

# **Social media campaign by former Post-Dispatch writer alleges mistakes in series about mistakes**

The “Jailed by Mistake” project published by the St. Louis Post-Dispatch this past fall had all of the earmarks of enterprising journalism in the public interest.

The series grew out of a letter that prisoner Dwayne A. Jackson sent the Post-Dispatch in January, 2012, complaining that he had spent three months in jail after St. Louis police picked him up on criminal charges against another Dwayne A. Jackson.

Jennifer Mann and Robert Patrick reported on the miscarriage of justice against Jackson, then started digging and filing Sunshine Act requests – all the while covering their daily beats. By the time the project went to press Oct. 27, the Post-Dispatch reported that 100 people had been arrested in error over the past seven years and spent a collective 2,000 days in jail.

In many instances, one family member with criminal trouble would use the identity of another family member or a friend. The aliases resulted in a welter of police and court records that were hard for police, prosecutors, judges and reporters to sort out.

The stories garnered national attention in Slate, which wrote: “The St. Louis Post-Dispatch has been doing some great work lately reporting on the number of mistaken-identity arrests in that city.” The St. Louis American praised the series and said it should win a Pulitzer. KTRS-AM morning host McGraw Milhaven interviewed Patrick for 15 minutes, saying the stories were

“scary stuff” and “great work.”

The series seemed to epitomize Joseph Pulitzer’s “Platform,” published every day in the Post-Dispatch, to “never tolerate injustice” and “never lack sympathy with the poor.”

But in the months since publication, a former Post-Dispatch editorial writer who went to work for St. Louis Mayor Francis Slay meticulously documented what he thinks were mistakes in the series about mistakes. The top Slay administration official, Eddie Roth, has gone about it in an unorthodox way: publishing a series of criticisms on his Facebook page running even longer than the original series.

The Post-Dispatch at first stood by its stories. Then, after Gateway Journalism Review published a story in November about Roth’s questions, the paper acknowledged an error. Cortez Cooper, whom the paper had cited prominently for having served 36 days in jail for a charge against his brother, turned out not to have served time.

St. Louis Circuit Attorney Jennifer Joyce joined the criticism. After auditing 10 percent of the Post-Dispatch’s 100 cases, she concluded that the paper had overstated the days wrongfully served in jail by 550. She said she assumed there were similar errors in the other 90 percent of the cases, which would substantially lower the number of days reported. In a Nov. 26 letter to editor Gilbert Bailon, she called for an independent audit of the stories’ accuracy.

Bailon said nothing about an independent audit in his Dec. 11 response. He provided the paper’s timelines on the cases that Joyce had singled out. He said the paper stood “ready and willing to correct any factual errors” but would need to see the documentation of the mistakes.

Joyce responded with a letter of her own stating, that she couldn’t make confidential records available to the paper: “...your reporters’ conclusions have a significant potential to

be inaccurate ... because they lack access to the information required for this analysis. ... The Post-Dispatch does not have the legal authority or legal access to the documents needed to verify the accuracy of the documents you are representing to the public.”

The letters between Joyce and Bailon concentrated on several cases where Joyce said prisoners were jailed for their own parole or probation problems, not mistakenly for relatives' charges as the Post-Dispatch had reported.

In one case, Joyce wrote that Jason Thomas was held 117 days on his own “parole hold” rather than for a charge against his brother Daniel, as the Post-Dispatch had reported. Bailon responded by saying that the Department of Corrections had told the paper that Jason’s parole never had been revoked, so “there was no parole violation to hold him on.” Joyce acidly replied to GJR that she stood by her claim, and that “we understand the difference between a parole hold and a parole violation.”

A “parole hold” means a criminal convict is being confined because of *suspected* parole violations. A person on parole hold can be lawfully detained pending a parole revocation hearing, even if parole ultimately is not revoked.

As Joyce wrote to GJR: “We have access to all sources of data, including many that are not available to non-law enforcement personnel. We have the legal expertise that allows us to accurately interpret the data.” The Post-Dispatch does not have access to confidential court documents needed to paint the entire picture of a case, she said.

