.

Under 405 ILCS§5/2-103 a recipient is entitled to unimpeded, private, and uncensored communication with persons of his choice by mail, telephone and visitation. Since this provision was enacted prior to the Internet becoming a standard form of communication, presumably it would be interpreted to include the Internet. 405 ILCS§5/2-103(c) provides that this right to unimpeded communication can only be reasonably restricted in order to protect the recipient or others from harm, harassment or intimidation and then only if notice of such restriction is given to all recipients upon admission.

405 ILCS§5/2-104 provides that a recipient is entitled to possess and use personal property, which under subsection (a) can only be restricted when necessary to protect the recipient or others from harm, and then a notice of such restriction must be given to all recipients upon admission.

There are other rights set forth in Article I, Chapter II of the Illinois Mental Health and Developmental Disabilities Code, 405 ILCS 5/.

### **FACTS AND PROCEEDINGS<sup>3</sup>**

Mr. Yoder was convicted of aggravated battery on May 11, 1979, and sentenced to probation, which was revoked on August 28, 1979. He was released in 1983 when it was held that the Illinois Department of Corrections had illegally revoked his good time credits. See, *Yoder v. Hardy*, 451 N.E.2d 965 (Ill. App 5 1983). After his release Mr. Yoder's life included a job, family, and college for a period from 1983-1989. In 1989 he divorced his wife, however, they continued to live together. After drinking heavily, he had an altercation with her about her letting a person who was molesting his four year old son continue to babysit for the son that led to his arrest for battery. He pled guilty but mentally ill and began a 3 year sentence at Stateville

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<sup>3</sup> As Mr. Yoder has been held for over a decade and has vigorously attempted to assert his rights and obtain his release during that time, a full recitation of facts is not attempted. There have also been many lawsuits involving Mr. Yoder, but only those considered directly relevant will be discussed. Mr. Yoder himself has written much on his situation. Articles of interest are J'accuse! at [http://www.stopshrinks.org/yoder/yoder\\_story.htm](http://www.stopshrinks.org/yoder/yoder_story.htm), and How Psychiatry Destroyed My Life at [http://www.geocities.com/shrinkbusters/yoder/newstory\\_091201.htm](http://www.geocities.com/shrinkbusters/yoder/newstory_091201.htm).  
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Correctional Center. Shortly after incarceration, he sought to withdraw his guilty plea.<sup>4</sup> After complaining to the sentencing judge, he was moved to Menard Psychiatric Unit. While at Menard, a psychiatrist determined him not to be dangerous to self or others. He was found to be hostile and negative but "no indication of acute pathology" HRA Report 98-110-9009

Less than a month prior to his scheduled release on June 18, 1991 Mr. Yoder was sent to Menard Correctional Center Psychiatric Unit following a hunger strike over grievances. Mr. Yoder was transferred to Chester Mental health Center on June 26, 1991 and his first court order for Involuntary Admission was entered on July 12, 1991.

In December, 1991, a recommendation was made by a staff psychiatrist to transfer Mr. Yoder to a less restrictive environment, specifically Zeller Mental Health Center, a facility near his home and family. This did not occur. When the Human Rights Authority attempted to find out why it was unable to determine why the transfer did not occur. HRA Report of Findings No. 98-110-9009.

In 1994 in violation of 405 ILCS, *Sections* 5/2-100, 2-102, 2-104, 2-109, and 2-201 as found by Human Rights Authority Report of Investigation, Case No. 95-070-9011, dated September 14, 1995, Mr. Yoder was illegally placed in seclusion for failing to obey an illegal request of staff to remove a rubber band around his ponytail. The following are the findings of the investigation:

The incident involved the recipient named in the complaint and a unit staff person. The staff person ordered the recipient to remove a rubber band which held the recipient's hair in a pony tail. During the interview the recipient stated, "I knew rubber bands were not considered contraband." In reviewing *Notice to Recipients, Personal Property Restrictions*, the HRA discovered rubber bands were not one of the seventeen prohibited items, nor was it one of the five items to be used with staff supervision.

The HRA was denied a face to face interview, or a telephone interview, with the staff person involved in the incident. The only available documentation was a *Notice Regarding Rights of Recipients*, which was completed by the staff person involved in the incident. The staff person interpreted the recipient's movement up from a sitting position as threatening behavior, thus ordering seclusion for failure to remove the rubber band.

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The HRA has made several requests for additional documentation concerning the incident and also policy clarification on personal property/contraband from the assistant facility director. The facility does not respond and fails to return phone communications.