For their part, Mann, Patrick and their main editor on the series, Pat Gauen, said in an interview at the newspaper’s headquarters in December that Joyce and Roth stonewalled them on records and refused to deal with them seriously on the story. They called Roth’s Facebook venue a “one-sided outlet

where you can say whatever you want to say.”

The real injustice, said Patrick, is “it seems ... you are guilty of being who they say until you prove otherwise. ... A lot of people will walk around with a record of a court order ... if (the police chief) is saying that is what you have to do ... we have a problem.”

### **Lawyer-Journalist**

Roth is a lawyer and former St. Louis Police Board president who decided a decade ago to switch to journalism. After a stint at the Dayton Daily News, he worked on the Post-Dispatch editorial page until 2011, when he joined the administration of Mayor Francis Slay. He is the mayor’s director of operations.

Few newspaper investigations are put under the microscope like this one by a person who knows both the law and the conventions of journalism.

Here are the main criticisms that Roth and Joyce have made:

- The Post-Dispatch did not talk to most of the 100 people whom the paper said were wrongly jailed. The reporters said they talked to the defendant or lawyer in about a dozen cases. One who wasn’t interviewed, Cortez Cooper, never was jailed as the series stated.
- The characterization of the system as “broken” was “false and inflammatory,” Roth said. The paper’s own data show errors to be rare and declining significantly. “The P-D used every trick in the book to obscure that reality,” wrote Roth, who added: “Why? Because a story about a system that works well and steadily improves under difficult circumstances ... isn’t big news.”
- The Post-Dispatch’s methodology was flawed. Reporters could not get access to relevant confidential documents. The stories were heavily based on police and court records that prosecutors warned before publication would

lead to factual errors.

- The series accused top city officials of blaming the victims and exhibiting indifference based on statements taken out of context.
- The newspaper switched the burden of proof for its story to the city by saying it would report what the public records showed unless the city was able to refute the records.
- The one correction that the paper eventually made was grudging.
- The newspaper has never reported that Joyce says its numbers are exaggerated. “To this day, the Post-Dispatch has not told its readers that the chief prosecutor for the City of St. Louis has found profound errors and exaggerations,” Roth said.
- Some of the paper’s claims were stated as facts without attribution or qualification, even though they were based on sometimes faulty records.
- The paper mischaracterized a lawsuit it cited in suggesting there could be “hundreds” of mistaken arrests. The paper said lawyers were “planning a class action,” even though the court already had turned down class certification.

## **The Numbers**

Most of the Post-Dispatch’s 100 cases were older ones. Roth said half were five years or older, and only about a dozen related to the past two years. That is out of a universe of 30,000 arrests a year.

“The reporters found fewer than one case a month in 2012, and about one case every other month in 2013 – a steady and marked improvement in the system over the five-year average,” he said.

Mann and Patrick said one reason there are fewer recent cases is that their Sunshine Act request covered the period up to

early 2012, and that the cost of obtaining computer records for 2009-2010 was deemed excessive.

Post-Dispatch editors decided not to pay about \$750 to \$1,000 to obtain some 70 computerized records for that period, even though Mann urged the editors to obtain them.

Gauen said he didn't regret the decision made by other editors not to pay for the records. "I'll stand by the decision," Gauen said, adding: "I don't think they are that important." He said the project never was driven by the magnitude of the numbers.

One factor in the debate over the numbers is a lawsuit pending in federal court on the issue of wrongful imprisonments. The stories reported that lawyers "planning a class action" claim to "have discovered more than 80 wrongful arrest cases with their own research and believe the actual number could be hundreds."

Roth maintained that the "reporters used the specter of a 'class action' to create the impression of a vast trove of cases that might be coming before the federal court. If the reporters knew that the request for class certification had been denied months earlier (and, indeed, had been found 'futile' by the federal court) they should have informed their readers."

Patrick said, however, that the lawyers in the case acknowledge they asked for class certification too soon and are planning to file a new class-action case. He and Mann emphasized they were extremely conservative in their investigation and suspected the number of people wrongfully jailed was considerably higher than the 100 they reported. If the city had provided the information it sought, they would have been able to better verify their numbers, they said.

At a hearing in early January in the court case, U.S. District Judge Audrey Fleissig said in court that the city had clearly

been negligent in the case of Cedric Wright, who spent 58 days in jail in 2011 on another man's charges. The other man apparently had used Wright's name as an alias. The city knew that one of three charges against Wright was bogus but didn't take the next step of freeing him from two related bogus charges.

Roth said he couldn't comment on the particular case but said, "People make mistakes. The mistakes are infrequent. We regret every one of them – as evidenced by a system that fundamentally is high performing and constantly improving."

On the burden of proof issue, the reporters and editors say they didn't switch the burden to the city officials. They said they simply wanted to give city officials time to respond to their evidence.

But Joyce told Bailon: "If the Post-Dispatch is adopting a standard where such complex and historical data is published as fact unless corrected by this office, I can only believe that such a standard will lead to further inaccuracies."

### **The Case of Cortez Cooper**

Roth points to Cortez Cooper to illustrate several criticisms: the failure to talk to defendants, the absence of attribution for important claims and the grudging approach to correcting errors.

The Post-Dispatch's original story stated without qualification:

*"Earlier this year, Cortez Cooper spent more than a month in jail because his brother, Cecil Cooper, used his name during a drug arrest before being released pending charges. Despite a fingerprint report within 21 hours showing that the wanted man was really Cecil, an arrest warrant was issued two months later for Cortez. He was jailed for 36 days."*

Roth said this statement should have been attributed because it was based entirely on records, and the newspaper had acknowledged in a disclaimer that the records "can be inconsistent or inaccurate."

The Post-Dispatch editorial page contacted Roth the day after the story ran to ask why Cortez Cooper had been wrongly jailed. (The editorial page ended up not writing an editorial.)

Roth and Joyce determined that the claim was wrong, and the Gateway Journalism Review brought the Cooper case to Bailon's attention. By this time, Patrick had made contact with Cortez, and he said he never was jailed.

Cortez and his mother went to police headquarters with Patrick tagging along. Police, once again confusing one Cooper for the other, handcuffed Cortez. He was released after a short time when he showed police a court paper explaining the situation.

Patrick's front-page story the next day focused on the problems Cortez had at police headquarters. Under the headline, "Man battles to free himself from St. Louis police paperwork glitch," Patrick reported the Cortez faced "another episode in the record-keeping system that contributes to a wrongful arrest problem, outlined in a Post-Dispatch investigation published Oct. 27. The paper reported that at least 100 people had spent more than 2,000 days behind bars on wrongful arrests, based on available records over about five years."

The story then included these paragraphs, which Roth views as a grudging, confusing correction:

*"Eddie Roth, operations director for Mayor Francis Slay, ... challenged the story's characterization that Cortez Cooper had been wrongly held for 36 days in the drug case against Cecil Cooper.*



*Neither he nor other officials would provide proof to contradict what was otherwise clearly stated in jail records and police arrest logs: that Cortez was arrested and held on a warrant that turned out to be intended for Cecil.*

*Interviewed for the first time Monday, Cortez Cooper acknowledged that he was never jailed."*

The day after the story and correction ran, McGraw Milhaven interviewed Patrick on KTRS radio for 15 minutes. Much of the interview focused on Cortez Cooper's problems. Patrick did not mention that the series had mistakenly said Cortez was jailed. Patrick said he did not mention the error because Milhaven was interested in the rest of the story about Cortez being handcuffed at police headquarters.

Based on Patrick's account of what happened to Cortez, Milhaven remarked, "It sounds to me like these people were just walking down the street and the cops said, 'Hey, you, we want to talk to you,' and they arrest the guy thinking it is somebody else."

This is exactly what St. Louis public officials say is not happening. Susan Ryan, a public relations consultant for Joyce, said in a videotaped interview with the Post-Dispatch before the series ran that it was important for citizens to know that the average person "isn't driving down the street and being stopped and arrested for something he didn't do."