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<sup>4</sup> Mr. Yoder feels he was duped into pleading guilty but mentally ill.  
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In January of 1995, Mr. Yoder began voluntary admission and requested discharge in April, 1995. Mr. Yoder rescinded the discharge request, and in June, 1995, a transfer recommendation was proposed if he complied with all treatment goals. All treatment goals were met; however, he was not transferred, with the offered reasons that he met the standards for involuntary admission. Shortly after, he was transferred to a more restrictive Unit. The Legal Advocacy Service of the Guardianship and Advocacy Commission addressed the transfer to a more restrictive unit with a Chester Administrator who stated that the recipient had threatened to harm self and others. He stated that he had struck another recipient.<sup>5</sup> HRA Report of Findings 98-110-9009

In April, 1996 the Office of the Inspector General, in a formal written report found that an outside specialist should be hired to evaluate Mr. Yoder. In June, 1996, a date of July 26, 1996 was set for an independent evaluation from a specialist from Southern Illinois University School of Medicine. The proposed evaluation was not conducted on that date, but, Mr. Yoder subsequently received written confirmation from the Office of Inspector General promising an outside evaluation. Numerous dates were proposed, but the independent evaluation did not occur. Later, the Chester Administrative Assistant stated that he had no knowledge of the evaluation and that the evaluation was not going to happen. HRA Report of Findings 98-110-9009.

In Human Rights Authority Report of Findings No. 98-110-9009, the Authority found that Chester's treatment goals are "vague and unobtainable" and that while there may be professional disagreements regarding the least restrictive environment, that Chester had not "done all that is necessary to determine if the recipient is appropriately placed in a least restrictive environment." The Authority also states that Mr. Yoder's right to be placed in the least restrictive environment is an absolute one. Finally, the Authority found: "Although not listed in the allegation, it was noted during the investigation that two entries made in the recipient's chart appear to be judgmental and not behaviorally based." HRA Report of Findings 98-110-9009<sup>6</sup>

On May 26, 1996, Mr. Yoder had a trial on his complaint for discharge under ILCS 5/3-900. The denial of discharge was the subject of *In re: Yoder*, 682 N.E.2d 753 (Ill. App 5, 1997). The grounds for the appeal were (1) he had the right to an independent expert to examine him under 405 ILCS 5/3-804, (2) he had the right to a jury trial under 405 ILCS 5/3-802, (3) the court improperly found him unable to either waive counsel or represent himself, (4) he had established a *prima facie* case for discharge, and (5) he had ineffective assistance of counsel. The court held that (1) the right to an independent expert that the state had to pay for

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<sup>5</sup> In light of multiple proven instances of Chester staff fabricating such incidents, Chester's explanations should not automatically be credited.

<sup>6</sup> In its review, the Authority also mentions that it reviewed twelve letters written by Mr. Yoder, which had been characterized by Chester as threats and therefore proper grounds for whatever punitive measures it had imposed. The Authority, however, found, "Eleven of the letters expressed anger and discontent with confinement; however, one of the letters written in August of 1993 to a State Senator contained a threat of harm to the Senator or member of his staff." Mr. Yoder acknowledges that more than five years ago he engaged in a campaign of sending threatening letters to prominent people in an attempt to get transferred to jail with the prospect of eventually being released. He denies that he has made any threats for quite some time. This report also mentions a biting incident by Mr. Yoder. Mr. Yoder was asked about this incident and a recording of his Yahoo voice mail response can be found at <http://gottsteinlaw.com/yoder/Recordings/bitingincident.wav>.

was satisfied with an employee of the mental health system, (2) he did have the right to a jury trial, (3) while it would have been better for the court to have explored if Mr. Yoder was competent that since the court had a lot of experience with Mr. Yoder that it was not reversible error, (4) the unverified complaint was insufficient to establish a *prima facie* case, and (5) since the case was being remanded, it was not necessary to decide whether he had ineffective assistance of counsel.<sup>7</sup>