She said that, in the main cases the Post-Dispatch reported, the person wrongly jailed already was in the criminal justice system.

Asked if she meant that people with criminal records should be treated differently, Ryan responded: "I'm not saying that at all. I think that all three agencies would tell you that they take this very seriously, and they don't want anybody wrongly arrested."

## Callous Indifference?

The Post-Dispatch cited Ryan's comment as a sign that city officials' attitudes had hardened after the initial stories in 2012, when Roth and others talked about the importance of avoiding any mistakes.

The suggestion of indifference offended Roth from the moment the series hit the street with a front-page read-out headline quoting him saying: "I don't worry about this."

The quote got a lot of attention. The Huffington Post reported that "of the public officials interviewed for the piece, Eddie Roth, a senior aide to St. Louis Mayor Francis Slay, comes off the most callous."

The St. Louis American said Roth looked like a "callous, ignorant jerk." Later, the American suggested that Roth's New Year's resolution should be: "I resolve to start worrying about the fact that the city whose operations I direct has a record of arresting and incarcerating the wrong people, leaving actual criminals at large."

Roth complained immediately to the Post about the quote, and it added a sentence: *He said he has faith in the system's ability to correct mistakes.*"

The Post-Dispatch reporters and editors were split on whether to add the sentence. Mann opposed the addition, arguing that Roth would claim – as he did – that it was an admission of error. Gauen decided to add the sentence out of an abundance of caution.

"I don't think it changed anything," he said.

But Roth still thought the paper misrepresented what he said. Here is what he said:

*"We like stuff done right. And so ... we don't like to see things that might not be right. Even though we can look at*

*this and say the chances of a citizen getting mistakenly caught up in the system is almost to the vanishing point in its rarity, we understand how important this is to the process, and we don't like any of them. We don't want there to be any. So, if we see any, we don't like it.*

*"We take some comfort – I take some comfort – in knowing we have a really excellent system, with really dedicated people. I don't worry at night, and worry is kind of my main form of fitness exercise. **I worry about a lot of things, I don't worry about this** even though I know it is imperfect... But I don't like to get any of them wrong, and the idea that anybody would spend one minute more in jail than they are required to is not something that is satisfactory to me."*

### **Misdirection?**

Gauen called the claims by city officials "baloney" and "misdirection" designed to distract from the serious injustices the paper uncovered. He said he was "flabbergasted there is not more interest in fixing the problem." Mann added that the city had not yet obtained mobile fingerprint devices for district stations, a step that could address the problem.

Said Gauen: "I think that their attempt to spin this thing has embarrassed them, and they are withdrawing. They are very resistant to representing their point in any serious way. ... I have the impression that Jennifer Joyce is done ... that they have declared victory and left the field."

He added: "These are people who have their own agendas" who take any "shred that we were wrong" as an excuse not to "look any deeper" at the problem because they "don't want to see anything deeper."

Gauen also said "... the records are wrong. Nobody seems to have an interest in going back and fixing the records. ... They never suggested they had any remorse" for giving people like Cortez Cooper a criminal record.

Roth responded that “the Post-Dispatch reporters came to us with questions not about errors in records, but about whether people were being jailed by mistake. That’s what the reporters asked about. They called their exposé: ‘Jailed by Mistake.’”

Roth said Gauen’s statements were “angry words, not words of a measured, thoughtful editor. This is a major reason why Post-Dispatch readers deserve, as the circuit attorney has recommended, an independent evaluation of the reporting and stories.”

He added that “the editors and reporters are offended at having been publicly confronted with their errors and omissions. They also appear to resent how new media gives people aggrieved by flawed journalism a chance to correct the record. They ... mount no serious defense to the detailed criticisms of their investigative, reporting and editing methods. Instead, they lash out. ... This illustrates how uncomfortable these editors and reporters are with the give-and-take of serious social media.”

*Freivogel, publisher of Gateway Journalism Review, is a former St. Louis Post-Dispatch reporter and editor, and a colleague of Eddie Roth and the Post-Dispatch reporters and editors involved in the series.*