On December 11, 1998, Mr. Yoder sued Ann Patla, then Director of the Director of the Department of Mental Health and Developmental Disabilities under 42 USC §1983 in the United States District Court Northern District of Illinois challenging the conditions of his confinement and the process by which he was involuntarily committed. In furtherance of this, Mr. Yoder requested *in forma pauperis* status and the assistance of counsel. The court granted Mr. Yoder's motion for *in forma pauperis* status, and identified an attorney to help him. Over Mr. Yoder's objection, the case was transferred to the Southern District of Illinois and the attorney was relieved of the appointment. Once transferred, Mr. Yoder renewed his motion for appointment of counsel and, in the alternative, the appointment of a guardian *ad litem* because he had been declared incompetent by the Illinois courts. The motion for appointment of counsel was denied as well as the appointment of a guardian *ad litem* by the trial court because Yoder "maintained the ability to prosecute this action without the assistance of counsel." On December 4, 1998, a new judge in the case *sua sponte*, reconsidered the Northern District judge's decision granting Mr. Yoder *in forma pauperis* status, citing the "three strikes" provision of the Prison Litigation Reform Act (PLRA), 28 USC §1915(g). The court then vacated the order granting *in forma pauperis* status and dismissed the suit with prejudice.

This was appealed in the "unpublished" *Yoder v. Patla*, 234 F.3d 1275, 2000 WL 1225476 (7th Cir. (Ill.) 2000) The 7th Circuit was concerned with two issues: (a) whether Mr. Yoder was barred from filing *in forma pauperis* under the "three strikes" provision of the PLRA, and (b) whether he was competent enough to bring the suit or needed to have a representative appointed. The court of appeals held that the PLRA only applied to criminal prisoners and was not applicable to Mr. Yoder. The court further held that the district court should have inquired into Mr. Yoder's competency and directed it to do so on remand. Mr. Yoder reports that on remand, the trial court held that Mr. Yoder is competent, rescinded his *in forma pauperis* status in spite of the 7th Circuit's contrary holding, dismissed the complaint for failure to pay filing fees and the 7th Circuit court clerk will not file his appeal, presumably for the same reason.<sup>8</sup> At the competency hearing, Chester staff reportedly testified that they never have had any reason to question Mr. Yoder's competency and when presented with Chester's contrary testimony at his numerous involuntary commitment hearings, the judge reproached Chester for this inconsistency.

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<sup>7</sup> It appears that in most cases in Illinois, when a person prevails on appeal that he or she was improperly found to be subject to involuntary commitment, that the remedy is to send the case back to the trial court with timing being such that the person never actually gets any remedy.

<sup>8</sup> Mr. Yoder mainly communicates via yahoo.com voice mail in one minute chunks which vary in quality, so some of this may be garbled.

On April 6, 1999, as determined by the Illinois Human Rights Authority in its Report of Findings, 99-110-9025, dated September 21, 1999, a nurse at Chester wrote a fabricated account of a threat in Mr. Rodney's clinical chart:

The individual chart contained an entry made by the nurse on April 6, 1999, at 10:30 A.M. The nursing notes on this date and time are recorded as follows: "recip on pt/s phone @ this time. Informed the receiver angrily that 'I'm a human. If I could get my hands around your throat, if you ain't receiving my calls, you S.O.B. tell me so.'"

The Lawyer from Equip for Equality informed the Coordinator that the recipient had called his office on April 6, 1999 at 10:30 A.M. At that time the recipient spoke with his secretary. The secretary indicated that the recipient was polite in his conversation and made no threatening remarks, nor did he slam the telephone down. . . . Telephone records from Equip for Equality indicated that a collect call was accepted from Chester Mental Health Center on April 6, 1999 at 10:28 A.M.

#### HRA Report of Findings, 99-110-9025

On October 1, 1999, Chester staff again fabricated a threat by Mr. Yoder and placed it in his chart as documented by the following September 5, 2000, letter from Barry Lowry, Senior attorney for Equipped for Equality:

Dear Dr. Hardy:

This correspondence is written on behalf of Mr. Yoder and it is requested that a copy of it be placed in his records. On October 1, 1999 CMHC staff entered in Mr. Yoder's records an observation that at 3:45 p.m. Mr. Yoder spoke with our agency and threatened violence. Mr. Yoder did speak with our office at that time but at no time did he threaten myself or my secretary with violence. In fact, at no time has Mr. Yoder ever threatened me or my staff with violence. Why this improper entry was made I do not know but I request that it be removed or that this correspondence be placed in Mr. Yoder's chart at the place where the entry is made.

Please do not let the fact that this correspondence has been submitted nearly one year after the fact undermine its importance. This would have been submitted to you earlier had Mr. Yoder's records been timely provided to me pursuant to my properly submitted request for records.

In June of 2000, Chester illegally under 405 ILCS 5/2-104, confiscated a scanner and computer disks as determined by Human Rights Authority Report of Findings 01-110-9013, dated January 16, 2001.



On November 13, 2000, two computer disks were illegally taken from Mr. Yoder in violation of 405 ILCS 5/2-104 as determined by the Illinois Human Rights Authority in its Report of Findings 01-110-9016, dated May 14, 2001.

On or around May of 1991, a CD-ROM drive sent to Mr. Yoder was illegally taken from Mr. Yoder in violation of 405 ILCS 5/2-104 as determined Human Rights Authority Report of Findings 01-110-9023, dated June 19, 2001.

In late November 2001, another prisoner at Chester smashed Mr. Yoder's laptop computer, which has years worth of files and information on its hard drive. Mr. Yoder desires to have the hard drive sent a friend to recover the data from it. A number of people have requested the Chester administration to comply with this request, but Chester has heretofore failed to do so. James Robert (Bob) Poole, the Public Service Administrator of Chester (second in command), informed Mr. Cameron, staff attorney for Legal Advocacy Services that if Mr. Yoder would only put the request in writing it would be complied with. In spite of Mr. Yoder expressing skepticism that putting it in writing would accomplish anything, he did so, but the laptop was not released.

It is believed that the current involuntary admission proceeding under 405 ILCS 5/3-813 has been continued for quite a long time by current counsel; that a hearing has been scheduled for December 13, 2001, to handle a number of motions, one of which is a motion by current counsel to withdraw.

## CONCLUSION

E. Fuller Torrey, M.D., probably the most prominent proponent of involuntary mental health treatment says:

It would probably be difficult to find any American Psychiatrist working with the mentally ill who has not, at a minimum, exaggerated the dangerousness of a mentally ill person's behavior to obtain a judicial order for commitment . . . Thus, ignoring the law, exaggerating symptoms, and outright lying by families to get care for those who need it are important reasons the mental illness system is not even worse than it is.

Torrey, E. Fuller. 1997. *Out of the Shadows: Confronting America's Mental Illness Crisis*. New York: John Wiley and Sons. 152. Dr. Torrey also quotes Psychiatrist Paul Applebaum as saying when "confronted with psychotic persons who might well benefit from treatment, and who would certainly suffer without it, mental health professionals and judges alike were reluctant to comply with the law," noting that in "'the dominance of the commonsense model,' the laws are sometimes simply disregarded."

In light of this attitude of psychiatrists and other mental health professionals, and the examples cited above where Chester has demonstrably fabricated incidents involving Mr. Yoder, Mr. Yoder's protestations that Chester personnel are not reliable witnesses become quite credible. Mr. Chester's cynicism about the Chester Administration's good faith in any

particular instance is also quite understandable, if not justified. Similarly, Mr. Yoder is justified in being angry about his situation. His cynicism and anger also seems justified against a judicial system that will not allow him to discharge a do-nothing public defender because he is incompetent, yet refuse to appoint a representative in another case because he is very competent and then fail to do anything when faced with contradictory sworn testimony from Chester in these proceedings.<sup>9</sup>

In any event, it seems clear that, at a minimum, that Mr. Yoder's rights are regularly being violated by Chester and that he is not being afforded every opportunity to mount an effective defense and receive an impartial decision at his involuntary admission hearings. As to the former, it seems clear that the existing mechanism for protecting his rights is not being effective. The Human Rights Authority only has the authority to make recommendations, which Chester is apparently quite willing to ignore, while Legal Advocacy Services and Equipped for Equality, seem unwilling or unable to take the effort to the next level of legal advocacy. With respect to the involuntary admission hearings, it is clear that the relationship between Mr. Yoder and Chester staff as well as with the court has deteriorated to the point where his hearings are *pro forma* and his contentions are not adequately addressed.

The primary goals of any representation would be to (a) force Chester to follow the law with respect to Mr. Yoder's rights,<sup>10</sup> and (b) mount an effective legal defense at his next involuntary admission trial. It might also prove necessary to assert some rights in federal court, possibly through picking up the existing 1983 action in *Patla* if it is still alive.

It is hoped that this memo is helpful in setting the factual and legal framework in which Mr. Yoder has been caught and aids in furthering his need to obtain well-qualified Illinois counsel pursue his rights. There are a number of prominent psychiatrists and psychologists who are willing to help Mr. Yoder, but he needs to first obtain counsel. I am willing to help in the effort to the extent that I can from Alaska. I also have many other thoughts that can not be put in this memo because it is anticipated this memo will receive some distribution.

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<sup>9</sup> The record in the *Patla* remand has not yet been acquired to verify this.

<sup>10</sup> As part of this, Mr. Yoder should be allowed his computer and reasonable Internet access to enable him to communicate effectively.